

# **PUBLIC WELFARE**

## **CHAPTER 407**

### **HOUSE BILL NO. 1200**

(Representatives Devlin, Boucher, Severson)  
(Senators Andrist, Fischer, Robinson)

## **NURSING FACILITY MEDICAL ASSISTANCE APPROPRIATION**

AN ACT to provide an appropriation to the department of human services for nursing facility medical assistance payments; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$850,000, or so much of the sum as may be necessary, to the department of human services for the purpose of making nursing facility payments under the medical assistance program, for the period beginning January 1, 2003, and ending June 30, 2003.

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

Approved March 27, 2003  
Filed March 28, 2003

**CHAPTER 408****SENATE BILL NO. 2359**

(Senator Klein)

(Representatives DeKrey, Devlin, Weisz)

**SOCIAL SERVICES PROGRAM ADMINISTRATION**

AN ACT to provide for the designation of a regional human service center for program supervision in cases of multicounty program administration.

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

**SECTION 1. Multicounty agreement to administer social service programs - Selection of regional administration.** If two or more counties enter an agreement to jointly administer a program that is under the supervision of the department of human services, a county that is party to the agreement may request designation of a regional human service center for program supervision. The human service center requested must be providing supervision to one or more of the counties party to the multicounty agreement. Within six months of the request, the department of human services shall implement the county's request for the designation or negotiate with the county to reach an agreeable alternative. If the department of human services and the requesting county have not agreed on an alternative within six months of the request, the requesting designation must be implemented. A request for a change in the designation of a regional human service center may not be made for three years after a designation, unless the membership of the multicounty agreement changes.

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 409****SENATE BILL NO. 2069**

(Judiciary Committee)

(At the request of the Department of Human Services)

**CHILDREN WITH SERIOUS EMOTIONAL DISORDERS  
TREATMENT**

AN ACT to amend and reenact section 50-06-06.13 of the North Dakota Century Code, relating to the provision of treatment services for children with serious emotional disorders.

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

**SECTION 1. AMENDMENT.** Section 50-06-06.13 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.13. Treatment services for children with serious emotional disorders.** The department shall establish in all human service regions a program to provide out-of-home treatment services for a medicaid-eligible child with a serious emotional disorder. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems ~~and both parents or the legal guardian have agreed to the child's voluntary placement or, if there is a parental disagreement, there is a judicial determination by the juvenile court that placement is in the best interests of the child.~~ With departmental approval, a parent with legal and physical custody of the child may obtain treatment services for the child through the program. A parent without physical custody of a child, who disagrees with a child's treatment under this section, may request a judicial determination regarding the child's treatment.

Approved March 13, 2003

Filed March 13, 2003

## CHAPTER 410

### SENATE BILL NO. 2083

(Human Services Committee)

(At the request of the Department of Human Services)

### SPED PROGRAM ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-06.2 of the North Dakota Century Code, relating to disqualifying transfers for determining eligibility for service payments for elderly and disabled; to amend and reenact section 50-06.2-03 of the North Dakota Century Code, relating to the eligibility resource limits of the service payments for elderly and disabled; and to provide statements of legislative intent.

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

**SECTION 1. AMENDMENT.** Section 50-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-06.2-03. Powers and duties of the state agency.** The state agency has the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the human services programs for individuals and families in conformity with state and federal requirements.
2. To prepare, at least biennially, a comprehensive human services plan which must:
  - a. Include human services determined essential in effectuating the purposes of this chapter.
  - b. Detail the human services identified by the state agency for provision by human service centers and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt of any funds allocated or distributed by the state agency.
3. To make available, through county agencies or human service centers, any or all of the services set out in the comprehensive human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive human services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive human services plan, evaluation of comprehensive human services programs, and distribution of public money for services.
5. Within the limits of legislative appropriations and at rates determined payable by the state agency, to pay qualified service providers, which meet standards for services and operations, for the provision of the

following services as defined in the comprehensive human services plan which are provided to ~~persons~~ individuals who, on the basis of functional assessments, income, and resources, are determined eligible for the services in accordance with rules adopted by the state agency:

- a. Homemaker services;
  - b. Chore services;
  - c. Respite care;
  - d. Home health aide services;
  - e. Case management;
  - f. Family home care;
  - g. Personal attendant care;
  - h. Adult family foster care; and
  - i. Such other services as the state agency determines to be essential and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

For purposes of this chapter, resources do not include the ~~person's~~ individual's primary home and the first fifty thousand dollars ~~in~~ of liquid assets.

**SECTION 2.** A new section to chapter 50-06.2 of the North Dakota Century Code is created and enacted as follows:

**Disqualifying transfers.** An individual is not eligible to receive benefits under this chapter if, at any time before or after making application, the individual or the individual's spouse has made any assignment or transfer of any asset for the purpose of making that individual eligible for the benefits. Assignment or transfer includes any action or failure to act that effects a transfer, renunciation, or disclaimer of any asset or interest in an asset that the individual might otherwise assert or have asserted, or which serves to reduce the amount that an individual might otherwise claim from a decedent's estate, a trust or similar device, or another individual obligated by law to furnish support.

**SECTION 3. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - SLIDING FEE SCALE - INCOME NOT EXCEEDING TWENTY-FIVE THOUSAND DOLLARS.** It is the intent of the fifty-eight legislative assembly that the department of human services reduce the income limit levels used for determining copayments for recipients of services under the service payments for elderly and disabled program as of April 1, 2003, by one hundred dollars for each monthly income level for recipients with liquid assets not exceeding twenty-five thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 4. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - SLIDING FEE SCALE - INCOME EXCEEDING TWENTY-FIVE THOUSAND DOLLARS.** It is the intent of the fifty-eighth legislative assembly that the department of human services reduce the income limit levels used for determining copayments for recipients of services under the service payments for elderly and disabled program as of April 1, 2003, by two hundred fifty dollars for each monthly income level for recipients with liquid assets exceeding twenty-five thousand dollars but which do not exceed fifty thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 5. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - INCOME AND ASSET VERIFICATION.** It is the intent of the fifty-eighth legislative assembly that the department of human services verify all income of recipients of services under the service payments for elderly and disabled program by reviewing and maintaining information contained on federal tax forms or similar documents and that the department of human services gather information on the value of income-producing and other assets, excluding an applicant's primary home, furnishings, and personal items, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 25, 2003

Filed April 25, 2003

## CHAPTER 411

### SENATE BILL NO. 2155

(Human Services Committee)

(At the request of the Department of Human Services)

## TANF DEFINITIONS AND ADMINISTRATION

AN ACT to create and enact a new subsection to section 50-09-01 of the North Dakota Century Code, relating to the definition of work activity for purposes of the temporary assistance for needy families program; and to amend and reenact subdivision m of subsection 2 of section 14-08.1-05.1 and section 50-09-29 of the North Dakota Century Code, relating to work and the requirements for the administration of temporary assistance for needy families.

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

<sup>185</sup> **SECTION 1. AMENDMENT.** Subdivision m of subsection 2 of section 14-08.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

- m. Postsecondary education and any other activity permitted or required to be treated by the federal government as work for purposes of calculating a work participation rate under 42 U.S.C. 607(b).

**SECTION 2.** A new subsection to section 50-09-01 of the North Dakota Century Code is created and enacted as follows:

"Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

**SECTION 3. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-29. Requirements for administration of temporary assistance for needy families.**

1. Except as provided in subsections 2, 3, and ~~5 through 7~~ 4, the department of human services, in its administration of the temporary assistance for needy families program, shall:
  - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
  - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;

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<sup>185</sup> Section 14-08.1-05.1 was also amended by section 12 of House Bill No. 1183, chapter 138.

- c. Exempt ~~up to twenty percent of the caseload~~ eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
- d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
- e. ~~Unless otherwise required by federal law, and except~~ Except as provided in subdivision ~~k j~~, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996, ~~for the first five years of residence in the United States, and after five years of residence, until the immigrant has ten years of work history, provide benefits only after considering the income and assets of the immigrant's sponsor;~~
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department not to exceed five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
- g. Exclude one motor vehicle of any value in determining eligibility;
- h. Require work activities ~~as defined in section 14-08.1-05.1~~ for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
- i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- j. ~~Conduct a program, designed to reach state and local law enforcement officials, the education system, and relevant counseling services, which provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men;~~
- k. ~~Provide~~ To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States as ~~refugees, asylees, veterans, active duty military personnel, spouses and dependents of active duty military personnel, and Cuban-Haitian entrants;~~
- † k. Establish and enforce standards against program fraud and abuse;
- m. ~~Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the temporary assistance for needy families program assessment;~~

- ~~n.~~ l. Provide ~~an~~ employment placement ~~program~~ programs;
- ~~o.~~ m. ~~Implement, as soon as practicable,~~ Consider implementing an electronic fund transfer system;
- ~~p.~~ n. Consider exempting funds in individual development accounts;
- ~~q.~~ o. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- ~~r.~~ p. When appropriate, require household members to complete high school;
- ~~s.~~ q. ~~Exempt~~ To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities ~~as defined in section 44-08.1-05.4 if the exempted parent has a child under four months of age~~;
- ~~t.~~ r. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- ~~u.~~ s. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- ~~v.~~ t. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- ~~w.~~ u. Require each household to participate in developing an individual responsibility plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
- ~~x.~~ v. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
- ~~y.~~ w. ~~Seek federal funding to assist in the evaluation of the program~~;
- ~~z.~~ w. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's ~~probable~~ conception;
- ~~aa.~~ x. Disregard earned income as an incentive allowance for no more than twelve months;
- ~~bb.~~ y. ~~Except as otherwise may be permitted by federal law, not reduce or terminate benefits based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has~~

not attained six years of age and the individual proves a demonstrated inability to obtain needed child care because of the:

- (1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- (2) Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- (3) Unavailability of appropriate and affordable formal child care arrangements; and

~~66.~~ y. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere.

2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.

3. If the caseload of households provided assistance exceeds projections provided to the fifty-fifth legislative assembly by the department of human services, the department of human services, subject to the approval of the legislative council, shall administer the temporary assistance for needy families program in a manner that avoids expending or committing all funds appropriated for that purpose earlier than June 30, 1999.

4. If administratively feasible, the department may establish a program that provides for payment of assistance after performance by individuals required to engage in work activities, as defined in section 14-08.1-05.1.

~~5.~~ If the department of human services determines, subject to the approval of the legislative council, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities as defined by section 14-08.1-05.1, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.

~~6.~~ 4. If the department of human services determines, subject to the approval of the legislative council, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.

7. If projected rates of expenditures for operation of the temporary assistance for needy families program, approved by the legislative council, indicate that appropriations for that purpose will be expended or committed earlier than June 30, 1999, the department of human services shall administer the temporary assistance for needy families program in a manner that avoids that result.

Approved March 26, 2003

Filed March 26, 2003

## CHAPTER 412

### SENATE BILL NO. 2036

(Legislative Council)  
(Family Law Committee)

### SPECIAL NEEDS ADOPTION ELIGIBILITY

AN ACT to amend and reenact section 50-09-02.2 of the North Dakota Century Code, relating to eligibility for certification as a special needs adoption.

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

<sup>186</sup> **SECTION 1. AMENDMENT.** Section 50-09-02.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-09-02.2. Assistance for adopted children with special needs.**

Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or vocational school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social services board and who is five seven years of age or older; under eighteen years of age with a physical, emotional, or mental ~~handicap~~ disability or has been diagnosed by a licensed physician to be at high risk for such a disability; a member of a minority; or a member of a sibling group.

Approved April 8, 2003

Filed April 9, 2003

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<sup>186</sup> Section 50-09-02.2 was also amended by section 87 of House Bill No. 1183, chapter 138.

## CHAPTER 413

### SENATE BILL NO. 2245 (Senators Fischer, Heitkamp, J. Lee) (Representatives Grande, Kasper)

## CHILD SUPPORT OBLIGOR IDENTITY DISCLOSURE

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

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

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

#### **Disclosure of identity of child support obligors.**

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who owes past-due child support in an amount greater than twenty-five thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.
2. Prior to disclosing information about an obligor under this section, the state agency shall send to each obligor whose name will be released a notice by regular mail to the obligor's last-known address. The notice must contain the information the state agency plans to release and give the obligor thirty days to object to the accuracy of the information. The notice must state that the obligor may avoid public disclosure of the information under this section if the obligor provides the state agency with the obligor's current address and employer and makes a child support payment in an amount equal to the amount of child support the obligor is required to pay each month under section 14-09-09.30. Information regarding an obligor who owes any past-due support may be disclosed if at any time after receiving a notice under this subsection the obligor fails to make a required child support payment in an amount determined under section 14-09-09.30.
3. The state agency shall obtain the written consent of the obligee before disclosing information regarding an obligor under subsection 1.
4. The state agency must develop and maintain a list of the names, addresses, and amounts of past-due support owed by obligors who have been found in contempt of court in this state for failure to comply with a child support order or who have been found guilty of willful failure to pay child support under section 12.1-37-01. Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state agency must release the list upon request under section 44-04-18.

5. The state agency, its employees and agents, and any person publishing information that is disclosed under this section is immune from any civil or criminal liability resulting from the disclosure of information under this section.

Approved April 8, 2003

Filed April 9, 2003

## CHAPTER 414

### HOUSE BILL NO. 1084

(Human Services Committee)

(At the request of the Department of Human Services)

### FOSTER CARE LICENSE DENIAL

AN ACT to amend and reenact section 50-11-07 of the North Dakota Century Code, relating to the denial or revocation of a foster care license.

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

**SECTION 1. AMENDMENT.** Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-07. ~~Revocation~~ Denial or revocation of license.** The department may deny or revoke the license of any facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license ~~no longer~~ do not exist.
2. The application contains false or misleading material information or the applicant intentionally withheld material information.
3. The license was issued upon ~~fraudulent or untrue representations~~ false, misleading, or intentionally withheld material information.
- 3- 4. ~~The~~ An operator, licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department.
4. ~~The~~ An operator of the facility, or a caregiver in the facility, applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the person's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

Approved March 13, 2003

Filed March 13, 2003

## CHAPTER 415

### HOUSE BILL NO. 1085

(Human Services Committee)

(At the request of the Department of Human Services)

## CHILD CARE PROVIDER LICENSING

AN ACT to amend and reenact sections 50-11.1-04 and 50-11.1-06.2 of the North Dakota Century Code, relating to consideration of reports of child abuse or neglect in licensing or registering child care providers.

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

**SECTION 1. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.** Applications for early childhood facility licenses must be made on forms provided, in the manner prescribed, by the department. The county agency shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all facilities applying for a license. The applicant for a license and the applicant's employees, and, if the license is for an occupied private residence, every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of probable cause services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of an early childhood facility upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application;
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03; and
6. The group child care or child care center facility maintains at all times during which early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

The license issued to the operator of an early childhood facility must be in force and effect for a period of not more than two years.

**SECTION 2. AMENDMENT.** Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees.** Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of ~~probable cause~~ services required for child abuse or neglect, the division shall submit one set of fingerprints to the federal bureau of investigation and one set to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of ~~probable cause~~ services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

Approved March 13, 2003

Filed March 13, 2003

## CHAPTER 416

### HOUSE BILL NO. 1249

(Representatives Hawken, Delmore, Meier)  
(Senator Wardner)

### EARLY CHILDHOOD SERVICES

AN ACT to amend and reenact subsection 2 of section 50-11.1-07 and sections 50-11.1-07.2, 50-11.1-07.8, and 50-11.1-09 of the North Dakota Century Code, relating to early childhood services.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Licensees and registrants shall:
  - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department; ~~and~~
  - b. Admit for inspection authorized agents of the department or the county agency and open for examination all records, books, and reports of the home or facility; and
  - c. Notify the parent, guardian, or custodian of each child receiving care at the facility and each employee of the facility of the process for reporting a complaint or a suspected licensing violation.

**SECTION 2. AMENDMENT.** Section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-11.1-07.2. Correction orders.**

1. Whenever the county agency finds, upon inspection of an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order must be issued to the facility. The correction order must cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.
2. Within three business days of the receipt of the correction order, the licensee of the early childhood facility shall notify the parent, guardian, or custodian of each child receiving care at the facility that a correction order has been issued. In addition to providing notice to the parent,

guardian, or custodian of each child, the licensee shall post the correction order in a conspicuous location within the facility until the violation has been corrected.

**SECTION 3. AMENDMENT.** Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.8. Suspension of license - Notification to parent, guardian, or custodian.** The department may suspend the license of any early childhood facility during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department ~~may~~ shall notify the parent, guardian, or custodian of any child receiving care at the facility when the license of the facility is suspended. Upon the conclusion and disposition of the investigation of the facility, the department ~~may~~ shall notify the parent, guardian, or custodian of the child of the disposition.

**SECTION 4. AMENDMENT.** Section 50-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-09. Revocation of license or registration document.**

1. The department may revoke the license of any early childhood facility or the registration document of any in-home provider upon proper showing of any of the following:
  4. a. Any of the applicable conditions set forth in section 50-11.1-04 as prerequisites for the issuance of the license no longer exist.
  2. b. The licensee or registrant is no longer in compliance with the minimum standards prescribed by the department.
  3. c. The license or registration document was issued upon fraudulent or untrue representation.
  4. d. The licensee or registrant has violated any rules of the department.
  5. e. The licensee or registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a licensee or registrant.
  6. f. The licensee has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the licensee has not been sufficiently rehabilitated.
2. The department shall notify, in writing, the parent, guardian, or custodian of each child receiving care in the facility of the issuance of a revocation notice.

Approved March 27, 2003

Filed March 28, 2003

## CHAPTER 417

### HOUSE BILL NO. 1037

(Legislative Council)  
(Family Law Committee)

## CHILD-PLACING AGENCY AND ADOPTION LICENSING AND REGULATION

AN ACT to amend and reenact sections 50-12-01, 50-12-02, and 50-12-03, subsection 1 of section 50-12-03.2, subsection 3 of section 50-12-04, sections 50-12-06, 50-12-07, and 50-12-08, subsection 1 of section 50-12-10, and sections 50-12-12, 50-12-14.1, and 50-12-17 of the North Dakota Century Code, relating to licensure of child-placing agencies and registration of adoption placement facilitators; to repeal section 50-12-13 of the North Dakota Century Code, relating to child-placing agency licensure appeals; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 50-12-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-01. Child-placing agency Definitions.** ~~The term "child-placing agency" when~~ As used in this chapter, unless the context or subject matter otherwise requires;

1. "Child-placing agency" means any person; ~~partnership; voluntary association; corporation; or limited liability company~~ undertaking to place children in family homes for temporary or permanent care.
2. "Placement" means the transfer of physical custody of a child from a birth parent for foster or adoptive care until an adoption is finalized.

**SECTION 2. AMENDMENT.** Section 50-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-02. Child-placing agency licensed.** Every child-placing agency shall secure a license ~~annually~~ from the department of human services.

<sup>187</sup> **SECTION 3. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03. Requirements for license - Term.** ~~Licenses~~ The department of human services shall issue licenses for the conduct of child-placing agencies ~~must be issued by the department of human services upon application and. Licenses must be granted for a period not exceeding one year~~ two years. ~~Such licenses~~ Licenses must be issued to reputable and responsible applicants upon a showing

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<sup>187</sup> Section 50-12-03 was also amended by section 1 of Senate Bill No. 2188, chapter 418.

that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise ~~such~~ the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded.

**SECTION 4. AMENDMENT.** Subsection 1 of section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in chapter 50-11.3, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.

**SECTION 5. AMENDMENT.** Subsection 3 of section 50-12-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Whether the licensee is authorized to find ~~temporary~~ foster or ~~permanent~~ adoptive homes for children, or both.

**SECTION 6. AMENDMENT.** Section 50-12-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-06. Placement contract.** Every child-placing agency upon placing a child in a foster or an adoptive home shall enter ~~into~~ a written agreement with the persons taking the child ~~which~~. The agreement must provide:

1. The placing agency ~~shall have~~ has access at all reasonable times to such child and to the home in which the child is living; and
2. For the return of the child to the placing agency whenever in the opinion of ~~such~~ the agency, or of the department of human services, the best interests of the child ~~shall~~ require the return.

**SECTION 7. AMENDMENT.** Section 50-12-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-07. Duties of licensee.** Every licensee shall:

1. Keep a full record and social history of each child received for placement and a similar record and history of his family.
2. Report to the department of human services:
  - a. The name and address of each child to be placed in a ~~permanent~~ foster or an adoptive home-;
  - b. The name and address of the proposed foster or adoptive parents-; and

- c. ~~Such~~ Any other facts and information as ~~shall be~~ requested by the department.
3. Visit the proposed foster or adoptive home at frequent intervals and make all necessary inquiries and investigations as may be necessary to determine whether the child will become properly adjusted in ~~said~~ the home.
  4. Continue to visit and supervise each placement as often as may be required by the department and report in writing to the department the conditions as ascertained by ~~such~~ a visit.

**SECTION 8. AMENDMENT.** Section 50-12-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-08. Child must be placed in suitable home - Department may remove child.** A child may not be placed in any foster or adoptive home until adequate investigation has been made as to the suitability of the proposed foster or adoptive parents and their home surroundings. ~~Whenever~~ When the department of human services is satisfied that a child has been placed in an unsuitable home ~~it, the department~~ shall order the child-placing agency, in writing, to remove the child and place ~~it~~ the child in a home ~~which that~~ meets ~~with~~ the approval of the department. If within a reasonable period of time it appears that suitable arrangements have not been made for the care of the child, the department shall refer the child to the county social service board of the county in which the child has legal settlement. The county social service board shall make immediate arrangements, subject to the approval of the department, for the care and support of the child. If the child has no legal settlement within the state, or in case of a dispute as to the determination of the child's legal settlement or responsibility for the child's support, the child must be brought before the juvenile court as a dependent child in the county in which the child is found, as provided by law.

**SECTION 9. AMENDMENT.** Subsection 1 of section 50-12-10 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Any of the conditions set forth in section 50-12-03 as prerequisites for the issuance of the license no longer exist.~~ The licensee has violated any requirements under this chapter.

**SECTION 10. AMENDMENT.** Section 50-12-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-12. Denial or revocation of license - Hearing.** Before any application for a license ~~to conduct a child-placing agency~~ under this chapter may be denied, or before the revocation of any ~~such~~ license may take place, written charges as to the reasons therefor must be served upon the applicant or licensee. ~~Such~~ The applicant or licensee has the right to ~~a~~ an administrative hearing ~~before the department of human services, if such a hearing is requested, within thirty days after service of the written charges as provided under chapter 28-32 if written request for the hearing is made to the department within thirty days after service of the written charges.~~

**SECTION 11. AMENDMENT.** Section 50-12-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-14.1. Conditions for placement of children in state - Consent of department required.** Any person, ~~partnership, association, corporation, limited liability company, charitable agency, or other entity~~ undertaking to bring or to send a child into this state for placement in foster care ~~or~~, as a preliminary to a possible adoption, or for guardianship shall furnish the department of human services with written notice of the intention to send, bring, or place the child in the state and shall obtain prior written consent from the department for each child to be so placed. The notice must contain:

1. The name, date, and place of birth of the child;
2. The identity and address or addresses of the parent or legal guardian;
3. The name and address of the person, agency, or institution to or with which the child is proposed to be placed;
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made; and
5. ~~Such~~ Any supporting or additional information as the department ~~may deem~~ determines necessary under the circumstances.

This section does not apply to the sending or bringing of a child into this state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in this state.

**SECTION 12. AMENDMENT.** Section 50-12-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-17. Licensure requirement - Registration requirement - Penalty.** ~~No~~ A person may not place or cause to be placed any child in a family home for adoption without a license ~~se~~ to do so from the department of human services except that a parent, upon giving written notice to the department, may place ~~his or her own~~ the parent's child in the home of the child's parent, stepparent, grandparent, adult brother or sister, adult uncle, or aunt, or guardian for adoption by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. ~~Every~~ A person who willfully violates ~~any provision in this chapter~~ is guilty of a class C felony. For purposes of this section, "to place or cause to be placed" means to place a child for adoption; arrange or provide for short-term foster care for a child pending an adoptive placement; facilitate placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents; or advertise in any public medium that the person knows of a child who is available for adoption or is willing to accept a child for adoption or that the person knows of prospective adoptive parents of a child.

**SECTION 13. REPEAL.** Section 50-12-13 of the North Dakota Century Code is repealed.

## CHAPTER 418

### SENATE BILL NO. 2188

(Senators Klein, Dever, Robinson)  
(Representatives Grande, Pollert, Weisz)

## CHILD-PLACING AGENCY LICENSING

AN ACT to create and enact a new section to chapter 50-12 of the North Dakota Century Code, relating to moral or religious objections by a child-placing agency; and to amend and reenact section 50-12-03 of the North Dakota Century Code, relating to licensure of child-placing agencies.

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

<sup>188</sup> **SECTION 1. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03. Requirements for license - Term - Moral or religious conviction not bar to licensure.** Licenses for the conduct of child-placing agencies must be issued by the department of human services upon application and must be granted for a period not exceeding one year. Such licenses must be issued to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded. The department of human services may not deny a license because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.

**SECTION 2.** A new section to chapter 50-12 of the North Dakota Century Code is created and enacted as follows:

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<sup>188</sup> Section 50-12-03 was also amended by section 3 of House Bill No. 1037, chapter 417.

**Objection to placement for religious or moral convictions or policies -**

**Effect.** A child-placing agency is not required to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies. A state or local government entity may not deny a child-placing agency any grant, contract, or participation in a government program because of the child-placing agency's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the child-placing agency's written religious or moral convictions or policies. Refusal by a child-placing agency to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the child-placing agency's written religious or moral convictions or policies does not constitute a determination that the proposed adoption is not in the best interest of the minor.

Approved April 23, 2003

Filed April 23, 2003

## CHAPTER 419

### SENATE BILL NO. 2341

(Senators Epegard, G. Lee)

(Representative Grande)

## CHARITABLE SOLICITATIONS

AN ACT to create and enact sections 50-22-06 and 50-22-07 of the North Dakota Century Code, relating to charitable solicitations; to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.3, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; and to repeal section 50-22-04.2 of the North Dakota Century Code, relating to charitable solicitations.

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

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

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

1. "Accounting year" means the twelve-month period on which a charitable organization keeps its financial records.
4. ~~2.~~ a. "Charitable organization" means ~~any entity that:~~
  - (1) ~~is deemed by the internal revenue service to be a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; or~~
  - (2) ~~holds itself out to the public to be established for any charitable purpose; or~~
  - (3) ~~in any manner employs a charitable appeal as the basis for any solicitation~~ a person that engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office, or similar affiliate or a person soliciting contributions within the state for a parent charitable organization.
- b. The term "charitable organization" does not include:
  - (1) An organization ~~soliciting~~ solicits funds for an institution of higher learning.
  - (2) An organization ~~using~~ that uses only volunteer unpaid fundraisers and ~~soliciting~~ that solicits funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.

- (3) A private or public elementary or secondary school.
  - (4) A charitable organization or person ~~soliciting~~ that solicits contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.
  - (5) ~~A duly constituted religious organization or any group affiliated with and forming an integral part of that organization no part of the net income of which inures to the direct benefit of any individual and which has received a declaration of current tax-exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain the declaration if the parent or principal organization has obtained the declaration.~~ A religious society or organization that is exempt from filing a federal annual information return pursuant to Internal Revenue Code section 6033(a)(2)(A)(i) and (iii) [26 U.S.C. 6033(a)(2)(A)(i) and (iii)] and Internal Revenue Code section 6033(a)(2)(C)(i) [26 U.S.C. 6033(a)(2)(C)(i)].
  - (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.
3. "Charitable purpose" means a charitable, benevolent, philanthropic, religious, social service, welfare, educational, cultural, artistic, or public interest purpose, either actual or purported.
  2. 4. "Contribution" means cash or the promise, grant, or pledge of any money, credit, assistance, or property of any kind or value, including the promise to pay, provided in response to a solicitation. "Contribution" includes, in the case of a charitable organization offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization and the price at which the charitable organization or a person acting on behalf of that organization resells those goods or services to the public. "Contribution" does not include bona fide fees, dues, or assessments paid by members of an organization, provided that:
    - a. Membership is not conferred in exchange for a contribution in response to a solicitation; or
    - b. Membership provides no benefit in addition to the right to vote or otherwise participate in the organization and the right to receive literature.
  3. 5. "Person" means any individual, organization, association, partnership, corporation, or limited liability company.
  4. "Professional fundraiser" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on,

advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fundraiser.

5. 6. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through the person's agents, servants, or employees or through agents, servants, or employees specially employed by, or for, a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fundraiser within the meaning of this chapter fundraiser" means a person who, for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be, solicited in this state by the compensated person or by a compensated person the person employs, procures, or engages to solicit; or a person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the state may not be deemed to be a professional ~~solicitor~~ fundraiser.

An attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization may not be deemed, as the result of that advice, to be a professional fundraiser ~~or a professional solicitor~~.

6. 7. "Solicitation" ~~means~~ and "solicit" mean the request to the public or member of the public for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including:
- a. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media;
  - b. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through any medium available to the public and described in subdivision a;
  - c. A sale of or attempt to sell any good or service in which the good or service is priced above fair market value or when it is otherwise represented that some portion of the purchase price will be used for a charitable purpose; or
  - d. An announcement inviting the public to attend an assembly, event, exhibition, performance, or social gathering of any kind where

admission is conditioned on the receipt of a contribution or at which function contributions will be otherwise solicited.

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

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

**50-22-02. License to solicit - Term - Revocation Registration of charitable organization.**

1. A charitable organization may not solicit contributions from persons in this state by any means ~~without first having obtained a license from the secretary of state. The application for a license must contain the information concerning the solicitation as required by this chapter. This information must be filed with the secretary of state and must be available as a matter of public record. The application form containing the information must be sworn to and must include the following:~~
1. ~~The name of the charitable organization for which the solicitation is to be conducted.~~
2. ~~The organization's address.~~
3. ~~The purpose or purposes for which the contributions solicited are to be used.~~
4. ~~The individual or officer who will have custody of the contributions.~~
5. ~~The individual or officer responsible for the distribution of contributions received.~~
6. ~~The period of time during which solicitation is to be conducted.~~
7. ~~A description of the methods of solicitation in such detail as may be determined by the secretary of state.~~
8. ~~Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or both, and if in whole or part by paid solicitors, the name and address of each professional fundraiser supplying the solicitors, the basis of payment, and the nature of the agreement.~~
9. ~~Any additional information deemed necessary by the secretary of state.~~

The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until September first of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the

application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the state general fund. The fee for an initial license is twenty-five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause.

unless, prior to a solicitation, there is on file with the secretary of state upon forms prescribed by the secretary of state a registration statement containing the following information:

- a. Legally established name.
  - b. Name or names under which it solicits contributions.
  - c. Form of organization.
  - d. Date and place of organization.
  - e. Business telephone number.
  - f. Street and mailing address of principal office in this state, if any.
  - g. Name and address of the person having custody of books and records within this state.
  - h. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
  - i. Federal and state tax-exempt status.
  - j. Denial at any time by any governmental agency or court of the right to solicit contributions.
  - k. Date on which accounting year of the charitable organization ends.
  - l. General purposes for which organized.
  - m. General purposes for which contributions to be solicited will be used.
  - n. Methods by which solicitation will be made.
  - o. Board, group, or individual having final discretion or authority as to the distribution and use of contributions received.
  - p. Amount of total contributions received during the accounting year last ended.
2. The registration statement filed by a charitable organization must include a registration fee of twenty-five dollars and a financial statement of the organization's operation for its most recent twelve-month period

immediately preceding the filing of the first registration statement. The registration continues unless revoked by a court of competent jurisdiction, by the secretary of state, or as provided in this chapter. If a charitable organization fails to file a registration statement or other information required to be filed by the secretary of state under this chapter, or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration. An adjudicative proceeding under this chapter must be conducted in accordance with chapter 28-32 unless otherwise provided in this chapter. A notice required under this chapter or chapter 28-32 may be made by certified mail. In the event of revocation, the secretary of state still shall retain the registration fee.

3. An officer of the charitable organization must execute the registration statement and must acknowledge that the registration statement has been executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement. The executing officer also must certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume, responsibility for determining matters of policy and have supervised, and will continue to supervise, the finances of the charitable organization.
4. If a chapter, branch, area office, or similar affiliate of a charitable organization is supervised and controlled by a parent organization located within or outside the state, the affiliate may file a registration statement on behalf of the parent organization in addition to or as part of its own registration statement or the parent organization may file a registration statement on behalf of the affiliate in addition to or as part of its own registration statement.

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

**50-22-02.1. Registration of professional fundraiser and solicitor - Bond required.** ~~The secretary of state or the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds.~~

1. A person may not act as a professional fundraiser or solicitor subject to this chapter unless that person has registered with the secretary of state. The application for registration statement must be in writing, under oath, in the form prescribed by the secretary of state and must be accompanied by an annual a fee of one hundred dollars. This The registration information must be available to the public as a matter of public record. Each registration expires on September first unless, prior to September first, the public fundraiser registers by filing a new registration statement, accompanied by a fee of one hundred dollars. The forms containing the information must be ~~sworn to~~ verified under oath and must include the following:
  - 4- a. ~~The name of the professional fundraiser or solicitor.~~
  - 2- b. The street and mailing address and telephone number of the professional fundraiser or solicitor.

3. c. The type of fundraising to be conducted in this state.
4. d. The name of the auditor ~~in charge of~~, accountant, employee, agent or other person who maintains or possesses the organization's professional fundraiser's records.
5. e. A list of all officers, agents, or employees to work under the applicant's direction.
6. f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

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

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

2. The professional fundraiser shall also include, as part of the registration statement, a bond in which the professional fundraiser is the principal obligor. The bond must be in the sum of twenty thousand dollars, with one or more responsible sureties whose liability in the aggregate as the sureties will at least equal that sum. In order to maintain the registration, the bond must be in effect for the full term of the registration. The bond, which may be in the form of a rider to a larger blanket liability bond, must run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities subject to this chapter.
3. The professional fundraiser shall also include, as part of the registration statement, a copy of the contract between any charitable organization and the professional fundraiser. The contract must:
  - a. Be in writing;
  - b. Contain information that will enable the secretary of state to identify the services the professional fundraiser is to provide, including whether the professional fundraiser will at any time have custody of contributions; and

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

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

**50-22-04. Information required to be filed annually.**

1. Every charitable organization ~~licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, that is required to file or that files a registration statement pursuant to~~ section 50-22-02 shall file an annual report along with a ten dollar fee with the secretary of state on or before September first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

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

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used.

2. The annual report must be filed on forms ~~provided~~ prescribed by the secretary of state ~~containing the following information:~~
4. ~~Specific and itemized support and revenue statements disclosing direct public support in this state from solicitation, indirect public support, government grants, program service revenue, and any other revenue.~~
2. ~~The amount thereof given to the charitable purpose represented.~~

3. ~~Specific and itemized expense statements disclosing program services, public information expenditures, payments to affiliates, management costs, and salaries paid in this state.~~
4. ~~The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.~~

In addition, the and must include a financial statement covering the immediately preceding twelve-month period of operation. An officer of the charitable organization shall execute the financial statement which must include a balance sheet, statement of income and expense, and statement of functional expenses. The financial statement must be filed on or attached to forms furnished by the secretary of state and must be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of the allocations:

- a. Total receipts and total income from all sources;
  - b. Cost of management and general;
  - c. Program services;
  - d. Cost of fundraising;
  - e. Cost of public education;
  - f. Funds or properties transferred out of state with explanation as to recipient and purpose;
  - g. Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;
  - h. Names of professional fundraisers used during the accounting year and the financial compensation and profit resulting to each professional fundraiser; and
  - i. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
3. Unless otherwise required by this section, the financial statement need not be certified.
  4. The annual report must include a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the internal revenue service for the period covered by the annual report, except any schedules of contributors to the organization.
  5. The secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall may assist the secretary of state in carrying out this chapter and, for this purpose, has

all powers granted by this chapter to the secretary of state. Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter. The registration of a charitable organization is ineffective immediately upon its failure to file an annual report, including the payment of all required fees. Any such organization, if in default under this chapter, may not file a new registration statement until it files the required annual report with the secretary of state.

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

**SECTION 5. AMENDMENT.** Section 50-22-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-22-04.3. Fraud - Misrepresentation.** ~~No~~ A charitable organization, professional fundraiser, ~~or professional solicitor,~~ or any agent or employee of a charitable organization, ~~or professional fundraiser, or professional solicitor~~ may not use any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the solicitation of a contribution for or on behalf of a charitable organization.

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

**50-22-05. Enforcement - Penalties - Remedies.** Any person conducting a solicitation in violation of this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. ~~Any person who commences or continues fundraising or soliciting after the person's application is denied or the license or registration under this chapter is revoked or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the person the right to engage in future fundraising activities. Any person conducting a solicitation after the person's registration is revoked is guilty of a class C felony. The criminal penalties in this section are in addition to all other causes of action, remedies, and penalties available to the state.~~

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the ~~fundraiser,~~ charitable organization, or professional ~~solicitor~~ fundraiser is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser ~~or solicitor,~~ or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser ~~or solicitor~~ or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other relief the court determines appropriate, including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of ~~license or~~ registration under this chapter for a period of up to five years. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all

other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

**SECTION 7.** Section 50-22-06 of the North Dakota Century Code is created and enacted as follows:

**50-22-06. Costs recoverable in court proceeding.** The attorney general is entitled to an award of reasonable attorney's fees, costs, and expenses of an investigation and action brought under this chapter.

**SECTION 8.** Section 50-22-07 of the North Dakota Century Code is created and enacted as follows:

**50-22-07. Rules.** The secretary of state may adopt rules the secretary of state deems necessary and appropriate to fully implement the provisions of this chapter in accordance with chapter 28-32, but which need not comply with section 28-32-07.

**SECTION 9. REPEAL.** Section 50-22-04.2 of the North Dakota Century Code is repealed.

Approved March 20, 2003  
Filed March 20, 2003

## CHAPTER 420

### HOUSE BILL NO. 1469 (Representatives Weisz, Price) (Senator Fischer)

#### MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to eligibility for medical assistance; and to amend and reenact section 50-24.1-02.5 of the North Dakota Century Code, relating to eligibility for medical assistance.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased after July 31, 2003, the insurance coverage under this section must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage. The coverage required under this subsection must include a daily benefit equal to at least one and fifty-seven hundredths times the average daily cost of nursing care for the year in which the policy was issued and an aggregate benefit equal to at least one thousand ninety-five times that daily benefit.

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

##### **Department to submit plans and seek waivers.**

1. Unless a waiver under subsection 2 is required, the department of human services shall submit amendments to the state plan for medical assistance to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services.
2. If the state plan amendment provided for in subsection 1 is or will be denied, the department of human services shall seek a waiver of federal law to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services.

3. Unless the amendment to the state plan or the request for waiver would otherwise be denied, the requirements of this section apply only to transfers that occur on or after the effective date of the state plan amendment or waiver.

Approved April 21, 2003

Filed April 22, 2003

## CHAPTER 421

### SENATE BILL NO. 2074

(Human Services Committee)

(At the request of the Office of Management and Budget)

## MEDICAL ASSISTANCE BENEFIT ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02.6 of the North Dakota Century Code, relating to eligibility criteria for medical assistance benefits; to repeal section 5 of chapter 425 of the 2001 Session Laws; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.6. (Contingent effective date - See note) Medical assistance benefits - Eligibility criteria:**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
  - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all minors born before September 30, 1983, equal to one hundred percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined and that do not exceed legislative appropriations for that purpose.

**(Contingent effective date and effective through June 30, 2003 - See note) Medical assistance benefits - Eligibility criteria.**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
  - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and

- b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all minors born before September 30, 1983, equal to one hundred percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined and that do not exceed legislative appropriations for that purpose.
4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.

**SECTION 2. REPEAL.** Section 5 of chapter 425 of the 2001 Session Laws is repealed.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 422****SENATE BILL NO. 2194**

(Senator J. Lee)  
(Representative Price)

**MEDICAL ASSISTANCE BUY-IN AND PERSONAL CARE**

AN ACT to provide for the establishment of a medical assistance buy-in program for individuals with disabilities and to provide for personal care services for eligible medical assistance recipients; and to provide an expiration date.

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

**SECTION 1. Medical assistance buy-in program for disabled.** The department of human services shall establish and implement a buy-in program to provide medical assistance to an individual who meets the definition of disabled under the supplemental security income program under title XVI of the federal Social Security Act, who is at least eighteen but less than sixty-five years of age, and who is gainfully employed. The program must:

1. Be made available to an individual with a disability who is a member of a family the total annual income of which is less than two hundred twenty-five percent of the most recently revised official poverty line published by the federal office of management and budget for the family;
2. Disregard up to an additional ten thousand dollars earned while an eligible individual is enrolled in medical assistance and retained as an approved plan to achieve self-support;
3. Require the payment of a premium that is based upon a sliding scale which may not be less than two and one-half percent nor more than seven and one-half percent of the individual's income;
4. Include a one-time program enrollment fee of one hundred dollars; and
5. Provide that the failure of an enrolled individual to pay premiums for three consecutive months may result in the termination of enrollment in the program.

**SECTION 2. Personal care services.** Subject to the requirements under title 42, Code of Federal Regulations, part 440, section 167, the department of human services shall provide personal care services for eligible medical assistance recipients who are residing in their own homes.

**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 14, 2003  
Filed April 14, 2003

## CHAPTER 423

### SENATE BILL NO. 2384

(Senators Schobinger, Brown, J. Lee)  
(Representatives Price, Svedjan, Thoreson)

## ANNUITY TRANSFER EFFECT ON MEDICAL ASSISTANCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the effect on medical assistance eligibility of transfers involving annuities.

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

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

#### **Transfers involving annuities.**

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future. The term does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half.
2. The purchase of an annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1 is considered an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:
  - a. The annuity is irrevocable and cannot be assigned to another person.
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.
  - c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.
  - d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the department of human services.

- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.

Approved April 23, 2003

Filed April 23, 2003

## CHAPTER 424

### SENATE BILL NO. 2068

(Human Services Committee)

(At the request of the Department of Human Services)

### EYE CARE SERVICES COVERAGE

AN ACT to amend and reenact section 50-24.1-06 of the North Dakota Century Code, relating to remedial eye care services coverage.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-06. Remedial eye care - When provided.** On the basis of the findings of an examination made by an ophthalmologist, optometrist, or physician skilled in the diseases of the eye, recommended remedial eye care services must be provided by the department of human services to any person individual under the age of sixty-five who is in need of treatment either to prevent blindness or to restore the person's eyesight remedial eye care services if the person individual is not blind as defined under title XVI of the Social Security Act, as amended, [42 U.S.C. 1381 et seq.], and the person individual is otherwise qualified for assistance under this chapter. The remedial eye care services may include necessary travel and other expenses to receive treatment from a hospital or clinic designated by the department. Except for services furnished in a medical emergency, the department may not pay for recommended remedial eye care services unless the individual receiving those services first applies for and receives authorization from the department. As used in this section, "remedial eye care services" mean services to prevent blindness or to restore an individual's eyesight, but does not include treatment of diseases causing an impairment or a loss of eyesight, such as diabetes and high blood pressure, ordinary eye examinations, eye glasses, physical examinations, or travel and other expenses necessary to receive treatment.

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 425****SENATE BILL NO. 2089**

(Human Services Committee)

(At the request of the Office of Management and Budget)

**BREAST OR CERVICAL CANCER MEDICAL ASSISTANCE**

AN ACT to amend and reenact section 50-24.1-17 of the North Dakota Century Code, relating to medical assistance for breast or cervical cancer; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-17. (~~Effective through June 30, 2003~~) Medical assistance for breast or cervical cancer.** The department of human services may provide medical assistance for women screened and found to have breast or cervical cancer in accordance with the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000 [Pub. L. 106-354; 114 Stat. 1381; 42 U.S.C. 1396a et seq.]. The department shall establish an income eligibility limit that may not exceed two hundred percent of the poverty line for payments made under this section. For purposes of this section, poverty line means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2), applicable to a family of the size involved.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2003.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 2003

Filed April 4, 2003

**CHAPTER 426****SENATE BILL NO. 2330**  
(Senator Mathern)**HOME AND COMMUNITY-BASED LIVING OPTIONS**

AN ACT to provide for a choice of options for individuals eligible for home and community-based living.

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

**SECTION 1. Home and community-based living - Choice of options.** Any aged or disabled individual who is eligible for home and community-based living must be allowed to choose, from among all service options available, the type of service that best meets that individual's needs. To the extent permitted by any applicable waiver, the individual's medical assistance funds must follow the individual for whichever service option the individual selects, not to exceed the cost of the service. The department of human services shall apply for the waivers and grants necessary to implement this section under existing or future federal legislation.

Approved April 11, 2003  
Filed April 14, 2003

## CHAPTER 427

### SENATE BILL NO. 2085

(Human Services Committee)

(At the request of the Office of Management and Budget)

## TARGETED CASE MANAGEMENT AND ASSESSMENT SERVICES

AN ACT to create and enact section 50-24.3-03.1 of the North Dakota Century Code, relating to the powers and duties of the department of human services regarding assessment services; to amend and reenact sections 50-24.3-01 and 50-24.3-03 of the North Dakota Century Code, relating to the establishment of targeted case management and assessment services for persons being admitted to a skilled nursing facility or hospital swing-bed facility; to repeal section 50-24.3-02 of the North Dakota Century Code, relating to professional involvement in the assessment process; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.3-01. (Effective through June 30, 2003) Targeted case management.** The department of human services shall establish a targeted case management service for disabled and elderly individuals eligible for benefits under chapter 50-24.1 who are at risk of requiring long-term care services to ensure that an individual is informed of alternatives available to address the individual's long-term care needs.

**(Effective after June 30, 2003) Assessment mechanism - Establishment.** The department of human services shall establish a mechanism to assess, prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the health and social needs of each person making application for admission to the facility.

**SECTION 2. AMENDMENT.** Section 50-24.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.3-03. (Effective through June 30, 2003) Department of human services - Targeted case management - Powers and duties.** The department of human services has the following powers and duties which it may delegate to any entity ~~which~~ that provides targeted case management services approved by the department:

1. To seek cooperation from other public and private entities in the community ~~which~~ that offer services to individuals with disabilities or the elderly.
2. To provide information and education to the general public regarding availability of targeted case management.

3. To accept referrals from an interested party including individuals, families, human services program professionals, nursing facility personnel, and acute care facility personnel.
4. To assess the health and social needs of, and provide targeted case management to, referred individuals who wish to receive this service.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare an individual care plan for each individual receiving targeted case management services.
7. To inform referred individuals of the extent to which long-term care services are available, including institutional and community-based services, and of the individual's opportunity to choose, in consultation with an attending physician, family members, and other interested parties, among the appropriate alternatives that may be available.
8. To monitor the results of targeted case management and report to each legislative assembly on these results and the cost-effectiveness of these services.

**(Effective after June 30, 2003) Department of human services - Powers and duties.** The department of human services has the following powers and duties which it may delegate to any entity which provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services professionals, and nursing home personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care, or intermediate care as provided in a facility, or other care which is available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available, and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

**SECTION 3.** Section 50-24.3-03.1 of the North Dakota Century Code is created and enacted as follows:

**50-24.3-03.1. Department of human services - Assessment services - Powers and duties.** The department of human services has the following powers and duties which it may delegate to any entity that provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services program professionals, nursing facility personnel, and acute care facility personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care or other care available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

**SECTION 4. REPEAL.** Section 50-24.3-02 of the North Dakota Century Code is repealed.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 8, 2003  
Filed April 9, 2003

## CHAPTER 428

### HOUSE BILL NO. 1268

(Representatives Devlin, Nicholas, Wald)  
(Senators Nichols, Thane, Wardner)

## NURSING HOME RATES AND PROPERTY COSTS

AN ACT to amend and reenact section 50-24.4-15 of the North Dakota Century Code, relating to nursing home rates for property-related costs for reimbursements; and to provide an effective date.

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

<sup>189</sup> **SECTION 1. AMENDMENT.** Section 50-24.4-15 of the North Dakota Century Code is amended and reenacted as follows:

#### 50-24.4-15. Property-related costs.

1. The department shall include in the ratesetting system for nursing homes a payment mechanism for the use of real and personal property which provides for depreciation and related interest costs. The property cost payment mechanism must:
  4. ~~a.~~ a. Recognize ~~to the extent allowed by federal rules~~ the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
    - ~~a.~~ (1) Purchase price paid by the purchaser;
    - ~~b.~~ (2) Fair market value at the time of sale;
    - ~~c.~~ (3) Seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation; ~~or~~
    - ~~d.~~ Seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation.
  2. ~~b.~~ b. Recognize depreciation on land improvements, buildings, and fixed equipment acquired, as an ongoing operation over the estimated useful remaining life of the asset as determined by a qualified appraiser.

<sup>189</sup> Section 50-24.4-15 was also amended by section 7 of Senate Bill No. 2348, chapter 86.

- ~~3.~~ c. Recognize depreciation on movable equipment acquired as an ongoing operation after August 1, 1995, over a composite remaining useful life.
  4. d. Provide for an interest expense limitation determined by the department and established by rule.
  - ~~5.~~ e. Establish a per bed property cost limitation considering single and double occupancy construction. ~~Property costs incurred or related to projects having received state health council certificate of need approval prior to July 1, 1994, are not subject to this limitation.~~
  - ~~6.~~ f. Recognize increased lease costs of a nursing home operator to the extent the lessor has incurred increased costs related to the ownership of the facility, the increased costs are charged to the lessee, and the increased costs would be allowable had they been incurred directly by the lessee.
2. For rate years beginning after December 31, 2003, the limitations of paragraph 3 of subdivision a of subsection 1 do not apply to the valuation basis of assets purchased between July 1, 1985, and July 1, 2000. The provisions of this subsection may not be applied retroactively to any rate year before the effective date of this Act.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2005.

Approved March 27, 2003  
Filed March 28, 2003

## CHAPTER 429

### HOUSE BILL NO. 1164

(Human Services Committee)

(At the request of the Department of Human Services)

## ASSISTED LIVING FACILITY LICENSING

AN ACT to create and enact chapter 50-32 of the North Dakota Century Code, relating to licensing of assisted living facilities; to amend and reenact subsection 8 of section 23-09-01 and sections 50-24.5-01 and 50-24.5-02 of the North Dakota Century Code, relating to assisted living facilities; to repeal section 50-24.5-02.1 of the North Dakota Century Code, relating to registration of assisted living facilities; and to provide a penalty.

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

<sup>190</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~50-24.5-04~~ 50-32-01.

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

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

1. "~~Activities of daily living~~" means ~~bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.~~
2. "Aged" means at least sixty-five years of age.
3. "~~Assisted living facility~~" means ~~any building or structure containing a series of living units operated as one business entity to provide services for five or more individuals who are aged or disabled adults and who are not related by blood or marriage 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 makes available individualized support services to accommodate an individual's needs and abilities to maintain as much independence as possible. It does not include a facility that is licensed as a basic care facility or a congregate housing facility.~~

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<sup>190</sup> Section 23-09-01 was also amended by section 2 of House Bill No. 1160, chapter 214.

4. 2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. 3. "Congregate housing" means housing shared by two or more individuals not related to each other which is not provided in an institution.
6. 4. "County agency" means the county social service board.
7. 5. "Department" means the department of human services.
8. 6. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
9. 7. "Eligible beneficiary" means a resident of this state who:
- a. (1) Is aged; or
  - (2) Is at least eighteen years of age and is disabled or blind;
  - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that an individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that individual is not eligible to receive benefits under title XIX;
  - c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:
    - (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or an assisted living facility; or
    - (2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and
  - d. Is determined to be eligible pursuant to rules adopted by the department.
10. ~~"Individualized support services" means services designed to provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more activities of daily living.~~
11. 8. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more individuals who are not related to the proprietor.

- ~~12.~~ "Instrumental activities of daily living" means activities to support independent living including housekeeping, shopping, laundry, transportation, and meal preparation.
- ~~13.~~ 9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
- ~~14.~~ "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
- ~~15.~~ 10. "Proprietor" means an individual responsible for day-to-day administration and management of a facility.
- ~~16.~~ 11. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
- ~~17.~~ "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.
- ~~18.~~ 12. "Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.
- ~~19.~~ 13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.
- ~~20.~~ "Tenant" means an adult individual who has entered into a lease agreement with an assisted living facility.
- ~~21.~~ 14. "Would be eligible to receive the cash benefits except for income" refers to an individual whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus sixty dollars.

**SECTION 3. AMENDMENT.** Section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-02. Powers and duties of the department.** The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.

2. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary adult family foster care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care provided at rates determined by the department.
3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department.
4. Pay qualified service providers at rates determined by the department, within the limits of legislative appropriation, for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:
  - a. Homemaker services;
  - b. Chore services;
  - c. Respite care;
  - d. Home health aide services;
  - e. Case management;
  - f. Family home care;
  - g. Personal attendant care;
  - h. Adult family foster care;
  - i. Adaptive assessment; and
  - j. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.
5. Establish, maintain, and ensure the enforcement of standards for congregate housing as may be appropriate to the needs of the residents of congregate housing who are receiving services under this chapter. The standards must govern matters such as admission policy, safety, sanitation, and protection of civil rights.
6. Establish an individualized care rate for each eligible beneficiary receiving adult family foster care services or assisted living services.
7. Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.
8. Take action and give directions necessary to implement this chapter.
9. ~~Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.~~

**SECTION 4.** Chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

**50-32-01. 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 does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16.
2. "Department" means the department of human services.
3. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.
4. "Individualized support services" means services provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.
5. "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

**50-32-02. Licensing of assisted living facilities - Penalty.**

1. An entity may not keep, operate, conduct, manage, or maintain an assisted living facility or use the term "assisted living" in its advertising unless it is licensed by the department.
2. An assisted living facility shall pay to the department an annual license fee of seventy-five dollars for each facility. License fees collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.
3. An assisted living facility shall apply annually to the department for a license. After the fifty-ninth day following the notification of noncompliance with annual licensing, the department may assess a fine of up to fifty dollars per day against an entity that provides assisted living services or uses the term assisted living in its marketing without a license approved by the department. Fines collected under this section

must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.

4. Religious orders providing individualized support services to vowed members residing in the order's retirement housing are not subject to this chapter.

**50-32-03. Powers and duties of the department.** The department shall:

1. Take action and give directions necessary to implement this chapter.
2. Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.
3. Establish rules governing the licensing of assisted living facilities to regulate the application for, approval, denial, revocation, and requirements of a license.

**50-32-04. Assisted living facility health services.** An entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. For purposes of this section, health services means services provided to an individual for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

**SECTION 5. REPEAL.** Section 50-24.5-02.1 of the North Dakota Century Code is repealed.

Approved March 13, 2003

Filed March 13, 2003

## CHAPTER 430

### HOUSE BILL NO. 1430

(Representatives Devlin, Price, Weisz)  
(Senators Fischer, J. Lee)

## DRUG UTILIZATION REVIEW PROGRAM

AN ACT to establish a medical assistance drug use review program and drug prior authorization program within the department of human services; to provide for a legislative council study of medical assistance pharmacy benefit management; to provide an expiration date; and to declare an emergency.

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

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

1. "Board" means the drug use review board.
2. "Compendium" means the American hospital formulary service drug information, United States pharmacopeia-drug information, the DRUGDEX information system, American medical association drug evaluations, or nonproprietary peer-reviewed medical literature.
3. "Department" means the department of human services.
4. "Drug use review" means a program as described in 42 U.S.C. 1396r-8(g)(2).
5. "Drug use review criteria" means standards approved by the board for use in determining whether use of a drug is likely to be medically appropriate, to be medically necessary, and not result in adverse medical outcomes.
6. "Prior authorization" means a process requiring the prescriber or the dispenser to verify with the department or the department's contractor that proposed medical use of a particular drug for a medical assistance program recipient meets predetermined criteria for coverage by the medical assistance program.

### SECTION 2. Drug use review board.

1. The board is established within the department for the implementation of a drug use review program.
2. The board consists of fifteen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. The executive director of the department shall appoint the remaining thirteen board members. A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have

participated in programs in which prior authorization is used. The appointed members of the board must be:

- a. Six physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, and four of whom are chosen from a list of nominees provided by the North Dakota medical association;
  - b. Six pharmacists licensed in this state and actively engaged in the practice of pharmacy, four of whom are chosen from a list of nominees provided by the North Dakota pharmaceutical association; and
  - c. One pharmacist or physician representing the pharmaceutical industry who is chosen from a list of nominees provided by the pharmaceutical research manufacturers of America.
3. Appointed board members shall serve staggered three-year terms. Two physicians and two pharmacists must be initially appointed for two-year terms, and two physicians and two pharmacists must be initially appointed for one-year terms. An appointed member may be reappointed for a period not to exceed three 3-year terms. A vacancy on the board must be filled for the balance of the unexpired term from the appropriate board category as provided under subsection 2. The executive director of the department may replace an appointed member of the board who fails to attend three consecutive meetings of the board without advance excuse or who fails to perform the duties expected of a board member. The pharmaceutical industry representative is a nonvoting board member.
  4. Voting board members shall select a chairman and a vice chairman on an annual basis from the board's voting membership.
  5. The board shall meet in person at least once every three months and may meet at other times by teleconference or electronically at the discretion of the chairman. A board member is entitled to receive from the department per diem compensation and reimbursement of expenses as determined by the department, except that no compensation under this section may be paid to any board member who receives compensation or salary as a state employee or official.

**SECTION 3. Duties of the board.** The board shall:

1. Cooperate with the department to create and implement a prospective and retrospective drug use review program for outpatient prescription drugs under the medical assistance program. This drug use review program must be based on a compendium and drug use review criteria and must comply with 42 U.S.C. 1396r-8(g)(3).
2. Advise and make recommendations regarding any rule proposed for adoption by the department to implement the provisions of state and federal law related to drug use review.
3. Receive and consider information regarding the drug use review process which is provided by the department and by interested parties,

including prescribers who treat significant numbers of patients under the department's medical assistance program.

4. Review and recommend to the department any drugs to be included on prior authorization status.
5. Review no less than once each year the status of the list of drugs that have been placed on prior authorization.
6. Review and approve the prior authorization program process used by the department, including the process to accommodate the provision of a drug benefit in an emergency situation.
7. Propose remedial strategies to improve the quality of care and to promote effective use of medical assistance program funds or recipient expenditures.

#### **SECTION 4. Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
3. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
4. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
  - a. Establish policies and procedures necessary to implement the prior authorization program.

- b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
- c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

#### **SECTION 5. Public notice - Applicability.**

1. The department shall provide thirty days' notice of all meetings of the board. The notice requirement is met if the department provides notice of the meeting on the department's web site and provides, by written or electronic means, individual notice to each person that has requested such notice. If the meeting agenda includes board consideration of a change to the prior authorization program, the department shall include in the notice a list of the affected drugs, and upon request the board shall provide background information. Any interested party may attend a meeting of the board and provide information or recommendations related to the inclusion of a drug in a prior authorization program.
2. The department shall post on the department's web site:
  - a. The most current and applicable list of drugs requiring prior authorization, together with any limits on coverage of these drugs.
  - b. In downloadable format, forms necessary to complete prior authorization requests.
  - c. Decisions regarding changes to the prior authorization program list. The department shall allow a period of no less than thirty days for public comment following posting on the web site.
  - d. Meeting notice.
3. The department may not discontinue the provision of prescription drug benefits being provided to medical assistance recipients before the effective date of this Act based solely on the subsequent placement of the drug on the prior authorization program.

**SECTION 6. Grievances.** The department shall adopt rules for a grievance procedure by which an interested person may appeal a department decision to place a drug on prior authorization.

**SECTION 7. Appeals.** A medical assistance recipient who is aggrieved by the placement of a drug on prior authorization may appeal as authorized under chapter 28-32.

**SECTION 8. Financial incentives prohibited.** The department may not offer or pay, directly or indirectly, any material inducement, bonus, or other financial incentive to a participating provider based on the denial or delay of medically necessary and appropriate prescription drug therapy or based on a reduction in the proportion of recipients who receive prescription drug therapy under the medical assistance program.

**SECTION 9. Maximum allowable costs and use of edits.** To promote efficiency and savings in the department's service to eligible medical assistance program recipients, the department shall create and implement the broadest possible list of drugs that can be paid at the maximum allowable costs. To further promote efficiency and savings, the department shall maximize use of edit programs that pertain to payment of medical assistance program pharmaceutical claims. Upon request of a member of the legislative assembly, the department shall provide to that member a summary of edit programs available to the medical assistance program and a description of the department's progress in implementing the edit programs.

**SECTION 10. Adoption of rules.** The department shall adopt rules to implement sections 1 through 9 of this Act.

**SECTION 11. MEDICAL ASSISTANCE PHARMACY BENEFIT MANAGEMENT - LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2003-04 interim, the value of medical assistance program use of benefit purchasing pools, preferred drug lists, and other pharmacy benefit management concepts, including the fiscal impact of the appeals and grievance process on existing programs. If the study is conducted by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

**SECTION 12. EXPIRATION DATE.** Section 6 of this Act is effective through June 30, 2005, and after that date is ineffective.

**SECTION 13. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 14, 2003  
Filed April 14, 2003

# CHAPTER 431

## SENATE BILL NO. 2271 (Senator J. Lee) (Representative Price)

### REPORTING PRENATAL EXPOSURE TO CONTROLLED SUBSTANCES

AN ACT to create and enact three new sections to chapter 50-25.1 of the North Dakota Century Code, relating to prenatal testing and reporting; and to amend and reenact section 50-25.1-02 of the North Dakota Century Code, relating to child abuse and neglect reporting requirements.

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

<sup>191</sup> **SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

#### 50-25.1-02. Definitions.

1. "A person responsible for the child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or a person responsible for the child's welfare in a residential setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current diagnostic and statistical manual published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.
- ~~3.~~ 4. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.
- ~~4.~~ 5. "Department" means the department of human services or its designee.
- ~~5.~~ 6. "Harm" means negative changes in a child's health which occur when a person responsible for the child's welfare:

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<sup>191</sup> Section 50-25.1-02 was also amended by section 4 of Senate Bill No. 2212, chapter 106.

- a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
  - b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
- ~~6.~~ 7. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- ~~7.~~ 8. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.
- ~~8.~~ 9. "Neglected child" means a deprived child as defined in chapter 27-20.
- ~~9.~~ 10. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
11. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- ~~10.~~ 12. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to

represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

**SECTION 2.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Prenatal exposure to controlled substances - Reporting requirements.**

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. Any individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy.
3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.
4. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
5. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of use, if known, and the name and address of the individual making the report.

**SECTION 3.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Toxicology testing - Requirements.**

1. If the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose, upon the consent of the pregnant woman, or without consent if a specimen is otherwise available, a physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance. If the test results are positive, the physician shall report the results under section 50-25.1-03.1. A negative test result or the

pregnant woman's refusal to consent to a test does not eliminate the obligation to report under section 50-25.1-03 if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

2. If a physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose during the pregnancy, the physician shall administer, without the consent of the child's parents or guardian, to the newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance. If the test results are positive, the physician shall report the results as neglect under section 50-25.1-03. A negative test result does not eliminate the obligation to report under section 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance is present.
3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test if the physician ordering the test believes in good faith that the test is required under this section and the test is administered in accordance with an established protocol and reasonable medical practice. A physician or any other medical personnel who determines in good faith not to administer a toxicology test under this section is immune from liability for not administering the test.

**SECTION 4.** A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

**Prenatal exposure to alcohol abuse - Reporting requirements.**

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol after the woman knows of the pregnancy may:
 
  - a. Arrange for a chemical dependency assessment conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
  - b. Immediately report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol during the pregnancy.
3. If the woman is referred for a chemical dependency assessment under subdivision a of subsection 1 and fails to obtain an assessment or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment or refusal to comply

with recommendations of the assessment shall make a report to the department.

4. If a report alleges a pregnant woman has abused alcohol, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.
5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of the abuse of alcohol, any health risk associated with the abuse of alcohol, and the name and address of the individual making the report.

Approved March 26, 2003  
Filed March 26, 2003

## CHAPTER 432

### HOUSE BILL NO. 1165

(Human Services Committee)

(At the request of the Department of Human Services)

## SUBSTANCE ABUSE TREATMENT PROGRAMS

AN ACT to create and enact chapter 50-31 of the North Dakota Century Code, relating to substance abuse treatment programs; to amend and reenact subsection 12 of section 25-03.1-02 and subdivision b of subsection 2 of section 26.1-36-08 of the North Dakota Century Code, relating to the correction of statutory cross-references; and to repeal chapter 23-17.1 of the North Dakota Century Code, relating to the licensing of addiction hospitals.

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

<sup>192</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or ~~23-17.4~~ 50-31.

<sup>193</sup> **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 26.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and rules of the state department of health pursuant thereto or as licensed under ~~section 23-17.1-04~~ chapter 50-31, or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

**SECTION 3.** Chapter 50-31 of the North Dakota Century Code is created and enacted as follows:

**50-31-01. Definition.** "Department" means the department of human services.

<sup>192</sup> Section 25-03.1-02 was also amended by section 1 of Senate Bill No. 2296, chapter 224.

<sup>193</sup> Section 26.1-36-08 was also amended by section 1 of Senate Bill No. 2210, chapter 255.

**50-31-02. License required.** A person, partnership, association, corporation, or limited liability company without a license may not establish, conduct, or maintain in this state a substance abuse treatment program for the care of persons addicted to alcohol or other drugs. The department, in accordance with the laws of this state governing injunctions and other process, may maintain an action in the name of the state against a person, partnership, association, corporation, or limited liability company for establishing, conducting, managing, or operating a substance abuse treatment program without a license.

**50-31-03. Application - Contents.** A person, partnership, association, corporation, or limited liability company desiring a license shall file with the department a verified application containing the name of the applicant, the type of institution to be operated, the location, the name of the individual or individuals in charge, and such other information as the department may require.

**50-31-04. Inspection and evaluation of licensed premises.** Every licensed substance abuse treatment program shall obtain and provide to the department a local or state authority certification as to the safety of the premises. The department shall evaluate every licensed substance abuse treatment program according to the rules adopted by the department.

**50-31-05. Issuance, suspension, and revocation of license.**

1. The department is authorized to issue licenses to operate substance abuse treatment programs, for a period of two years, which are found to comply with the provisions of this chapter and rules adopted by the department.
2. The department may suspend or revoke a license if a program violates any of the rules adopted by the department.
3. Before a license may be suspended or revoked, written notice must be given to the licenseholder. The licenseholder must be furnished with a copy of the notice by registered mail. If a license is revoked, a new application for a license may be considered by the department when the conditions upon which the revocation were based have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made and the applicant has complied with all rules adopted by the department. Within thirty days after service of the written charges, the applicant or licensee may submit to the department a written request for an administrative hearing as provided in chapter 28-32.

**50-31-06. Information confidential.** Information received by the department through inspections of programs under this chapter is confidential and may not be disclosed except in a proceeding involving the issuance of a license.

**SECTION 4. REPEAL.** Chapter 23-17.1 of the North Dakota Century Code is repealed.

Approved March 13, 2003

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