

PUBLIC WELFARE

CHAPTER 472

HOUSE BILL NO. 1179

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD AND ADULT FOSTER CARE

AN ACT to create and enact a new subsection to section 50-06-05.1, sections 50-11-01.4, 50-11-02.2, 50-11-03.2, 50-11-04.1, 50-11-04.2, 50-11-04.3, 50-11-04.4, 50-11-04.5, 50-11-04.6, and 50-11-04.7 of the North Dakota Century Code, relating to transitional living services and licensure of foster care facilities for children and adults; to amend and reenact sections 50-11-00.1, 50-11-01, 50-11-02, 50-11-02.1, 50-11-03, 50-11-04, 50-11-05, 50-11-06, 50-11-06.6, 50-11-06.7, 50-11-07, 50-11-08, and 50-11-09 of the North Dakota Century Code, relating to licensure of foster care facilities for children and adults; and to repeal sections 50-11-01.3, 50-11-06.1, 50-11-06.2, 50-11-06.3, 50-11-06.4, and 50-11-06.5 of the North Dakota Century Code, relating to the licensure of foster care facilities for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06-05.1 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:

- a. "Transitional living facility" means a specific site, identified by a licensed child-placing agency and approved by the department, for the provision of transitional living services.
- b. "Transitional living program" means a program that provides transitional living services, and may include an identified program operations location approved by the department.
- c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.

SECTION 2. AMENDMENT. Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-00.1. Definitions. As used in this chapter:

1. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a foster family home, group home, or residential child care facility. "Department" means the department of human services.
2. "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.
3. "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
- ~~2-~~ 4. "Foster family Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage, in which case such limitation does not apply.
5. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person's own care.
6. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.
- ~~3-~~ 7. "Group home" means an occupied private a residence in which foster care is regularly provided for more than four, but less than ten, unrelated children.
- ~~4-~~ 8. "Residential child care facility" means a facility other than an occupied private residence providing foster care to more than eight unrelated children, except as may be otherwise provided by rule or regulation.

SECTION 3. AMENDMENT. Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

¹ ~~50-11-01. Foster care for children - License required. Any person, partnership, voluntary association, or corporation owning or operating a foster family home, group home, or residential child care facility receiving for~~ No person may furnish foster care one or more for children for more than thirty days during the a calendar year shall procure annually without first procuring a license to do so from the department of human services a license so to do. The mandatory provisions of this section requiring licensure do not apply when the care is provided in:

1. The home of a person related to the child by blood or marriage.
2. A home or institution under the management and control of the state or a political subdivision.
3. A home or facility furnishing room and board primarily to accommodate the child's educational or vocational needs.

SECTION 4. Section 50-11-01.4 of the North Dakota Century Code is created and enacted as follows:

50-11-01.4. Foster care for adults - License required. A person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the department.

SECTION 5. AMENDMENT. Section 50-11-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License granted - Term. A license for the operation of a home or institution facility receiving children persons for foster care must be granted, for a period of not more than two years, by the department of human services to reputable and responsible persons upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all children persons who may be received;
2. The persons in active charge of ~~such home or institution and their assistants~~ the facility are properly qualified to carry on efficiently the duties required of them;
3. The ~~home or institution~~ facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children persons cared for therein; and
4. The ~~institution or home~~ facility will be maintained according to the standards prescribed for its conduct by the rules ~~and regulations~~ of the department ~~of human services~~.

~~Such license is in force and effect for a period of not more than one year.~~

¹ NOTE: Section 50-11-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 6. AMENDMENT. Section 50-11-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the department of human services determines that the offense has a direct bearing upon a that person's ability to serve the public as the owner or proprietor operator of a foster family care home or institution for children or adults, facility or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. Section 50-11-02.2 of the North Dakota Century Code is created and enacted as follows:

50-11-02.2. Provisional license. At the discretion of the department, a provisional license may be issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and the rules of the department. The department may set conditions under which a provisional license may be issued, and may issue such a license for any period of time, not to exceed two years, as the department may deem reasonable or appropriate to the circumstances of the case. The department may not be compelled to issue a provisional license.

SECTION 8. AMENDMENT. Section 50-11-03 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03. Department to make rules and regulations - Children registered - Records kept by facility. The department of human services may prescribe forms for the registration and A record of all children and adults cared for in any home or institution facility licensed under this chapter must be maintained at the facility in the manner and form prescribed by the department. The department shall establish reasonable minimum standards, and shall make such reasonable rules and regulations for the conduct of such place as are necessary to carry out the purposes of this chapter.

SECTION 9. Section 50-11-03.2 of the North Dakota Century Code is created and enacted as follows:

50-11-03.2. Use of public funds. Public funds for the purchase of foster care for children or adults may be used only in facilities licensed or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license issued by the department. This section does not apply to any home or institution under the management and control of the state.

SECTION 10. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

2 50-11-04. Inspection by the department - Inspection and report by county social service board. The department of human services and its authorized agents at any time may inspect any home or institution facility licensed under the

² NOTE: Section 50-11-04 was also amended by section 3 of Senate Bill No. 2048, chapter 479.

provisions of this chapter or with respect to which a license application has been made. The department and its agents shall have full and free access to every part of such home or institution the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the home or institution facility must be open for the inspection of the department or its agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the county social service board of the county in which the facility is located shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

SECTION 11. Section 50-11-04.1 of the North Dakota Century Code is created and enacted as follows:

50-11-04.1. Notice. After each inspection or reinspection, the department shall mail or deliver any correction order or notice of noncompliance to the facility.

SECTION 12. Section 50-11-04.2 of the North Dakota Century Code is created and enacted as follows:

50-11-04.2. Correction order - Contents. Whenever the department determines that the facility is not in compliance with this chapter, or the rules adopted thereunder, a notice of license denial or revocation or a correction order must be issued to the facility. A correction order must cite the statute or rule violated, state the factual basis of the violation, specify the time allowed for correction, and specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. A correction order may also state a suggested method of correction or require the submission of a corrective action plan by the facility. If a correction order requires the submission of a corrective action plan, it must also specify a date by which the corrective action plan must be submitted. The department shall, by rule, establish a schedule of allowable times for correction of deficiencies.

SECTION 13. Section 50-11-04.3 of the North Dakota Century Code is created and enacted as follows:

50-11-04.3. Reinspections. A facility issued a correction order under section 50-11-04.2 must be inspected at the end of the period allowed for correction. If, upon inspection, it is determined that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed or sent to the facility. The notice must specify the uncorrected violations and the penalties assessed in accordance with section 50-11-04.5.

SECTION 14. Section 50-11-04.4 of the North Dakota Century Code is created and enacted as follows:

50-11-04.4. Fiscal sanctions. A facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rule. The fiscal sanction must be assessed for each day the facility remains out of compliance after the allowable time for the correction of deficiencies ends and must continue until a

notice of correction is received by the department in accordance with section 50-11-04.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 15. Section 50-11-04.5 of the North Dakota Century Code is created and enacted as follows:

50-11-04.5. Accumulation of fiscal sanctions. A facility must promptly provide written notice to the department when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be promptly reinspected. If, upon reinspection, it is determined that the deficiency has not been corrected, the daily assessment of fiscal sanctions must resume and the amount of fiscal sanctions that otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The department must mail or deliver a notice of resumption to the facility. Recovery of the resumed fiscal sanction must be stayed if the licensee makes a written request for an administrative hearing in the manner provided for in chapter 28-32, provided that the written request for the hearing is made to the department within ten days after mailing or delivery of the notice of resumption.

SECTION 16. Section 50-11-04.6 of the North Dakota Century Code is created and enacted as follows:

50-11-04.6. Recovery of fiscal sanctions - Hearing. Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator makes written request to the department for an administrative hearing within ten days after mailing or delivery of the notice.

SECTION 17. Section 50-11-04.7 of the North Dakota Century Code is created and enacted as follows:

50-11-04.7. Disposition of fiscal sanctions. Any fiscal sanction collected for any violation of this chapter or of rules adopted pursuant to this chapter must be paid into the state treasury for the general fund after the costs of recovering the fiscal sanction are deducted therefrom.

SECTION 18. AMENDMENT. Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

50-11-05. Contents of records not disclosed - Exception. ~~No agent of the department of human services may disclose the contents of the~~ The records of homes or institutions facilities licensed under the provisions of this chapter or of reports which may be received therefrom, except, pertaining to the children or adults receiving care, are confidential and may be made available:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons ~~having~~ who have a definite interest in the well-being of the ~~child~~ adults or children concerned ~~and,~~ who are in a position to serve

~~their interests should that be necessary, and who need to know the contents of the records in order to assure their well-being and interests.~~

SECTION 19. AMENDMENT. Section 50-11-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06. ~~Foster family care home~~ Facility not to hold itself out as having authority to dispose of child by adoption unless licensed. ~~No licensee under the provisions of facility licensed under this chapter may hold himself be held out as having authority to dispose of any child, nor may he advertise that he will give children for adoption, or hold himself be held out directly or indirectly, as being able to dispose of children, unless he has been without first being licensed so to do expressly by the department of human services, according to law under chapter 50-12.~~

SECTION 20. AMENDMENT. Section 50-11-06.6 of the North Dakota Century Code is amended and reenacted as follows:

³ **50-11-06.6. Department to furnish information when requested.**

1. ~~It is the duty of the department of human services whenever called upon~~ Whenever requested by any person, organization, or corporation interested in establishing ~~such a foster family care home~~ facility for children or adults ~~to, the department shall~~ furnish information concerning the minimum requirements for ~~such home a facility~~, and concerning the need for ~~such foster family care home for children or adults a facility~~ in any given community.
2. Any person, organization, or corporation is entitled, upon request, to be advised by the department or county social service boards regarding the policy, procedure, and intentions of the department or county social service boards toward placement of children in that person's, organization's, or corporation's facility if:
 - a. The person, organization, or corporation is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
 - b. The person, organization, or corporation is applying for ~~or renewing~~ its license to provide foster care for children under this chapter.

SECTION 21. AMENDMENT. Section 50-11-06.7 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.7. License approval or denial - Time requirements. Except as otherwise provided in this section, an application to the department for a license required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department ~~of human services~~. The department has an additional forty-five days to grant or deny an

³ NOTE: Section 50-11-06.6 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~initial~~ a license required by this chapter if the department notifies the applicant that the additional time is necessary.

SECTION 22. AMENDMENT. Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11-07. Revocation of license. The department of ~~human services~~ may revoke the license of any ~~foster family care home or institution for children or adults~~ facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license no longer exist.
2. The license was issued upon fraudulent or untrue representations.
3. The owner or proprietor of such home or institution operator or an agent of the facility has violated a provision of this chapter or any of the rules and regulations of the department.
4. The owner or proprietor of such home or institution operator of the facility, or a caregiver in the facility, has been guilty convicted of an offense determined by the department to have a direct bearing upon a the person's ability to serve the public, or residents of the home, as an owner or proprietor facility, or the department determines, following conviction of any other offense, that an owner or proprietor the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 23. AMENDMENT. Section 50-11-08 of the North Dakota Century Code is amended and reenacted as follows:

50-11-08. Denial or revocation of license - Hearing - Appeals. Before any application for a license under the provisions of this chapter is denied, or before revocation of any such license takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's right to a hearing on the matter before the department must be served upon the applicant or licensee. The applicant or licensee must also be notified in writing of his or her right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, to present witnesses at the hearing on behalf of the applicant or licensee and to present documentary evidence, to present testimony and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee has the right to a hearing before the department of ~~human services~~ if the hearing is requested within twenty days after service of the written charges. The department shall hold the hearing within sixty days after the hearing request unless the applicant or licensee agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee. An applicant or licensee may appeal under the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance ~~or renewal~~ of a license required by this chapter.

SECTION 24. AMENDMENT. Section 50-11-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11-09. Appeal from decision of department denying or revoking license. ~~The applicant for a license to operate a foster family care home for children or adults or institution receiving children or adults and facility or a person holding such license whose license for a facility has been revoked may appeal the denial or revocation to the district court from any decision of the department of human services denying an application or revoking a license. An appeal shall must be taken in the manner provided in chapter 28-32.~~

SECTION 25. REPEAL. Sections 50-11-01.3, 50-11-06.1, 50-11-06.2, 50-11-06.3, 50-11-06.4, and 50-11-06.5 of the North Dakota Century Code are repealed.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 473

SENATE BILL NO. 2026
(Legislative Council)
(Interim Budget Committee on Government Services)

DAY CARE PROPERTY LEASE FROM STATE

AN ACT to amend and reenact section 50-06-06.6 of the North Dakota Century Code, relating to leases of real and personal property by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-06.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-06.6. Department of human services may lease real and personal property. The executive director of the department of human services ~~is authorized to~~ may lease surplus farm and pasture land at the state hospital and the developmental center, ~~and to lease space in a building at the developmental center for a child care center.~~ The executive director ~~is also authorized to~~ may enter into further leases of real or personal property at the developmental center or the state hospital upon a specific finding that the granting of each such leasehold interest, except those relating to child care services, will result in a net economic gain for the department, taking into account all identifiable costs. Any lease of space for the purpose of providing child care services must meet requirements as determined by the department. The executive director may prescribe the terms and conditions of any leases entered into pursuant to this section and may renew existing leases. Any lease entered into must be subject to renewal or cancelable each biennium. Any lease or lease renewal of unneeded building or building space may be made only after consultation with the administrator of the state fire and tornado fund.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 474

SENATE BILL NO. 2028
(Legislative Council)
(Interim Budget Committee on Government Services)

CHILD CARE PROVIDER REIMBURSEMENT

AN ACT to provide for child care provider reimbursements; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Child care provider reimbursement payments. Within the limits of federal regulations, the department of human services shall directly reimburse early childhood facilities monthly under child care assistance programs administered by the department.

SECTION 2. Child care provider reimbursement system. Within the limits of federal regulations, the department of human services may generate state matching funds for federal child care assistance programs by withholding monthly from a child care provider's reimbursement payment under child care assistance programs administered by the department, an amount not to exceed fourteen dollars for each child for whom at least a portion of the child care services costs are paid by the department. The amounts withheld must be deposited into the department's operating fund and may be used only to match federal funds for child care assistance programs administered by the department. The department may also obtain state matching funds from other available sources. This section is effective only when child care provider reimbursement payments made to child care providers pursuant to this section are at least fourteen dollars per month more than the reimbursement payments would be without the provisions of this section.

SECTION 3. APPROPRIATION. There is hereby appropriated from special funds, derived from federal funds and other funds arising pursuant to section 2 of this Act, and other income, the sum of \$2,719,707, or so much of the sum as may be necessary, to the department of human services for the purpose of providing child care assistance payments for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 475

SENATE BILL NO. 2473
(Senators Mathern, Lindgren, Redlin, Robinson)
(Representative Pyle)

TRAUMATIC BRAIN INJURY SERVICES

AN ACT to provide services for persons with traumatic brain injury; and to provide a continuing appropriation subject to budget section approval.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 4 of this Act:

1. "Department" means the department of human services.
2. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial disability or impairment, including open and closed head injuries that may result in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functioning, information processing and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma, but may include brain injuries caused by anoxia and other related causes.

SECTION 2. Department to be lead agency - Cooperation of other agencies. The department shall act as lead agency in the state for the purpose of coordinating services to persons with traumatic brain injury. State agencies and political subdivision agencies shall cooperate with the department to permit the department to efficiently coordinate services to persons with traumatic brain injury while avoiding duplication of services. Neither sections 1 through 4 of this Act, nor any activity undertaken by the department under sections 1 through 4 of this Act, may be construed as creating a right to any benefit or service not specifically required to be granted as a condition of the receipt of grants of federal funds.

SECTION 3. Department may submit plans - Seek waivers. The department may submit state plans and amendments to state plans, concerning programs administered under title 50, to carry out sections 1 through 4 of this Act. The department may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

SECTION 4. Authority to accept and expend grants, gifts, and services - Continuing appropriation - Budget section approval. The department may apply for and accept any funds, grants, gifts, or services made available for the purpose of providing or coordinating services to persons with traumatic brain injury by any federal agency or department or any private agency or individual. Funds received by the department under this section must be deposited in the state treasury in a special fund designated as the traumatic brain injury fund. There is hereby appropriated out of the traumatic brain injury fund any moneys that may become

available under this section for the purposes of carrying out sections 1 through 4 of this Act. No moneys may be expended from the fund without prior approval of the budget section of the legislative council.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 476

SENATE BILL NO. 2484
(Senators DeMers, Lips, Kelly)
(Representatives Svedjan, Kroeber, Wentz)

INDEPENDENT LIVING SERVICES

AN ACT to authorize the North Dakota independent living council to develop and implement a statewide network of centers for independent living and independent living services for people with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. "Center for independent living" means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency that is designed and operated within a local community by individuals with disabilities, that provides an array of independent living services and programs, and that does not offer permanent housing among its services.
2. "Consumer control" means power and authority vested in individuals with disabilities and, when applied to a center for independent living, means at least fifty-one percent of the principal governing board, management, and staff are individuals with disabilities.
3. "Council" means the statewide independent living council.
4. "Designated state agency" means the vocational rehabilitation division of the department of human services.
5. "Director" means the director of the designated state agency.
6. "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities.
7. "Independent living core services" means information and referral services, independent living skills training, peer counseling, and individual and systems advocacy.
8. "Independent living services" includes independent living core services and other services and assistance that may include:
 - a. Counseling services, including psychological, psychotherapeutic, and related services;

- b. Services related to securing housing or shelter;
- c. Assistive technology;
- d. Interpreter and reader services;
- e. Personal assistance services, including attendant care and training of personnel providing those services;
- f. Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation and other support services;
- g. Services and technical assistance related to the implementation of the federal Americans with Disabilities Act and other related state and federal laws;
- h. Activities supporting, assisting, or maintaining life in the community;
- i. Transportation, including referral and assistance for transportation;
- j. Individual and group community integration activities;
- k. Training to develop skills that promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;
- l. Appropriate preventive services to decrease the needs of individuals assisted under this Act for similar services in the future;
- m. Community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and
- n. Other services, as may be necessary, not inconsistent with this Act.

SECTION 2. Statewide independent living council. A statewide independent living council is established. The council shall adopt bylaws governing operations of the council. The council shall meet at least quarterly.

SECTION 3. Membership of the council.

1. The governor, or an entity designated by the governor, shall appoint the members of the council, except as provided in subdivision b of subsection 2. The appointing authority shall select members after soliciting recommendations from representatives of consumer-controlled organizations representing a broad range of individuals with disabilities. The council shall select a chairman from among its membership.
2. The council must include:
 - a. A majority of individuals with disabilities who are not state employees.
 - b. At least fifty percent of the directors of the centers for independent living serving the state or the directors' designated representatives

as chosen by all the directors of centers for independent living serving the state.

- c. Ex officio nonvoting members who are a representative from the designated state agency and representatives from other state agencies that provide services to individuals with disabilities.
- d. Additional members may be:
 - (1) Representatives from centers for independent living;
 - (2) Parents and guardians of individuals with disabilities;
 - (3) Advocates of and for individuals with disabilities;
 - (4) Representatives from private businesses;
 - (5) Representatives from organizations that provide services for individuals with disabilities; and
 - (6) Other appropriate individuals.
3. The council must be composed of members who provide statewide representation, who represent a broad range of individuals with disabilities, and who are knowledgeable about the independent living philosophy and centers for independent living services and programs.
4. A member of the council may not serve more than two consecutive three-year terms. The two consecutive three-year term limit does not include the term of a member appointed to fill a vacancy occurring before the expiration of the term for which appointed or the reduced terms of service of the members initially appointed to provide for the expiration of terms on a staggered basis as specified by the appointing authority. Any vacancy occurring in the membership of the council must be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.

SECTION 4. Duties of the independent living council. The council shall:

1. Jointly develop and submit, in conjunction with the designated state agency, the state plan as required.
2. Monitor, review, and evaluate the implementation of the state plan.
3. Coordinate activities with councils that address the needs of specific disability populations and issues under other federal and state law.
4. Prepare reports and make recommendations, as necessary, to the governor, legislative assembly, and designated state agency.

SECTION 5. State plan.

1. To be eligible to receive financial assistance, the council and the designated state agency, jointly, shall develop a plan. The plan must provide for review and revision of the plan at least once every three years to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address on a

statewide and comprehensive basis, needs for the state for the development and support of a statewide network of centers for independent living, the provision of statewide independent living services, and working relationships between programs providing independent living services and independent living centers, and the vocational rehabilitation program established under title I of the Rehabilitation Act of 1973, as amended, and any other program providing services to individuals with disabilities.

2. The plan shall:
 - a. Specify the objectives to be achieved under the plan and establish timelines for the achievements of those objectives.
 - b. Explain how the objectives are consistent with and further the purpose of this Act.
 - c. Set forth a strategy for the expansion and enhancement of the statewide network of centers for independent living.
 - d. Describe the purpose, extent, and scope of independent living services and programs funded by the state.
 - e. Set the priorities for the expenditure of state funds appropriated for the purposes of this Act.
 - f. Describe efforts to coordinate federal and state funding for centers for independent living and independent living services and programs.
3. The plan must provide satisfactory assurances that all recipients of financial assistance will:
 - a. Notify all individuals seeking or receiving services of the availability of the client assistance program established under section 112 of the Rehabilitation Act of 1973, as amended, the purposes of the services provided under that program, and how to contact that program;
 - b. Take affirmative action to employ and advance in employment, qualified individuals with disabilities on the same terms and conditions required with respect to the employment of qualified individuals with disabilities under the provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act;
 - c. Adopt fiscal control and fund accounting procedures necessary to ensure the proper disbursement of and accounting for funds paid by the state under this Act; and
 - d. Maintain other records appropriate to facilitate an effective audit.
4. The plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established, including evaluation of satisfaction by individuals with disabilities.

SECTION 6. Independent living centers.

1. Under the direction set forth in the state plan, the director, in cooperation with the council, shall award grants to eligible agencies from funds appropriated for this purpose.
2. The director, with the cooperation of the council, may make a grant under this section to any eligible agency that has the power and authority to carry out the purposes of this Act, that is determined by the director and the council to be able to plan, conduct, administer, and evaluate a center for independent living consistent with the standards and assurances, and that submits an application to the director as required.
3. In the administration of this section, the designated state agency shall award grants to any eligible agency that is receiving funds for this purpose on June 30, 1992, unless the director finds that the agency involved fails to meet program and fiscal standards and assurances.
4. The minimum annual allocation for each center must be established in response to recommendations of the council. Priority for distribution of these funds is as follows:
 - a. Centers funded through title VII of the Rehabilitation Act of 1973, as amended, but receiving less than the minimum annual allocation.
 - b. New centers for independent living as planned by the council.
 - c. Expansion of current centers to serve unserved or underserved areas of the state.
5. If there is no center for independent living serving a region or a region is underserved and funds are sufficient to support an additional center for independent living within the state, the director may award a grant under this section to the most qualified applicant consistent with the state plan and setting forth design of the state for establishing a statewide network of centers for independent living.

SECTION 7. Standards and assurances.

1. Each center for independent living that receives assistance under this Act must comply with the standards set out in subsection 2 to ensure that all programs and activities are planned, conducted, administered, and evaluated in a manner consistent with the purposes of the Act.
2. The standards are:
 - a. The center shall promote and practice the independent living philosophy of:
 - (1) Consumer control of the center, regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;
 - (2) Self-help and self-advocacy;
 - (3) Development of peer relations and peer role models; and

- (4) Equal access of individuals with disabilities to society and to all services, programs, activities, resources, and facilities whether public or private and regardless of the funding source.
 - b. The center shall provide services to individuals with a range of disabilities. The center shall provide services on a cross-disability basis for individuals with different types of disabilities, including individuals with disabilities who are members of populations that are unserved or underserved. Eligibility for services at any center for independent living may not be based on the presence of any one or more specific disabilities.
 - c. The center shall facilitate the development and achievement of independent living goals selected by individuals who seek that assistance by the center.
 - d. The center shall work to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with disabilities.
 - e. The center shall provide independent living core services and, as appropriate, a combination of any other independent living services.
 - f. The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with disabilities.
 - g. The center shall conduct resource development activities to obtain funding from sources other than that available under this Act.
3. The applicant shall provide, as the council may require, satisfactory assurance that:
 - a. The applicant is an eligible agency.
 - b. The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of that board will be composed of individuals with disabilities.
 - c. The applicant will comply with the standards set forth in this section.
 - d. The applicant will establish clear priorities through annual and three-year programs and financial planning objectives for the center, including overall goals or mission for the center, a work plan for achieving the goals or mission, specific objectives, services priorities, and types of services to be provided along with a description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year state plan.
 - e. The applicant will use sound organization, personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with disabilities on the same

terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act.

- f. The applicant will ensure that the majority of its staff, and individuals on its staff in decisionmaking positions, are individuals with disabilities.
- g. The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit.
- h. The applicant will conduct annual self-evaluations, prepare an annual report, and maintain records, adequate to measure performance with respect to the standards containing information regarding, at least:
 - (1) The extent to which the center is in compliance with the standards.
 - (2) The numbers and types of individuals with disabilities receiving services through the center.
 - (3) The types of services provided through the center and the number of individuals with disabilities receiving each type of service.
 - (4) The source and amounts of funding for the operation of the center.
 - (5) The number of individuals with disabilities who are employed by, and the number who are in management and decisionmaking positions in the center.
 - (6) The comparison, when appropriate, of the activities of the center in prior years, with the activities of the center in the most recent year.
- i. Individuals with severe disabilities who are seeking services from the center will be notified by the center of the existence of the availability of the client assistance program and a way to contact that program.
- j. Aggressive outreach, regarding services provided through the center, will be conducted in an effort to reach populations of individuals with disabilities that are unserved or underserved by programs under this Act, especially minority groups and urban and rural populations.
- k. Staff at centers for independent living will receive training on how to serve the unserved and underserved populations, including minority groups and urban and rural populations.
- l. The center will submit to the council a copy of its approved grant application and the annual audit required under subdivision g.
- m. The center will prepare and submit a report to the designated state agency, at the end of each fiscal year, that contains the information described in subdivision h and information regarding the extent to

which the center is in compliance with the standards set forth in subsection 2.

- n. Each individual receiving independent living services will have an independent living plan if that individual requests one.
4. Services may be provided under this Act to an individual with a disability regardless of age, to the parents and family of an individual with a disability, and to others in the community.

SECTION 8. Independent living services and programs. From sums appropriated in addition to those allocated for independent living centers, the designated state agency may allocate funds, pursuant to the state plan:

1. To demonstrate ways to expand and improve independent living services.
2. To support the operation of centers for independent living.
3. To support activities to increase the capacities of centers for independent living to develop comprehensive approaches or systems for providing independent living services.
4. To conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to policymakers to enhance independent living services for individuals with disabilities.
5. To train individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the independent living philosophy.
6. To provide outreach to populations that are unserved or underserved by programs under this Act, including minority groups and urban and rural populations.

Approved March 26, 1993

Filed March 26, 1993

CHAPTER 477

HOUSE BILL NO. 1281
(Representatives Payne, Aarsvold)
(Senators W. Stenehjem, Tallackson)

AFDC WORK INCENTIVE WAIVER

AN ACT relating to a waiver from the federal government to allow employment incentives for recipients of aid to families with dependent children benefits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Department to apply for waiver. The department of human services shall apply for a waiver from the federal government to allow the department to adopt rules to provide an incentive to recipients of aid to families with dependent children benefits to obtain work. Upon receipt of the waiver, the department shall disregard, with no prescribed time limitations, an amount equal to thirty dollars plus one-third of the recipient's earned income, in a manner otherwise consistent with the requirements of 45 CFR 233.20(a)(11), in determining need and amount of assistance in the aid to families with dependent children program.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 478

SENATE BILL NO. 2031
(Legislative Council)
(Interim Budget Committee on Human Services)

CHILD SUPPORT INCENTIVES ACCOUNT

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to the child support incentives account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support incentives account. The child support incentives account is established as a special account in the state treasury. One percent of the total amount of child support incentive payments paid to the state by the office of child support enforcement of the United States department of health and human services must be deposited into the child support incentives account. The state agency, within the limits of legislative appropriation, shall distribute the moneys in the child support incentives account as grants to organizations determined eligible by the state agency for the purpose of providing child support related education of and training for individuals involved in child support enforcement. The state agency, prior to distributing the moneys in the child support incentives account, shall invite comments regarding the distribution of the moneys from representatives of the North Dakota state's attorneys association and regional child support offices and other interested persons.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 479

SENATE BILL NO. 2048
(Legislative Council)
(Interim Special Education Committee)

FOSTER HOMES LICENSING AND INSPECTIONS

AN ACT to create and enact two new sections to chapter 50-11 of the North Dakota Century Code, relating to the licensure of foster care homes; and to amend and reenact section 50-11-04 of the North Dakota Century Code, relating to inspections of foster homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Fire prevention training. Before initial licensure and each renewal under this chapter, each foster parent shall complete a course of instruction related to fire prevention and safety. The state fire marshal shall design the course in cooperation with the department of human services. The course must be available on videotape or any equivalent medium as designed by the department. The department of human services shall offer the course throughout the state.

SECTION 2. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Self-declaration form. The department of human services shall prescribe self-declaration forms to be completed and signed by each foster parent before initial licensure and each renewal under this chapter. The self-declaration forms must include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of appliances, electrical systems, and heating systems.

SECTION 3. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

¹ ~~50-11-04. Inspection by the department~~ Inspections. The department of human services and its authorized agents at any time may inspect any home or institution licensed under ~~the provisions of~~ this chapter. The department and its agents shall have full and free access to every part of such home or institution. All records of the home or institution must be open for the inspection of the department or its agents and they may see and interview all children and adults cared for therein. The department of human services also may require on a case-by-case basis, before

¹ NOTE: Section 50-11-04 was also amended by section 10 of House Bill No. 1179, chapter 472.

or after licensure, that the foster home undergo a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection that the department determines necessary to carry out the purposes of this chapter.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 480

SENATE BILL NO. 2030
(Legislative Council)
(Interim Budget Committee on Government Services)

CHILD CARE OPERATOR CPR TRAINING

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to family child care home licensing requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Family child care home operator - Cardiopulmonary resuscitation certification. The operator of a family child care home must be certified in rescuer cardiopulmonary resuscitation by the American heart association or the American red cross or by a similar cardiopulmonary resuscitation training program approved by the department.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 481

SENATE BILL NO. 2408
(Senators Mathern, Grindberg, O'Connell)
(Representatives J. Berg, Payne, Sveen)

STATE DENTAL INSURANCE PLAN

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the establishment of a state unified dental service insurance coverage plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department may establish and administer state unified dental insurance coverage plan. The department of human services may establish a state unified dental insurance coverage plan to provide dental service coverage to all persons eligible for medical assistance pursuant to section 50-24.1-02. The department, or a private entity under contract with the department, may administer the plan. Any private entity that contracts with the department under this section must have on its board of directors at least one dentist and one person to whom services are provided under the plan. The plan must provide insurance coverage of the general and usual services rendered and the care administered by licensed dentists. The department may apply for federal funds to administer the plan based on estimates of the medical assistance eligible persons within this state. The department may apply for a waiver to allow the use of medicaid funds to administer the plan and to provide the services determined by the department.

Approved March 16, 1993

Filed March 16, 1993

CHAPTER 482

SENATE BILL NO. 2337
(Senator DeMers)
(Representatives Glassheim, Svedjan)

MEDICAL ASSISTANCE EXEMPT ASSETS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to exempt income and resources to determine medical assistance eligibility for the disabled.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Exempt income and resources. The department may not consider, as an available asset for purposes of determining eligibility for benefits under this chapter, income and resources set aside by a blind or disabled person as part of a plan to achieve self-support, if the plan has been approved by the social security administration.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 483

HOUSE BILL NO. 1096
(Human Services Committee)
(At the request of the Department of Human Services)

NURSING HOME RATES

AN ACT to amend and reenact subsections 7, 11, and 16 of section 50-24.4-01 of the North Dakota Century Code, relating to nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7, 11, and 16 of section 50-24.4-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances, and medical services furnished at nursing home expense.
11. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01 or a facility owned or administered by the state, which agrees to accept a rate established under this chapter.
16. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any ~~other third party~~ governmental entity with ratesetting authority, including the veterans' administration or medicare.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 484

HOUSE BILL NO. 1032
(Legislative Council)
(Interim Budget Committee on Long-Term Care)

NURSING HOME PROPERTY REIMBURSEMENT

AN ACT relating to a property cost reimbursement study and property cost reimbursement to certain nursing homes; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Property reimbursement study - Reimbursement in certain cases.

1. During the 1993-95 biennium, the department of human services shall continue its study of the medical assistance property cost reimbursement system for the nursing home industry in this state which was initiated under section 1 of chapter 517 of the 1991 Session Laws of North Dakota. The department shall continue the nine-member advisory committee for the study consisting of departmental staff, at least three representatives of the long-term care industry, and three legislative members appointed by the chairman of the legislative council. The department may expend funds to engage a qualified consulting firm to assist in the study and shall continue to report on the progress of the study and any findings to the legislative council or a committee designated by the council. The legislative council shall report any findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-fourth legislative assembly.
2. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment that was purchased by the nursing home provider after July 1, 1985, and before January 1, 1991, based on property costs created by good faith, arm's length purchase agreements. For purposes of this Act, "property costs" means property taxes including special assessments, lease and rental costs of personal property and reasonable legal expense, all to the extent allowable under chapter 50-24.4 and rules adopted by the department; interest expense allowable under rules adopted by the department without the application of subdivision f of subsection 1 of section 75-02-06-04 of the North Dakota Administrative Code; personal property depreciation based upon purchase price paid by the buyer; and real property depreciation based upon current reproduction cost of those assets depreciated on a straight-line basis over their useful lives to the date of acquisition by the buyer and increased by one-half of the percentage increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, or the purchase price paid by the buyer, whichever is lower.

SECTION 2. APPROPRIATION. There is hereby appropriated the sum of \$60,000, including \$30,000, or so much of that amount as may be necessary, out of any moneys in the general fund in the state treasury, not otherwise appropriated, and \$30,000, or so much of that amount as may be necessary, from special funds derived from federal funds or other income to the department of human services, for the purpose of defraying the expenses of continuing the study of medical assistance property cost reimbursement for nursing homes for the biennium beginning July 1, 1993, and ending June 30, 1995. The appropriation made available pursuant to this section is limited to the amount of funds unspent as of June 30, 1993, from the appropriation contained in section 2 of chapter 517 of the 1991 Session Laws of North Dakota.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 485

SENATE BILL NO. 2400
(Senators Keller, Robinson, Tennesfos)
(Representatives Clayburgh, Mahoney, Wentz)

NURSING HOME RATES

AN ACT to amend and reenact section 50-24.4-18 of the North Dakota Century Code, relating to establishing deadlines for hearings and decisions concerning nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.4-18. Appeals.

1. A nursing home dissatisfied with the final rate established may, upon completion of the reconsideration, appeal. An appeal may be perfected by mailing or delivering the information described in subdivisions a through e of this subsection to the department, at such address as the department may designate, mailed or delivered on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including the following information:
 - a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;
 - b. A statement of each disputed item and the reason or basis for the dispute;
 - c. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
 - d. The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. Repealed by S.L. 1991, ch. 637, § 9, effective July 1, 1991. Upon assignment, the hearing officer shall set and conduct the hearing within one hundred twenty days of the date of assignment.
3. Within sixty days after all evidence has been received, the department shall make its findings of fact and conclusions of law and enter a decision based upon its findings and conclusions.

4. A nursing home may seek a writ of mandamus to compel the hearing officer to timely set and conduct a hearing or to compel the department to timely issue a decision; however, no writ may be granted to a nursing home contributing to the delay.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 486

SENATE BILL NO. 2404
(Senators Keller, Robinson, Tennefos)
(Representatives Bodine, Clayburgh, Wentz)

NURSING HOME RATES AND APPEALS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home rates pending reconsideration and appeal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Rates pending reconsideration and appeal.

1. For purposes of this section:

- a. "Final decision rate" means the amount, if any, determined on a per-day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration made under section 50-24.4-17, a request for an administrative appeal under section 50-24.4-18, or a request for judicial appeal under chapter 28-32 taken from a decision on an administrative appeal.
- b. "Pending decision rate" means the amount, determined on a per-day basis, by which a rate otherwise set under this chapter would increase if a nursing home prevails on a request for reconsideration made under section 50-24.4-17, on a request for an administrative appeal under section 50-24.4-18, or on a request for a judicial appeal under chapter 28-32 taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter or through rules adopted under section 50-24.4-02.

2. If a nursing home has made a request for reconsideration under section 50-24.4-17, taken an administrative appeal under section 50-24.4-18, or taken a judicial appeal under chapter 28-32 from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per-day basis, the effect of each of the disputed issues on the nursing home's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

3. The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding section 50-24.4-19, the total must be the rate chargeable to private-paying residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal.
4. The nursing home shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-paying resident from the date the nursing home charges a private-paying resident the pending decision rate.
5. If the pending decision rate paid by a private-paying resident exceeds the final decision rate, the nursing home shall refund the difference, plus interest at the legal rate, within sixty days after the final decision is no longer subject to appeal. If a nursing home fails to provide a timely refund to a living resident or former resident, the nursing home shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the nursing home shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the nursing home may make any disposition of the refund permitted by law. Interest paid under this subsection is a nonallowable cost.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 487

SENATE BILL NO. 2331
(Senators Wogsland, Mathern, Mushik)
(Representatives Aarsvold, A. Olson, Schindler)

NURSING HOME RESIDENT EXTRAORDINARY NEEDS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home residents with extraordinary medical needs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Residents with extraordinary needs. The department shall develop criteria identifying extraordinary medical needs so severe as to make it difficult for affected persons to secure necessary care in nursing facilities. The department shall consider those extraordinary medical needs that may be associated with extensive pulmonary disease, specialized rehabilitation, and ventilator dependence. Notwithstanding any other provision of this chapter, the department may determine rates for nursing home residents with extraordinary medical needs. The department shall consider the costs of alternative care or treatment in determining rates for nursing home residents with extraordinary medical needs. A rate so determined by the department is effective for services provided after:

1. The department has agreed that the criteria are met;
2. The facility has agreed to provide necessary services at that rate; and
3. For periods when the person is not eligible for medical assistance, the person, or anyone who may lawfully act on the person's behalf, has agreed to the rate.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1993

Filed March 26, 1993

CHAPTER 488

SENATE BILL NO. 2116
(Judiciary Committee)

(At the request of the Department of Human Services)

RELIGIOUS BELIEFS HARM TO CHILD

AN ACT to amend and reenact section 50-25.1-05.1 of the North Dakota Century Code, relating to findings of child abuse or neglect in cases involving parental religious beliefs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.1. Determination of probable cause. Upon completion of the investigation of the initial report of child abuse or neglect, a determination must be made that there does or does not exist probable cause to believe that child abuse or neglect is indicated.

1. This determination is the responsibility of:
 - a. The state child protection team in all cases of alleged institutional child abuse or neglect; and
 - b. In all other cases of alleged abuse or neglect, by the department or the department's designee.
2. Probable cause to believe that child abuse or neglect is indicated may not be determined where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child where the child's life or safety requires it or the child is subject to harm or threatened harm.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 489

SENATE BILL NO. 2308
(Senators W. Stenehjem, Lindgren, Maxson)
(Representatives C. Carlson, Kretschmar, Stenehjem)

CHILD ABUSE OR NEGLECT FINDINGS

AN ACT to amend and reenact section 50-25.1-05.4 of the North Dakota Century Code, relating to rules to resolve complaints of suspected child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-05.4 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.4. Department of human services to adopt rules for review of investigations of probable cause findings. The department of human services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct or result of the investigation of a probable cause finding of the suspected child abuse or neglect.

Approved April 12, 1993
Filed April 12, 1993