

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2317

Introduced by

Senators Poolman, J. Lee, Wanzek

Representatives Devlin, Pollert, Satrom

1 A BILL ~~for an Act to create and enact a new subsection to section 23-16-01.1, a new section to~~
2 ~~chapter 23-16, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating~~
3 ~~to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities~~
4 ~~and reimbursement of pediatric subacute care facilities; and to amend and reenact section~~
5 ~~50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota~~
6 ~~Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities.~~ for
7 an Act to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century
8 Code, relating to health care facilities and licensure of nursing facilities; to provide for a
9 legislative management study; to provide for a report; and to declare an emergency.

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

11 ~~SECTION 1. A new subsection to section 23-16-01.1 of the North Dakota Century Code is~~
12 ~~created and enacted as follows:~~

13 ~~Notwithstanding the prohibition on adding nursing facility beds under subsection 1, an~~
14 ~~additional twenty two nursing facility beds are authorized for use as pediatric subacute~~
15 ~~care facility beds. Beds authorized under this subsection may not be sold, converted,~~
16 ~~or transferred.~~

17 ~~SECTION 2. A new section to chapter 23-16 of the North Dakota Century Code is created~~
18 ~~and enacted as follows:~~

19 ~~Nursing facility – Pediatric subacute care facility.~~

20 ~~1. The health council shall adopt rules to license nursing facilities under this chapter.~~

21 ~~2. The department shall license a pediatric subacute care facility as a type of nursing~~
22 ~~facility. A facility may choose whether to seek licensure as an intermediate care facility~~
23 ~~under chapter 25-16 or as a pediatric subacute care facility.~~

1 ~~3. The rules applicable to a pediatric subacute care facility must allow for aging in place~~
2 ~~for an individual over the age of twenty-one and for a pediatric subacute care facility to~~
3 ~~be located in a facility or structure that offers other appropriate levels of services.~~

4 ~~4. Rules under this section must provide for consistent implementation of specialized~~
5 ~~training, treatment, health services, and related care which are developmentally~~
6 ~~appropriate for the population.~~

7 ~~**SECTION 3. AMENDMENT.** Section 50-24.4-27 of the North Dakota Century Code is~~
8 ~~amended and reenacted as follows:~~

9 ~~**50-24.4-27. Medicare certification.**~~

10 ~~All~~~~Except for pediatric subacute care facilities, all~~ nursing facilities certified under the
11 medical assistance program shall participate in Medicare part A and part B with respect to at
12 least thirty percent of the beds in the facility unless, after submitting an application, Medicare
13 certification is denied by the federal health care financing administration. The facility shall file on
14 behalf of each patient or assist each patient in the filing of requests for any third-party benefits
15 to which the patient may be entitled. Charges for Medicare covered services provided to
16 residents who are simultaneously eligible for medical assistance and medicare must be billed to
17 Medicare part A or part B before billing medical assistance. Medical assistance may be billed
18 only for charges not reimbursed by Medicare.

19 ~~**SECTION 4.** A new section to chapter 50-24.4 of the North Dakota Century Code is created~~
20 ~~and enacted as follows:~~

21 ~~**Pediatric subacute care facilities:**~~

22 ~~If reimbursing a pediatric subacute care facility licensed under chapter 23-16, the~~
23 ~~department shall consider the unique level of care and the additional cost required to provide~~
24 ~~services to medically fragile clients.~~

25 ~~**SECTION 5. AMENDMENT.** Subdivision a of subsection 24 of section 57-39.2-04 of the~~
26 ~~North Dakota Century Code is amended and reenacted as follows:~~

27 ~~a. "Eligible facility" means any hospital, skilled nursing facility, nursing facility,~~
28 ~~intermediate care facility, or basic care facility licensed by the state department of~~
29 ~~health, or any assisted living facility licensed by the department of human~~
30 ~~services; and~~

1 **SECTION 1. AMENDMENT.** Section 23-01-37 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23-01-37. Survey program - Health facilities construction or renovation projects -**
4 **Innovation waivers.**

- 5 1. The state department of health shall conduct a life safety survey process for all health
6 facilities licensed by the division of health facilities of the state department of health
7 during and at the conclusion of a construction, renovation, or construction and
8 renovation project.
- 9 2. The department may charge a reasonable fee for the review of plans for construction,
10 renovation, or construction and renovation projects performed under this section
11 based on the size of the project. Revenues derived from the fees collected under this
12 subsection must be deposited in the department's operating fund in the state treasury.
- 13 3. The state department of health shall make a determination on a construction,
14 renovation, or construction and renovation project of no more than one million dollars
15 within sixty days of receipt of a complete application.
- 16 4. The state department of health may approve a request for a waiver of a state law or
17 rule relating to an innovative construction, renovation, or construction and renovation
18 project if the lack of compliance does not adversely affect health or safety.
- 19 5. The department shall design and operate the program in a manner that will provide
20 that the surveyor that performs a life safety survey under this section does not violate
21 the federal requirements associated with Medicare-certified life safety surveys.

22 **SECTION 2. AMENDMENT.** Section 23-09.3-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23-09.3-04. Department to establish standards - Licensing - Inspection - Survey -**
25 **Prosecute violations.**

- 26 1. The department shall establish standards for basic care facilities. The department
27 shall inspect all places and grant annual licenses to basic care facilities as conform to
28 the standards established and comply with the rules prescribed, as provided in this
29 chapter. The department may waive all or a portion of a license standard if the
30 department determines the lack of compliance does not adversely affect the health or
31 safety of residents.

1 2. The department shall implement a survey process for basic care facilities which for
2 purposes of the life safety portions of the survey, all surveys must be announced;
3 which for purposes of the health portions of the survey, half of the surveys must be
4 announced; and which for purposes of complaints related to health and life safety, all
5 surveys must be unannounced. As part of the survey process, the department shall
6 develop, in consultation with basic care facilities, and shall implement a two-tiered
7 system of identifying areas of noncompliance with the health portions of the survey.

8 3. The department shall prosecute all violations of this chapter.

9 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY**

10 **CONSTRUCTION.** During the 2019-20 interim, the legislative management shall consider
11 studying the state department of health licensing process for health facility construction and
12 renovation projects, including consideration of the appropriate role of the state department of
13 health. The legislative management shall report its findings and recommendations, together with
14 any legislation required to implement the recommendations, to the sixty-seventh legislative
15 assembly.

16 **SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY**

17 **CONSTRUCTION AND RENOVATION.** Before July 1, 2020, the state department of health
18 shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

19 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.