

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1134

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 25-01.2-01, 25-01.2-03, 25-01.2-04,
2 25-01.2-05, 25-01.2-06, 25-01.2-08, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-12,
3 25-01.2-14, 25-01.2-15, 25-01.2-16, and 25-04-02.1, subsection 4 of section 25-04-05,
4 subsection 2 of section 25-16-01, section 25-16-04, subsection 2 of section 25-16.1-01, section
5 25-16.1-03, and subsection 2 of section 25-18-01 of the North Dakota Century Code, relating to
6 updating definitions and code sections to reflect person first language, updating language to
7 reflect rights of the developmentally disabled, and to clarify inspection of facilities.

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

9 **SECTION 1. AMENDMENT.** Section 25-01.2-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **25-01.2-01. Definitions.**

12 In this chapter, unless the context or subject matter otherwise requires:

- 13 1. "Applicant" means an entity that has requested licensure from the department.
14 2. "Department" means the department of human services.
15 3. "Developmental disability" means a severe, chronic disability of an individual which:
16 a. Is attributable to a mental or physical impairment or combination of mental and
17 physical impairments;
18 b. Is manifested before the individual attains age twenty-two;
19 c. Is likely to continue indefinitely;
20 d. Results in substantial functional limitations in three or more of the following areas
21 of major life activity:
22 (1) Self-care;
23 (2) Receptive and expressive language;
24 (3) Learning;

- 1 (4) Mobility;
- 2 (5) Self-direction;
- 3 (6) Capacity for independent living; and
- 4 (7) Economic sufficiency; and
- 5 e. Reflects the individual's needs for a combination and sequence of special,
- 6 interdisciplinary, or generic care, treatment, or other services which are of lifelong
- 7 or extended duration and are individually planned and coordinated.
- 8 4. "Individualized setting" means a setting where an individual owns or rents the
- 9 individual's residence and a public or private agency or organization provides services
- 10 to an individual with a developmental disability.
- 11 ~~2-5.~~ "Institution or facility" means any school, hospital, residence center, group home, or
- 12 any other ~~facility~~setting operated by any public or private agency, or organization, ~~or~~
- 13 ~~institution, which~~that provides services to an individual with a developmental disability.
- 14 ~~3-6.~~ "Least restrictive appropriate setting" means that setting ~~which~~that allows ~~the~~an
- 15 individual with a developmental disability to develop and realize the individual's fullest
- 16 potential and enhances the individual's ability to cope with the individual's environment
- 17 without unnecessarily curtailing fundamental personal liberties.
- 18 7. "License" means authorization by the department to provide services to individuals
- 19 with developmental disabilities, pursuant to chapter 25-16.
- 20 ~~4-8.~~ "Service or services ~~for~~to an individual with a developmental disability" means services
- 21 provided by any public or private agency, or organization, ~~or institution~~, directed
- 22 toward the alleviation of a developmental disability or toward the social, personal,
- 23 physical, or economic habilitation or rehabilitation of an individual with a
- 24 developmental disability.

25 **SECTION 2. AMENDMENT.** Section 25-01.2-03 of the North Dakota Century Code is

26 amended and reenacted as follows:

27 **25-01.2-03. Presumption of incompetence prohibited - Discrimination prohibited -**

28 **Deprivation of constitutional, civil, or legal rights prohibited.**

29 An individual with a developmental disability may not be presumed to be incompetent and

30 may not be deprived of any constitutional, civil, or legal right solely because of admission to or

31 residence at an institution ~~or~~, facility, or individualized setting or solely because of receipt of

1 services ~~for~~to individuals with a developmental ~~disability~~disabilities. However, nothing in this
2 section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal
3 rights which may not be varied or modified under the provisions of this section include:

- 4 1. The right to vote at elections;
- 5 2. The free exercise of religion;
- 6 3. The right of reasonable opportunities to interact with members of the opposite sex;
- 7 and
- 8 4. The right to confidential handling of personal and medical records.

9 **SECTION 3. AMENDMENT.** Section 25-01.2-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~25-01.2-04. Mail, telephone, and visitation~~Communication rights –Application to**
12 **~~residential institution or facility.~~**

- 13 1. Except as provided in this section, every individual with a developmental disability who
14 resides in a ~~mental health or developmental disabilities~~an institution or facility, or
15 individualized setting has the right of private, unimpeded, and uncensored
16 communication, including visitation, with persons of the ~~resident's~~individual's choice ~~by~~
17 ~~mail, telephone, and visitation.~~
- 18 ~~a.2.~~ The facility directorA public or private agency or organization licensed by the
19 department to provide services to an individual with a developmental disability shall
20 ensure that correspondence can be conveniently received and mailed, that telephones
21 are reasonably accessible, and that space for private visitation is availableshall
22 document any restrictions of these rights in the individual's person-centered service
23 plan.
- 24 ~~b.3.~~ The facility directorA public or private agency or organization not licensed by the
25 department may establish in writing reasonable times and places for use of telephones
26 and for visits, provided that ~~a resident's~~an individual's ability to contact an attorney,
27 guardian, or custodian, may not be restricted and provided that any rules or
28 restrictions must be posted in each ~~residential~~institution, facility, or individualized
29 setting.
- 30 4. A copy of any rules or restrictions must be given to all ~~residents~~individuals over
31 eighteen years of age ~~and,~~ to the parents or custodians of all individuals under

1 ~~eighteen years of age, or guardian of all residents under eighteen years of age, upon~~
2 admission.

3 ~~2. This section applies only with respect to an institution or facility that provides~~
4 residential care.

5 **SECTION 4. AMENDMENT.** Section 25-01.2-05 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **25-01.2-05. Personal property – ~~Application to residential institution or facility.~~**

8 ~~1. Except in the circumstances and under the conditions as~~ provided in this
9 ~~section subsection, every resident of an institution or facility~~ individual with a
10 developmental disability who resides in an institution, facility, or individualized setting
11 must be permitted to receive, possess, and use lawful personal property and must be
12 provided with a secure, convenient, and reasonable amount of storage space for that
13 property.

14 ~~1.2. The facility director~~ A public or private agency or organization providing services to an
15 individual with a developmental disability may restrict the possession and use of
16 certain classes of property which may be dangerous or may harm a ~~resident an~~
17 individual.

18 ~~2.3.~~ Notice of any restrictions must be immediately given in writing to all
19 ~~residents~~ individuals over eighteen years of age and, to the parents or custodian of all
20 individuals under eighteen years of age, or guardian of all residents under eighteen
21 years of age, upon admission.

22 ~~3.4.~~ When a ~~resident an~~ individual is discharged from ~~the institution or facility~~ services
23 provided from a public or private agency or organization, all of the
24 ~~resident's~~ individual's lawful personal property ~~which that~~ is in the custody of the
25 ~~facility~~ public or private agency or organization must be returned to the
26 ~~resident~~ individual.

27 ~~This section applies only with respect to an institution or facility that provides residential care.~~

28 5. A public or private agency or organization licensed by the department to provide
29 services to an individual with a developmental disability shall document any
30 restrictions of these rights in the individual's person-centered service plan.

1 **SECTION 5. AMENDMENT.** Section 25-01.2-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **25-01.2-06. Labor - Wages - Money --~~Application to residential institution or facility.~~**

4 ~~A resident or service recipient may consent to perform labor for a service provider if the~~
5 ~~professional responsible for overseeing the implementation of that resident's individual~~
6 ~~habilitation plan determines that the labor would be consistent with that plan.~~

7 1. ~~A resident or service recipient~~An individual with a developmental disability who is
8 receiving services from a public or private agency or organization must be permitted to
9 seek employment and work in integrated settings if this is a desire of the individual.

10 2. An individual with a developmental disability who performs labor which~~that~~ is of any
11 consequential economic benefit to a service provider~~public or private agency or~~
12 organization shall receive wages ~~which~~that are commensurate with the value of the
13 work performed, in accordance with applicable federal and state laws and regulations.
14 ~~A resident~~An individual of an institution, facility, or individualized setting may be
15 required to perform tasks of a personal housekeeping nature in the individual's living
16 quarters without compensation.

17 ~~2.3.~~ ~~A resident~~An individual with a developmental disability may use the
18 ~~resident's~~individual's money as the ~~resident~~individual chooses, unless the
19 ~~resident~~individual is a minor; ~~or~~ is prohibited from doing so under a court guardianship
20 or conservatorship order; ~~or the use would be inconsistent with the resident's~~
21 ~~individual habilitation plan. A minor or a person under guardianship or conservatorship~~
22 ~~may be required to deposit the person's money with the service provider, or in a~~
23 ~~financial institution in the name of a parent, guardian, or conservator, and may be~~
24 ~~permitted to use the money in accordance with written instructions of the parent,~~
25 ~~guardian, or conservator.~~

26 ~~3.4.~~ ~~A resident~~An individual with a developmental disability may deposit money, or cause
27 money to be deposited, in the ~~resident's~~individual's name with a financial institution of
28 the ~~resident's~~individual's choice, or the ~~resident~~individual may deposit the money with
29 a ~~service provider~~public or private agency or organization. The ~~service provider~~public
30 or private agency or organization may not retain any money deposited with the ~~service~~
31 ~~provider~~public or private agency or organization under this subsection, but shall hold

1 all such funds in an account in the resident's individual's name. All earnings attributable
2 to a resident's an individual's money shall must accrue to the resident individual.

3 ~~4.5.~~ No service provider public or private agency or organization, nor any of the service-
4 provider's public or private agency or organization's employees shall may be made
5 representative payee for a resident's social security, pension, annuity, trust fund, or
6 any other form of direct payment or assistance an individual without the
7 resident's individual's informed consent.

8 ~~5.6.~~ When a resident an individual is discharged, all of the resident's individual's money,
9 including earnings, shall must be returned to the resident individual.

10 ~~This section applies only with respect to an institution or facility that provides~~
11 ~~residential care~~

12 7. A public or private agency or organization licensed by the department to provide
13 services to an individual with a developmental disability shall document any
14 restrictions of these rights in the individual's person-centered service plan.

15 **SECTION 6. AMENDMENT.** Section 25-01.2-08 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **25-01.2-08. Medication - Chemical restraints.**

18 ~~No~~ An individual with a developmental disability receiving services at any institution or_
19 ~~facility for individuals, or individualized setting from a public or private agency or organization~~
20 ~~with developmental disabilities~~ may ~~at any time~~ not be administered at any time any drug or
21 medication, or be chemically restrained or tranquilized in any manner, except upon the written
22 authorization of a licensed physician when necessary and appropriate as an element of the
23 service being received or as a treatment of any medical or physical condition in conformity with
24 accepted standards for that treatment. The nature, amount of, and reasons for the
25 administration of any drug or medication must be promptly recorded in the ~~person's~~ individual's
26 medical record. A public or private agency or organization licensed by the department to provide
27 services to an individual with a developmental disability shall document any restrictions of these
28 rights in the individual's person-centered service plan.

29 **SECTION 7. AMENDMENT.** Section 25-01.2-09 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization**
2 **- Shock treatment.**

3 ~~No~~An individual with a developmental disability receiving services at any institution or_
4 facility ~~for individuals, or individualized setting from a public or private agency or organization~~
5 ~~with developmental disabilities~~ may not at any time:

- 6 1. Be subjected to any corporal punishment.
- 7 2. Be isolated or secluded, except in emergency situations when necessary for the
8 control of violent, disturbed, or depressed behavior which may immediately result, or
9 has resulted, in harm to that individual or other individuals.
- 10 3. Be physically restrained in any manner, except in emergency situations when
11 necessary for the control of violent, disturbed, or depressed behavior which may
12 immediately result, or has resulted, in harm to that individual or to other individuals.
- 13 4. Be subjected to psychosurgery, sterilization, medical behavioral research, or
14 pharmacological research, except in conformity with an order of a court of competent
15 jurisdiction. Under no circumstances may an individual receiving treatment be
16 subjected to hazardous or intrusive experimental research which is not directly related
17 to the specific goals of that individual's treatment program.
- 18 5. Be subjected to electroconvulsive therapy or shock treatment without that individual's
19 or guardian's written and informed consent. If the recipient of services is a minor, the
20 recipient's parent, custodian, or guardian may provide informed consent for that
21 treatment, which the parent, custodian, or guardian believes to be in the recipient's
22 best interests.

23 **SECTION 8. AMENDMENT.** Section 25-01.2-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **25-01.2-10. Seclusion or physical restraint - ~~Facility administrator~~Administrator to be**
26 **notified.**

- 27 1. Whenever a ~~person~~an individual with a developmental disability receiving services
28 from a public or private agency or organization not licensed by the department, is
29 placed in seclusion or is physically restrained, the ~~facility~~public or private agency or
30 organization administrator or the administrator's representative must be notified and
31 shall determine if the isolation or restraint is necessary. The isolation or restraint may

1 be continued only upon written order of the administrator or the administrator's
2 representative and for a period of not more than twenty-four hours. Any
3 ~~person~~individual who is in seclusion or who is physically restrained must be checked
4 by an attendant at least once every thirty minutes.

5 2. A public or private agency or organization licensed by the department to provide
6 services to an individual with a developmental disability may not place an individual in
7 seclusion. In order to use physical restraints, the restraint must be in compliance with
8 the individual's person-centered service plan or done in accordance with the public or
9 private agency's or organization's emergency restraint policy.

10 **SECTION 9. AMENDMENT.** Section 25-01.2-11 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing -**
13 **Right to attorney at public expense -~~Application to residential institution or facility.~~**

14 A court of competent jurisdiction may issue the orders required for the procedures or
15 treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the
16 necessity of the procedure, the individual who is receiving or is entitled to receive the treatment,
17 ~~or the individual's~~parents or custodian of the individual under eighteen years of age, or
18 guardian, following a hearing on the application.

- 19 1. The individual receiving or entitled to treatment shall:
- 20 a. Receive prior notice of the hearing;
- 21 b. Have the right and the opportunity to present evidence; and
- 22 c. Have the right to be confronted with and to cross-examine witnesses.
- 23 2. If the individual with a developmental disability is indigent, counsel shall be provided at
24 public expense not less than ten days before the hearing.
- 25 3. The burden of proof is on the party alleging the necessity of the procedure or
26 treatment.
- 27 4. An order allowing the procedure or treatment may not be granted unless the party
28 alleging the necessity of the procedure or treatment proves by clear and convincing
29 evidence that the procedure is in the best interest of the recipient and that no less
30 drastic measures are feasible.

31 ~~This section applies only with respect to an institution or facility that provides residential care.~~

1 **SECTION 10. AMENDMENT.** Section 25-01.2-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **25-01.2-12. Diet –~~Application to residential institution or facility.~~**

4 Every resident of any institution or facility must be provided with a nutritionally adequate
5 and sufficient diet planned by a qualified dietician. This section applies only with respect to an
6 institution or facility that provides residential care individual with a developmental disability
7 receiving residential services in an institution, facility, or individualized setting, must be allowed
8 access to food at any time and meal choices must be provided. Any public or private agency or
9 organization licensed by the department to provide services to an individual with a
10 developmental disability shall document in the individual's person-centered service plan any
11 restrictions on access to or choice of food because of health and safety concerns.

12 **SECTION 11. AMENDMENT.** Section 25-01.2-14 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-01.2-14. Individualized habilitation, person-centered service, or individual**
15 **education plan - Contents.**

16 Any ~~institution, facility, public or private~~ agency, or organization that provides services for
17 ~~individuals to an individual~~ with a developmental disability ~~shall~~ must have a written,
18 individualized habilitation, person-centered service, or individual educational plan developed
19 and put into effect for each individual for whom that ~~institution, facility, public or private~~ agency,
20 or organization is primarily responsible for the delivery, or coordinating the delivery, of services.
21 ~~A school must have an individual educational plan for each of its students with a developmental~~
22 ~~disability.~~ A plan required under this section must:

- 23 1. Be developed and put into effect within thirty days following admission of the
24 individual.
- 25 2. Be reviewed and updated from time to time, but no less than annually.
- 26 3. Include a statement of the long-term habilitation or education goals for the individual
27 and the intermediate objectives relating to the attainment of those goals. The
28 objectives must be stated specifically, in sequence, and in behavioral or other terms
29 that provide measurable indices of progress.
- 30 4. State an objective criteria and an evaluation procedure and schedule for determining
31 whether the objectives and goals are being achieved.

- 1 5. Describe the personnel necessary for the provision of the services described in the
- 2 plan.
- 3 6. Specify the date of initiation and the anticipated duration of each service to be
- 4 provided.
- 5 7. State whether the individual with a developmental disability appears to need a
- 6 guardian and determine the type of protection needed by the individual based on the
- 7 individual's actual mental and adaptive limitations and other conditions which may
- 8 warrant the appointment of a guardian. Any member of the individual habilitation,
- 9 person-centered service, or individual educational plan team may petition, or notify
- 10 any interested person of the need to petition, for a finding of incapacity and
- 11 appointment of a guardian.

12 **SECTION 12. AMENDMENT.** Section 25-01.2-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-01.2-15. Right to refuse services.**

15 An adult recipient of services, ~~or, parents or custodian~~ if the recipient is a minor ~~or under~~
16 ~~guardianship, or~~ the recipient's guardian ~~or parent~~, must be given the opportunity to refuse
17 generally accepted ~~mental~~behavioral health or developmental disability services, including
18 medication, unless those services are necessary to prevent the recipient from causing serious
19 harm to the recipient or to others. ~~The facility director shall inform all services are refused, the~~
20 recipient ~~or, guardian, or parent~~ or custodian of a minor ~~who refuses generally accepted~~
21 ~~services~~must be informed of alternate services available, the risks of those alternate services,
22 and the possible consequences to the recipient of the refusal of generally accepted services.

23 **SECTION 13. AMENDMENT.** Section 25-01.2-16 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **25-01.2-16. Notice of rights.**

26 ~~Every~~Any public or private agency or organization that provides services to an individual
27 with a developmental disability in an institution or facility shall post conspicuously in public
28 areas a summary of the rights ~~which~~that are set out in this chapter. In addition, upon
29 commencement of services or as soon after commencement as the recipient's condition
30 permits, every recipient who is eighteen years of age or older, the parents or custodian of all

1 recipients under eighteen years of age, and the guardian of a minor recipient or other recipient-
2 under guardianship must be given written notice of the rights guaranteed by this chapter.

3 **SECTION 14. AMENDMENT.** Section 25-04-02.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-04-02.1. Accreditation of life skills and transition center.**

6 The department of human services shall request appropriations and resources sufficient to
7 ensure maintenance of the life skills and transition center's accreditation by the accreditation
8 council on services for people with developmental disabilities and certification by the health care
9 financing administration or by similar accrediting and certifying organizations and agencies
10 possessing standards applicable to ~~handicapped individuals~~ an individual with a developmental
11 disability and disciplines needed to provide quality services to individuals served.

12 **SECTION 15. AMENDMENT.** Subsection 4 of section 25-04-05 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 4. Parents of a ~~handicapped patient~~ an individual with a developmental disability, who is
15 twenty-one years of age or under, are not required to file, assist in filing, agree to filing,
16 or assign an insurance claim when filing the claim would pose a realistic threat that the
17 parents would suffer a financial loss not incurred by similarly situated parents of
18 nonhandicapped children with disabilities. Financial losses do not include incidental
19 costs such as the time needed to file or assist in filing an insurance claim or the
20 postage needed to mail the claim. Financial losses include:
- 21 a. A decrease in available lifetime coverage or any other benefit under an insurance
 - 22 policy.
 - 23 b. An increase in premiums or the discontinuation of a policy.
 - 24 c. An out-of-pocket expense such as the payment of a deductible amount incurred
 - 25 in filing a claim unless the life skills and transition center pays or waives the
 - 26 out-of-pocket expense.

27 **SECTION 16. AMENDMENT.** Subsection 2 of section 25-16-01 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 2. "Treatment or care center" means ~~any hospital, home, or other premises operated to~~
30 ~~provide relief, care, custody, treatment, day activity, work activity, or extended-~~

1 ~~employmentan entity providing~~ services to individuals with a developmental
2 ~~disabilitydisabilities and licensed by the department to provide services.~~

3 **SECTION 17. AMENDMENT.** Section 25-16-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-16-04. Inspection and report by department.**

6 The department shall~~may~~ inspect the facilities and premises of the applicant to determine
7 ~~the premises are fit, safe, and~~ sanitary conditions ~~and the adequacy of medical and nursing-~~
8 ~~servicesto provide quality care and treatment.~~

9 **SECTION 18. AMENDMENT.** Subsection 2 of section 25-16.1-01 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 2. "Treatment or care center" means ~~any hospital, home, or other premises, operated to~~
12 ~~provide relief, care, custody, treatment, day activity, work activity, or extended-~~
13 ~~employmentan entity providing~~ services to individuals with developmental disabilities
14 ~~and licensed by the department to provide services.~~

15 **SECTION 19. AMENDMENT.** Section 25-16.1-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **25-16.1-03. Appointment of receiver.**

18 The court shall appoint, as receiver, the executive director of the department who shall
19 designate a qualified individual not employed by this state or its political subdivisions, or a
20 nonprofit organization to execute the receivership. The receiver appointed by the court shall use
21 the income and assets of the treatment or care center to maintain and operate the center and to
22 attempt to correct the conditions which constitute a threat to the clients. The receiver may not
23 liquidate the assets of the treatment or care center.

24 **SECTION 20. AMENDMENT.** Subsection 2 of section 25-18-01 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. "Treatment or care center" means an entity providing services to individuals with
27 developmental disabilities and licensed by the department ~~as an intermediate care-~~
28 ~~facility for individuals with intellectual disabilities as defined in section 1905(d) of the~~
29 ~~Social Security Act [42 U.S.C. 1396d(d)]; group home; or a provider of day supports,~~
30 ~~supported living arrangement, extended services, or infant developmentto provide~~
31 services.