

# PUBLIC WELFARE

## CHAPTER 522

HOUSE BILL NO. 1644  
(Representatives A. Olson, Olafson, D. Olsen)  
(Senators Kusler, Vosper)

### GENERAL ASSISTANCE REIMBURSEMENT

AN ACT to amend and reenact section 50-01-09.2 of the North Dakota Century Code, relating to reimbursement by the state to the counties for costs of general assistance; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 50-01-09.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-09.2. Reimbursement to counties by state for general assistance provided. Within the limits of legislative appropriations, the department of human services shall reimburse each county upon claim being made by the county, for one-half of the amounts expended on behalf of persons unable to provide themselves with a reasonable subsistence compatible with decency and health and who are not otherwise provided for under the laws of this state. Claim for reimbursement along with a certification of amounts paid shall be presented quarterly by the board of county commissioners to the department of human services. An amount not to exceed one-half of the sums so certified shall be paid to the county by the department of human services, except that the department shall reimburse the county for eighty percent of the cost of supplementary payments to or on behalf of those individuals residing in adult family care homes and custodial care homes who are in receipt of supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who are determined by the department to need assistance to enable them to meet the reasonable costs of custodial care in those homes, upon the audit and approval of the claim in the manner provided by law.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1985.

Approved April 13, 1983

## CHAPTER 523

HOUSE BILL NO. 1309  
(Representatives Serenus Hoffner, Haugland, DeMers)  
(Senators Lashkowitz, Matchie, Wenstrom)

### HUMAN SERVICE PROGRAMS

AN ACT to amend and reenact sections 50-06.2-01, 50-06.2-02, 50-06.2-03, 50-06.2-04, and 50-06.2-05 of the North Dakota Century Code, relating to comprehensive human service programs and to provide funding for programs to prevent or reduce institutional care.

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

SECTION 1. AMENDMENT. Section 50-06.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-01. Purpose - Interpretation. It is the purpose of this chapter to establish a system for planning, coordinating, and providing comprehensive ~~social~~ human services administered by county social service boards, ~~area social service centers~~, and human service centers. This chapter shall be construed to effectuate the following public purposes:

1. To help individuals or their families to achieve, maintain, or support the highest attainable level of personal independence and economic self-sufficiency.
2. To prevent, remedy, or alleviate neglect, abuse, or exploitation of children and adults unable to protect their own interests.
3. To prevent or reduce institutional care by providing alternate, cost effective and quality of life enhancing community-based care, home-based care, or other forms of less intensive care.
4. To preserve, rehabilitate, and reunite families.
5. To assist in securing referral or admission of individuals to institutional care when other forms of care are not appropriate.

\* SECTION 2. AMENDMENT. Section 50-06.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-02. Definitions. As used in this chapter:

1. "Area ~~social service center~~" means a regional ~~social service center~~ established by the state agency pursuant to ~~section 50-06-05.1~~.
2. "Comprehensive ~~social~~ human services" means services included in the comprehensive ~~social~~ human services plan published by the state agency and ~~social~~ human services required by state law or state agency regulation or federal law or regulation as a condition for the receipt of federal financial participation in programs administered under the provisions of this title.
3. 2. "County agency" means the county social service board in each of the counties of the state established under section 50-01-07.
4. 3. "County plan" means the county ~~social~~ human services plan required by section 50-06.2-04.
5. 4. "Human service center" means a regional center established under section 50-06-05.3.
6. 5. "State agency" means the department of human services.

\*\* SECTION 3. AMENDMENT. Section 50-06.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-03. Powers and duties of the state agency. The state agency shall have the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the ~~social~~ human services programs for individuals and families in conformity with state and federal requirements ~~including titles IV-B and XX of the Social Security Act,~~ as amended.
2. To prepare, at least biennially, a comprehensive ~~social~~ human services plan which ~~shall~~ must:
  - a. Include ~~social~~ human services determined essential in effectuating the purposes of this chapter.
  - b. Detail the ~~social~~ human services identified by the state agency for provision by human service centers ~~and area social service centers~~ and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt

\* NOTE: Section 50-06.2-02 was also amended by section 96 of House Bill No. 1058, chapter 82.

\*\* NOTE: Section 50-06.2-03 was also amended by section 97 of House Bill No. 1058, chapter 82.

of any funds allocated or distributed by the state agency.

3. To make available, through ~~area centers~~, county agencies, or human service centers, any or all of the services set out in the comprehensive ~~social~~ human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive ~~social~~ human services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive ~~social~~ human services plan, evaluation of comprehensive ~~social~~ human service programs, and distribution of public money for services.
5. From funds otherwise available for payments under chapter 50-24.1, to reimburse county agencies for the provision of the following services as defined in the comprehensive human service plan at rates not to exceed the nonfederal share of the statewide average of payments of intermediate care under chapter 50-24.1:
  - a. Homemaker services;
  - b. Chore services;
  - c. Respite care;
  - d. Home health aide services; and
  - e. Such other services as the state agency determines to be essential in preventing or reducing institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

SECTION 4. AMENDMENT. Section 50-06.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-04. Powers and duties of county agencies. Each county agency shall have the following powers and duties under this chapter:

1. To administer comprehensive ~~social~~ human services programs for individuals and families at the county level in conformity with state and federal requirements, ~~including titles IV-B and XX of the Social Security Act, as amended,~~ under the direction and supervision of the state agency.

2. To publish and provide to the state agency a county ~~social~~ human services plan which shall include the following:
  - a. A statement of the goals of county ~~social~~ human service programs in the county.
  - b. Methods used to identify persons in need of services and the social problems to be addressed by the county ~~social~~ human service programs.
  - c. A description of each county ~~social~~ human service proposed and identification of the agency or person proposed to provide the service.
  - d. The amount of money proposed to be allocated to each service.
  - e. An agreement to make available those ~~social~~ human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title.

The date of submission of the county ~~social~~ human service plan to the state agency shall be determined so that the plan is coordinated with the proposed and final comprehensive ~~social~~ human services plan ~~required by applicable titles of the Social Security Act.~~

3. To make available the ~~social~~ human services detailed in the comprehensive ~~social~~ human service plan which the county agency has included in the approved county plan and to provide such other ~~social~~ human services the county agency determines essential in effectuating the purposes of this chapter within the county.
4. To submit annually to the board of county commissioners a budget containing an estimate and supporting data, setting forth the county funds needed to carry out the provisions of this chapter.

SECTION 5. AMENDMENT. Section 50-06.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-05. Appropriation of county funds. The board of county commissioners of each county shall annually appropriate and make available to the poor relief fund an amount sufficient to pay the local expenses of administration and provision of the ~~social~~ human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title.

Approved March 7, 1983

## CHAPTER 524

SENATE BILL NO. 2070  
(Legislative Council)  
(Interim Social Services Committee)

### LONG-TERM CARE OMBUDSMEN APPOINTMENT

AN ACT to provide for the appointment of state and regional long-term care ombudsmen and prescribing the powers and duties of long-term care ombudsmen.

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

SECTION 1. Definitions. As used in this Act:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.
3. "Long-term care facility" means any skilled nursing facility, intermediate care facility, boarding home for the aged and infirm, nursing home as defined in subsection 3 of section 43-34-01, or foster family care home for adults.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

SECTION 2. Appointment of state and regional long-term care ombudsmen. The executive director of the department shall appoint a state long-term care ombudsman and such regional long-term care ombudsmen as the executive director deems necessary within the limits of legislative appropriations.

SECTION 3. Duties of state long-term care ombudsman. The state long-term care ombudsman shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect the health, safety,

welfare, or personal or civil rights of older persons in long-term care facilities.

2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in the state.
3. Gather and disseminate information to public agencies about the problems of older persons in long-term care facilities.
4. Train volunteers and assist in the development of citizen organizations to participate in the ombudsman programs.
5. Report to any state agency those factors found by the state long-term care ombudsman to relate to those duties of that agency which impact on the care given to residents of a long-term care facility in this state.
6. Act as an advocate for aged residents of long-term care facilities.
7. Carry out any activities consistent with the requirements of this Act, including the delegation to regional long-term care ombudsmen of any duties imposed by this Act, which the executive director of the department deems appropriate.

SECTION 4. Access to facilities and records. To carry out the powers and duties of this Act the state long-term care ombudsman and the ombudsman's authorized agents shall:

1. Have reasonable access to all long-term care facilities within the state and shall have private access to any resident within any long-term care facility within the state. Reasonable access shall be defined as access by an ombudsman during normal working hours or by appointment and upon notification to the administrator or person in charge of the facility.
2. Have access to all personal and medical records of any resident of a long-term care facility who has sought ombudsman services, or on whose behalf such services have been sought, except that no record shall be obtained without the written consent of a resident or a legal representative of a resident, or unless a court orders the disclosure.

SECTION 5. Act to be posted - Retaliation prohibited. A copy of this Act shall be posted in a conspicuous place in each long-term care facility, along with a statement of the right to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any legally appointed

representative of a resident shall be provided with copies of the posted documents at the time the resident is admitted to the long-term care facility. However, each person who is a resident on July 1, 1983, the spouse of each resident having a spouse, and any legally appointed representative of a resident shall be provided with copies of the posted documents at that time. A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident on account of the filing of a complaint by or on behalf of that resident.

**SECTION 6. Establishment of reporting system.** The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency.

**SECTION 7. Confidentiality and disclosure of records and files.** Those records and files of the state and regional ombudsman, and their authorized agents, which relate to, or identify any resident of a long-term care facility or a complainant, are confidential and shall not be disclosed unless:

1. A resident, or a legal representative, consents in writing to the release of the information and designates to whom the information shall be disclosed; or
2. The ombudsman authorizes a disclosure which does not reveal the identity of any complainant or resident; or
3. A court of competent jurisdiction orders the disclosure.

Approved March 23, 1983

## CHAPTER 525

SENATE BILL NO. 2299  
(Senators Wenstrom, Kilander, Stromme)  
(Representative Sanstead)

### BILL OF RIGHTS FOR HEALTH CARE FACILITY RESIDENTS

AN ACT to establish a bill of rights for health care facility residents, to provide for implementation of those rights and to authorize adoption of rules.

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

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Facility" means a skilled nursing care facility, intermediate care facility, foster care home for adults, boarding home for the aged and infirm, boarding homes, or any combination thereof.
2. "Resident" means a person residing and receiving personal care from a facility.

SECTION 2. Residents' rights - Implementation.

1. All facilities shall adopt and make public a statement of the rights and responsibilities of their residents and must treat residents in accordance with provisions of that statement. This statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct and must be provided to the resident or legal guardian prior to or at the time of admission to the facility. The statement must include provisions ensuring each resident the following minimum rights:
  - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.

- b. The right to have private meetings, associations, and communications with any person of the resident's choice.
- c. The right to present complaints on one's behalf or on the behalf of other residents to the facility's staff or administrator, to governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint.
- d. The right to send and receive unopened personal mail, and the right of access to and use of telephones for private conversations.
- e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with a verbal explanation by the facility to the resident or the person legally responsible for the resident.
- g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services. Residents, or their guardian, must be informed at least thirty days prior to any change in the costs or availability of the services.
- h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by that resident's physician, and to be notified of the consequences of any such actions.
- i. The right to have privacy in treatment and in caring for personal needs, confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions.
- j. The right to be treated courteously, fairly, and with the fullest measure of dignity.

- k. The right to be free from mental and physical abuse and from physical and chemical restraint, except for those restraints authorized in writing by a physician for a specified and limited period of time or as necessitated by an emergency. In the case of an emergency, restraint may only be applied by a qualified licensed or registered nurse who shall set forth in writing the circumstances requiring the use of a restraint and in the case of use of a chemical restraint, a physician must be consulted immediately thereafter.
- l. The right to be transferred or discharged only for:
- (1) Medical reasons;
  - (2) The resident's welfare or that of other residents; or
  - (3) Nonpayment of one's rent or fees.

The rights in this subdivision do not apply during times of rebuilding, remodeling, refurbishing, or general renovation of a facility.

- m. The right to receive a thirty-day advance notice of any transfer or discharge, except in the case of an emergency as determined by physician.
- n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care as being therapeutic, as deemed by a physician.
2. Each facility must prepare a written plan and appropriate staff training to implement this Act.

SECTION 3. Rulemaking authority of department. The department of human services may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this Act through the ombudsman program.

Approved March 23, 1983

## CHAPTER 526

HOUSE BILL NO. 1246  
(Conmy, Gates)

### FOSTER CARE PARENT GRIEVANCE PROCEDURE

AN ACT to provide for a foster care parent grievance procedure.

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

SECTION 1. Foster care parent grievance. A foster parent who is duly licensed to care for a foster child may object to any decision made by the department of human services or county social service board which substantially affects the foster parent or the needs of the foster child. An objection may be made in the form of a grievance which must be filed in the county of the foster care parent's residence with the county social service board. The county social service board must notify foster parents of the grievance procedure and provide them with grievance procedure forms.

SECTION 2. Grievance procedure. The grievance procedure to be followed by the department of human services, county social service board, and foster parents is:

1. Any decision made by the department of human services or county social service board which substantially affects the licensed foster parent or the needs of a foster child must be sent in writing to the foster parents who have been given the responsibility of providing foster care for that child. Nothing herein shall be construed to prohibit the department of human services or county social service board from immediately implementing a decision, where the best interests of the child require such immediate action, as long as notice is given to the foster parent as soon as possible.
2. A foster parent may object to any decision referred to in subsection 1. Upon the filing of a grievance by the foster care parents, the county social service board shall schedule an informal meeting to be held within ten days of the filing of the grievance. The needs and responsibilities of all interested parties must be discussed at this meeting in an attempt to maintain a continuing relationship which will serve the best

interests of the foster child. A written resolution relating to the grievance should be agreed to and signed by both parties.

3. If no written resolution between the parties relating to the grievance is made at the informal meeting, the foster parents may request a formal hearing to be held at the regional foster care office. This meeting must be held within ten working days of the informal meeting unless both parties agree to an extension. The regional foster care director shall provide for a record of this hearing. The regional foster care director shall review all prior contact between the foster care parents and the department of human services or county social service board relating to the grievance. The regional foster care director must then make a final determination relating to the grievance. The regional foster care director's findings and conclusions must be sent to the county social service board and the foster care parents.
4. All decisions of the regional foster care director relating to a grievance under this Act are final.
5. The department of human services shall adopt rules to carry out the purpose and intent of this section and these rules shall be given to the foster parent upon licensing.
6. Denial or revocation of a foster care license may be appealed as provided in chapter 28-32.
7. Nothing herein shall be construed to require a grievance proceeding under this Act, where the department of human services or county social service board is acting to implement a specific placement decision issued by a court with competent jurisdiction.

Approved April 5, 1983

## CHAPTER 527

SENATE BILL NO. 2177  
(Committee on Social Services and Veterans Affairs)  
(At the request of the Attorney General)

## SOLICITATION PAYMENT LIMITATION

AN ACT to amend and reenact section 50-22-04.1 of the North Dakota Century Code, relating to limitations on amount of payments for solicitation or funding.

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

SECTION 1. AMENDMENT. Section 50-22-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-22-04.1. Limitations on amount of payments for solicitation or funding. No charitable organization shall pay or agree to pay to a professional solicitor, professional fundraiser or his agents, servants, or employees in the aggregate ~~a total amount in excess of fifteen percent an unreasonable amount~~ (including reimbursement for expenses incurred and direct payment of expenses incurred) of the total moneys, pledges, or other property raised or received by reason of any solicitation activities or campaigns. Any such cost of solicitation activities or campaigns in excess of twenty percent of the amount collected shall be deemed unreasonable unless special facts or circumstances are presented showing that a cost higher than twenty percent is not unreasonable under the circumstances.

No charitable organization shall incur solicitation and fundraising expenses (including not only payments to professional solicitors, but also payments to professional fundraisers and internal fundraising and solicitation salaries and expenses) in excess of thirty-five percent of total moneys, pledges, or other property raised or received by reason of any solicitation, gift and fundraising activities or campaigns. As used in this subsection, the term "internal fundraising and expenses" shall include, but not be limited to, such portions of the charitable organization's salary and overhead expenses as are fairly allocable (on a time or other appropriate basis) to its solicitation and fundraising expense. In the event special facts or circumstances are presented showing expenses higher than thirty-five percent, the secretary of state has

the discretion to allow such higher funds and may impose such conditions as he shall deem necessary for such exemption.

For purposes of this section, the total moneys, funds, pledges, or other property raised or received shall not include the actual cost to the charitable organizations or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.

Every contract, written agreement, or written statement of the nature of the arrangement to prevail in the absence of a contract between a professional fundraiser or professional solicitor and a charitable organization shall be filed with the secretary of state within ten days after such contract, written agreement, or written statement is concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the secretary of state shall examine the contract to ascertain whether the compensation to be paid in such circumstances is likely to exceed ~~fifteen~~ twenty percent of the total moneys, pledges, or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed ~~fifteen~~ twenty percent of the total moneys, pledges, or other property and no showing of special facts or circumstances has been made to demonstrate that a cost higher than twenty percent is not unreasonable, the secretary of state shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of disapproval, be given a hearing before the secretary of state within thirty days after such request is filed.

Approved March 23, 1983

## CHAPTER 528

HOUSE BILL NO. 1314  
(Representatives Serenus Hoffner, Haugland, Peltier)  
(Senators Lips, Redlin, Wenstrom)

### COMMUNITY ALTERNATIVES TO INSTITUTIONAL CARE

AN ACT to provide state funding for community alternatives to institutional care on behalf of elderly and disabled persons.

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

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Adult foster care" means those services provided by a licensed foster family care home as defined under section 50-11-06.1.
2. "County agency" means the county social service board.
3. "Department" means the department of human services.
4. "Eligible elderly or disabled person" means an individual:
  - a. Who has been determined eligible for the receipt of medical assistance under chapter 50-24.1, or who would be determined eligible but for the fact that the individual's available income, reduced by the cost of incurred medical expenses, exceeds the maximum amount allowed in establishing such eligibility, provided that the excess is no more than the maximum rate set under section 2 of this Act;
  - b. Who has been determined by the department to have a medical need for services provided in a skilled or intermediate care facility; and
  - c. Who is at least sixty-five years of age or disabled as defined by the rules of the department.
5. "Family home care" means the provision of room, board, supervisory care and personal services to eligible elderly

or disabled persons by the spouse, parent, or adult children of an eligible elderly or disabled person.

6. "Remedial services" means those services, provided in a licensed boarding home for the aged and infirm, an adult foster care home, or a family home supervised by a county agency, which produce the maximum reduction of physical or mental disability and restoration of the eligible elderly or disabled person's best possible functional level.
7. "Rest home services" means those services provided by boarding homes for the aged and infirm licensed under chapter 50-18.

SECTION 2. Payment and election for noninstitutional personal care on behalf of elderly and disabled persons. From funds otherwise available for payments under chapter 50-24.1, the department shall make payment on behalf of eligible elderly or disabled persons who elect to receive family home care which is supervised and approved by the county agency, adult foster care, or rest home services. If the alternative care is elected, the payment may be made directly to the eligible elderly or disabled person, to the protective payee of such person, or to the individual or entity providing remedial services on behalf of the eligible elderly or disabled person. If direct payment will cause a reduction in the amount of benefits, received by the eligible elderly or disabled person, through title XVI or title XIX of the Social Security Act, the county agency shall make any payment to the provider of the remedial services. Rates of payment, to be determined by the department, may not exceed the nonfederal share of the statewide average of payments for intermediate care under chapter 50-24.1. The determination whether family home care, adult foster care, or rest home care will be received as an alternative to skilled or intermediate care is the sole responsibility of the elderly or disabled individual, or guardian of such person, if any, in consultation with an attending physician and family members.

Approved March 7, 1983