

HEALTH AND SAFETY

CHAPTER 184

SENATE BILL NO. 2173

(Senator Anderson)
(Representative Laning)

AN ACT to repeal section 23-01-03.2 of the North Dakota Century Code, relating to duties of the health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-03.2 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 185

SENATE BILL NO. 2264

(Senators Bekkedahl, Laffen, D. Larson)
(Representatives Hatlestad, Howe, Sukut)

AN ACT to amend and reenact subsection 2 of section 23-01-05.5 of the North Dakota Century Code, relating to providing notification of the report of death to the next of kin or authorized representative of the deceased.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-01-05.5 of the North Dakota Century Code is amended and reenacted as follows:

2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is ~~a public record~~ subject to disclosure ~~under section 44-04-18~~ as follows:
 - a. The next of kin or authorized representative requesting the report of death is responsible for providing to the state forensic examiner or the examiner's designee satisfactory proof of relationship to the deceased and contact information for notification of the report of death.
 - b. When in receipt of the information in subdivision a, the state forensic examiner, examiner's designee, county coroner, or pathologist who performed the autopsy shall make a good faith effort to immediately notify the decedent's next of kin or authorized representative of the availability of the report of death. The notification or attempts to notify the next of kin or authorized representative must be recorded and must precede any public disclosure of the report of death.
 - c. The report of death becomes a public record eight days after the report of death is finalized.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 186

SENATE BILL NO. 2099

(Human Services Committee)
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-01-39 of the North Dakota Century Code, relating to the immunization program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-39 of the North Dakota Century Code is amended and reenacted as follows:

23-01-39. Immunization program - Provider choice - Purchasing.

1. As used in this section:
 - a. "Department" means the state department of health.
 - b. "North Dakota immunization advisory committee" means the group of private health care providers, local public health units, department staff, and other applicable individuals which makes immunization and vaccine selection recommendations to the North Dakota immunization program.
 - c. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
 - d. "Program-eligible child" means any child, who is under nineteen years of age, whose custodial parent or legal guardian resides in this state.
 - e. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.
 - f. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396s].
2. As part of the North Dakota immunization program:
 - a. The department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered through the state using federal or state funds, may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This subsection does not apply in the event of a shortage or delay in vaccine availability, disaster, public health emergency, terrorist

- attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
- b. The department ~~shall~~may establish a program through which the department purchases vaccines through the federal vaccine purchasing contract.
- (1) The department shall supply public health units with the purchased vaccines. A public health unit that receives vaccines under this subdivision shall administer the vaccines to program-eligible children.
 - (2) A public health unit that receives vaccines under this purchasing program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
 - (3) The department shall fund this purchasing program through participation in the vaccines for children program, the federal section 317 vaccine program, and state funds appropriated for this purpose. If it appears there will be inadequate funds to fund this purchasing program, the department shall petition the emergency commission for a transfer from the state contingency fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, to fund this purchasing program.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 187

HOUSE BILL NO. 1292

(Representatives Toman, Nathe, Porter, Rohr, Seibel)
(Senator Cook)

AN ACT to create and enact a new section to chapter 23-02.1 of the North Dakota Century Code, relating to issuance of a certified copy of a fetal loss; and to amend and reenact section 23-02.1-01 of the North Dakota Century Code, relating to definitions in the Health Statistics Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸¹ **SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-01. Definitions.

As used in this chapter:

1. "Authorized representative" means a person that has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Certified" means a copy of the original record on file with the state department of health which is signed and sealed by the state registrar or deputy state registrar.
3. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
4. "Electronic birth registration system" means the electronic birth registration system maintained by the state department of health.
5. "Electronic death registration system" means the electronic death registration system maintained by the state department of health.
6. "Facts of death" means the demographic and personal information pertaining to an individual's death.
7. "Fetal death" or "birth resulting in stillbirth" means death occurring before the complete expulsion or extraction from its mother of a product of human conception. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

⁸¹ Section 23-02.1-01 was also amended by section 2 of House Bill No. 1294, chapter 92.

8. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.
9. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
10. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
11. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which individuals are committed by law.
12. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
13. "Medical certification" means the medical information pertaining to an individual's death, including the cause and manner of death.
14. "Miscarriage of birth" means the expulsion of a fetus from the womb, spontaneously or as a result of an accident, before twenty weeks gestation.
15. "Personal or real property interests" means ownership or other legal rights or duties concerning personal or real property.
- ~~15-16.~~ "Physician" means an individual authorized or licensed to practice medicine or osteopathy under chapter 43-17.
- ~~16-17.~~ "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
- ~~17-18.~~ "Relative" means an individual's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.
- ~~18-19.~~ "Subregistrar" means a funeral director or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing burial-transit permits.
- ~~19-20.~~ "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.
- ~~20-21.~~ "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death,

marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

SECTION 2. A new section to chapter 23-02.1 of the North Dakota Century Code is created and enacted as follows:

Fetal loss.

The state registrar may issue a certified copy of a fetal loss to an individual who experiences a documented miscarriage of birth, if the individual provides to the state registrar a completed fetal loss request form established by the state department of health which is signed by the mother or the father and a letter signed by a hospital, physician, or other medical attendant documenting proof of pregnancy and fetal loss.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 188

HOUSE BILL NO. 1338

(Representatives Seibel, Kreidt, Nathe, Porter)
(Senators Klein, D. Larson, J. Lee)

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to indigent burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸² **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial - Indigent burial - Decedent's instructions.

1. The duty of ~~burying~~disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
 - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
 - b. The surviving husband or wife~~spouse~~ if the deceased was married or, if:
 - c. If the deceased was not married but left kindred, upon one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
 - d. The surviving parent or parents of the decedent, each having equal authority;
 - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
 - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild

⁸² Section 23-06-03 was also amended by section 8 of House Bill No. 1294, chapter 92.

- who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
- g. The grandparent or the grandparents of the decedent, each having equal authority;
 - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
 - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
 - j. An adult who exhibited special care and concern for the decedent;
 - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
 - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the county social service board of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
 3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
 - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
 - b. To the individual in the next degree of relationship to the decedent under subsection 1.
 4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote,

make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:

- a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
 - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
 - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
 - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of burial/final disposition does not bury/arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
- 3-6. a. ~~If the deceased is not survived by an individual described by subsection 1 and did not leave sufficient means to defray funeral pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the county's general assistance policy, within fifteen days of application for services~~ the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, within fifteen days of application for assistance the county social service board of the county in which the death occurs shall employ ~~some~~ a person to arrange for and supervise the ~~burial or cremation~~final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation.
- b. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars.
 - c. The county social services board may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket.
 - d. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, ~~less any.~~ The county social service board may not decrease the county payment due to a nominal amount left by the deceased or contributed by kin or any other

party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.

- 4-7. If the individual with the duty of burialfinal disposition under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that person shall honor those instructions, to the extent reasonable and possible, to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 23-06-31, or a document of gift for an anatomical gift.
- 5-8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.

Approved April 5, 2017

Filed April 5, 2017

CHAPTER 189

SENATE BILL NO. 2151

(Senators Holmberg, Armstrong, Myrdal)
(Representatives K. Koppelman, Vetter)

AN ACT to amend and reenact section 23-06.5-17 of the North Dakota Century Code, relating to health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. Optional health care directive form.

The following is an optional form of a health care directive and is not a required form:

HEALTH CARE DIRECTIVE

I _____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS

FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE

HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time

and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS
FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

____(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

____(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

My fears about my health care:

My spiritual or religious beliefs and traditions:

My beliefs about when life would be no longer worth living:

My thoughts about how my medical condition might affect my family:

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

If I were dying and unable to make and communicate health care decisions for myself, I would want:

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

In all circumstances, my ~~doctors~~health care providers will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my ~~doctor~~health care provider:

Where I would like to live to receive health care:

Where I would like to die and other wishes I have about dying:

My wishes about what happens to my body when I die (cremation, burial, whole body donation):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

(A) I WANT TO BE AN ORGAN DONOR

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

Any needed organs and tissue.

Only the following organs and tissue: _____

(B) I DO NOT WANT TO BE AN ORGAN DONOR

I do not want to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes.

PART IV: MAKING THE DOCUMENT LEGAL

PRIOR DESIGNATIONS REVOKED. I revoke any prior health care directive.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on _____
at

(date)

(city)

(state)

(you sign here)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

State of _____

County of _____

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness One)

(Address)

Witness Two:

- (1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's ~~physician~~ health care provider.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this ____ day of _____, 20 ____.

(Signature of Principal)

Approved April 4, 2017

Filed April 4, 2017

CHAPTER 190

HOUSE BILL NO. 1215

(Representatives Weisz, Devlin, Kreidt)
(Senator J. Lee)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01 of the North Dakota Century Code, relating to the definition of basic care facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
 - a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; ~~or~~
 - b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility; ~~or~~
 - c. Is attached to a nursing home or assisted living facility and its staff are available to meet the needs of all residents and comply with state and federal regulations.

Approved March 22, 2017

Filed March 22, 2017

CHAPTER 191

HOUSE BILL NO. 1433

(Representatives Simons, Rick C. Becker, Johnston, Kiefert, B. Koppelman, Magrum, Olson, Schatz, Toman)
(Senators Kannianen, O. Larsen)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to the direct sale of food by the producer to a consumer; and to amend and reenact sections 19-07-01 and 36-24-06 of the North Dakota Century Code, relating to the sale and production of animal-based products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-07-01 of the North Dakota Century Code is amended and reenacted as follows:

19-07-01. Eggs to be graded - Exemption.

All eggs sold or offered for sale to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation. "Eggs" in this chapter means eggs in the shell which are the product of the domesticated chickenpoultry. A producer of eggs when selling only eggs of the producer's own flock production is exempt from the provisions of this chapter.

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

Definitions.

As used in this chapter:

1. "Cottage food operator" means an individual who produces or packages cottage food products in a kitchen designed and intended for use by the residents of a private home.
2. "Cottage food product" means baked goods, jams, jellies, and other food and drink products produced by a cottage food operator.
3. "Delivery" means the transfer of a cottage food product resulting from a transaction between a cottage food operator and an informed end consumer.
4. "Farmers market" means a market or group of booths where farmers and other cottage food operators sell cottage food products directly to consumers.
5. "Home consumption" means food consumed within a private home or food from a private home consumed only by family members, employees, or nonpaying guests.
6. "Informed end consumer" means an individual who is the last individual to purchase a cottage food product and has been informed the cottage food product is not licensed, regulated, or inspected.

7. "Transaction" means the exchange of buying and selling.

Direct producer to consumer sales of cottage food products.

1. Notwithstanding any other provision of law, a state agency or political subdivision may not require licensure, permitting, certification, inspection, packaging, or labeling that pertains to the preparation or sale of cottage food products under this section. This section does not preclude an agency from providing assistance, consultation, or inspection, upon request, of a producer.
2. Transactions under this section must be directly between the cottage food operator and the informed end consumer and be only for home consumption. Transactions may occur at a farm, ranch, farmers market, farm stand, home-based kitchen, or any other venue not otherwise prohibited by law or through delivery.
3. Transactions under this section may not:
 - a. Involve interstate commerce;
 - b. Be conducted over the internet or phone, through the mail, or by consignment;
 - c. Include the sale of uninspected products made from meat, except as provided under subdivision d; or
 - d. Include the sale of uninspected products made from poultry, unless:
 - (1) The cottage food operator slaughters no more than one thousand poultry raised by the cottage food operator during the calendar year;
 - (2) The cottage food operator does not buy or sell poultry products, except products produced from poultry raised by the cottage food operator; and
 - (3) The poultry product is not adulterated or misbranded.
4. Except for whole, unprocessed fruits and vegetables, food prepared by a cottage food operator may not be sold or used in any food establishment, food processing plant, or food store.
5. The cottage food operator shall inform the end consumer that any cottage food product or food sold under this section is not certified, labeled, licensed, packaged, regulated, or inspected.
6. This section does not change any requirement for brand inspection or animal health inspections.
7. A cottage food operator shall label all cottage food products that require refrigeration, such as baked goods containing cream, custard, meringue, cheesecake, pumpkin pie, and cream cheese, with safe handling instructions and a product disclosure statement indicating the product was transported and maintained frozen.
8. A cottage food operator shall display a consumer advisory sign at the point of sale or place a label on the cottage food product with the following statement:

"This product is made in a home kitchen that is not inspected by the state or local health department."

9. The state department of health or a local regulating authority may conduct an investigation upon complaint of an illness or environmental health complaint.

SECTION 3. AMENDMENT. Section 36-24-06 of the North Dakota Century Code is amended and reenacted as follows:

36-24-06. Prohibitions.

Unless otherwise provided in section 1 of this Act, a person may not:

1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;
2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 192

SENATE BILL NO. 2136

(Senators Grabinger, Oehlke)
(Representatives Dobervich, Pollert, Satrom)

AN ACT to amend and reenact section 23-11-05 of the North Dakota Century Code, relating to the appointment of housing authority commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-11-05 of the North Dakota Century Code is amended and reenacted as follows:

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation.

When the governing body of a city adopts a resolution declaring there is need for a housing authority, the governing body promptly shall notify the mayor of the adoption. Upon receiving the notice, the mayor shall appoint no fewer than five persons as commissioners of the authority. When the governing body of a county adopts a resolution declaring there is need for a housing authority, the governing body shall appoint no fewer than five persons as commissioners of the authority. The commissioners ~~who are first~~ must be appointed ~~must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of appointment, and after that time each commissioner must be appointed for a term of office for terms of five years,~~ except that all vacancies must be filled for the unexpired term. The terms of the commissioners must be staggered to ensure an approximately equal number of appointments expire each year and the term of one or more commissioners may initially be less than five years to accommodate the required staggering of terms. A commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and the certificate is conclusive evidence of the ~~due and proper~~ appointment of the commissioner. The governing body of the city or county shall establish the rate of compensation for commissioners and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 193

SENATE BILL NO. 2024

(Appropriations Committee)

AN ACT to amend and reenact subsection 2 of section 23-12-10.4, subsection 2 of section 54-27-25, and subsection 1 of section 54-59-22.1 of the North Dakota Century Code, relating to smoking prohibited signage, the tobacco settlement trust fund, and required use of centralized desktop support services; to repeal chapter 23-42 of the North Dakota Century Code, relating to the tobacco prevention and control program; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-12-10.4 of the North Dakota Century Code is amended and reenacted as follows:

2. The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this chapter may request from the ~~executive committee of the tobacco prevention and control advisory committee~~ state department of health the signs necessary to comply with the signage requirements of subsection 1.

⁸³ **SECTION 2. AMENDMENT.** Subsection 2 of section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

2. There is created in the state treasury a tobacco prevention and control trust fund. The fund consists of the tobacco settlement dollars obtained by the state under section IX(c)(2) of the agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Interest earned on the fund must be credited to the fund and deposited in the fund. Moneys received into the fund are to be administered ~~by the executive committee for the purpose of creating and implementing the comprehensive plan. If in any biennium, the tobacco prevention and control trust fund does not have adequate dollars to fund a comprehensive plan, the treasurer shall transfer money from the water development trust fund to the tobacco prevention and control trust fund in an amount equal to the amount determined necessary by the executive committee to fund a comprehensive plan~~ as appropriated by the legislative assembly.

SECTION 3. AMENDMENT. Subsection 1 of section 54-59-22.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The following state agencies shall obtain centralized desktop support services from the information technology department:
 - a. Office of administrative hearings.

⁸³ Section 54-27-25 was also amended by section 39 of House Bill No. 1012, chapter 11, and section 13 of Senate Bill No. 2004, chapter 29.

- b. Office of the governor.
- c. Commission on legal counsel for indigents.
- d. Public employees retirement system.
- e. North Dakota university system office.
- f. Department of career and technical education.
- g. Department of financial institutions.
- h. Department of veterans' affairs.
- i. Aeronautics commission.
- ~~j. Tobacco prevention and control executive committee.~~
- ~~k. Council on the arts.~~
- ~~l.k. Agriculture commissioner.~~
- ~~m.l. Department of labor and human rights.~~
- ~~n.m. Indian affairs commission.~~
- ~~o.n. Protection and advocacy project.~~
- ~~p.o. Secretary of state.~~
- ~~q.p. State treasurer.~~
- ~~r.q. State auditor.~~
- ~~s.r. Securities department.~~

SECTION 4. REPEAL. Chapter 23-42 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 2017.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 194

SENATE BILL NO. 2231

(Senators J. Lee, Schaible)
(Representative Weisz)

AN ACT to create and enact a new section to chapter 23-16 and four new sections to chapter 26.1-47 of the North Dakota Century Code, relating to informed decisionmaking for choosing air ambulance service providers, preferred provider arrangement requirements for insurance prior authorization for air ambulance services, and air ambulance subscriptions; to amend and reenact section 26.1-47-01, subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code, relating to preferred provider organizations; to provide an effective date; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Air ambulances - Informed Decisions - Publication.

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.
4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state.

SECTION 2. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.

2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-4. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-5. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-6. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-7. "Health care provider" means licensed providers of health care services in this state.
- 6-8. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" means a group of preferred providers providing services under a network plan.
11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.

SECTION 3. AMENDMENT. Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-01. Definitions.

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Authorized representative" means:
 - a. A person to which a covered person has given express written consent to represent the covered person;
 - b. A person authorized by law to provide substituted consent for a covered person; or
 - c. If a covered person is unable to provide consent, the covered person's treating health care professional or a family member of the covered person.
4. "Balance billing" means the practice of an air ambulance provider billing for the difference between the air ambulance provider's charge and the health care insurer's allowed amount.
5. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-6. "Covered person" means ~~any person~~ an individual on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-7. "Facility" means an institution or other immobile health care setting providing physical, mental, or behavioral health care services.
8. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-9. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-10. "Health care provider" means licensed providers of health care services in this state.
- 6-11. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 7-12. "Network" means a group of preferred providers providing services under a network plan.
13. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person

to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.

14. "Out-of-network" means a provider that is not providing the service under a network plan.
15. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-16. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.
17. "Prior authorization" means confirmation by the covered person's health care insurer that the air ambulance services sought to be provided by the air ambulance provider meet the criteria for coverage under the covered person's health benefit plan as defined by the provisions of the covered person's health benefit plan.

SECTION 4. AMENDMENT. Subsection 6 of section 26.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A health care insurer may not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health carrier ~~that~~ care insurer which jeopardizes patient health or welfare.

SECTION 5. AMENDMENT. Section 26.1-47-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-07. Penalty.

The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this chapter. ~~Any person who violates this chapter is guilty of a class A misdemeanor.~~

SECTION 6. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulances.

1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state.
2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.

4. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;
 - e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;
 - g. Vision care or any other limited supplemental benefit;
 - h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
 - i. Medicaid;
 - j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
 - k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
 - l. Automobile medical payment insurance.

SECTION 7. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Preferred provider arrangements - Requirements for accessing air ambulance providers.

1. In addition to the other preferred provider arrangement requirements under this chapter, a preferred provider arrangement must require the health care insurer and health care provider comply with this section.
2. Except as otherwise provided under this section, before a health care provider arranges for air ambulance services for an individual the health care provider knows to be a covered person, the health care provider shall request a prior authorization from the covered person's health care insurer for the air ambulance services to be provided to the covered person. If the health care provider is unable to request or obtain prior authorization from the covered person's health care insurer:
 - a. The health care provider shall provide the covered person or the covered person's authorized representative an out-of-network services written disclosure stating the following:
 - (1) Certain air ambulance providers may be called upon to render care to the covered person during the course of treatment;

- (2) These air ambulance providers might not have contracts with the covered person's health care insurer and are, therefore, considered to be out of network;
 - (3) If these air ambulance providers do not have contracts with the covered person's health care insurer, the air ambulance services will be provided on an out-of-network basis;
 - (4) A description of the range of the charges for the out-of-network air ambulance services for which the covered person may be responsible;
 - (5) A notification the covered person or the covered person's authorized representative may agree to accept and pay the charges for the out-of-network air ambulance services, contact the covered person's health care insurer for additional assistance, or rely on other rights and remedies that may be available under state or federal law; and
 - (6) A statement indicating the covered person or the covered person's authorized representative may obtain a list of air ambulance providers from the covered person's health care insurer which are preferred providers and the covered person or the covered person's representative may request those participating air ambulance providers be accessed by the health care provider.
- b. Before air ambulance services are accessed for the covered person, the health care provider shall provide the covered person or the covered person's authorized representative the written disclosure, as outlined by subdivision a and obtain the covered person's or the covered person's authorized representative's signature on the disclosure document acknowledging the covered person or the covered person's authorized representative received the disclosure document before the air ambulance services were accessed. If the health care provider is unable to provide the written disclosure or obtain the signature required under this subdivision, the health care provider shall document the reason, which may include the health and safety of the patient. The health care provider documentation satisfies the requirement under this subdivision.
3. This section does not:
- a. Preclude a covered person from agreeing to accept and pay the charges for the out-of-network services and not access the covered person's health care insurer's out-of-network air ambulance billing process described under this section.
 - b. Preclude a covered person from agreeing to accept and pay the bill received from the out-of-network air ambulance provider or from not accessing the air ambulance provider mediation process described under this section.
 - c. Regulate an out-of-network air ambulance provider's ability to charge certain fees for services or to charge any amount of fee for services provided to a covered person by the out-of-network air ambulance provider.

4. A health care insurer shall develop a program for payment of out-of-network air ambulance bills submitted under this section. A health benefit plan may not be issued in this state without the terms of the health benefit plan including the provisions of the health care insurer's program for payment of out-of-network air ambulance bills.
 - a. A health care insurer may elect to pay out-of-network air ambulance provider bills as submitted, or the health care insurer may elect to use the out-of-network air ambulance provider mediation process described in subsection 5.
 - b. This section does not preclude a health care insurer and an out-of-network facility air ambulance provider from agreeing to a separate payment arrangement.
5. A health care insurer shall establish an air ambulance provider mediation process for payment of out-of-network air ambulance provider bills. A health benefit plan may not be issued in this state if the terms of the health benefit plan do not include the provisions of the health care insurer's air ambulance provider mediation process for payment of out-of-network air ambulance provider bills.
 - a. A health care insurer's air ambulance provider mediation process must be established in accordance with mediation standards recognized by the department by rule.
 - b. If the health care insurer and the out-of-network air ambulance provider agree to a separate payment arrangement or if the covered person agrees to accept and pay the out-of-network air ambulance provider's charges for the out-of-network services, compliance with the air ambulance provider mediation process is not required.
 - c. A health care insurer shall maintain records on all requests for mediation and completed mediation under this subsection for one year and, upon request of the commissioner, submit a report to the commissioner in the format specified by the commissioner.
6. The rights and remedies provided under this section to covered persons are in addition to and may not preempt any other rights and remedies available to covered persons under state or federal law.
7. The department shall enforce this section and shall report a violation of this section by a facility to the state department of health.
8. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
 - a. A specified disease, a specified accident, or accident-only coverage;
 - b. Credit;
 - c. Dental;
 - d. Disability;

- e. Hospital;
 - f. Long-term care insurance as defined by chapter 26.1-45;
 - g. Vision care or any other limited supplemental benefit;
 - h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
 - i. Medicaid;
 - j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
 - k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
 - l. Automobile medical payment insurance.
9. The commissioner may adopt rules to implement this section.

SECTION 8. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Rules.

If an action of Congress, the president of the United States, or a federal agency allows the state to regulate the rates, routes, or services of air ambulance providers, the commissioner may adopt rules consistent with the action taken.

SECTION 9. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Air ambulance subscription agreements - Prohibition.

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

SECTION 10. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE. Sections 2, 4, 5, and 6 of this Act become effective January 1, 2018. If section 6 of this Act is declared invalid, sections 3, 7, and 8 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 6 to the secretary of state and the legislative council.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 195

SENATE BILL NO. 2156

(Senators Klein, Burckhard, Robinson)
(Representatives J. Nelson, Pollert, Weisz)

AN ACT to amend and reenact sections 23-20.2-02, 23-20.2-04, and 23-20.2-09 of the North Dakota Century Code, relating to definitions, permitting required for underground storage and retrieval or waste disposal facilities, and the disposal of radioactive waste material; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁴ **SECTION 1. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "High-level radioactive waste material" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, and other highly radioactive material, which contains fission products in sufficient concentrations to require permanent isolation under federal law, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste.
3. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
- ~~3-4.~~ "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
- ~~4-5.~~ "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
- ~~5-6.~~ "Waste" includes liquid wastes, gaseous wastes, and solid wastes ~~as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.~~

⁸⁴ Section 23-20.2-02 was also amended by section 14 of Senate Bill No. 2327, chapter 199.

SECTION 2. AMENDMENT. Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 3. AMENDMENT. Section 23-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-09. Deposit of high-level radioactive waste material - Legislative and local zoning approval required.

1. ~~No~~A person, ~~firm, corporation, limited liability company, or other legal entity~~ may not deposit, or cause or permit to be deposited in this state, any high-level radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. ~~Radioactive waste material means waste either from the generation of electrical power through the utilization of~~

radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides. A county's zoning approval may not preclude the disposal development if approved by the legislative assembly, but may regulate the size, scope, and location.

2. A person may not conduct any testing or exploration for the development of a storage or disposal facility for high-level radioactive waste material to be brought into the state unless prior approval has been granted by concurrent resolution passed by the legislative assembly.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the geological division of the department of mineral resources and the environmental health section of the state department of health, whether state and local level regulation of high-level radioactive waste disposal is consistent with applicable federal regulations; how to ensure the state has proper input into the federal location selection process for high-level radioactive waste material deposits; the mechanisms for calling a special session to approve the depositing of high-level radioactive waste material in the state and the notice of disapproval requirements under federal law; special laws, local laws, and existing code regarding the potential existence of a legislative veto over executive branch authority to determine the size, scope, and location of high-level radioactive waste material deposits in the state and any existing conflicts with the commerce clause; and the feasibility and desirability of developing new statutes and regulations for subsurface disposal of waste and the storage and retrieval of material. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 19, 2017

Filed April 19, 2017

CHAPTER 196

SENATE BILL NO. 2312

(Senator Anderson)
(Representatives Heinert, Porter)

AN ACT to amend and reenact subsection 5 of section 23-27-02 and section 23-27-04.4 of the North Dakota Century Code, relating to emergency medical services professionals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Emergency medical services professional" means an individual licensed by the department ~~as an emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician-paramedic~~ under this chapter.

SECTION 2. AMENDMENT. Section 23-27-04.4 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.4. Supervision of ~~certified or licensed emergency medical technician hospital personnel~~ services professionals - Scope of practice.

~~Certified or licensed emergency~~ Emergency medical technicians ~~intermediate and paramedics, services professionals~~ who are employed by a hospital may provide patient care within a scope of practice established by the department. Under this section, these emergency medical services professionals ~~are under the supervision of the hospital's nurse executive~~ must be supervised by a hospital designated physician, physician assistant, advanced practice registered nurse, or registered nurse.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 197

SENATE BILL NO. 2089

(Senator Anderson)
(Representative Holman)

AN ACT to amend and reenact section 23-34-01 of the North Dakota Century Code, relating to medical peer reviews.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-01 of the North Dakota Century Code is amended and reenacted as follows:

23-34-01. Definitions.

As used in this chapter:

1. "Health care organization" means:
 - a. A hospital;
 - b. A hospital medical staff;
 - c. A clinic;
 - d. A long-term or extended care facility;
 - e. An ambulatory surgery center;
 - f. An emergency medical services unit;
 - g. A physician;
 - h. A group of physicians operating a clinic or outpatient care facility;
 - i. A pharmacist;
 - j. A pharmacy;
 - k. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;
 - l. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;
 - m. Any combination of entities set forth in subdivisions a through j; ~~or~~
 - n. Any federally designated state peer review organization; or
 - o. Any state designated multi-disciplinary peer review entity designated to evaluate controlled substance practices in a referred case.
2. "Health care provider" means a physician or other ~~person~~individual licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Peer review organization" means:
 - a. A health care organization; or
 - b. A committee of a health care organization which:
 - (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body; and
 - (2) Conducts professional peer review.
4. a. "Peer review records" means:
 - (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review organization as a part of any professional peer review, regardless of when the record was created; and
 - (2) Communications relating to a professional peer review, whether written or oral, between:
 - (a) Peer review organization members;
 - (b) Peer review organization members and the peer review organization's staff; or
 - (c) Peer review organization members and other ~~persons~~individuals participating in a professional peer review, including the ~~person~~individual who is the subject of the professional peer review.
- b. The term does not include original patient source documents.
5. "Professional peer review" means all procedures a peer review organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers and includes procedures or functions to:
 - a. Evaluate and improve the quality of health care;
 - b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;
 - c. Develop and establish guidelines for medical care and the costs of medical care;
 - d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;
 - e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and
 - f. Provide quality assurance.

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 198

HOUSE BILL NO. 1210

(Representatives Porter, B. Anderson, Hogan, Meier, Nathe, J. Nelson)
(Senators Bowman, Campbell, Erbele, Wanzek)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to a cardiac ready community grant program; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Cardiac ready community grant program.

The state department of health shall establish a cardiac ready community grant program. The primary purpose of the program is to support bystander, emergency responder, and community private public partnerships for strengthening community-based capacity for cardiac and stroke emergency response and risk reduction programs throughout the state. The program must build on and may not duplicate existing programs. The department shall award grants on a competitive basis based on criteria established by an advisory committee. To facilitate volume purchasing savings, the department may procure vendor rates and purchases, and grant the acquired elements to community programs.

Cardiac ready community grant program advisory committee - Duties.

1. The state department of health shall establish a cardiac ready community grant program advisory committee with members appointed by the state health officer. The advisory committee shall advise the department in the development of the cardiac ready community grant program and the membership must include a representative of the department, one cardiac ready community member, one representative of the emergency medical services association, one representative of the American heart association, one representative of the cardiac task force, one representative of the stroke task force, one representative of the emergency services advisory committee, one survivor advocate, and the state department of health emergency medical services and trauma medical director.
2. Members of the committee who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the committee must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
3. The state department of health, with the advisory committee's involvement, shall provide assistance to:
 - a. Evaluate programs:

- b. Promote public awareness of core program elements;
 - c. Facilitate the coordination of program components with the local level;
 - d. Involve state agencies, law enforcement, and local government in the administration and management of the program; and
 - e. Assist the department in screening and implementing the grants.
4. The department may study the implementation of the program and shall recommend legislation the cardiac ready community grant program advisory committee considers appropriate to improve the program.

Gifts, grants, and donations - Continuing appropriation.

The state department of health may accept any gifts, grants, or donations, whether conditional or unconditional. The department or local grantees may contract public or private entities and may expend any available moneys to obtain matching funds for the purposes of this chapter. All moneys received by the state department of health as gifts, grants, or donations under this section are appropriated on a continuing basis to the department's operations fund for the purpose of funding the grant program.

Approved April 5, 2017

Filed April 5, 2017