

# HEALTH AND SAFETY

## CHAPTER 206

### SENATE BILL NO. 2317

(Senators Poolman, J. Lee, Wanzek)  
(Representatives Devlin, Pollert, Satrom)

AN ACT to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century Code, relating to health care facilities and licensure of nursing facilities; to provide for a legislative management study; to provide for a report; and to declare an emergency.

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

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

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

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

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

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

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.
2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY CONSTRUCTION.** During the 2019-20 interim, the legislative management shall consider studying the state department of health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

**SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION.** Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

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

Approved April 30, 2019

Filed May 2, 2019

## CHAPTER 207

### SENATE BILL NO. 2208

(Senators J. Lee, Mathern, K. Roers)  
(Representatives Nathe, Schreiber-Beck, Tveit)

AN ACT to amend and reenact sections 23-06-03 and 23-06-31 of the North Dakota Century Code, relating to authority to and immunity for disposition of the dead.

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

<sup>96</sup> **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06-03. Duty of final disposition - Indigent burial - Decedent's instructions.**

1. The duty of disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
  - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
  - b. The surviving spouse if the deceased was married;
  - c. If the deceased was not married but left kindred, upon the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
  - d. The surviving parent or parents of the decedent, each having equal authority;
  - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
  - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who

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<sup>96</sup> Section 23-06-03 was also amended by section 17 of Senate Bill No. 2124, chapter 391.

- represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
- g. The grandparent or the grandparents of the decedent, each having equal authority;
  - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
  - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
  - j. An adult who exhibited special care and concern for the decedent;
  - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
  - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the county social service board of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
  3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
    - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
    - b. To the individual in the next degree of relationship to the decedent under subsection 1.
  4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district

court has been petitioned to make a determination, the court shall consider the following factors in making a determination:

- a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
  - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
  - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
  - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of final disposition does not arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
6. a. If the deceased did not leave sufficient means to pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the county's general assistance policy, within fifteen days of application for services 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, within fifteen days of application for assistance the county social service board of the county in which the death occurs shall employ a person to arrange for and supervise the final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance 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 final disposition.
- b. 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.
- c. 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.
- d. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners. The county social service board may not decrease the county payment due to a nominal amount left by the deceased or contributed by kin or any other party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.

7. If the individual with the duty of final disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.
9. A funeral director or mortician has complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition if:
  - a. The funeral director or mortician has actual knowledge none of the individuals described in subsection 1 exist, can be found after reasonable inquiry, or can be contacted by reasonable means; and
  - b. Within thirty-six hours after having been given written notice of the facts, the appropriate court or public authority fails to assume responsibility for disposition of the remains. Written notice may be delivered by hand, United States mail, or facsimile transmission.

**SECTION 2. AMENDMENT.** Section 23-06-31 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-31. Cremation or other lawful disposition of a body - Authorization document - Immunity.**

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.
2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.
3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document

articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.

4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent or an individual to whom the crematorium or funeral establishment reasonably believes is entitled to control final disposition pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to criminal prosecution, civil liability, or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a body in reliance on a document executed pursuant to this section is presumed to be made in good faith.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 208

### HOUSE BILL NO. 1355

(Representatives Kreidt, Bellew, Devlin, Meier, Rohr, Tveit)  
(Senators Anderson, O. Larsen, J. Lee)

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on basic care and nursing facility bed capacity.

#### 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, ~~2017~~2019, and July 31, ~~2019~~2021, except ~~when~~if:
  - 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~~seventy-two 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~~seventy-two 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.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

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, ~~2017~~2019, and July 31, ~~2019~~2021. 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 within ~~forty-eight~~seventy-two 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~~seventy-two 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~~seventy-two month period originally established at the time of the first transfer.
3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within ~~forty-eight~~seventy-two months of acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a Medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.
6. A nursing facility, upon prior written notice to the state department of health, may delicense a maximum of twenty-five percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of ~~twenty-four~~forty-eight months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than

fifty percent of the number of currently licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the ~~twenty-four-month~~forty-eight-month holding period ceases to exist.

7. During the ~~twenty-four-month~~forty-eight-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
  - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure.
  - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within the ~~forty-eight-month~~seventy-two-month period originally established at the time of ~~delicensure~~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~~seventy-two-month period originally established at the time of ~~delicensure~~transfer. The subsequent receiving entity must license the received bed capacity within the ~~forty-eight-month~~seventy-two-month period originally established at the time of ~~delicensure~~transfer.
  - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.
8. Notwithstanding any other provision of this section, a nursing facility bed transferred before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-month period established at the time of transfer.
9. Notwithstanding any other provision of this section, a nursing facility bed in the layaway program before July 1, 2019, may remain in the program for forty-eight months from the time the bed was first laid away.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 209

### HOUSE BILL NO. 1126

(Representative Weisz)  
(Senator J. Lee)

AN ACT to amend and reenact section 23-09.3-08.1 of the North Dakota Century Code, relating to basic care facility end-of-life services.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-08.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-09.3-08.1. Admission of residents to basic care facility - Restrictions - Exception.**

1. A basic care facility may not admit and retain ~~only~~ an individual ~~for whom~~unless the facility:
  - a. Facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual's highest practicable level of functioning. ~~A basic care facility may admit or retain only an individual whose condition; and~~
  - b. Condition and abilities of that individual are consistent with the national fire protection association 101 life safety code requirements.
2. Notwithstanding contrary provisions in subsection 1, a basic care facility may retain an individual in need of end-of-life services if the facility wraps around the individual's family, or the individual's designee, volunteers, or staff services to support the individual through end of life. The facility, individual, or the individual's designee may contract with a person or hospice agency to meet the needs of the individual. A basic care facility continues to be responsible for the care and services of every resident.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 210

### HOUSE BILL NO. 1433

(Representatives Kasper, Becker, B. Koppelman, Rohr, Strinden, Vigesaa)  
(Senators Clemens, Davison, Dever, J. Lee, Oehlke)

AN ACT to create and enact a new section to chapter 23-16 and a new section to chapter 26.1-47 of the North Dakota Century Code, relating to maintenance of certification for physicians; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

##### **Maintenance of certification.**

1. As used in this section:
  - a. "Continuing medical education" means continued postgraduate medical education required by the North Dakota board of medicine intended to educate medical professionals about new developments in the medical field.
  - b. "Maintenance of certification" means a process requiring periodic recertification examinations or other activities to maintain specialty medical board certification. Recertification may be provided by a medical professional organization, such as one or more of the medical specialty boards of the American board of medical specialties, the American osteopathic association, the national board of physicians and surgeons, or any other board a credentialing entity recognizes.
  - c. "Physician" means a physician licensed under chapter 43-17.
  - d. "Specialty medical board certification" means certification by a board specializing in one particular area of medicine and having requirements in addition to those the North Dakota board of medicine requires to practice medicine.
2. Except as provided in subsection 5, a physician may not be denied staff privileges or employment by a facility licensed under this chapter based solely on the physician's decision to not participate in maintenance of certification.
3. This section does not prevent a facility's credentialing committee from requiring a physician meet continuing medical education requirements as set by the physician's licensing board.
4. This section does not prohibit a facility licensed under this chapter from requiring a physician to undergo remedial or corrective courses or training as may be required by a quality improvement committee.

5. A facility licensed under this chapter may differentiate between physicians based on a physician's maintenance of certification if:
  - a. The facility's designation, certification, or accreditation is contingent on the facility requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the facility and the differentiation is limited to those physicians whose maintenance of certification is required for the facility's designation, certification, or accreditation; or
  - b. The voting physician members of the facility's organized medical staff vote to authorize the differentiation and the facility's governing body approves the vote.
    - (1) The facility may establish terms applicable to the facility's differentiation, including appropriate grandfathering provisions, and allowing the differentiation to be rescinded at any time by a vote of the voting physician members of the facility's organized medical staff.
    - (2) This section may not be construed to require a new vote by the facility's medical staff.
    - (3) Notwithstanding paragraph 2, this section may not be construed to abrogate or supersede the ability of an organized medical staff and governing board of an individual facility to determine the facility's credentialing and privileging criteria with respect to board certification and the maintenance of certification requirements.
6. A facility licensed under this chapter may not consider maintenance of certification participation or status as a standard of care consideration in the course of a quality improvement assessment.

**SECTION 2.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Maintenance of certification.**

1. As used in this section, the terms "continuing medical education", "maintenance of certification", "physician", and "specialty medical board certification" have the same meaning as provided under section 1 of this Act.
2. A health care insurer may not deny reimbursement to or prevent a physician from being a preferred provider based solely on a physician's decision to not participate in maintenance of certification, including basing a physician's network participation on any form of maintenance of certification participation or status.
3. A health care insurer may not discriminate with respect to reimbursement levels based solely on a physician's decision to not participate in any form of maintenance of certification.

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

Approved March 13, 2019

Filed March 14, 2019

## CHAPTER 211

### HOUSE BILL NO. 1337

(Representatives Heinert, Guggisberg, Meier, Porter)  
(Senators Burckhard, Dever, Meyer)

AN ACT to create and enact chapter 23-27.1 of the North Dakota Century Code, relating to the emergency medical services personnel licensure interstate compact.

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

**SECTION 1.** Chapter 23-27.1 of the North Dakota Century Code is created and enacted as follows:

##### **23-27.1-01. Purpose.**

To protect the public through verification of competency and ensure accountability for patient care-related activities all states license emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics. This compact is intended to facilitate the day-to-day movement of emergency medical services personnel across state boundaries in the performance of their emergency medical services duties as assigned by an appropriate authority and authorize state emergency medical services offices to afford immediate legal recognition to emergency medical services personnel licensed in a member state. This compact recognizes states have a vested interest in protecting the public's health and safety through their licensing and regulation of emergency medical services personnel and state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. Increase public access to emergency medical services personnel;
2. Enhance the states' ability to protect the public's health and safety, especially patient safety;
3. Encourage the cooperation of member states in the areas of emergency medical services personnel licensure and regulation;
4. Support licensing of military members who are separating from an active duty tour and their spouses;
5. Facilitate the exchange of information between member states regarding emergency medical services personnel licensure, adverse action, and significant investigatory information;
6. Promote compliance with the laws governing emergency medical services personnel practice in each member state; and
7. Invest all member states with the authority to hold emergency medical services personnel accountable through the mutual recognition of member state licenses.

**23-27.1-02. Definitions.****In this chapter:**

1. "Advanced emergency medical technician" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
2. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by law which may be imposed against licensed emergency medical services personnel by a state emergency medical services authority or state court, including actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state emergency medical services authority.
3. "Alternative program" means a voluntary, nondisciplinary substance abuse recovery program approved by a state emergency medical services authority.
4. "Certification" means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.
5. "Commission" means the national administrative body of which all states that have enacted the compact are members.
6. "Emergency medical technician" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
7. "Home state" means a member state where an individual is licensed to practice emergency medical services.
8. "License" means the authorization by a state for an individual to practice as an emergency medical technician, advanced emergency medical technician, paramedic, or a level in between an emergency medical technician and paramedic.
9. "Medical director" means a physician licensed in a member state who is accountable for the care delivered by emergency medical services personnel.
10. "Member state" means a state that has enacted this compact.
11. "Paramedic" means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the national emergency medical services education standards and national emergency medical services scope of practice model.
12. "Privilege to practice" means an individual's authority to deliver emergency medical services in remote states as authorized under this compact.
13. "Remote state" means a member state in which an individual is not licensed.

14. "Restricted" means the outcome of an adverse action that limits a license or the privilege to practice.
15. "Rule" means a written statement by the interstate commission promulgated pursuant to section 23-27.1-12 which is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.
16. "Scope of practice" means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.
17. "Significant investigatory information" means:
  - a. Investigative information that a state emergency medical services authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or
  - b. Investigative information that indicates an individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.
18. "State" means any state, commonwealth, district, or territory of the United States.
19. "State emergency medical services authority" means the board, office, or other agency with the legislative mandate to license emergency medical services personnel.

### **23-27.1-03. Home state licensure.**

1. Any member state in which an individual holds a current license is deemed a home state for purposes of this compact.
2. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.
3. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:
  - a. Currently requires the use of the national registry of emergency medical technicians examination as a condition of issuing initial licenses at the emergency medical technician and paramedic levels;
  - b. Has a mechanism in place for receiving and investigating complaints about individuals;
  - c. Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

- d. No later than five years after activation of the compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation with the exception of federal employees who have suitability determination in accordance with title 5, Code of Federal Regulations, section 731, part 202 and submit documentation of such as promulgated in the rules of the commission; and
- e. Complies with the rules of the commission.

#### **23-27.1-04. Compact privilege to practice.**

1. Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with section 23-27.1-03.
2. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:
  - a. Be at least 18 years of age;
  - b. Possess a current unrestricted license in a member state as an emergency medical technician, advanced emergency medical technician, paramedic, or state recognized and licensed level with a scope of practice and authority between emergency medical technician and paramedic; and
  - c. Practice under the supervision of a medical director.
3. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.
4. Except as provided in subsection 3, an individual practicing in a remote state is subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, that remote state shall promptly notify the home state and the commission.
5. If an individual's license in any home state is restricted or suspended, the individual is not eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.
6. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked, the individual is not eligible to practice in any remote state until the individual's privilege to practice is restored.

#### **23-27.1-05. Conditions of practice in a remote state.**

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's emergency medical services duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;
2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;
3. The individual enters a remote state to provide patient care or transport within that remote state;
4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state; and
5. Other conditions as determined by rules promulgated by the commission.

#### **23-27.1-06. Relationship to emergency management assistance compact.**

Upon a member state's governor's declaration of a state of emergency or disaster that activates the emergency management assistance compact, all relevant terms and provisions of the emergency management assistance compact apply and to the extent any terms or provisions of this compact conflict with the emergency management assistance compact, the terms of the emergency management assistance compact prevails with respect to any individual practicing in the remote state in response to such declaration.

#### **23-27.1-07. Veterans, service members separating from active duty military, and their spouses.**

1. Member states shall consider a veteran, active military service member, and member of the national guard and reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted national registry of emergency medical technicians certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.
2. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the national guard and reserves separating from an active duty tour, and their spouses.
3. All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of section 23-27.1-08.

#### **23-27.1-08. Adverse actions.**

1. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.
2. If an individual's license in any home state is restricted or suspended, the individual is not eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.
  - a. All home state adverse action orders must include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's emergency medical services authority.

- b. An individual currently subject to adverse action in the home state may not practice in any remote state without prior written authorization from both the home state and remote state's emergency medical services authority.
3. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.
4. A remote state may take adverse action on an individual's privilege to practice within that state.
5. Any member state may take adverse action against an individual's privilege to practice in the member state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.
6. A home state's emergency medical services authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.
7. Nothing in this compact may override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation must remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

**23-27.1-09. Additional powers invested in a member state's emergency medical services authority.**

A member state's emergency medical services authority, in addition to any other powers granted under state law, is authorized under this compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's emergency medical services authority for the attendance and testimony of witnesses or the production of evidence from another member state, or both, must be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state's emergency medical services authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence, or both, are located; and
2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

**23-27.1-10. Establishment of the interstate commission for emergency medical services personnel practice.**

1. The compact states hereby create and establish a joint public agency known as the interstate commission for emergency medical services personnel practice.

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- a. The commission is a body politic and an instrumentality of the compact states.
  - b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
  - c. Nothing in this compact may be construed to be a waiver of sovereign immunity.
2. a. Each member state shall have and be limited to one delegate. The responsible official of the state emergency medical services authority or the official's designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the member state in which the vacancy exists. If more than one board, office, or other agency with the legislative mandate to license emergency medical services personnel at and above the level of emergency medical technician exists, the governor of the state shall determine which entity is responsible for assigning the delegate.
  - b. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
  - c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
  - d. All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in section 23-27.1-12.
  - e. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
    - (1) Noncompliance of a member state with its obligations under the compact;
    - (2) The employment, compensation, discipline, or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
    - (3) Current, threatened, or reasonably anticipated litigation;
    - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
    - (5) Accusing any person of a crime or formally censuring any person;



- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws exclusively govern the personnel policies and programs of the commission;
  - f. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
  - g. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations;
  - h. The commission shall publish its bylaws and file a copy thereof, and a copy of any amendment, with the appropriate agency or officer in each of the member states, if any;
  - i. The commission shall maintain its financial records in accordance with the bylaws; and
  - j. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
4. The commission shall have the following powers:
- a. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states;
  - b. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state emergency medical services authority or other regulatory body responsible for emergency medical services personnel licensure to sue or be sued under applicable law may not be affected;
  - c. To purchase and maintain insurance and bonds;
  - d. To borrow, accept, or contract for services of personnel, including employees of a member state;
  - e. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
  - f. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;
  - g. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal, or

- mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- h. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
  - i. To establish a budget and make expenditures;
  - j. To borrow money;
  - k. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and other interested persons as may be designated in this compact and the bylaws;
  - l. To provide and receive information from, and to cooperate with, law enforcement agencies;
  - m. To adopt and use an official seal; and
  - n. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of emergency medical services personnel licensure and practice.
5. a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
- b. The commission may accept appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
- c. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
- d. The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
- e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
6. a. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or

- personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. This subdivision may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
  - c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

### **23-27.1-11. Coordinated database.**

- 1. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.
- 2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the commission, including:
  - a. Identifying information;
  - b. Licensure data;
  - c. Significant investigatory information;
  - d. Adverse actions against an individual's license;
  - e. An indicator that an individual's privilege to practice is restricted, suspended, or revoked;
  - f. Nonconfidential information related to alternative program participation;
  - g. Any denial of application for licensure, and the reason for such denial; and

- h. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.
4. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.
5. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the coordinated database.

### **23-27.1-12. Rulemaking.**

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments are binding as of the date specified in each rule or amendment.
2. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule has no further force and effect in any member state.
3. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
4. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - a. On the website of the commission; and
  - b. On the website of each member state emergency medical services authority or the publication in which each state would otherwise publish proposed rules.
5. The notice of proposed rulemaking must include:
  - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment and the reason for the proposed rule;
  - c. A request for comments on the proposed rule from any interested person; and
  - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

6. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
  - a. At least twenty-five persons;
  - b. A governmental subdivision or agency; or
  - c. An association having at least twenty-five members.
8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.
  - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
  - b. Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  - c. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section does not preclude the commission from making a transcript or recording of the hearing if it so chooses.
  - d. Nothing in this section may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of commission or member state funds;
  - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
  - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

### **23-27.1-13. Oversight, dispute resolution, and enforcement.**

1. a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder have standing as statutory law.
  - b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
  - c. The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.
2. a. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
    - (1) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and
    - (2) Provide remedial training and specific technical assistance regarding the default.
  - b. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of

- the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- c. Termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
  - d. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
  - e. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
  - f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
3. a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
4. a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
- c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**23-27.1-14. Date of implementation of the interstate commission for emergency medical services personnel practice and associated rules, withdrawal, and amendment.**

1. The compact becomes effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the

commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

2. Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the same.
  - a. A member state's withdrawal may not take effect until six months after enactment of the repealing statute.
  - b. Withdrawal may not affect the continuing requirement of the withdrawing state's emergency medical services authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
4. Nothing contained in this compact may be construed to invalidate or prevent any emergency medical services personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. No amendment to this compact may become effective and binding upon any member state until it is enacted into the laws of all member states.

### **23-27.1-15. Construction and severability.**

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact is held to be contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of emergency medical services agencies.

Approved March 28, 2019

Filed March 29, 2019

## CHAPTER 212

### SENATE BILL NO. 2092

(Agriculture Committee)  
(At the request of the Department of Health)

AN ACT to amend and reenact sections 23-36-01, 23-36-03, 23-36-05, 23-36-06, and 23-36-08 of the North Dakota Century Code, relating to rabies control.

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

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

##### **23-36-01. Definitions.**

As used in this chapter:

1. "Bite" means any penetration of the skin by an animal's teeth.
2. "Clinical ~~symptoms~~signs of rabies" means physical signs ~~or symptoms~~ or animal behavior that would lead a reasonably prudent veterinarian to ~~conclude that a diagnosis of possible~~suspect an infection of rabies and the pursuit of a rabies diagnosis is indicated.
3. "Confinement" means separation of an animal from humans, other than the owner, caretaker, a member of the owner's family, or the caretaker's employees, and from other animals, by means of a building, cage, fence, pen, or other secure enclosure that restricts the animal's movement within definite boundaries and prevents the animal from exiting the enclosure.
4. "Department" means the state department of health.
5. "Domestic animal" means any dog [canis familiaris], cat [felis domestica], horse, mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred, ~~currently vaccinated~~ ferret.
6. "Emergency" means a situation in which an immediate search and seizure of an animal is necessary and authorized by section 8 of article I of the Constitution of North Dakota and the fourth amendment to the Constitution of the United States because of a risk of death or serious bodily injury to a human or another animal.
7. "Euthanasia" means the use of humane techniques to induce the most rapid, painless, and distress-free death possible in an animal.
8. "Exposure to rabies" means any bite or scratch, and includes any nonbite contact of ~~an individual~~ with an animal, animal tissue, or fluids ~~that are~~which is defined as an exposure to rabies by the federal advisory committee on immunization practices referred to in Public Law No. 103-66 [107 Stat. 636, 642; 42 U.S.C. 1396s(e)].

- ~~8-9.~~ "Impound" means quarantining an animal at a public pound or an animal facility of a licensed veterinarian.
- ~~9-10.~~ "Law enforcement officer" has the meaning of that term as set forth in section 12.1-01-04.
- ~~10-11.~~ "Quarantine" means confinement in a fixed area that keeps a ~~possibly rabid~~exposed animal secure and ~~isolated~~segregated from all other animals ~~and individuals~~ so there is no reasonable possibility of rabies being mechanically transmitted from the confined area.
- ~~11-12.~~ "Vaccinated animal" means an animal that has been vaccinated in compliance with the 2016 compendium of animal rabies control issued by the national association of state public health veterinarians.
- ~~12-13.~~ "Suspect rabies exposure" means an animal bitten or otherwise exposed to a wild carnivore, skunk, bat, or an animal, as determined by a veterinarian, which may have been exhibiting signs of rabies, and a rabies exposure could not be ruled out through laboratory testing.
14. "Wild ~~mammal~~animal" means any animal of the ~~order~~class mammalia which is not a domestic animal and includes any hybrid of a domestic animal and a ~~mammal~~wild animal regardless of whether the animal is:
- Wildlife as defined in section 20.1-01-02; or
  - Held in private ownership.

**SECTION 2. AMENDMENT.** Section 23-36-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-03. Enforcement authority.**

- The department, or an agency acting on the department's behalf, may promptly seize and ~~humanely kill~~euthanize, impound at the owner's expense, or quarantine any animal if the state health officer, or the state health officer's designee, has probable cause to believe the animal presents clinical ~~symptom~~signs of rabies.
- The department, or an agency acting on the department's behalf, may promptly seize and ~~humanely kill~~euthanize, impound at the owner's expense, or quarantine any ~~wild mammal that is not currently vaccinated for rabies by a vaccine approved for use on that species by the national association of state public health veterinarians, inc., or any stray or unwanted domestic~~wild animal; if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of another animal or an individual to rabies.
- ~~The department, or an agency acting on the department's behalf, may promptly seize and quarantine, or impound at the owner's expense, any dog, cat, or currently vaccinated ferret for a period of ten days, or any other domestic animal for a period not exceeding six months, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies. For domestic animals, the department may seize and quarantine or confine and observe an animal if the animal has bitten or otherwise exposed~~

an individual or has been bitten or otherwise exposed to rabies or suspect rabies and the owner is unwilling or unable to comply with the department's recommendations. The department may seize and euthanize an animal if the animal has bitten or otherwise exposed an individual and is exhibiting signs of rabies, as diagnosed by a veterinarian. The department may seize, euthanize, or quarantine an animal if the animal was exposed to rabies or suspect rabies and never has been vaccinated against rabies and the owner is unwilling or unable to comply with the department's recommendations.

4. If an animal ~~had died or is humanely killed under this section~~ and there is a possible exposure of another animal or an individual to rabies, then at the request of the state health officer, or the state health officer's designee, the animal's brain must be tested for rabies by the ~~state microbiology laboratory of the department or by the North Dakota veterinary diagnostic laboratory.~~ The department may ~~conduct~~ seek a diagnosis of rabies for farm animals, domestic animals, and wildlife that are suspected of having rabies and report findings as appropriate.
5. If an animal that has bitten or otherwise exposed an individual or another animal is not seized for testing, a law enforcement officer with jurisdiction over the place where the animal is located may determine whether to impound or quarantine the animal under subsection ~~32~~ and which method of confinement to use.
6. A licensed veterinarian shall examine, at the owner's expense, a confined animal ~~on the first and last day of the animal's confinement and, at the request of the department or, a local public health unit, at any other time during confinement~~ or a law enforcement officer with jurisdiction over the place where the animal is located.

**SECTION 3. AMENDMENT.** Section 23-36-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-05. Assistance of state and local agencies.**

If a warrant is issued under section 23-36-04 and upon written request of the department, the game and fish department, the state veterinarian, or the wildlife services program of the United States department of agriculture animal and plant health inspection service shall provide assistance to the department in any action to seize, impound, quarantine, or test an animal suspected of having rabies or that has possibly exposed an individual to rabies or possibly has been exposed to rabies, and shall carry out any other preventive measures the department requests. For purposes of this section, a request from the department means only a request for assistance as to a particular and singular suspicion of exposure to rabies and does not constitute a continuous request for assistance.

The duty of the game and fish department to cooperate and provide assistance under this section is limited to cases involving a wild ~~mammal~~ animal and is applicable only if no other agency is available for law enforcement or animal control services.

**SECTION 4. AMENDMENT.** Section 23-36-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-06. Payment for postexposure treatment.**

The department may provide, at no cost, rabies postexposure ~~vaccinebiologics~~ to an individual possibly exposed to rabies if the department determines the individual is financially unable to pay for the postexposure ~~vaccinebiologics~~ treatment.

**SECTION 5. AMENDMENT.** Section 23-36-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-08. Limitation on liability.**

Subject to any other requirements of section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an amount up to the replacement value of the animal, if the owner establishes that before the animal was seized and tested for rabies under this chapter, the state health officer, or the state health officer's designee, knew or recklessly failed to determine that the animal, at the time of the exposure, was lawfully owned and licensed and that:

1. ~~The animal was a wild mammal, and, at the time of the exposure, was currently vaccinated with a vaccine approved for use on an animal of that species by the national association of state public health veterinarians, inc.;~~
2. The animal had not bitten, scratched, or otherwise possibly exposed a ~~person~~another animal or an individual to rabies; or
- ~~3.~~2. The animal was a domestic animal and there was not probable cause to believe the animal was rabid.

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 213

### HOUSE BILL NO. 1268

(Representatives Fegley, D. Anderson, Jones, J. Nelson)

AN ACT to amend and reenact sections 11-28.3-09 and 23-46-04 and subsection 10 of section 57-15-06.7 of the North Dakota Century Code, relating to property tax levies for emergency medical service and ambulance service operations financial assistance; and to provide for the distribution of state financial assistance for emergency medical services.

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

**SECTION 1. AMENDMENT.** Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-28.3-09. Emergency medical service policy - Levy - Financial report.**

1. The board of directors shall establish a general emergency medical service policy for the district and shall annually estimate the probable expense for carrying out that policy. The estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year. In the year for which the levy is sought, a board of directors of a rural ambulance service district seeking approval of a property tax levy under this chapter must file with the county auditor of the counties within the rural ambulance service district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the rural ambulance service district during that year. The board or boards of county commissioners may levy a tax not to exceed the mill rate approved by the electors of the district under section 11-28.3-04, and in no event exceeding a mill rate of ~~ten~~fifteen mills upon the taxable property within the district for the maintenance of the rural ambulance service district for the fiscal year as provided by law. A rural ambulance service district may be dissolved by approval of electors of the district as provided in section 11-28.3-13.
2. The tax levied for a rural ambulance service district shall be:
  1. a. Collected as other taxes are collected in the county.
  2. b. Turned over to the secretary-treasurer of the rural ambulance service district, who shall be bonded in the amount of at least five thousand dollars.
  3. c. Deposited by the secretary-treasurer in a state or national bank in a district account.
  4. d. Paid out upon warrants drawn upon the district account by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president.

3. In no case shall the amount of the tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. The district may include in its operating budget no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent emergency medical services sinking fund may be in addition to the actual annual operating budget, but the total of the annual operating budget and the annual ten percent emergency medical services sinking fund shall not exceed the amount of revenue that would be generated by application of the maximum mill levy approved by the electors.

**SECTION 2. AMENDMENT.** Section 23-46-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-46-04. State financial assistance for emergency medical services - Confidential information - Annual allocation.**

Emergency medical services operations that request financial assistance from the state must provide requested fiscal information to the state department of health for use in financial assistance determinations. All information provided to the department under this section is confidential. The state department of health shall determine annually the allocation amount of state financial assistance for each emergency medical services funding area based on the department's determination of:

1. ~~The the minimum annual funding necessary to operate the emergency medical services operation or service designated to operate in the ambulance funding area, based on the financial needs unique to each emergency medical services funding area.~~
2. ~~Required local matching funds commensurate with at least ten dollars per capita within the emergency medical services funding area.~~

<sup>97</sup> **SECTION 3. AMENDMENT.** Subsection 10 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

10. A county levying a tax for county emergency medical service according to section 57-15-50 may levy a tax not exceeding tenfifteen mills.

**SECTION 4. AMBULANCE SERVICE OPERATION FUNDING DISTRIBUTION.** Notwithstanding section 23-46-04, during the biennium beginning July 1, 2019, and ending June 30, 2021, the state department of health, in consultation with the emergency medical services advisory council, shall provide state financial assistance annually to each eligible ambulance service operation pursuant to the following formula calculation:

1. The budget for each operation must be determined by adding the amount of \$60,000, or other base amount established by the department, to the product of the operation's average number of runs for the two most recent fiscal years multiplied by the average cost of a run.

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<sup>97</sup> Section 57-15-06.7 was also amended by section 133 of Senate Bill No. 2124, chapter 391.

2. The operation's grant amount must be determined by deducting the following amounts from the operation's budget calculated under subsection 1 of this section:
  - a. The product of the operation's average number of runs for the two most recent fiscal years multiplied by the average amount of reimbursement for a run; and
  - b. The product of the property tax valuation of the operations service area for the most recent taxable year multiplied by 5 mills.
3. The department shall distribute a prorated share of the operation's calculated grant amount if legislative appropriations for state financial assistance for emergency medical services is not sufficient to provide full grant funding calculated under this section.
4. An operation is not eligible to receive funding under this section if the operation's average number of runs for the two most recent fiscal years is more than 700.

Approved April 25, 2019

Filed April 26, 2019

## CHAPTER 214

### SENATE BILL NO. 2154

(Senators Poolman, Dever, Hogan)  
(Representatives Beadle, Dobervich, Meier)

AN ACT to create and enact chapter 23-49 of the North Dakota Century Code, relating to hospital discharge policies.

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

**SECTION 1.** Chapter 23-49 of the North Dakota Century Code is created and enacted as follows:

##### **23-49-01. Definitions.**

As used in this chapter:

1. "Discharge" means the exit or release of a patient from inpatient care in a hospital to the residence of the patient.
2. "Informal caregiver" means an individual at least eighteen years of age who a patient, or the patient's legal representative, designates at admission as a lay caregiver, and who following the discharge of the patient is willing and able to perform posthospital care for the patient at the patient's residence.
3. "Posthospital care" means care directly related to a patient's condition at the time of discharge and which is provided by an informal caregiver to the patient in the patient's residence.
4. "Residence" means the dwelling a patient considers to be the patient's home. The term does not include a hospital or rehabilitation facility.

##### **23-49-02. Patient and caregiver discharge planning, involvement, and documentation.**

1. A hospital shall adopt and maintain a written discharge planning process, including policies and procedures, which applies to all patients.
2. At an early stage of hospitalization, a hospital shall identify patients who are likely to suffer adverse health consequences if discharged without adequate discharge planning. A hospital shall involve a patient throughout the discharge planning process. As appropriate, a hospital shall involve the patient's informal caregiver or legal representative in the discharge planning process. A hospital shall:
  - a. Document the patient's discharge plan in the patient's medical record.
  - b. As appropriate, communicate the plan to the patient, the patient's informal caregiver, or the patient's representative.

- c. Document the arrangements made for initial implementation of the patient's discharge plan in the patient's medical record, including any training or materials provided to the patient, the patient's informal caregiver, or the patient's representative.

**23-49-03. Posthospital care training.**

1. As appropriate, a hospital shall educate or train a patient, the patient's informal caregiver, or the patient's representative to prepare the patient for posthospital care.
2. The education or training provided by hospital staff to a patient, the patient's informal caregiver, or the patient's representative must be tailored to the patient's identified needs, including medications, treatment modalities, physical and occupational therapies, psychosocial needs, appointments, or other posthospital care.
3. Education and training provided by a hospital may include repeated review of the training and materials with a patient, the patient's informal caregiver, or the patient's representative.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 215

### SENATE BILL NO. 2196

(Senators Anderson, J. Lee)  
(Representative Tveit)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to creation of a drug fatalities review panel.

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

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

##### **Drug fatalities review panel.**

1. The forensic pathology department of the university of North Dakota school of medicine and health sciences shall appoint individuals to serve as members on the drug fatalities review panel. To encompass disciplines needed for evaluation and balance of members' viewpoints, panel membership must include representation from multiple disciplines and services. Membership may include a forensic pathologist, a pharmacist with knowledge in pharmacogenomics, representatives of rural and urban healthcare facilities, a licensed addiction counselor, a physician, and representatives of nonregulatory divisions of the state department of health and department of human services.
2. The state department of health and the university of North Dakota school of medicine and health sciences shall provide for or arrange for administrative services to assist the panel in performing official duties, including collection and management of case review files, the maintenance of records, data collection and analysis, and the issuance of a state report on drug-related fatalities. The department and the university of North Dakota school of medicine and health sciences are responsible for the confidentiality and security of data on the sharing site on which the documents are stored.

##### **Powers and duties.**

1. The panel may:
  - a. Provide outcome data on drug-related fatalities in the state as a basis for policy, intervention, and other program effectiveness.
  - b. Promote the identification of circumstances that may contribute to drug-related fatalities.
  - c. Promote the identification of public health issues related to drug-related fatalities.
  - d. Promote training for individuals and agencies that share a responsibility in responding to or preventing drug-related fatalities.

- e. Promote interagency communication for the management of pharmaceutical and nonpharmaceutical drug-related fatalities and for the management of future nonfatal cases.
  - f. Promote evaluation of the impact of specific drug-related fatality risk factors, including substance abuse, domestic violence, and behavioral or mental health issues.
  - g. Promote the use of intervention and education programs to prevent drug-related fatalities.
  - h. Provide data regarding use and potential expansion of drug-related rescue programs and referral services.
2. The panel shall review the deaths of individuals which are identified as prescription drug, illicit drug, or alcohol overdoses or which pertain to a trend or pattern of deaths identified as drug or alcohol overdoses. The panel shall prioritize the reviews conducted under this subsection. In conducting a review under this subsection, the panel:
- a. May utilize case-specific consultants on a case-by-case basis.
  - b. Shall identify factors that may have contributed to a preventable fatality, gaps in the system, and community areas of need.
  - c. Shall make recommendations or observations to identify whether a fatality was preventable, whether additional information is needed for a more complete review, whether it is appropriate to make a referral to an agency requesting services, and any systemic issues raised by the circumstances of the fatality.

### **Confidentiality.**

Notwithstanding section 44-04-19, all portions of a meeting of the panel which reviews drug fatalities are closed to the public. Notwithstanding section 44-04-18, all documentation and reports of the panel which are related to panel review of drug fatalities are confidential, except for the annual state report, which may not disclose personally identifiable information of decedents. The confidential records are not discoverable as evidence.

### **Access to records.**

Upon the written request of the presiding officer of the panel, a health care facility and health care provider shall disclose all patient records of the facility or provider which are requested by the panel and pertain to an identified drug fatality. The presiding officer may request records from the most recent thirty-six-month period.

### **State report.**

Annually the panel shall compile a state report of fatalities reviewed. The report must include identification of patterns, trends, and policy issues related to drug fatalities, but may not disclose personally identifiable information.

Approved April 8, 2019

Filed April 9, 2019