

Introduced by

Human Services Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to create and enact a new chapter to title 57 of the North Dakota Century  
2 Code, relating to a provider assessment for intermediate care facilities for the mentally retarded;  
3 and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 57 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **Definitions.** As used in this chapter:

- 8 1. "Business" has the meaning provided in section 31-08.1-01.
- 9 2. "Commissioner" means the state tax commissioner.
- 10 3. "Facility" includes the operating entity of each intermediate care facility for the  
11 mentally retarded located in this state.
- 12 4. "Intermediate care facility for the mentally retarded" means a treatment or care  
13 center licensed under chapter 25-16 that provides services eligible for coverage as  
14 medical assistance under 42 U.S.C. 1396a(a)(31), and also means the  
15 developmental center at westwood park, Grafton.
- 16 5. "Licensed bed" means a bed licensed under chapter 23-16 or 25-16 or approved  
17 by the secretary of health and human services pursuant to 42 U.S.C. 1396i.
- 18 6. "Quarter" means one of four calendar quarters beginning January first, April first,  
19 July first, or October first.

20 **Imposition of assessment.** An assessment must be imposed on each intermediate  
21 care facility for the mentally retarded licensed in this state. No waiver otherwise available under  
22 this code is applicable to this assessment.

23 **Basis of assessment.** Every year beginning July first, each intermediate care facility  
24 for the mentally retarded must be assessed a quarterly rate per licensed bed as of the first day

1 of each quarter. The quarterly rate may not exceed a rate calculated by the department of  
2 human services as an annual aggregate of gross revenues as of December thirty-first of the  
3 preceding year for all intermediate care facilities for the mentally retarded, multiplied by one and  
4 one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

5 **Reports - Extension.**

- 6 1. On or before the last day of a quarter, each facility required to pay an assessment  
7 under this chapter must make out a return for the quarter in the form and manner  
8 prescribed by the commissioner. The facility shall report the number of licensed  
9 beds as of the first day of the quarter, the amount of the assessment for the quarter  
10 covered by the return, and include such further information the commissioner may  
11 require to enable the commissioner to correctly compute and remit the assessment  
12 levied by this chapter.
- 13 2. Upon request by a facility and a proper showing of the necessity, the commissioner  
14 may grant to the facility an extension of time not exceeding thirty days for making a  
15 return. If an extension is granted to a facility, the time the facility is required to  
16 make payment of the assessment liability must be extended for the same period.  
17 Interest must be charged upon the amount of the deferred payment at the rate of  
18 twelve percent per annum from the date the assessment would have been due if  
19 the extension had not been granted to the date the assessment is paid.
- 20 3. A return must be signed by a duly authorized agent of the facility and must contain  
21 a written declaration that the return is made and subscribed under the penalties of  
22 this chapter.

23 **Payment of assessment.** An assessment levied under this chapter must be paid on a  
24 quarterly basis and is due and payable on the last day of the quarter.

25 **Penalties - Offenses.**

- 26 1. If a facility's return or corrected return is not filed or the assessment is not paid  
27 within the time required by this chapter or, if upon audit, the facility is found to owe  
28 an additional assessment, the facility is subject to a penalty of five percent of the  
29 amount of assessment due, plus interest of one percent of the assessment for  
30 each month of delay or fraction thereof, excepting the first month after the  
31 assessment becomes due. If satisfied that the delay was excusable, the

1 commissioner may waive and, if paid, refund all or any part of the penalty and  
2 interest. The penalty and interest must be paid to the commissioner and disposed  
3 of in the same manner as other receipts under this chapter. Unpaid penalties and  
4 interest may be enforced in the same manner as the assessment imposed under  
5 this chapter.

6 2. A person failing to comply with this chapter or failing to remit the assessment  
7 provided by this chapter to the commissioner on a timely basis is guilty of a class B  
8 misdemeanor.

9 **Records required.** A facility required to pay an assessment under this chapter shall  
10 preserve and maintain the records as the commissioner may require for a period of three years  
11 and one month. All records must be open to examination at any time by the commissioner or  
12 any of the commissioner's duly authorized agents.

13 **Officer and manager liability.**

14 1. If a business that owns or operates a facility fails for any reason to file a required  
15 return or to pay an assessment due, any of its officers or managers having control  
16 or supervision of, or charged with the responsibility for making a return or payment  
17 is personally liable for the failure. The dissolution of a business does not discharge  
18 an officer's or manager's liability for a prior failure of the business to make a return  
19 or remit the assessment due.

20 2. If any of the officers or managers elect not to be personally liable for the failure to  
21 file the required return or to pay the assessment due, the facility shall make a cash  
22 deposit or post with the commissioner a bond or undertaking executed by a surety  
23 company authorized to do business in this state. The cash deposit, bond, or  
24 undertaking must be in an amount equal to the estimated annual assessment  
25 liability of the facility.

26 **Commissioner to administer chapter.**

27 1. The commissioner is charged with the administration of this chapter and shall  
28 enforce the assessment, levy, and collection of assessments imposed under this  
29 chapter.

30 2. For the purpose of ascertaining the correctness of a return or for the purpose of  
31 ascertaining the number of licensed beds of a facility, the commissioner shall

1 examine or cause to be examined by an agent or representative designated by the  
2 commissioner any books, papers, records, or memoranda; require by subpoena  
3 the attendance and testimony of witnesses; issue and sign subpoenas; administer  
4 oaths; examine witnesses and receive evidence; and compel witnesses to produce  
5 for examination books, papers, records, and documents relating to any matter  
6 which the commissioner has the authority to investigate or determine.

7 3. If the commissioner finds an officer or manager of a facility has made a fraudulent  
8 return, the costs of a hearing must be assessed to the facility. In all other cases,  
9 the costs must be paid by the state.

10 4. The fees and mileage to be paid witnesses and assessed as costs must be the  
11 same as prescribed by law in proceedings in the district court of this state in civil  
12 cases. All costs must be assessed in the manner provided by law in proceedings  
13 in civil cases. When the costs are assessed to the facility, the costs must be  
14 added to the assessment charged against the facility and must be collected in the  
15 same manner. Costs assessed to the state must be certified by the commissioner  
16 to the state treasurer, who shall issue warrants for the amount of the costs.

17 5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a  
18 court of competent jurisdiction in requiring the attendance and testimony of  
19 witnesses and production of records, books, papers, and documents. The court  
20 may issue an order requiring the person to appear before the commissioner and  
21 give evidence or produce records, books, papers, and documents. A failure to  
22 obey an order of the court may be punished by the court as contempt.

23 6. Testimony on hearings before the commissioner may be taken by a deposition as  
24 in civil cases and an individual may be compelled to appear and depose in the  
25 same manner as witnesses may be compelled to appear and testify as provided by  
26 this section.

27 **Lien of assessment - Collection - Action authorized.**

28 1. Whenever a facility liable to pay an assessment or penalty imposed refuses or  
29 neglects to pay the same, the amount, including any interest, penalty, or addition to  
30 the assessment, together with the costs that may accrue, is a lien in favor of this  
31 state upon all property and rights to property, whether real or personal, belonging

1 to the facility. In the case of property in which a deceased owner, officer, or  
2 manager of a facility held an interest as joint tenant or otherwise with right of  
3 survivorship at the time of death, the lien continues as a lien against the property in  
4 the hands of the survivor or survivors to the extent of the deceased owner's,  
5 officer's, or manager's interest, which interest must be determined by dividing the  
6 value of the entire property at the time of the officer's or manager's death by the  
7 number of joint tenants or persons interested therein.

8 2. The lien attaches at the time the assessment becomes due and payable and  
9 continues until the liability for the amount is satisfied. For the purposes of this  
10 subsection, the words "due" and "due and payable" mean the first instant the  
11 assessment becomes due.

12 3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest  
13 in, or lien on, any property situated in the state, prior to the commissioner filing in  
14 the central indexing system maintained by the secretary of state, a notice of the  
15 lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.

16 4. The commissioner shall index in the central indexing system the following data:  
17 a. The name of the facility.  
18 b. The tax identification number of the facility or social security number of the  
19 owner, officer, or manager of the facility.  
20 c. The name "State of North Dakota" as claimant.  
21 d. The date and time the notice of lien was indexed.  
22 e. The amount of the lien.

23 The notice of lien is effective as of eight a.m. the next day following the indexing of  
24 the notice. A notice of lien filed by the commissioner with the recorder may be  
25 indexed in the central indexing system without changing its original priority as to  
26 property in the county where the lien was filed.

27 5. The commissioner is exempt from the payment of the filing fees as otherwise  
28 provided by law for the indexing of the notice of lien, or for its satisfaction.

29 6. Upon payment of the assessment as to which the commissioner has indexed  
30 notice in the central indexing system, the commissioner shall index a satisfaction of  
31 the lien in the central indexing system.

- 1           7. Upon the request of the commissioner, the attorney general shall bring an action at  
2           law or in equity, as the facts may justify, without bond, to enforce payment of any  
3           assessments and any penalties, or to foreclose the lien in the manner provided for  
4           mortgages on real or personal property. The state's attorney of the county in which  
5           the action is pending shall assist the attorney general.
- 6           8. The remedies of this section are cumulative. Action taken by the commissioner or  
7           attorney general may not be construed to be an election on the part of the state or  
8           any of its officers to pursue any remedy hereunder to the exclusion of any other  
9           remedy provided by law.
- 10          9. The technical, legal requirements in this section relating to assessment liens on all  
11          real and personal property of the officer or manager of the facility to ensure  
12          payment of the assessment, including penalties, interest, and other costs, are  
13          self-explanatory.

14           **Commissioner may require bond.** When in the commissioner's judgment it is  
15          necessary and advisable to do so in order to secure the collection of the assessment levied  
16          under this chapter, the commissioner may require a person subject to the assessment to file  
17          with the commissioner a bond, issued by a surety company authorized to transact business in  
18          this state and approved by the insurance commissioner as to solvency and responsibility in an  
19          amount the commissioner may fix, to secure the payment of any assessment and penalties due  
20          or which may become due from the person. In lieu of the bond, securities approved by the  
21          commissioner in the amounts as the commissioner prescribes may be deposited with the  
22          commissioner, which securities must be kept in the custody of the commissioner and may be  
23          sold by the commissioner at public or private sale, without notice to the depositor, if it becomes  
24          necessary to do so in order to recover any assessment and penalties due. All moneys  
25          deposited as security with the commissioner under this section must be paid by the  
26          commissioner to the state treasurer and must be credited by the state treasurer into a special  
27          fund to be known as the provider assessment trust fund. If any assessment, penalty, or costs  
28          imposed by this chapter are not paid when due, by the person depositing moneys with the  
29          commissioner as security for the payment of the assessment, penalty, or costs imposed by this  
30          chapter, the commissioner shall certify that information to the director of the office of  
31          management and budget who shall transmit the money to the commissioner who shall apply the

1 money deposited by the person or so much thereof as is necessary to satisfy the assessment  
2 and penalties due. When in the commissioner's judgment it is no longer necessary to require  
3 the deposit to be maintained by the person, the commissioner shall certify that information to  
4 the director of the office of management and budget who shall pay the unused money to the  
5 entitled person.

6 **Correction of errors.** If it appears that, as a result of a mistake, an amount of  
7 assessment, penalty, or interest has been paid which was not due under this chapter, the  
8 amount must be credited against any assessment due, or to become due, under this chapter  
9 from the person who made the erroneous payment, or the amount must be refunded to the  
10 person. The person who made the erroneous payment shall present a claim for refund or credit  
11 to the commissioner not later than three years after the due date of the return for the period for  
12 which the erroneous payment was made or one year after the erroneous payment was made,  
13 whichever is later.

14 **Provider assessment fund.** There is a special fund in the state treasury known as the  
15 provider assessment fund. The fund includes all revenue received from intermediate care  
16 facilities for the mentally retarded for remittance to the fund under this chapter. All moneys  
17 designated for the fund from whatever source derived must be deposited with the state  
18 treasurer in the provider assessment fund.