

# HEALTH AND SAFETY

## CHAPTER 185

### SENATE BILL NO. 2176

(Senators Heckaman, Mathern)  
(Representatives Rohr, Wallman)

AN ACT to amend and reenact section 23-01-41 of the North Dakota Century Code, relating to the autism spectrum disorder database; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-01-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-01-41. Autism spectrum disorder database - Rulemaking - Confidentiality.**

1. The state department of health shall establish and administer an autism spectrum disorder database. The database must include a record of all reported cases of autism spectrum disorder in the state and any other information determined relevant and appropriate by the department in order to complete epidemiologic surveys of the autism spectrum disorder, enable research and analysis of the autism spectrum disorder, and provide services to individuals with an autism spectrum disorder.
2. The state department of health shall establish criteria regarding who is qualified to report a case of autism spectrum disorder to the database. In establishing this criteria, the department shall require that the reporter be a ~~doctoral-level professional and be appropriately licensed, credentialed, and experienced in the field of autism spectrum disorder, including intellectual testing and other formal evidenced-based assessments for autism spectrum disorders. The department shall consult with experts in establishing this criteria~~physician or psychologist or any other licensed or certified health care professional who is qualified by training and by licensure or certification to make the diagnosis of autism spectrum disorder.
3. The database established under this section must:
  - a. Include the reported individual's diagnoses under the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders; and
  - b. ~~Include~~Indicate whether a complete physical evaluation of the reported individual, performed by a licensed physician was performed by a licensed independent practitioner as part of the diagnostic process for autism spectrum disorder.
4. The health council shall adopt rules to provide for mandatory reporting to the autism spectrum disorder database and to establish reporting requirements,

including timeliness requirements. A reporter who makes the diagnosis an individual is affected with autism spectrum disorder, or the reporter's designee, shall report this diagnosis in the form or manner prescribed by the state department of health.

5. The state department of health shall keep confidential all records of the database which could be used to identify a reported individual; however, the department may provide these records to other state agencies as necessary to effect the purposes of this database without regard to the confidential nature of the records. If the department provides confidential records of the database to a state agency, the department shall notify the receiving agency of the confidential nature of the records and the receiving agency shall treat these records as confidential.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 186

### HOUSE BILL NO. 1370

(Representatives P. Anderson, Hawken, Mitskog, Strinden)  
(Senator Nelson)

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to mammogram result notices and the notification of registered owners of mammography equipment; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

##### (Effective through July 31, 2017) Mammogram results.

1. As used in this section, the term "facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, or office of a physician or other facility as determined by the state department of health, which conducts breast cancer screening or diagnosis through mammography activities.
2. If a facility at which a mammography examination is performed categorizes a patient as having heterogeneously dense breasts or extremely dense breasts based on a breast imaging reporting and data system approved by the state department of health, such as the system established by the American college of radiology, the facility shall include in the summary of the written report that is sent to the patient a notice that the patient has dense breast tissue, that this dense breast tissue may make it more difficult to detect cancer on a mammogram, and that this dense breast tissue may increase the patient's risk of breast cancer.
3. The state department of health shall notify all registered owners of mammography equipment of these changes, along with the state board of medical examiners, the North Dakota medical association, the North Dakota board of nursing, and the North Dakota nursing association. The state department of health shall encourage these boards to include information about these changes in the next publication of their professional journals.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2017, and after that date is ineffective.

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

Approved April 8, 2015  
Filed April 8, 2015

## CHAPTER 187

### SENATE BILL NO. 2104

(Senator Anderson)  
(Representative Rick C. Becker)

AN ACT to create and enact a new section to chapter 23-01 and a new subsection to section 43-15-10 of the North Dakota Century Code, relating to immunity from liability related to opioid antagonists and limited prescriptive authority for Naloxone rescue kits.

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

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

#### **Opioid antagonist prescription, distribution, possession, or use - Immunity from liability.**

1. As used in this section:
  - a. "Health care professional" means a licensed or certified health care professional who is working within the scope of practice for that profession. The term may include a physician, physician assistant, advanced practice registered nurse, and pharmacist acting in the professional's scope of practice.
  - b. "Opioid antagonist" means a drug:
    - (1) That is approved by the United States food and drug administration for the treatment of a drug overdose and is recognized by the state department of health for the treatment of a drug overdose; and
    - (2) That when administered negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.
2. A health care professional acting in good faith may directly or by standing order prescribe, distribute, or dispense an opioid antagonist, if the health care professional provides training to:
  - a. An individual at risk of experiencing an opioid-related overdose; or
  - b. A family member, friend, or other individual in a position to assist an individual at risk of experiencing an opioid-related overdose.
3. An individual acting in good faith may receive or possess an opioid antagonist if that individual is:
  - a. An individual at risk of experiencing an opioid-related overdose; or
  - b. A family member, friend, or other individual in a position to assist an individual at risk of experiencing an opioid-related overdose.

4. An individual acting in good faith may self-administer an opioid antagonist or administer an opioid antagonist to another individual who the administering individual suspects is at risk of experiencing an opioid overdose.
5. An individual may receive, possess, or administer an opioid antagonist under subsection 3 or 4, regardless of whether the individual is the individual for or to whom the opioid antagonist is prescribed, distributed, or dispensed.
6. An individual who prescribes, distributes, dispenses, receives, possesses, or administers an opioid antagonist as authorized under this section is immune from civil and criminal liability for such action. A health care professional who prescribes, distributes, or dispenses an opioid antagonist as authorized under this section is not subject to professional discipline for such action. This section does not expand the scope of practice of a health care professional. Immunity from liability or discipline under this subsection does not apply if the individual's actions constitute recklessness, gross negligence, or intentional misconduct.

**SECTION 2.** A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To establish limited prescriptive authority for individuals to distribute opioid antagonist kits, also known as "Naloxone rescue kits." If the board establishes limited prescriptive authority under this subsection, the board shall adopt rules to establish standards that may include training, certification, and continuing education requirements.

Approved April 8, 2015  
Filed April 8, 2015

## CHAPTER 188

### HOUSE BILL NO. 1116

(Human Services Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact sections 23-02.1-01, 23-02.1-13, 23-02.1-15, 23-02.1-19, 23-02.1-20, 23-02.1-25, and 23-02.1-27, and subsection 5 of section 23-02.1-30 of the North Dakota Century Code, relating to the Health Statistics Act; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-02.1-01. Definitions.**

As used in this chapter:

1. "Authorized representative" means a person ~~who~~that has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Certified" means a copy of the original record on file with the state department of health ~~that~~which is signed and sealed by the state registrar or deputy state registrar.
3. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
4. "Electronic birth registration system" means the electronic birth registration system maintained by the state department of health.
5. "Electronic death registration system" means the electronic death registration system maintained by the state department of health.
6. "Facts of death" means the demographic and personal information pertaining to ~~a person's~~an individual's death.
7. "Fetal death" or "birth resulting in stillbirth" means death ~~prior to occurring~~before the complete expulsion or extraction from its mother of a product of human conception; ~~irrespective of the duration of pregnancy; the~~The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.
8. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.

9. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
10. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
11. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which ~~persons~~individuals are committed by law.
12. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
13. "Medical certification" means the medical information pertaining to a ~~person's~~an individual's death, including the cause and manner of death.
14. "Personal or real property interests" means ownership or other legal rights or duties concerning personal or real property.
15. "Physician" means a ~~person~~an individual authorized or licensed to practice medicine or osteopathy ~~pursuant to~~under chapter 43-17.
- 45-16. "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
- 46-17. "Relative" means a ~~person's~~an individual's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.
- 47-18. "Subregistrar" means a funeral director or other suitable ~~person~~individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing burial-transit permits.
- 48-19. "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.
- 49-20. "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

**SECTION 2. AMENDMENT.** Section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-13. Birth registration.**

1. A birth record for each live birth that occurs in this state must be filed with the state registrar.
2. When a birth occurs in an institution, the person in charge of the institution or a designated representative must use the state department of health's electronic birth registration system to report the birth, including all personal and medical facts, to the state registrar within five days after the birth.
3. When a birth occurs outside an institution, the required forms prescribed by the state department of health must be prepared and filed with the state registrar, within thirty days of the birth by one of the following in the indicated order of priority:
  - a. The physician in attendance at or immediately after the birth, or in the absence of such ~~a person~~ an individual;
  - b. Any other ~~person~~ individual in attendance at or immediately after the birth, or in the absence of such ~~a person~~ an individual; or
  - c. The father, the mother, or in the absence of the father and the inability of the mother, the ~~person~~ individual in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the man must be entered on the record as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth record unless:
  - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged his paternity of the child in writing filed with the state registrar; or
    - (2) He is obligated to support the child under a written voluntary promise or by court order;
  - b. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity ~~in a writing on a form prescribed by the state department of health~~, signed by ~~both~~ the child's natural mother and biological father, and filed with the state registrar; or

- c. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the birth record, the child's surname must be shown on the birth record as the current legal surname of the mother at the time of birth unless an affidavit or an acknowledgment of paternity signed by both parents is received ~~stating the surname to be that of the father~~filed with the state department of health.

**SECTION 3. AMENDMENT.** Section 23-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-15. Delayed registration of birth.**

1. When the birth of ~~a person~~an individual born in this state has not been registered, a record may be filed in accordance with the regulations of the state department of health. Such record must be registered subject to such evidentiary requirements as the state department of health shall prescribe to substantiate the alleged facts of birth.
2. Records of birth registered one year or more after the date of occurrence must be marked "delayed" and show on ~~their~~the face of the record the date of delayed registration.
3. A summary statement of the evidence submitted in support of the delayed registration must be endorsed on the record.
4. a. When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the state registrar finds reason to question the validity or adequacy of the record or documentary evidence, the state registrar may not register the delayed record and shall advise the applicant of the reasons for this action. In the event that the deficiencies are not corrected, the state registrar shall advise the applicant of the right of appeal to a court of competent jurisdiction for a judicial determination of the birth facts.  
b. The state department of health may by regulation provide for the dismissal of an application ~~which~~that is more than ~~two years~~one year old and is not being actively pursued.
5. A report of live birth may not be registered for a deceased individual one year or more after that individual's date of birth.

**SECTION 4. AMENDMENT.** Section 23-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-19. Death registration.**

1. A death record for each death that occurs in this state must be filed with the state registrar in accordance with the rules and regulations set forth by the state department of health using the electronic death registration system. All registration and issuing of copies of death records will be completed by the state department of health.
2. The funeral director shall obtain the facts of death from the next of kin or the best qualified ~~person~~individual or source available and must file the facts of

death information using the electronic death registration system within three days after assuming custody of the dead body. The funeral director shall obtain the medical certification of death from the ~~person~~individual responsible for the medical certification.

3. The medical certification must be completed and filed using the electronic death registration system within ~~fifteen~~ days after death by the physician, physician assistant, or nurse practitioner in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
4. When death occurred without medical attendance or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death, and shall obtain medical information about the individual from the individual's medical records or last-known physician or physician assistant, and shall complete and file the medical certification within ~~fifteen~~ days after taking charge of the case using the electronic death registration system.
5. If the cause of death cannot be determined within ~~fifteen~~ days after death, the medical certification may be filed after the prescribed period, in accordance with rules adopted by the state department of health. The attending physician, physician assistant, nurse practitioner, or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, physician assistant, nurse practitioner, or coroner.
6. When a death is presumed to have occurred within this state but the body cannot be located, a death record may be prepared by the state registrar upon receipt of findings of a court of competent jurisdiction, including the facts of death and medical certification required to complete the death record. The death record must be marked "presumptive" and must show on ~~its~~the face of the death record the date of registration and must identify the court and the date of the decree.
7. Each death ~~record~~registration must include the social security number of the decedent, if the information is available. A social security number included on a death record is confidential and may be disclosed only to a relative or authorized representative of the individual named on the record, to a person with personal or real property interests that depend upon information contained in the death record, or by an order of a court of competent jurisdiction.

**SECTION 5. AMENDMENT.** Section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-20. Fetal death registration.**

1. A fetal death record for each fetal death ~~which that~~ occurs in this state after a gestation period of twenty completed weeks or more ~~or of less than twenty completed weeks of gestation when provided by rules of the state department of health~~ must be filed with the state registrar.
2. ~~The funeral director who first assumes custody of a fetus shall file the fetal death record. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the fetal death record. The person filing the fetal death record shall obtain the facts of death from the next of kin~~

~~or the best qualified person or source available and must file the facts of death information within fifteen days of the occurrence using the electronic death registration system. The person filing the fetal death record shall obtain the medical certification of death from the person responsible for the medical certification. When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall use the state department of health's electronic fetal death registration system to report the fetal death, including all personal and medical facts, to the state registrar within ten days after the delivery. If a fetal death occurs outside of an institution, a funeral director or other individual in attendance at or after delivery shall file the fetal death record.~~

- ~~3. The medical certification must be completed and filed using the electronic death registration system by the physician, physician assistant, or a nurse practitioner in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.~~
- ~~4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death, and shall obtain medical information about the individual from that individual's medical records or last-known physician or physician assistant and file the medical certification within ~~fifteen~~ ten days after taking charge of the case using the electronic death registration system.~~
- ~~5-4.~~ If the cause of fetal death cannot be determined within ~~fifteen~~ ten days after death, the medical certification may be filed after the prescribed period of time in accordance with rules adopted by the state department of health. The attending physician, physician assistant, nurse practitioner, or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, physician assistant, nurse practitioner, or coroner.
- ~~6-5.~~ The provision for entering the name of the father of the fetus on the fetal death record and the reporting of out-of-wedlock fetal deaths concur exactly with those set forth in section 23-02.1-13.

**SECTION 6. AMENDMENT.** Section 23-02.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-25. Correction and amendment of vital records.**

1. A record registered under this chapter may be amended only in accordance with this chapter and regulations ~~thereunder~~ under this chapter adopted by the state department of health to protect the integrity and accuracy of vital records.
2. A record that is amended under this section must be marked "amended" except as provided in subsection 4. The date of amendment and a summary description of the evidence submitted in support of the amendment must be endorsed on or made a part of the record. The state department of health shall prescribe by regulation the conditions under which additions or minor corrections may be made to birth records within one year after the date of birth without the record being considered as amended.
3. Upon receipt of a certified copy of a court order ~~changing the name of a person born in this state~~ that is amending a birth, death, or fetal death record

and upon request of such ~~person~~individual or the ~~person's~~individual's parent, guardian, or legal representative, the state registrar shall amend the record to ~~reflect the new names directed in the court order; however, if the state registrar has information to believe the facts of the court order are false or inaccurate, the state registrar shall provide the court and any known parties with the correct information.~~

4. Upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents and upon request, the state registrar shall amend a record of birth to show such paternity if paternity is not shown on the record. Upon request of the parents, the surname of the child must be changed on the appropriate record to ~~that of the father~~the surname designated by the parents on the acknowledgment of paternity. Such record may not be marked as "amended". The provisions of this subsection apply also in their entirety to records of fetal death.

**SECTION 7. AMENDMENT.** Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-27. Disclosure of records.**

Birth, death, and fetal death records, filings, data, or other information related to birth, death, and fetal death records are confidential and may not be disclosed except as authorized under this chapter. The state registrar shall restrict access to all vital records to protect vital records from loss, mutilation, or destruction and to prevent disclosure of the information contained in these records except as authorized under this chapter.

1. A certified copy of a birth record may be issued to the individual named on the record if that individual is at least sixteen years old, to a parent named on the record, to an authorized representative, or by the order of a court of competent jurisdiction. If the individual named on a birth record is deceased, a certified copy of that record may also be issued to a relative. If the date of birth on any birth record is more than one hundred and twenty-five years old, that record is an open record and a certified copy may be issued to anyone, except that adoption records remain confidential.
2. A certified copy of a complete death record may be issued to a relative, an authorized representative, the child fatality review board, a licensed physician for the purposes of researching family medical history, a funeral director reporting the facts of death, or a person with personal or real property interests that depend upon information contained in the complete death record or by the order of a court of competent jurisdiction and may include the cause of death and the social security number. A certified copy of the facts of death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a complete death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified copy of an informational death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.
3. A certified copy of a fetal death record may be issued to a parent named on the record, an authorized representative, or by the order of a court of competent jurisdiction. A person authorized to receive a certified copy of a fetal death record may request the certified copy be issued in the form of a certification of birth resulting in stillbirth.

4. A noncertified informational copy of a marriage record may be issued to the general public.
5. ~~Any individual~~A person authorized to receive a certified copy of any specific record may grant another ~~individual~~person the same authority by completing a written authorization on a form prescribed by the state department of health.
6. The state department of health may grant limited access to birth and death information to divisions and programs of the state department of health, the department of transportation, the protection and advocacy project, and the department of information technology, and to the department of human services necessary for the purpose of completing their respective official duties.
7. The state department of health may issue, through electronic means determined by the state department of health, verifications of information contained on birth or death records filed with the state registrar when such information is provided and a verification is requested by a governmental agency, whether foreign or domestic, in the conduct of the agency's official duties. The state department of health may also issue these electronic verifications for a negotiated and agreed-upon fee to:
  - a. Benefit-paying parties, such as annuity companies, pension plans, and life insurance companies, that demonstrate a need for such information to determine whether the benefits the benefit-paying party are paying should be terminated or distributed to a beneficiary;
  - b. Physicians licensed to practice in the United States who demonstrate such information is needed to determine whether a patient the physician is treating has been lost to care;
  - c. Attorneys licensed to practice in the United States who demonstrate that the information is necessary to administer the attorneys' client's estate; or
  - d. Other entities for fraud prevention as determined by the state registrar.

**SECTION 8. AMENDMENT.** Subsection 5 of section 23-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

5. On or before the fifth day of each month, each hospital, institution, funeral director, embalmer, or person acting as such in this state shall report to the state registrar, on forms provided for this purpose, information required by the state registrar regarding each ~~dead body or fetus~~birth, death, or fetal death handled ~~by such person~~ during the preceding calendar month.

**SECTION 9. APPLICATION.** Under subsection 3 of section 23-02.1-13, the state department of health shall use forms that are substantially similar to the department's North Dakota parent's worksheet and certifier's worksheet for completing the North Dakota birth certificate.

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 189

### SENATE BILL NO. 2238

(Senators Marcellais, Schneider)  
(Representative M. Nelson)

AN ACT to amend and reenact subsection 3 of section 23-06-03 of the North Dakota Century Code, relating to providing military caskets or urns for eligible deceased veterans.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

3. If the deceased is not survived by an individual described by subsection 1 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, the county social service board of the county in which the death occurs shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social services board may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

Approved April 8, 2015  
Filed April 8, 2015

## CHAPTER 190

### SENATE BILL NO. 2079

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 23-09.3-01.1 and subsections 1 and 2 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratoria on basic care and nursing facility bed capacity; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-09.3-01.1. Moratorium on expansion of basic care bed capacity.**

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2013~~2015, and July 31, ~~2015~~2017, except when:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
  - c. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
  - d. The state department of health and the department of human services grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.
2. Transfers of basic care beds from one basic care facility to another entity is permitted. Transferred basic care beds must become licensed within forty-eight months of transfer. The entity receiving the transferred beds or any new facility may seek to participate in the basic care assistance program. If the entity can demonstrate that individuals can be cared for at a more independent level and that this service will delay entry into the nursing facility, the entity may be approved for basic care assistance funds.
3. If an Indian tribe acquires basic care beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate in the basic care assistance program.

Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.

**SECTION 2. AMENDMENT.** Subsections 1 and 2 of section 23-16-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2013~~2015, and July 31, ~~2015~~2017. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity ~~as the type of bed capacity originally transferred~~ within forty-eight months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the forty-eight-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of the first transfer.

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

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 191

### SENATE BILL NO. 2284

(Senators Nelson, Anderson, Grabinger)  
(Representatives Boschee, Delmore, Maragos)

AN ACT to create and enact section 23-16-16 of the North Dakota Century Code, relating to hospital treatment of victims of sexual assault; to provide a penalty; to designate the use of oil and gas impact grants; and to provide for reports.

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

**SECTION 1.** Section 23-16-16 of the North Dakota Century Code is created and enacted as follows:

##### **23-16-16. Treatment of victims of sexual assault.**

1. As used in this section:
  - a. "Hospital" means an entity required to obtain a license under section 23-16-01.
  - b. "Sexual assault" has the same meaning as provided under section 12.1-20-07.
  - c. "Victim of sexual assault" means an individual who:
    - (1) States a sexual assault has been committed against the individual;
    - (2) Is accompanied by another individual who states a sexual assault has been committed against the accompanied individual; or
    - (3) Hospital personnel or a sexual assault nurse examiner have reason to believe is a victim of sexual assault.
2. A hospital may not require a victim of sexual assault to submit to a forensic examination or to report the alleged sexual assault to law enforcement.
3. A hospital without staff specially trained to perform a sexual assault forensic examination may coordinate with a community-based sexual assault nurse examiner nurse program or develop a sexual assault examiner nurse program to ensure all victims of sexual assault who want a sexual assault forensic examination or sexually transmitted infection treatment receive that examination or treatment.

**SECTION 2. BOARD OF UNIVERSITY AND SCHOOL LANDS - USE OF OIL AND GAS IMPACT GRANTS - REPORTS.** The board of university and school lands, from funds designated in House Bill No. 1176 as approved by the sixty-fourth legislative assembly for grants to law enforcement agencies impacted by oil and gas development, shall make available \$250,000 for grants through the domestic violence and rape crisis program for community-based or hospital-based sexual assault examiner programs, for the biennium beginning July 1, 2015, and ending June 30,

2017. The board of university and school lands shall award the grants as directed by the attorney general. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-fifth legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the sixty-fifth legislative assembly on the number of nurses trained, the number and location of nurses providing services related to sexual assault nurse examiner programs, and documentation of collaborative efforts to assist victims which includes nurses, the hospital or clinic, law enforcement, states attorneys, and sexual assault advocates. Grant funds awarded under this section may not be used for salaries for nurses.

Approved April 23, 2015

Filed April 23, 2015

## CHAPTER 192

### HOUSE BILL NO. 1113

(Government and Veterans Affairs Committee)  
(At the request of the State Department of Health)

AN ACT to create and enact subsection 3 to section 23-20.1-04.1 of the North Dakota Century Code, relating to custody of land used for disposal of radioactive material; to amend and reenact sections 23-01-36, 23-20.1-04.3, 23-20.1-04.4, 23-20.1-06, and 23-20.1-10 of the North Dakota Century Code, relating to the licensing and regulation of radioactive material; to repeal section 23-20.1-09.1 of the North Dakota Century Code, relating to the confidentiality of radioactive material records; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-01-36 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-01-36. Appeal from permit proceedings.**

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

**SECTION 2.** Subsection 3 to section 23-20.1-04.1 of the North Dakota Century Code is created and enacted as follows:

3. Land used for the disposal of technologically enhanced naturally occurring radioactive material is not subject to the provisions of subsection 2.

**SECTION 3. AMENDMENT.** Section 23-20.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.1-04.3. Procedural requirements.**

In the licensing and regulation of the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially, the department shall provide:

1. In the cases of licenses:
  - a. An opportunity, after public notice, for written comments and a public hearing, with a transcript.
  - b. ~~An opportunity for cross-examination.~~
  - e. A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period and which is subject to judicial review.
  - ~~d.c.~~ For each licensed activity which has a significant impact on the human environment, a written analysis prepared by the department, which must be available to the public before commencement of hearings, of the impact of the licensed activity on the environment. The analysis must include:
    - (1) An assessment of the radiological and nonradiological impacts to the public health.
    - (2) An assessment of any impact on any waterway and ground water.
    - (3) Consideration of alternatives to the activities to be conducted.
    - (4) Consideration of the long-term impacts of the licensed activities.
  - e.d. A prohibition of any major construction with respect to the activities to be conducted prior to completing the action stipulated in subdivisions a, b, c, and d.
  - f.e. An assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards promulgated by the department, the commission, and the United States environmental protection agency.
2. In the case of rulemaking:
  - a. An opportunity for public participation through written comments or a public hearing.
  - b. An opportunity for judicial review.

**SECTION 4. AMENDMENT.** Section 23-20.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.1-04.4. Additional authorities.**

The department is authorized, ~~in carrying out its authority under subdivision f of subsection 1 of section 23-20.1-04.3,~~ to require persons exempt from licensing to conduct monitoring, perform remedial work, and to comply with any other measures

the department deems necessary or desirable to protect health or minimize danger to life or property.

**SECTION 5. AMENDMENT.** Section 23-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.1-06. Administrative procedures and judicial review.**

Any proceeding under this chapter for:

1. The issuance or modification of rules including emergency orders relating to control of sources of ionizing radiation;
2. Granting, suspending, revoking, or amending any license; or
3. Determining compliance with rules of the department;

must be conducted in accordance with the provisions of chapter 28-32. If an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order is effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the department must be afforded a hearing before the ~~state health council~~department within ten days. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

**SECTION 6. AMENDMENT.** Section 23-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.1-10. Penalties.**

~~Any person who violates any provision of this chapter or any license condition or limitation implemented by this chapter is subject to a civil penalty of not more than ten thousand dollars per day of violation.~~

~~In addition to any other penalty or remedy pursuant to this chapter, any person who knowingly violates any of the provisions of this chapter, or rules or orders of the department in effect pursuant thereto, is guilty of a class A misdemeanor.~~

1. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person who willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person who willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or who falsifies, tampers with, or willfully renders inaccurate any monitoring

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device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

**SECTION 7. REPEAL.** Section 23-20.1-09.1 of the North Dakota Century Code is repealed.

Approved April 22, 2015  
Filed April 22, 2015

## CHAPTER 193

### HOUSE BILL NO. 1255

(Representatives Porter, Hofstad)  
(Senators Dever, Larsen)

AN ACT to create and enact a new section to chapter 23-27, a new section to chapter 26.1-36, and section 65-02-21.2 of the North Dakota Century Code, relating to air ambulance services and classifications of ambulance services for health insurance and workers' compensation benefits; and to amend and reenact section 50-24.1-16 of the North Dakota Century Code, relating to classification of ambulance services for medical assistance.

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

**SECTION 1.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

##### **Air ambulance services.**

1. The department shall create and maintain a primary call list and a secondary call list of air ambulance service providers operating in this state.
2. To qualify to be listed on the primary call list, an air ambulance service provider shall submit to the department attested documentation indicating the air ambulance service provider is a participating provider of the health insurance carriers in the state which collectively hold at least seventy-five percent of the health insurance coverage in the state as determined by annual market share reports.
3. The department shall provide the primary call list and the secondary call list for air ambulance service providers operating in this state to all emergency medical services personnel, each hospital licensed under chapter 23-16, each 911 coordinator in this state, and each public safety answering point operating in this state.
4. The department shall establish air ambulance service response zones for rotary wing aircraft which are based on response times and patient health and safety.
  - a. Upon receipt of a request for air ambulance services, emergency medical services personnel, a hospital licensed under chapter 23-16, or a public safety answering point operating in this state, shall make a reasonable effort to inform the requesting party of the estimated response time for the requested air transport versus the ground transport for that designated response zone. If at any point during the request for air ambulance services the requester withdraws the request, the receiving party is not required to complete that call for air ambulance services.
  - b. If emergency medical services personnel, a hospital licensed under chapter 23-16, or a public safety answering point operating in this state receives a request from emergency medical services personnel for air

ambulance services, the recipient of the request shall comply with the call priority under this subdivision in responding to the request.

- (1) First, the recipient of the request shall call an air ambulance service provider listed on the primary call list which is within the designated response zone.
  - (2) Second, if each of the air ambulance service providers listed on the primary list is not available or is not able and willing to respond to the call, the recipient of the request shall notify the requester of this fact and shall call an air ambulance provider listed on the secondary call list within the designated response zone.
  - (3) Third, if each of the air ambulance service providers listed on the secondary list is not available or is not able and willing to respond to the call, the recipient of the request shall notify the requester of this fact and shall inform the requester of primary and secondary air ambulance service provider options outside the designated response zone.
5. Upon request of the department, a potential patient, or a potential patient's legal guardian, an air ambulance service provider shall provide that provider's fee schedule, including the base rate, per loaded mile rate, and any usual and customary charges.

    - a. The department shall compile and distribute this fee information to each hospital licensed under chapter 23-16, each hospital emergency department in the state, each physician the department determines is likely to generate an air ambulance transport, each emergency medical services operation, each emergency medical services professional, each emergency medical services personnel, each public safety answering point in this state, and each 911 coordinator in this state.
    - b. Before a hospital refers a patient to an air ambulance service provider, the hospital shall make a reasonable effort to inform the patient or the patient's legal guardian of the fees for the air ambulance service providers licensed under this chapter, for the purpose of allowing the patient or legal guardian to make an informed decision on choosing an air ambulance service provider. A hospital is exempt from complying with this subdivision if the hospital determines compliance might jeopardize the health or safety of the patient.
  6. The state health council shall adopt rules establishing air ambulance service provider requirements that must address transport plans, including auto launch protocol and auto launch cancellation protocol; transporting to the nearest appropriate medical facility; medical necessity; and informed consent. As necessary, the state health council shall adopt rules relating to quality of care standards and other appropriate requirements regarding air ambulance service providers.

**SECTION 2.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

**Ambulance services classifications.**

For purposes of classifying ambulance services for an accident and health insurance policy, the classifications established under section 50-24.1-16 apply.

**SECTION 3. AMENDMENT.** Section 50-24.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-16. Reimbursement of ambulance services.**

1. Medical assistance coverage must include reimbursement of ambulance services for responding to calls to assist covered individuals which do not result in transport. The reimbursement must be at a rate negotiated by the department and the ambulance service.
2. For purposes of classifying ambulance services under this section:
  - a. An emergency response is one that at the time the ambulance is called the ambulance responds immediately. An immediate response is one in which the ambulance begins as quickly as possible to take the steps necessary to respond to the call.
  - b. An advanced life support assessment is an assessment performed by an advanced life support crew as part of an emergency response that was necessary because the patient's reported condition at the time of the dispatch was such that only an advanced life support crew was qualified to perform the assessment. An advanced life support assessment does not necessarily result in a determination that the patient requires an advanced life support level of service.

**SECTION 4.** Section 65-02-21.2 of the North Dakota Century Code is created and enacted as follows:

**65-02-21.2. Ambulance services classifications.**

For purposes of classifying ambulance services for benefits provided under this title, the classifications established under section 50-24.1-16 apply.

Approved April 20, 2015  
Filed April 20, 2015

## CHAPTER 194

### HOUSE BILL NO. 1114

(Energy and Natural Resources Committee)  
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-29-03, subsection 3 of section 23-29-05.1, and section 23-29-12 of the North Dakota Century Code, relating to solid waste management; to repeal sections 23-29-09 and 23-29-16 of the North Dakota Century Code, relating to solid waste management correspondence and environmental protection; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-29-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-29-03. Definitions.**

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the state department of health.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
7. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
9. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public

and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.

10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
11. "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
12. "Political subdivision" means a city, county, township, or solid waste management authority.
13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from municipal solid waste.
14. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
  - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
18. "Transport" means the offsite movement of solid waste.

**SECTION 2. AMENDMENT.** Subsection 3 of section 23-29-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A person violating this section is guilty of an infraction for which a minimum fine of ~~one~~two hundred dollars must be imposed, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor and the person is subject to the civil penalty provided in section 23-29-12.

**SECTION 3. AMENDMENT.** Section 23-29-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-29-12. Penalties.**

~~Unless another penalty is specifically prescribed, a person violating this chapter, or any rule, order, or condition in a permit issued under this chapter, is subject to a civil penalty not to exceed one thousand dollars per day of such violation.~~

1. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person who willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person who willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or who falsifies, tampers with, or willfully renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

**SECTION 4. REPEAL.** Sections 23-29-09 and 23-29-16 of the North Dakota Century Code are repealed.

Approved March 31, 2015  
Filed March 31, 2015

## CHAPTER 195

### HOUSE BILL NO. 1390

(Representative Keiser)

AN ACT to create and enact section 23-29-04.2 of the North Dakota Century Code, relating to establishment by the state department of health of one or more operating pilot projects to examine and determine standards for rules governing operations and permitting of commercial oilfield special waste recycling facilities for oilfield special waste from oil and gas drilling and production operations; and to declare an emergency.

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

**SECTION 1.** Section 23-29-04.2 of the North Dakota Century Code is created and enacted as follows:

#### **23-29-04.2. Commercial oilfield special waste recycling facilities - Action against well operators restricted.**

1. By June 1, 2015, the department shall select at least one commercial oilfield special waste recycling facility having a pending beneficial use application, for authorization of operation of the facility as a pilot project and to assist the department to develop standards for recycling of oilfield special waste. The pending beneficial use application of the pilot project facility must be supported by scientific findings from a third-party source focused on the anticipated environmental performance of the end products of the recycled oilfield special waste and the practical utility of those end products.
2. Any pilot project facility and any commercial oilfield special waste recycling facility permitted after June 30, 2017, must obtain a solid waste permit from the department and a treating plant permit from the industrial commission for treatment of oilfield special waste.
3. Any selected pilot project facility may operate as an oilfield special waste recycling facility through June 30, 2017, and may implement beneficial use demonstration projects using processed materials under the guidance of the department. A selected pilot project facility operator shall cooperate with the department to monitor and analyze impacts to the environment.
4. By July 1, 2017, based upon the results of any pilot projects, the department shall make recommendations either to adopt rules under chapter 28-32 governing operations and permitting of commercial oilfield special waste recycling facilities or to develop written guidelines on recycling and beneficial use of oilfield special waste under the department's beneficial use approval process. The rules or guidelines must be adopted to assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of oilfield special waste.
5. Upon presentation of official credentials, an employee authorized by the department may:

- a. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial oilfield special waste recycling facility.
  - b. Enter upon public or private property for the purpose of taking action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.
6. The operator of the commercial oilfield special waste recycling facility is liable for the cost of any inspection and corrective action required by the department.
7. As a condition of permitting, the department may require the operator of a commercial oilfield special waste recycling facility post a bond or other financial assurance payable to the state in a sufficient amount for remediation of any release or disposal of oilfield special waste in violation of the rules of the department, on the premises or property of the facility or at a place where treated or untreated materials from the facility are taken for use or disposal.
8. As used in this section:
- a. "Commercial oilfield special waste recycling facility" means a commercial recycling facility permitted, or a commercial recycling facility pilot project authorized, under this section for extraction of reusable solids and fluids from any or all types of oilfield special waste.
  - b. "Drilling operation" means oil and gas drilling and production operations and any associated activities that generate oilfield special waste.
  - c. "Oilfield special waste" means special waste associated with oil and gas drilling operations, exploration, development, or production and specifically includes drill cuttings, saltwater, and other solids and fluids from drilling operations.
9. Upon delivery of oilfield special waste to a commercial oilfield special waste recycling facility, which is permitted or authorized to conduct recycling operations under this section and is not affiliated with the well operator; acceptance of the oilfield special waste by the recycling facility; and after the oilfield special waste has been treated and converted to a beneficial use as a usable product or legitimate substitute for a usable product, the well operator is not liable in any civil or criminal action for any subsequent claim or charge regarding the material converted to a beneficial use.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 16, 2015  
Filed April 16, 2015

## CHAPTER 196

### SENATE BILL NO. 2121

(Senator Anderson)  
(Representative Dockter)

AN ACT to amend and reenact section 23-34-01 of the North Dakota Century Code, relating to medical peer review records.

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

**SECTION 1. AMENDMENT.** Section 23-34-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-34-01. Definitions.**

As used in this chapter:

1. "Health care organization" means:
  - a. A hospital;
  - b. A hospital medical staff;
  - c. A clinic;
  - d. A long-term or extended care facility;
  - e. An ambulatory surgery center;
  - f. An emergency medical services unit;
  - g. A physician;
  - h. A group of physicians operating a clinic or outpatient care facility;
  - i. A pharmacist;
  - j. A pharmacy;
  - k. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;
  - l. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;
  - ~~k-m.~~ Any combination of entities set forth in subdivisions a through j; or
  - ~~l-n.~~ Any federally designated state peer review organization.
2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Peer review organization" means:
  - a. A health care organization; or
  - b. A committee of a health care organization which:
    - (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body; and
    - (2) Conducts professional peer review.
4. a. "Peer review records" means:
  - (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review organization as a part of any professional peer review, regardless of when the record was created; and
  - (2) Communications relating to a professional peer review, whether written or oral, between:
    - (a) Peer review organization members;
    - (b) Peer review organization members and the peer review organization's staff; or
    - (c) Peer review organization members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.
  - b. The term does not include original patient source documents.
5. "Professional peer review" means all procedures a peer review organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers and includes procedures or functions to:
  - a. Evaluate and improve the quality of health care;
  - b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
  - c. Develop and establish guidelines for medical care and the costs of medical care;
  - d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;
  - e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
  - f. Provide quality assurance.

## CHAPTER 197

### SENATE BILL NO. 2132

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact subsection 1 of section 23-37-17 and section 26.1-21-02 of the North Dakota Century Code, relating to petroleum tank registration fees and bonding fund investment income.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. ~~If on~~after the first day of July in any year the amount of money in the petroleum release compensation fundfiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. ~~If on the first day of July in any year the amount of money in the petroleum release compensation fundfiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance~~ is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. ~~Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in~~If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at ~~the fee of five dollars until the money in the fund~~fund balance does not exceed nine million dollars.

**SECTION 2. AMENDMENT.** Section 26.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-21-02. State bonding fund - Management by commissioner.**

A fund must be maintained as a fund for the bonding of public employees and public officials. ~~Money~~All assessments, interest, profits on investments, and all other income collected under this chapter must be paid into the fund. The commissioner shall manage the fund.

Approved March 19, 2015

Filed March 19, 2015

## CHAPTER 198

### HOUSE BILL NO. 1323

(Representatives Porter, D. Anderson, Hogan, Holman, J. Nelson)  
(Senators Axness, Dever, Erbele, Larsen)

AN ACT to amend and reenact sections 23-43-01, 23-43-02, 23-43-03, 23-43-04, 23-43-05, and 23-43-06 of the North Dakota Century Code, relating to the creation and implementation of a stroke system; and to provide for a report to the legislative management.

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

**SECTION 1. AMENDMENT.** Section 23-43-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-01. Primary stroke centers. Stroke system - Duties of state health officer.**

- ~~1. Effective January 1, 2010, the state department of health shall designate qualified hospitals as primary stroke centers. A hospital seeking designation as a primary stroke center shall apply to the department for that designation and shall demonstrate to the department that the hospital meets the applicable criteria established by the department.~~
- ~~2. The criteria established by the department for designation as a primary stroke center must include a requirement that the hospital be certified as a primary stroke center by the joint commission on accreditation of health care organizations or by a similar accrediting or certifying organization possessing hospital standards recognized nationally by the health care industry and accepted by the department.~~
- ~~3. The department may suspend or revoke a hospital's designation as a primary stroke center, after notice and opportunity for a hearing, if the department determines the hospital is not in compliance with the requirements of this chapter.~~
- ~~4. Annually, the state department of health shall provide a list of hospitals designated as primary stroke centers to each emergency medical services operation licensed in this state. The department shall post to the department's website a list of the hospitals designated as primary stroke centers.~~

The state health officer shall establish and maintain a comprehensive stroke system for the state. The program must comply with this chapter; be based on department-approved, nationally recognized guidelines and protocols; and provide specific patient care and support services criteria stroke centers shall meet to ensure stroke patients receive safe and effective care, and must modify the state's emergency medical response system to assure stroke patients are quickly identified and transported to and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients. The stroke system must include standards for the following components:

1. A system plan.
2. Prehospital emergency medical services.
3. Hospitals, for which the standards must include:
  - a. Standards for designation, redesignation, and removal of designation.
  - b. Standards for evaluation and quality improvement programs for designated facilities. The standards must require each facility to collect quality improvement data and to provide specified portions to the department for use in state and regional stroke quality improvement programs.
4. A stroke registry. Data in the stroke registry is not subject to subpoena or discovery or introduction into evidence in any civil action. A designated facility shall participate in the stroke registry. A hospital not designated shall provide to the stroke registry a minimum set of data elements for all stroke patients as determined by the stroke system of care advisory task force.
5. A stroke quality improvement program to monitor the performance of the stroke system. The proceedings and records of the stroke quality improvement program are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the stroke quality improvement program.

**SECTION 2. AMENDMENT.** Section 23-43-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-02. Stroke system of care task force. Designation of comprehensive stroke center, primary stroke centers, and acute stroke-ready hospitals.**

1. ~~The state department of health shall establish a stroke system of care task force. The purpose of the task force is to encourage and ensure the establishment of an effective stroke system of care throughout the state. The state health officer, or the officer's designee, shall serve on the task force. The state health officer shall appoint members to the task force who represent rural hospitals, physicians who treat patients in rural areas, and members representing emergency medical services operations that provide services in rural areas of the state. Members of the task force serve at the pleasure of the state health officer.~~
2. ~~Before April 1, 2010, the stroke system of care task force shall provide the state department of health with recommendations regarding the establishment of an effective stroke system of care in the rural areas of this state. The initial recommendations must include:~~
  - a. ~~Protocols for the triage, stabilization, and appropriate routing of stroke patients by emergency medical services operations in rural areas; and~~
  - b. ~~A plan to provide for coordination and communication between rural hospitals, primary stroke centers, and other support services in order to assure that residents of all regions of the state have access to effective and efficient stroke care.~~

3. ~~The state health council may adopt rules, based on the task force's recommendations.~~
1. The state department of health shall identify hospitals that meet the criteria as a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital. In order to receive a designation under this section, a hospital shall apply to the state department of health and shall demonstrate to the satisfaction of the department the hospital meets the applicable criteria.
2. In order to qualify for designation as a comprehensive stroke center, an accredited acute care hospital must be certified as a comprehensive stroke center by a department-approved, nationally recognized guidelines-based organization, which provides comprehensive stroke center hospital certification for stroke care. As a condition of retaining designation as a comprehensive stroke center, an acute care hospital shall maintain its certification.
3. In order to qualify for designation as a primary stroke center, an accredited acute care hospital must be certified as a primary stroke center by a department-approved, nationally recognized guidelines-based organization, which provides primary stroke center certification for stroke care. As a condition of retaining designation as a primary stroke center, an acute care hospital shall maintain its certification.
4. In order to qualify for designation as an acute stroke-ready hospital, an accredited acute care hospital must be certified as an acute stroke-ready hospital by department-approved, nationally recognized guidelines-based criteria. As a condition of retaining designation as an acute stroke-ready hospital, an acute care hospital shall maintain its certification.
5. Through agreement, a comprehensive stroke center and primary stroke center may coordinate with an acute stroke-ready hospital to provide appropriate access to care for acute stroke patients. The coordinating stroke care agreement must be in writing and include, at a minimum:
  - a. The transfer agreement for the transport and acceptance of a stroke patient seen by the acute stroke-ready hospital for stroke treatment therapies the stroke center or primary care center is not capable of providing; and
  - b. Communication criteria and protocol with the acute stroke-ready hospital.
6. If the department determines the hospital is not in compliance with the requirements set for designation level, after notice and a hearing, the state department of health may suspend or revoke a hospital's state designation as a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital.
7. Any facility that is not designated, must have a predetermined plan for the triage of acute stroke patients. The plan must be filed annually with the state department of health, division of emergency medical services and trauma.

**SECTION 3. AMENDMENT.** Section 23-43-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-03. Stroke triage – Emergency medical services operations - Assessment and transportation of stroke patients to a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital.**

1. ~~Before January 1, 2011, the state department of health shall adopt a nationally recognized standardized stroke triage assessment tool. The department shall post this standardized stroke triage assessment tool to the department's website and shall provide a copy to each emergency medical services operation licensed in this state. As a term of licensure under chapter 23-27, each licensed emergency medical services operation shall adopt and implement a stroke triage assessment tool that is substantially similar to the standardized stroke triage assessment tool adopted by the department.~~
2. ~~The department shall work with the stroke task force to establish protocols related to the assessment, treatment, and transport of stroke patients by emergency medical services operations licensed by the state. The protocols may include regional transport plans for the triage and transport of stroke patients to the closest, most appropriate facility, including the bypass of health care facilities not designated as primary stroke centers when it is safe to do so.~~
3. ~~Effective April 1, 2012, each emergency medical services operation licensed under chapter 23-27 shall comply with this chapter.~~
1. Before June first of each year the state department of health shall send the list of comprehensive stroke centers, primary stroke centers, and acute stroke-ready hospitals to the medical director of each licensed emergency medical services operation in this state. The state department of health shall maintain a copy of the list and shall post a list of comprehensive stroke centers, primary stroke centers, and acute stroke-ready hospitals to the state department of health's website.
2. The state department of health shall adopt and distribute a nationally recognized, standardized stroke triage assessment tool. The department shall post this stroke triage assessment tool on the department's website and provide a copy of the assessment tool to each licensed emergency medical services operation. Each licensed emergency medical services operation shall use a stroke triage assessment tool that is substantially similar to the sample stroke triage assessment tool provided by the state department of health.
3. Each emergency medical services operation in the state shall establish prehospital care protocols related to the assessment, treatment, and transport of a stroke patient by a licensed emergency medical services operation. Such protocols must include plans for the triage and transport of an acute stroke patient to the closest comprehensive or primary stroke center or when appropriate to an acute stroke-ready hospital, within a specified timeframe of onset of symptoms.
4. As part of current training requirements, each emergency medical services operation in the state shall establish protocols to assure licensed emergency medical services providers and 911 dispatch personnel receive regular training on the assessment and treatment of stroke patients.
5. An emergency medical services operation shall comply with this chapter.

6. All data reported under this chapter must be made available to the state department of health and to all other government agencies, or contractors of government agencies, which have responsibility for the management and administration of emergency medical services throughout the state.
7. This chapter may not be construed to require disclosure of any confidential information or other data in violation of the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

**SECTION 4. AMENDMENT.** Section 23-43-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-04. Reports-Continuous improvement of quality of care for individuals with stroke - Recommendations - Report to legislative management.**

~~Semiannually, each hospital designated as a primary stroke center shall provide the state department of health a report on the center's quality initiatives. The data in the report is an exempt record and is not subject to the state's open records law. However, the department shall make the data in these reports available to state and local government entities that have responsibility for the management and administration of emergency medical services throughout the state. Annually, the department shall compile the report data in aggregate form as a report card and post this report card to the department's website. The results of this report card may be used by the department to conduct training.~~

1. The state department of health shall establish and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment. In implementing this plan, the state department of health shall:
  - a. Maintain a statewide stroke database that compiles information and statistics on stroke care which align with nationally recognized stroke consensus metrics. The state department of health shall utilize a nationally recognized data set platform with confidentiality standards no less secure than the stroke registry data platform. The state department of health shall coordinate with national voluntary health organizations involved in stroke quality improvement to avoid duplication and redundancy.
  - b. Require comprehensive stroke centers and primary stroke centers and encourage acute stroke-ready hospitals and emergency medical services operations to report data consistent with nationally recognized guidelines on the treatment of individuals with confirmed stroke within the state.
  - c. Encourage sharing of information and data among health care providers on ways to improve the quality of care of stroke patients in this state.
  - d. Facilitate the communication and analysis of health information and data among the health care professionals providing care for individuals with stroke.
  - e. Require the application of evidence-based treatment guidelines regarding the transitioning of patients to community-based followup care in hospital outpatient, physician office, and ambulatory clinic settings for ongoing care after hospital discharge following acute treatment for stroke.

2. The state department of health shall establish a data oversight process and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment which must:
  - a. Analyze data generated by the stroke registry on stroke response and treatment;
  - b. Identify potential interventions to improve stroke care in geographic areas or regions of the state; and
  - c. Provide recommendations to the state department of health, emergency medical services advisory council, and legislative assembly for the improvement of stroke care and delivery in the state.
3. Data reported under this section must be made available to the state department of health and to other government agencies, or contractors of government agencies, which have responsibility for the management and administration of emergency medical services throughout the state.
4. Before June first of each even-numbered year, the state department of health shall provide a report to the legislative management regarding progress made toward the recommendations provided in this chapter and any recommendations for future legislation.

**SECTION 5. AMENDMENT.** Section 23-43-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-05. Standard of care.Stroke system of care task force.**

~~This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital has been licensed. This chapter must be interpreted to recognize that all patients should be treated individually based on each patient's needs and circumstances.~~

1. The state department of health shall establish a stroke system of care task force to address matters of triage, treatment, and transport of possible acute stroke patients. The stroke system of care task force must include representation from the state department of health, the emergency medical services advisory council, the university of North Dakota's center for rural health, the American stroke association or similar entity, comprehensive stroke centers, primary stroke centers, rural hospitals, physicians, and emergency medical services operations.
2. The task force shall implement the regulations necessary to establish an effective stroke system of care in the state, with a focus on serving rural areas. The regulations must include protocols for the assessment, stabilization, and appropriate routing of stroke patients by emergency medical services operations, and for coordination and communication between hospitals, comprehensive stroke centers, primary stroke centers, and other support services necessary to assure all residents have access to effective and efficient stroke care.
3. The stroke system of care task force shall make recommendations to the state department of health and health council. Upon receiving such

recommendations, the health council may adopt rules implementing the recommendations.

4. As used in this subsection, "telemedicine services" means the use of interactive audio, video, and other electronic media used for the purpose of diagnosis, consultation, or treatment of acute stroke. The stroke system of care task force shall recommend eligible essential health care services for acute stroke care provided through telemedicine services.

**SECTION 6. AMENDMENT.** Section 23-43-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-06. Advertisement-General provisions.**

~~A person may not advertise to the public that a hospital is a primary stroke center unless the hospital has been designated as such under this chapter.~~

1. This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital received a license under state law. Patients must be treated individually based on the needs and circumstances of each patient.
2. A person may not advertise to the public, by way of any medium, that a hospital is a comprehensive stroke center, primary stroke center, or acute stroke ready hospital unless the hospital is designated as such by the state department of health.
3. The health council may adopt rules to implement this chapter.

Approved March 25, 2015  
Filed March 25, 2015

## CHAPTER 199

### SENATE BILL NO. 2259

(Senators Mathern, Wanzek, Heckaman)  
(Representatives Oversen, Pollert, Glassheim)

AN ACT to create and enact chapter 23-48 of the North Dakota Century Code, relating to the use of experimental drugs; and to provide for a notification by the secretary of state.

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

**SECTION 1.** Chapter 23-48 of the North Dakota Century Code is created and enacted as follows:

##### **23-48-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. a. "Eligible patient" means an individual who:
  - (1) Has a terminal illness that is attested to by the patient's treating physician;
  - (2) Considered all other treatment options currently approved by the United States food and drug administration;
  - (3) If there is a clinical trial for the terminal illness within one hundred miles of the patient's home address for the terminal illness, is unable to participate in the clinical trial or within one week of completion of the clinical trial application process is not accepted to the clinical trial;
  - (4) Has a recommendation from the patient's treating physician for an investigational drug, biological product, or device;
  - (5) Has given written, informed consent for the use of the investigational drug, biological product, or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written, informed consent on the patient's behalf; and
  - (6) Has documentation by the patient's treating physician the patient meets the requirements of this subdivision.
- b. The term does not include an individual treated as an inpatient in a hospital licensed under chapter 23-16.
2. "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States food and drug administration and remains under investigation in a United States food and drug administration-approved clinical trial.

3. "Terminal illness" means a disease that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.
4. "Written, informed consent" means a written document signed by the patient or the patient's parent or legal guardian and attested to by the patient's treating physician and by a witness which:
  - a. Explains the currently approved products and treatments for the terminal illness from which the patient suffers;
  - b. Attests to the fact the patient concurs with the patient's treating physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;
  - c. Identifies the specific proposed investigational drug, biological product, or device the patient is seeking to use;
  - d. Describes the potentially best and worst outcomes of using the investigational drug, biological product, or device with a realistic description of the most likely outcome, including the possibility that new, unanticipated, different, or worse symptoms might result, and that death could be hastened by the proposed treatment, based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;
  - e. States the patient's health insurer and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device;
  - f. States the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment and that hospice care may be reinstated if the curative treatment ends and the patient meets hospice eligibility requirements;
  - g. States in-home health care may be denied if treatment begins; and
  - h. Attests that the patient understands the patient is liable for all expenses consequent to the use of the investigational drug, biological product, or device, and that this liability may extend to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.

**23-48-02. Drug manufacturers - Availability of investigational drugs, biological products, or devices - Costs - Insurance coverage.**

1. A manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to an eligible patient pursuant to this chapter. This chapter does not require that a manufacturer make available to an eligible patient an investigational drug, biological product, or device.
2. A manufacturer may:
  - a. Provide to an eligible patient an investigational drug, biological product, or device without receiving compensation; or

- b. Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.
3. If an eligible patient dies while being treated by an investigational drug, biological product, or device, the eligible patient's heirs are not liable for any outstanding debt related to the treatment or lack of insurance due to the treatment.

**23-48-03. Action against health care provider's license or medicare certification prohibited.**

Notwithstanding any other law, a licensing board may not revoke, fail to renew, suspend, or take any action against a health care provider's license issued in this state, based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device, if the recommendations are consistent with medical standards of care. Action against a health care provider's medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product, or device is prohibited.

**23-48-04. Access to investigational drugs, biological products, and devices.**

An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device. Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section. This section does not require payment for experimental drugs under this state's medical assistance program or from other payer sources.

**23-48-05. Cause of action not created.**

This chapter does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device or against any other person involved in the care of an eligible patient using the investigational drug, biological product, or device, for any harm done to the eligible patient resulting from the investigational drug, biological product, or device, if the manufacturer or other person complied in good faith with the terms of this chapter. However, this chapter does not limit a private cause of action against a manufacturer or other person if there was a failure to exercise reasonable care.

**SECTION 2. NOTIFICATION BY SECRETARY OF STATE.** The secretary of state shall notify the federal food and drug administration and the North Dakota congressional delegation of this bill by sending a copy of this bill upon filing with the secretary of state.

Approved April 15, 2015  
Filed April 15, 2015