

**HOUSE BILL NO. 1109**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-24.5 and a new subsection to  
2 section 50-24.5-02 of the North Dakota Century Code, relating to registration fees,  
3 requirements, and complaints to the department of human services regarding assisted living  
4 facilities; to amend and reenact subsection 2 of section 23-09-01, subsection 1 of section  
5 23-09.3-01, and sections 23-09.3-05, 50-24.5-01, and 50-24.5-04 of the North Dakota Century  
6 Code, relating to requiring assisted living facilities to be licensed as boardinghouses, definitions,  
7 licensing fees for basic care facilities, and limits on cost of services provided; to repeal section  
8 23-09.3-03 of the North Dakota Century Code, relating to choice of pharmacy services; and to  
9 provide an effective date.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Subsection 2 of section 23-09-01 of the 1999 Supplement  
12 to the North Dakota Century Code is amended and reenacted as follows:

13 2. "Boardinghouse" includes every building or structure, or any part thereof, with  
14 accommodations for four or more boarders, which is kept, used, maintained,  
15 advertised, or held out to the public as a place where food is furnished to regular  
16 boarders for periods of one week or more. The term does not include a facility  
17 providing personal care directly or through contract as defined in section  
18 23-09.3-01 ~~or 50-24.5-04~~.

19 **SECTION 2. AMENDMENT.** Subsection 1 of section 23-09.3-01 of the 1999  
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21 1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the  
22 department, that provides room and board to five or more individuals who are not  
23 related by blood or marriage to the owner or manager of the residence and who,  
24 because of impaired capacity for independent living, require health, social, or

1 personal care services, but do not require regular twenty-four-hour medical or  
2 nursing services and:

3 a. Makes response staff available at all times to meet the twenty-four-hour per  
4 day scheduled and unscheduled needs of the individual; or

5 b. Is kept, used, maintained, advertised, or held out to the public as an  
6 Alzheimer's, dementia, or special memory care facility.

7 **SECTION 3. AMENDMENT.** Section 23-09.3-05 of the 1999 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **23-09.3-05. License required - Term - Revocation - Fee.** ~~No person~~ An individual,  
10 institution, organization, limited liability company, or public or private corporation may not keep,  
11 operate, conduct, or manage a basic care facility without holding a valid license issued by the  
12 department. The license is not valid for more than one year. Any license may be revoked by  
13 the department for violation of this chapter or the rules adopted by the department. An  
14 application for a basic care facility license submitted by a facility that is not owned by the state  
15 or its political subdivisions must be accompanied by a license fee in an amount to be  
16 established by the department, not to exceed the actual cost of licensing. License fees  
17 collected under this section must be deposited in the state department of health operating fund  
18 in the state treasury and any expenditure from the fund is subject to legislative appropriation.

19 **SECTION 4. AMENDMENT.** Section 50-24.5-01 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **50-24.5-01. (Effective through June 30, 2001) Definitions.** In this chapter, unless the  
22 context otherwise requires:

- 23 1. "Aged" means at least sixty-five years of age.
- 24 2. "Assisted living" means an environment where a person lives in an apartment-like  
25 unit and receives services on a twenty-four-hour basis to accommodate that  
26 person's needs and abilities to maintain as much independence as possible.
- 27 3. "Basic care facility" means a facility defined in section 23-09.3-01 which is not  
28 owned or operated by the state.
- 29 4. "Blind" has the same meaning as the term has when used by the social security  
30 administration in the supplemental security income program under title XVI of the  
31 Social Security Act [42 U.S.C. 1381 et seq.].

- 1           5. "Congregate housing" means housing shared by two or more persons not related  
2           to each other which is not provided in an institution.
- 3           6. "County agency" means the county social service board.
- 4           7. "Department" means the department of human services.
- 5           8. "Disabled" has the same meaning as the term has when used by the social  
6           security administration in the supplemental security income program under title XVI  
7           of the Social Security Act [42 U.S.C. 1381 et seq.].
- 8           9. "Eligible beneficiary" means a resident of this state who:
- 9           a. (1) Is aged; or
- 10           (2) Is at least eighteen years of age and is disabled or blind;
- 11           b. Has applied for and is eligible to receive benefits under title XIX of the Social  
12           Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible  
13           to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381  
14           et seq.] and who was receiving benefits under title XVI before January 1,  
15           1995, is not ineligible because that person is not eligible to receive benefits  
16           under title XIX;
- 17           c. Based on a functional assessment, is not severely impaired in any of the  
18           activities of daily living of toileting, transferring to or from a bed or chair, or  
19           eating and:
- 20           (1) Has health, welfare, or safety needs, including a need for supervision or  
21           a structured environment, which require care in a licensed adult family  
22           foster care home or a licensed basic care facility, or
- 23           (2) Is impaired in three of the following four instrumental activities of daily  
24           living: preparing meals, doing housework, taking medicine, and doing  
25           laundry; and
- 26           d. Is determined to be eligible pursuant to rules adopted by the department.
- 27           10. "Institution" means an establishment that makes available some treatment or  
28           services beyond food or shelter to four or more persons who are not related to the  
29           proprietor.
- 30           11. "Living independently" includes living in congregate housing. The term does not  
31           include living in an institution.

- 1           12. "Qualified service provider" means a county agency or independent contractor who  
2                    agrees to meet standards for services and operations established by the  
3                    department.
- 4           13. "Remedial care" means services that produce the maximum reduction of an eligible  
5                    beneficiary's physical or mental disability and the restoration of an eligible  
6                    beneficiary to the beneficiary's best possible functional level.
- 7           14. "Would be eligible to receive the cash benefits except for income" refers to a  
8                    person whose countable income, less the cost of necessary remedial care that  
9                    may be provided under this chapter, does not exceed an amount equal to the cash  
10                  benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the  
11                  person would receive if the person had no income, plus forty-five dollars.

12           **(Effective July 1, 2001) Definitions.** In this chapter, unless the context otherwise  
13 requires:

- 14           1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating,  
15                    bed mobility, and personal hygiene.
- 16           2. "Aged" means at least sixty-five years of age.
- 17        ~~2.~~ 3. "Assisted living facility" means a ~~facility that:~~
- 18                    a. ~~Makes response staff available at all times;~~
- 19                    b. ~~Provides housing and:~~
- 20                            (1) ~~Congregate meals;~~
- 21                            (2) ~~Kitchen facilities in each resident's living quarters; or~~
- 22                            (3) ~~Any combination of congregate meals and kitchen facilities in each~~  
23                                    ~~resident's living quarters sufficient to assure each resident adequate~~  
24                                    ~~access to meals;~~
- 25                    e. ~~Assures provision of:~~
- 26                            (1) ~~Personal care, therapeutic care, and social and recreational~~  
27                                    ~~programming;~~
- 28                            (2) ~~Supervision, safety, and security;~~
- 29                            (3) ~~Medication services; and~~
- 30                            (4) ~~Transportation services;~~

- 1           ~~d. Fosters dignity, respect, and independence by allowing, to the maximum~~  
2           ~~extent feasible, each resident to determine the resident's service providers,~~  
3           ~~routines of care provision, and service delivery; and~~
- 4           ~~e. Serves five or more adult residents, unrelated to the proprietor, on a specified~~  
5           ~~premises not licensed under chapter 23-20 or 25-16, which meets the~~  
6           ~~requirements of the national fire protection association 101 Life Safety Code,~~  
7           ~~as applicable.~~
- 8           series of living units on the same site, operated as one business entity to provide  
9           services for five or more individuals who are aged or disabled adults and who are  
10           not related by blood or marriage to the owner or manager of the entity and which is  
11           kept, used, maintained, advertised, or held out to the public as a place that makes  
12           available individualized support services to accommodate an individual's needs  
13           and abilities to maintain as much independence as possible. It does not include a  
14           facility that is licensed as a basic care facility.
- 15       ~~3.~~ 4. "Blind" has the same meaning as the term has when used by the social security  
16           administration in the supplemental security income program under title XVI of the  
17           Social Security Act [42 U.S.C. 1381 et seq.].
- 18       ~~4.~~ 5. "Congregate housing" means housing shared by two or more ~~persons~~ individuals  
19           not related to each other which is not provided in an institution.
- 20       ~~5.~~ 6. "County agency" means the county social service board.
- 21       ~~6.~~ 7. "Department" means the department of human services.
- 22       ~~7.~~ 8. "Disabled" has the same meaning as the term has when used by the social  
23           security administration in the supplemental security income program under title XVI  
24           of the Social Security Act [42 U.S.C. 1381 et seq.].
- 25       ~~8.~~ 9. "Eligible beneficiary" means a resident of this state who:  
26           a. (1) Is aged; or  
27               (2) Is at least eighteen years of age and is disabled or blind;  
28           b. Has applied for and is eligible to receive benefits under title XIX of the Social  
29           Security Act [42 U.S.C. 1396 et seq.], provided that ~~a person~~ an individual  
30           who was eligible to receive benefits under title XVI of the Social Security Act  
31           [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before

- 1 January 1, 1995, is not ineligible because that ~~person~~ individual is not eligible  
2 to receive benefits under title XIX;
- 3 c. Based on a functional assessment, is not severely impaired in any of the  
4 activities of daily living of toileting, transferring to or from a bed or chair, or  
5 eating and:
- 6 (1) Has health, welfare, or safety needs, including a need for supervision or  
7 a structured environment, which require care in a licensed adult family  
8 foster care home or an assisted living facility; or
- 9 (2) Is impaired in three of the following four instrumental activities of daily  
10 living: preparing meals, doing housework, taking medicine, and doing  
11 laundry; and
- 12 d. Is determined to be eligible pursuant to rules adopted by the department.
- 13 10. "Individualized support services" means services designed to provide assistance to  
14 adults who may have physical or cognitive impairments and who require at least a  
15 moderate level of assistance with one or more activities of daily living or  
16 instrumental activities of daily living.
- 17 ~~9-~~ 11. "Institution" means an establishment that makes available some treatment or  
18 services beyond food or shelter to five or more ~~persons~~ individuals who are not  
19 related to the proprietor.
- 20 12. "Instrumental activities of daily living" means activities to support independent living  
21 including housekeeping, shopping, laundry, transportation, and medication  
22 assistance.
- 23 ~~40-~~ 13. "Living independently" includes living in congregate housing. The term does not  
24 include living in an institution.
- 25 14. "Living unit" means a portion of an assisted living facility occupied as the living  
26 quarters of an individual who has entered into a lease agreement with the assisted  
27 living facility.
- 28 ~~44-~~ 15. "Proprietor" means a ~~person~~ an individual responsible for day-to-day administration  
29 and management of a facility.



- 1           1. An individual, institution, organization, limited liability company, or public or private  
2           corporation keeping, operating, conducting, managing, maintaining, advertising, or  
3           holding itself out to the public as an assisted living facility located in this state shall  
4           register annually with the department by providing such information as the  
5           department prescribes and shall obtain a license issued by the state department of  
6           health under chapter 23-09.
- 7           2. An assisted living facility shall pay to the department an annual registration fee of  
8           ten dollars per living unit, except the total annual registration fee shall be no less  
9           than one hundred dollars and no more than seven hundred fifty dollars.
- 10          3. The department shall establish rules governing the annual registration of an  
11          assisted living facility to regulate the application for, approval, denial, revocation,  
12          and requirements of registration.
- 13          4. An individual, institution, organization, limited liability company, or public or private  
14          corporation may not operate or market its facility or services as an assisted living  
15          facility unless it has registered with the department as an assisted living facility and  
16          that registration has been approved by the department.
- 17          5. The department may assess a fine of up to five hundred dollars per day against  
18          any individual, institution, organization, limited liability company, or public or private  
19          corporation that provides assisted living services, markets its services as an  
20          assisted living facility, or uses the term assisted living in its marketing without a  
21          registration approved by the department.
- 22          6. Religious orders providing assistance with activities of daily living or instrumental  
23          activities of daily living to vowed members residing in the order's retirement  
24          housing are not subject to this chapter.

25           **SECTION 7. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **50-24.5-04. Services provided - Limit on cost.** Services provided under this chapter  
28 must be treated as necessary remedial care to the extent those services are not covered under  
29 the medical assistance program. The cost of the services provided under this chapter to a  
30 person residing in a basic care or adult family foster care facility for which the rate charged  
31 includes room and board is limited to the rate set for services in that facility, plus ~~forty-five~~

1 ~~dollars~~ a personal needs allowance established by the department, less that person's total  
2 income.

3           **SECTION 8. REPEAL.** Section 23-09.3-03 of the North Dakota Century Code is  
4 repealed.

5           **SECTION 9. EFFECTIVE DATE.** This Act becomes effective on July 1, 2001.