

MENTALLY ILL, TUBERCULAR, BLIND, AND DEAF

CHAPTER 279

SENATE BILL NO. 2370
(Senators W. Stenehjem, Evanson)

CIVIL COMMITMENT

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-04, 25-03.1-08, 25-03.1-09, 25-03.1-10, 25-03.1-11, 25-03.1-13, 25-03.1-16, 25-03.1-17, 25-03.1-18.1, 25-03.1-22, 25-03.1-23, 25-03.1-25, 25-03.1-26, 25-03.1-27, 25-03.1-30, 25-03.1-31, 25-03.1-33, 25-03.1-34, 25-03.1-35, 25-03.1-40, 25-03.1-41, 25-03.1-42, and 25-03.1-43 of the North Dakota Century Code, relating to civil commitment and treatment of mentally ill or chemically dependent persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions. In this chapter, unless the context requires otherwise:

1. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
2. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
3. "Court" means, except where otherwise indicated, the county court of the county ~~wherein~~ in which the respondent resides.
- 3- 4. "Department" means the department of human services.
- 4- 5. "Director" means the director of a treatment facility or the director's designee.
- 5- 6. "Expert examiner" means a licensed physician, psychiatrist, ~~clinical~~ psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a licensed psychiatrist or ~~clinical~~ psychologist trained in a clinical program, and an ~~examination by a licensed addiction counselor must be limited to~~ evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.

- ~~6-~~ 7. "Independent expert examiner" means a licensed physician, psychiatrist, ~~clinical~~ psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent ~~meets the criteria of is~~ a person requiring treatment. ~~An examination by a licensed addiction counselor must be limited to~~ evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent and whether the respondent is a person requiring treatment may be made only by a licensed physician or licensed addiction counselor.
- ~~7-~~ 8. "Magistrate" means the judge of the appropriate county or juvenile court or a judge assigned by the presiding judge of the judicial district.
- ~~8-~~ 9. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c, or of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
- ~~9-~~ 10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded ~~or mentally deficient~~ person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.
- ~~10-~~ 11. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person,

others, or property. "Serious risk of harm" means a substantial likelihood of:

- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
- b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
- c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
- d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors.

~~11-~~ 12. "Private treatment facility" means any facility established under chapters 10-19.1, 10-22, and 10-24 and licensed under chapter 23-16 or 23-17.1.

13. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.

~~12-~~ 14. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.

~~13-~~ 15. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.

~~14-~~ 16. "Respondent" means a person subject to petition for involuntary treatment.

~~15-~~ 17. "Superintendent" means the state hospital superintendent or the superintendent's designee.

~~16-~~ 18. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.

~~17-~~ 19. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility ~~which can provide that provides~~ directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency.

SECTION 2. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Voluntary admission. Pursuant to ~~Under~~ rules adopted by the department, an application for admission to a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill or chemically dependent or who has symptoms of ~~such~~ those illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill or chemically dependent or who has symptoms of ~~such~~ those illnesses, by the minor's parent or legal guardian. The application must be submitted to a regional human services center, or, in an emergency, to the state hospital. Upon receipt of an application, the regional human service center must arrange for an evaluation of the applicant and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or the director shall immediately designate a physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional to examine the patient.

SECTION 3. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional. Any person eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The attorney shall assist the person in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to ~~such~~ those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, or ~~clinical~~ psychologist who has personally examined the respondent within forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 4. AMENDMENT. Section 25-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-09. Review of petition for involuntary treatment - Probable cause established - Respondent notified - Rights.

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 25-03.1-08 and whether it establishes probable cause to believe the respondent ~~meets the criteria of~~ is a person requiring treatment. If probable cause has not been so established, the petition must be dismissed unless an amendment would cure the defect.
2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent, ~~copies:~~
 - a. A copy of the petition and supporting documentation. ~~This must be accompanied by~~
 - b. A notice informing the respondent of the procedures required by this chapter. ~~This notice also must include~~
 - c. A notice of the respondent's right to a preliminary and a treatment hearing when in custody under section 25-03.1-25 and if mental illness or a combination of mental illness and chemical dependency of the respondent is alleged in the petition, or, if not in custody or if in custody and chemical dependency alone is alleged in the petition, the right to a treatment hearing; of the right to be present at the hearings; of the right to have counsel ~~prior to~~ before the hearings and any court-ordered examination; of the right to an independent evaluation; and, if the respondent is indigent, of the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. ~~if~~
 - d. Notice that if an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

SECTION 5. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination. If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or ~~clinical~~ psychologist who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of ~~his~~ the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear, the address to which the respondent is to report, and a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, he ~~the respondent~~ may be involuntarily taken into custody and transported to the appointed place. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at ~~the~~

~~state hospital or~~ a treatment facility, at the respondent's home, or at any other suitable place in the community. The respondent may be accompanied by one or more ~~of his~~ relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county ~~which~~ that is the respondent's place of residence.

SECTION 6. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by ~~such~~ that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:

1. Evaluations of the respondent's physical condition and mental status.
2. A conclusion as to whether the respondent ~~meets the criteria of~~ is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
3. If the report concludes that the respondent ~~meets the criteria of~~ is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner who prepared the report.

If the expert examiner concludes that the respondent ~~does~~ is not ~~meet the criteria of~~ a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent ~~does meet the criteria of~~ is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a ~~preliminary~~ hearing and shall give notice of ~~this~~ hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing date must be within seven days of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If ~~the~~ a preliminary hearing is not required, the treatment hearing must be held within seven days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 7. AMENDMENT. Section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-13. Right to counsel - Indigency - Waiver - Recoupment - Limitations.

1. Every respondent under this chapter is entitled to legal counsel.

2. Unless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, exclusive of weekends or holidays, from the time the petition was filed, appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel shall immediately notify the court of that fact.
3. If, after consultation with counsel, the respondent wants to waive the right to counsel or the right to any of the hearings provided for under this chapter, the respondent may do so by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and must also be signed by counsel.
4. If the court determines that the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county which that is the respondent's place of residence in a reasonable amount based upon time and expenses. After notice and hearing, the court may order a respondent with appointed counsel to reimburse the county for expenditures made on the respondent's behalf.
5. If the state's attorney of a county that has expended sums under subsection 4 on behalf of a respondent who is liable to reimburse the county determines that the respondent may have funds or property to reimburse the county, the state's attorney shall seek civil recovery of those sums. Commencement of the action must occur within six years after the date the sums were paid.

SECTION 8. AMENDMENT. Section 25-03.1-16 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-16. Medication pending treatment order. A patient who has requested release or a person who is the subject of a petition for hospitalization treatment has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, a physician may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescribing physician, the need for the medication still exists or discontinuation would hamper the respondent's preparation of for and participation in the proceedings.

SECTION 9. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - Preliminary Right to preliminary hearing. A respondent who is in custody under section 25-03.1-25 and who is alleged to be mentally ill or to be suffering from a combination of chemical dependency and mental illness is entitled to a preliminary hearing. At the preliminary hearing the magistrate shall review the medical report. During the hearing the petitioner and the respondent must 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 does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The person must be ordered discharged from the ~~hospital or~~ treatment facility if that person has been detained before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it shall 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~~ alternative treatment is 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 written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

SECTION 10. AMENDMENT. Section 25-03.1-18.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.1. Court authorized involuntary treatment with prescribed medication.

1. a. Upon ~~advance notice to the court and the parties and hearing,~~ a treating psychiatrist may request authorization from the court to treat a ~~patient~~ person under a mental health treatment order with prescribed medication. ~~The request may be considered by the court in an involuntary treatment hearing if.~~ As a part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient shall certify:
 - ~~a-~~ (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and there is a reasonable expectation that if the person is not treated as proposed there exists a serious risk of harm to that person, other persons, or property;
 - ~~b-~~ (2) That the patient was offered ~~such~~ that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about ~~such~~ that treatment;
 - ~~c-~~ (3) That ~~the~~ prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - ~~d-~~ (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

2. a. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22, or at a separate hearing after motion and notice. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
- a- (1) The danger the patient presents to self or others;
 - b- (2) The patient's current condition;
 - c- (3) The patient's past treatment history;
 - d- (4) The results of previous medication trials;
 - e- (5) The efficacy of current or past treatment modalities concerning the patient;
 - f- (6) The patient's prognosis; and
 - g- (7) The effect of the patient's mental condition on the patient's capacity to consent.
- b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.
3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision, or it may issue a separate order after notice and hearing, authorizing the treating psychiatrist to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. ~~However, no such provision is effective. The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days, unless prior to the expiration of that time period the treating psychiatrist submits a report to the court indicating that the involuntary treatment with prescribed medication remains appropriate and necessary to effectively treat the patient. Based on such reports, a review of the patient's progress, and the patient's concerns, the court may extend its authorization for involuntary treatment with prescribed medication for additional ninety day periods if the patient remains under an involuntary treatment order.~~
4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the treating psychiatrist has requested authorization for involuntary treatment with prescribed medication, only a ~~licensed physician or~~ psychiatrist may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 11. AMENDMENT. Section 25-03.1-22 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-22. Involuntary Length of involuntary and continuing treatment orders.

1. An initial order for involuntary treatment ~~must be for a period~~ may not to exceed ninety days.
2. ~~If, before the expiration of the ninety day order,~~ the director or superintendent believes that a ~~patient's condition is such that the~~ patient continues to require treatment, the director or superintendent shall, not less than fourteen days before the expiration of the initial order, petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment, which order may be for an unspecified a period of time not to exceed one year. The court shall set a hearing date that must be within fourteen days after the petition was filed, unless extended for good cause shown.
3. Unless extended under section 25-03.1-31, continuing treatment orders of indefinite duration issued before August 1, 1993, expire as follows:
 - a. Those orders issued before August 1, 1991, expire September 30, 1993.
 - b. Those orders issued from August 1, 1991, through July 31, 1992, expire December 31, 1993.
 - c. Those orders issued from August 1, 1992, through August 1, 1993, expire on their first anniversaries or on March 31, 1994, whichever is later.
4. A respondent subject to a continuing treatment order of indefinite duration retains the rights to periodic review and to petition for discharge under section 25-03.1-31 as that section existed on July 31, 1993.

SECTION 12. AMENDMENT. Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-23. Petition for continuing treatment orders. A petition for an order authorizing continuing treatment must contain: a statement setting forth the reasons for the ~~superintendent's or director's~~ determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician, psychiatrist, or ~~clinical~~ psychologist. ~~The court shall set a hearing date which must be within fourteen days of the date of service of the petition.~~

SECTION 13. AMENDMENT. Section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

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

1. When a peace officer, physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and 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 magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the magistrate 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 or treatment hearing, which must be held no more than seven days after the date of the order.
3. Detention under this section may be:
 - a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that 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~~ self 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 must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's ~~right~~ rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional who conveyed the person or who caused the person to be conveyed shall complete an application for evaluation 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 must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the ~~belief~~ beliefs that the individual is a person requiring treatment and that, because of such that person's condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

SECTION 14. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~The state hospital or~~ A public treatment facility immediately shall 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 the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of the person's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, 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, if the respondent is alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency, or a treatment hearing, if the respondent is alleged to be suffering from chemical dependency, to be held no later than seven days after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 15. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. Whenever any person is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:
 - a. A copy of the petition which asserted that the individual is a person requiring treatment.
 - b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.
 - c. A written statement in simple terms explaining the rights of the individual alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.
 - d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.

2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain them in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 16. AMENDMENT. Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.

1. The superintendent or director may at any time discharge a voluntarily hospitalized patient ~~he deems who is~~ clinically suitable for discharge.
2. The superintendent or director shall discharge a patient hospitalized by court order when the patient's mental condition is such that ~~he~~ the patient no longer ~~meets the criteria of~~ is a person requiring treatment.
3. If a patient discharged ~~pursuant to~~ under subsection 1 or 2 has been hospitalized by a court order, or if court proceedings are pending, the court must be notified of the discharge by the treatment facility.
4. A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment ~~pursuant to this chapter~~ may terminate the alternative treatment if ~~he deems~~ the patient is clinically suitable for termination of treatment. ~~He~~ The person shall terminate the alternative treatment when the ~~patient's mental condition is such that he~~ patient no longer ~~meets the criteria of~~ is a person requiring treatment and shall notify the court upon ~~such that~~ that termination.
5. If, upon the discharge of a hospitalized patient or the termination of alternative treatment of an individual under this chapter, ~~it is determined that~~ the individual would benefit from ~~the receipt of~~ further treatment, the hospital or provider of alternative treatment shall offer appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons, ~~or both,~~ of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist mentally ill or chemically dependent persons, and the individual's physician. The agencies and persons notified of the individual's release shall report to the ~~state hospital facility~~ state hospital facility that initial contact with the individual has been accomplished.
6. If, ~~prior to the~~ before expiration of ~~a ninety-day~~ an initial treatment order, the superintendent or director determines that a less restrictive form of treatment would be more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court which last ordered the patient's hospitalization to modify its order. The petition must contain ~~a statement~~ statements setting forth the reasons for the determination that the patient continues to require treatment, ~~a statement setting forth~~ the reasons for the determination that a less

restrictive form of treatment would be more appropriate for the patient, and ~~a statement~~ describing the recommended treatment program. If the patient consents, the court may, without a hearing, modify its treatment order by directing the patient to undergo the agreed treatment program for the remainder of the ~~ninety-day~~ treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of ~~his~~ the protest.

SECTION 17. AMENDMENT. Section 25-03.1-31 of the North Dakota Century Code is amended and reenacted as follows:

~~25-03.1-31. Review of current status of~~ Procedure to extend continuing treatment orders - Respondent's right to petition for discharge.

1. If the director or superintendent believes that a respondent continues to be a person requiring treatment, the director or superintendent shall, not less than thirty days before expiration of the order, petition the court where the facility is located for another continuing treatment order in the manner prescribed by section 25-03.1-23. The petition must also contain a notice to the respondent that, unless the respondent waives a hearing on the petition within fifteen days after service of the petition upon the respondent, a hearing will be held by the court. The court shall appoint counsel for the respondent upon receipt of the petition, unless retained counsel has appeared on behalf of the respondent. If retained counsel has appeared, the court shall provide notice of the petition to the attorney. If the hearing is not waived, it must be held within thirty days after the petition was filed, unless extended for good cause shown. The burden of proof is the same as in an involuntary treatment hearing.
2. ~~Every individual subject to an order of continuing treatment has the right to regular, adequate, and prompt review of his current status as a person requiring treatment and in need of hospitalization. Six months from the date of an order of continuing treatment, and every year thereafter, the director or superintendent where an individual is hospitalized shall review his status as a person requiring treatment and in need of hospitalization. The results of each periodic review conducted under this chapter must be made part of the patient's record, and must be filed within five days of the review, in the form of a written report, with the court where the facility is located. Within this five day period, the director or superintendent shall give notice of the results of the review to the patient, his attorney, and his nearest relative or guardian.~~

~~If a periodic review report concludes that the patient continues to require treatment and hospitalization, and the patient objects to either or both of those conclusions, the patient shall have the right to a hearing, an independent evaluation, and may petition the court for discharge once annually. This The petition may be presented to the court or a representative of the hospital or facility within seven days, excluding weekends and holidays, after the report is received. If the petition is presented to a representative of the hospital or facility, he who shall transmit it to the court forthwith. The petition must be accompanied by a report from a physician, psychiatrist, or clinical psychologist setting forth the reasons for his or her conclusions that the patient no longer is a person requiring treatment or in need of hospitalization. If no such report~~

~~accompanies the petition because the patient is indigent or is unable for reasons satisfactory to the court to procure such a report~~ obtain an independent expert examiner, the court shall appoint an independent expert examiner to examine the patient, ~~and the examiner shall to~~ furnish a report to the court.

~~If such report concludes that the patient continues to be a person requiring treatment and in need of hospitalization, the court shall so notify the patient and shall dismiss the petition for discharge. If the conclusion is to the contrary,~~ the The court shall set a hearing date which must be within fourteen days of receipt of the examiner's report. At the hearing, the burden of proof is the same as in an involuntary treatment hearing.

SECTION 18. AMENDMENT. Section 25-03.1-33 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-33. Legal incompetence - Presumption - Finding - Adjudication negated.

1. No determination that a person requires treatment, no court order authorizing hospitalization or alternative treatment, nor any form of admission to a hospital gives rise to a presumption of, constitutes a finding of, or operates as an adjudication of legal incompetence, or of the inability to give or withhold consent.
2. No order of commitment under any previous statute of this state, in the absence of a concomitant appointment of a guardian, constitutes a finding of or operates as an adjudication of legal incompetence, or of the inability to give or withhold consent.

SECTION 19. AMENDMENT. Section 25-03.1-34 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from ~~one a~~ a hospital to another ~~hospital or~~ facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. ~~In all such transfers, due~~ Due consideration must be given to the relationship of the patient to family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any ~~public or private institution~~ treatment facility licensed by any state for the care and treatment of mentally ill or chemically dependent persons ~~shall by agreement~~ agrees with a parent, a spouse, a brother, a sister, a child of legal age, or guardian of any patient to accept the patient for treatment, the superintendent or director of the treatment facility shall release the patient to the ~~institution~~ other facility.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ordered hospitalized ~~under law in any hospital for care or treatment of mentally ill or chemically dependent persons and the individual who is eligible for care or treatment in a hospital or institution~~ treatment facility of such that agency, the superintendent or director of the treatment

facility may cause the individual's transfer to ~~such that~~ agency of the United States for ~~hospitalization treatment~~. No person may be transferred to any agency of the United States if the person is confined pursuant to conviction of any felony or misdemeanor or the person has been acquitted of the charge solely on the ground of mental illness unless the court originally ordering confinement of the person enters an order for ~~such~~ transfer after appropriate motion and hearing. Any person transferred ~~as provided~~ under this section to an agency of the United States is deemed to be ~~hospitalized by such~~ committed to that agency pursuant to under the original order of hospitalization treatment.

3. No ~~patient facility~~ may be ~~transferred~~ transfer a patient to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ~~ordering hospitalization that ordered treatment~~. The patient must be given an opportunity to protest the transfer and to receive a hearing on the protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the ~~hospital or~~ facility within seven days after the notice of transfer was received. If the objection is presented to a representative of the ~~hospital or~~ facility, the representative shall transmit it to the court forthwith. The court shall set a hearing date which must be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 20. AMENDMENT. Section 25-03.1-35 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-35. Hospitalization Treatment by an agency of the United States.

1. If an individual ~~ordered to be involuntarily hospitalized pursuant to a respondent under~~ this chapter is eligible for ~~hospital care or treatment~~ by any agency of the United States, the court, upon receipt of notice from ~~such that~~ agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order ~~him to be the respondent~~ placed in the custody of ~~such the~~ agency for hospitalization treatment. ~~When any such~~ Any individual ~~is admitted pursuant to under~~ the order of the court to any ~~hospital or institution treatment facility~~ operated by any agency of the United States within or without the state, he is subject to the rules and regulations of ~~such the~~ agency. The chief officer of any ~~hospital or institution treatment facility~~ operated by ~~such an~~ agency in which the individual is ~~so hospitalized shall with respect to such individual be vested with has~~ the same powers as the heads of ~~hospitals treatment facilities~~ within this state with respect to detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in the committing court of this state at any time to inquire into the mental condition of an individual so ~~hospitalized, transferred or placed~~ and to determine the necessity for continuance of ~~his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned treatment~~.

2. An order of a court of competent jurisdiction of another state, or of the District of Columbia, authorizing ~~hospitalization treatment~~ of an individual by any agency of the United States has the same force and effect as to the individual while in this state as in the geographical jurisdiction of the court entering the order; and the courts of the state or district issuing the order ~~must be deemed to have retained~~ retain jurisdiction of the individual ~~so hospitalized for the purpose~~ purposes of inquiring into ~~his~~ the individual's mental condition and of determining the necessity for continuance of ~~his hospitalization, as is provided in subsection 1 with respect to individuals ordered hospitalized by the courts of this state~~ treatment. Consent is hereby given to the application of the law of the state or district in which ~~is located~~ the court issuing the order for ~~hospitalization treatment is located~~ with respect to the authority of the chief officer of any ~~hospital or institution~~ treatment facility operated in this state by any agency of the United States to retain custody, transfer, conditionally release, or discharge the individual ~~hospitalized~~ being treated.

SECTION 21. AMENDMENT. Section 25-03.1-40 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-40. Rights of patients. Each patient of a treatment facility ~~shall retain~~ retains the following rights, subject only to the limitations and restrictions authorized by section 25-03.1-41. A patient has the right:

1. To receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability.
2. To the least restrictive conditions necessary to achieve the purposes of treatment.
3. To be treated with dignity and respect.
4. To be free from unnecessary restraint and isolation.
5. To visitation and telephone communications.
6. To send and receive sealed mail.
7. To keep and use personal clothing and possessions.
8. To regular opportunities for outdoor physical exercise.
9. ~~To participate in religious worship of choice~~ To be free to exercise religious faith of choice.
10. To be free from unnecessary medication.
11. To exercise all civil rights including the right of habeas corpus.
12. Not to be subjected to experimental research without the express and informed written consent of the patient or of the patient's guardian.
13. Not to be subjected to psychosurgery, electroconvulsive treatment, or aversive reinforcement conditioning, without the express and informed written consent of the patient or of the patient's guardian.

SECTION 22. AMENDMENT. Section 25-03.1-41 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-41. Limitations and restrictions of patient's rights. The rights enumerated in subsections 5, 6, 7, and 8 of section 25-03.1-40 may be limited or restricted by the treating physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program, if in ~~his~~ that person's professional judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules ~~and regulations promulgated~~ adopted pursuant to section 25-03.1-46. Whenever a physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules ~~and regulations~~, a written order specifying the restriction and the reasons ~~therefor~~ for the restriction must be signed by the physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program and attached to the patient's chart. These restrictions must be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 23. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization involuntary treatment of another person under this chapter is not subject to civil or criminal liability.
2. A physician, psychiatrist, ~~clinical~~ psychologist, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.
3. A person who makes a petition for hospitalization involuntary treatment of another person without having good cause to believe that the other person is suffering from mental illness or chemical dependency and as a result is likely to cause serious harm to ~~himself~~ self or others is guilty of a class A misdemeanor.

SECTION 24. AMENDMENT. Section 25-03.1-43 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records are available to the court and, under regulations established by the department, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient

- to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.
 3. Persons legally representing the patient, including attorneys representing the patient in commitment proceedings, upon proper proof of representation and ~~unless the patient specifically withholds consent~~.
 4. Persons authorized by a court order.
 5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, the patient's consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.
 6. The department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
 7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime, ~~provided such.~~ The disclosures are must be directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances of the incident, the name and address of the patient involved, and ~~such~~ the patient's last known whereabouts.
 8. Qualified service organizations and third-party payers to the extent necessary to perform their functions.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 280

HOUSE BILL NO. 1490
(Representatives D. Olsen, A. Olson, Dorso)
(Senators Mathern, Tallackson)

DEVELOPMENTAL CENTER SERVICES AND RECORDS

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to services provided by the developmental center at Grafton; and to amend and reenact sections 25-04-02, 25-04-04, and subsection 1 of section 25-04-16 of the North Dakota Century Code, relating to services provided by the developmental center at Grafton.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-04-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-04-02. Purpose of developmental center at Grafton.

1. The developmental center at Grafton must be maintained for the relief, instruction, care, and custody of the persons who are developmentally disabled or other persons who may benefit from the services offered at the center. For this purpose the department of human services may introduce and establish such trades and manual industries as in its judgment will best prepare the residents for future self-support.
2. The department may provide onsite and offsite additional services and effectuate its powers and duties to best serve persons who are developmentally disabled and other persons who may benefit from those activities. The services provided and the duties effectuated need not be accredited by the accreditation council on services for people with developmental disabilities or certified by the health care financing administration, or any other similar accrediting or certifying organization, if the service or duty is not provided to persons who are developmentally disabled or if such accrediting or certifying organization does not accredit or certify the service or duty.

SECTION 2. AMENDMENT. Section 25-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-04-04. Who may receive benefits of developmental center. Subject to this chapter and to any rules adopted by the department of human services, the benefits of the developmental center at Grafton may be received by:

1. Developmentally Persons who are developmentally disabled persons and other persons who may benefit from services provided at the developmental center who, in the opinion of the superintendent of the developmental center at Grafton, are of suitable age and capacity to receive instruction in the center and whose deficiencies prevent them from receiving proper training and instruction in the public schools; or

2. Developmentally disabled persons and other persons who may benefit from services provided at the developmental center, who cannot be properly cared for in their homes or other available facilities; or
3. Persons who are developmentally disabled and other persons who may benefit from onsite and offsite services provided or duties effectuated by the developmental center.

Residents and nonresidents of this state may receive the benefits of the developmental center. Priority, however, must be given to residents of this state ~~with and first priority must be given to persons who are developmentally disabled persons receiving first priority.~~

SECTION 3. AMENDMENT. Subsection 1 of section 25-04-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~The patient, former patient, parent of a patient or former patient~~ Except with respect to services provided and duties effectuated for persons other than residents of the developmental center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the resident, former resident, parent of a resident or former resident under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the ~~patient's~~ resident's care and treatment at the developmental center at Grafton. An application from a ~~patient, former patient~~ resident, former resident, personal representative, or guardian must be accompanied by proof of the ~~patient's~~ resident's or the estate of the ~~patient's~~ resident's inability to pay. An application from a parent of a ~~patient~~ resident or former ~~patient~~ resident must be accompanied by proof that the parent has applied for or cooperated fully in an application for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workers' compensation, or medical care and disability programs for provision of services to the ~~patient~~ resident, and has assured the contribution of those services, compensation, and contract and program benefits to meet the cost of care provided to the ~~patient~~ resident by the developmental center at Grafton. A waiver must be granted upon receipt of an application from such a parent, which is complete and supported by the required proofs and is effective for so long as the parent continues to apply for or cooperate fully in applications for services, compensation, and contract and program benefits, and continues to assure the contribution of those services, compensation, and benefits to meet the costs of care. A waiver, once granted, with respect to a ~~patient~~ resident under age eighteen, extinguishes any debt that would otherwise be owed by the ~~patient~~ resident, the ~~patient's~~ resident's parents, or the ~~patient's~~ resident's estate with respect to care and treatment furnished during times the waiver is effective.

SECTION 4. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Quality assurance review committees - Reports - Immunity. Any information, data, report, or record made available to an internal quality assurance review committee of the developmental center at Grafton is confidential and may be used by the committee and the members thereof only in the exercise of the proper functions of the committee. The proceedings and records of the committee are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter under consideration by the committee. Any information, document, or record otherwise available from original sources is not immune from discovery or use in any civil action merely because it was presented during the proceedings of the committee, nor may any person who testified before the committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness' testimony before the committee. This section does not relieve any person of any liability incurred as a result of furnishing health care to the resident. No person furnishing information, data, reports, or records to the committee with respect to any resident of the developmental center is, by reason of furnishing the information, data, reports, or records, liable in damages to any resident, or answerable for willful violation of a privileged or confidential communication. No member of the committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 281

HOUSE BILL NO. 1025
(Legislative Council)
(Interim Budget Committee on Government Services)

DEVELOPMENTAL CENTER SERVICES SALE

AN ACT to authorize the state developmental center to sell services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Institutional sale of services. Subject to approval of the budget section of the legislative council, the state developmental center may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The state developmental center shall determine the rates for services provided. The budget section may approve the provision of a service under this section only after determining that the service is not otherwise being provided by either the private or public sector.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 282

HOUSE BILL NO. 1095
(Human Services Committee)
(At the request of the Department of Human Services)

DEVELOPMENTAL CENTER CARE REPAYMENT

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to claims for repayment of the cost of care at the developmental center at Grafton.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Statute of limitations not bar to recovery. No statute of limitations or similar statute or the doctrine of laches may bar the recovery of costs of care furnished under this chapter. It is not necessary to bill currently any person for those accounts determined to be inactive, currently uncollectible, or for which it has been determined as provided by law that there is no present ability to pay. Current billings may be made for amounts chargeable by law or for which it has been determined the responsible party presently has an ability to pay, but the manner of billing may not affect the total amount due. This section applies to claims for the cost of care furnished on or after July 1, 1961.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 283

SENATE BILL NO. 2115
(Human Services Committee)
(At the request of the Department of Human Services)

SHELTERED WORKSHOPS

AN ACT to repeal chapter 25-15 of the North Dakota Century Code, relating to sheltered workshops for the handicapped.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 25-15 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 284

HOUSE BILL NO. 1274
(Representatives Dorso, Nelson, Rydell)
(Senators Holmberg, Nalewaja, Langley)

INVESTMENT RETURN FOR DEVELOPMENTALLY DISABLED FACILITY

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

Maximum annual return on investment. For-profit institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt over the original asset cost and must be determined as follows:

Percent debt to asset	Return
51 to 80 percent -	2 percent return on original cost of fixed assets.
0 to 50 percent -	3 percent return on original cost of fixed assets.

Approved April 20, 1993

Filed April 20, 1993