

# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 255

### HOUSE BILL NO. 1347

(Representative Uglem)

(Senator J. Lee)

## COMMITTEE ON PROTECTION AND ADVOCACY MEMBERSHIP

AN ACT to amend and reenact subsections 3 and 4 of section 25-01.3-02 of the North Dakota Century Code, relating to appointment of a member of the committee on protection and advocacy by a North Dakota nonprofit advocacy group of people with disabilities, to update the name of another appointing group, and to stagger the terms of the members.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>141</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The appointments and terms of committee members are as follows:
  - a. The governor shall appoint two committee members for two-year terms, beginning on August first in each ~~odd-numbered~~ even-numbered year.
  - b. The legislative council shall appoint one member from each house of the legislative assembly for two-year terms, beginning on August first in each odd-numbered year.
  - c. The governing board of the ~~association for retarded citizens arc~~ of North Dakota shall appoint one committee member for a three-year term, beginning ~~on~~ August first in each year that is evenly divisible by three.
  - d. The governing board of ~~people first of a~~ North Dakota nonprofit advocacy group for people with disabilities shall appoint one committee member for a three-year term, beginning on August first in each year that is ~~evenly~~ evenly divisible by three with a remainder of one. Whenever an appointment to this position is to be made, the other members of the committee shall select a North Dakota

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<sup>141</sup> Section 25-01.3-02 was also amended by section 2 of House Bill No. 1347, chapter 255.

nonprofit advocacy group for people with disabilities to make this appointment.

- e. The governing board of the mental health association in North Dakota shall appoint one committee member for a three-year term, beginning on August first in each year that is ~~evenly~~ divisible by three with a remainder of two.

<sup>142</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Each committee member appointed by ~~the association for retarded citizens of North Dakota, people first of North Dakota, or the mental health association in North Dakota~~ a North Dakota nonprofit advocacy group for people with disabilities must be:
  - a. An individual with disabilities who is eligible for services; or
  - b. A parent, family member, guardian, advocate, or other authorized representative of an individual with disabilities who is eligible for services.

Approved March 5, 2007  
Filed March 6, 2007

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<sup>142</sup> Section 25-01.3-02 was also amended by section 1 of House Bill No. 1347, chapter 255.

## CHAPTER 256

### SENATE BILL NO. 2130

(Human Services Committee)

(At the request of the Department of Human Services)

## PSYCHIATRIC TREATMENT FACILITIES FOR CHILDREN

AN ACT to amend and reenact subsection 7 of section 15.1-31-01, sections 25-03.2-01, 25-03.2-02, 25-03.2-03, 25-03.2-03.1, 25-03.2-04, 25-03.2-05, 25-03.2-06, and 25-03.2-07, subsection 4 of section 25-03.2-08, section 25-03.2-10, and subdivision a of subsection 9 of section 43-12.1-04 of the North Dakota Century Code, relating to psychiatric residential treatment facilities for children; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>143</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 15.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

7. A child placed for purposes other than education in a group or residential care facility or in a psychiatric residential treatment ~~center~~ facility is not eligible for open enrollment under this section.

**SECTION 2. AMENDMENT.** Section 25-03.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Child" or "children" means a person or persons under the age of twenty-one.
2. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery, provided by qualified mental health professionals.
- ~~2.~~ 3. "Department" means the department of human services.
- ~~3.~~ 4. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.
- ~~4.~~ 5. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under

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<sup>143</sup> Section 15.1-31-01 was also amended by section 1 of House Bill No. 1199, chapter 181.

the clinical supervision of a mental health professional on the basis of a diagnostic assessment.

- 5- 6. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
- 6- 7. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must meet the requirements of a psychiatric residential treatment facility as set out in title 42, Code of Federal Regulations, part 483.352.
- 7- 8. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
- 8- 9. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

**SECTION 3. AMENDMENT.** Section 25-03.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-02. License required.** The operator of a publicly or privately operated psychiatric residential treatment center facility for children shall meet the requirements for licensure and shall secure a license from the department.

**SECTION 4. AMENDMENT.** Section 25-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03. Requirements for license.** The department shall issue a license for the operation of a psychiatric residential treatment center facility for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the center facility holds, at a minimum, a master's degree in social work, psychology, or in a related behavioral science field with at least two years of professional experience in the treatment of children ~~and adolescents~~ suffering from mental illnesses or emotional disturbances. The executive director of the center facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the center facility is supervised by the program director and qualified by training and experience to provide services to children ~~and adolescents~~ suffering from mental illnesses or emotional disturbances. The center facility annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the ~~residents~~ children cared for and treated in the center facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the ~~residents~~ children in the center facility;
6. The center facility will provide for a medical and psychological examination of each ~~resident~~ child within seventy-two hours of admission and thereafter as needed by the ~~resident~~ child;
7. An interdisciplinary team consisting of at least one qualified mental health professional will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the ~~resident~~ child; ~~and~~
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's family, school, and community upon discharge to ensure continuity of care; and
9. The center facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441, and with this chapter and with rules adopted under this chapter.

<sup>144</sup> **SECTION 5. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03.1. (Effective through July 31, 2007) Moratorium on expansion of psychiatric residential treatment center facility for children bed capacity.** Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a psychiatric residential treatment center facility for children above the state's gross number of beds licensed as of June 30, 2003.

**SECTION 6. AMENDMENT.** Section 25-03.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-04. Conviction not bar to licensure - Exceptions.** Conviction of an offense by an owner or operator of a center facility does not disqualify the center from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment center facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 7. AMENDMENT.** Section 25-03.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-05. Content of license.** The license to operate a psychiatric residential treatment center facility for children must specify:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of residents children who may be received in the premises at any one time.
4. The date of expiration of the license.

**SECTION 8. AMENDMENT.** Section 25-03.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-06. Admission criteria.** A child may be admitted to a psychiatric residential treatment center facility for children if, the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The center facility must take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all residents children.

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<sup>144</sup> Section 25-03.2-03.1 was also amended by section 1 of Senate Bill No. 2066, chapter 257.

**SECTION 9. AMENDMENT.** Section 25-03.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-07. Method of providing service.** A psychiatric residential treatment ~~center~~ facility for children shall provide for the development of an individual treatment plan, based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the ~~residential therapeutic activities and~~ treatment, provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services, consistent with the individual treatment plan, to ~~residents~~ children. Clinical supervision of the individual treatment plan must be accomplished by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual treatment plans and by entries in the ~~resident's~~ child's record regarding supervisory activity.

**SECTION 10. AMENDMENT.** Subsection 4 of section 25-03.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The owner, operator, or an employee of the center facility is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 11. AMENDMENT.** Section 25-03.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-10. Department may adopt rules.** The department may adopt rules for the conduct of psychiatric residential treatment ~~centers~~ facilities for children.

<sup>145</sup> **SECTION 12. AMENDMENT.** Subdivision a of subsection 9 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. Within psychiatric residential treatment ~~centers~~ facilities for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;

**SECTION 13. EFFECTIVE DATE.** This Act becomes effective on July 1, 2007.

**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007

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<sup>145</sup> Section 43-12.1-04 was also amended by section 2 of Senate Bill No. 2025, chapter 112.

**CHAPTER 257****SENATE BILL NO. 2066**

(Human Services Committee)

(At the request of the Department of Human Services)

**RESIDENTIAL TREATMENT CENTER AND CHILD  
CARE FACILITY MORATORIUM**

AN ACT to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to the moratorium on expansion of residential treatment center for children bed capacity and the moratorium on residential child care facility or group home bed capacity.

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

<sup>146</sup> **SECTION 1. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03.1. (Effective through July 31, 2007) Moratorium on expansion of residential treatment center for children bed capacity.** Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 2003. This section does not apply to nor prohibit the department from licensing additional bed capacity for a new psychiatric residential treatment facility for children if the additional beds are designated for the care of children and adolescents who are residents of other states.

**SECTION 2. AMENDMENT.** Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.3. (Effective through July 31, 2007) Moratorium on expansion of residential child care facility or group home bed capacity.** Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 2003.

Approved April 4, 2007

Filed April 5, 2007

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<sup>146</sup> Section 25-03.2-03.1 was also amended by section 5 of Senate Bill No. 2130, chapter 256.

## CHAPTER 258

### HOUSE BILL NO. 1217

(Representatives DeKrey, Delmore, Koppelman)  
(Senators Hacker, Lyson, Nelson)

## SEXUALLY DANGEROUS INDIVIDUAL CIVIL COMMITMENT

AN ACT to amend and reenact subsection 2 of section 25-03.3-05 and section 25-03.3-13 of the North Dakota Century Code, relating to the civil commitment of sexually dangerous individuals; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this chapter, the disclosure of individually identifiable health information by a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other a mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment. A retained or appointed counsel has the right to obtain individually identifiable health information regarding a respondent in a proceeding under this chapter. In any other case, the right of an inmate or a patient to obtain protected health information must be in accordance with title 45, Code of Federal Regulations, part 164.

**SECTION 2. AMENDMENT.** Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings.** Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless expert evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility

or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 3, 2007

Filed April 4, 2007