

PUBLIC WELFARE

CHAPTER 419

SENATE BILL NO. 2038

(Legislative Council)

(Budget Committee on Long-Term Care)

TRAUMATIC BRAIN-INJURED FACILITY REPORT

AN ACT to provide for reports to the legislative council regarding the establishment of a traumatic brain-injured facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TRAUMATIC BRAIN-INJURED FACILITY REPORT TO THE LEGISLATIVE COUNCIL. The director of the department of human services shall report periodically to the legislative council, or an interim committee designated by the legislative council, during the 1999-2000 interim regarding the establishment of a traumatic brain-injured facility in western North Dakota. The reports must include information regarding the number of beds available and the location of any beds available for conversion to a traumatic brain-injured facility in western North Dakota and the status of the number of beds that have been converted for a traumatic brain-injured facility in western North Dakota.

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 420

SENATE BILL NO. 2157

(Political Subdivisions Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES STUTSMAN COUNTY LAND CONVEYANCE

AN ACT to authorize the department of human services to convey certain land in Stutsman County, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land authorized.

1. The department of human services may convey the land described in this section to the city of Jamestown, North Dakota, for the price and on the terms as determined by the department of human services. The land to be conveyed is a part of the grounds of the state hospital described as follows:

A tract of land located within Government Lots 2 and 3 within the North Half (N 1/2) of Section 5, Township 139 North, Range 63 West of the Fifth Principal Meridian, Stutsman County, North Dakota being more particularly described as follows:

Commencing at the northeast corner of said Section 5; thence $S0^{\circ}04'17''E$, along the east line of said Section 5, 31.80 feet to a point on the southerly right-of-way line of Interstate 94, said point being 160.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence $N89^{\circ}41'07''W$, along said southerly right-of-way line, 1783.06 feet; thence $S0^{\circ}18'53''W$, 50.00 feet to a point on said southerly right-of-way line that is 210.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence $N89^{\circ}41'07''W$, along said southerly right-of-way line, 586.59 feet to the northwest corner of Auditor's Lot 5-2, said point being the point of beginning; thence $S0^{\circ}18'53''W$, along the westerly line of said Auditor's Lot 5-2, 100.00 feet; thence $N89^{\circ}41'07''W$, 91.71 feet; thence $S0^{\circ}18'53''W$, 130.00 feet; thence $N89^{\circ}41'07''W$, 98.90 feet to the point of beginning of a $1^{\circ}04'59''$ curve to the left, said curve having a chord bearing of $S84^{\circ}19'00''W$ and a chord length of 1105.50 feet and said point being 440.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence, along said curve to the left and parallel with the centerline of the median of said Interstate 94, an arc length of 1107.52 feet to a point on the northeasterly line of Auditor's Lot 5-3; thence $N32^{\circ}22'27''W$, along said northeasterly line of Auditor's Lot 5-3, 106.76 feet to the point of beginning of a $1^{\circ}03'47''$ curve to the right, said curve having a chord bearing of $N84^{\circ}06'58''E$ and a chord length of

1163.90 feet and said point being 340.00 feet, measured at right angles from the centerline of the median of said Interstate 94; thence, along said curve to the right and parallel with the centerline of the median of said Interstate 94, an arc length of 1166.18 feet; thence N0°18'53"E, 130.00 feet to a point on the southerly right-of-way line of said Interstate 94 that is 210.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence, S89°41'07"E, along said southerly right-of-way line, 190.61 feet to the point of beginning. Said tract of land contains 3.34 acres more or less.

2. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 421

SENATE BILL NO. 2114

(Human Services Committee)

(At the request of the Department of Human Services)

TEMPORARY ASSISTANCE TO NEEDY FAMILIES

AN ACT to amend and reenact subsection 2 of section 50-01.2-00.1 and subsection 1 of section 50-09-29 of the North Dakota Century Code, relating to local expenses of administration and requirements for temporary assistance for needy families; to authorize the department of human services to negotiate a pilot project for the state's participation in direct funding and administration of tribal temporary assistance to needy families; to provide for a legislative council study; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-01.2-00.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Local expenses of administration" includes costs for personnel, space, equipment, computer software, ~~costs associated with achieving caseload ratios of sixty-five cases to one worker,~~ materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include initial acquisition of computers and related hardware approved by the department for the training, education, employment, and management program, custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996, or, unless agreed to by the county social service board, any costs related to pilot programs before the programs are implemented on a statewide basis.

SECTION 2. AMENDMENT. Subsection 1 of section 50-09-29 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2, 3, and 5 through 7, the department of human services, in its administration of temporary assistance for needy families in the form of the training, education, employment, and management program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;

- c. Exempt up to twenty percent of the caseload from the requirements of subdivision b due to mental or physical disability of a parent or child, ~~or~~ mental or physical incapacity of a parent, or other hardship;
- d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
- e. Unless otherwise required by federal law, and except as provided in subdivision m, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996, for the first five years of residence in the United States, and after five years of residence, until the immigrant has ten years of work history, provide benefits only after considering the income and assets of the immigrant's sponsor;
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department not ~~exceeding~~ to exceed five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
- g. Seek approval of appropriate federal officials, and, if approved, use a simplified food stamp program to provide food stamp benefits to eligible households receiving temporary assistance for needy families;
- h. Exclude one motor vehicle of any value in determining eligibility;
- i. Require work activities as defined in section 14-08.1-05.1 for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child, or mental or physical incapacity of a parent;
- j. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- k. Conduct a program, designed to reach state and local law enforcement officials, the education system, and relevant counseling services, which provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men;
- l. Afford otherwise eligible households that have resided in this state less than twelve months benefits subject to the lifetime limit of the household's immediately previous state of residence;
- m. Provide benefits to otherwise eligible noncitizens who are lawfully present in the United States as refugees, asylees, veterans, active duty military personnel, spouses and dependents of active duty military personnel, and Cuban-Haitian entrants;
- n. Establish and enforce standards against program fraud and abuse;

- o. Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
- p. Provide an employment placement program;
- q. Implement, as soon as practicable, an electronic fund transfer system;
- r. ~~Not exempt~~ Consider exempting funds in individual development accounts;
- s. ~~Sanction parents who, without good cause, fail to ensure dependent minor children attend school unless the child has received a high school diploma or equivalent~~ Determine the unemployment rate of adults living on an Indian reservation by using the unemployment data provided by job service North Dakota;
- t. When appropriate, require household members to complete high school;
- u. Exempt single parents from required work activities as defined in section 14-08.1-05.1 if the exempted parent has a child under four months of age;
- v. Count only approved work activities as defined in section 14-08.1-05.1 for the purpose of measuring work participation rates;
- w. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- x. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- y. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- z. Require each household to participate in developing an individual responsibility plan and provide for progressive sanctions, including termination of assistance to the household, if adult ~~and~~ or minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
- aa. Provide pre-pregnancy family planning services that are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
- bb. Seek federal funding to assist in the evaluation of the program;

- cc. Seek the approval of the secretary to develop and use a single application form for all economic assistance programs administered by the county social service boards;
- dd. After June 30, 1998, except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the month of the child's probable conception;
- ee. Disregard earned income as an incentive allowance for no more than twelve months; and
- ff. Except as otherwise may be permitted by federal law, not reduce or terminate benefits based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained six years of age and the individual proves a demonstrated inability to obtain needed child care because of the:
 - (1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
 - (2) Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
 - (3) Unavailability of appropriate and affordable formal child care arrangements.

SECTION 3. LEGISLATIVE INTENT - DEPARTMENT TO NEGOTIATE PILOT PROJECT - REPORTS TO LEGISLATIVE COUNCIL.

1. It is the legislative intent of the legislative assembly that the department of human services offer to negotiate with the tribal government of any Indian tribe in this state to establish a pilot project to begin operation no sooner than July 1, 2001, under which that tribal government will secure direct funding for the administration of a tribal family assistance grant under 42 U.S.C. 612 from the United States department of health and human services, and under which the state will participate, in cash or in kind, in the cost of providing services under the tribal family assistance grant, provided:
 - a. All components of the program are administered by the department of human services, one or more county social service boards, one or more contractors with the department of human services, or any combination thereof;
 - b. Interagency agreements entered into between the department of human services and other state or federal agencies, essential to the state's receipt of federal funds otherwise available under title IV-A, title IV-B, title IV-D, or title IV-E of the Social Security Act, will be honored by the tribe to the extent the department of human services requires the county social service boards to honor those agreements;
 - c. The annual funding contributed by the state may not exceed an amount calculated by dividing the nonfederal share of total state expenditures under title IV-A of the Social Security Act for the

twelve-month period beginning October 1, 1993, and ending September 30, 1994, by the monthly average number of title IV-A filing units receiving title IV-A benefits in the state during that period, and multiplying the result times the number of IV-A filing units on April 1, 1999, with a primary information person who:

- (1) Is an enrolled member of a tribe or is married to an enrolled member of a tribe who is also a member of that IV-A filing unit; and
 - (2) Lives in Indian country within a North Dakota county that also includes Indian reservation lands subject to the exclusive jurisdiction of the tribe;
- d. The state's financial participation in the pilot project will be terminated upon breach of the negotiated agreement.
2. The department of human services shall periodically report to the legislative council, or to an interim study committee designated by the legislative council, on the progress of any negotiation conducted under subsection 1.
 3. An interim committee designated by the legislative council to receive reports under subsection 2 shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 4. LEGISLATIVE COUNCIL STUDY. During the 1999-2000 interim, the legislative council shall consider studying the implementation of temporary assistance to needy families program in North Dakota, the effectiveness of that program to accomplish welfare reform, and the need for continuing legislative monitoring. The study may address the proportion of adults living in Indian country who are employed and the efforts of the department of human services to negotiate a pilot project under which the state would participate in the cost of providing services under a tribal family assistance grant.

SECTION 5. REPORTS TO LEGISLATIVE COUNCIL - UNEMPLOYMENT IN INDIAN COUNTRY. The department of human services shall periodically report to the legislative council, or an interim study committee designated by the legislative council, on the progress in its efforts to determine the most reliable current data concerning the proportion of adults living in Indian country who are unemployed.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 422**HOUSE BILL NO. 1119**

(Human Services Committee)

(At the request of the Department of Human Services)

BIRTH REPORTS ELIMINATED

AN ACT to amend and reenact subsection 1 of section 50-06-01.2 of the North Dakota Century Code, relating to birth reports; and to repeal chapter 50-20 of the North Dakota Century Code, relating to reporting of out-of-wedlock births and births of children with visible congenital deformities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-06-01.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, 50-10, 50-11, 50-11.1, 50-12, 50-18, 50-19, ~~50-20~~, 50-21, 50-24.1, and 50-25.1.

SECTION 2. REPEAL. Chapter 50-20 of the North Dakota Century Code is repealed.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 423

SENATE BILL NO. 2036

(Legislative Council)
(Budget Committee on Long-Term Care)

ASSISTED LIVING FACILITIES

AN ACT to amend and reenact sections 50-06-14.4 and 50-24.5-01 of the North Dakota Century Code, relating to assisted living facilities; to require the preparation of a recommendation by the department of human services and the state department of health; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁸ **SECTION 1. AMENDMENT.** Section 50-06-14.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-14.4. Alzheimer's and related dementia and twenty-four hour care projects. The department of human services shall establish projects designed to meet the service needs of the alzheimer's and related dementia population and other aged, blind, or disabled persons who require twenty-four hour care. The projects established under this section must explore the financial and service viability of converting existing nursing facility or basic care capacity to a specific twenty-four hour service environment that targets either the alzheimer's and related dementia population or other aged, blind, or disabled persons who require twenty-four hour care. Project costs must be met using amounts appropriated to the department. Approval preference must be given to projects that involve a reduction in nursing facility beds due to delicensing an entire nursing facility or basic care facility or wing of a nursing facility or basic care facility. The state department of health shall cooperate with the department to ensure the success of the projects. The projects may be established notwithstanding subsections 2, 5, 4, 9, and 10; and 44 and subdivision c of subsection 9 8 of section 50-24.5-01; relating to definitions for aid to aged, blind, and disabled persons; and subsection 4 of section 23-09.3-01, relating to the definition of a basic care facility.

SECTION 2. AMENDMENT. Section 50-24.5-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a facility that:
 - a. Makes response staff available at all times;
 - b. Provides housing and:

²⁷⁸ Section 50-06-14.4 was repealed by section 1 of Senate Bill No. 2034, chapter 424.

- (1) Congregate meals;
 - (2) Kitchen facilities in each resident's living quarters; or
 - (3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;
 - c. Assures provision of:
 - (1) Personal care, therapeutic care, and social and recreational programming;
 - (2) Supervision, safety, and security;
 - (3) Medication services; and
 - (4) Transportation services;
 - d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and
 - e. Serves five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.
2. "Aged" means at least sixty-five years of age.
2. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
3. "Basic care facility" means a facility defined in section 23-09.3-04 which is not owned or operated by the state.
4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. 4. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
6. 5. "County agency" means the county social service board.
7. 6. "Department" means the department of human services.
8. 7. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
9. 8. "Eligible beneficiary" means a resident of this state who:

- a. (1) Is aged; or
 - (2) Is at least eighteen years of age and is disabled or blind;
 - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that person is not eligible to receive benefits under title XIX;
 - c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:
 - (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a ~~licensed basic care~~ assisted living facility; or
 - (2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and
 - d. Is determined to be eligible pursuant to rules adopted by the department.
40. 9. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to ~~four~~ five or more persons who are not related to the proprietor.
44. 10. "Living independently" includes living in congregate housing. The term does not include living in an institution.
11. "Proprietor" means a person responsible for day-to-day administration and management of a facility.
12. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
13. "Related to the proprietor" means a person who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.
14. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.
44. 15. "Would be eligible to receive the cash benefits except for income" refers to a person whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an

amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the person would receive if the person had no income, plus forty-five dollars.

SECTION 3. DEPARTMENT OF HUMAN SERVICES AND STATE DEPARTMENT OF HEALTH - RECOMMENDATION. The department of human services and the state department of health, after consultation with individuals and entities determined appropriate by those departments, shall prepare a recommendation for consideration by the fifty-seventh legislative assembly describing the conversion of current basic care and assisted living facilities into an integrated long-term housing and service system entitled assisted living. The recommendation must include appropriate methods and means for the inspection, regulation, and payment systems for assisted living facilities that respect residents' choices of care providers. That recommendation must include a proposed budget and any necessary implementing legislation and appropriation.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 2001.

SECTION 5. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2001, and after that date is ineffective.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 424**SENATE BILL NO. 2034**

(Legislative Council)
(Budget Committee on Long-Term Care)

ALZHEIMER'S AND DEMENTIA PROJECTS REPEAL

AN ACT to repeal section 50-06-14.4 of the North Dakota Century Code, relating to alzheimer's and related dementia projects; to require the department of human services to monitor the progress of the alzheimer's and related dementia projects and report to the legislative council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁹ **SECTION 1. REPEAL.** Section 50-06-14.4 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 2. DEPARTMENT OF HUMAN SERVICES TO MONITOR PROJECTS - REPORT TO LEGISLATIVE COUNCIL. The department of human services shall monitor the progress of the alzheimer's and related dementia projects established under section 50-06-14.4 and shall present a final progress report to the legislative council by June 30, 2000.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective July 1, 2001.

Approved March 3, 1999
Filed March 4, 1999

²⁷⁹ Section 50-06-14.4 was amended by section 1 of Senate Bill No. 2036, chapter 423.

CHAPTER 425

HOUSE BILL NO. 1401

(Representatives L. Thoreson, Haas, N. Johnson, Kroeber, Wikenheiser)

CHARITABLE SOLICITATIONS

AN ACT to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.2, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; to repeal section 50-22-03 of the North Dakota Century Code, relating to charitable solicitation license applications; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-22-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. a. "Charitable organization" means any ~~benevolent, philanthropic, patriotic, social, or eleemosynary organization, or one purporting to be this type of organization.~~ The term does not include entity that:
 - (1) Is deemed by the internal revenue service to be a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; or
 - (2) Holds itself out to the public to be established for any charitable purpose; or
 - (3) In any manner employs a charitable appeal as the basis for any solicitation.
- b. The term "charitable organization" does not include:
 - ~~a.~~ (1) An organization soliciting funds for an institution of higher learning.
 - ~~b.~~ (2) An organization using only volunteer unpaid fundraisers and soliciting funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.
 - ~~c.~~ (3) A private or public elementary or secondary school.
 - ~~d.~~ (4) A charitable organization or person soliciting contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.

- e. (5) A duly constituted religious organization or any group affiliated with and forming an integral part of that organization no part of the net income of which inures to the direct benefit of any individual and which has received a declaration of current tax exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain the declaration if the parent or principal organization has obtained the declaration.
- (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.
2. "Contribution" means cash or the promise of, grant, or pledge of any money, credit, assistance, or property of any kind or value provided in response to a solicitation. The term includes a promise or grant of money or property for which consideration in the form of a service or good is provided if the promise or grant may have been given as a result of a connection to a charitable organization. "Contribution" does not include bona fide fees, dues, or assessments paid by members of an organization, provided that:
- a. Membership is not conferred in exchange for a contribution in response to a solicitation; or
- b. Membership provides no benefit in addition to the right to vote or otherwise participate in the organization and the right to receive literature.
3. "Person" means any individual, organization, ~~group,~~ association, partnership, corporation, or limited liability company; ~~or any combination of them.~~
4. "Professional fundraiser" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fundraiser.
5. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through the person's agents, servants, or employees or through agents, servants, or employees specially employed by, or for, a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fundraiser within the meaning of this chapter. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent

establishment within the state may not be deemed to be a professional solicitor.

~~No~~ An attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization may not be deemed, as the result of ~~such~~ that advice, to be a professional fundraiser or a professional solicitor.

6. "Solicitation" means ~~the asking, seeking, appealing, requesting, directly or indirectly by means of mail, personal contact, written material, radio, television, news media, magazines or other periodicals, or any other means of communication, of money or property of any kind or value or pledges for the same~~ request to the public or member of the public for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including:
- a. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media;
 - b. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through any medium available to the public and described in subdivision a;
 - c. A sale of or attempt to sell any good or service in which the good or service is priced above fair market value or when it is otherwise represented that some portion of the purchase price will be used for a charitable purpose; or
 - d. An announcement inviting the public to attend an assembly, event, exhibition, performance, or social gathering of any kind where admission is conditioned on the receipt of a contribution or at which function contributions will be otherwise solicited.

A solicitation is deemed to have occurred regardless of whether the party solicited makes a contribution.

SECTION 2. AMENDMENT. Section 50-22-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02. License to solicit - Term - Revocation. A charitable organization may not solicit contributions from persons in this state by any means without first having obtained a license from the secretary of state. The application for a license must contain the information concerning the solicitation as required by this chapter. This information must be filed with the secretary of state and must be available as a matter of public record. The application form containing the information must be sworn to and must include the following:

1. The name of the charitable organization for which the solicitation is to be conducted.
2. The organization's address.
3. The purpose or purposes for which the contributions solicited are to be used.

4. The individual or officer who will have custody of the contributions.
5. The individual or officer responsible for the distribution of contributions received.
6. The period of time during which solicitation is to be conducted.
7. A description of the methods of solicitation in such detail as may be determined by the secretary of state.
8. Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or both, and if in whole or part by paid solicitors, the name and address of each professional fundraiser supplying the solicitors, the basis of payment, and the nature of the agreement.
9. Any additional information deemed necessary by the secretary of state.

The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until the ~~first day of~~ September ~~first~~ of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the state general fund of the state. The fee for an initial license is twenty-five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause. ~~The fee for a subsequent license is ten dollars.~~

SECTION 3. AMENDMENT. Section 50-22-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02.1. Registration of professional fundraiser; ~~professional and solicitor; and charitable organizations.~~ The secretary of state or the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds ~~and each renewal application of charitable organizations for the right to solicit funds.~~ A person may not act as a professional fundraiser or solicitor subject to this chapter unless that person has registered with the secretary of state. The application for registration must be accompanied by an annual fee of one hundred dollars. This information must be available to the public as a matter of public record. The forms containing the information must be sworn to and must include the following:

1. The name of the professional fundraiser or solicitor.
2. The address of the professional fundraiser or solicitor.
3. The type of fundraising to be conducted in this state.

4. The name of the auditor in charge of the organization's records.
5. A list of all officers, agents, or employees to work under the applicant's direction.
6. A list of all licensed charitable organizations with which the applicant has contracts within this state.

If the solicitation is to be made in whole or in part by a professional fundraiser or ~~professional~~ solicitor, the secretary of state shall approve registration if the arrangement for payment conforms to the requirements of this chapter and all relevant rules. The registration of a professional fundraiser grants the right to solicit funds within the state for charitable organizations until ~~the first day of~~ first of that year. Any applicant who is denied registration may, within fifteen days from the date of notification of denial, request in writing a hearing before the secretary of state. The hearing must be held within fifteen days from the date of the request.

No person may act as a professional fundraiser or ~~professional~~ solicitor for a charitable organization subject to this chapter unless that person first has registered with the secretary of state. An application for registration must be in writing, under oath or affirmation in the form prescribed by the secretary of state, and must contain any information the secretary of state may require. The application for registration by a professional fundraiser or ~~professional~~ solicitor must be accompanied by an annual fee in the sum of one hundred dollars. A partnership, corporation, or limited liability company that is a professional fundraiser or ~~professional~~ solicitor may register for and pay a single fee on behalf of all its members, officers, agents, and employees. However, the names and addresses of all officers, agents, and employees employed to work under the direction of a professional solicitor or fundraiser must be listed in the application.

A parent organization filing on behalf of one or more chapters, branches, or affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and the chapters, branches, affiliates, or member agencies included in the registration statement. If any charitable organization, professional fundraiser, or ~~professional~~ solicitor fails to file any registration application or other information required to be filed by the secretary of state under this chapter or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last known address, may deny or suspend the application for registration if the information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice. All civil proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided. Any notice required under this chapter or chapter 28-32 may be made by certified mail.

SECTION 4. AMENDMENT. Section 50-22-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-04. Information required to be filed annually. Every charitable organization licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, shall file an annual report along with a ten dollar fee with the secretary of state on or before ~~the first day of~~ first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used. The annual report must be filed on forms provided by the secretary of state containing the following information:

1. ~~The gross amount of the contributions pledged or collected in this state~~ Specific and itemized support and revenue statements disclosing direct public support in this state from solicitation, indirect public support, government grants, program service revenue, and any other revenue.
2. The amount thereof given ~~or to be given~~ to the charitable purpose represented.
3. ~~The aggregate amount paid or received and to be paid or received for the expenses of solicitation~~ Specific and itemized expense statements disclosing program services, public information expenditures, payments to affiliates, management costs, and salaries paid in this state.
4. The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.

In addition, the secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall assist the secretary of state in carrying out this chapter and, for this purpose, has all powers granted by this chapter to the secretary of state. Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter.

Failure to file the annual report and fee as required will mean the organization's registration will no longer be in effect and the organization may not solicit in this state.

SECTION 5. AMENDMENT. Section 50-22-04.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-04.2. Contract or statement filing. Every contract, written agreement, or written statement of the nature of the arrangement to prevail in the absence of a contract between a professional fundraiser or ~~professional~~ solicitor and a charitable organization must be filed by the professional fundraiser and the charitable organization with the secretary of state within ten days after such contract, written agreement, or written statement is concluded.

SECTION 6. AMENDMENT. Section 50-22-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-05. Enforcement - Penalties. Any person conducting a solicitation in violation of this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. ~~A fundraiser~~ Any person

who commences or continues fundraising or soliciting after the fundraiser's person's application is denied or the license or registration under this chapter is revoked or ~~or canceled~~ or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the fundraiser person the right to engage in future fundraising activities.

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the fundraiser, charitable organization, or professional solicitor is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser or professional solicitor, or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser or professional solicitor or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other relief the court determines appropriate including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of licensure or registration under this chapter for a period of up to five years.

SECTION 7. REPEAL. Section 50-22-03 of the North Dakota Century Code is repealed.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 426**HOUSE BILL NO. 1384**
(Representatives Poolman, Delmore)**MEDICAID RECIPIENT FUNERAL EXPENSES**

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to funeral expenses in claims against the estates of former medicaid recipients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which total three thousand dollars or less designated by the applicant or recipient as set aside to pay for the applicant's or recipient's funeral. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral ~~purposes~~ pre-need contracts, prepayments, or deposits. Interest or earnings retained in a funeral fund also may not be considered as an available resource. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that funds maintained in accordance with this section total less than three thousand dollars.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 427

HOUSE BILL NO. 1038

(Legislative Council)

(Insurance and Health Care Committee)

PREHOSPITAL EMERGENCY MEDICAL SERVICE ASSISTANCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance coverage of prehospital emergency medical services; to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state assistance to prehospital emergency medical services; and to provide legislative intent regarding state department of health assistance for prehospital emergency medical services and department of human services medical assistance reimbursement rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. Prehospital emergency medical services - State assistance. The ~~health services branch~~ of the state department of health shall assist in the training of personnel of certain prehospital emergency medical services as determined by the ~~branch department~~ and financially shall assist certain prehospital emergency medical services as determined by the ~~branch department~~ in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The ~~health services branch department~~ shall adopt criteria for eligibility for assistance in the training of personnel of various types of prehospital emergency medical services. To qualify for financial assistance for equipment, a prehospital emergency medical service shall certify, in the manner required by the ~~health services branch department~~, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The ~~health services branch department~~ shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The ~~health services branch department~~ may establish minimum and maximum amounts of financial assistance to be provided a prehospital emergency medical service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the ~~health services branch department~~ may prorate the funds among the applicants in accordance with criteria adopted by the ~~health services branch department~~. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Prehospital emergency medical services. Medical assistance coverage must include prehospital emergency medical services benefits in the case of a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and which a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part.

SECTION 3. INTENT. The funds appropriated for the purpose of defraying expenses of prehospital emergency medical services under sections 1 and 2 of this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001 include \$940,000 appropriated from the general fund in 1999 House Bill No. 1004 for training for volunteers. The funds provided for training are for volunteer services based on \$2,200 for volunteer ambulance service training, \$500 for volunteer rescue squad training, \$500 for the initial training of volunteer emergency medical service providers, and \$1,500 for training of volunteer quick response units, subject to reallocation by the state department of health based on training applications and available funding. The state department of health may accept funds from other sources and may distribute these funds to prehospital emergency medical services providers for the purpose of obtaining equipment.

SECTION 4. MEDICAL ASSISTANCE - REIMBURSEMENT FOR AMBULANCE SERVICES. During the biennium beginning July 1, 1999, and ending June 30, 2001, the department of human services shall spend \$276,000 in addition to the \$943,068 in the executive budget recommendation for medical assistance reimbursement for ambulance services. If the amount of ambulance services billing is less than the amount required to be spent under this section, the department of human services shall reimburse ambulance services at one hundred percent of billing for ambulance services and the department shall use the remainder for medical assistance reimbursement for other medical services.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 428

SENATE BILL NO. 2033

(Legislative Council)
(Budget Committee on Long-Term Care)

NURSING HOME PROHIBITED PRACTICES AND RATES

AN ACT to create and enact a new subsection to section 50-24.4-19 of the North Dakota Century Code, relating to prohibited practices of nursing homes; to amend and reenact section 50-24.4-01 of the North Dakota Century Code, relating to nursing facility rates; to repeal section 50-06-14.3 of the North Dakota Century Code, relating to basic care rates; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.4-01. Definitions. For the purposes of this chapter:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.
2. "Actual resident day" means a billable, countable day as defined by the department.
3. "Department" means the department of human services.
4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.
5. "Direct care costs" means the cost category for allowable nursing and therapy costs.
6. "Final rate" means the rate established after any adjustment by the department, including; ~~but not limited to;~~ adjustments resulting from cost report reviews and audits.
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.
8. "General and administrative costs" means all allowable costs for administering the facility, including; ~~but not limited to;~~ salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies; travel,

except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit ~~under subsection 6~~; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.

9. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.
10. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
11. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
12. "Nursing home" means a facility, not owned or administered by the state government, ~~described~~ defined 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.
- ~~42.~~ 13. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.
- ~~43.~~ 14. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~44.~~ 15. "Payment rate" means the rate determined under section 50-24.4-06.
- ~~45.~~ 16. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~46.~~ 17. "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 governmental entity with ratesetting authority, including the veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services for the resident.
- ~~47.~~ 18. "Rate year" means the fiscal year for which a payment rate determined under this chapter is effective, from January first to the next December thirty-first.

48. 19. "Real estate" means improvements to real property and attached fixtures used directly for resident care.
49. 20. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this chapter.
20. 21. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and ~~any other person~~ persons performing functions ordinarily performed by such personnel.

SECTION 2. A new subsection to section 50-24.4-19 of the North Dakota Century Code is created and enacted as follows:

Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 3. REPEAL. Section 50-06-14.3 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 4. EMERGENCY - EFFECTIVE DATE. Section 3 of this Act is declared to be an emergency measure and is effective July 1, 1999.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 429

SENATE BILL NO. 2168

(Human Services Committee)

(At the request of the Department of Human Services)

HEALTH CARE TRUST FUND

AN ACT to create and enact a new chapter to title 6, a new section to chapter 50-24.4, and a new chapter to title 50 of the North Dakota Century Code, relating to a funding pool to establish the North Dakota health care trust fund to make grants and loans to support development of basic care facilities, assisted living facilities, and other alternatives to nursing facility care; to repeal chapter 50-21 of the North Dakota Century Code, relating to the administration of a revolving fund for nursing homes and homes for aged; to provide continuing appropriations to make funding pool payments and disbursements from the North Dakota health care trust fund; to declare a retroactive application; 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. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Definitions. Terms defined in section 3 of this Act have the same meaning when used in this chapter.

Revolving loan fund - Appropriation. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to nursing facilities, basic care facilities, assisted living facilities, or other entities providing alternatives to nursing facility care, to encourage and support conversion of nursing facilities. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative loan fund.

1. There is hereby created a nursing facility alternative loan fund. The fund shall include revenue transferred from the North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.
2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:
 - a. Loans as provided in this chapter and as approved by the department under section 3 of this Act;
 - b. The costs of administration of the fund; and
 - c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.

3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Loan application - How made. All applications for loans under this chapter must be made to the department. The department may approve the applications of qualified applicants who propose projects that conform to requirements established under section 3 of this Act. Applications approved by the department must be forwarded to the Bank of North Dakota. Upon approval of the application by the Bank of North Dakota, loans may be made from the revolving loan fund in accordance with the provisions of this chapter.

Amount of loans - Terms and conditions. Loans in an amount not exceeding eighty percent of project costs may be made by the Bank of North Dakota from the fund maintained pursuant to this chapter. Such loans must bear interest at a rate determined by the Bank of North Dakota to be two percentage points less than the market rate for similar commercial loans, provided that no loan may bear interest at a rate less than one half of one percent, or more than seven percent, of the outstanding principal balance of the loan. In consideration of the making of a loan under this chapter, each borrower shall execute a contract with the department to operate the project in accordance with standards established under section 3 of this Act. The contract must also provide that if the use of the project is discontinued or diverted to purposes other than those provided in the loan application without written consent of the department, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under this chapter, one half of one percent of the principal balance of the outstanding loans from the revolving fund.

Powers of Bank of North Dakota. The Bank of North Dakota may do all acts or things necessary to negotiate loans and preserve security under this chapter, including the power to take such security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving fund under mortgages, contracts, and notes executed to obtain loans under the provisions of this chapter. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the Bank of North Dakota may take a subordinate security interest. The bank may recover from the revolving loan fund amounts actually expended by it for legal fees and to effect a redemption.

SECTION 2. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Government nursing facility funding pool - Appropriations.

1. For purposes of this section:
 - a. "Fiscal period" means a twelve-month period determined by the department; and
 - b. "Governmental nursing facility" means any nursing home administered by any political subdivision of this state for which a rate is set under this chapter.
2. The department shall establish a pool consisting of an amount annually calculated by multiplying the total of all resident days of all nursing homes during the fiscal period during which a resident was eligible for

and received benefits under chapter 50-24.1 times an amount that does not exceed the amount that can reasonably be estimated to be paid under payment principles established under title XVIII of the Social Security Act [42 U.S.C. 1395, et seq.], reduced by the payment rates set for each such resident, for each such day, during the fiscal period.

3. In addition to any payment made pursuant to a rate set under this chapter, and notwithstanding any other provision of this chapter, the department shall pay to each governmental nursing facility an amount determined by:
 - a. Dividing that facility's total inpatient days for the fiscal period by the total inpatient days of all governmental nursing facilities for the fiscal period; and
 - b. Multiplying a decimal fraction determined under subdivision a times the pool amount determined under subsection 2.
4. Each governmental nursing facility, immediately upon receiving a payment under subsection 3, shall remit the amount of that payment, less a ten thousand dollar transaction fee, to the state treasurer for credit to:
 - a. The North Dakota health care trust fund in an amount equal to the federal medical assistance percentage for the fiscal period times the total remittance to the state treasurer, less ten thousand dollars; and
 - b. The general fund for all remaining amounts.
5. Notwithstanding any other provision of this code, or of any ordinance or code governing the operation of a governmental nursing facility, a governmental nursing facility is authorized to receive and, upon receipt, required to remit payments provided under this section.
6. No payment is required under this section for any period in which the funds otherwise appropriated under subdivision b of subsection 7 are unavailable due to action by the secretary of the United States department of health and human services.
7. The department of human services, subject to legislative appropriation, may make the payments described in subsection 3 for the pool amount annually determined under subsection 2, as follows:
 - a. From special funds derived from federal funds and other income, the pool amount determined under subsection 2 reduced by the amount determined under subdivision b; and
 - b. From the general fund, the "state percentage" as that term is used in defining the term "federal medical assistance percentage" for purposes of title XIX of the Social Security Act [42 U.S.C. 1396, et seq.], multiplied times the pool amount determined under subsection 2.

SECTION 3. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter:

1. "Alternative to nursing facility care" means services described in the home and community-based services waiver for aged persons under medical assistance.
2. "Assisted living facility" has the meaning provided in section 50-24.5-01, but if the term is not defined in that section, the term means a facility that:
 - a. Makes response staff available at all times;
 - b. Provides housing and:
 - (1) Congregate meals;
 - (2) Kitchen facilities in each resident's living quarters; or
 - (3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;
 - c. Assures provision of:
 - (1) Personal care, therapeutic care, and social and recreational programming;
 - (2) Supervision, safety, and security;
 - (3) Medication services; and
 - (4) Transportation services;
 - d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and
 - e. Services five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.
3. "Basic care facility" has the meaning provided in section 23-09.3-01.
4. "Conversion" means:
 - a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate basic care facility services, assisted living facility services, or other alternatives to nursing facility care; or
 - b. New construction of a basic care facility, assisted living facility, or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new

construction is more cost effective than the conversion of existing space.

5. "Department" means the department of human services.
6. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396, et seq.] and chapter 50-24.1.
7. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the term "nursing home".

North Dakota health care trust fund created - Appropriation. There is hereby created in the state treasury a special fund known as the North Dakota health care trust fund. The fund shall include revenue received from governmental nursing facilities for remittance to the fund under section 2 of this Act. The department shall administer the fund and shall adopt procedures for participation by governmental nursing facilities. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the North Dakota health care trust fund. The state treasurer shall invest such funds in interest-bearing accounts, as designated by the department, and the interest earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department, subject to legislative appropriation, for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative grant fund.

1. There is hereby created a nursing facility alternative grant fund. The fund shall include revenue transferred from the North Dakota health care trust fund.
2. The department shall administer the distribution of funds in the nursing facility alternative grant fund. The nursing facility alternative grant fund may be used for:
 - a. Grants, as provided in this chapter;
 - b. The costs of administration of the grants; and
 - c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.
3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Department to award grants or make loan guarantees.

1. The department may award grants from the nursing facility alternative grant fund or approve loans from the nursing facility alternative loan fund established under section 1 of this Act for capital or one-time expenditures, including startup and training expenses and operating losses for the first year:
 - a. To any nursing facility which has been approved for at least three years as a provider under the medical assistance program to convert all or a portion of the facility licensed to provide such care

- to a basic care facility, assisted living facility, or other alternative to nursing facility care; or
- b. To any other entity meeting conditions established by the department to develop a basic care facility, assisted living facility, or other alternative to nursing facility care.
2. A nursing facility or other entity may be eligible for a grant or loan only if the basic care facility, assisted living facility, or other alternative to nursing facility care is located in an underserved area as determined by the department.
 3. To be eligible for a grant or loan under this section, the nursing facility or other entity approved by the department shall provide at least twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. The department's share of the total cost of any conversion is limited to one million dollars or eighty percent of the project cost, whichever is less.
 4. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or approving loans.
 5. No grant or loan application may be approved by the department unless the applicant can demonstrate that:
 - a. Conversion of the nursing facility or portion of the facility to a basic care facility, assisted living facility, or other alternative to nursing facility care may offer efficient and economical care to individuals requiring long-term care services in the area;
 - b. Basic care, assisted living services, or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program; and
 - c. The resulting reduction in the availability of nursing facility service is not expected to cause undue hardship on those individuals requiring nursing facility services.
 6. No grant may be awarded or loan approved unless the applicant agrees:
 - a. To maintain a minimum occupancy rate by individuals eligible for supplemental security income benefits provided under title XVI of the Social Security Act [42 U.S.C. 1382, et seq.]; and
 - b. To refund to the nursing facility alternative grant fund or the nursing facility alternative loan fund, on an amortized basis, the amount of the grant or loan if the applicant or its successor in interest ceases to operate a basic care facility, assisted living facility, or other alternative to nursing facility care during the ten-year period after the date the applicant began operation of its facility as a basic care facility, assisted living facility, or other alternative to nursing facility care ceases to maintain the agreed minimum occupancy rate or fails to commence operations within a reasonable time.

7. In addition to other remedies provided by law or contract, the department may deduct the amount of any refund due from a recipient of grant or loan guarantee funds from any money owed by the department to such recipient or the recipient's successor in interest.

Department to adopt rules.

1. The department shall adopt rules that establish:
 - a. An application process for grants or loans;
 - b. Criteria, that need not be the same for grants as for loans, for nursing facilities and other entities to receive funding, including minimum occupancy rates, allowable costs, and refund methods;
 - c. Criteria for the rates and amounts of funding; and
 - d. Other procedures as the department deems necessary for the proper administration of this chapter.
2. Rules adopted under this chapter may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and any interim final rules so adopted may take effect on a date no earlier than the date of first filing with the legislative council of the notice of proposed adoption of a rule.

Chapter does not create entitlement. This chapter does not create an entitlement to any funds available for grants or loans. The department may award grants or approve loans to the extent funds are available and, within its discretion, to the extent such applications are approved.

Annual cost reports. Recipients of grants and loans under this chapter shall annually submit cost reports to the department regarding the conversion project for a period of ten years after the date the recipient began operation of its facility as a basic care facility, an assisted living facility, or other alternative to nursing facility care. The department shall develop the cost report which must include revenue, costs, loans undertaken by the facility, fixed assets of the facility, a balance sheet, and a profit and loss statement.

Annual reports by the department. The department shall provide reports to the governor and the legislative council on or before August thirty-first of each year after the effective date of this Act, concerning grants awarded or loans approved under this chapter through June thirtieth of that year. Each report must include the number of applicants and approved applicants, an overview of the grants awarded or loans approved, and reports of the cost of each project funded by a grant or loan and annual cost reports received from recipients of grants or loans under this chapter.

SECTION 4. APPROPRIATION - GOVERNMENT NURSING FACILITY FUNDING POOL. There is hereby appropriated a total of \$12,409,448, of which \$3,618,391 is from the general fund, to the department of human services for the purpose of making the payments pursuant to section 2 of this Act and including \$226,238 for department administrative costs for the biennium beginning July 1, 1999, and ending June 30, 2001. In the event that additional amounts in excess of \$12,409,448 become available during the biennium based on the calculation in section 2 of this Act, the department of human services may

increase the amount paid which funds are hereby appropriated, subject to emergency commission and budget section approval, and providing that any additional "state percentage" required be made available from a loan from the Bank of North Dakota which funds are hereby appropriated.

SECTION 5. APPROPRIATION - HEALTH CARE TRUST FUND.

There is hereby appropriated a total of \$8,715,279, including an estimated \$190,460 of fund interest earnings from special funds derived from amounts available in the North Dakota health care trust fund to the department of human services for the purpose of the implementation of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001. Of the first \$8,524,820 deposited in the health care trust fund, \$4,262,410 must be allocated by the department of human services for loans and grants pursuant to section 3 of this Act and \$4,262,410 must be available for funding the service payments to the elderly and disabled program to be appropriated in Senate Bill No. 2012. If additional amounts in excess of \$8,715,279 become available during the biennium based on the calculation of section 2 of this Act, the department of human services may increase the amount paid and the funds are hereby appropriated, subject to emergency commission and budget section approval.

SECTION 6. LEGISLATIVE INTENT - ADMINISTRATIVE STAFF.

It is the intent of the legislative assembly that two full-time equivalent administrative staff positions shall be added to the positions authorized by the fifty-sixth legislative assembly for the department of human services for the biennium beginning July 1, 1999, and ending June 30, 2001, for carrying out the purposes of this Act. The continuation of these positions, if required, must be requested of the fifty-seventh legislative assembly.

SECTION 7. REPEAL. Chapter 50-21 of the North Dakota Century Code is repealed.

SECTION 8. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 2001, and after that date is ineffective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 1999

Filed April 19, 1999