

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2240
(Senators J. Lee, Hogan)
(Representatives D. Anderson, Damschen, J. Nelson)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

Any assignment of a mortgage upon property within this state heretofore made by any executor or administrator appointed in any other state or foreign country on the estate of any person where no executor or administrator had been appointed in this state, if such executor or administrator has filed in the office of the recorder of any county in which any such mortgage was filed or recorded an authenticated copy of the person's appointment, and any assignment of a mortgage upon property within this state heretofore made by any heir or legatee of such deceased person, if such heir or legatee has recorded in the office of the recorder an authenticated copy of the judgment or decree of the foreign court transferring to such heir or legatee the ownership of such mortgage, and any assignment of a mortgage upon property within this state heretofore made by any guardian appointed in any other state or foreign country, of a minor, ~~habitual drunkard, spendthrift, or an individual who is incompetent person,~~ holding and owning a mortgage upon property in this state, if such guardian has filed in the office of the recorder of the county in which the property is situated an authenticated copy of the person's appointment as guardian, and an authenticated copy of the judgment or decree of the foreign court, if any, transferring to the guardian's ward the ownership of such mortgage, if such assignment was made prior to the date of the taking effect of this code, hereby is declared to be legal and valid for all purposes, and of the same force and effect as though such executor, administrator, guardian, heir, or legatee had been authorized specifically by law to make such assignment. The provisions of this section apply to all mortgages, judgments, or other liens upon real or personal property, and to the foreclosure of any such mortgage or lien on real or personal property.

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

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

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

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

Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation,

interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

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

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

19-03.3-05. Application.

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

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

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

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

25-03.1-01. Legislative intent.

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

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

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

3. "~~Chemically dependent person~~Individual with a substance use disorder" or "~~person who is chemically dependent~~" means an individual with an illness or disorder characterized by a

maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.

12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. ~~Chemical dependency~~ A substance use disorder does not per se constitute mental illness, although ~~a person who is chemically dependent~~ an individual with a substance use disorder may also be a person who is mentally ill.
13. "Person requiring treatment" means a person who is mentally ill or ~~a person who is chemically dependent~~ an individual with a substance use disorder, and there is a reasonable expectation that if the individual is not treated for the mental illness or ~~chemical dependency~~ substance use disorder there exists a serious risk of harm to that individual, others, or property.
23. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to individuals who are mentally ill or ~~chemically dependent~~ have a substance use disorder.

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

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

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or ~~chemical dependency~~ a substance use disorder must be performed, in person when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a mental health professional and the individual who is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and, if appropriate, shall treat the applicant or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a tier 1 or tier 2 mental health professional to examine the individual.

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

2. If probable cause has been established, the magistrate shall cause to be served on the respondent and the respondent's nearest relative or guardian or, if none, a friend of the respondent:
 - a. A copy of the petition and supporting documentation.
 - b. A notice informing the respondent of the procedures required by this chapter.

- c. A notice of the respondent's right to a preliminary and a treatment hearing when in custody under section 25-03.1-25 and if mental illness or a combination of mental illness and ~~chemical dependency~~ substance use disorder of the respondent is alleged in the petition, or, if not in custody or if in custody and ~~chemical dependency~~ substance use disorder alone is alleged in the petition, the right to a treatment hearing; of the right to be present at the hearings; of the right to have counsel before the hearings and any court-ordered examination; of the right to an independent evaluation; and, if the respondent is indigent, of the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence.
- d. Notice that if an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

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

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

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

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

25-03.1-34.2. Interstate contracts for treatment of mental illness or ~~chemical dependency~~ substance use disorder.

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment or detoxification facility in a bordering state for the treatment of mental illness or ~~chemical dependency~~ substance use disorders or for providing ~~chemical dependency~~ substance use disorder detoxification services for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or ~~chemical dependency~~ substance use disorders or to provide ~~chemical dependency~~ substance use disorder detoxification services in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or ~~chemical dependency~~ substance use disorder or who receives ~~chemical dependency~~ substance use disorder detoxification services in another state under this section is subject to the laws of the state in which treatment or detoxification is provided. An individual who receives treatment or detoxification in another state under this section must be informed of the consequences of receiving treatment or detoxification in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment or detoxification to individuals who:
 - a. Are serving a sentence after conviction of a criminal offense;
 - b. Are on probation or parole;
 - c. Are the subject of a presentence investigation; or

- d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or ~~chemical dependency~~ a substance use disorder, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:
 - a. Describe the services to be provided;
 - b. Establish responsibility for the costs of services;
 - c. Establish responsibility for the costs of transporting individuals receiving services under this section;
 - d. Specify the duration of the contract;
 - e. Specify the means of terminating the contract;
 - f. Specify the terms and conditions for refusal to admit or retain an individual; and
 - g. Identify the goals to be accomplished by the placement of an individual under this section.
 5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who require detoxification services, are on emergency holds, or who have been involuntarily committed as mentally ill or ~~chemically dependent~~ having a substance use disorder in a bordering state and enable the temporary placement in a bordering state of patients who require detoxification services or who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, re-examinations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota. This section applies to detoxification services regardless of whether the services are provided on a voluntary or involuntary basis.

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

38-10-01. Definitions.

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

1. "District court" means the district court having jurisdiction of the estate of which the personal representative involved is administrator, executor, or guardian, as the case may be.
2. "Estate" means the estate of a person who died testate or intestate and the estate of a minor or of an individual who is incompetent; or a spendthrift; ~~or habitual drunkard~~ under guardianship.
3. "Lease for production" means any lease of property of an estate for the purpose of mining or of drilling and operating for oil, including the laying of pipelines and the building of tanks,

power stations, and other structures upon the lands described in such lease for the purpose of producing, saving, and taking care of products of the mine or well.

4. "Personal representative" means an executor of the last will or the administrator of the estate of a deceased person, or a guardian of the estate of a minor or of an incompetent; or spendthrift, or habitual drunkard.

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

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

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

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

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or chemical dependency an addiction evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or chemical dependency an addiction examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or a chemical dependency an addiction evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

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

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

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2240.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 72 Nays 18 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State