

PUBLIC WELFARE

CHAPTER 407

SENATE BILL NO. 2410

(Senator J. Lee)

MEDICAL ASSISTANCE AND CHIPS ELIGIBILITY

AN ACT to create and enact a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to medical assistance and children's health insurance program eligibility determinations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Notwithstanding section 50-01.2-00.1, to determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.

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

Approved March 22, 2005

Filed March 22, 2005

CHAPTER 408

SENATE BILL NO. 2118

(Human Services Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 50-06-15 of the North Dakota Century Code, relating to confidentiality of information contained in department of human services records; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-15 of the North Dakota Century Code is amended and reenacted as follows:

50-06-15. Disclosure Confidentiality of information contained in records - Penalty. ~~It is a class A misdemeanor for any person to disclose, authorize, or knowingly permit, participate in, or acquiesce in the disclosure of any records or~~

1. Individually identifiable information concerning persons an individual applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department when such information is derived directly or indirectly from records, papers, files, or communications received in the course of the administration of any such program or in the performance of official duties is confidential, except that any such records and information, including an individual's social security number, may be used in and disclosed:
 - a. In the administration of any such program and as;
 - b. As specifically authorized by the rules and regulations of the department; or
 - c. As permitted or required by other law.
2. A vendor, agent, or contractor of the department must agree to maintain the confidentiality of individually identifiable information disclosed to that person by the department or by any individual applying for or receiving assistance or services and may use and disclose confidential information only to the extent that person's agreement with the department permits the use and disclosure of any such information.
3. As used in this section, "individually identifiable information" means information, including an individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, as well as demographic information collected from an individual, that:
 - a. Is created or received by the department; and

- b. Relates to the past, present, or future assistance or services applied for or received by an individual under any program administered by or under the supervision and direction of the department that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 4. Any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information in violation of this section is subject to the penalty provided in section 12.1-13-01.

Approved April 6, 2005
Filed April 6, 2005

CHAPTER 409**HOUSE BILL NO. 1110**

(Human Services Committee)

(At the request of the Department of Human Services)

RESIDENTIAL TREATMENT CENTER AND CHILD CARE FACILITY MORATORIUM

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to duties of the department of human services with respect to least restrictive care options; to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to extending the moratorium on expansion of residential treatment center for children bed capacity and residential child care facility or group home bed capacity; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03.1. (Effective through June 30, 2005 July 31, 2007) Moratorium on expansion of residential treatment center for children bed capacity. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 2003.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Placement of children - Least restrictive care. The department and county social service boards shall thoroughly explore the option of kinship care when a child is unable to return home due to safety concerns. Absent kinship options, the department and county social service boards shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671]. Before January 1, 2006, the department of human services shall issue a request for proposal for the provision of residential treatment services to meet the needs of youth with a history of sexual offenses within the state and explore options of therapeutic foster care for those youth who would benefit from this service level.

SECTION 3. AMENDMENT. Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.3. (Effective through June 30, 2005 July 31, 2007) Moratorium on expansion of residential child care facility or group home bed capacity. Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any

additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 2003.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

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

Approved March 15, 2005

Filed March 16, 2005

CHAPTER 410**SENATE BILL NO. 2028**

(Legislative Council)
(Criminal Justice Committee)

GUARDIANSHIP SERVICES SYSTEM

AN ACT to provide for a guardianship services system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Guardianship services. The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system must include a base unit funding level, provider standards, staff competency requirements, the use of an emergency funding procedure to cover the costs of establishing needed guardianships, and guidelines and training for guardians. The department shall require that the contracting entity develop and maintain a system of volunteer guardians to serve the state. The department shall adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, to the department of human services for the purpose of contracting for the establishment and maintenance of a guardianship services system for vulnerable adults who are ineligible for developmental disabilities case management services, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 411

HOUSE BILL NO. 1460

(Representatives Price, Devlin, Kaldor)
(Senators Brown, J. Lee, Warner)

HUMAN SERVICES BIENNIAL REPORTS

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to a biennial report of certain programs administered or funded by the department of human services; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Biennial report on programs and services. The department shall present a biennial report to the legislative council which provides a five-year historical analysis of the number of persons receiving services under the medical assistance program, the costs for rendering the services by program appropriations, the budget requested, the budget appropriated, and actual expenditures for each of the preceding five years. The report must include a comparison of the state's experience with that of immediate surrounding states. Using actuarial tools, the report must project estimated usage trends and budget estimates for meeting those trends for the succeeding five-year period. The legislative council may request from the department actuarial reports in a format and timeline the legislative council determines necessary to monitor program policies and legislative appropriations.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, and from special funds derived from federal funds or other income, the sum of \$50,000, or so much of the sum as may be necessary, to the department of human services for the purpose of obtaining actuarial service for developing actuarially based methodologies for setting medical assistance payment rates and developing department budget recommendations, performing and reviewing data analyses, tracking program service utilization, and determining the effectiveness of quality and cost containment initiatives in the medical assistance program for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 412**SENATE BILL NO. 2409**

(Senator Krauter)
(Representative Koppelman)

ABORTION ALTERNATIVES PROGRAM

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the establishment of an alternatives-to-abortion services program; to provide for reports to the legislative council; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Alternatives-to-abortion services program. Before January 1, 2006, the department of human services shall establish and implement a procedure to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The services must be outcome-based with positive outcome-based results. For purposes of this Act, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall make periodic reports to the legislative council regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2005.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$500,000, or so much of the sum as may be necessary, to the department of human services for the purpose of establishing and implementing alternatives-to-abortion services funding, for the biennium beginning July 1, 2005, and ending June 30, 2007. The department shall seek sources of funding for this purpose through the federal office of faith-based and community initiatives.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 413

HOUSE BILL NO. 1459

(Representatives Price, Devlin, Kaldor)
(Senators Brown, J. Lee, Warner)

MEDICAL SYSTEM PROGRAM MANAGEMENT

AN ACT to create and enact a new section to chapter 50-06 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to creation of a prescription drug monitoring program and medical assistance program management; to provide for reports to the legislative council; to provide for a legislative council study; to provide legislative intent; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Prescription drug monitoring program. The department of human services shall seek federal grant funds for the planning and implementing of a prescription drug monitoring program. Upon receipt of federal grant funds, the department of human services shall adopt rules necessary to implement the prescription drug monitoring program and shall implement the program. State agencies shall cooperate with the department to ensure the success of the program.

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

Medical assistance program management. The department of human services, with respect to the state medical assistance program, shall:

1. Provide statewide targeted case management services to include a concentrated, but not an exclusive, emphasis for the two thousand medical assistance recipients with the highest cost for treatment of chronic diseases and the families of neonates that can benefit from case management services. Case management services must focus on those recipients in these groups which will result in the most cost-savings, taking into consideration available resources, and may include a primary pharmacy component for the management of medical assistance recipient medication.
2. Require medical assistance providers to use the appropriate diagnosis or reason and procedure codes when submitting claims for medical assistance reimbursement; review and develop recommendations to identify instances in which a provider of services is not properly reporting diagnosis or reason and procedure codes when submitting claims for medical assistance reimbursements; and review and recommend any specific providers from which a potential benefit might be obtained by requiring additional diagnosis or reason and procedure codes.

3. Review and develop recommendations for the improvement of mental health treatment and services including the use of prescription drugs for medical assistance recipients.
4. Review and develop recommendations regarding whether the number of medical assistance recipients who are placed in out-of-state nursing homes should be reduced.
5. Review and develop recommendations regarding whether the use of post-office addresses or street addresses are the appropriate mailing addresses for medical assistance recipients.
6. Review and develop recommendations regarding whether to require medical assistance providers to secure prior authorization for certain high-cost medical procedures.
7. Review and develop recommendations regarding whether a system for providing and requiring the use of photo identification medical assistance cards for all medical assistance recipients should be implemented.
8. Review and develop recommendations regarding whether medical assistance providers should be required to use tamper-resistant prescription pads.
9. Develop a plan to provide information to blind and disabled medical assistance recipients who may be eligible for part D benefits under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The information must inform recipients of part D benefits for which the recipient may be eligible.
10. Review and recommend a plan for implementing the necessary infrastructure to permit risk-sharing arrangements between the department and medical assistance providers.

SECTION 3. PRESCRIPTION DRUG MONITORING PROGRAM WORKING GROUP - REPORT TO LEGISLATIVE COUNCIL.

1. The department of human services shall form a prescription drug monitoring program working group of interested individuals to:
 - a. Identify problems relating to the abuse and diversion of controlled substances and how a prescription drug monitoring program may address these problems.
 - b. Identify a strategy and propose a prescription drug monitoring program through which to address the identified problems, including consideration of how the program would fit into the overall strategy. Factors to be addressed in the program must include:
 - (1) Determination of what types of prescription drugs will be monitored.

- (2) Determination of what types of drug dispensers will be required to participate in the program.
 - (3) Determination of what data will be required to be reported.
 - (4) Determination of what persons will be allowed to access data, what types of data will be accessible, and how to ensure appropriate protection of data.
 - (5) Determination of the entity that will implement and sustain the program.
 - c. Establish how the program will be implemented, the fiscal requirements for implementation, and the timelines for implementation. In establishing how the program will be implemented, the working group shall consider the feasibility and desirability of formal or informal educational outreach to North Dakota communities and interested persons.
 - d. Consider possible performance measures the state may use to assess the impact of the program and whether special data collection instruments would be required to effectively monitor the impact of the program.
 - e. Provide to the department of human services a draft of proposed administrative rules to implement the proposed program.
2. The membership of the working group may include representatives from the private and public sectors, including representatives from the North Dakota medical association; the North Dakota nurses association; the North Dakota pharmacists association; the North Dakota society of health-system pharmacists; the North Dakota board of pharmacy; the North Dakota dental association; the North Dakota veterinary medical association; the North Dakota healthcare association; the North Dakota long term care association; the university of North Dakota school of medicine and health sciences; law enforcement agencies, appointed by the attorney general; the department of human services; the state department of health; workforce safety and insurance; the information technology department; and the federally designated state peer review organization.
3. During the 2005-06 interim, the department of human services and the prescription drug monitoring program working group shall provide the legislative council with periodic status reports on the activities of the working group and the implementation of the program.
4. The department shall designate the chairman and vice chairman of the working group.

SECTION 4. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall receive input from and report to the legislative council regarding the development of recommendations required in section 2 of this Act.

SECTION 5. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the medicaid medical reimbursement

system, including costs of providing services, fee schedules, parity among provider groups, and access. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-ninth legislative assembly that the department promptly initiate and conduct the rulemaking activity under chapter 28-32 which is deemed necessary to implement this Act.

SECTION 7. EXPIRATION DATE. Section 3 of this Act is effective through December 31, 2006, and after that date is ineffective.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 414

SENATE BILL NO. 2373

(Senators Robinson, Brown, Lyson)
(Representatives DeKrey, Kroeber, Nottestad)

METHAMPHETAMINE TREATMENT PILOT PROJECT

AN ACT to provide for the implementation of a pilot program for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances; to provide for a report to the legislative assembly; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Substance abuse treatment pilot program. The department of human services shall implement a substance abuse treatment pilot program consisting of up to twenty beds at the state hospital or at a private treatment facility through a grant as determined by the department for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. Prior to establishing the program, the department shall issue a statewide request for proposal seeking providers for this program.

SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall collect statistics regarding the operation of the pilot program, track participants in the pilot program, and provide a report to the sixtieth legislative assembly detailing the number of participants in the pilot program, the cost of the pilot program, relapse statistics, and other data concerning the effectiveness of the pilot program provided for under section 1 of this Act.

SECTION 3. APPROPRIATION - ADDITIONAL FUNDS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, and from other funds consisting of third party, client payments, and other sources, the sum of \$800,000, to the department of human services for the costs associated with establishing the pilot program at the state hospital or at a private treatment facility for the treatment of individuals who are chemically dependent on methamphetamine or other controlled substances, for the biennium beginning July 1, 2005, and ending June 30, 2007. The funds appropriated under this section may not be used for the cost of any facility construction or renovation project. If additional federal or other funds become available for the treatment services provided for under this section, the department of human services may seek emergency commission and budget section approval to receive and spend the funds for treatment services, excluding construction or renovation projects.

SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2007, and after that date is ineffective.

Approved May 4, 2005
Filed May 4, 2005

CHAPTER 415

HOUSE BILL NO. 1172

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT COLLECTION AND DISBURSEMENT

AN ACT to create and enact a new section to chapter 13-05, two new subsections to section 14-09-25, a new subsection to section 15-39.1-30, a new subsection to section 39-03.1-28, three new sections to chapter 50-09, and a new subsection to section 54-52-26 of the North Dakota Century Code, relating to judgment interest and the collection and disbursement of child support; to amend and reenact subsection 3 of section 14-09-08.1, section 14-09-08.15, subsection 5 of section 14-09-09.3, section 14-09-09.10, subsections 1 and 2 of section 28-21-05.2, subsection 1 of section 28-22-19, sections 34-15-06, 35-34-02, 35-34-05, 35-34-09, and 50-09-08.5, subsection 2 of section 50-09-08.6, subsection 1 of section 50-09-32, and section 50-09-33 of the North Dakota Century Code, relating to reporting of new hires, account liens, enforcement of medical support, and the collection and disbursement of child support; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

Child support collection agencies.

1. Notwithstanding section 13-05-02, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.
2. A collection agency licensed under this section may not:
 - a. Impose a fee or charge for any child support collected primarily through the efforts of a governmental agency;
 - b. Impose a fee or charge for collection of a current child support payment; or
 - c. Designate a current child support payment as past-due support or other amount owed.
3. If the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1, all child support payments collected by a collection agency must be paid to the department of human services within five business days for

disbursement under section 14-09-25. Child support payments disbursed under section 14-09-25 may not be redirected to a collection agency unless specifically permitted by rules adopted by the department of human services.

4. A collection agency failing to pay child support payments to the department of human services as required in this section is liable to the obligor for three times the amount improperly withheld by the collection agency or five hundred dollars, whichever is greater, in addition to any other remedy or damages permitted by law. The department of human services is not required to give credit for payments withheld by a collection agency in violation of this section.
5. Any person contracting for services with a collection agency for the collection of child support may cancel the contract without a fee or charge upon thirty days' written notice.

SECTION 2. AMENDMENT. Subsection 3 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Whenever there is failure to make the payments as required, the clerk of court may, and upon request of the obligee or child support agency, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments and the. The citation ~~must~~ may be served on that person as provided by the North Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 50-09-08.6 by first-class mail with affidavit of service to the person's last-known address.

SECTION 3. AMENDMENT. Section 14-09-08.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.15. Reasonable cost of health insurance. For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the public authority in compliance with rules promulgated by the secretary of the United States department of health and human services.

SECTION 4. AMENDMENT. Subsection 5 of section 14-09-09.3 of the North Dakota Century Code is amended and reenacted as follows:

5. Any contempt proceeding against an income payer under this section must be commenced within one ~~hundred eighty days~~ year after the income payer's act or failure to act upon which such proceeding is based.

SECTION 5. AMENDMENT. Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.10. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 16 of this Act.
2. "Business day" means every day that is not a Saturday or legal holiday.
- ~~2.~~ 3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
- ~~3.~~ 4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
4. 5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- ~~5.~~ 6. "Disposable income" means gross income less deductions required by law for taxes and social security.
- ~~6.~~ 7. "Employer" means income payer.
- ~~7.~~ 8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
- ~~8.~~ 9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~9.~~ 10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

- ~~40-~~ 12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
- ~~44-~~ 13. "Obligor" means any person owing a duty of support.
- ~~42-~~ 14. "Past-due support" means child support that is not paid by the earlier of:
- The date a court order or an order of an administrative process established under state law requires payment to be made; or
 - The last day of the month or other period the payment was intended to cover.
- ~~43-~~ 15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~44-~~ 16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
- ~~45-~~ 17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.

SECTION 6. Two new subsections to section 14-09-25 of the North Dakota Century Code are created and enacted as follows:

The public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the public authority determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before the effective date of this Act only if the arrearage is assigned to the public authority under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.

If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:

- As specifically provided in a court order in the event of the obligee's death;
- To the obligee's estate or as provided in the obligee's will;
- To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; or
- As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old.

SECTION 7. A new subsection to section 15-39.1-30 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 28-21-05.2 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Notwithstanding the provisions of section 28-21-05, if a judgment has been docketed under section 14-08.1-05 in an amount greater than six times the monthly child support obligation and the judgment debtor is not current in a court-established plan to repay the unpaid child support judgment is listed on the arrears registry as defined in section 14-09-09.10, or if the judgment debtor meets criteria established by the secretary of the United States department of health and human services that apply when a financial institution is doing business in two or more states, the department of human services may issue an execution, against the property of the judgment debtor, to the sheriff of any county in which the property may be found.~~
2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the past-due support need not be docketed and the writ may omit:
 - a. ~~The seal of the court;~~
 - b. ~~The subscription of the clerk of that court;~~
 - c. ~~The attestation in the name of the judge of the court that entered the judgment;~~
 - d. ~~A statement of the courts and counties to which the judgment has been transcribed; and~~
 - e. ~~If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county be issued in a form prescribed by the department of human services. A writ issued under this section must be accompanied by a copy of the payment records maintained under section 50-09-02.1 which has been certified under section 14-08.1-08.~~

SECTION 9. AMENDMENT. Subsection 1 of section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes. The exemption in this subsection does not apply to the collection of child support unless federal law requires an exemption or if complying with an execution or

other process would require an actuarial analysis to determine the current value of the amounts that are payable to the debtor.

SECTION 10. AMENDMENT. Section 34-15-06 of the North Dakota Century Code is amended and reenacted as follows:

34-15-06. Recovery of civil money penalties. A civil money penalty assessed under this chapter is payable fifteen days after service on the employer, by first-class mail, of notice of imposition of the civil money penalty. If an order for child support was issued by a court in this state, failure to pay a civil money penalty may be punished as a civil contempt of court by the court that issued an order for child support imposed upon a newly hired employee whose hiring was not reported timely, completely, and correctly. If an order for child support was issued by a court or administrative tribunal in another state or if there is no current order for child support for the employee, failure to pay a civil money penalty may be punished as a civil contempt of court by any court of this state with jurisdiction over the employer.

SECTION 11. AMENDMENT. Section 35-34-02 of the North Dakota Century Code is amended and reenacted as follows:

35-34-02. Lien for past-due child support. When a past-due child support obligation is at least six times the monthly child support obligation and the obligor is not current in a court-established plan to repay the past-due support listed on the arrears registry as defined in section 14-09-09.10, the public authority may establish a lien on personal property as provided in this chapter. Except for liens under section 35-34-05, the amount of a lien under this chapter includes any past-due support that is owed when the lien is perfected and any past-due support that accrues after the lien is perfected.

SECTION 12. AMENDMENT. Section 35-34-05 of the North Dakota Century Code is amended and reenacted as follows:

35-34-05. Account lien.

1. In the case of an account maintained in a financial institution, the public authority may establish a lien on the account by serving a notice of lien upon the financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the financial institution. The notice must be in a form prescribed by the public authority and contain the name, social security number, or other taxpayer identification number and last-known address of the obligor, the amount of past-due support for which a lien is claimed, and any other information required by the public authority. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon service of the notice of lien on a financial institution in accordance with this section, the lien attaches to accounts of the obligor maintained in the financial institution; except to the extent necessary to and freezes all subsequent withdrawals from the account except for funds in excess of the amount of past-due support for which a lien is claimed under this section and as provided in subsection 3.
3. Notwithstanding a freeze on an account under subsection 2, the financial institution may satisfy any right of setoff which exists in

connection with an account, payment orders that were made by the obligor before the financial institution was served with notice of lien, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with notice of lien.

- 3- 4. A lien under this section is perfected when the financial institution is served with notice of the lien.

SECTION 13. AMENDMENT. Section 35-34-09 of the North Dakota Century Code is amended and reenacted as follows:

35-34-09. Immunity from liability. A person in possession of, or obligated with respect to, property, who, upon demand of the public authority, surrenders the property or discharges the obligation to the public authority, complies with section 35-34-12, or otherwise acts in good faith to comply with the requirements in this chapter, is immune from suit or any liability to the obligor or other person arising from the surrender or payment under any federal or state law. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.

²¹⁰ **SECTION 14.** A new subsection to section 39-03.1-28 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

SECTION 15. AMENDMENT. Section 50-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.5. Securing assets to satisfy child support. In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past-due child support, the state agency may secure assets to satisfy any current support obligation and the past-due amount by issuing writs of execution under chapter 28-21 or domestic relations orders that comply with federal law regarding pensions. Those writs of execution or domestic relations orders may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workforce safety and insurance benefits, or other benefits; and
 - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.

²¹⁰ Section 39-03.1-28 was also amended by section 5 of House Bill No. 1069, chapter 531.

SECTION 16. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support arrears registry. The state case registry maintained under section 50-09-02.4 must include a registry of any obligor who owes past-due support in an amount greater than two times the obligor's current or most recent monthly support obligation as defined in section 14-09-09.10 or two thousand dollars, whichever is less. As used in this chapter, "arrears registry" means the registry maintained under this section.

²¹¹ **SECTION 17. AMENDMENT.** Subsection 2 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is ~~in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less~~ listed on the arrears registry; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.

SECTION 18. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support deduction order.

1. The state agency, directly or through agents or child support agencies, may issue an order requiring an income payer to deduct the amount identified in the order from the portion of any lump sum payment to an obligor that has been withheld under section 14-09-09.34.
2. The state agency, directly or through agents or child support agencies, may issue an order requiring a financial institution to deduct the amount identified in the order from any account of the obligor maintained in the financial institution.
3. The state agency shall serve the order on the income payer or financial institution in the manner provided for service of a summons in a civil action or in any other manner agreed to by the income payer or financial institution. The state agency shall serve a copy of the order upon the obligor by first-class mail to the obligor's last-known address, along with a notice of the obligor's right to claim that the property is exempt from

²¹¹ Section 50-09-08.6 was also amended by section 3 of House Bill No. 1162, chapter 122.

legal process under section 28-22-02, the right to request an informal review by the state agency within ten days of the date of the notice, and the right of the obligor and any other aggrieved person to a review by a court under section 50-09-14. If an informal review is requested under this subsection, the time for requesting a review by a court under section 50-09-14 does not expire until thirty days after the informal review is completed.

4. The income payer or financial institution shall deduct the amount identified in the order or the balance of the account, whichever is less, and transmit the funds to the state disbursement unit within seven business days of the date the order is served.
5. An order issued under this section has priority over any other legal process against the same account, except to the extent necessary to satisfy any right of setoff which exists in connection with an account, payment orders that were made by the obligor before the financial institution was served with the order, or other obligations of the obligor based upon written agreements or instruments made or issued by the obligor before the financial institution was served with the order.
6. An income payer or financial institution may also withhold and retain an additional sum of three dollars from the obligor's account or from the amount retained under section 14-09-09.34 to cover expenses involved in transmitting payment.
7. An income payer or financial institution receiving an order under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with an order under this section.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 or section 18 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

SECTION 20. AMENDMENT. Subsection 1 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

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 is listed on the arrears registry and owes past-due child support in an amount greater than ~~twenty-five~~ ten 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.

SECTION 21. AMENDMENT. Section 50-09-33 of the North Dakota Century Code is amended and reenacted as follows:

50-09-33. (Effective through June 30, 2005 ~~2007~~) Continuing appropriation - Cooperative agreements for child support enforcement services. All federal funds and other income generated by the state agency under a cooperative agreement with one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services, is appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

SECTION 22. A new subsection to section 54-52-26 of the North Dakota Century Code is created and enacted as follows:

A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 416

SENATE BILL NO. 2301

(Senators J. Lee, Brown)
(Representatives Boucher, Devlin, Price, Weisz)

CHILD SUPPORT ENFORCEMENT

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 3 of section 50-01.2-03.2 and sections 50-03-10 and 50-09-15.1 of the North Dakota Century Code, relating to administration of the child support enforcement program; to provide for a child support enforcement task force; to provide a statement of legislative intent; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which more than twenty percent of the caseload for these programs consists of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The reimbursement must be such that:
 - a. An affected county's expenses for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at ninety one hundred percent;
 - b. Each calendar year the affected counties will receive quarterly allocations based on the actual county expenses for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 57-13-07 available on that date; and
 - c. The reimbursement will be calculated for each county and reported to the county social service board prior to August first of the year preceding the allocation.

SECTION 2. AMENDMENT. Section 50-03-10 of the North Dakota Century Code is amended and reenacted as follows:

50-03-10. County commissions to make recommendations. Before August first of each year, the boards of county commissioners of the counties shall make a collective recommendation to the department concerning the distribution between counties, of the social service block grant funds, and the general fund equivalents of social service block grant funds, and child support incentive funds available to the department for distribution to county social service boards. The department shall consider the recommendation of the county commissioners in

determining the distribution to the county social service boards, in the following calendar year, of the social service block grant funds, and the general fund equivalents of social service block grant funds, and child support incentive funds available to the department for that purpose. The department shall distribute child support incentive funds according to a formula that promotes performance and consistency in child support enforcement activities throughout the state.

SECTION 3. AMENDMENT. Section 50-09-15.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-15.1. Child support incentives improvement account - Continuing appropriation. The child support incentives improvement account is established as a special account in the state treasury. One Five percent of the total amount of child support incentive payments paid to the state by the office of child support enforcement of the United States department of health and human services must be deposited into the child support incentives improvement account. The state agency, within the limits of legislative appropriation, shall distribute the moneys in the child support incentives account as grants to organizations determined eligible by the state agency for the purpose of providing child support-related education of and training for individuals involved in child support enforcement. The state agency, prior to distributing the moneys in the child support incentives account, shall invite comments regarding the distribution of the moneys from representatives of the North Dakota state's attorneys association and regional child support offices and other interested persons. The funds in the child support improvement account, the balance of the child support incentives account on the effective date of this Act, and any matching federal funds received by the state agency are appropriated on a continuing basis for the sole purpose of producing increases in child support collections, federal child support incentives, or other revenue or savings to the state agency, or reductions in unpaid child support, that exceed the total amount of improvement funds expended. Improvement funds may be used to sponsor training and publications that promote child support enforcement activities. The state agency shall develop and maintain a business plan that defines the goals and objectives of the child support enforcement program, identifies methods to increase child support collections or reduce unpaid child support, and outlines the process for evaluating progress toward the goals and objectives in the business plan. The state agency must maintain a record of its use of improvement funds and the anticipated result from the use of the funds. Improvement funds may only be used for activities that are included in the business plan maintained under this section.

SECTION 4. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Administration of child support enforcement activities. The state agency shall identify any activity of the child support enforcement program the state agency believes may be administered more effectively, efficiently, or consistently through an agreement between two or more child support agencies or through an agreement for centralized administration under section 50-09-33 and shall direct a child support agency to enter an agreement to perform that activity on terms prescribed by the state agency. The department may not pay any incentive funds to a county or a child support agency that does not enter an agreement under this section. Any attorney performing an activity under this section represents the state and shall obtain an appointment from the attorney general under section 54-12-08.

SECTION 5. CHILD SUPPORT ENFORCEMENT TASK FORCE. The state agency shall convene a child support enforcement task force that includes two members of the legislative assembly appointed by the chairman of the legislative

council and representatives from the state agency, the counties, and the judicial system. The state agency shall extend invitations to representatives from Indian tribes. The task force shall study the organizational and programmatic structure of the child support enforcement program to determine how to enhance service delivery, improve performance, and increase efficiencies. The study must consider the impact on customers, the effect on Indian counties, and the fiscal effect on counties and the state. The findings and recommendations, together with any legislation required to implement the recommendations, must be presented by the state agency to the sixtieth legislative assembly.

SECTION 6. LEGISLATIVE INTENT - OPERATIONAL EFFICIENCIES. It is the intent of the legislative assembly that the authority granted to the department of human services in section 4 of this Act for administration of child support enforcement be exercised to increase child support collections or operational efficiencies such as maximization of federal incentive funds, optimal distribution of staff at the state office and regional offices, improvements in automation, and specialization of staff. The department of human services and North Dakota human resource management services shall review the classification and compensation of all state and county employees engaged in child support enforcement activities.

SECTION 7. EXPIRATION DATE. Section 5 of this Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 417

SENATE BILL NO. 2395

(Senators J. Lee, Cook)

(Representatives R. Kelsch, Wrangham)

RUSSELL-SILVER SYNDROME TREATMENT

AN ACT to create and enact a new section to chapter 50-10 of the North Dakota Century Code, relating to a department of human services treatment program for children with Russell-Silver syndrome; to amend and reenact subsection 12 of section 50-10-06 of the North Dakota Century Code, relating to income eligibility for Russell-Silver syndrome treatment and services; to direct the department of human services to apply for a medical waiver; to provide for a legislative council study; to provide for a report to the legislative council; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 50-10-06 of the North Dakota Century Code is amended and reenacted as follows:

12. Establish eligibility criteria for services under this chapter at one hundred eighty-five percent of the poverty line, except for criteria relating to Russell-Silver syndrome, phenylketonuria₁, or maple syrup urine disease treatment services for which income is not to be considered when determining eligibility. For purposes of this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

SECTION 2. A new section to chapter 50-10 of the North Dakota Century Code is created and enacted as follows:

Russell-Silver syndrome - Services - Definitions.

1. The state agency shall provide payment of a maximum of fifty thousand dollars per child per biennium for medical food and growth hormone treatment at no cost to individuals through age eighteen who have been diagnosed with Russell-Silver syndrome, regardless of income. If the state agency provides an individual with services under this section, the state agency may seek reimbursement from any governmental program that provides coverage to that individual for the services provided by the department. The parent of an individual receiving services under this section shall obtain any health insurance available to the parent on a group basis or through an employer or union, and that insurance must be the primary payer before payment under this program.
2. For purposes of this section:
 - a. "Growth hormone treatment" means a drug prescribed by a physician or other licensed practitioner for the long-term treatment of growth failure, the supplies necessary to administer the drug, one out-of-state physician visit per year to obtain expert consultation for the management of Russell-Silver syndrome,

appropriate in-state physician visits, and the travel expenses associated with physician visits for the child and one parent.

- b. "Medical food" means a formula that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician as well as any medical procedure and supplies necessary for assimilation of the formula.

SECTION 3. MEDICAID WAIVER - IN-HOME SERVICES. The department shall apply for a medicaid waiver to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care. The department may limit the waiver to fifteen participants and may prioritize applicants by degree of need.

SECTION 4. LEGISLATIVE COUNCIL STUDY - HEALTH CARE NEEDS. The legislative council shall consider studying, during the 2005-06 interim, issues relating to medicaid and other public funding for the extraordinary health care needs of children who live in an institution or who are at risk of institutionalization; the comprehensive health association of North Dakota program provided for under chapter 26.1-08, including contracting for a cost-benefit analysis of this program; and the state programs providing services to children with special health care needs to determine whether the programs are effective in meeting these special health care needs, whether there are gaps in the state's system for providing services to children with special health care needs, and whether there are significant unmet special health care needs of children which should be addressed. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 5. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department shall report to the legislative council regarding the status of the medicaid waiver to provide in-home services under section 3 of this Act, the number of applications the department receives for the in-home services, and the status of the program's appropriation.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing Russell-Silver syndrome services, for the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 418**SENATE BILL NO. 2149**

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD CARE AND ABUSE AND NEGLECT

AN ACT to create and enact a new subsection to section 50-01.2-03 of the North Dakota Century Code, relating to duties of county social service boards; and to amend and reenact sections 50-11-00.1 and 50-11-04, subsection 2 of section 50-11-06.6, section 50-11.1-02, subsection 5 of section 50-11.1-03, sections 50-11.1-04, 50-11.1-06, 50-11.1-07, and 50-11.1-07.1, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.4, 50-11.1-07.5, 50-25.1-02, 50-25.1-06, and 50-25.1-06.1, and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to authorized agents of the department of human services for foster care licensing, child care licensing, and child abuse and neglect services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-01.2-03 of the North Dakota Century Code is created and enacted as follows:

Supervise and administer designated child welfare services under the direction and supervision of the department of human services. Through established procedures the department of human services may release the county social service board of this duty or the county social service board may request to be released from this duty by the department of human services. If a county is released from the county's duty to supervise and administer designated child welfare services under this subsection, the county retains its financial responsibility for providing those services unless otherwise negotiated and approved by the department.

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

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

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Department" means the department of human services.
- ~~2.~~ 3. "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.
- ~~3.~~ 4. "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

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

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

50-11-04. Inspection by the department - Inspection and report by ~~county social service board~~ the department or its authorized agent. The department and its authorized agents at any time may inspect any facility licensed under the provisions of this chapter or with respect to which a license application has been made. The department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the ~~county social service board of the county in which the facility is located~~ department or its authorized agent shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

SECTION 4. AMENDMENT. Subsection 2 of section 50-11-06.6 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person, organization, corporation, or limited liability company is entitled, upon request, to be advised by the department or ~~county social service boards~~ its authorized agent regarding the policy, procedure, and intentions of the department or ~~county social service boards~~ its

authorized agent toward placement of children in that person's, organization's, corporation's, or limited liability company's facility if:

- a. The person, organization, corporation, or limited liability company is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
- b. The person, organization, corporation, or limited liability company is applying for its license to provide foster care for children under this chapter.

²¹² **SECTION 5. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
- ~~2.~~ 3. "County agency" means the county social service board in each of the counties of the state.
- ~~3.~~ 4. "Department" means the department of human services.
4. 5. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, or known by any other name.
- ~~5.~~ 6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.

²¹² Section 50-11.1-02 was also amended by section 1 of Senate Bill No. 2304, chapter 419.

- d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Headstart programs that are federally funded and meet federal headstart standards.
 - j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.
- ~~6.~~ 7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
- ~~7.~~ 8. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
- ~~8.~~ 9. "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~9.~~ 10. "License" means the right, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, or preschool educational facility.
- ~~10.~~ 11. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
- ~~14.~~ 12. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.

- ~~42.~~ 13. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
- ~~43.~~ 14. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~44.~~ 15. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

SECTION 6. AMENDMENT. Subsection 5 of section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. All fees collected under subsection 3 must be paid to the ~~county social service board~~ department or the department's authorized agent and must be used to defray the cost, to ~~that board~~ the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 7. 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 department or the department's authorized agent~~ department or the department's authorized agent 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 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 8. AMENDMENT. Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06. In-home provider - Registration voluntary - Issuance of registration certificate - Term. In-home providers may apply for a registration certificate from the department. ~~The county agency~~ the department or the department's authorized agent shall determine whether the standards have been met and shall issue or deny a registration certificate based upon that determination. Registration certificates for in-home providers must be in force and effect for not more than one year.

SECTION 9. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07. Investigation of applicants, licensees, and registrants - Maintenance of records - Confidentiality of records.

1. The department and ~~the county agency~~ its authorized agent at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of early childhood services in any early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration document under this chapter. Upon request of the department or ~~the county agency~~ its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect any facility for which a license is applied for or issued and shall report the findings to the ~~county agency~~ department or the department's authorized agent.
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;
 - 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.
3. Except as provided in subsection 4, all records and information maintained with respect to children receiving early childhood services

are confidential and must be properly safeguarded and may not be disclosed except:

- a. In a judicial proceeding;
 - b. To officers of the law or other legally constituted boards or agencies; or
 - c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.
4. A provider of early childhood services, upon the request of the parent or guardian of a child for whom the provider provides such services, shall make available to the parent or guardian a list of the names, telephone numbers, and addresses of the parents or guardians of children for whom early childhood services are provided. The list may only include the names, telephone numbers, or addresses of parents or guardians who grant the provider permission to disclose that information.

SECTION 10. AMENDMENT. Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.1. Notice. After each inspection or reinspection, the county agency department or the department's authorized agent shall, by certified mail, send copies of any correction order or notice of noncompliance, to the early childhood facility.

SECTION 11. AMENDMENT. Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the county agency department or the department's authorized agent 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.

SECTION 12. AMENDMENT. Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.4. Fiscal sanctions. An early childhood facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction must be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and must continue until a notice of correction is received by the county agency department or the department's authorized agent in accordance with section 50-11.1-07.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 13. AMENDMENT. Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.5. Accumulation of fiscal sanctions. An early childhood facility shall promptly notify the county agency department or the department's authorized agent in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the county agency department or the department's authorized agent, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be reinspected within three working days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the daily assessment of fiscal sanction must resume and the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The county agency department or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

²¹³ **SECTION 14. 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 in violation of sections 12.1-20-01 through 12.1-20-07.
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.
5. "Authorized agent" means the county social service board, unless another entity is designated by the department.

²¹³ Section 50-25.1-02 was also amended by section 1 of Senate Bill No. 2383, chapter 434.

- ~~6.~~ 6. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
- ~~7.~~ 7. "Department" means the department of human services or its designee.
- ~~6.~~ 8. "Harm" means negative changes in a child's health which occur when a person responsible for the child's welfare:
- 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.
- ~~7.~~ 9. "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.
- ~~8.~~ 10. "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.
- ~~9.~~ 11. "Neglected child" means a deprived child as defined in chapter 27-20.
- ~~40.~~ 12. "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.
- ~~44.~~ 13. "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.
- ~~42.~~ 14. "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 15. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06. Protective and other services to be provided. The department ~~and the appropriate county social service board~~ shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children. The department may discharge the duties described in this section through an authorized agent.

SECTION 16. AMENDMENT. Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-06.1. Caseload standards - Reimbursement. The department shall adopt caseload standards establishing minimum staff to client ratios for the assessment of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation, the department shall reimburse ~~each county its authorized agent,~~ upon claim being made by the ~~county authorized agent,~~ for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming ~~county authorized agent~~ in the amount of seventy-five percent of such additional staff costs, the department shall reimburse each claiming ~~county authorized agent~~ for that percentage of additional staff costs which the appropriation is sufficient to defray.

²¹⁴ **SECTION 17. AMENDMENT.** Subsection 3 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Authorized staff of the department, ~~appropriate county social service boards and its authorized agents,~~ and appropriate state and local child protection team members, and citizen review committee members.

Approved April 19, 2005
Filed April 20, 2005

²¹⁴ Section 50-25.1-11 was also amended by section 3 of Senate Bill No. 2383, chapter 434.

CHAPTER 419

SENATE BILL NO. 2304

(Senators Dever, Brown, Cook, Tollefson)
(Representative L. Meier)

EARLY CHILDHOOD SERVICES

AN ACT to amend and reenact section 50-11.1-02 of the North Dakota Century Code, relating to services included within the definition of early childhood services; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
2. "County agency" means the county social service board in each of the counties of the state.
3. "Department" means the department of human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, drop-in care center, or known by any other name.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.

²¹⁵ Section 50-11.1-02 was also amended by section 5 of Senate Bill No. 2149, chapter 418.

- b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
 - d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, ~~other than employment~~, on or near the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Headstart programs that are federally funded and meet federal headstart standards.
 - j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.
- ~~6.~~ 7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
- ~~7.~~ 8. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
- ~~8.~~ 9. "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~9.~~ 10. "License" means the rights, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility.

- ~~40.~~ 11. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
- ~~44.~~ 12. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.
- ~~42.~~ 13. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
- ~~43.~~ 14. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~44.~~ 15. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

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

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 420**HOUSE BILL NO. 1181**

(Representatives Keiser, Devlin, Price)
(Senators Brown, J. Lee)

FUNERAL CONTRACT MEDICAL ASSISTANCE EFFECT

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to funds designated for funeral expenses and eligibility for medical assistance; and to direct the department of human services to seek a waiver.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

SECTION 2. WAIVER. During the 2005-07 biennium, the department of human services shall seek approval from the federal government to disregard for medicaid eligibility purposes any pre-need funeral service contract, prepayment, or deposit to a fund, regardless of its value, made by a medicaid applicant or recipient if the pre-need funeral service contract, prepayment, or deposit to a fund was purchased before April 1, 2004.

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 421

SENATE BILL NO. 2185

(Senator J. Lee)

(Representatives Keiser, Price)

MEDICAL ASSISTANCE BUY-IN FOR DISABLED

AN ACT to amend and reenact section 50-24.1-02.7 of the North Dakota Century Code, relating to buy-in of medical assistance for individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.7 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.7. (Effective through June 30, 2005) Medical assistance buy-in program for disabled Workers with disabilities coverage. The department of human services shall establish and implement a buy-in program to provide medical assistance to an individual who, except for substantial gainful activity, 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~~ sixteen 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 net~~ 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~~ Allow 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~~ in assets;
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 gross countable 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.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 422

SENATE BILL NO. 2190

(Senator Wardner)
(Representative Wald)

ANNUITY TRANSFERS

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to transfers involving annuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁶ **SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.8. 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 a single premium immediate annuity or an annuity in which a settlement option has been selected, 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.

²¹⁶ Section 50-24.1-02.8 was also amended by section 1 of House Bill No. 1248, chapter 423.

- d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the ~~department of human services~~ life expectancy tables published by the centers for medicare and medicaid 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~~ under 42 U.S.C. 1396r-5.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 423

HOUSE BILL NO. 1248

(Representatives Keiser, Price)

ANNUITY TRANSFERS

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to transfers involving annuities; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.8. 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~~ Except for purposes of subsections 3 and 5, 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.

²¹⁷ Section 50-24.1-02.8 was also amended by section 1 of Senate Bill No. 2190, chapter 422.

- 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.
3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.
4. An annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1, purchased after July 31, 2005, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:
- a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
 - b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
 - c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;
 - d. 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;
 - e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and

- f. The annuity does not include any provision that limits the effect of subsection 5.
5. Except as provided in subsection 2, before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty-five years of age or older, the department of human services, or the successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty-five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant which complies with subsection 4.

SECTION 2. APPLICATION. If any provision of this Act is determined by the federal government to be in conflict with existing or future federal requirements with respect to federal participation in medical assistance, the federal requirements prevail.

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 424

HOUSE BILL NO. 1436

(Representatives Koppelman, Kasper, Kerzman)
(Senators Nething, Warner)

MEDICAL ASSISTANCE INTEREST ACCRUAL

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to the accrual of interest on medical assistance of a deceased recipient.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-07. Recovery from estate of medical assistance recipient.

1. On the death of any recipient of medical assistance who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Funeral expenses not in excess of three thousand dollars;
 - b. Expenses of last illness;
 - c. Expenses of administering the estate, including attorney's fees approved by the court;
 - d. Claims made under chapter 50-01;
 - e. Claims made under chapter 50-24.5; and
 - f. Claims made under chapter 50-06.3 and on behalf of the state hospital.
2. ~~No~~ A claim must may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 425

HOUSE BILL NO. 1206 (Representatives Porter, Devlin, Price) (Senators Dever, J. Lee)

MEDICAL ASSISTANCE REIMBURSEMENT APPEALS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to provider appeals of medical assistance reimbursement denials; and to amend and reenact section 50-24.1-15 of the North Dakota Century Code, relating to prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-15 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-15. Prehospital emergency medical services. Medical assistance coverage must include prehospital emergency medical services benefits in the case of a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and which a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part. A medical assistance claim that meets the prudent layperson standard of this section may not be denied by the department on the basis that the prehospital emergency medical services were not medically necessary or that a medical emergency did not exist.

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

Provider appeals - Definitions.

1. For purposes of this section:

- a. "Denial of payment" means that the department has denied payment for a medical assistance claim or reduced the level of service payment for a service provided to an individual who was an eligible medical assistance recipient at the time the service was provided.**
- b. "Department" means the department of human services.**
- c. "Provider" means an individual, entity, or facility that furnishes medical or remedial services or supplies pursuant to a provider agreement with the department.**

2. A provider may request a review of denial of payment under this section by filing within thirty days of the date of the department's denial of the claim a written notice with the department which includes a statement of each disputed item and the reason or basis for the dispute. A provider

- may not request review under this section of the rate paid for a particular service.
3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits and other written information that support the provider's request for review, together with a computation and the dollar amount that reflects the provider's claim as to the correct computation and dollar amount for each disputed item.
 4. The department shall assign to a provider's request for review someone other than any individual who was involved in the initial denial of the claim. A provider who has requested review may contact the department for an informal conference regarding the review anytime before the department has issued its final decision.
 5. The department shall make and issue its final decision within seventy-five days of receipt of the notice of request for review. The department's final decision must conform to the requirements of section 28-32-39. A provider may appeal the final decision of the department to the district court in the manner provided in section 28-32-42, and the district court shall review the department's final decision in the manner provided in section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in section 28-32-49.
 6. Upon receipt of notice that the provider has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits and other written information submitted by the provider or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original and a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of section 28-32-44.

Approved April 11, 2005

Filed April 12, 2005

CHAPTER 426**HOUSE BILL NO. 1148**

(Human Services Committee)

(At the request of the Department of Human Services)

MEDICAL ASSISTANCE RECIPIENT SERVICES

AN ACT to create and enact two new sections to Senate Bill No. 2185, as approved by the fifty-ninth legislative assembly, relating to the effective date of the medical assistance buy-in program for individuals with disabilities; to amend and reenact section 50-24.1-18.1 of the North Dakota Century Code, relating to personal care services for eligible medical assistance recipients who are residing in their own homes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-18.1. (Effective through June 30, 2005) Personal care services - Residing at home. 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. The department shall seek a waiver of federal law to permit disabled and elderly individuals to direct their own care and to permit personal care services authorized under this section to be provided by nonlicensed personal care service providers.

SECTION 2. Two new sections to Senate Bill No. 2185, as approved by the fifty-ninth legislative assembly, are created and enacted as follows:

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

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

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

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

Approved April 15, 2005

Filed April 18, 2005

CHAPTER 427**SENATE BILL NO. 2342**
(Senators Thane, Fischer, Mathern)
(Representatives Aarsvold, Hawken)**DEVELOPMENTAL DISABILITIES SERVICE
PROVIDERS COST INDEX**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to developmental disabilities service providers.

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:

Operating costs for developmental disabilities service providers. The department of human services shall determine annual payment rates for private, licensed developmental disability providers by applying the inflation rate for these providers used to develop the legislative appropriation for the department.

Approved April 20, 2005
Filed April 20, 2005

CHAPTER 428

HOUSE BILL NO. 1465

(Representatives Price, Delzer, Devlin)
(Senators Brown, Fischer, J. Lee)

MEDICAL ASSISTANCE PROGRAM MANAGEMENT

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the management of the state medical assistance program; to provide for a report; to provide an appropriation; and to declare an emergency.

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:

Medical assistance and medicare prescription drug management program. The department of human services, with respect to the state medical assistance program, shall develop a plan for the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The department may purchase the services of an outside consultant to assist in the development of the plan. The requirements of chapter 54-44.4 do not apply to the purchase of the consultant services. The department may not pay for:

1. A prescription drug that is within a class of drugs covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed to a medical assistance recipient who is also a medicare beneficiary.
2. A prescription drug that is not covered and for which no drug in its class is covered under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed for an individual who is a medical assistance recipient and a medicare beneficiary unless federal medical assistance matching funds are available at no less than the federal medical assistance percentage and the department determines that the drug is medically necessary for the individual.
3. A prescription drug for which federal medical assistance matching funds are not available except that until February 15, 2006, the department may pay for the drug in an emergency to ensure that a medical assistance recipient who is also a medicare beneficiary may continue to receive appropriate medications after implementation of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1].

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. During the 2005-06 interim, the department of human services shall report to the legislative council regarding the department's progress in developing and implementing the plan provided for in section 1 of this Act.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary to the department of human services for the purpose of supplementing other appropriations provided for the medical assistance program to defray the expenses associated with developing and implementing the plan described in section 1 of this Act beginning with the effective date of this Act and ending June 30, 2007.

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

Approved April 25, 2005
Filed April 26, 2005

CHAPTER 429

SENATE BILL NO. 2354

(Senator Espegard)
(Representative Keiser)

CHARITABLE SOLICITATIONS REGULATION

AN ACT to amend and reenact subsection 2 of section 50-22-01, subsection 2 of section 50-22-02, and section 50-22-02.2 of the North Dakota Century Code, relating to charitable solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-22-01 of the North Dakota Century Code is amended and reenacted as follows:

2. a. "Charitable organization" means 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 that solicits funds for an institution of higher learning.
 - (2) An organization that uses only volunteer unpaid fundraisers and 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 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 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~~ or 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.

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

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. An initial registration filed by a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 is valid until September first of the subsequent year. 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.

SECTION 3. AMENDMENT. Section 50-22-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-02.2. Licensee Registrant name registration or certificate of authority required. The secretary of state may not issue or renew a ~~license registration~~ provided for in this chapter if the name of the ~~licensee registrant~~ is an entity whose name is not in some manner registered with the secretary of state as a corporation, limited liability company, trade name, fictitious name of a partnership, limited partnership, or limited liability partnership. For a registrant that is a foreign entity, a registration under this chapter means the same as a license or permit under section 10-19.1-134, 10-32-137, 10-33-127, or 45-22-19, or other substantially equivalent statute for the purpose of procuring a certificate of authority or similar authorization to act in this state.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 430

HOUSE BILL NO. 1217 (Representatives Keiser, Price, Weisz)

INSURANCE EFFECT ON MEDICAL ASSISTANCE BENEFITS

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 benefits and long-term care insurance; to provide for a report; and to provide an effective date.

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:

Effect of purchase of long-term care insurance on eligibility for medical assistance benefits.

1. Notwithstanding any other provision of law to the contrary, the assets of an individual must be disregarded when determining medical assistance eligibility if the individual owns a long-term care insurance policy as described in this section and purchased before application for medical assistance was made. For purposes of this section, assets mean any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether presently vested with possessory rights and that would be considered in determining eligibility for medical assistance. The following asset disregards must be applied:
 - a. A one dollar increase in the medical assistance asset limit must be granted to an individual who is the beneficiary of a long-term care insurance policy that meets the requirements of this section for each one dollar of benefit paid out under the individual's long-term care insurance policy for long-term care services; or
 - b. The total assets an individual owns and may retain and still qualify for medical assistance benefits at the time the individual applies for benefits must be disregarded if the individual is the beneficiary of a long-term care insurance policy that meets the requirements of this section, provides maximum benefits at the time of purchase of at least the total asset protection amount in effect at the time of purchase, and includes a provision under which the daily benefit increases by at least five percent per year compounded at least annually, and that individual has exhausted the benefits of the long-term care insurance policy.
2. As used in this section, long-term care insurance has the meaning set forth in section 26.1-45-01.
3. As used in this section, "total asset protection amount" means a maximum benefit equal to one hundred sixty-four thousand two hundred

fifty dollars for policies purchased during 2005 and that amount plus an additional five percent compounded annually for policies purchased in any year after 2005.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. Before November 1, 2005, the department of human services shall report to the legislative council regarding the status of the amendment to the medicaid state plan regarding the disregard of any assets to the extent that payments are made under a long-term care insurance policy or because an individual has received or is entitled to receive benefits under a long-term care insurance policy.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on the date the department of human services certifies to the legislative council that an amendment to the medicaid state plan has been approved that provides for the disregard of any assets to the extent that payments are made under a long-term care insurance policy or because an individual has received or is entitled to receive benefits under a long-term care insurance policy.

Approved March 14, 2005

Filed March 14, 2005

CHAPTER 431**HOUSE BILL NO. 1281**

(Representatives Kreidt, Galvin, Uglem)
(Senator J. Lee)

**MEDICAL ASSISTANCE AND LONG-TERM CARE
FACILITIES**

AN ACT to create and enact two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance eligibility and long-term care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 50-24.1 of the North Dakota Century Code are created and enacted as follows:

Long-term care facility information. A long-term care facility may request that an applicant for admission, a resident of the facility, or the applicant's or resident's legal representative furnish financial information regarding income and assets, including information regarding any transfers or assignments of income or assets. A long-term care facility may deny admission to an applicant for admission who is unable to verify a viable payment source.

Long-term care facility resident - Medical assistance eligibility. An individual is not ineligible for medical assistance if application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that:

1. For periods after the return, all income or assets constituting the disqualifying transfer have been transferred or assigned back to the individual and the individual is otherwise eligible for medical assistance;
or
2. Compensation equal to the fair market value of the income or asset at time of transfer is paid to, or on behalf of, the individual for nursing care and services provided by a long-term care facility and the individual is otherwise eligible for medical assistance.

Approved March 15, 2005
Filed March 16, 2005

CHAPTER 432

HOUSE BILL NO. 1252

(Representatives Delzer, Devlin, Kreidt)
(Senators Brown, Fischer, J. Lee)

NURSING HOME AND BASIC CARE RATES

AN ACT to amend and reenact sections 50-24.4-06 and 50-24.4-10, subsection 1 of section 50-24.4-11, sections 50-24.4-13, 50-24.4-14, 50-24.4-16, 50-24.4-19, and 50-24.4-27, and subsection 3 of section 50-24.5-02 of the North Dakota Century Code, relating to nursing home rates and basic care rates; and to repeal section 50-24.4-09 of the North Dakota Century Code, relating to interim rates for nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination. The department shall determine prospective payment rates for resident care costs. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.

The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.

SECTION 2. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs after January 1, 1990.

1. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall establish procedures for determining per diem reimbursement for operating costs.
2. ~~The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.~~
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.
4. 3. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs ~~for the reporting year that begins July 1, 1987,~~ taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the

costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. ~~The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this chapter based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. For the rate year beginning 2006, the department shall establish limits for cost categories using the June 30, 2003, cost report year as the base period. The limits may not fall below the median of the most recent cost report. Until the a new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5 by the inflation rate for nursing home services used to develop the legislative appropriation for the department. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the indirect care cost per diem to an imputed occupancy level at or below ninety percent. To encourage the development of home and community-based services as an alternative to nursing home care, the department may waive the imputed occupancy level requirements for a nursing home that the department determines to be providing significant home and community-based services in coordination with home and community-based service providers to avoid duplicating existing services. The department shall establish efficiency incentives as appropriate for indirect care costs. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.~~

5. ~~The department shall establish a composite index or indices based on the average of the increase in the Data Resources, Incorporated, nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (all items, United States city average) to be applied to specific operating cost categories or combination of operating cost categories.~~
6. 4. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the ~~appropriate index established in subsection 5~~ inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to subsection 4 ~~3~~ or the limit for the operating cost category increased by the same index inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In

establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

7. 5. ~~Effective July 1, 1994, the~~ The efficiency incentives to be established by the department pursuant to subsection 4 ~~3~~ for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation ~~indices~~ rates, and the limit rate, exclusive of current inflation ~~indices~~ rates. The efficiency incentive must be included as a part of the indirect care cost rate.
8. 6. ~~Effective July 1, 1994, each~~ Each nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care costs and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care cost categories.
7. A new base period must be established at least every four years beginning with the cost report period June 30, 2006.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.4-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~For rate years beginning on or after January 1, 1994, the~~ The department may allow a one-time adjustment to historical operating costs of a nursing home that has been found by the department to be significantly below care related minimum standards appropriate to the mix of resident needs in that nursing home when it is determined by the department that the nursing home is unable to meet minimum standards through reallocation of nursing home costs and efficiency incentives or allowances. In developing procedures to allow adjustments, the department shall specify the terms and conditions governing any additional payments made to a nursing home as a result of the adjustment. The department shall establish procedures to recover amounts paid under this section, in whole or in part, and to adjust current and future rates, for nursing homes that fail to use the adjustment to satisfy care related minimum standards.

SECTION 4. AMENDMENT. Section 50-24.4-13 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for nongeriatric individuals with physical disabilities or units within nursing homes which exclusively provide geropsychiatric services, such nursing homes or units within nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of any cost categories. Each of these nursing homes or units within nursing homes shall receive its actual allowed historical operating cost per diem adjusted by a ~~percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 50-24.4-10~~ the inflation rate for nursing home services used to develop the legislative appropriation for the department, and which the department determines to be relevant to residential services for nongeriatric individuals with physical disabilities or geropsychiatric services.

SECTION 5. AMENDMENT. Section 50-24.4-14 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-14. General and administrative costs after January 1, 1990. For rate years beginning on or after January 1, 1990, all All general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services ~~in~~ for the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.
5. The consultant's full-time responsibilities are to provide the services identified in this section.

SECTION 6. AMENDMENT. Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-16. Special rates.

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the ~~percentile for any group~~ limits of any cost category, the department shall establish procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than eighteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up for periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities ~~for rate periods beginning on or after January 1, 1990.~~

SECTION 7. AMENDMENT. Section 50-24.4-19 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-19. Prohibited practices. ~~From and after January 1, 1990, a~~ A nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department of human services. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable ~~attorneys'~~ attorney's fees or their equivalent.
2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.

- b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this chapter.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the nursing home except as payment for the fair market value of renting or leasing space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.
7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.
9. Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 8. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification. All nursing facilities certified under the medical assistance program shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. ~~Medicare review must be conducted at the time of the annual medical assistance review.~~ Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 9. AMENDMENT. Subsection 3 of section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

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 adjusted by the inflation rate for basic care services used to develop the legislative appropriation for the department.

SECTION 10. REPEAL. Section 50-24.4-09 of the North Dakota Century Code is repealed.

Approved April 25, 2005

Filed April 26, 2005

CHAPTER 433

HOUSE BILL NO. 1470

(Representatives Devlin, Nelson, Sandvig, Weisz)
(Senators Fischer, Mathern)

DRUG USE REVIEW AND PRIOR AUTHORIZATION

AN ACT to amend and reenact subsection 2 of section 50-24.6-02 and section 50-24.6-04 of the North Dakota Century Code, relating to the membership of the drug use review board and the prior authorization program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of ~~fifteen~~ sixteen 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~~ Four 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~~ appointed by the North Dakota medical association;
 - b. ~~Six~~ Two physicians licensed in this state and actively engaged in the practice of medicine, appointed by the executive director of the department;
 - c. Four pharmacists licensed in this state and actively engaged in the practice of pharmacy, ~~four of whom are chosen from a list of nominees provided~~ appointed by the North Dakota pharmaceutical association; ~~and~~
 - d. Two pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the executive director of the department;
 - e. One individual who represents consumer interests, appointed by the governor; and
 - e. f. One pharmacist or physician representing the pharmaceutical industry who is chosen from a list of nominees provided appointed by the pharmaceutical research manufacturers of America.

SECTION 2. AMENDMENT. Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

50-24.6-04. 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. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses, such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:
 - a. Acquired immune deficiency syndrome or human immunodeficiency virus; and
 - b. Cancer.
4. 5. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
5. 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 3. EXPIRATION DATE. Section 2 of this Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 434

SENATE BILL NO. 2383

(Senators Fischer, Dever, J. Lee)
(Representatives Delmore, D. Johnson, Weisz)

CHILDREN'S ADVOCACY CENTERS

AN ACT to create and enact a new subsection to section 50-25.1-02 of the North Dakota Century Code, relating to the definition of children's advocacy center; to amend and reenact section 50-25.1-05 and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to the role of children's advocacy centers in the investigation of child abuse and neglect; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1.** A new subsection to section 50-25.1-02 of the North Dakota Century Code is created and enacted as follows:

"Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.

SECTION 2. AMENDMENT. Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05. Assessment. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services. The department or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The department or law enforcement

²¹⁸ Section 50-25.1-02 was also amended by section 14 of Senate Bill No. 2149, chapter 418.

agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

²¹⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Authorized staff of the department, appropriate county social service boards, children's advocacy centers, and appropriate state and local child protection team members.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the expenses of North Dakota children's advocacy centers, for the biennium beginning July 1, 2005, and ending June 30, 2007.

Approved April 19, 2005

Filed April 20, 2005

²¹⁹ Section 50-25.1-11 was also amended by section 17 of Senate Bill No. 2149, chapter 418.

CHAPTER 435**HOUSE BILL NO. 1267**

(Representatives Sitte, Koppelman, Metcalf, Price)
(Senators Dever, Syverson)

CHILD PROTECTIVE SERVICES DUTIES

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the duties of the department of human services with respect to child protective services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Child protective services duties - Training requirements.

1. The department, at the initial time of contact with an individual subject to a child abuse or neglect assessment, shall advise the individual of the specific complaints or allegations made against the individual.
2. The department shall provide training to all representatives of the child protective services system regarding the legal duties of the representatives. The training may consist of various methods of informing the representatives of these duties, to protect the legal rights and safety of children and families from the initial time of contact during assessment through treatment.
3. The department shall adopt rules to implement the requirements of this section.

Approved March 4, 2005

Filed March 4, 2005

CHAPTER 436

HOUSE BILL NO. 1204

(Representatives Devlin, Boucher, Delzer)
(Senators Andrist, Fischer, O'Connell)

NURSING FACILITY FUNDING POOL REPEAL

AN ACT to amend and reenact section 50-30-02 of the North Dakota Century Code, relating to the North Dakota health care trust fund; and to repeal section 50-24.4-30 of the North Dakota Century Code, relating to the government nursing facility funding pool.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.

1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund ~~and shall adopt procedures for participation by government nursing facilities.~~ The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:
 - 4- a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
 - 2- b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
 - 3- c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
2. The department shall continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.

SECTION 2. REPEAL. Section 50-24.4-30 of the North Dakota Century Code is repealed.

CHAPTER 437

HOUSE BILL NO. 1147

(Human Services Committee)

(At the request of the Department of Human Services)

ASSISTED LIVING FACILITIES

AN ACT to create and enact a new subsection to section 50-32-02 and a new section to chapter 50-32 of the North Dakota Century Code, relating to assisted living facilities; and to amend and reenact subsection 1 of section 23-09-01 and subsections 1 and 5 of section 50-32-01 of the North Dakota Century Code, relating to assisted living facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section 50-11-01.4.

SECTION 2. AMENDMENT. Subsections 1 and 5 of section 50-32-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Assisted living facility" means a building or structure containing a series of at least five 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 or section 50-11-01.4.
5. "Living unit" means a portion of an assisted living facility that contains a sleeping area, an entry door that can be locked, and a private bath with

²²⁰ Section 23-09-01 was also amended by section 14 of Senate Bill No. 2004, chapter 32.

a toilet, bathtub or shower, and sink and which is occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.

SECTION 3. A new subsection to section 50-32-02 of the North Dakota Century Code is created and enacted as follows:

No more than two people may occupy one bedroom of each living unit of an assisted living facility.

SECTION 4. A new section to chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

Continuation of existing licenses. An assisted living facility that possessed a valid license issued by the department of human services before the effective date of this Act may not be subsequently denied a license by the department of human services merely due to failure to meet the requirements of sections 23-09-01, 50-32-01, and 50-32-02 provided that the assisted living facility meets all other licensing requirements.

Approved March 4, 2005

Filed March 4, 2005