

# MENTALLY ILL AND RETARDED, AND BLIND AND DEAF

## CHAPTER 312

SENATE BILL NO. 2187

(Committee on Social Services and Veterans Affairs)

(At the request of the Superintendent of Public Instruction)

### INDIVIDUAL EDUCATION PLAN

AN ACT to amend and reenact subsection 1 of section 25-01.2-01, sections 25-01.2-04, 25-01.2-05, 25-01.2-06, 25-01.2-07, 25-01.2-11, 25-01.2-12, 25-01.2-14, and 25-01.2-18 of the North Dakota Century Code, relating to certain definitions, the rights of developmentally disabled persons residing in institutions or facilities, individualized education plans, and rulemaking authority.

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

SECTION 1. AMENDMENT. Subsection 1 of section 25-01.2-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Developmental disability" means a severe, chronic disability of a person which meets all of the following conditions:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments-;
  - b. Is manifested before the person attains age twenty-two-;
  - c. Is likely to continue indefinitely-;
  - d. Results in substantial functional limitations ~~to the person's ability to function normally in society in~~ three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;

- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency; and

e. Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

SECTION 2. AMENDMENT. Section 25-01.2-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-04. Mail, telephone, and visitation rights - Application to residential institution or facility. Except as provided in this section, every person who resides in a mental health or developmental disabilities institution or facility has the right of private, unimpeded, uncensored communication with persons of the resident's choice by mail, telephone, and visitation.

1. The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for private visitation is available.
2. The facility director may establish in writing reasonable times and places for use of telephones and for visits, provided that a resident's ability to contact an attorney may not be restricted, and provided that any rules or restrictions shall be posted in each residential facility. A copy of any rules or restrictions shall be given to all residents over eighteen years of age and to the parents or guardian of all residents under eighteen years of age, upon admission.

This section applies only with respect to an institution or facility that provides residential care.

SECTION 3. AMENDMENT. Section 25-01.2-05 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-05. Personal property - Application to residential institution or facility. Except in the circumstances and under the conditions provided in this section, every resident of an institution or facility shall be permitted to receive, possess, and use lawful personal property and shall be provided with a secure, convenient, and reasonable amount of storage space for that property.

1. The facility director may restrict the possession and use of certain classes of property which may be dangerous or may harm a resident.
2. Notice of any restrictions shall be given in writing to all residents over eighteen years of age and to the parents or guardian of all residents under eighteen years of age, upon admission.
3. When a resident is discharged from the institution or facility all of the resident's lawful personal property which is in the custody of the facility shall be returned to the resident.

This section applies only with respect to an institution or facility that provides residential care.

SECTION 4. AMENDMENT. Section 25-01.2-06 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-06. Labor - Wages - Money - Application to residential institution or facility. A resident or service recipient may consent to perform labor for a service provider if the professional responsible for overseeing the implementation of that resident's individual habilitation plan determines that the labor would be consistent with that plan.

1. A resident or service recipient who performs labor which is of any consequential economic benefit to a service provider shall receive wages which are commensurate with the value of the work performed, in accordance with applicable federal and state laws and regulations. A resident may be required to perform tasks of a personal housekeeping nature without compensation.
2. A resident may use his money as he chooses, unless he is a minor, is prohibited from doing so under a court guardianship or conservatorship order, or the use would be inconsistent with the resident's individual habilitation plan. A minor or a person under guardianship or conservatorship may be required to deposit his money with the service provider, or in a financial institution in the name of a parent, guardian, or conservator, and may be permitted to use the money in accordance with written instructions of the parent, guardian, or conservator.
3. A resident may deposit money, or cause money to be deposited, in his name with a financial institution of the resident's choice, or the resident may deposit the money with a service provider. The service provider may not retain any money deposited with the service provider under this subsection, but shall hold all such funds in an

- account in the resident's name. All earnings attributable to a resident's money shall accrue to the resident.
4. No service provider nor any of the service provider's employees shall be made representative payee for a resident's social security, pension, annuity, trust fund, or any other form of direct payment or assistance without the resident's informed consent.
  5. When a resident is discharged, all of the resident's money, including earnings, shall be returned to the resident.

This section applies only with respect to an institution or facility that provides residential care.

SECTION 5. AMENDMENT. Section 25-01.2-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-07. Medical and dental services - Application to residential institution or facility. All residents of an institution or facility are entitled to appropriate and adequate medical and dental services, which must be provided by qualified professionals who are licensed to practice or are otherwise authorized to provide medical and dental services pursuant to state and federal law and regulations. This section applies only with respect to an institution or facility that provides residential care.

SECTION 6. AMENDMENT. Section 25-01.2-11 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to court-appointed attorney - Application to residential institution or facility. A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the person who is receiving or is entitled to receive the treatment, or the person's guardian, following a hearing on the application.

1. The person receiving or entitled to treatment shall:
  - a. Receive prior notice of the hearing;
  - b. Have the right and the opportunity to present evidence; and
  - c. Have the right to be confronted with and to cross-examine witnesses.

2. ~~in the event that~~ if the developmentally disabled person cannot afford counsel, the court shall appoint an attorney not less than ten days before the hearing.
3. The burden of proof shall be on the party alleging the necessity of the procedure or treatment.
4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

This section applies only with respect to an institution or facility that provides residential care.

SECTION 7. AMENDMENT. Section 25-01.2-12 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-12. Diet - Application to residential institution or facility. Every resident of any institution or facility shall be provided with a nutritionally adequate and sufficient diet planned by a qualified dietician. This section applies only with respect to an institution or facility that provides residential care.

\* SECTION 8. AMENDMENT. Section 25-01.2-14 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-14. Individualized habilitation or education plan - Contents. Any institution, facility, ~~seheei,~~ agency, or organization that provides services for developmentally disabled persons shall have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, ~~seheei,~~ agency, or organization is primarily responsible for the delivery, or coordinating the delivery, of services. The individualized habilitat~~ion~~ plan shall A school must have an individual educational plan for each of its developmentally disabled students. A plan required under this section must:

1. Be developed and put into effect within thirty days following admission of the person.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation or education goals for the person and the intermediate objectives relating to the attainment of those goals. The objectives shall be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.

\* NOTE: Section 25-01.2-14 was also amended by section 2 of House Bill No. 1057, chapter 313.

4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe the personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.

SECTION 9. AMENDMENT. Section 25-01.2-18 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.2-18. Authority to adopt rules. The director of the state department of human services may adopt, in accordance with chapter 28-32, any rules necessary to implement ~~the provisions of~~ this chapter. The superintendent of public instruction may adopt rules to implement this chapter in schools. The rules adopted may not restrict or limit the rights guaranteed by this chapter.

Approved April 13, 1983

## CHAPTER 313

HOUSE BILL NO. 1057  
(Legislative Council)  
(Interim Judiciary Committee)

### GUARDIANSHIP REQUIREMENTS

AN ACT to amend and reenact sections 25-01.2-14, 25-04-13.1, 27-07.1-11, subsections 7 and 17 of section 30.1-01-06, sections 30.1-28-03, 30.1-28-04, 30.1-28-11, subsection 1 of section 30.1-28-12, sections 30.1-28-13, 30.1-29-08, 30.1-29-20, 30.1-29-21, and 50-06-05.3 of the North Dakota Century Code, relating to requirements for the individual habilitation plan, to the superintendent of Grafton state school acting as guardian, and a limited guardianship or conservatorship under the Uniform Probate Code; to repeal section 25-04-13.1 of the North Dakota Century Code, relating to the superintendent of Grafton state school acting as guardian; and to provide an effective date.

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

**SECTION 1. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the superintendent of Grafton state school use the two-year period provided in this bill to divest himself of statutory guardianship granted pursuant to section 25-04-13.1. This could be done through renunciation when the superintendent decides guardianship is not necessary and through seeking a court-appointed guardian when guardianship is necessary. It is the further intention of the legislative assembly that the North Dakota council on developmental disabilities shall assist with the education of the public as to the nature of guardianship responsibilities and locate individuals to serve as guardians for developmentally disabled persons as provided in this Act.

**\* SECTION 2. AMENDMENT.** Section 25-01.2-14 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**25-01.2-14. Individualized habilitation plan - Contents.** Any institution, facility, school, agency, or organization that provides services for developmentally disabled persons shall have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, school, agency, or

**\* NOTE:** Section 25-01.2-14 was also amended by section 8 of Senate Bill No. 2187, chapter 312.

organization is primarily responsible for the delivery, or coordinating the delivery, of services. The individualized habilitation plan shall:

1. Be developed and put into effect within thirty days following admission of the person.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation goals for the person and the intermediate objectives relating to the attainment of those goals. The objectives shall be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.
4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe the personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the developmentally disabled person appears to need a guardian and determine the type of protection needed by the individual based on the individual's actual mental and adaptive limitations and other conditions which may warrant the appointment of a guardian. Any member of the individual habilitation plan team may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian.

SECTION 3. AMENDMENT. Section 25-04-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-13.1. Guardianship and conservatorship - Superintendent to act as guardian and director of institutions authorized to seek protective proceedings in lieu of court appointment or retention by parent.

- 1- The superintendent of the Grafton state school shall be the guardian of any resident of the Grafton state school who does not otherwise have a guardian duly appointed by a court of competent jurisdiction, or whose parents do not elect to retain their natural guardianship as herein provided. Such guardianship by the superintendent shall continue until the resident obtains a court-appointed guardian, or is permanently discharged from the Grafton state school pursuant to section 25-04-08.

- 2- The guardianship provided for by this section is in lieu of court appointment as provided in chapters 30-1-26 through 30-1-30, but carries the same powers and duties. Within ninety days following admission of a resident to the Grafton state school, his parents or responsible relatives may file an action in writing stating their intention to retain their natural guardianship over the resident. If an election to retain guardianship is not filed, the superintendent becomes the resident's guardian ninety days following admission and without court appointment. A full explanation of the legal effects of the statutory guardianship and of the optional procedures available under chapters 30-1-26 through 30-1-30 shall be furnished to the parents or responsible relatives of any resident admitted to the Grafton state school at the time of admission or as soon thereafter as possible.
- 3- Nothing contained in this section shall affect any parental financial responsibility for the resident as may otherwise be provided by law. The superintendent, in his capacity as guardian of a resident of the Grafton state school, shall not consent to any sterilization operation of such resident except as may otherwise be provided for by law.
1. The superintendent of Grafton state school shall continue to be guardian until July 1, 1985, of any resident of Grafton state school for which he is guardian on July 1, 1983, except as otherwise provided by court order, except where the resident is discharged from Grafton, or except as otherwise provided by this section. The superintendent may renounce in writing his guardianship of any resident between July 1, 1983, and July 1, 1985. The resident will not have a guardian upon renunciation by the superintendent. The guardianship of a minor for which there has been no court-ordered alternate guardian appointed will revert back to the minor's parents on renunciation by the superintendent or on July 1, 1985. The superintendent shall provide written notice of any intended renunciation to the resident and the resident's parent, advocate, and case manager thirty days before the effective date of the renunciation, or on June 1, 1985, whichever date occurs first.
2. The guardianship provided by this section carries the same duties and powers as court-appointed guardians provided for in chapters 30.1-26 through 30.1-30. Nothing contained in this section affects any parental financial responsibility for the resident as may otherwise be required by law.
3. Court proceedings for the appointment of a guardian for an individual presently or formerly a ward of the superintendent of the Grafton state school pursuant to

this section must, upon request of the petitioner, be handled by the state's attorney of the county in which the action is brought. The county of any state's attorney involved in more than thirty petitions per calendar year is entitled to reimbursement for the time and expenses of the state's attorney from the director of institutions in the amount the director of institutions determines reasonable.

**SECTION 4. AMENDMENT.** Section 27-07.1-11 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**27-07.1-11. Fees to be charged by the clerk of county court.** The clerk of a county court shall charge and collect the same fees as are prescribed in section 11-17-04, except that the clerk shall charge and collect the following fees:

1. For filing a petition for letters testamentary, of administration, of guardianship, or proceedings in heirship, twenty dollars. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual habilitation plan team for the incapacitated person or any state employee in the performance of official duties.
2. For applications in joint tenancy to determine estate tax, ten dollars.
3. For filing of civil action in the county court, ten dollars, and from time to time thereafter the clerk may require additional deposits to be made to cover the fees as they accumulate.
4. For default judgments in civil actions, including all fees prior to execution, five dollars.
5. For a certified abstract or transcript of any judgment in any civil action, one dollar.

Upon the entry of judgment in any civil action, the clerk shall refund to the proper party the amount of all moneys deposited with him in excess of the legal fees accrued in the action.

**SECTION 5. AMENDMENT.** Subsections 7 and 17 of section 30.1-01-06 of the 1981 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as described by section 30.1-29-20.

17. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as described by section 30.1-28-04, but excludes one who is merely a guardian ad litem.

SECTION 6. AMENDMENT. Section 30.1-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general.
2. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court.
3. Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.
4. The costs necessitated by hearings held pursuant to this chapter must be paid, in order of priority, by:

- a. The incapacitated person, if in the discretion of the court, sufficient assets are available.
- b. The spouse or parents of the incapacitated person if the court finds costs would not cause undue hardship.
- c. The state through the department of human services.

SECTION 7. AMENDMENT. Section 30.1-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure. The court shall determine in all cases in which a guardian is appointed whether the incapacitated person is mentally incompetent and as such is not qualified to vote.
2. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.
3. The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters.

SECTION 8. AMENDMENT. Section 30.1-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency,

institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and provided that the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.

2. Persons who are not disqualified have priority for appointment as guardian in the following order:
  - a. The spouse of the incapacitated person.
  - b. An adult child of the incapacitated person.
  - c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
  - d. Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition.
  - e. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
  - f. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
  - g. A person nominated by the person who is caring for the incapacitated person or paying benefits to him.

SECTION 9. AMENDMENT. Subsection 1 of section 30.1-28-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court when the guardianship is limited:
  - a. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction ~~of county mental health board~~ relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

- b. If entitled to custody of his ward, he shall make provision for his care, comfort, and maintenance and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.
- c. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
- d. If no conservator for the estate of the ward has been appointed, he may:
  - (1) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty.
  - (2) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.
- e. A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.
- f. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.

SECTION 10. AMENDMENT. Section 30.1-28-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-13. (5-313) Proceedings subsequent to appointment - Venue.

1. The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship, including proceedings to limit the authority previously conferred on a guardian, or to remove limitations previously imposed.
2. If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation ~~or~~, removing a guardian, or altering a guardian's authority shall be sent to the court in which acceptance of appointment is filed.

SECTION 11. AMENDMENT. Section 30.1-29-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-08. (5-408) Permissible court orders.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.
2. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:
  - 1- a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.
  - 2- b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.
  - 3- c. After hearing and upon determining that a basis for an appointment or other protective order exists with

respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- 4- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.
- 5- e. An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

SECTION 12. AMENDMENT. Section 30.1-29-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-20. (5-420) Conservators - Title by appointment. The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact, or to the part thereof specified in the order. An order specifying that only a part of the property of the protected person vests in the conservator creates a limited conservatorship. The appointment of a

conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

**SECTION 13. AMENDMENT.** Section 30.1-29-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30.1-29-21. (5-421) Recording of conservator's letters.** Letters of conservatorship are evidence of transfer of all assets, or the part thereof specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate subjected to the conservatorship from the conservator to the protected person or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

**SECTION 14. AMENDMENT.** Section 50-06-05.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**50-06-05.3. Regional human service centers - Powers - Duties - Human service council.**

1. Regional human service centers organized under this chapter are those centers established to provide human services as authorized by law. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support the highest level of personal independence and economic self-sufficiency, including health, mental health, education, manpower, social, vocational rehabilitation, aging, food and nutrition, and housing service. Regional human service centers shall function as regional administrative units established, within the multicounty areas designated by the governor's executive order 49 dated September 18, 1969, to provide for the planning and delivery of human services.
2. Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or

reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients suffering from mental or emotional disorders, mental retardation, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility. Regional human service centers shall deliver services in the manner prescribed by the department.

3. The human service council of a human service center shall be a council of not more than thirteen members. The council shall be appointed by the boards of county commissioners of the respective counties within the region meeting jointly with the director of the regional human service center, except for the appointment of the initial human service council which shall be as provided in section 41 of chapter 486 of the 1981 Session Laws. County commissioners may serve as members of the human service council; provided, that the commission members do not comprise more than one-third of the total council members. The terms of office shall be two years and arranged so that the term of six members shall expire at the end of the first year and the term of seven members shall expire at the end of the second year. Members of each human service council are to be selected on the basis of population from residents of the counties in the region served by the human service center. Each county in the region must have at least one member on the human service council. To the extent possible, membership on the council shall reflect regional interests in the fields of developmental disabilities, social services, vocational rehabilitation, mental health, and alcoholism and drug abuse. Members shall elect from the council membership a chairman and other officers as the council deems necessary. All members of each council shall be residents of the area served by the regional human service center. Vacancies occurring on the board for other than the expiration of a term shall be filled in the same manner as original appointments, except that appointments shall be made only for the unexpired term. Members of the human service council shall be compensated at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The members shall also be paid for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers.

SECTION 15. REPEAL. Section 25-04-13.1 of the North Dakota Century Code is hereby repealed.

SECTION 16. EFFECTIVE DATE. Section 15 shall be effective on July 1, 1985.

Approved March 22, 1983

## CHAPTER 314

HOUSE BILL NO. 1526  
(Unhjem)

## MENTAL HEALTH TREATMENT

AN ACT to amend and reenact subsections 1 and 11 of section 25-03.1-02, and sections 25-03.1-17, 25-03.1-25, and 25-03.1-26 of the North Dakota Century Code, relating to the definitions of an "alcoholic individual" and a "person requiring treatment", involuntary treatment commitment procedures and requirements, and emergency detentions or hospitalizations procedures.

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

SECTION 1. AMENDMENT. Subsections 1 and 11 of section 25-03.1-02 of the 1981 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Alcoholic individual" means an individual who has lost the power of self-control, or who exhibits cognitive deficiencies, or general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to his the individual's drinking.
11. "Person requiring treatment" means either a person:
  - a. Who is ~~severely mentally ill~~ suffering from severe mental illness, severe alcoholism, or severe drug addiction. "Severe" means that the disease or addiction is associated with gross impairment of the person's level of adaptive functioning as outlined by axis V of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or
  - b. Who is mentally ill, an alcoholic, or drug addict, and there is a reasonable expectation that if the person is not hospitalized there exists a serious risk of harm to himself, others or property. "Serious risk of harm" means a substantial likelihood of:

- (1) Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential; or
- (2) Killing or inflicting serious bodily harm on another person, inflicting significant property damage, as manifested by acts or threats; or
- (3) Substantial deterioration in physical health, or substantial injury, disease, or death resulting from poor self-control or judgment in providing one's shelter, nutrition, or personal care.

SECTION 2. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-17. Involuntary treatment - Preliminary hearing. At the preliminary hearing the magistrate shall review the medical report and the results of the outreach workers' investigation. During the hearing the petitioner and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court ~~finds~~ does not find probable cause to believe that the individual is a person requiring treatment ~~has not been established~~, the petition shall be dismissed. The ~~respondent~~ person shall be ordered discharged from the hospital or treatment facility if ~~he~~ that person has been detained prior to the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it must consider less restrictive alternatives to involuntary detention and treatment. The court may then order respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that such alternatives are not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent, and give him written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a full hearing as required by this chapter.

SECTION 3. AMENDMENT. Section 25-03.1-25 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional has reasonable cause to believe that a person is suffering from mental illness, alcoholism, or drug addiction; and ~~is~~

- likely to cause serious injury to himself or others there exists a serious risk of harm to that person, other persons, or property of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, clinical psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired, an alcoholic, or a drug addict, and is imminently likely to injure himself or other persons there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary hearing, which shall be held no more than seventy-two hours, exclusive of weekends and holidays, after the date of the order.
  3. Detention under this section may be:
    - a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been ordered. The facility may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
    - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
  4. Immediately upon being taken into custody, the person shall be advised of the purpose of custody, of the intended uses and possible effects of any evaluation he that the person undergoes, and of his the person's right to counsel and to a preliminary hearing.
  5. Upon arrival at a facility the peace officer, physician, psychiatrist, clinical psychologist, or the mental health

professional who conveyed the person, or caused him the person to be conveyed, shall complete an application for evaluation and be interviewed by a mental health professional at the facility. The application for emergency admission shall state in detail and shall deliver a detailed written report from the peace officer, physician, psychiatrist, clinical psychologist, or the mental health professional who caused the person to be conveyed. The written report shall state the circumstances under which the person was taken into custody. It The report must allege in detail the overt act which constituted the basis for the petitioner's belief that the person is mentally ill, an alcoholic, or drug addict and that, because of such condition, he could reasonably be expected to cause serious physical injury to himself or another if there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

SECTION 4. AMENDMENT. Section 25-03.1-26 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if he finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county of the person's residence giving notice to the court and stating in detail the circumstances and facts of the case.
2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing to be held no later than seventy-two hours, exclusive of weekends or holidays, after detention unless the person has been released as a person not requiring treatment, has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

Approved April 5, 1983

## CHAPTER 315

SENATE BILL NO. 2449  
(J. Meyer, Stenehjem)

### MENTAL HEALTH COMMITMENT HEARINGS

AN ACT to amend and reenact subsection 8 of section 25-03.1-02 and section 25-03.1-03 of the North Dakota Century Code, relating to jurisdiction in mental health commitment hearings.

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

SECTION 1. AMENDMENT. Subsection 8 of section 25-03.1-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Magistrate" means the judge of the appropriate county court or a judge assigned by the presiding judge of the judicial district.

SECTION 2. AMENDMENT. Section 25-03.1-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-03. Jurisdiction. The county courts shall have original ~~and exclusive~~ jurisdiction over the proceedings governed by this chapter, except as provided in this section. They shall have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation.

Approved March 17, 1983

## CHAPTER 316

HOUSE BILL NO. 1469  
(Eagles)

## SERVICE DOG ADMITTANCE

AN ACT to amend and reenact section 25-13-02 of the North Dakota Century Code, relating to the admittance to public places of blind and physically handicapped persons who are accompanied by a guide or service dog.

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

SECTION 1. AMENDMENT. Section 25-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-13-02. Blind person or physically handicapped persons accompanied by guide or service dog to be admitted to public places. Every totally or partially blind person shall have the right to be accompanied by a guide dog and every physically handicapped person shall have the right to be accompanied by a service dog, especially trained for ~~the purpose~~ those purposes, in places of public accommodations, common carriers, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided that ~~he~~ such persons shall be liable for any damage done to the premises or facilities by ~~such dog~~ the dogs.

Approved March 8, 1983

## CHAPTER 317

HOUSE BILL NO. 1447  
(Conmy, G. Pomeroy, D. Olsen)

### RESIDENTIAL ZONING FOR GROUP HOMES

AN ACT to redefine "developmentally disabled person" and to require residential zoning for group homes for developmentally disabled persons in counties, cities, and townships.

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

SECTION 1. Definitions. For the purposes of this Act:

1. "Developmentally disabled person" means a person with a severe, chronic disability which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the person attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;
    - (5) Self-direction;
    - (6) Capacity for independent living; and
    - (7) Economic sufficiency; and
  - e. Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic

care, treatment, or other services which are lifelong or extended duration and are individually planned and coordinated.

2. "Group home" means any community residential facility, foster home, family care facility, or other similar home for developmentally disabled persons.

**SECTION 2. Zoning group homes for developmentally disabled authorized in residential areas.** Notwithstanding the provisions in chapters 11-33, 40-47, or 58-03, or any other provisions authorizing any political subdivision to establish or enforce zoning regulations, a licensed group home serving six or fewer developmentally disabled persons shall be considered a permitted use in a single family or equivalent least density residential zone, and a licensed group home serving eight or fewer developmentally disabled persons shall be considered a permitted use in any area zoned for residential use of greater density than single family use.

Approved April 5, 1983