

Sixty-ninth
Legislative Assembly
of North Dakota

**HOUSE BILL NO. 1109
with Senate Amendments**

HOUSE BILL NO. 1109

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to create and enact three new sections to chapter 25-16 of the North Dakota
2 Century Code, relating to residential care and services for the developmentally disabled; to
3 amend and reenact sections 25-16-01, 25-16-02, 25-16-03, 25-16-03.1, 25-16-04, 25-16-05,
4 25-16-06, 25-16-07, 25-16-08, 25-16-09, 25-16-12, 25-16-13, 25-16-14, 25-16.1-01, 25-16.1-02,
5 25-16.1-03, and 25-16.1-04 of the North Dakota Century Code, relating to developmental
6 disability, residential care and services for the developmentally disabled, and receivers for
7 developmentally disabled facilities; to repeal chapter 25-18 of the North Dakota Century Code,
8 relating to fee for service ratesetting for developmentally disabled facilities; and to declare an
9 emergency.

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

11 **SECTION 1. AMENDMENT.** Section 25-16-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **25-16-01. Definitions.**

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

- 15 1. "Department" means the department of health and human services.
16 2. ~~"Treatment or care center"~~"Developmental disability" has the same meaning as in
17 section 25-01.2-01.
18 3. "Group home" means any community residential facility housing more than three
19 individuals with a developmental disability.
20 4. "Host home" means a community-based family home environment providing services
21 to no more than two individuals with a developmental disability who require
22 out-of-home placement to facilitate delivery of intensive care and support.

1 5. "Provider agency" means an entity providing services to individuals with
2 developmental disabilities and licensed by the department to provide services.

3 **SECTION 2. AMENDMENT.** Section 25-16-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-16-02. License required.**

6 The operator of a ~~treatment or care center~~provider agency for individuals with a
7 developmental disability shall secure annually from the department a license as required by
8 rules adopted under this chapter.

9 **SECTION 3. AMENDMENT.** Section 25-16-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **25-16-03. Requirements for license.**

12 The department shall issue a license for the operation of a ~~treatment or care center for an~~
13 agency providing services to individuals with a developmental disability upon a showing that:

- 14 1. The premises to be used are ~~in fit, safe, sanitary condition,~~ and properly equipped to
15 provide good care ~~and treatment~~;
- 16 2. The persons in ~~active charge of the center and~~provider agency, including their
17 assistants, are qualified by training and experience to carry on efficiently the duties
18 required of them;
- 19 3. The health, safety, and well-being of ~~the residents cared for and treated therein will be~~
20 ~~properly safeguarded~~individuals receiving services are protected;
- 21 4. ~~There is sufficient entertainment~~A variety of meaningful activities, treatment,
22 educational opportunities, and physical facilities ~~and services available to the residents~~
23 ~~therein~~are available;
- 24 5. Appropriate arrangements are made for a medical and psychological examination of
25 each resident~~individual~~; and
- 26 6. The provider is in compliance with rules adopted by the department under this chapter.

27 **SECTION 4. AMENDMENT.** Section 25-16-03.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **25-16-03.1. Conviction not bar to licensure - Exceptions.**

30 Conviction of an offense does not disqualify a person from licensure under this chapter
31 unless the ~~division~~department determines that the offense has a direct bearing upon a person's

1 ability to serve the public as an owner or operator of a ~~treatment or care center for individuals-~~
2 ~~with a developmental disability~~provider agency, or that, following conviction of any offense, the
3 person is not sufficiently rehabilitated under section 12.1-33-02.1.

4 **SECTION 5. AMENDMENT.** Section 25-16-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **25-16-04. Inspection and report by department.**

7 The department may inspect the facilities ~~and~~, premises, and records of the applicant or the
8 provider agency to determine ~~the premises are fit, safe, and sanitary to provide quality care and~~
9 ~~treatment~~whether the provider agency is in compliance with the rules of the department, to
10 facilitate verification of the information submitted with an application for licensure, to investigate
11 complaints, and to evaluate the implementation of a plan of correction.

12 **SECTION 6. AMENDMENT.** Section 25-16-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-16-05. Content of license.**

15 The license ~~to operate a treatment or care center for individuals with a developmental-~~
16 ~~disability~~ issued under the provisions of this chapter must specify:

- 17 1. The name of the licensee~~provider agency~~.
- 18 2. The premises to which the license is applicable.
- 19 3. ~~The number of residents who may be received in such premises at any one-~~
20 ~~time~~occupancy or service limitations.
- 21 4. The date of expiration of the license.

22 **SECTION 7. AMENDMENT.** Section 25-16-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **25-16-06. Department to prescribe forms - Rules.**

25 The department may prescribe forms for the registration and record of ~~the persons residing-~~
26 ~~in treatment or care centers for individuals with a developmental disability~~an eligible individual
27 and may adopt reasonable rules ~~for the conduct of such centers as are necessary to carry out~~
28 the purposes of this chapter.

29 **SECTION 8. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **~~25-16-07. Records of treatment or care center confidential~~Confidential records.**

2 Except as otherwise authorized by law, an agent of the department or the superintendent of
3 the life skills and transition center or the ~~licensee or~~provider agency, their agents, or employees
4 may not disclose the contents of ~~the individual~~an eligible individual's records of a ~~treatment or~~
5 ~~care center for individuals with a developmental disability~~, nor of the reports received from those
6 records, except:

- 7 1. In a judicial proceeding when ordered by the presiding judge;
- 8 2. To a law enforcement official for a law enforcement purpose or any other legally
9 constituted boards or agencies serving the interests of the ~~residents~~eligible individuals
10 for treatment, payment, or health care operations, to arrange, facilitate, or coordinate
11 service to any such person;
- 12 3. To the parents or legal guardians of the ~~resident~~eligible individual;
- 13 4. To a physician to aid in the treatment of an individual within the fourth degree of
14 consanguinity of a deceased ~~resident~~eligible individual, if the disclosure is limited to
15 genetic health information that has a direct bearing on the health of the relative, the
16 relative's child, or the relative's decision to have a child; or
- 17 5. To an individual who is within the fourth degree of consanguinity of a deceased
18 ~~resident~~eligible individual, if the disclosure is limited to information about a ~~resident~~an
19 eligible individual needed to establish a family's genealogy.

20 **SECTION 9. AMENDMENT.** Section 25-16-08 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **25-16-08. Revocation of license.**

23 The department may revoke a license of a ~~treatment or care center for individuals with a~~
24 ~~developmental disability~~provider agency upon a proper showing that:

- 25 1. Any of the conditions set forth in section 25-16-03 as requirements for the issuance of
26 the license no longer exists;
- 27 2. The license was issued upon fraudulent or untrue representations;
- 28 3. The owner or operator has violated any of the rules of the department; or
- 29 4. The owner or operator of the ~~center~~provider agency has been guilty of an offense
30 determined by the department to have a direct bearing upon a person's ability to serve
31 the public as an owner or operator, or the department determines, following conviction

1 of an offense, that the person is not sufficiently rehabilitated under section
2 12.1-33-02.1.

3 **SECTION 10. AMENDMENT.** Section 25-16-09 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-16-09. Hearing on denial or revocation of license.**

6 Before any application for a license to ~~conduct a treatment or care center for individuals~~
7 ~~with a developmental disability~~ is denied or before the revocation of such license by the
8 department, written charges as to the reasons for the revocation or denial must be served upon
9 the applicant or ~~licensee~~provider agency, who has a right to a hearing before the department, if
10 a hearing is requested within ten days after service of written charges.

11 **SECTION 11. AMENDMENT.** Section 25-16-12 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **25-16-12. Efforts to obtain private and governmental grants.**

14 The department and the ~~duly licensed treatment or care centers for individuals with a~~
15 ~~developmental disability~~provider agency may exert all possible efforts to obtain grants, both
16 private and governmental, for the care, custody, treatment, training, and education of individuals
17 with a developmental disability.

18 **SECTION 12. AMENDMENT.** Section 25-16-13 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **25-16-13. Expenses chargeable against patient eligible individual, patient's eligible**
21 **individual's estate, or responsible relatives.**

22 This chapter does not relieve the responsibility of the ~~patient eligible individual~~, the
23 ~~patient's eligible individual's~~ estate, or responsible relatives of the expenses for care and
24 treatment as provided in chapter 25-04 or 50-06.3. The provisions of chapter 25-04 or 50-06.3
25 applicable to the expenses of care and treatment of patients apply to this chapter.

26 **SECTION 13. AMENDMENT.** Section 25-16-14 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **25-16-14. ~~Definitions~~ - Group homes for individuals with developmental disabilities -**
29 **Zoning.**

30 1. ~~For the purposes of this section:~~

- 1 a. ~~"Group home" means any community residential facility, foster home, family care-~~
2 ~~facility, or other similar home for individuals with a developmental disability.~~
3 b. ~~"Individual with a developmental disability" means an individual with a severe,-~~
4 ~~chronic disability which:~~
5 ~~(1) Is attributable to a mental or physical impairment or combination of mental-~~
6 ~~and physical impairments;~~
7 ~~(2) Is manifested before the individual attains age twenty-two;~~
8 ~~(3) Is likely to continue indefinitely;~~
9 ~~(4) Results in substantial functional limitations in three or more of the following-~~
10 ~~areas of major life activity:~~
11 ~~(a) Self-care;~~
12 ~~(b) Receptive and expressive language;~~
13 ~~(c) Learning;~~
14 ~~(d) Mobility;~~
15 ~~(e) Self-direction;~~
16 ~~(f) Capacity for independent living; and~~
17 ~~(g) Economic sufficiency; and~~
18 ~~(5) Reflects the individual's needs for a combination and sequence of special,-~~
19 ~~interdisciplinary, or generic care, treatment, or other services which are~~
20 ~~lifelong or extended duration and are individually planned and coordinated.~~
21 2. Notwithstanding the provisions in chapter 11-33, 40-47, or 58-03, or any other
22 provisions authorizing any political subdivision to establish or enforce zoning
23 regulations, a licensed group home serving six or fewer individuals with a
24 developmental disability must be considered a permitted use in a single-family or
25 equivalent least-density residential zone, and a licensed group home serving eight or
26 fewer individuals with a developmental disability must be considered a permitted use
27 in any area zoned for residential use of greater density than single-family use.

28 **SECTION 14.** Three new sections to chapter 25-16 of the North Dakota Century Code are
29 created and enacted as follows:

1 **Corrective actions.**

- 2 1. If the department finds the provider agency is not in compliance with this chapter or
3 the rules adopted by the department, the department may notify the provider agency
4 of required corrective actions.
- 5 2. The provider agency shall submit a corrective action plan addressing the corrective
6 actions.
- 7 3. If the provider agency fails to comply with the corrective action plan by the date certain
8 for correction, the department may:
- 9 a. Issue a restricted license; or
10 b. Revoke the license.

11 **Purchase of services - Host home program.**

- 12 1. The department may purchase residential care, custody, treatment, training, and
13 education services for individuals with developmental disabilities from a provider
14 agency or a Medicaid-enrolled provider, from funds appropriated for that purpose.
- 15 2. The department may establish a host home program to provide out-of-home
16 placement habilitation and support services for Medicaid-eligible individuals with
17 developmental disabilities.

18 **Federal requirements - Supremacy.**

19 If any provision of this chapter is determined by the United States government to be in
20 conflict with existing or future requirements of the United States government so as to limit or
21 preclude federal financial participation in medical assistance, the department shall comply with
22 the federal requirements to the extent necessary to obtain federal financial participation and
23 shall not comply with the provisions of this chapter if necessary to avoid a loss of federal
24 financial participation.

25 **SECTION 15. AMENDMENT.** Section 25-16.1-01 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **25-16.1-01. Definitions.**

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

- 29 1. "Department" means the department of health and human services.

1 2. "~~Treatment or care center~~Provider agency" means an entity providing services to
2 individuals with developmental disabilities and licensed by the department to provide
3 services.

4 **SECTION 16. AMENDMENT.** Section 25-16.1-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **25-16.1-02. Conditions for appointment of receiver.**

7 When the department has revoked the license of a ~~treatment or care center~~provider agency,
8 or when the operator of a ~~center~~provider agency has requested, the department may file a
9 petition with the district court to place the ~~center~~provider agency under the control of a receiver
10 if necessary to protect the health or safety of clients at the ~~center~~provider agency. The court
11 may grant the petition upon a finding that the health or safety of the clients at the ~~center~~provider
12 agency would be seriously threatened if a condition existing at the time the petition was filed is
13 permitted to continue. Such a finding may be based upon evidence concerning the physical
14 plant, the program and services offered by the ~~center~~provider agency, but not solely upon
15 evidence that a ~~center~~provider agency:

- 16 1. Has been denied a license to operate as a ~~center~~provider agency, or has had a
17 previously issued license revoked; or
18 2. Has been denied certification as an intermediate care facility for individuals with
19 intellectual disabilities, or has lost or had revoked such certification.

20 **SECTION 17. AMENDMENT.** Section 25-16.1-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **25-16.1-03. Appointment of receiver.**

23 The court shall appoint, as receiver, the ~~executive director~~commissioner of the department
24 who shall designate a qualified individual not employed by this state or its political subdivisions,
25 or a nonprofit organization to execute the receivership. The receiver appointed by the court shall
26 use the income and assets of the ~~treatment or care center~~provider agency to maintain and
27 operate the ~~center~~provider agency and to attempt to correct the conditions which constitute a
28 threat to the clients. The receiver may not liquidate the assets of the ~~treatment or care~~
29 ~~center~~provider agency.

30 **SECTION 18. AMENDMENT.** Section 25-16.1-04 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **25-16.1-04. Termination of receivership.**

2 The receivership shall be terminated when the receiver and the court certify that the
3 conditions which prompted the appointment have been corrected, when the license is restored,
4 when a new license is issued, or, in the case of an election by the owner or owners to
5 discontinue operation, when the clients are safely placed or provided services in other
6 centersprovider agencies.

7 **SECTION 19. REPEAL.** Chapter 25-18 of the North Dakota Century Code is repealed.

8 **SECTION 20. EMERGENCY.** This Act is declared to be an emergency measure.