

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1134  
(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 25-01.2-01, 25-01.2-03, 25-01.2-04, 25-01.2-05, 25-01.2-06, 25-01.2-08, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-12, 25-01.2-14, 25-01.2-15, 25-01.2-16, and 25-04-02.1, subsection 4 of section 25-04-05, subsection 2 of section 25-16-01, section 25-16-04, subsection 2 of section 25-16.1-01, section 25-16.1-03, and subsection 2 of section 25-18-01 of the North Dakota Century Code, relating to updating definitions and code sections to reflect person first language, updating language to reflect rights of the developmentally disabled, applying and removing restrictions on individuals with developmental disabilities, and to clarify inspection of facilities.

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

**SECTION 1. AMENDMENT.** Section 25-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" means an entity that has requested licensure from the department.
2. "Department" means the department of human services.
3. "Developmental disability" means a severe, chronic disability of an individual which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the individual attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;
    - (5) Self-direction;
    - (6) Capacity for independent living; and
    - (7) Economic sufficiency; and
  - e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

4. "Individualized setting" means a setting where an individual owns or rents the individual's residence and a public or private agency or organization provides services to an individual with a developmental disability.
- 2-5. "Institution or facility" means any school, hospital, residence center, group home, or any other facility setting operated by any public or private agency, or organization, or institution, which that provides services to an individual with a developmental disability.
- 3-6. "Least restrictive appropriate setting" means that setting which that allows the an individual with a developmental disability to develop and realize the individual's fullest potential and enhances the individual's ability to cope with the individual's environment without unnecessarily curtailing fundamental personal liberties.
7. "License" means authorization by the department to provide services to individuals with developmental disabilities, pursuant to chapter 25-16.
- 4-8. "Service or services for to an individual with a developmental disability" means services provided by any public or private agency, or organization, or institution, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability.

**SECTION 2. AMENDMENT.** Section 25-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-03. Presumption of incompetence prohibited - Discrimination prohibited - Deprivation of constitutional, civil, or legal rights prohibited.**

An individual with a developmental disability may not be presumed to be incompetent and may not be deprived of any constitutional, civil, or legal right solely because of admission to or residence at an institution or, facility, or individualized setting or solely because of receipt of services for to individuals with a developmental disability disabilities. However, nothing in this section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal rights which may not be varied or modified under the provisions of this section include:

1. The right to vote at elections;
2. The free exercise of religion;
3. The right of reasonable opportunities to interact with members of the opposite sex; and
4. The right to confidential handling of personal and medical records.

**SECTION 3. AMENDMENT.** Section 25-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-04. ~~Mail, telephone, and visitation~~ Communication rights - ~~Application to residential institution or facility.~~**

1. Except as provided in this section, every individual with a developmental disability who resides in a mental health or developmental disabilities an institution or, facility, or individualized setting has the right of private, unimpeded, and uncensored communication, including visitation, with persons of the resident's individual's choice by mail, telephone, and visitation.
- a.2. ~~The facility director~~ A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for private visitation is available shall document any restrictions of these rights in the individual's person-centered service plan.

- ~~b.3.~~ A public or private agency or organization not licensed by the department may establish in writing reasonable times and places for use of telephones and for visits, provided that a resident's individual's ability to contact an attorney, guardian, or custodian, may not be restricted and provided that any rules or restrictions must be posted in each residential institution, facility, or individualized setting.
4. A copy of any rules or restrictions must be given to all residents individuals over eighteen years of age and, to the parents or custodians of all individuals under eighteen years of age, or guardian of all residents under eighteen years of age, upon admission.
2. This section applies only with respect to an institution or facility that provides residential care.

**SECTION 4. AMENDMENT.** Section 25-01.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-05. Personal property –~~Application to residential institution or facility.~~**

1. ~~Except in the circumstances and under the conditions as provided in this section subsection,~~ every resident of an institution or facility individual with a developmental disability who resides in an institution, facility, or individualized setting must be permitted to receive, possess, and use lawful personal property and must be provided with a secure, convenient, and reasonable amount of storage space for that property.
- ~~1.2.~~ The facility directorA public or private agency or organization providing services to an individual with a developmental disability may restrict the possession and use of certain classes of property which may be dangerous or may harm a residentan individual.
- ~~2.3.~~ Notice of any restrictions must be immediately given in writing to all residents individuals over eighteen years of age and, to the parents or custodian of all individuals under eighteen years of age, or guardian of all residents under eighteen years of age, upon admission.
- ~~3.4.~~ A restriction of the rights of an individual with a developmental disability which is imposed by a public or private agency or organization that provides services to the individual must be reviewed at least annually as part of the individual's individualized habilitation, person-centered service, or individual education plan team meeting.
5. Unless a restriction applies universally, the restricting agency or organization shall remove the restriction placed on an individual with a developmental disability at the earliest point at which the individual demonstrates the ability to mitigate the need for the restriction.
6. When a residentan individual is discharged from the institution or facility services provided from a public or private agency or organization, all of the resident's individual's lawful personal property whichthat is in the custody of the facilitypublic or private agency or organization must be returned to the residentindividual.

~~This section applies only with respect to an institution or facility that provides residential care.~~

7. A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

**SECTION 5. AMENDMENT.** Section 25-01.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-06. Labor - Wages - Money –~~Application to residential institution or facility.~~**

~~A resident or service recipient may consent to perform labor for a service provider if the professional responsible for overseeing the implementation of that resident's individual habilitation plan determines that the labor would be consistent with that plan.~~

1. ~~A resident or service recipient~~An individual with a developmental disability who is receiving services from a public or private agency or organization must be permitted to seek employment and work in integrated settings if this is a desire of the individual.
  2. ~~An individual with a developmental disability who performs labor which~~that is of any consequential economic benefit to a service provider~~public or private agency or organization shall receive wages which~~that are commensurate with the value of the work performed, in accordance with applicable federal and state laws and regulations. A residentAn individual of an institution, facility, or individualized setting may be required to perform tasks of a personal housekeeping nature in the individual's living quarters without compensation.
  - 2-3. ~~A resident~~An individual with a developmental disability may use the resident's~~individual's money as the resident~~individual chooses, unless the resident~~individual is a minor, or is prohibited from doing so under a court guardianship or conservatorship order, or the use would be inconsistent with the resident's individual habilitation plan. A minor or a person under guardianship or conservatorship may be required to deposit the person's money with the service provider, or in a financial institution in the name of a parent, guardian, or conservator, and may be permitted to use the money in accordance with written instructions of the parent, guardian, or conservator.~~
  - 3-4. ~~A resident~~An individual with a developmental disability may deposit money, or cause money to be deposited, in the resident's~~individual's name with a financial institution of the resident's~~individual's choice, or the resident~~individual may deposit the money with a service provider~~public or private agency or organization. The service provider~~public or private agency or organization may not retain any money deposited with the service provider~~public or private agency or organization under this subsection, but shall hold all such funds in an account in the resident's~~individual's name. All earnings attributable to a resident's~~an individual's money shall~~must~~accrue to the resident~~individual.~~
  - 4-5. ~~No service provider~~public or private agency or organization, nor any of the service provider's~~public or private agency or organization's employees shall~~may be made representative payee for a resident's social security, pension, annuity, trust fund, or any other form of direct payment or assistance~~an individual without the resident's~~individual's informed consent.
  - 5-6. ~~When a resident~~an individual is discharged, all of the resident's~~individual's money, including earnings, shall~~must be returned to the resident~~individual.~~
- ~~This section applies only with respect to an institution or facility that provides residential care~~
7. A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

**SECTION 6. AMENDMENT.** Section 25-01.2-08 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-08. Medication - Chemical restraints.**

~~No~~An individual with a developmental disability receiving services at any institution or facility for individuals, or individualized setting from a public or private agency or organization with developmental disabilities may at any time~~not be administered at any time any drug or medication, or be chemically restrained or tranquilized in any manner, except upon the written authorization of a licensed physician, physician assistant, or advanced practice registered nurse when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for that treatment. The nature, amount of, and reasons for the administration of any drug or medication must be promptly recorded in the person's~~individual's medical record. A public or private agency or organization licensed by the department to provide services to an

individual with a developmental disability shall document any restrictions of these rights in the individual's person-centered service plan.

**SECTION 7. AMENDMENT.** Section 25-01.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization - Shock treatment.**

No~~An~~ individual with a developmental disability receiving services at any institution or facility for individuals, or individualized setting from a public or private agency or organization with developmental disabilities may not at any time:

1. Be subjected to any corporal punishment.
2. Be isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or other individuals.
3. Be physically restrained in any manner, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that individual or to other individuals.
4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may an individual receiving treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of that individual's treatment program.
5. Be subjected to electroconvulsive therapy or shock treatment without that individual's or guardian's written and informed consent. If the recipient of services is a minor, the recipient's parent, custodian, or guardian may provide informed consent for that treatment, which the parent, custodian, or guardian believes to be in the recipient's best interests.

**SECTION 8. AMENDMENT.** Section 25-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-10. Seclusion or physical restraint - ~~Facility administrator~~Administrator to be notified.**

1. Whenever a person~~an individual with a developmental disability receiving services from a public or private agency or organization not licensed by the department,~~ is placed in seclusion or is physically restrained, the ~~facility~~public or private agency or organization administrator or the administrator's representative must be notified and shall determine if the isolation or restraint is necessary. The isolation or restraint may be continued only upon written order of the administrator or the administrator's representative and for a period of not more than twenty-four hours. Any ~~person~~individual who is in seclusion or who is physically restrained must be checked by an attendant at least once every thirty minutes.
2. A public or private agency or organization licensed by the department to provide services to an individual with a developmental disability may not place an individual in seclusion. In order to use physical restraints, the restraint must be in compliance with the individual's person-centered service plan or done in accordance with the public or private agency's or organization's emergency restraint policy.

**SECTION 9. AMENDMENT.** Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to attorney at public expense - ~~Application to residential institution or facility.~~**

A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the individual who is receiving or is entitled to receive the treatment, or the individual's parents or custodian of the individual under eighteen years of age, or guardian, following a hearing on the application.

1. The individual receiving or entitled to treatment shall:
  - a. Receive prior notice of the hearing;
  - b. Have the right and the opportunity to present evidence; and
  - c. Have the right to be confronted with and to cross-examine witnesses.
2. If the individual with a developmental disability is indigent, counsel shall be provided at public expense not less than ten days before the hearing.
3. The burden of proof is on the party alleging the necessity of the procedure or treatment.
4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

~~This section applies only with respect to an institution or facility that provides residential care.~~

**SECTION 10. AMENDMENT.** Section 25-01.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-12. Diet - ~~Application to residential institution or facility.~~**

~~Every resident of any institution or facility must be provided with a nutritionally adequate and sufficient diet planned by a qualified dietician. This section applies only with respect to an institution or facility that provides residential care.~~ individual with a developmental disability receiving residential services in an institution, facility, or individualized setting, must be allowed access to food at any time and meal choices must be provided. Any public or private agency or organization licensed by the department to provide services to an individual with a developmental disability shall document in the individual's person-centered service plan any restrictions on access to or choice of food because of health and safety concerns.

**SECTION 11. AMENDMENT.** Section 25-01.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-14. Individualized habilitation, person-centered service, or individual education plan - Contents.**

~~Any institution, facility, public or private agency, or organization that provides services for individualsto an individual with a developmental disability shall~~ must have a written, individualized habilitation, person-centered service, or individual educational plan developed and put into effect for each individual for whom that ~~institution, facility, public or private agency, or organization~~ is primarily responsible for the delivery, or coordinating the delivery, of services. ~~A school must have an individual educational plan for each of its students with a developmental disability.~~ A plan required under this section must:

1. Be developed and put into effect within thirty days following admission of the individual.
2. Be reviewed and updated from time to time, but no less than annually.

3. Include a statement of the long-term habilitation or education goals for the individual and the intermediate objectives relating to the attainment of those goals. The objectives must be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.
4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe the personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the individual with a developmental disability appears to need a guardian and determine the type of protection needed by the individual based on the individual's actual mental and adaptive limitations and other conditions which may warrant the appointment of a guardian. Any member of the individual habilitation, person-centered service, or individual educational plan team may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian.

**SECTION 12. AMENDMENT.** Section 25-01.2-15 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-15. Right to refuse services.**

An adult recipient of services, ~~or parents or custodian~~ if the recipient is a minor ~~or under guardianship~~, or the recipient's guardian or parent, must be given the opportunity to refuse generally accepted ~~mental~~behavioral health or developmental disability services, including medication, unless those services are necessary to prevent the recipient from causing serious harm to the recipient or to others. ~~The facility director shall inform all services are refused, the recipient or guardian, or parent or custodian of a minor who refuses generally accepted services must be informed~~ of alternate services available, the risks of those alternate services, and the possible consequences to the recipient of the refusal of generally accepted services.

**SECTION 13. AMENDMENT.** Section 25-01.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-16. Notice of rights.**

~~Every~~Any public or private agency or organization that provides services to an individual with a developmental disability in an institution or facility shall post conspicuously in public areas a summary of the rights ~~which that~~ are set out in this chapter. In addition, upon commencement of services or as soon after commencement as the recipient's condition permits, every recipient who is eighteen years of age or older, the parents or custodian of all recipients under eighteen years of age, and the guardian ~~of a minor recipient or other recipient under guardianship~~ must be given written notice of the rights guaranteed by this chapter.

**SECTION 14. AMENDMENT.** Section 25-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-02.1. Accreditation of life skills and transition center.**

The department of human services shall request appropriations and resources sufficient to ensure maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing standards applicable to ~~handicapped individuals~~an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

**SECTION 15. AMENDMENT.** Subsection 4 of section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Parents of a ~~handicapped patient~~ an individual with a developmental disability, who is twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of ~~nonhandicapped children~~ with disabilities. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:
  - a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
  - b. An increase in premiums or the discontinuation of a policy.
  - c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the life skills and transition center pays or waives the out-of-pocket expense.

**SECTION 16. AMENDMENT.** Subsection 2 of section 25-16-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Treatment or care center" means ~~any hospital, home, or other premises operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment~~ an entity providing services to individuals with a developmental disability ~~disabilities and licensed by the department to provide services.~~

**SECTION 17. AMENDMENT.** Section 25-16-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-16-04. Inspection and report by department.**

The department ~~shall~~ may inspect the facilities and premises of the applicant to determine ~~the premises are fit, safe, and sanitary conditions and the adequacy of medical and nursing services~~ to provide quality care and treatment.

**SECTION 18. AMENDMENT.** Subsection 2 of section 25-16.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Treatment or care center" means ~~any hospital, home, or other premises, operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment~~ an entity providing services to individuals with developmental disabilities and licensed by the department to provide services.

**SECTION 19. AMENDMENT.** Section 25-16.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-16.1-03. Appointment of receiver.**

The court shall appoint, as receiver, the executive director of the department who shall designate a qualified individual not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the treatment or care center to maintain and operate the center and to attempt to correct the conditions which constitute a threat to the clients. The receiver may not liquidate the assets of the treatment or care center.

**SECTION 20. AMENDMENT.** Subsection 2 of section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:



2. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as ~~an intermediate care facility for individuals with intellectual disabilities as defined in section 1905(d) of the Social Security Act [42 U.S.C. 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development~~ to provide services.

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Speaker of the House

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President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1134.

House Vote:    Yeas 90            Nays 0            Absent 4

Senate Vote:    Yeas 46            Nays 0            Absent 1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State