

# HEALTH AND SAFETY

## CHAPTER 208

### HOUSE BILL NO. 1123

(Human Services Committee)

(At the request of the State Department of Health)

## DEPUTY STATE HEALTH OFFICER APPOINTMENT

AN ACT to amend and reenact section 23-01-08 of the North Dakota Century Code, relating to authority of the state health officer to appoint a deputy state health officer; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.**

The state health officer shall appoint directors of the various divisions of the department and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the state health officer. The state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the state health officer.

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

Approved April 18, 2003

Filed April 18, 2003

## CHAPTER 209

### HOUSE BILL NO. 1481

(Representatives Severson, Devlin, Froseth)  
(Senator Espegard)

## DEATH CERTIFICATE SIGNING

AN ACT to amend and reenact subsections 4 and 6 of section 23-02.1-19 and subsections 3 and 5 of section 23-02.1-20 of the North Dakota Century Code, relating to the signing of death certificates by a nurse practitioner.

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

<sup>104</sup> **SECTION 1. AMENDMENT.** Subsections 4 and 6 of section 23-02.1-19 of the North Dakota Century Code are amended and reenacted as follows:

4. The medical certification must be completed and signed within fifteen days after death by the physician or nurse practitioner in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
6. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.

**SECTION 2. AMENDMENT.** Subsections 3 and 5 of section 23-02.1-20 of the North Dakota Century Code are amended and reenacted as follows:

3. The medical certification must be completed and signed by the physician or a nurse practitioner in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
5. If the cause of fetal death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period of time in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.

Approved March 25, 2003  
Filed March 25, 2003

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<sup>104</sup> Section 23-02.1-19 was also amended by section 3 of House Bill No. 1092, chapter 382.

## CHAPTER 210

### HOUSE BILL NO. 1414

(Representatives Porter, Price, Warner)  
(Senator Grindberg)

## DISEASE REPORTING AND QUARANTINE

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to reporting disease outbreaks to the state department of health in an emergency; to amend and reenact sections 23-07-02, 23-07.6-01, 23-07.6-02, 23-07.6-03, 23-07.6-04, 23-07.6-05, 23-07.6-06, 23-07.6-07, 23-07.6-08, 23-07.6-09, 23-07.6-10, 23-07.6-11, 23-07.6-12, subsection 8 of section 23-35-08, subdivision h of subsection 2 of section 23-35-12, and subsection 2 of section 40-06-01, relating to disease reporting and quarantine or isolation of persons infected or potentially infected with contagious diseases; and to provide a penalty.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 23-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07-02. Who to report reportable diseases.** Except as otherwise provided by section 23-07-02.1, the following persons or their designees shall report to the nearest state department of health officer having jurisdiction any reportable disease coming to their knowledge:

1. All health care providers, including physicians, physician assistants, nurse practitioners, nurses, dentists, medical examiners or coroners, pharmacists, emergency medical service providers, and local health officers.
2. All persons who treat or administer to the sick by whatever method The director, principal manager, or chief executive officer of:
  - a. Health care institutions, including hospitals, medical centers, clinics, long-term care facilities, assisted living facilities, or other institutional facilities;
  - b. Medical or diagnostic laboratories;
  - c. Blood bank collection or storage centers;
  - d. Public and private elementary and secondary schools;
  - e. Public and private universities and colleges;

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<sup>105</sup> Section 23-07-02 was also amended by section 1 of House Bill No. 1160, chapter 214.

- f. Health or correctional institutions operated or regulated by municipal, county or multi-county, state, or federal governments;
  - g. Funeral establishments and mortuaries; and
  - h. Child care facilities or camps.
3. Householders The state veterinarian, if the disease may be transmitted directly or indirectly to or between humans and animals.
  4. Keepers of hotels, boardinghouses, or lodginghouses.
  5. Nurses.
  6. Schoolteachers.
  7. All other persons treating, nursing, lodging, caring for, or A person having knowledge of the existence of any that a person or persons are suspected of having a reportable disease may notify the department and provide all information known to the person reporting concerning the reportable disease or condition of the person or persons.

If the person reporting is the attending physician or the physician's designee, the physician or the physician's designee shall report not less than twice a week, in the form and manner directed by the state department of health, the condition of the person afflicted and the state of the disease. A person making a report in good faith is immune from liability for any damages which may be caused by that act.

**SECTION 2.** A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

**Emergency reporting.**

1. The state health officer may issue a temporary order for emergency reporting of disease conditions or information if the state health officer finds probable cause to believe there is a threat caused by an imminent or emerging condition affecting the public health, including actual or threatened terrorism.
2. The state health officer may designate who must report, what conditions or information must be reported, what information must be contained in the report, the methods and frequency of reporting, and may make any other pertinent requirement.
3. The temporary order may be issued and is effective without regard to chapter 28-32 for a period of ninety days, unless earlier revoked by the state health officer. Emergency rulemaking must be initiated under chapter 28-32 within ninety days of the order or the order expires. The temporary order and any emergency rulemaking under this section are effective without the necessity of approval from the health council.

**SECTION 3. AMENDMENT.** Section 23-07.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
2. "Confinement" means quarantine or isolation.
3. "Isolation" means the physical separation and restrictions on movement or travel of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals.
4. "Local board" means a board of health as defined under section 23-35-01.
5. "Local health officer" means the health officer of a local board.
6. "Quarantine" means the physical separation and restrictions on movement or travel of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from nonquarantined individuals to prevent or limit the transmission of the disease to nonquarantined individuals.
- 3- 7. "Respondent" means the person or group of persons ordered to be confined or restricted under this chapter.

**SECTION 4. AMENDMENT.** Section 23-07.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-02. Confinement order.**

1. The state health officer or any local ~~board~~ health officer may order any person or group into confinement by a written directive if there are reasonable grounds to believe that the person or group is infected with any communicable disease ~~and is unable or unwilling to behave in a manner as not to expose other persons to danger of infection~~, the state health officer or local ~~board~~ health officer determines that the person or group poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.
2. Conditions and principles. The state or local health officer shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
  - a. Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include confinement to private homes or other private and public premises.
  - b. Isolated individuals must be confined separately from quarantined individuals.

- c. The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.
  - d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease the individual must promptly be removed to isolation.
  - e. Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.
  - f. The needs of persons isolated and quarantined must be addressed in a systematic and competent fashion, including providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
  - g. Premises used for isolation and quarantine must be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.
  - h. To the extent possible, cultural and religious beliefs must be considered in addressing the needs of individuals and establishing and maintaining isolation and quarantine premises.
- 3. Cooperation. Persons subject to isolation or quarantine shall obey the health officer's rules and orders and must not go beyond the isolation or quarantine premises. Failure to obey these provisions is a class B misdemeanor.
- 4. Entry into isolation or quarantine premises.
  - a. Authorized entry. The state or local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.
  - b. Unauthorized entry. A person, other than a person authorized by the state or local health officer, must not enter isolation or quarantine premises. Failure to obey this provision is a class B misdemeanor.
  - c. Potential isolation or quarantine. A person entering an isolation or quarantine premises with or without authorization of the state or local health officer may be isolated or quarantined pursuant to subsection 1.
- 5. This section does not authorize the state health officer or a local public health officer to commandeer, in whole or in part, any hospital or other medical facility.

**SECTION 5. AMENDMENT.** Section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-03. Contents of the order Procedures for isolation and quarantine.** The confinement order must be in writing and set forth the name of the person to be confined; the grounds for the belief that the person has a communicable disease and is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection; that the person poses a substantial threat to the public health and that confinement is necessary and is the least restrictive alternative to protect or preserve the public health; the place of designated confinement, and any conditions or restrictions necessary to protect or preserve the public health. The order must also list the respondent's rights under this chapter. A copy of the order must be given to the respondent. If the order is issued by a local board, the local board, within twenty-four hours of the issuance of the order, shall notify the state health officer that the order has been issued. The order is effective for not more than thirty days. Orders of confinement under this chapter may be issued for successive periods of not more than thirty days each if issued before the last business day of the preceding period of confinement. The isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.

1. Temporary isolation and quarantine without notice.

- a. Authorization. The state or a local health officer, within that officer's jurisdiction, may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the health officer's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.
- b. Content of directive. The written directive must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impracticable; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; and decontamination, treatment, or prevention measures that must be followed. The directive must be accompanied by a copy of this chapter and relevant definitions.
- c. Copies. A copy of the written directive must be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises. The state or local health officer may also use any available mass media, including broadcasting, to provide notice and information about the written directive.
- d. Petition for continued isolation or quarantine. Within ten days after issuing the written directive, the state or local health officer shall file a petition under subsection 2 for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.

2. Isolation or quarantine with notice.

- a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
- b. Content of petition. A petition under subdivision a of subsection (2) must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.
- c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the rules of civil procedure. The notice must include a statement that the respondent has the right to counsel, including appointed counsel if indigent and must include a copy of this chapter.

**SECTION 6. AMENDMENT.** Section 23-07.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-04. Place of confinement.** A respondent must be confined in a place designated in the ~~order~~ written directive until the ~~entity that~~ health officer who issued the ~~order~~ written directive determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent. The state department of health or the local board may establish and maintain places of confinement.

**SECTION 7. AMENDMENT.** Section 23-07.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-05. Court hearing.** A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. ~~The respondent or the respondent's representative has a right to be present at the hearing.~~ A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent or otherwise unable to pay for or obtain counsel, the respondent has the right to have counsel appointed. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. ~~If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of~~

~~receipt of the request, excluding Saturdays and holidays. A request petition for a hearing does not stay the order of a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health officers directive for decontamination, treatment, or preventative measures if the petition is granted. If the order is written directive was issued by a local board health officer, the state health officer has the right to be made a party to the proceedings.~~

**SECTION 8. AMENDMENT.** Section 23-07.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-06. Notice of hearing.** Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's rights right to counsel or appointed counsel under this chapter and must include a copy of this chapter.

**SECTION 9. AMENDMENT.** Section 23-07.6-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-07. Access to records.** Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel, and the attorney for the state or local health officer must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital shall make available at the hearing for use by the respondent, respondent's representative, ~~or~~ respondent's counsel, and the attorney for the state or local health officer all records in its possession relating to the conditions of the respondent.

**SECTION 10. AMENDMENT.** Section 23-07.6-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-08. Burden of proof.** At a hearing conducted under this chapter, the ~~entity that~~ health officer who ordered confinement has the burden of showing by ~~clear and convincing~~ a preponderance of the evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

**SECTION 11. AMENDMENT.** Section 23-07.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-09. Court findings and orders.** If the court finds by ~~clear and convincing~~ a preponderance of the evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate for decontamination, treatment, or prevention, including remand to the health officer that petitioned the court or issued the original directive, until the ~~entity~~ health officer that issued the original written directive for confinement

~~order~~ determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

**SECTION 12. AMENDMENT.** Section 23-07.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-10. Request to terminate or modify an order - Review of confinement orders.** A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court ~~periodically shall~~ may conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. Notice of at least five days, but no more than ten business days, must be provided to all parties to the hearing under this section. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

**SECTION 13. AMENDMENT.** Section 23-07.6-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-11. Closed hearing - Confidentiality of information.** At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential. Deidentified information may be released to the public under chapter 23-01.3.

**SECTION 14. AMENDMENT.** Section 23-07.6-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-12. Right of appeal.** Any party aggrieved by an order of the district court under this section may appeal to the supreme court. An order of confinement continues in effect while the matter is on appeal.

**SECTION 15. AMENDMENT.** Subsection 8 of section 23-35-08 of the North Dakota Century Code is amended and reenacted as follows:

8. May adopt ~~quarantine~~ confinement, decontamination, and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.

**SECTION 16. AMENDMENT.** Subdivision h of subsection 2 of section 23-35-12 of the North Dakota Century Code is amended and reenacted as follows:

- h. May determine when ~~quarantine~~ confinement and ~~disinfection~~ decontamination is necessary for the safety of the public. The local health officer may establish ~~quarantines~~ confinements consistent with procedures provided under chapter 23-07.6 and perform any acts required for ~~disinfection~~ decontamination when necessary.

**SECTION 17. AMENDMENT.** Subsection 2 of section 40-06-01 of the North Dakota Century Code is amended and reenacted as follows:

2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health ~~and quarantine~~ ordinances and regulations, ~~subject to chapter 23-07.6,~~ and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

Approved April 21, 2003

Filed April 21, 2003

## CHAPTER 211

### HOUSE BILL NO. 1438

(Representative Price)

(Senator J. Lee)

## HEALTH AND HIV INFORMATION DISCLOSURE

AN ACT to create and enact a new subsection to section 25-01.3-01 and a new section to chapter 44-04 of the North Dakota Century Code, relating to definitions and duties to protect information; to amend and reenact section 23-01.3-02, subsection 1 of section 23-07-01.1, sections 23-07-02.1 and 23-07-02.2, subsections 6, 7, and 8 of section 23-07.5-01, section 23-07.5-02, subsection 1 of section 23-07.5-04, sections 23-07.5-06, 23-07.5-07, and 23-07.5-08, subsection 3 of section 23-07.7-02, sections 23-12-14, 23-16-09, 25-01.3-10, and 25-16-07, subsection 9 of section 26.1-04-03, section 28-01-46.1, subsections 6 and 9 of section 37-18-11, subsection 4 of section 43-15-01, subdivision n of subsection 1 of section 43-15-10, section 43-47-09, subsection 1 of section 44-04-18.1, and section 50-19-10 of the North Dakota Century Code, relating to the use and disclosure of health information, and persons to be tested and the timing of testing for the human immunodeficiency virus; to repeal sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code, relating to the disclosure of health information; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-01.3-02. Disclosure of protected health information - In general.** Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15, subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does not prohibit a public health authority from disclosing protected health information for use in a biomedical research project approved by an institutional review board or public a privacy board or protected health information that has been transformed to protect the identity of the patient through coding or encryption if the information is disclosed for use in an epidemiological or statistical study.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~All physicians and other medical professionals~~ A physician or other health care provider may report immediately to the department of transportation in writing, the name, date of birth, and address of every ~~person~~ individual fourteen years of age or over coming before them for examination, attendance, care, or treatment ~~when~~ if there is reasonable cause to believe that ~~such person~~ the individual due to physical or mental reason is incapable of safely operating a motor vehicle or

diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments, and the report is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or the public.

**SECTION 3. AMENDMENT.** Section 23-07-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-07-02.1. Reports of human immunodeficiency virus infection - Penalty.** Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. A person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium, the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, the North Dakota youth correctional center, or other private or public institution shall make a report on that individual to the facility administrator or the facility administrator's designee. Further ~~release~~ disclosure of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual or as otherwise authorized by law. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

**SECTION 4. AMENDMENT.** Section 23-07-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-07-02.2. Confidentiality of reports.** A report required by section 23-07-02.1 and held by the state department of health is ~~strictly~~ confidential information. The information may not be ~~released~~ disclosed, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information for statistical purposes in a manner such that no individual person can be identified;
2. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or
3. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

<sup>106</sup> **SECTION 5. AMENDMENT.** Subsections 6, 7, and 8 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Informed consent for testing ~~or disclosure~~" means the written consent on an informed consent form by an individual to the administration of a test to that permission of an individual to be tested for the presence of ~~an antibody to the human immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.~~
7. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing permission to be tested for the presence of ~~an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.~~
8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

<sup>107</sup> **SECTION 6. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-02. Informed consent for testing ~~or disclosure~~ - Exception.**

1. Except when testing ~~and disclosure~~ is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of ~~an antibody to the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing or disclosure as provided under subsection 2.~~
2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of ~~an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential~~

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<sup>106</sup> Section 23-07.5-01 was also amended by section 3 of House Bill No. 1221, chapter 213.

<sup>107</sup> Section 23-07.5-02 was also amended by section 4 of House Bill No. 1221, chapter 213.

test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:

- a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.
  - b. A statement of explanation that the test results may be disclosed as ~~provided under subsection 4 of section 23-07.5-05~~ and either a ~~listing of the persons or circumstances specified under subsection 4 of section 23-07.5-05~~ or a statement that the listing is available ~~upon request~~ authorized by law.
  - c. ~~Spaces~~ Space specifically designated for the following purposes:
    - (1) ~~The signature of the person providing informed consent for the testing and the date on which the consent is signed; and~~
    - (2) ~~The name of any person to whom the test results may be disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.~~
3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:
- a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
  - b. The ~~patient's~~ patient's personal physician of the individual exposed, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
  - c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
  - d. Before testing, the patient is informed, while competent and conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including the patient without the patient's consent, except to,~~ the individual who has had a significant exposure, and any other person as authorized by law; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the patient's identity to any other person except for the purpose of having the test

performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the ~~information~~ patient's identity and that disclosing the information constitutes a class C felony.

4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:
  - a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
  - b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.
  - c. The provider or a person rendering aid under chapter 32-03.1 is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
  - d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including the provider without the provider's consent, except to the patient,~~ the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. ~~A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a class C felony.~~ Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating ~~that the patient's understanding that the patient may not disclose the information~~ provider's identity and that disclosing the information constitutes a class C felony.
5. If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that

person, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person who experienced the significant exposure. If a facility that received the person who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct the testing, the facility shall provide the physician providing care for the exposed emergency medical services provider, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most~~ a reasonably expedient manner ~~possible~~. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
  - a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;
  - b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the person to be tested;
  - c. The petition substitutes a pseudonym for the true name of the person to be tested;
  - d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
  - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~A person~~ An exposed individual may request two tests of the test subject after a significant exposure. ~~The first~~ Each test may be requested ~~within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than six nine months, after a significant exposure.~~ The tested person test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.
8. A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines ~~that~~ to which the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

**SECTION 7. AMENDMENT.** Subsection 1 of section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Obtain from the test subject; the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian if the subject is incapacitated, informed consent for testing ~~or disclosure,~~ unless testing ~~and procedures for disclosure are~~ is otherwise ~~provided~~ authorized by law.

**SECTION 8. AMENDMENT.** Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-06. Expanded disclosure of test results prohibited.** A person to whom the results of a test for the ~~presence of an antibody to~~ the human immunodeficiency virus have been disclosed under ~~subsection 4 of section 23-07.5-05~~ this chapter may not disclose the test results except as ~~provided under that subsection~~ authorized by law.

**SECTION 9. AMENDMENT.** Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-07. Civil liability.** Any person who violates section ~~23-07.5-02,~~ ~~subsection 4 of section 23-07.5-05,~~ or section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. ~~The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 23-07.5-02, subsection 4 of section 23-07.5-05, or section 23-07.5-06.~~ A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

**SECTION 10. AMENDMENT.** Section 23-07.5-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-08. Penalty.** A person who intentionally knowingly discloses the results of a blood test in violation of ~~subsection 4 of section 23-07.5-05 and thereby causes bodily or psychological harm to the subject of the test~~ this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.

**SECTION 11. AMENDMENT.** Subsection 3 of section 23-07.7-02 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Notwithstanding section 23-07.5-03, the~~ The laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health.

**SECTION 12. AMENDMENT.** Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

**23-12-14. Copies of medical records.**

4. As used in this section, "medical health care provider" means a licensed individual or licensed facility providing health care services. ~~This section applies to every medical provider unless expressly provided otherwise by law.~~ Upon the written request of a medical health care provider's patient or any person authorized by a patient, the medical provider shall:
  - a. ~~Provide~~ provide a free copy of a patient's medical health care records to a medical health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical health care to another medical health care provider for the continuation of medical treatment.
  - b. ~~Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.~~
2. a. ~~Except as specified in section 26.1-36-12.4 or subsection 3, a written medical records release is valid for the period of time specified in the release or three years, whichever is shorter.~~
  - b. ~~A patient or any person authorized by the patient may revoke a medical records release at any time by providing written notification to the medical provider.~~

3. Notwithstanding the period of validity under subdivision a of subsection 2, a signed medical records release authorizes a medical provider to forward a patient's medical records to another medical provider during the period of time necessary to complete the patient's course of treatment and to conclude all medical and financial aspects of the case.
4. It is not a prohibited practice as defined in chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers.

**SECTION 13. AMENDMENT.** Section 23-16-09 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-09. Information confidential.** Information other than reports relating to vital statistics received by the state department of health through inspection or otherwise, authorized under this chapter are confidential and may not be disclosed publicly except in a proceeding involving the question of license. ~~In the case of hospitals and related institutions providing maternity care, no~~ No agent of the state department of health or of any board of health, ~~nor the licensee under the provisions of this chapter may disclose the contents of case records~~ individually identifiable health information of such an institution obtained in the course of a survey or inspection except:

1. ~~In~~ in a judicial or administrative proceeding;
2. To legally constituted health or social agencies specifically interested in the patients; and
3. To persons having direct interest in the well-being of the patient, or her infant, and who are in a position to serve their interests should that be necessary in response to an order of a court or administrative tribunal.

**SECTION 14.** A new subsection to section 25-01.3-01 of the North Dakota Century Code is created and enacted as follows:

"Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.

**SECTION 15. AMENDMENT.** Section 25-01.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.3-10. Confidentiality and privileged information.**

1. ~~All documents, records, information, memoranda, reports, complaints, or written or nonwritten communication~~ information relating to an individual with a disability, including individually identifiable health information, that is in the possession of the committee, project, or any advocate relating to an identified or identifiable person with developmental disabilities or mental illness are is confidential and are is not subject to disclosure, except:

- a. ~~When release is consented to in writing by all persons~~ If an authorization for disclosure is given in writing by each individual with developmental disabilities or mental illnesses identified or identifiable in the documents, records, information, memoranda, reports, complaints, or written or nonwritten communications a disability who may be identifiable from the information, or that individual's personal representative;
  - b. In a judicial proceeding when ordered by the presiding judge;
  - c. ~~To officers of the law~~ a law enforcement officer for a law enforcement purpose, a health oversight agency, or, in at the discretion of the committee, to any other legally constituted board or agency serving the interests of persons with mental illness or developmental disabilities an individual with a disability for any other purpose authorized by this chapter, or any other state or federal law; or
  - d. To the parents of a minor who is an eligible person under sections 25-01.3-01 through 25-01.3-12 or legal guardians of the person with ~~mental illness or developmental~~ a disability except that no information may be ~~released~~ disclosed to ~~the~~ a person with mental illness who is the subject of the information when such ~~release~~ a disclosure is prohibited by state or federal law.
2. Unless ordered by a court of competent jurisdiction, the name of a ~~person~~ an individual who in good faith makes a report or complaint may not be ~~released or~~ disclosed by the committee or the project.

<sup>108</sup> **SECTION 16. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

**25-16-07. Records of treatment or care center confidential.** ~~No~~ Except as otherwise authorized by law, no agent of the department of human services or the superintendent of the developmental center at westwood park, Grafton or the licensee or their agents or employees may disclose the contents of the individual records of a treatment or care center for developmentally disabled persons, nor of the reports received ~~therefrom~~ from them, except:

1. In a judicial proceeding when ordered by the presiding judge;
2. To ~~officers of the law~~ a law enforcement official for a law enforcement purpose or any other legally constituted boards or agencies serving the interests of the residents for treatment, payment, or health care operations, to arrange, facilitate, or coordinate service to any such person; or
3. To the parents or legal guardians of the resident.

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<sup>108</sup> Section 25-16-07 was also amended by section 1 of House Bill No. 1425, chapter 230.

<sup>109</sup> **SECTION 17. AMENDMENT.** Subsection 9 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with a frequency indicating a general business practice:
  - a. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.
  - b. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.
  - c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
  - d. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.
  - e. Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.
  - f. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
  - g. Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.
  - h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed one was entitled by reference to written or printed advertising material accompanying or made a part of an application.
  - i. Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
  - j. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.

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<sup>109</sup> Section 26.1-04-03 was also amended by section 2 of Senate Bill No. 2195, chapter 239.

- k. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.
- l. Providing coverage under a policy issued under chapter 26.1-45 or 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.
- m. Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by section 26.1-36-37.1.

It is not a prohibited practice for a health insurance company with participating provider agreements to require that a subscriber or member using a nonparticipating provider be responsible for providing the insurer a copy of medical records used for claims processing.

**SECTION 18. AMENDMENT.** Section 28-01-46.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-01-46.1. Waiver of privilege for health care providers and informal discussion.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, as defined in section 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity, waives in that action any privilege existing under rule 503 of the North Dakota Rules of Evidence, as to any medical records, opinions, or other information in the possession of any other health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. The waiver must permit all defendants to the action, and their attorneys or authorized representatives, to examine the medical records, opinions, or other information and informally participate in a discussion with the health care provider, if the provider consents, regarding the medical records, opinions, or other information that appear reasonably calculated to lead to the discovery of admissible evidence as to any element of the action or the defense of the action. Any statements made by a health care provider during an informal discussion are not admissible, directly or by reference in direct or cross-examination of any witness, in any administrative, civil, or criminal proceeding. However, this section does not render inadmissible any statements obtained from the health care provider in discovery or any legal proceedings independent of the informal discussion which are otherwise admissible in the administrative, civil, or criminal proceeding.

The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. This requirement is satisfied if the defendant's attorney serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal discussion stating the time, date, and location of the informal discussion. If the plaintiff's attorney, after consultation with the defendant's attorney, is unable to attend the discussion at the time or on the date specified in the notice or at some other agreed-upon date and time, the court in which the action is pending shall, upon motion of any party before the date specified in the notice, hold a scheduling conference to set a date and time for the informal discussion that will best

serve the convenience of the parties and the health care provider and the interests of justice. ~~Appropriate medical~~ authorizations permitting access to the written medical record, informal discussion, and testimony at a deposition or trial must be provided by the party commencing the action upon request from any other party to the action at the time the action is commenced. If the party commencing the action fails to provide appropriate authorizations at the time the action is commenced, the health care provider or health care facility may use other means to obtain the records such as by subpoena or by seeking a court order. If alternative means to obtain a patient's records are used, the court shall award reasonable costs incurred by the health care provider or health care facility in obtaining those records, including reasonable attorney's fees.

**SECTION 19. AMENDMENT.** Subsection 6 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Medical information may be disclosed as follows:
  - a. ~~Information~~ Except as otherwise required by law, information contained in medical records on file may shall be released disclosed to the veteran resident on request, except information contained in the medical record which would prove injurious to his physical or mental health, in which case the information will be released only to his duly authorized representative.
  - b. Information contained in medical records of ~~veterans~~ residents and beneficiaries pertaining to medical history, diagnosis, findings, or treatment may be disclosed directly to physicians and hospitals ~~upon request and the submission of a written authorization from the veteran or beneficiary, or in the event he is incompetent, from his duly authorized representative for treatment, payment, and health care operations, and as otherwise authorized by law. This information will be released only with the consent of the patient and on the condition that it is to be treated as a privileged communication confidential information. However, such~~ This information also may be released disclosed without the consent of the veteran resident or his the resident's personal representative when a request for such the information is received from the veterans' administration, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department and the disclosure is required by law, or for the purpose of treatment, payment, or health care operations.

**SECTION 20. AMENDMENT.** Subsection 9 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~Members~~ Subject to the limitations of any other law, members of the legislative assembly may be furnished such information contained in department files as may be requested for official use.

**SECTION 21. AMENDMENT.** Subsection 4 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Confidential information" means individually identifiable health information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling;

which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being, and to such other persons or governmental agencies authorized by law to receive such confidential information.

**SECTION 22. AMENDMENT.** Subdivision n of subsection 1 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

- n. ~~Divulges or reveals~~ Discloses confidential information to ~~an unauthorized~~ any person, except as authorized by law.

**SECTION 23. AMENDMENT.** Section 43-47-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-47-09. Confidentiality.** Except as ~~provided in chapter 50-25.1~~ authorized by law, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

<sup>110</sup> **SECTION 24. AMENDMENT.** Subsection 1 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be ~~released~~ used or disclosed without the ~~written consent~~ authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

**SECTION 25.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Business associate - Duty to protect information.**

1. As used in this section, "business associate" has the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103.
2. If a public entity is acting as a business associate of another public entity, the entity acting as a business associate shall comply with all the requirements applicable to a business associate under title 45, Code of Federal Regulations, part 164, section 504, subsection e, paragraph 2.

**SECTION 26. AMENDMENT.** Section 50-19-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-10. Records of maternity home confidential.** ~~No~~ Except as otherwise authorized by law, no agent of the state department of health or the

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<sup>110</sup> Section 44-04-18.1 was also amended by section 1 of House Bill No. 1078, chapter 381, and section 8 of House Bill No. 1092, chapter 382.

department, or the licensee, under this chapter, may disclose the contents of the records of a maternity home for unmarried mothers nor of the reports received ~~therefrom~~ from them, except:

1. In a judicial or administrative proceeding when ordered by the presiding judge in response to an order of a court or administrative tribunal; or
2. ~~To officers of the law or other legally constituted boards or agencies serving the interests of the patient or her infant.~~ For a law enforcement purpose to a law enforcement official or a health oversight agency for oversight activities authorized by law.

**SECTION 27. REPEAL.** Sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code are repealed.

**SECTION 28. EFFECTIVE DATE.** This Act is effective April 14, 2003.

**SECTION 29. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 15, 2003

Filed April 15, 2003

## CHAPTER 212

### SENATE BILL NO. 2289

(Senators J. Lee, Fischer, Kilzer, Mathern)  
(Representatives Niemeier, Price)

## CHICKENPOX INOCULATIONS FOR CHILDREN

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to required inoculations for children.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella (chickenpox), and poliomyelitis. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the public school district in which the child resides.

Approved March 14, 2003  
Filed March 17, 2003

## CHAPTER 213

### HOUSE BILL NO. 1221

(Representatives Grande, Hawken, Meier, Potter)  
(Senators Christenson, J. Lee)

## CONTAGIOUS DISEASE TESTING

AN ACT to amend and reenact sections 23-07.3-01 and 23-07.3-02, subsections 1 and 10 of section 23-07.5-01, and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for contagious diseases; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.3-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means ~~the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold~~ a reportable condition or disease under section 23-07-01.
2. "Department" means the state department of health.
3. "~~Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
  - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
  - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
  - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

**SECTION 2. AMENDMENT.** Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.3-02. Procedures following significant exposure - Penalty.**

1. If an emergency medical services provider exposed individual has a significant exposure in the process of caring for a patient with a test subject, the emergency medical services provider exposed individual shall document that exposure. The documentation must be ~~on forms approved by the department, and in the manner and time designated by the department~~ conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient test subject may refuse to consent to the test and, if the patient test subject refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall ~~test~~ be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of a crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a patient test subject who is the subject of a ~~reported~~ significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained ~~from the patient's next of kin or legal guardian~~ in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that ~~received the patient~~, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The attending physician health care provider that conducted the test under this section shall report the results of the test to the ~~department~~ and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.

5. A health care provider or an exposed individual who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent if all of the following apply:
  - a. A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.
  - b. The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.
  - c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
  - d. Before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of contagious disease; that the test results may not be disclosed to anyone without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed shall first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information is a class C felony.
6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of a court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
- b. The court finds probable cause to believe that the individual petitioning for the testing had a significant exposure with the test subject;
- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

<sup>111</sup> **SECTION 3. AMENDMENT.** Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "~~Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or ~~other person~~ an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
10. "Universal precautions" means measures that a health care provider, emergency medical ~~services provider~~ technician, exposed individual, or a ~~person~~ an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in United States public health care settings service to prevent transmission of disease.

<sup>112</sup> **SECTION 4. AMENDMENT.** Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, ~~emergency medical services provider~~, or a ~~person rendering aid under chapter 32-03.1~~ who provides care to a patient or handles or processes specimens of body fluids or tissues of a

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<sup>111</sup> Section 23-07.5-01 was also amended by section 5 of House Bill No. 1438, chapter 211.

<sup>112</sup> Section 23-07.5-02 was also amended by section 6 of House Bill No. 1438, chapter 211.

~~patient and~~ an exposed individual who ~~has~~ had a significant exposure with ~~the patient~~ another individual may subject ~~the patient's~~ that individual's blood to a test for the presence of the human immunodeficiency virus, without ~~the patient's~~ that individual's consent, if all of the following apply:

- a. A blood sample of the ~~patient's~~ blood individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
  - b. The ~~patient's~~ exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual ~~has~~ had a significant exposure. The certification must accompany the request for testing and disclosure.
  - c. The ~~patient~~ test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
  - d. Before testing, the ~~patient~~ test subject is informed, while competent and conscious, that the ~~patient's~~ test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one ~~including the patient~~ without the ~~patient's~~ test subject's consent, except to the exposed individual ~~who has had a significant exposure~~, the department, and any other person authorized by law; that if the exposed individual ~~who has had a significant exposure~~ knows the identity of the ~~patient~~ test subject, ~~that~~ the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the ~~individual's~~ test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the ~~patient's~~ test subject's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each exposed individual who ~~has~~ had a significant exposure and to whom test results are disclosed ~~must~~ shall first sign a document indicating ~~that~~ the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information constitutes a class C felony.
5. If a ~~person~~ an individual who is the subject of a ~~reported~~ significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a ~~person~~ an individual who is the subject of a ~~reported~~ significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received that person~~, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure. If a facility that received the ~~person~~ individual who died fails

to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed ~~emergency medical services provider, individual or health care provider, or person who rendered aid under chapter 32-03.4~~ testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most~~ a reasonably expedient manner ~~possible~~. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing ~~the~~ another individual, patient, or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the ~~person~~ test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within ~~five~~ three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
  - a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the ~~patient's or provider's~~ test subject's blood is not available to be used to test for the human immunodeficiency virus;
  - b. The court finds probable cause to believe that the person petitioning for the testing ~~has~~ had a significant exposure with the ~~person to be tested~~ test subject;
  - c. The petition substitutes a pseudonym for the true name of the ~~person to be tested~~ test subject;
  - d. The court provides the ~~person to be tested~~ test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
  - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

Approved April 9, 2003

Filed April 9, 2003

## CHAPTER 214

### HOUSE BILL NO. 1160

(Human Services Committee)

(At the request of the State Department of Health)

## ASSISTED LIVING AND LODGING FACILITY REGULATION

AN ACT to amend and reenact sections 23-07-02, 23-09-01, 23-09-02.1, 23-09-03, 23-09-05, 23-09-06, 23-09-07, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-21, 23-09-22, 50-10.1-01, and 50-10.2-01 of the North Dakota Century Code, relating to assisted living facilities and lodging establishments.

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

<sup>113</sup> **SECTION 1. AMENDMENT.** Section 23-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07-02. Who to report reportable diseases.** Except as otherwise provided by section 23-07-02.1, the following persons shall report to the nearest health officer having jurisdiction any reportable disease coming to their knowledge:

1. All physicians.
2. All persons who treat or administer to the sick by whatever method.
3. Householders.
4. Keepers of ~~hotels, boardinghouses, or lodginghouses~~ lodging establishments and assisted living facilities.
5. Nurses.
6. Schoolteachers.
7. All other persons treating, nursing, lodging, caring for, or having knowledge of the existence of any reportable disease.

If the person reporting is the attending physician, the physician shall report not less than twice a week, in the form and manner directed by the state department of health, the condition of the person afflicted and the state of the disease.

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<sup>113</sup> Section 23-07-02 was also amended by section 1 of House Bill No. 1414, chapter 210.

<sup>114</sup> **SECTION 2. AMENDMENT.** Section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
- ~~2. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. The term does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01.~~
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.

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<sup>114</sup> Section 23-09-01 was also amended by section 1 of House Bill No. 1164, chapter 429.

6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to four or more transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
10. "Proprietor" includes the person in charge of a food ~~or~~ establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.
13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than

fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

**SECTION 3. AMENDMENT.** Section 23-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review.** Each lodging establishment and assisted living facility shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section.

**SECTION 4. AMENDMENT.** Section 23-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-03. Exiting requirements.** Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

**SECTION 5. AMENDMENT.** Section 23-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required.** Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

**SECTION 6. AMENDMENT.** Section 23-09-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-06. Chemical fire extinguishers - Standpipes.** Each lodging establishment or assisted living facility must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire

marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

**SECTION 7. AMENDMENT.** Section 23-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire.** ~~After July 1, 1997, all~~ All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements.

**SECTION 8. AMENDMENT.** Section 23-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-09. Sanitation and safety.** Every food ~~and~~ establishment, lodging establishment, and assisted living facility must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. Every food ~~and~~ establishment, lodging establishment, and assisted living facility must be well constructed, drained, and provided with plumbing equipment according to established sanitary principles and must be kept free from effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.
2. In municipalities in which a system of public water supply and sewerage is maintained, every food ~~and~~ establishment, lodging establishment, and assisted living facility must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes.
3. When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition.
4. All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near any food ~~or~~ establishment, lodging establishment, or assisted living facility.
5. All bedrooms must be kept free from insects and rodents, and the bedding in use must be clean and sufficient in quantity and quality.
6. Each food ~~or~~ establishment, lodging establishment, or assisted living facility shall keep in its main public washroom and available at all hours individual disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.

7. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connected directly to the outside.
8. All food ~~or~~ establishments, lodging establishments, or assisted living facilities shall equip operable windows during the summer months with screens adequate to keep out insects.
9. Neither the dining room nor kitchen of any food ~~or~~ establishment, lodging establishment, or assisted living facility may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.

**SECTION 9. AMENDMENT.** Section 23-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-10. Drinking water standards.** Every person operating a food ~~or~~ establishment, lodging establishment, or assisted living facility shall see that the drinking water supplied therein is obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

**SECTION 10. AMENDMENT.** Section 23-09-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-11. Inspection - Reports.** Every lodging establishment, food establishment, or assisted living facility must be inspected at least once every two years by the department. Food establishments and assisted living facilities must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. ~~Every food establishment must be inspected at least once every two years.~~ The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

**SECTION 11. AMENDMENT.** Section 23-09-14 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-14. Department to report to state fire marshal.** The department, before the sixth day of each month, shall report to the state fire marshal on all food ~~and~~ establishments, lodging establishments, or assisted living facilities inspected by the department during the preceding month, paying particular attention in the report to the violation of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

**SECTION 12. AMENDMENT.** Section 23-09-16 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-16. License - Application.** Before any food ~~or~~ establishment, lodging establishment, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food ~~and~~ establishment, lodging establishment, or assisted living facility licensed by a city or district health unit. Application for license must be made to the department during December of every year, or before the operating of the food ~~or~~

establishment, lodging establishment, or assisted living facility, as the case may be. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date.

**SECTION 13. AMENDMENT.** Section 23-09-17 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-17. License fees.** The following annual license fees must be paid to the department by proprietors of food ~~and~~ establishments, lodging establishments, or assisted living facilities:

1. For a lodging establishment containing not more than three sleeping rooms, twenty dollars.
2. For a lodging establishment containing at least four but not more than ten sleeping rooms, thirty dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, forty-five dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, sixty dollars.
5. For a lodging establishment containing fifty-one sleeping rooms or more, eighty dollars.
6. For a restaurant ~~or boardinghouse~~ with a seating capacity of less than seventy-five, sixty dollars.
7. For a restaurant ~~or boardinghouse~~ with a seating capacity of seventy-five to not more than one hundred fifty, eighty dollars.
8. For a restaurant ~~or boardinghouse~~ with a seating capacity of more than one hundred fifty, eighty-five dollars.
9. For a limited restaurant, fifty dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], fifty dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], sixty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, forty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, fifty dollars.
14. For a salvaged food distributor, fifty dollars.
15. For a food processing plant, not licensed and inspected by any other federal or local health unit, twenty-five dollars.

16. For an assisted living facility, seventy-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars for an establishment with not more than five thousand square feet [464.52 square meters] and one hundred fifty dollars for an establishment over five thousand square feet [464.52 square meters]. The department shall waive all or a portion of the license fee for any food ~~or establishment~~, lodging establishment, or assisted living facility that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food ~~and establishment~~, lodging establishment, or assisted living facility beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year.

**SECTION 14. AMENDMENT.** Section 23-09-18 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-18. Failure to comply with chapter - Notice - How served.** Whenever the proprietor of any food ~~or establishment~~, lodging establishment, or assisted living facility fails to comply with this chapter, the proprietor must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

**SECTION 15. AMENDMENT.** Section 23-09-21 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-21. Penalty - General.** Any person operating a food ~~or establishment~~, lodging establishment, or assisted living facility in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor.

**SECTION 16. AMENDMENT.** Section 23-09-22 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-22. License canceled.** Whenever the proprietor of a food ~~or establishment~~, lodging establishment, or assisted living facility has been convicted of a violation of this chapter and for a period of ten days after the conviction fails to comply with any provision of this chapter, the department may cancel the proprietor's license.

**SECTION 17. AMENDMENT.** Section 50-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-10.1-01. Definitions.** As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.

3. "Long-term care facility" means any skilled nursing facility, ~~intermediate care facility~~, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

**SECTION 18. AMENDMENT.** Section 50-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-10.2-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, ~~intermediate care facility~~, basic care facility, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
  - a. Prevent the facility staff from providing customary and required care; or
  - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of workmen.
6. "Resident" means a person residing in a facility.

Approved March 13, 2003

Filed March 13, 2003

**CHAPTER 215****HOUSE BILL NO. 1121**

(Human Services Committee)

(At the request of the State Department of Health)

**FOOD AND LODGING REGULATION ENFORCEMENT**

AN ACT to amend and reenact section 23-09-02 of the North Dakota Century Code, relating to enforcement of food and lodging regulations.

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

**SECTION 1. AMENDMENT.** Section 23-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-02. State department of health to enforce provisions of chapter.**

The department shall enforce the provisions of this chapter. Under no circumstances may any other state agency ~~enforce the provisions of this chapter or adopt rules which that relate in any way to the provisions of this chapter nor may any other state agency expend any moneys, including salaries, which would involve the agency or its employees in work related to the provisions of this chapter.~~

Approved March 7, 2003

Filed March 7, 2003

## CHAPTER 216

### HOUSE BILL NO. 1400

(Representatives Devlin, Boucher, Nelson, Price)  
(Senators Fischer, J. Lee)

## BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to a moratorium on expansion of the licensed basic care and long-term bed capacity, the conversion of beds, and the transfer of existing basic care beds from one municipality to another municipality or to a tribal reservation.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-09.3-01.1. Moratorium on expansion of basic care bed capacity.**

1. Except when a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia pilot projects established under section 50-06-14.4 requests licensure of the facility's existing beds as basic care bed capacity, or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department may not issue a license under this chapter for any additional bed capacity above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, ~~2004~~ 2003, during the period between August 1, ~~2004~~ 2003, and July 31, ~~2003~~ 2007.
2. Transfers of existing beds from one municipality to another municipality must be approved if the licensing requirements are met, during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~, ~~only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred~~ 2007. Existing licensed beds released by a facility and transferred to another facility must become licensed within ~~twenty-four~~ forty-eight months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~ 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to ~~twice~~ the number of beds transferred. A tribal facility may seek to participate, within ~~twenty-four~~ forty-eight months of any transfer of beds, in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of the facility's intent to convert bed capacity. ~~The converted beds must be located in the same block of rooms within the facility.~~

**SECTION 2. AMENDMENT.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

1. Notwithstanding sections 23-16-06 and 23-16-10, except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4 or when a nursing facility converts basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to nursing facility bed capacity, the state department of health may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, ~~2004~~ 2003, during the period between August 1, ~~2004~~ 2003, and July 31, ~~2003~~ 2007.
2. Transfers of existing beds from one municipality to another municipality must be approved if the state department of health licensing requirements are met, during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~, ~~only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred~~ 2007. Existing licensed beds released by a facility and transferred to another facility must become licensed within ~~twenty-four~~ forty-eight months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~ 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to ~~twice~~ the number of beds transferred. A tribal facility may seek to participate, within ~~twenty-four~~ forty-eight months of any transfer of beds, in the medical assistance program. Medical assistance payments may only be made to a medicaid-certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program including participation, screening, ratesetting, and licensing requirements.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of health of the facility's intent to convert bed capacity. ~~The converted beds must be located in the same block of rooms within the facility.~~

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 217****SENATE BILL NO. 2272**

(Senators Dever, Fischer, Kilzer, J. Lee)  
(Representatives Meier, Porter)

**X-RAY OPERATOR RULES**

AN ACT to create and enact a new section to chapter 23-20.1 of the North Dakota Century Code, relating to x-ray operators.

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

**SECTION 1.** A new section to chapter 23-20.1 of the North Dakota Century Code is created and enacted as follows:

**X-ray operators - Rules.** The health council shall adopt rules, to become effective August 1, 2006, to require that x-ray operators obtain continuing education every two years and to establish minimum standards for x-ray operator provision of limited pediatric examinations.

Approved March 21, 2003

Filed March 21, 2003

## CHAPTER 218

### HOUSE BILL NO. 1306

(Representatives Severson, Delmore, Porter, Uglen)  
(Senators Klein, Krebsbach)

### EMS MISREPRESENTATION PENALTY

AN ACT to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to misrepresentation as to status as an emergency medical services personnel; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-27-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.3. Emergency medical services personnel training, testing, certification, licensure, and quality review - Penalty.** The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing persons who have met the required standards, and provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel. It is a class B misdemeanor for an individual to willfully misrepresent that individual's certification or licensing status as an emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

Approved March 19, 2003

Filed March 19, 2003

**CHAPTER 219****HOUSE BILL NO. 1480**

(Representatives Severson, Drovdal, Gulleson, Warner)  
(Senators Every, Trenbeath)

**QUICK-RESPONSE UNITS**

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to quick-response units.

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

**SECTION 1.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Quick-response units.** Notwithstanding contrary licensing and certification requirements under this chapter, department licensure or certification as a quick-response unit is optional.

Approved March 25, 2003

Filed March 25, 2003

## CHAPTER 220

### SENATE BILL NO. 2297

(Senators Fischer, Dever, J. Lee)  
(Representatives Delmore, Hawken, Price)

## COMMUNITY HEALTH GRANT PROGRAM

AN ACT to amend and reenact section 23-38-02 of the North Dakota Century Code, relating to the community health grant program; to provide for an appropriation; and to provide for an exemption.

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

**SECTION 1. AMENDMENT.** Section 23-38-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-38-02. Community health grant program advisory committee - Duties of state health officer.**

1. The state health officer shall establish a community health grant program advisory committee and shall appoint, after consulting with the governor, appropriate members to advise the state department of health in the development of a community health grant program. The state health officer, who ~~shall be~~ is the chairman of the committee, shall appoint to the committee the state tobacco control administrator; one high school student; one student of a postsecondary institution in the state; one representative of a nongovernmental tobacco control organization; and one law enforcement officer. In addition to the members appointed by the state health officer, the committee must include:
  - a. One individual appointed by the North Dakota Indian affairs commission;
  - b. One individual appointed by the North Dakota public health association;
  - c. The superintendent of public instruction or the superintendent's designee;
  - d. An academic researcher with expertise in tobacco control and health promotion intervention, appointed by the dean of the university of North Dakota school of medicine and health sciences; and
  - e. One physician appointed by the North Dakota medical association.
2. Members of the committee who are not state employees or officers are entitled to be compensated at a rate of sixty-two dollars and fifty cents per day and are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the committee must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

3. The state department of health, with the committee's involvement, shall provide assistance to:
  - a. Evaluate programs;
  - b. Promote media advocacy by working with statewide media associations;
  - c. Implement smoke-free policies by involving antitobacco groups in promoting the need for smoke-free public buildings;
  - d. Work to reduce minors' access to tobacco in all communities;
  - e. Facilitate the coordination of program components with the local level;
  - f. Involve state agencies, law enforcement, and local government in the administration and management of the program; and
  - g. Assist the state in screening and implementing the grants.
4. The state health officer shall monitor the implementation of the community health grant program. The state health officer shall provide ~~reports~~ a report to the legislative council regarding the implementation of the program not later than ~~December 31, 2001, and November 4, 2002~~ September 30, 2004. Upon request, the state health officer shall provide assistance to any interim legislative committee that may study the implementation of the community health grant program and shall recommend any legislation that the community health grant program advisory committee considers appropriate to improve the community health grant program.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the community health grant program advisory committee, for the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding grants to cities and counties with a one dollar local match for every three dollars of state funds for city and county employee tobacco education and cessation programs and for the purpose of funding state employee tobacco education and cessation programs, for the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 4. EXEMPTION.** The appropriation contained in section 5 of chapter 250 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available, in addition to any other moneys appropriated, for grants for the purpose of funding city, county, and state employee tobacco education and cessation programs under section 3 of this Act, for the biennium beginning July 1, 2003, and ending June 30, 2005.