Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2083

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

A BILL for an Act to amend and reenact sections 50-32-01, 50-32-02, 50-32-03, and 50-32-05 of the North Dakota Century Code, relating to assisted living facilities licensing; and to repeal section 50-32-02.1 of the North Dakota Century Code, relating to assisted living facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-32-01 of the North Dakota Century Code is amended and reenacted as follows:

50-32-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Abuse" means any willful act or omission that results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation.

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

~~2.~~3. "Department" means the department of human services.

~~3.~~4. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.

5. "Financial exploitation" means the use or receipt of services provided by an individual without just compensation, the taking or misuse of property or resources of an individual by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

~~4.~~6. "Individualized support services" means services provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.

~~5.~~7. "Living unit" means a portion of an assisted living facility that contains a sleeping area, an entry door that can be locked, and a private bath with a toilet, bathtub or shower, and sink and which is occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.

8. "Mental anguish" means psychological or emotional damage that requires medical treatment or care or is characterized by behavioral change or physical symptoms.

9. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.

~~6.~~10. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner's or manager's spouse or former spouse.

11. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-07, and 12.1-20-11.

SECTION 2. AMENDMENT. Section 50-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. An entity may not keep, operate, conduct, manage, or maintain an assisted living facility or use the term "assisted living" in its advertising unless it is licensed by the department.

2. An assisted living facility shall apply annually to the department for a license. The department may conduct an onsite visit of an assisted living facility prior to issuing a license.

3. The department may issue a provisional license, valid for no longer than ninety days, when there are one or more deficiencies or a pattern of deficiencies related to quality of care or compliance with licensing requirements. A provisional license may be renewed once for no longer than an additional ninety days. If the deficiencies have not been corrected upon the expiration of a provisional license, the department may deny the assisted living facility's application or revoke its license.

4. An assisted living facility shall pay to the department an annual license fee of seventy-five dollars for each facility. License fees collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.

~~3.~~5. ~~An assisted living facility shall apply annually to the department for a license.~~ After the fifty-ninth day following the notification of noncompliance with annual licensing, the department may assess a fine of up to fifty dollars per day against an entity that provides assisted living services or uses the term assisted living in its marketing without a license approved by the department. Fines collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.

~~4.~~6. Religious orders providing individualized support services to vowed members residing in the order's retirement housing are not subject to this chapter.

~~5. No more than two people may occupy one bedroom of each living unit of an assisted living facility.~~

7. An assisted living facility shall notify the department in writing within thirty days ~~in advance~~ of:

a. Transfer or change of ownership;

b. Change of name of the facility;

c. Change of administrator; or

d. Change in bed capacity.

SECTION 3. AMENDMENT. Section 50-32-03 of the North Dakota Century Code is amended and reenacted as follows:

50-32-03. Powers and duties of the department.

The department shall:

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

SECTION 4. AMENDMENT. Section 50-32-05 of the North Dakota Century Code is amended and reenacted as follows:

50-32-05. Assisted living ~~facilities~~facility requirements - Duties - ~~Educational requirements~~Education.

1. Each assisted living facility ~~must have~~shall establish clear, concise, and understandable tenancy criteria that ~~is~~are fully disclosed to all tenants, in writing, before the tenancy agreement is signed. The tenancy criteria must address the specific needs that can be met within the facility and the conditions under which a tenant may be required to move out of the facility. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria. The facility shall reevaluate a tenant's ability to meet the tenancy criteria annually, or sooner if there has been a significant change in the tenant's needs, or if the tenant has been hospitalized.
2. An assisted living facility may not serve, and may not include in its tenancy criteria the option of serving, an individual who is bedbound with limited potential for improvement, not including an individual who is receiving hospice care~~,~~; who requires extensive skilled nursing care~~,~~; or who needs restraints~~, or who has a known active substance abuse problem~~.
3. An assisted living facility may not ~~represent~~advertise or hold itself out to the public as a facility that provides memory care services to individuals with memory care needs~~,~~

~~such as Alzheimer's disease, or dementia~~without additional licensure as a basic care or nursing facility. The department may revoke the license of an assisted living facility that represents itself as being an assisted living facility that provides memory care services.

4. If a tenant elects to receive hospice care, the assisted living facility shall complete an assessment within seven days of the hospice election to ensure there is a coordinated plan of care between hospice, the assisted living facility, the tenant, and any appropriately appointed representative of the tenant.

5. An assisted living facility shall complete a service plan when a tenant moves in and shall update the service plan annually, or sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.

6. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. At least six of the continuing education hours must be directly related to assisted living. The assisted living facility shall require all ~~direct care~~ staff to receive annual education or training in the areas of:

   a. Resident rights;

   b. Fire and accident prevention and training;

   c. Mental and physical health needs of tenants;

   d. Behavior problems and prevention; ~~and~~

   e. Control of infection, including universal precautions; and

   f. Vulnerable adult protection services.

~~3.~~7. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:

   a. An initial evaluation, updated at least annually, to meet tenancy criteria;

   b. The initial service plan, updated at least annually;

   c. The tenancy agreement signed by the tenant or the tenant's legal representative;

   ~~c.~~d. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; ~~and~~

   ~~d.~~e. An itemized list of services provided for the tenant; and

f. A service plan ~~of care which includes~~that identifies third-party contracts for any tenant requiring third-party services ~~exceeding those normally delivered in~~to ensure the tenant meets the tenancy criteria of the assisted living facility.

~~4.~~8. Before hiring, the assisted living facility shall conduct a reference and previous employment check and a check of applicable registries of each applicant being considered for employment at the facility.

~~5.~~9. At least once every twenty-four months, each assisted living facility shall conduct a consumer satisfaction survey. The assisted living facility shall provide each tenant with a copy of the results of the survey. The facility shall provide the department with the most recent results ~~and with its plans to correct any survey results that demonstrate consumer dissatisfaction~~during the facility's license review.

10. An assisted living facility shall develop and follow a policy regarding medication administration which includes the following:

a. All medications administered by facility staff must be administered by a medication assistant I, medication assistant II, medication assistant III, licensed practical nurse, or a registered nurse;

b. All medications administered by facility staff must be ordered in writing by a licensed health care practitioner;

c. All medications administered by facility staff must be stored in a locked area or locked cart; and

d. An assessment of the role and responsibilities of the medication assistant and how a nurse will provide oversight and supervision to a medication assistant.

11. An assisted living facility shall ~~report any~~have policies and procedures for receiving, investigating, and correcting medication ~~administration error to~~errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or the state department of health.

12. An assisted living facility shall develop policies for receiving, investigating, and resolving complaints, including allegations of abuse of a tenant, from tenants and families.

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

SECTION 5. REPEAL. Section 50-32-02.1 of the North Dakota Century Code is repealed.