

**SENATE BILL NO. 2240
with House Amendments
SENATE BILL NO. 2240**

Sixty-sixth
Legislative Assembly
of North Dakota

Introduced by

Senators J. Lee, Hogan

Representatives D. Anderson, Damschen, J. Nelson

1 A BILL for an Act to amend and reenact section 1-04-07, subsection 1 of section 5-01-09,
2 sections 12.1-20-06.1 and 19-03.3-05, subdivision f of subsection 3 of section 23-01-44, section
3 25-03.1-01, subsections 3, 12, 13, and 23 of section 25-03.1-02, section 25-03.1-04,
4 subsection 2 of section 25-03.1-09, sections 25-03.1-34.1, 25-03.1-34.2, and 38-10-01,
5 subdivision l of subsection 1 of section 43-05-16, section 43-05-16.4, subsection 3 of section
6 43-17.1-06, subsection 3 of section 50-25.1-16, and section 50-25.1-18 of the North Dakota
7 Century Code, relating to references to substance abuse disorders.

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

9 **SECTION 1. AMENDMENT.** Section 1-04-07 of the North Dakota Century Code is amended
10 and reenacted as follows:

11 **1-04-07. Assignment of mortgage by foreign executor, administrator, or guardian.**

12 Any assignment of a mortgage upon property within this state heretofore made by any
13 executor or administrator appointed in any other state or foreign country on the estate of any
14 person where no executor or administrator had been appointed in this state, if such executor or
15 administrator has filed in the office of the recorder of any county in which any such mortgage
16 was filed or recorded an authenticated copy of the person's appointment, and any assignment
17 of a mortgage upon property within this state heretofore made by any heir or legatee of such
18 deceased person, if such heir or legatee has recorded in the office of the recorder an
19 authenticated copy of the judgment or decree of the foreign court transferring to such heir or
20 legatee the ownership of such mortgage, and any assignment of a mortgage upon property
21 within this state heretofore made by any guardian appointed in any other state or foreign
22 country, of a minor, ~~habitual drunkard~~, spendthrift, or an individual who is incompetent person,
23 holding and owning a mortgage upon property in this state, if such guardian has filed in the
24 office of the recorder of the county in which the property is situated an authenticated copy of the

1 person's appointment as guardian, and an authenticated copy of the judgment or decree of the
2 foreign court, if any, transferring to the guardian's ward the ownership of such mortgage, if such
3 assignment was made prior to the date of the taking effect of this code, hereby is declared to be
4 legal and valid for all purposes, and of the same force and effect as though such executor,
5 administrator, guardian, heir, or legatee had been authorized specifically by law to make such
6 assignment. The provisions of this section apply to all mortgages, judgments, or other liens
7 upon real or personal property, and to the foreclosure of any such mortgage or lien on real or
8 personal property.

9 **SECTION 2. AMENDMENT.** Subsection 1 of section 5-01-09 of the North Dakota Century
10 Code is amended and reenacted as follows:

11 1. Any individual knowingly delivering alcoholic beverages to an individual under
12 twenty-one years of age, except as allowed under section 5-02-06, or to a ~~habitual~~
13 ~~drunkard~~, an incompetent, or an obviously intoxicated individual is guilty of a class A
14 misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.

15 **SECTION 3. AMENDMENT.** Section 12.1-20-06.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.**

18 Any person who is or who holds oneself out to be a therapist and who intentionally has
19 sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment,
20 consultation, interview, or examination is guilty of a class C felony. Consent by the complainant
21 is not a defense under this section. A complaint of a violation of this section may be made to the
22 police department of the city in which the violation occurred, the sheriff of the county in which
23 the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies
24 and the bureau of criminal investigation shall cooperate in investigations of violations of this
25 section. As used in this section, unless the context or subject matter otherwise requires:

- 26 1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition,
27 including alcohol or drug addiction.
- 28 2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse,
29 ~~chemical dependency~~addiction counselor, member of the clergy, or other person,
30 whether licensed or not by the state, who performs or purports to perform
31 psychotherapy.

1 **SECTION 4. AMENDMENT.** Section 19-03.3-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **19-03.3-05. Application.**

4 This chapter does not apply to a person being treated by a physician for ~~chemical-~~
5 ~~dependeneya substance use disorder~~ because of the person's use of controlled substances not
6 related to treatment for pain. This chapter does not authorize a physician to prescribe or
7 administer any drug legally classified as a controlled substance or as an addictive or dangerous
8 drug for other than medically accepted therapeutic purposes. A person to whom controlled
9 substances are prescribed or administered for pain is not exempt from section 39-08-01 or
10 39-20-04.1.

11 **SECTION 5. AMENDMENT.** Subdivision f of subsection 3 of section 23-01-44 of the North
12 Dakota Century Code is amended and reenacted as follows:

13 f. Provide ~~drug~~ addiction treatment information, and referrals to ~~drug~~ treatment
14 programs, including programs in the local area and programs that offer
15 medication-assisted treatment that includes a federal food and drug
16 administration approved long-acting, non-addictive medication for the treatment
17 of opioid or alcohol ~~dependeneya~~ use disorder;

18 **SECTION 6. AMENDMENT.** Section 25-03.1-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **25-03.1-01. Legislative intent.**

21 The provisions of this chapter are intended by the legislative assembly to:

- 22 1. Provide prompt evaluation and treatment of persons with serious mental disorders or
23 ~~chemical-dependeneya substance use disorder~~.
- 24 2. Safeguard individual rights.
- 25 3. Provide continuity of care for persons with serious mental disorders or ~~chemical-~~
26 ~~dependeneya substance use disorder~~.
- 27 4. Encourage the full use of all existing agencies, professional personnel, and public
28 funds to prevent duplication of services and unnecessary expenditures.
- 29 5. Encourage, whenever appropriate, that services be provided within the community.

30 **SECTION 7. AMENDMENT.** Subsections 3, 12, 13, and 23 of section 25-03.1-02 of the
31 North Dakota Century Code are amended and reenacted as follows:

- 1 3. ~~"Chemically dependent person"~~Individual with a substance use disorder" or ~~"person-~~
2 ~~who is chemically dependent"~~ means an individual with an illness or disorder
3 characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination
4 thereof, resulting in social, occupational, psychological, or physical problems.
- 5 12. "Mentally ill person" or "person who is mentally ill" means an individual with an
6 organic, mental, or emotional disorder that substantially impairs the capacity to use
7 self-control, judgment, and discretion in the conduct of personal affairs and social
8 relations. The term does not include an individual with an intellectual disability of
9 significantly subaverage general intellectual functioning that originates during the
10 developmental period and is associated with impairment in adaptive behavior,
11 although an individual who is intellectually disabled may also be a person who is
12 mentally ill. ~~Chemical dependency~~A substance use disorder does not per se constitute
13 mental illness, although ~~a person who is chemically dependent~~an individual with a
14 substance use disorder may also be a person who is mentally ill.
- 15 13. "Person requiring treatment" means a person who is mentally ill or ~~a person who is~~
16 ~~chemically dependent~~an individual with a substance use disorder, and there is a
17 reasonable expectation that if the individual is not treated for the mental illness or
18 ~~chemical dependency~~substance use disorder there exists a serious risk of harm to that
19 individual, others, or property.
- 20 23. "Treatment facility" or "facility" means any hospital, including the state hospital at
21 Jamestown, or any evaluation and treatment facility that provides directly, or by direct
22 arrangement with other public or private agencies, emergency evaluation and
23 treatment, outpatient care, and inpatient care to individuals who are mentally ill or
24 ~~chemically dependent~~have a substance use disorder.

25 **SECTION 8. AMENDMENT.** Section 25-03.1-04 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **25-03.1-04. Screening and admission to a public treatment facility.**

28 Under rules adopted by the department, screening of an individual to a public treatment
29 facility for observation, diagnosis, care, or treatment for mental illness or ~~chemical dependency~~a
30 substance use disorder must be performed, in person when reasonably practicable, by a
31 regional human service center. This screening must be performed in the region where the

1 individual is physically located. Upon the request of a court, a law enforcement official, a mental
2 health professional, the individual's legal guardian, a minor's parent or legal custodian, or the
3 individual requesting services, the regional human service center shall conduct a screening. If a
4 request for screening is made by a mental health professional and the individual who is the
5 subject of the screening does not authorize the disclosure of the individual's protected health
6 information, upon the request of the regional human service center, any mental health
7 professional who treated the individual within the previous six months shall disclose, subject to
8 the requirements of title 42, Code of Federal Regulations, part 2, to the human service center
9 any relevant protected health information regarding that treatment. Upon receipt of the request,
10 the regional human service center shall arrange for a screening of the individual and, if
11 appropriate, shall treat the applicant or refer the applicant to the appropriate treatment facility.
12 Upon admittance to a public treatment facility, the superintendent or director shall immediately
13 designate a tier 1 or tier 2 mental health professional to examine the individual.

14 **SECTION 9. AMENDMENT.** Subsection 2 of section 25-03.1-09 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 2. If probable cause has been established, the magistrate shall cause to be served on
17 the respondent and the respondent's nearest relative or guardian or, if none, a friend
18 of the respondent:
- 19 a. A copy of the petition and supporting documentation.
 - 20 b. A notice informing the respondent of the procedures required by this chapter.
 - 21 c. A notice of the respondent's right to a preliminary and a treatment hearing when
22 in custody under section 25-03.1-25 and if mental illness or a combination of
23 mental illness and ~~chemical-dependency~~ substance use disorder of the
24 respondent is alleged in the petition, or, if not in custody or if in custody and
25 ~~chemical-dependency~~ substance use disorder alone is alleged in the petition,
26 the right to a treatment hearing; of the right to be present at the hearings; of the
27 right to have counsel before the hearings and any court-ordered examination; of
28 the right to an independent evaluation; and, if the respondent is indigent, of the
29 right to counsel and to an independent expert examiner, each at the expense of
30 the county which is the respondent's place of residence.

1 d. Notice that if an independent expert examiner is to be appointed, the respondent
2 must be given an opportunity to select that examiner.

3 **SECTION 10. AMENDMENT.** Section 25-03.1-34.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-03.1-34.1. Exchange of chemically dependent patient or prisoner.**

6 The director of the department of human services, a county, a city, or a local law
7 enforcement agency may enter into reciprocal agreements with the appropriate authorities of
8 any other state regarding the mutual exchange, return, and transportation of ~~chemically-~~
9 ~~dependent or mentally ill patients or prisoners~~individuals with a mental illness or substance use
10 disorder who are treated or confined in hospitals of one state for treatment of ~~chemical-~~
11 ~~dependeneya substance use disorder~~ or mental illness but who have legal residence in another
12 state.

13 **SECTION 11. AMENDMENT.** Section 25-03.1-34.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **25-03.1-34.2. Interstate contracts for treatment of mental illness or ~~chemical-~~**
16 **dependeneya substance use disorder.**

- 17 1. For purposes of this section, "bordering state" means Minnesota, Montana, or South
18 Dakota.
- 19 2. Unless prohibited by another law and subject to the exceptions in subsection 3, the
20 department may contract with any appropriate treatment or detoxification facility in a
21 bordering state for the treatment of mental illness or ~~chemical-dependeneya~~substance
22 use disorders or for providing ~~chemical-dependeneya~~substance use disorder
23 detoxification services for residents of North Dakota. The department may also
24 contract with any public or private agency or facility to provide treatment of mental
25 illness or ~~chemical-dependeneya~~substance use disorders or to provide ~~chemical-~~
26 ~~dependeneya~~substance use disorder detoxification services in North Dakota to
27 residents of a bordering state. An individual who receives treatment for mental illness
28 or ~~chemical-dependeneya~~substance use disorder or who receives ~~chemical-~~
29 ~~dependeneya~~substance use disorder detoxification services in another state under this
30 section is subject to the laws of the state in which treatment or detoxification is
31 provided. An individual who receives treatment or detoxification in another state under

- 1 this section must be informed of the consequences of receiving treatment or
2 detoxification in another state, including the implications of the differences in state
3 laws.
- 4 3. A contract may not be entered under this section for treatment or detoxification to
5 individuals who:
- 6 a. Are serving a sentence after conviction of a criminal offense;
7 b. Are on probation or parole;
8 c. Are the subject of a presentence investigation; or
9 d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for
10 treatment of mental illness or ~~chemical dependency~~ substance use disorder,
11 except as provided under subsection 5.
- 12 4. Contracts entered under this section must, at a minimum:
- 13 a. Describe the services to be provided;
14 b. Establish responsibility for the costs of services;
15 c. Establish responsibility for the costs of transporting individuals receiving services
16 under this section;
17 d. Specify the duration of the contract;
18 e. Specify the means of terminating the contract;
19 f. Specify the terms and conditions for refusal to admit or retain an individual; and
20 g. Identify the goals to be accomplished by the placement of an individual under this
21 section.
- 22 5. The department may enter negotiations with appropriate personnel of a bordering
23 state to develop an agreement that conforms to the requirements of this section. An
24 agreement with a bordering state must enable the placement in North Dakota of
25 individuals who require detoxification services, are on emergency holds, or who have
26 been involuntarily committed as mentally ill or ~~chemically dependent~~ having a
27 substance use disorder in a bordering state and enable the temporary placement in a
28 bordering state of patients who require detoxification services or who are on
29 emergency holds in North Dakota under chapter 25-03.1. An agreement with a
30 bordering state must also provide that the North Dakota courts retain jurisdiction over
31 North Dakota residents, and that the bordering state affords to North Dakota residents

1 the rights afforded to them under North Dakota law. Individuals committed by a court
2 of a bordering state and placed in North Dakota facilities continue to be in the legal
3 custody of the bordering state. The bordering state's laws governing length of
4 commitment, re-examinations, and extension of commitment must continue to apply to
5 these residents. In all other respects, residents of a bordering state placed in North
6 Dakota facilities are subject to North Dakota laws. An agreement with a bordering
7 state must specify that responsibility for payment for the cost of care of a resident of a
8 bordering state remains with the bordering state of which that individual is a resident
9 and the cost of care of a North Dakota resident remains with the state of North Dakota.
10 This section applies to detoxification services regardless of whether the services are
11 provided on a voluntary or involuntary basis.

12 **SECTION 12. AMENDMENT.** Section 38-10-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **38-10-01. Definitions.**

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

- 16 1. "District court" means the district court having jurisdiction of the estate of which the
17 personal representative involved is administrator, executor, or guardian, as the case
18 may be.
- 19 2. "Estate" means the estate of a person who died testate or intestate and the estate of a
20 minor or of an individual who is incompetent, or a spendthrift, or habitual drunkard
21 under guardianship.
- 22 3. "Lease for production" means any lease of property of an estate for the purpose of
23 mining or of drilling and operating for oil, including the laying of pipelines and the
24 building of tanks, power stations, and other structures upon the lands described in
25 such lease for the purpose of producing, saving, and taking care of products of the
26 mine or well.
- 27 4. "Personal representative" means an executor of the last will or the administrator of the
28 estate of a deceased person, or a guardian of the estate of a minor or of an
29 incompetent, or spendthrift, or habitual drunkard.

30 **SECTION 13. AMENDMENT.** Subdivision I of subsection 1 of section 43-05-16 of the North
31 Dakota Century Code is amended and reenacted as follows:

- 1 I. Inability to practice podiatric medicine with reasonable skill and safety to patients
2 because of physical or mental illness, ~~chemical dependency~~ substance use
3 disorder, or as a result of any mental or physical condition or disability.

4 **SECTION 14. AMENDMENT.** Section 43-05-16.4 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-05-16.4. Mental examination - Access to medical data.**

- 7 1. If the board has probable cause to believe that a podiatrist or applicant for license falls
8 within the provisions of subdivision l or q of subsection 1 of section 43-05-16, it may
9 direct the podiatrist or applicant for license to submit to a mental or physical
10 examination or ~~chemical dependency~~ an addiction evaluation. A podiatrist licensed or
11 permitted under this chapter or an applicant for a license is considered to have
12 consented to submit to a mental or physical examination or ~~chemical dependency~~ an
13 addiction examination when directed in writing by the board and to have waived all
14 objections to the admissibility of the examiner's testimony or examination reports on
15 the ground that the examination constitutes a privileged communication. The failure of
16 a podiatrist or applicant for a license to submit to an examination when directed
17 constitutes an admission of the allegations against the podiatrist or applicant for
18 license and a default and final order may be entered without the taking of testimony or
19 presentation of evidence unless the failure was due to circumstances beyond the
20 podiatrist's or applicant's control. A podiatrist or applicant for a license must, at
21 reasonable intervals, be given an opportunity to demonstrate that the podiatrist or
22 applicant can resume or commence the competent practice of podiatric medicine with
23 reasonable skill and safety to patients. In a proceeding under this subsection, neither
24 the record of proceedings nor the orders entered by the board may be used against a
25 podiatrist or applicant in any other proceeding.
- 26 2. In addition to ordering a physical or mental examination or a ~~chemical dependency~~ an
27 addiction evaluation, the board may, notwithstanding any law to the contrary, obtain
28 medical data and health records relating to a licensee or applicant without the
29 licensee's or applicant's consent if the board has probable cause to believe that the
30 podiatrist or applicant falls within the provisions of subdivision l or q of subsection 1 of
31 section 43-05-16. The medical data may be requested from a provider, an insurance

1 company, or a government agency. A provider, insurance company, or government
2 agency shall comply with a written request of the board under this section and is not
3 liable in any action for damages for releasing the data requested by the board if the
4 data are released in accordance with a written request under this section unless the
5 information is false and the provider giving the information knew or had reason to
6 believe the information was false.

7 **SECTION 15. AMENDMENT.** Subsection 3 of section 43-17.1-06 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. Upon probable cause, require any physician, physician assistant, or fluoroscopy
10 technologist under investigation to submit to a physical, psychiatric, or competency
11 examination or ~~chemical-dependency~~an addiction evaluation.

12 **SECTION 16. AMENDMENT.** Subsection 3 of section 50-25.1-16 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical
15 purpose, the department or its designee shall immediately initiate an appropriate
16 assessment and offer services indicated under the circumstances. Services offered
17 may include a referral for ~~chemical-dependency~~an addiction assessment, a referral for
18 ~~chemical-dependency~~substance use disorder treatment if recommended, or a referral
19 for prenatal care. The department or its designee may also take any appropriate action
20 under chapter 25-03.1.

21 **SECTION 17. AMENDMENT.** Section 50-25.1-18 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **50-25.1-18. Prenatal exposure to alcohol abuse - Reporting requirements.**

24 1. An individual required to report under section 50-25.1-03 who has knowledge of or
25 reasonable cause to suspect that a woman is pregnant and has abused alcohol after
26 the woman knows of the pregnancy may:
27 a. Arrange for a ~~chemical-dependency~~an addiction assessment conducted by a
28 licensed treatment program and confirm that the recommendations indicated by
29 the assessment are followed; or

- 1 b. Immediately report the circumstances to the department if the knowledge or
2 suspicion is derived from information received by that individual in that
3 individual's official or professional capacity.
- 4 2. An individual may make a voluntary report if the individual has knowledge of or
5 reasonable cause to suspect that a woman is pregnant and has abused alcohol during
6 the pregnancy.
- 7 3. If the woman is referred for ~~a chemical dependency~~an addiction assessment under
8 subdivision a of subsection 1 and fails to obtain an assessment or refuses to comply
9 with the recommendations of the assessment, an individual required to report under
10 section 50-25.1-03 who has knowledge of the failure to obtain the assessment or
11 refusal to comply with recommendations of the assessment shall make a report to the
12 department.
- 13 4. If a report alleges a pregnant woman has abused alcohol, the department or its
14 designee shall immediately initiate an appropriate assessment and offer services
15 indicated under the circumstances. Services offered may include a referral for
16 ~~chemical dependency~~an addiction assessment, a referral for ~~chemical-~~
17 ~~dependency~~substance use disorder treatment, if recommended, or a referral for
18 prenatal care. The department or its designee may also take any appropriate action
19 under chapter 25-03.1.
- 20 5. A report and assessment under this section is not required if the pregnant woman
21 voluntarily enters treatment in a licensed treatment program. If the pregnant woman
22 does not complete voluntary treatment or fails to follow treatment recommendations,
23 an individual required to report under section 50-25.1-03 who has knowledge of the
24 failure to complete voluntary treatment or failure to follow treatment recommendations
25 shall make a report as required by this section.
- 26 6. A report under this section must be made as described in section 50-25.1-04 and must
27 be sufficient to identify the woman, the nature and extent of the abuse of alcohol, any
28 health risk associated with the abuse of alcohol, and the name and address of the
29 individual making the report.