

PUBLIC WELFARE

CHAPTER 407

HOUSE BILL NO. 1214

(Representatives Kingsbury, Kilichowski)
(Senator Miller)

AN ACT to authorize the department of human services to convey certain land in Walsh County, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land authorized. The state of North Dakota by and through the department of human services may convey the land described in this section to the Grafton park board, for the price and on the terms as determined by the department of human services. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The land to be conveyed is a part of the grounds of the developmental center at westwood park, Grafton, described as follows:

1. A parcel of land approximately 5.19 acres, more or less, located in Lot One (1), Block One (1), of the State School Second Addition, Grafton, Walsh County, North Dakota, described more particularly as follows:

Beginning at the Southeast corner of Lot One (1); thence North along the Eastern line of Lot One (1), a distance of 400 feet, more or less, to a point; thence West a distance of 150 feet, more or less, to a point; thence North a distance of 200 feet, more or less, to a point being the Northeast corner of Lot One (1); thence West a distance of 277.40 feet; thence South a distance of 600 feet, more or less, to a point of intersection with the South line of Lot One (1), Block One (1); thence East 427.40 feet, more or less, to the point of beginning. Above tract contains 5.19 acres, more or less.

2. A parcel of land, located in Lot 2, Block 1, State School Second Addition to the City of Grafton, more accurately described as follows.

Commencing at the southeast corner of Lot 2, Block 1, State School Second Addition to the City of Grafton, North Dakota; thence West, along the South line of said Lot 2, on an assumed bearing of N 89° 34' 17" W, a distance of 277.40 feet; thence N 0° 18' 13" E, and parallel to the west line of said Lot 2, a distance of 1,150.00 feet, to a point where said line intersects the centerline of the Park River; thence in a southeasterly direction, a distance of 616 feet, more or less, along said centerline of the Park River, to a point on the East line of said Lot 2; thence South, along the East line of said Lot 2, a distance of 600 feet, more or less, to the Point of Beginning.

Said parcel of land contains 5.57 acres, more or less.

Approved April 16, 2009
Filed April 17, 2009

CHAPTER 408**HOUSE BILL NO. 1327**

(Representatives Weisz, DeKrey)
(Senator Klein)

AN ACT to provide for the remodeling of a nursing facility to meet the requirements of assisted living and basic care and a pilot project on assisted living rent subsidies; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REMODELING OF A NURSING FACILITY TO MEET THE REQUIREMENTS OF ASSISTED LIVING AND BASIC CARE - PILOT PROJECT ON ASSISTED LIVING RENT SUBSIDIES. Before March 1, 2010, the department of human services shall grant \$200,000 to a facility under section 23-16-01.1 which incurs a transfer of the location of all the facility's beds and a change of operator before June 1, 2009, for costs associated with the remodeling of the facility. In order to receive a grant, a facility shall agree to:

1. Meet the requirements of both an assisted living facility and a basic care facility;
2. Use at least \$50,000 of the grant to conduct a rent subsidy pilot project for at least four assisted living residents; and
3. Report to the department of human services on the success of the rent subsidy pilot project compared to the basic care assistance program.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the health care trust fund, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing a grant as provided for in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of human services may not spend this funding prior to January 1, 2010.

Approved May 7, 2009
Filed May 19, 2009

CHAPTER 409**HOUSE BILL NO. 1556**

(Representatives Wieland, Kerzman, Pollert)
(Senators Fischer, Flakoll, Robinson)

AN ACT to provide for a study by the department of human services of rates for public and private licensed developmental disability providers; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STUDY - RATE STRUCTURE OF DEVELOPMENTAL DISABILITY PROVIDERS. During the 2009-10 interim, the department of human services shall contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse public and private, licensed developmental disability ICF/MR and home and community-based services providers serving ICF/MR medically fragile and behaviorally challenged individuals who meet the definitions established by the Oregon scoring criteria used by the department to assess levels of medical and behavioral severity in children and other recognized scoring criteria used to score adult severity. The study must address reimbursement adequacy and equitability and fairness of reimbursement rates among such providers, the level of medical and supportive services required by providers to adequately serve individuals in those categories, the varying levels of medical and behavioral complexity of individuals requiring services by the providers, and any other analytical comparisons bearing upon issues of reimbursement adequacy, fairness, and equitability to such providers. In obtaining data and arriving at outcomes and recommendations, the study must include consultations with those providers furnishing services to such individuals. Before September 1, 2010, the department shall report the outcomes and recommendations of this study to the legislative council.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of conducting the study required in section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 410

HOUSE BILL NO. 1540

(Representatives Vigessaa, Boe, Kerzman)
(Senators Andrist, Warner)

AN ACT to amend and reenact subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code, relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which ~~more than twenty percent of the caseload for these programs consists of people who reside on a~~ the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation ~~or property tax-exempt tribal trust lands is ten percent or more.~~ The reimbursement must be such that:
 - a. An affected county's ~~expenses~~ actual direct costs and indirect costs allocated based on a percentage of each county's direct economic assistance and social services costs for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at one hundred percent the percentage of that county's average total supplemental nutrition assistance program caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed ninety percent;
 - b. ~~Each calendar year the~~ The affected counties will receive quarterly ~~allocations payments based on the actual county~~ payments direct and indirect costs, as provided in subdivision a, for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 67-13-07 available on that date ~~state fiscal year; and~~
 - c. At the end of each fiscal year the actual quarterly payments paid must be reconciled to the current year of calculation of actual direct and indirect costs as provided in subdivision a and supplemental nutrition assistance program caseload and counties must be compensated accordingly in the first quarter of the new fiscal year; and

- e. d. The reimbursement will be calculated for each county and reported to the county social service board prior to ~~August~~ September first of the year ~~preceding the allocation.~~

SECTION 2. APPROPRIATION.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$549,938, or so much of the sum as may be necessary, to the department of human services for the purpose of reimbursing the expenses of locally administered economic assistance programs in counties that contain federally recognized Indian reservation land, for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. Each affected county shall reduce that county's human services budget by the amount saved by the implementation of section 1 of this Act and shall publish the property tax savings in that county's official newspaper.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2010.

Approved May 4, 2009
Filed May 5, 2009

CHAPTER 411

HOUSE BILL NO. 1144

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-06-15 of the North Dakota Century Code, relating to confidentiality of information contained in records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-06-15. Confidentiality of information contained in records - Penalty.

1. Individually identifiable information concerning an individual applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department is confidential, except that any such information, including an individual's social security number, may be used and disclosed:
 - a. In the administration of any such program;
 - b. In accordance with a program's participation in the department's master client index data matching system, unless prohibited by federal law;
 - c. As specifically authorized by the rules of the department; or
 - e. d. As permitted or required by other law.
2. A vendor, agent, or contractor of the department must agree to maintain the confidentiality of individually identifiable information disclosed to that person by the department or by any individual applying for or receiving assistance or services and may use and disclose confidential information only to the extent that person's agreement with the department permits the use and disclosure of any such information.
3. As used in this section, "individually identifiable information" means information, including an individual's name, address, telephone number, facsimile number, social security number, electronic mail address, program identification number, or any other unique identifying number, characteristic, or code, as well as demographic information collected from an individual, that:
 - a. Is created or received by the department; and
 - b. Relates to the past, present, or future assistance or services applied for or received by an individual under any program administered by or under the supervision and direction of the department that identifies the individual or with respect to which

there is a reasonable basis to believe the information can be used to identify the individual.

4. Any person who discloses, authorizes, or knowingly permits, participates in, or acquiesces in the disclosure of any confidential information in violation of this section is subject to the penalty provided in section 12.1-13-01.

Approved March 5, 2009
Filed March 5, 2009

CHAPTER 412

SENATE BILL NO. 2391

(Senators Krauter, Erbele, J. Lee)

(Representatives Kerzman, Koppelman, Weisz)

AN ACT to amend and reenact section 50-06-26 of the North Dakota Century Code, relating to the alternatives-to-abortion services program; to provide for reports to the legislative council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-26 of the North Dakota Century Code is amended and reenacted as follows:

50-06-26. Alternatives-to-abortion services program. The department of human services shall disburse funds available through title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] to nongovernmental entities that provide alternatives-to-abortion services and expend funds to inform the public about this program. The services must be outcome-based with positive outcome-based results. The department, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, shall contract to inform the public about this program. For purposes of this section, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. During the 2009-10 interim, the department of human services shall make annual reports to the legislative council regarding the status of the alternatives-to-abortion services program.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing the alternatives-to-abortion services program, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department shall use this funding to inform the public about the alternatives-to-abortion program. Funding for the alternatives-to-abortion program also is appropriated to the department of human services in House Bill No. 1012.

Approved May 1, 2009

Filed May 5, 2009

CHAPTER 413**SENATE BILL NO. 2174**

(Senators Heckaman, G. Lee)
(Representative D. Johnson)

AN ACT to provide for the creation of an autism spectrum disorder task force; to amend and reenact sections 23-09.4-01, 23-09.4-02, 23-09.4-03, 23-09.4-04, 23-09.4-05, 23-09.4-06, and 23-09.4-08 of the North Dakota Century Code, relating to residential care for children with autism spectrum disorder; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. Autism spectrum disorder task force - Appointment - Duties - Annual reports.**

1. The autism spectrum disorder task force consists of:
 - a. (1) The state health officer, or the officer's designee;
 - (2) The director of the department of human services, or the director's designee;
 - (3) The director of special education, or the director's designee; and
 - (4) The executive director of the protection and advocacy project, or the director's designee; and
- b. The following members appointed by the governor:
 - (1) A pediatrician with expertise in the area of autism spectrum disorder;
 - (2) A psychologist with expertise in the area of autism spectrum disorder;
 - (3) A college of education faculty member with expertise in the area of autism spectrum disorder;
 - (4) A licensed teacher with expertise in the area of autism spectrum disorder;
 - (5) An occupational therapist;
 - (6) A representative of a health insurance company doing business in this state;
 - (7) A representative of a licensed residential care facility for individuals with autism spectrum disorder;
 - (8) A parent of a child with autism spectrum disorder;

- (9) A family member of an adult with autism spectrum disorder; and
- (10) A member of the legislative assembly.
2. The director of the department of human services, or the director's designee, shall serve as the chairman. The task force shall meet at the call of the chairman, at least quarterly.
3. The task force shall examine early intervention services, family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.
4. The task force shall develop a state autism spectrum disorder plan and present the plan to the governor and the legislative council before July 1, 2010. Thereafter, the task force shall continue to review and periodically update or otherwise amend the state plan so that it best serves the needs of individuals with autism spectrum disorder. The task force shall provide an annual report to the governor and the legislative council regarding the status of the state autism spectrum disorder plan.

SECTION 2. AMENDMENT. Section 23-09.4-01 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-01. Definitions. In this chapter unless the context otherwise requires:

1. "Autism spectrum disorder" means a brain disorder that may prevent understanding of what a person sees, hears, or otherwise senses and is conceptualized as a behavioral syndrome with multiple biological manifestations.
2. "~~Autistic-like~~" means ~~exhibiting one or more of the characteristics of autism.~~
3. "Department" means the state department of health.
- 4- 3. "~~Residential care facility for children with autism or autistic-like characteristics~~ spectrum disorder" means a living facility providing twenty-four-hour assistance for five or more children not related by blood or marriage to the operator through a multidisciplinary approach including a medical diagnosis of autism ~~or autistic-like characteristics~~ spectrum disorder.
- 5- 4. "Residential care giver" means an individual who routinely provides assistance with activities of daily living or direct care services in implementing the treatment plan, behavior management, or education to residents in a residential care facility for children with autism ~~or autistic-like characteristics~~ spectrum disorder.

SECTION 3. AMENDMENT. Section 23-09.4-02 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-02. Department to establish standards - Licensing - Inspection. The department shall establish standards for the licensure of residential care facilities for children with autism ~~or autistic-like characteristics spectrum disorder~~, regularly inspect the facilities, and grant annual licenses to the facilities that meet the established standards. Upon the request of the department, the state fire marshal shall inspect any facility seeking licensure, or any licensed facility, and shall report the inspection results to the department.

SECTION 4. AMENDMENT. Section 23-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-03. License required - Term - Revocation. No person may operate or manage a residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ unless the facility has been licensed by the department. The license must state the name of the owner or manager of the facility, its location, and the maximum number of persons who may reside in the facility at any time. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

SECTION 5. AMENDMENT. Section 23-09.4-04 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-04. Method of providing service. A residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must be specifically designed, arranged, and staffed to provide twenty-four hour assistance with activities of daily living in a homelike environment in response to the individual needs of the residents. A residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must provide or make arrangements for diagnostic and treatment services, behavioral management, and educational services to enable residents to attain or maintain their highest practicable level of functioning.

SECTION 6. AMENDMENT. Section 23-09.4-05 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-05. Records. The owner or manager of a residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ must keep a record of every individual admitted to the facility, in the manner and form prescribed by the department.

SECTION 7. AMENDMENT. Section 23-09.4-06 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-06. Violations - Injunction. The department shall prosecute all violations of this chapter. The department may apply to the district court of the county in which the residential care facility for children with autism ~~or autistic-like characteristics spectrum disorder~~ is located, for a temporary or permanent injunction restraining any person from conducting, managing, or operating a facility without a license as required by this chapter.

SECTION 8. AMENDMENT. Section 23-09.4-08 of the North Dakota Century Code is amended and reenacted as follows:

23-09.4-08. Penalty.

1. Any person who operates or manages a residential care facility for children with autism ~~or autistic-like characteristics~~ spectrum disorder without first obtaining a license as required by this chapter is guilty of a class B misdemeanor.
2. Any person who violates any provision of this chapter or any rule adopted under this chapter may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues, plus interest and any costs incurred by the department to enforce this penalty. The civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by rules adopted under this chapter.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000, or so much of the sum as may be necessary, to the department of human services for the purpose of paying miscellaneous expenses incurred by the autism spectrum disorder task force, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 414**HOUSE BILL NO. 1043**

(Legislative Council)
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to a dementia care services program; to provide for a report to the legislative council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Dementia care services. As used in this section, dementia means the condition of an individual involving loss of memory and impairment of cognitive functions severe enough to interfere with the individual's daily life. The department shall contract with a private provider for a dementia care services program in each area of the state served by a regional human service center. The dementia care services must include:

1. Identifying available services within the region;
2. Providing information to medical professionals, law enforcement, and the public regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers;
3. Assessing the needs of individuals with dementia and their caregivers;
4. Training care providers to manage and provide for the care of individuals with dementia;
5. Providing consultation services to individuals with dementia and their caregivers; and
6. Facilitating the referral of individuals with dementia and their caregivers to appropriate care and support services.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL - DEPARTMENT OF HUMAN SERVICES. During the 2009-10 interim, the department of human services shall report to the legislative council after June 30, 2010, regarding the outcomes of the dementia care services program, including the estimated long-term care and health care costs avoided, and improvement in disease management and caregiver assistance.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing the dementia care services program under section 1 of this Act for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 21, 2009

Filed April 22, 2009

CHAPTER 415**HOUSE BILL NO. 1044**

(Legislative Council)
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the development of a program for services to transition-aged youth at risk; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Program for services to transition-aged youth at risk - Definition - Rules - Continuing appropriation.

1. The department shall develop, within current appropriations, a program for services to transition-aged youth at risk. The department shall use a wraparound planning process. The department shall adopt rules to establish eligibility, services, and a distinct statewide interagency advisory council on transition-aged youth at risk, with youth and family representation, and with regional subcommittees. For the purposes of this section, transition-aged youth means children and young adults at risk due to:
 - a. Deprivation or other activities resulting in youth being involved with the foster care or juvenile justice system;
 - b. Serious mental illness or serious disabilities that do not qualify the youth for developmental disabilities case management; or
 - c. Suicidal tendencies.
2. Services under the program must include:
 - a. Individualized assessments to determine the needs and appropriate services to individual transition-aged youth at risk;
 - b. Single plan of care to coordinate services among available service systems, emphasizing existing case management resources;
 - c. Independent living skills, including self-advocacy training;
 - d. Enhanced or extended vocational rehabilitation, including transition from education to employment and from secondary education to higher education;
 - e. In-home support, including mentors, individual and family training, and access to respite care; and

- f. Development of a statewide independent living skills curriculum for youth and families.
3. Services to an individual youth must be appropriate to that individual and need not include all services of the program.
4. The department may accept and receive grants and other sources of funding for the development of a program for services to transition-aged youth at risk. All moneys received by the department as gifts, grants, or donations for the development of a program for services to transition-aged youth at risk under this section are appropriated on a continuing basis to the department.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 416**SENATE BILL NO. 2231**

(Senators J. Lee, Fiebiger, Krebsbach)
(Representatives N. Johnson, Hofstad, Kerzman)

AN ACT to provide for contracting with a statewide charitable food recovery and distribution organization; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. Department of human services food assistance contracts.**

The department of human services shall contract with a statewide charitable food recovery and distribution organization to develop and implement new methods of delivering charitable food assistance services in underserved counties, to include a mobile food pantry program and prepacked food basket program; expand the recovery of surplus food from the retail and wholesale food industry for distribution to charitable feeding programs; provide training, technical assistance, and equipment grants to community food pantries and emergency meal programs; and develop a cross-referral system between charitable feeding programs and government assistance programs that help clients achieve self-sufficiency.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the state department of human services for the purpose of contracting with a statewide provider of charitable food distribution services to address gaps in service in, expand the recovery and distribution of surplus food supplies for, and strengthen the capacity of, the North Dakota charitable emergency feeding network, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 417**SENATE BILL NO. 2423**

(Senators Fischer, Heckaman)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to audits and reimbursements of private providers for individuals with developmental disabilities; and to provide for a report to the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Developmental disability provider review. With respect to private providers for individuals with developmental disabilities, the department shall conduct a review of the audit and reimbursement process and a review and reconsideration of the ninety-five percent occupancy rule.

SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall provide a report to the sixty-second legislative assembly which includes recommendations or proposed legislation relating to audits and reimbursements of private providers for individuals with developmental disabilities.

Approved April 9, 2009

Filed April 13, 2009

CHAPTER 418**SENATE BILL NO. 2198**

(Senators Mathern, J. Lee, Wardner)
(Representatives R. Kelsch, Mueller, Klemin)

AN ACT to create and enact five new sections to chapter 50-06.4 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the provision of services to individuals with traumatic brain injury; to amend and reenact sections 50-06.4-02 and 54-38-05 of the North Dakota Century Code, relating to joint meetings and duties of the department of human services; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Traumatic brain injury - Prevention and identification activities. The department shall provide outreach services and conduct public awareness efforts regarding the prevention and identification of traumatic brain injury.

SECTION 2. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Traumatic brain injury - Services and activities - Acceptance of moneys. The department may accept and expend moneys from any public or private source, including federal sources, for any purpose involving traumatic brain injuries or the provision of services to individuals with traumatic brain injury and their families.

SECTION 3. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Traumatic brain injury - Informal supports - Contracts - Exemption.

1. The department shall contract with public or private entities for the provision of informal supports to individuals with traumatic brain injury. As used in this section, "informal supports" includes information sharing and referral services, peer mentoring, training, facilitation of support groups, public awareness efforts, and individual and programmatic advocacy efforts.
2. Any entity contracting with the department under this section must:
 - a. Demonstrate expertise in serving and enhancing the quality of life for individuals with traumatic brain injury;
 - b. Agree to work in cooperation with the department, case managers, and veterans' service officers; and
 - c. Agree to consult with veterans and other individuals having a traumatic brain injury, their families, and their caregivers.

3. The department is exempt from complying with chapter 54-44.4 with respect to contracting for the provision of informal supports under this section.

SECTION 4. AMENDMENT. Section 50-06.4-02 of the North Dakota Century Code is amended and reenacted as follows:

50-06.4-02. Department to be lead agency - Cooperation of other agencies - Joint meeting. The department shall act as lead agency in the state for the purpose of coordinating services to persons with traumatic brain injury. At least annually the department shall call a joint meeting of the adjutant general, the state department of health, the department of veterans' affairs, and the superintendent of public instruction to discuss the provision of services to individuals with traumatic brain injury. State agencies and political subdivision agencies shall cooperate with the department to permit the department to efficiently coordinate services to persons with traumatic brain injury while avoiding duplication of services. Neither this chapter, nor any activity undertaken by the department under this chapter, may be construed as creating a right to any benefit or service not specifically required to be granted as a condition of the receipt of grants of federal funds.

SECTION 5. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Social and recreational services. The department shall provide or contract for the provision of social and recreational services, including day supports, to individuals with traumatic brain injury, if the department determines that available vocational rehabilitative services do not meet the individuals' needs.

SECTION 6. A new section to chapter 50-06.4 of the North Dakota Century Code is created and enacted as follows:

Vocational rehabilitation and consultation. The department shall provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with traumatic brain injury who receive case management for personal care services. Services under this section include extended support for individuals at risk of losing their employment upon exhausting their vocational services.

SECTION 7. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Traumatic brain injury - Home and community-based services - Outreach activities - Quality control.

1. As part of the personal care services program for eligible medical assistance recipients and as part of the department's services for eligible disabled and elderly individuals, the department shall provide home and community-based services to individuals who have moderate or severe impairments as a result of a traumatic brain injury. The department shall give priority under this section to individuals whose impairments are less severe or similar to those of individuals who are eligible for medicaid waivers.
2. The department shall conduct outreach and public awareness activities regarding the availability of home and community-based services to

individuals who have moderate or severe impairments as a result of a traumatic brain injury.

3. The department shall conduct quality control activities and make training available to case managers and other persons providing services to individuals under this section.

SECTION 8. AMENDMENT. Section 54-38-05 of the North Dakota Century Code is amended and reenacted as follows:

54-38-05. Duties of department. The department shall:

1. Study alcoholism and drug abuse and related problems, including methods and facilities available for the care, custody, detention, treatment, employment, and rehabilitation of resident alcoholics and drug dependent persons.
2. Promote meetings and programs for the discussion of alcoholism and drug abuse or any of their aspects, disseminate information on the subject of alcoholism and drug abuse for the guidance and assistance of individuals, courts, and public or private agencies for the prevention of alcoholism and drug abuse, and inform and educate the general public on problems of alcoholism and drug abuse, their prevention and treatment, to the end that alcoholism and drug abuse may be prevented and that persons suffering from alcoholism or drug dependency may be disposed to seek available treatment.
3. Conduct, promote, and finance, in full or in part, studies, investigations, and research, independently or in cooperation with universities, colleges, scientific organizations, and public or private agencies.
4. Accept for examination, diagnosis, guidance, and treatment, insofar as funds permit, any resident of the state coming to the department of that person's own volition for advice and guidance. For purposes of this subsection, "any resident" includes veterans and nonveterans who have a traumatic brain injury.
5. Establish, from time to time, policies governing the evaluation, acceptance, care, and treatment of alcoholics and drug dependent persons.
6. Develop, through consultation with the director of the department of transportation, a policy governing programs for persons who, subsequent to being convicted for traffic offenses, are referred to educational courses on alcohol, drugs, and driving.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$330,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing services to individuals with traumatic brain injury, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 419**HOUSE BILL NO. 1175**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 26.1 and a new section to chapter 50-09 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 5 of section 14-09-08.2, subsections 1, 2, and 9 of section 14-09-09.3, subsection 3 of section 14-09-09.10, subsections 4 and 5 of section 14-09-09.24, subsection 5 of section 14-09-09.33, subsections 9 and 10 of section 14-09-25, sections 20.1-01-26.1 and 34-15-06, subsection 1 of section 35-34-06, subsection 2 of section 50-09-02.1, subsections 1 and 5 of section 50-09-08.2, subsection 2 of section 50-09-14, and sections 50-09-36 and 50-24.1-02.1 of the North Dakota Century Code and section 12 of chapter 135 of the 2005 Session Laws, relating to child support enforcement; to provide for a task force on child support enforcement; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order; ~~provided that the affidavit described in subsection 3 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.~~

¹⁶⁶ **SECTION 2. AMENDMENT.** Subsections 1, 2, and 9 of section 14-09-09.3 of the North Dakota Century Code are amended and reenacted as follows:

1. Any ~~failure of an income payer failing~~ to comply with this section or section 14-09-09.16 may be ~~punished for~~ sanctioned as a contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of ~~such~~ the contempt.
2. Any income payer who fails or refuses to withhold or deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to withhold or deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to withhold or deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or

¹⁶⁶ Section 14-09-09.3 was also amended by section 1 of House Bill No. 1329, chapter 148.

actual damages caused by the violation, whichever is greater, in addition to the amount of income that should have been withheld or delivered, costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the child support agency under subsection 9 of section 14-09-09.3. Any damages collected by the child support agency under this subsection must be paid allocated by the court between each affected obligor and obligee, or made payable on behalf of an obligor to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

9. An income payer who fails to withhold or deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be ~~punished~~ sanctioned as a contempt of court. Any late fee ~~collected~~ assessed by the child support agency under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to withhold or deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.

SECTION 3. AMENDMENT. Subsection 3 of section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

3. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders, and includes past-due support.

SECTION 4. AMENDMENT. Subsections 4 and 5 of section 14-09-09.24 of the North Dakota Century Code are amended and reenacted as follows:

4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:
 - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
 - b. Proof of timely payment of previously ordered support, if any; and

- c. A requirement that the obligor keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
 - a. Provides that the obligor shall keep the ~~clerk and the~~ child support agency informed of any employment-related health insurance to which the obligor has access;
 - b. Describes the provisions by which regular payment of child support is assured; and
 - c. Is reviewed and approved by the court and entered into the court's records.

SECTION 5. AMENDMENT. Subsection 5 of section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

5. Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, an obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.

SECTION 6. AMENDMENT. Subsections 9 and 10 of section 14-09-25 of the North Dakota Century Code are amended and reenacted as follows:

9. If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:
 - a. As specifically provided in a court order in the event of the obligee's death;
 - b. To the obligee's estate or as provided in the obligee's will;
 - c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; ~~or~~
 - d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old; or
 - e. Refunded to the obligor if the court determines that the past-due child support cannot be disbursed under this section.
10. Unless any party to a child support order objects within ten days of the date of a notice sent by first-class mail to the party's last-known address, the child support agency ~~or clerk of court~~ may change the payee of a child support obligation for the current month or a future month upon request of a guardian or other person who has legal custody of the child or children for whom the child support is being paid.

SECTION 7. AMENDMENT. Section 20.1-01-26.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-26.1. Hunting, trapping, or fishing prohibited while privileges are suspended - Penalty. No person may directly or indirectly hunt, trap, or fish or assist in any way in hunting, trapping, or fishing while the person's privileges have been suspended by a court or by the department of human services under section 50-09-08.6. Any person violating this section is guilty of a class A misdemeanor.

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

Child support insurance data match. Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter 12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.

SECTION 9. AMENDMENT. Section 34-15-06 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Subsection 1 of section 35-34-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In the case of personal property that does not consist of a vehicle, a vessel, or an account maintained in a financial institution, the child support agency may establish a lien on such personal property by filing a notice of lien with the office of the recorder in the county in which the personal property may be found ~~or~~ with the secretary of state, or with a third party who is in possession of the personal property. The notice must particularly describe the property to be subjected to the lien and the name and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.

SECTION 11. AMENDMENT. Subsection 2 of section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system. Notwithstanding section 14-08.1-05, any record of a child support obligation that is currently being enforced in another jurisdiction and not by a child support agency, or that is owed by an obligor who is deceased, or that is owed to a deceased obligee for whom disbursement of any collections could not occur under section 14-09-25, may be removed indefinitely from the statewide automated data processing system until a request is received from a party to the child support case to restore those records.

SECTION 12. AMENDMENT. Subsections 1 and 5 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

1. In implementing programs under title IV-D, the state agency, and the officials, employees, and agents of the agency may:
 - a. Conduct examinations;
 - b. Require by subpoena the attendance of witnesses and the production of books, records, and papers;
 - c. Compensate witnesses and individuals producing books, records, including records maintained in automated data bases, and papers in amounts determined by the state agency, not to exceed actual reasonable costs incurred and not to include any costs incurred by a financial institution that has not entered into an agreement under subdivision h nor costs incurred by any person that reflects the difference between responding to a subpoena and providing information under subdivision g or k;
 - d. Impose a fiscal sanction of no more than twenty-five dollars for each day against a person who fails to attend as a witness or produce books, records, or papers;
 - e. Require genetic testing of appropriate individuals when necessary in disputed paternity cases, to determine the relationship of parent and child, and:
 - (1) Pay the costs of such testing, subject to recoupment from the alleged father if paternity is established; and
 - (2) Obtain additional testing in any case if an initial test result is contested, upon request and advance payment by the contestant;
 - f. Make application to the district court to compel participation in genetic testing, the attendance of witnesses, the production of books, records, and papers, and the payment of fiscal sanctions imposed under this section;

- g. Notwithstanding any provision of law this code making the records confidential, in addition to or in lieu of a subpoena, obtain access, including automated access in the case of records maintained in automated data bases, to:
- (1) Records of other state and local government agencies, including:
 - (a) Vital statistics, including records of marriage, birth, and divorce;
 - (b) Local tax and revenue records, including information on residence address, employer, income, and assets;
 - (c) Records concerning real and titled personal property;
 - (d) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;
 - (e) Employment security records;
 - (f) Workforce safety and insurance records identifying the last-known address of a person who owes or who is owed support, the wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that person has received or is entitled to receive from the organization, and whether and where that person is currently employed;
 - (g) Records of all agencies administering public assistance programs;
 - (h) Records of the department of transportation, which access is not subject to the requirements in section 39-16-03;
 - (i) Corrections records;
 - (j) Law enforcement records; and
 - (k) Subject to an agreement with the state tax commissioner, state tax and revenue records, including information on residence address, employer, income, and assets; and
 - (2) Certain information contained in records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, subject to safeguards on privacy and information security, consisting of:
 - (a) The names and, addresses, social security numbers, and other requested relevant income or asset information of such individuals and the names and

addresses of the employers of such individuals, as appearing in customer records of public utilities, including cellular and wireless telephone service providers, and cable television companies, pursuant to an administrative subpoena if requested; and

- (b) Information on assets and liabilities on those individuals held by financial institutions;
- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
 - (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past-due support, as identified by the state agency by name and social security number or other taxpayer number; and
 - (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support;
- i. For purposes of locating parents or alleged parents of children receiving services under title IV-D, provide all federal and state agencies conducting activities under title IV-D with access to:
 - (1) Records of the department of transportation; and
 - (2) Law enforcement records; ~~and~~
- j. Notwithstanding any provision of law making the records confidential:
 - (1) Provide access to information identifying the amount of payment necessary to obtain the release of a lien taken by the state agency in any property to secure the payment of child support; and
 - (2) Upon payment of a sufficient amount, satisfy and release that lien; and
- k. Upon agreement, exchange information, including social security numbers, with a person listed in subdivision g for the purpose of identifying individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, and any income, assets, or liabilities of those individuals.

5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other ~~state~~ state jurisdiction charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

SECTION 13. AMENDMENT. Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another ~~state~~ state jurisdiction, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter 53-12.1 to enforce that order may seek review of the action in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions in a proceeding under chapter 28-32.

SECTION 14. AMENDMENT. Section 50-09-36 of the North Dakota Century Code is amended and reenacted as follows:

50-09-36. Protest period. Except as authorized by the obligor, the state agency shall hold any funds collected under section 28-21-05.2 ~~or~~ 50-09-35, or section 15 of this Act and may not disburse the funds as a collection of child support until the time has expired for requesting a review by a court under section 50-09-14 or the conclusion of the review, whichever is later. Interest does not accrue under section 28-20-34 after the funds are received by the state agency.

SECTION 15. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Report of gambling winnings. Before a gaming operator makes a payment of winnings for which the gaming operator is required to file an internal revenue service form W-2G or substantially equivalent form, the gaming operator shall obtain the name, address, and social security number of the winner and submit the information to the state agency through a secure interactive website that is maintained by the state agency. If the state agency replies to the gaming operator that the winner does not owe past-due support or if the gaming operator is unable to receive information from the state agency after attempting in good faith to do so, the gaming operator may make the payment to the winner. If the state agency replies that the winner owes past-due support, the reply must include the amount of past-due support owed by the winner and the location of the office with which the

winner may file a protest under section 50-09-14. The gaming operator shall withhold from the payment to the winner an amount equal to the total winnings or the amount of past-due support, whichever is less. Within seven business days after withholding the payment, the gaming operator shall send the amount withheld to the state disbursement unit, along with the name, address, and social security number of the winner. The gaming operator may withhold and retain an additional sum of three dollars from the winner to cover expenses involved in sending the payment. A gaming operator that withholds funds under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise and is immune from suit or liability for complying with this section.

SECTION 16. AMENDMENT. Section 50-24.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.1. Assignment of claim.

1. Each applicant or recipient of benefits under this chapter must be deemed to have assigned, to the department of human services, any right of recovery the applicant or recipient may have for medical costs incurred under this chapter not exceeding the amount of funds expended by the department for the care and treatment of the applicant or recipient. The applicant or recipient, or other person empowered by law to act in the applicant's or recipient's behalf, shall execute and deliver an assignment of claim, assignment of rights, or other authorizations as necessary to secure fully the right of recovery of the department. The assignment:
 1. a. Is effective as to both current and accrued medical support recovery obligations.
 2. b. Takes effect upon a determination that an applicant is eligible for assistance under this chapter.
2. The department of human services may compromise claims arising out of assignments made under this section on such terms as it may deem just and appropriate. The department of human services may not be compelled to compromise any claim.

SECTION 17. AMENDMENT. Section 12 of chapter 135 of the 2005 Session Laws is amended and reenacted as follows:

SECTION 12. TRANSITION. A proceeding to adjudicate parentage which was commenced before the effective date of this chapter is governed by the law in effect at the time the proceeding was commenced. A complaint or motion to adjudicate parentage that is filed with the court after August 1, 2009, is governed by this chapter even if the proceeding was commenced prior to August 1, 2009.

SECTION 18. CHILD SUPPORT ENFORCEMENT TASK FORCE. The department of human services shall convene a child support enforcement task force to study the interaction of the business community and the child support enforcement program. The task force must include two members of the legislative assembly appointed by the chairman of the legislative council. The department shall extend invitations to representatives from the financial and insurance industries, employers, public utilities, and other business interests. The study must include strategies for encouraging voluntary participation in electronic data matches, the feasibility and

desirability of mandatory data matches or mandatory electronic transfer of information, the identification of potential sources of income and asset information regarding child support obligors, the creation of a lien registry for property owned by a delinquent child support obligor, and the development of procedures for conducting data matches that are secure and limited to the information needed to assist in the establishment and enforcement of child support and medical support orders. The department of human services shall present the findings and recommendations of the task force, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

SECTION 19. EFFECTIVE DATE. Sections 14 and 15 of this Act become effective on July 1, 2010.

Approved April 28, 2009
Filed May 1, 2009

CHAPTER 420

HOUSE BILL NO. 1038

(Legislative Council)
(Judicial Process Committee)

AN ACT to amend and reenact section 50-09-08.6 of the North Dakota Century Code, relating to restrictions on an individual's operator's license for nonpayment of child support or failure to obey a subpoena.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

50-09-08.6. Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.

1. As used in this section:

a. "License" means:

- (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
- (2) Any certificate, permit, or license issued by an agency of the state which the obligor is required to obtain prior to engaging in a recreational activity; and
- (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.

b. "Licensee" means a person who has applied for or currently possesses a license.

c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.

d. "Restrict", as it relates to the operator's license of an obligor or a person who fails to comply with a subpoena, includes the authority of the state agency to authorize the issuance, upon request for good cause, of a restricted operator's license that is solely for the use of a motor vehicle during the licensee's normal working hours.

2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
 - a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is listed on the arrears registry; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section or in exchange for the state agency refraining from taking an enforcement action against the obligor.
3. Before withholding, restricting, or suspending a license under subdivision a or b of subsection 2, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the notice.
4. Upon notice to the licensee, the state agency may withhold, restrict, or suspend a license under subdivision c of subsection 2 at any time if the licensee fails to comply with a payment plan negotiated under this section. A copy of the state agency's order to withhold, restrict, or suspend a license must be sent to the licensee by first-class mail to the licensee's last-known address. The order must state that the licensee may contest the action of the state agency by making a written request for a court hearing under subsection 5 within ten days of the date of the order.
5. A request for a hearing under this section must be made to the court that issued or considered the child support order. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the request may be made to any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
6. In a contest under this section, the court must affirm the action of the state agency to withhold, restrict, or suspend a license unless it finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, is listed on the arrears registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.
7. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency after the licensee complies with the subpoena, satisfies the arrearage in

full, or enters into a payment plan with the state agency under this section.

8. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
9. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
10. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
11. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 421**SENATE BILL NO. 2045**

(Legislative Council)
(Long-Term Care Committee)

AN ACT to amend and reenact subdivision m of subsection 1 of section 50-10.2-02 of the North Dakota Century Code, relating to advance notice requirements of any transfer or discharge of a resident from a nursing home, swing-bed hospital, or basic care or assisted living facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision m of subsection 1 of section 50-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

- m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 422

SENATE BILL NO. 2162

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new section to chapter 50-06 and two new sections to chapter 50-11.1 of the North Dakota Century Code, relating to criminal history record checks and to self-declaration of an individual who provides early childhood services; to amend and reenact subdivision g of subsection 2 of section 12-60-24 and sections 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.8, 50-11.1-08, 50-11.1-09, 50-11.1-10, 50-11.1-11, 50-11.1-11.1, 50-11.1-12, and 50-11.1-13.1 of the North Dakota Century Code, relating to criminal history record checks, licensing and registration of early childhood services providers, investigation of early childhood services providers, denial or revocation of request for early childhood services provider licensure or registration, and resource and referral services; to repeal section 50-11.1-03.1 of the North Dakota Century Code, relating to cardiopulmonary resuscitation certification for a family child care home operator; to provide a statement of legislative intent; to provide a penalty; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁷ **SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck registrations under section 50-11.1-06.2~~ criminal history record checks authorized under section 2 of this Act.

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

Criminal history record checks. The department may require criminal history record checks as the department determines appropriate for:

1. Employees of the department upon hiring;
2. Providers licensed by the department under chapter 50-12, as well as for any employees of those providers; and
3. Applicants for early childhood services licensure, nonlicensed holders of a self-declaration, and in-home providers under chapter 50-11.1. The

¹⁶⁷ Section 12-60-24 was also amended by section 1 of House Bill No. 1084, chapter 123, section 1 of House Bill No. 1437, chapter 377, and section 1 of Senate Bill No. 2152, chapter 379.

department also may require criminal history record checks for new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home.

SECTION 3. AMENDMENT. Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- e. Child care provided in facilities operated in connection with a church, ~~shopping center~~, business, or ~~other establishment organization~~ where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, ~~shopping~~, or is engaged in other activities, on ~~or near~~ the premises.
 - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no ~~preschool age~~ children under six years of age for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. ~~Headstart~~ Head start and early head start programs that are federally funded and meet federal ~~headstart~~ head start performance standards.
 - j. Child care provided by a hospital in a medical facility by medical personnel ~~within the physical structure of the hospital~~ to children who are ill.
8. "Family child care ~~home~~" means ~~an occupied a private residence in which licensed to provide~~ early childhood services ~~are provided~~ for no more than seven children at any one time, except that the term includes a residence ~~providing licensed to provide~~ early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
9. "Group child care ~~home~~" or "group child care facility" means a child care facility ~~where program licensed to provide~~ early childhood services ~~are provided for eight through eighteen or fewer children or a facility, other than an occupied private residence, which serves fewer than eight children.~~
10. "Household member" means an adult living in the private residence out of which a program is operated, regardless of whether the adult is living there permanently or temporarily.
11. "In-home provider" means any person who provides early childhood services to children in the children's home.
- ~~44.~~ 12. "~~License~~ Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility and provide early childhood services.

- ~~42.~~ 13. "Multiple licensed ~~facility program~~" means an early childhood ~~facility that provides program licensed to provide~~ more than one type of early childhood services.
- ~~43.~~ 14. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
15. "Parent" means an individual with the legal relationship of father or mother to a child or an individual who legally stands in place of a father or mother, including a legal guardian or custodian.
16. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
17. "Preschool ~~educational facility~~" means a ~~facility that offers program licensed to offer~~ early childhood services ~~and, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that which serves no child for more than three hours per day.~~
18. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- ~~44.~~ 19. "Registrant" means the holder of ~~a~~ an in-home provider registration document issued by the department in accordance with this chapter.
- ~~45.~~ 20. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
- ~~46.~~ 21. "Registration document" ~~is~~ means a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.
22. "School-age child care" means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years.
23. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to three children below the age of twenty-four months or for no more than five children through the age of eleven.
24. "Staff member" means operator, caregiver, provider, or any other individual, whether paid or volunteer, who provides care, supervision, or guidance to children in an early childhood program and includes food preparation, transportation, and maintenance personnel.

SECTION 4. AMENDMENT. Section 50-11.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-02.1. Number of children in program - How determined. For the purpose of determining the number of children in an receiving early childhood facility services, all children of the operator or employees, present in the facility on the

premises and under the age of twelve years, must be counted except for purposes of determining fire, safety, or zoning requirements. All children present are protected by this chapter regardless of whether money is received or goods or other services are received for their care.

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

50-11.1-03. Operation of family child care home, group child care facility, preschool educational facility, and child care center early childhood services program - License required - Fees.

1. A license for a family child care ~~home~~ is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or ~~more~~ seven children through age eleven at any one time which includes no more than three children under twenty-four months of age. These persons not required by this subsection to hold a family child care license may voluntarily apply for and receive such a license.
2. ~~No~~ A license for group child care is required if early childhood services are provided for at least eight and no more than eighteen children at any one time.
3. A license for a child care center is required if early childhood services are provided for more than eighteen children at any one time.
4. A person, partnership, firm, corporation, limited liability company, association, or nongovernmental organization may not establish or operate a family child care, group child care facility, preschool educational facility, school-age child care, or child care center unless licensed to do so by the department. ~~No~~
5. A governmental organization may not establish or operate a family child care, group child care facility, preschool educational facility, school-age child care, or child care center without first receiving public approval by certifying, to the department or the department's authorized agent, that it has complied with all rules applicable to family child care, group child care facilities, preschool educational facilities, or school-age child care, or to child care centers.
- 3- 6. An applicant for a license shall submit the following nonrefundable fees with the application:
 - a. The operator of a family child care ~~home~~ applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
 - b. The operator of a group child care ~~home~~ applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
 - c. The operator of a preschool educational facility applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.

- d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
 - e. The operator of a multiple licensed ~~facility~~ program applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
- 4- 7. In addition to any criminal sanctions or other civil penalties which may be imposed pursuant to law, the operator of an early childhood ~~facility~~ program who, after being given written notice by a ~~representative~~ of the department or the department's authorized agent, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of ~~fifty two hundred~~ fifty two hundred dollars per day for each day of operation without ~~such the~~ required license. The civil penalty may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.
- 5- 8. All fees collected under subsection ~~3 6~~ must be paid to the department or the department's authorized agent and must be used to defray the cost, to the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 6. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. ~~Applications~~

- 1. An application for operation of an early childhood ~~facility~~ licenses ~~program~~ must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all ~~facilities~~ premises to be used by the early childhood program applying for a license. The applicant for a license and the ~~applicant's employees~~ staff members, and, if the ~~license application is for an occupied~~ program that will be located in a private residence, every ~~person~~ individual living or working in that residence, ~~may~~ must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. ~~The department may use the findings of the investigation to determine licensure.~~ Except as otherwise provided, the department shall grant a license for the operation of an early childhood ~~facility~~ program upon a showing that:
 - 4- a. The premises to be used are in fit and sanitary condition ~~and~~ are properly equipped to provide for the health and safety for all children ~~who may be received~~, and must be maintained according to rules adopted by the department;
 - 2- ~~The persons in charge of the facility and their assistants~~
 - b. Staff members are qualified to fulfill the duties required of them according to the provisions of this chapter and standards

prescribed for their qualifications by the rules and regulations of the department;

- 3- ~~The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;~~
 - c. The application does not include any fraudulent or untrue representations;
4.
 - d. The facility owner or operator, or applicant has not had a previous license or self-declaration denied or revoked within the ~~one hundred eighty days~~ twelve months prior to the date of the current application;
 - e. The owner or operator, or applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial cannot have occurred within the five years immediately preceding the application date;
- 5-
 - f. The facility program has paid its license fees and any penalties assessed against the facility program as required by section 50-11.1-03;
 - g. The family child care owner or operator has received training and is currently certified in cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department, and is currently certified in first aid by a program approved by the department; and
- 6-
 - h. The group child care, preschool, school-age child care, or child care center facility maintains, at all times during which early childhood services ~~is~~ are provided, at least one person who has received training and is currently certified in resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department, and at least one person who is currently certified in first aid by a program approved by the department.
2. The license issued to the owner or operator of an early childhood facility must services program may not be in force and effect effective for a period of not more longer than two years.
3. The department may consider the applicant's prior licensing, self-declaration, and registration history in determining whether to issue a license.
4. The department may issue a provisional or restricted license in accordance with the rules of the department.

SECTION 7. AMENDMENT. Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06. In-home provider - Registration voluntary - Prerequisites for approval - Issuance of registration certificate document - Term. ~~In-home~~

providers An in-home provider may apply for a registration certificate document from the department. The department or the department's authorized agent shall determine whether the applicant meets the standards have been met and shall issue or deny a registration certificate document based upon that determination. Registration certificates A registration document for an in-home providers must be in force and effect provider may not be effective for not more longer than one year. The application does not include any fraudulent or untrue representations. The department may consider the early childhood services history of the applicant in determining issuance of a registration document. The department may investigate an applicant according to rules adopted by the department to determine whether the applicant has a criminal record or has been the subject of a finding of services required for child abuse and neglect. The department may issue a provisional in-home provider registration document in accordance with the rules of the department.

SECTION 8. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Self-declaration - Approved application required - Fees.

1. a. An application for self-declaration is voluntary. An individual may apply for self-declaration from the department. The department or the department's authorized agent shall determine whether the standards for self-declaration have been met and shall approve or deny a self-declaration based upon that determination.
- b. An applicant for self-declaration shall pay a nonrefundable fee of fifteen dollars at the time the application is filed.
2. All fees collected under this section must be paid to the department or the department's authorized agent and must be used to defray the cost of investigating, inspecting, and evaluating applications for self-declarations or to provide training to providers of early childhood services.

SECTION 9. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Application for self-declaration - Prerequisites for approval - Approval - Term.

1. Applications for self-declarations must be made on forms provided and in the manner prescribed by the department. The department or the department's authorized agent shall investigate the applicant and every individual living in the private residence and shall conduct a background check. The department or the department's authorized agent shall conduct the investigation in accordance with the rules adopted by the department and shall determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall approve a self-declaration upon the applicant's declaration that:
 - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and shall be maintained

- according to the standards prescribed by the rules of the department;
- b. The applicant is able to provide for the health and safety of each child receiving early childhood services from the applicant according to this chapter and standards prescribed by the department as set forth in its rules;
 - c. The applicant has not had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application;
 - d. The applicant has not had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial cannot have occurred within five years of the application date;
 - e. The applicant has paid the required application fees;
 - f. The applicant has paid any penalties assessed against the program required by section 50-11.1-03;
 - g. The applicant is currently certified in cardiopulmonary resuscitation by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation training program approved by the department;
 - h. The applicant is currently certified in first aid through a training program approved by the department; and
 - i. The application does not include any fraudulent or untrue representations.
2. The department may consider the early childhood services history of the applicant in determining issuance of a self-declaration document.
 3. The department may issue a provisional self-declaration document in accordance with the rules of the department.

SECTION 10. AMENDMENT. Section 50-11.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.1. Conviction not bar to licensure, self-declaration, or registration - Exceptions. Conviction of an offense does not disqualify ~~a person an individual~~ from licensure, self-declaration, or registration under this chapter unless the department determines ~~that the~~:

1. The offense has a direct bearing upon ~~a person's~~ the individual's ability to serve the public as the owner or ~~proprietor~~ operator of an early childhood ~~facility program~~, holder of a self-declaration, or ~~as an in-home provider;~~ or that, following
2. Following conviction of any offense, the ~~person~~ individual is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 11. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed

1. Upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services provider licensure, self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, shall obtain two sets of that person's own the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and.
2. The individual shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department department's authorized agent.
3. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit the fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck, household members, or staff members in accordance with section 12-60-24.
4. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.4-05.2 is found which would disqualify the person department's authorized agent.
5. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application.
6. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

8. The department may use background investigation findings to determine approval, denial, or revocation of an early childhood services license, self-declaration, or in-home registration.
9. Any individual who is providing early childhood services solely for the provider's own children, grandchildren, nieces, nephews, and cousins as a licensed provider, a nonlicensed holder of a self-declaration, or an in-home provider may not be required to submit to a criminal history record check authorized under section 2 of this Act.

SECTION 12. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07. Investigation of applicants, licensees, and registrants applicant, licensee, holder of self-declaration or registration document, and staff members - Inspection of programs and premises - Maintenance of records - Confidentiality of records.

1. The department ~~and~~ or its authorized agent at any time may investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of the facility their premises, the qualifications of the provider a provider of early childhood services in any early childhood facility, and the qualifications, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document under this chapter.
2. Upon request of the department or its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect ~~any facility~~ the premises for which a license or self-declaration is applied ~~for~~ or issued and shall report the findings to the department or the department's authorized agent.
2. ~~Licenses and registrants~~
3. A licensee, holder of a self-declaration, or registrant shall:
 - a. Maintain ~~such~~ records as the department ~~may prescribe~~ prescribes regarding each child in ~~their~~ the licensee's, holder's, or registrant's care and control, and shall report to the department or the department's authorized agent, when requested, such upon forms furnished by the department, facts as the department may require with reference to the children upon forms furnished by the department each child;
 - b. Admit for inspection ~~authorized agents~~ authorized agents of the department or the department's authorized agent and open for examination all records, books, and reports ~~of the home or facility;~~ and
 - c. Notify the parent, ~~guardian, or custodian~~ guardian, or custodian of each child receiving care at the facility early childhood services and ~~each employee of the facility~~ all staff members of the process for reporting a complaint or a suspected licensing violation.
- 3- 4. Except as provided in subsection 4 5, all records and information maintained with respect to children any child receiving early childhood

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

- a. In a judicial proceeding;
 - b. To officers of the law or other legally constituted boards or agencies; or
 - c. To persons having a definite interest in the well-being of the child ~~or children~~ concerned and who, in the judgment of the department, are in a position to serve ~~their~~ the child's interests should that be necessary.
- 4- 5. A provider of early childhood services, upon the request of the parent ~~or guardian~~ of a child for whom the provider provides such services, shall make available to the parent ~~or guardian~~ a list of the names, telephone numbers, and addresses of the parents ~~or guardians~~ of children for whom early childhood services are provided. The list may ~~only~~ include only the names, telephone numbers, ~~or electronic mail addresses, and~~ addresses of parents ~~or guardians~~ who grant the provider permission to disclose that information.
6. The following information for early childhood services licensees, self-declarations, in-home providers, staff members, and adults residing in a home out of which early childhood services are provided is not confidential:
- a. Name;
 - b. Address;
 - c. Telephone number; and
 - d. Electronic mail address.

SECTION 13. AMENDMENT. Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 14. AMENDMENT. Section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.2. Correction orders.

1. Whenever the department or the department's authorized agent finds, upon inspection ~~of an early childhood facility~~, that the facility program, self-declaration, or premises is not in compliance with ~~the provisions of~~ this chapter, or the rules ~~and regulations promulgated thereunder~~ adopted under this chapter, the department or the department's authorized agent shall issue a correction order ~~must be issued~~ to the facility program or self-declaration, provided the department does not revoke the license or self-declaration as a result of the noncompliance.

The correction order must cite the specific statute or ~~regulation~~ rule violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the program or self-declaration fails to comply with the correction order ~~is not complied with~~ in a timely fashion. ~~The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.~~

2. Within three business days of the receipt of the correction order, the licensee of the early childhood ~~facility program~~ or the holder of a self-declaration shall notify the parent, ~~guardian, or custodian~~ of each child receiving ~~care at the facility~~ early childhood services that a correction order has been issued. In addition to providing notice to the parent, ~~guardian, or custodian~~ of each child, the licensee or holder of a self-declaration shall post the correction order in a conspicuous location within upon the facility early childhood premises until the violation has been corrected or for five days, whichever is longer.

SECTION 15. AMENDMENT. Section 50-11.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.3. Reinspections. ~~AN~~ The department or the department's authorized agent shall reinspect an early childhood ~~facility program~~ or holder of a self-declaration issued a correction order under section 50-11.1-07.2 ~~must be reinspected~~, at the end of the period allowed for correction. If, upon reinspection, it is ~~determined~~ the department determines that the ~~facility program~~ or holder of a self-declaration has not corrected a violation identified in the correction order, the department shall mail to the program or the holder of a self-declaration, by certified mail, a notice of noncompliance with the correction order ~~must be mailed by certified mail to the facility~~. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

SECTION 16. AMENDMENT. Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.4. Fiscal sanctions. ~~AN~~ If the department or the department's authorized agent issues a notice of noncompliance with a correction order to an early childhood ~~facility~~, if issued a ~~notice of noncompliance with a correction order, must be assessed~~ program or holder of a self-declaration, the department shall assess fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules ~~promulgated pursuant to~~ adopted by the department under subsection 2 of section 50-11.1-08. The department shall assess a fiscal sanction ~~must be assessed~~ for each day the ~~facility~~ facility early childhood program or holder of a self-declaration remains in noncompliance after the allowable time period for the correction of ~~deficiencies~~ violations ends and the sanction must continue as set forth in section 50-11.1-07.6 until a the department receives notice of correction is received by the department or the department's authorized agent in accordance with section 50-11.1-07.6. No indicating the violations are corrected. The fiscal sanction for a specific violation may not exceed twenty five one hundred dollars per day of noncompliance.

SECTION 17. AMENDMENT. Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 18. AMENDMENT. Section 50-11.1-07.6 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.6. Recovery of fiscal sanctions - Hearing. Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator program or holder of a self-declaration makes written request to the department for an administrative hearing within ten days after the facility's receipt of early childhood program or the holder of the self-declaration receives the notice. If the appeal is unsuccessful or withdrawn, the daily assessment of fiscal sanctions must resume and the department shall add the amount of fiscal sanctions which otherwise would have accrued during the period prior to resumption to the total assessment due from the early childhood program or the holder of a self-declaration. The department or the department's authorized agent shall notify the early childhood program or the holder of a self-declaration of the resumption by certified mail.

SECTION 19. AMENDMENT. Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.8. Suspension of license, self-declaration, or registration document - Notification to parent, guardian, or custodian.

1. The department may suspend the a license of any early childhood facility, self-declaration, or registration document during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05 premises of the licensed program, holder of the self-declaration, or registration, or of a staff member.
2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department shall notify the parent, guardian, or custodian of any child receiving care at the facility early childhood services when the that program's license of the facility, self-declaration, or registration document is suspended.

3. Upon the conclusion and disposition of the investigation of the facility program, the department shall notify the parent, guardian, or custodian of ~~the~~ each child receiving early childhood services of the disposition.

SECTION 20. AMENDMENT. Section 50-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-08. Minimum standards - Rules and regulations - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of early childhood ~~facilities programs, self-declaration,~~ and the registration of in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make ~~such~~ reasonable rules and ~~regulations~~ for the regulation of early childhood services ~~as may be~~ necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
 - a. Inspect ~~any home or facility~~ the premises for which a license, self-declaration, or registration document is applied ~~for~~ or issued under this chapter; and
 - b. Certify to the department that the ~~home or facility premises of a program, holder of self-declaration, or registration document~~ meets the requirements of this chapter and the minimum standards prescribed by the department.

SECTION 21. AMENDMENT. Section 50-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-09. Revocation of license, self-declaration, or registration document.

1. The department may revoke the license, self-declaration, or registration document of any early childhood ~~facility or the registration document of any in-home~~ services provider upon proper showing of any of the following:
 - a. Any of the applicable conditions set forth in ~~section~~ sections 50-11.1-04, 50-11.1-06, and section 9 of this Act as prerequisites for the issuance of the license, self-declaration, or registration document no longer exist.
 - b. The licensee, holder of a self-declaration, or registrant is no longer in compliance with the minimum standards prescribed by the department.
 - c. The license, self-declaration, or registration document was issued upon fraudulent or untrue representation.

- d. The licensee, holder of a self-declaration, or registrant has violated any rules of the department.
 - e. The licensee ~~or~~, holder of a self-declaration, registrant, or a household member of a home out of which early childhood services are provided has been found guilty of, or pled guilty to, an offense determined by the department to have ~~determines~~ has a direct bearing upon ~~a person's~~ an individual's ability to serve the public as a licensee, a holder of a self-declaration, or a registrant.
 - f. The licensee, holder of a self-declaration, or registrant has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the ~~licensee~~ individual has not been sufficiently rehabilitated.
 - g. The department may consider the early childhood services history of the licensee, holder of a self-declaration, or registrant in determining revocation of a license, self-declaration, or in-home registration document.
2. The department shall notify, in writing, the parent, ~~guardian, or custodian~~ of each child receiving ~~care in~~ early childhood services from the facility early childhood services provider that is the subject of the issuance of a revocation notice.

SECTION 22. AMENDMENT. Section 50-11.1-10 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-10. Denial or revocation of license, self-declaration, or registration certificate document - Administrative hearing. Before the department may deny any application for a license, self-declaration, or registration certificate document under the provisions of this chapter may be denied or before revocation of the department may revoke any license, self-declaration, or registration certificate may take place, written charges as to document, the department shall provide a written notice to the applicant, licensee, or holder of the self-declaration or registration document of the reasons therefor must be served upon the applicant, licensee, or registrant for the denial or revocation. The applicant, licensee, holder of a self-declaration, or registrant has the right to may request an administrative hearing appealing the denial or revocation in the manner provided in chapter 28-32 if written. The applicant, licensee, holder of a self-declaration, or registrant shall make a request for the hearing is made to the department within ten days after service receipt of the written charges notice of denial or revocation from the department.

SECTION 23. AMENDMENT. Section 50-11.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-11. Public agency purchase of early childhood services. No agency of state or local government may purchase early childhood services, including care provided by or in the home of a relative, unless the early childhood ~~facility or early childhood services attendant program~~ is licensed, registered, or approved by the department.

SECTION 24. AMENDMENT. Section 50-11.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-11.1. Resource and referral ~~program~~ services - Authority of department to make grants - Federal funds - ~~Program~~ components Components.

1. The department may make grants to public and private nonprofit entities for the planning, establishment, expansion, improvement, or operation of early childhood services. Public or private entities may apply to the department for funding. Applicants shall apply for ~~such~~ grants on forms provided by the department. Applications for grants using funds received by the state under subsection 2 must include assurances that federal requirements have been met.
2. The department shall submit an application annually to the United States secretary of health and human services for the purpose of obtaining the state's allotment of funds authorized under chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9871-9877] or under any subsequent federal law providing funding for child care and development programs.
3. Each ~~program must~~ entity providing early childhood resource and referral services shall identify all existing related early childhood services through information provided by all relevant public and private entities in the areas of service and must develop a resource file of ~~the~~ these services which must be maintained and updated at least quarterly. The services must include early childhood services ~~and service providers as defined~~ as identified in section 50-11.1-02.
4. Each ~~program entity~~ entity providing early childhood resource and referral services ~~must shall~~ establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection ~~3~~ 4 of section 50-11.1-07, affords parents maximum access to all referral information, and includes telephone referral available for no less than twenty hours per week ~~and access via the internet~~. Each ~~program entity~~ shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.
5. All early childhood services resource and referral ~~programs must entities shall~~ maintain documentation of the number of calls and contacts ~~to the program~~. A ~~program received and~~ program received and may collect and maintain the following information:
 - a. Ages of children served.
 - b. Time category of child care request for each child.
 - c. Special time category, such as nights, weekends, or swing shift.
 - d. The reason ~~that the~~ child care is needed.
6. Each ~~program must~~ early childhood services resource and referral entity shall have available, as an educational aid to parents, information on available parent, early childhood, and family education programs in the community and information on aspects of evaluating the quality and suitability of early childhood services, including licensing regulation,

financial assistance availability, child abuse reporting procedures, and appropriate child development information.

7. A ~~program~~ may child care resource and referral entity shall provide technical assistance to existing and potential providers of all types of early childhood services and to employers. This assistance must include:
 - a. Information on all aspects of initiating new early childhood services, including licensing, zoning, program and budget development, and assistance in finding information from other sources;
 - b. Information and resources which help existing early childhood service providers to maximize their ability to serve the children and parents of their community;
 - c. Dissemination of information on current public issues affecting the local and statewide delivery of early childhood services;
 - d. Facilitation of communication between existing early childhood service providers and child-related services in the community served;
 - e. Recruitment of licensed providers; and
 - f. Options, and the benefits available to employers utilizing the various options, to expand child care services to employees.
8. Services prescribed by this section must be designed to maximize parental choice in the selection of early childhood services and to facilitate the maintenance and development of such services and resources.

SECTION 25. AMENDMENT. Section 50-11.1-12 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-12. Violation of chapter or ~~regulations~~ rules - Injunction. The department may seek injunctive action against an early childhood facility program, or holder of a self-declaration, or in-home registration document in the district court through proceedings instituted by the attorney general on behalf of the department if:

1. There is a violation of this chapter or a rule adopted ~~thereunder~~ under this chapter; or
2. An early childhood facility program or holder of a self-declaration, or in-home registration document, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction does not pay a properly assessed fiscal sanction in accordance with section 50-11.1-07.6.

SECTION 26. AMENDMENT. Section 50-11.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-13.1. Penalty for provision of services - When applicable. A ~~person~~ An individual who provides early childhood services to any child, other than a child who is a member of that ~~person's~~ individual's household, is guilty of a class B misdemeanor if:

1. Those services are provided after that ~~person~~ individual is required to register ~~under section 42-1-32-45~~ as a sexual offender;
2. The department has denied that ~~person's~~ individual's application for licensure, or self-declaration, or registration to provide early childhood services or has revoked that ~~person's~~ individual's license, self-declaration, or certificate of registration document to provide early childhood services following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that ~~person~~ individual; or
3. The ~~person~~ individual allows another ~~person~~ individual to be in the presence of the child receiving ~~the~~ early childhood services if that other ~~person~~ individual is required to register ~~under section 42-1-32-45~~ as a sexual offender or has had an application for licensure, self-declaration, or registration to provide early childhood ~~service~~ services denied or revoked by the department following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that other ~~person~~ individual.

SECTION 27. REPEAL. Section 50-11.1-03.1 of the North Dakota Century Code is repealed.

SECTION 28. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS - BACKGROUND CHECKS. It is the intent of the sixty-first legislative assembly that of the new 2.0 full-time equivalent positions authorized for the attorney general to assist with conducting background checks under this Act, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 29. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$210,856, or so much of the sum as may be necessary, and \$82,904 in special funds, to the attorney general for the purpose of conducting background checks under this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 30. EXPIRATION DATE. The increase in the penalty identified in subsection 7 of section 5 of this Act is effective through July 31, 2011, and after that date is ineffective.

Approved May 7, 2009
Filed May 19, 2009

CHAPTER 423

HOUSE BILL NO. 1472

(Representatives Thoreson, Berg, Hofstad, Wieland)
(Senators Flakoll, Horne)

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to the creation of an early childhood services advisory board; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Early childhood services advisory board - Membership - Duties.

1. The early childhood services advisory board is composed of seven members appointed by the director of the department. The members of the board must include a broad-based geographically distributed membership. The term of office is four years expiring on July thirty-first with no more than two terms expiring in any one year. Of the first members appointed, one member must be appointed for a term of one year, two members must be appointed for terms of two years, two members must be appointed for terms of three years, and two members must be appointed for terms of four years. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as the original appointment, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. A member also is entitled to be reimbursed up to one hundred dollars per day for the expenses incurred by the member which relate to the hiring of a substitute early childhood services provider in order that the member may attend meetings and perform the member's official duties.
2. The early childhood services advisory board shall:
 - a. Advise the department as the department conducts a review of all early childhood services rules, a review of which the department shall complete before August 1, 2010;
 - b. Upon the completion of the department's review, with the assistance of the department, conduct an analysis of and make recommendations to the department regarding the department's review of the early childhood services rules, however, final approval of any administrative rule changes must be completed through the administrative rulemaking process set forth in chapter 28-32; and
 - c. On an ongoing basis, make recommendations to the department regarding changes and revisions to the early childhood services

rules. The recommendations, the goal of which is to streamline and improve the quality of the early childhood services process, must seek to balance the need for rules that ensure safe quality child care with the need to revise or eliminate rules that create unnecessary barriers for early childhood service providers.

3. To accommodate the process set forth in subdivisions a and b of subsection 2 , any rules the department adopts in response to legislation enacted in 2009 are exempt from the deadline for rules to implement statutory changes set forth in section 28-32-07, however, those rules must be in effect before January 1, 2011.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2013, and after that date is ineffective.

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

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 424

HOUSE BILL NO. 1095

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-11.3-02, 50-12-02, 50-12-03, and 50-12-03.1 and subsection 1 of section 50-12-03.2 of the North Dakota Century Code, relating to criminal history record investigations for foster care licensure or licensure as a child-placing agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11.3-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11.3-02. Criminal history record investigation - Effect of results.

1. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:
 - a. (1) Child abuse or neglect;
 - b. (2) Domestic violence, as that term is used in chapter 14-07.1;
 - c. (3) A crime in which a child was a victim, including the creation or distribution of child pornography; or
 - d. (4) A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
2. b. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
 - a. (1) A crime involving violence not described in ~~subsection 4~~ subdivision a;
 - b. (2) Any drug-related offense; or
 - c. (3) An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in ~~subsection 4~~ subdivision a;
3. c. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in ~~subsection 2~~ subdivision b if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections,

without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

- 4- d. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in ~~subsection 2~~ subdivision b or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.
2. The department, in accordance with section 50-11-02, may adopt rules, using this section as a minimum requirement, to determine whether to deny or revoke a foster care facility's license, in accordance with section 50-11-07, if that facility houses or employs an individual who has a criminal record.
3. The department, in accordance with chapter 50-12, may adopt rules, using this section as a minimum requirement, to determine whether an individual or an individual's home is suitable for the adoption of any child through a child-placing agency.

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

50-12-02. Child-placing agency licensed - Rules. Every child-placing agency shall secure a license from the department of human services. The department shall adopt rules establishing the requirements for licensure as a child-placing agency.

SECTION 3. AMENDMENT. Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

50-12-03. Requirements for ~~license licensure and employment~~ - Term - Moral or religious conviction not bar to licensure or employment. The department of human services shall issue licenses for the conduct of child-placing agencies upon application. A child-placing agency shall require a criminal history record investigation on the owner and each employee of a child-placing agency who has direct contact with families, with children, or with both. The department of human services shall consider any criminal history record information available about the owner at the time a licensing decision is made and about an employee prior to the owner or the employee having direct contact with families, with children, or with both. Licenses must be granted for a period not exceeding two years. Licenses must be issued to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded. The department of human services may not deny a license because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.

SECTION 4. AMENDMENT. Section 50-12-03.1 of the North Dakota Century Code is amended and reenacted as follows:

50-12-03.1. Conviction not bar to licensure or employment - Exceptions. Conviction of an offense does not disqualify a person from licensure or employment

under this chapter unless the department of human services determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or ~~proprietor~~ employee of a child-placing agency, or that, following the person's conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 5. AMENDMENT. Subsection 1 of section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in chapter 50-11.3 or determined by the department to have a direct bearing upon the person's ability to provide a suitable home for placement of any child, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.

Approved March 5, 2009
Filed March 5, 2009

CHAPTER 425

HOUSE BILL NO. 1418

(Representatives Hawken, Martinson, Mueller)
(Senators Fiebiger, Krebsbach, Wardner)

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to early childhood care workforce development, child care capacity, and quality improvement for early childhood facilities; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Workforce development - Quality improvement - Technical assistance - Capacity building.

1. The department shall provide voluntary, progressive training opportunities leading to credentials and shall provide supports for the early childhood care and education workforce. The department shall implement a registry to track workforce participation.
2. The department shall implement a voluntary quality improvement process for licensed early childhood facilities. The department may provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility. The department may provide technical assistance and support to an early childhood facility that applies for quality improvement and may provide financial incentives to an early childhood facility that sustains and increases program quality. The department may contract with a private, nonprofit agency to provide technical assistance under this subsection.
3. The department may provide supports and incentives to build child care capacity, including:
 - a. Technical assistance and support to individuals who want to establish a new program or expand existing capacity to include information on needs assessments, regulatory processes, facility design and furnishings, startup and operating budgets, staffing patterns, curriculum evaluation, and development of business plans.
 - b. Grants to programs with a viable business plan to support early childhood facility development and expansion in areas with a demonstrated need.
4. The department shall coordinate with other state agencies as necessary to implement the provisions of this section.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys from federal funds made available to the state from federal action to provide funding to the states to stimulate the national economy or to address state fiscal recovery and other income, the sum of \$3,644,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing programs associated with early childhood care services under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. ADDITIONAL FUNDS. Subject to approval by the emergency commission and budget section, the department of human services may accept and spend federal or other funds in excess of those funds appropriated in section 2 of this Act for early childhood care programs, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 426**SENATE BILL NO. 2363**

(Senators Hogue, Nodland)
(Representative L. Meier)

AN ACT to amend and reenact subsection 3 of section 50-22-02, subsection 1 of section 50-22-02.1, and sections 50-22-04 and 50-22-05 of the North Dakota Century Code, relating to registration of charitable organizations and professional fundraisers and to annual reports by charitable organizations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-22-02 of the North Dakota Century Code is amended and reenacted as follows:

3. An officer of the charitable organization must execute the registration statement and must ~~acknowledge~~ certify that the registration statement has been executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement. The executing officer also must certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume, responsibility for determining matters of policy and have supervised, and will continue to supervise, the finances of the charitable organization.

SECTION 2. AMENDMENT. Subsection 1 of section 50-22-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not act as a professional fundraiser subject to this chapter unless that person has registered with the secretary of state. The registration statement must be in writing, ~~under oath~~, in the form prescribed by the secretary of state and must be accompanied by a fee of one hundred dollars. The registration information must be available to the public as a matter of public record. Each registration expires on September first unless, prior to September first, the public fundraiser registers by filing a new registration statement, accompanied by a fee of one hundred dollars. The forms containing the information ~~must be verified under oath and~~ must include the following:
 - a. The name of the professional fundraiser.
 - b. The street and mailing address and telephone number of the professional fundraiser.
 - c. The type of fundraising to be conducted in this state.
 - d. The name of the auditor, accountant, employee, agent, or other person who maintains or possesses the professional fundraiser's records.

- e. A list of all officers, agents, or employees to work under the applicant's direction.
- f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

SECTION 3. AMENDMENT. Section 50-22-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Every charitable organization that is required to file or that files a registration statement pursuant to section 50-22-02 shall file an annual report along with a ten dollar fee with the secretary of state on or before September first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

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

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

2. The annual report must be filed on forms prescribed by the secretary of state and must include a financial statement covering the immediately preceding twelve-month period of operation. An officer of the charitable organization shall execute the financial statement which must include a balance sheet, statement of income and expense, and statement of functional expenses. The financial statement must be filed on or attached to forms furnished by the secretary of state and must be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of the allocations:
 - a. Total receipts and total income from all sources;
 - b. Cost of management and general;
 - c. Program services;
 - d. Cost of fundraising;
 - e. Cost of public education;
 - f. Funds or properties transferred out of state with explanation as to recipient and purpose, unless the information is not reasonably available, in which case the charitable organization may, with the approval of the secretary of state, provide a reasonable estimate of the amounts transferred;

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

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 427**HOUSE BILL NO. 1477**

(Representatives Carlson, Boucher)

(Senators Stenehjem, O'Connell)

(At the request of the Governor)

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to the exempt amount of designated pre-need funeral service contracts in considering eligibility for medical assistance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 428**HOUSE BILL NO. 1157**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to recovery from the estate of a full-benefit dual-eligible medical assistance recipient.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Funeral expenses not in excess of three thousand dollars;
 - b. Expenses of the last illness, other than those incurred by medical assistance;
 - c. Expenses of administering the estate, including attorney's fees approved by the court;
 - d. Claims made under chapter 50-01;
 - e. Claims made under chapter 50-24.5;
 - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
 - g. Claims made under subsection 4.
2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
4.
 - a. ~~The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.~~
 - b. ~~In each calendar year following determination of an amount under subdivision a, the claims A claim of the department of human services made against the decedent's estate of a recipient of medical assistance who was a full-benefit dual-eligible recipient, or against the decedent's estate of the spouse of a deceased recipient of medical assistance who was a full-benefit dual-eligible recipient, must include a claim for an amount equal to the amount determined under subdivision a multiplied times the number of full or partial months required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, which reasonably may be attributable to benefits paid on behalf of the deceased recipient in a month during which the deceased recipient received medical assistance under this chapter and was eligible for medicare.~~
5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of human services has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
7. For purposes of this section:
 - a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and

-
- b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

Approved April 16, 2009
Filed April 17, 2009

CHAPTER 429**SENATE BILL NO. 2158**

(Senators J. Lee, Warner, Dever)
(Representatives Hofstad, Kempenich, Potter)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance services provided by advanced registered nurse practitioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Medical assistance - Services provided by advanced registered nurse practitioners. The medical assistance program must recognize advanced registered nurse practitioners as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the advanced registered nurse practitioner as a primary care provider under the medical assistance program must be within the scope of the advanced registered nurse practitioner's license.

SECTION 2. DEPARTMENT TO SUBMIT AMENDED PLAN. Within thirty days of the effective date of section 1 of this Act, the department of human services shall submit for approval an amended state plan to implement section 1 of this Act.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 430**HOUSE BILL NO. 1303**

(Representatives Kreidt, Bellew, Heller, Uglem, Wieland)
(Senator Dever)

AN ACT to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to factors considered in determining nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 431

HOUSE BILL NO. 1307

(Representatives Kreidt, Bellew, Heller, Uglem, Wieland)
(Senator Dever)

AN ACT to amend and reenact section 50-24.4-07 of the North Dakota Century Code, relating to nonallowable costs in nursing home ratesetting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-07 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-07. Nonallowable costs.

1. The following costs may not be recognized as allowable: political contributions; salaries or expenses of a lobbyist, as defined in section 54-05.1-02, for lobbying activities; advertising designed to encourage potential residents to select a particular nursing home; fines and penalties; legal and related expenses for unsuccessful challenges to decisions by governmental agencies; memberships in sports, health, or similar social clubs or organizations; and costs incurred for activities directly related to influencing employees with respect to unionization. The department ~~shall~~ by rule shall exclude the costs of other items or services not directly related to the provision of resident care.
2. Nonallowable costs include the education expense unless:
 - a. The education was provided by an accredited academic or technical educational facility;
 - b. The education expense was for materials, books, or tuition;
 - c. The facility claims the education expense, annually, in an amount not to exceed the lesser of one-half of the individual's education expense or three thousand seven hundred fifty dollars; and
 - d. The amount of education expense claimed for an individual does not exceed fifteen thousand dollars in the aggregate.
3. The education expense may be claimed the year in which it is expended.
4. For any individual who receives education assistance, the facility shall enter a contract with the individual which stipulates a minimum commitment to work for the facility as well as a repayment plan if the individual does not fulfill the contract obligations.
5. An individual who receives education assistance shall commit to a minimum of one thousand six hundred sixty-four hours of employment after completion of the educational program for each year education assistance was provided by the facility.

6. The facility shall report the education expense separately on the facility's cost report. The expense is allowed as a passthrough and is limited only by the fifteen thousand dollar maximum per individual.
7. If an individual defaults on a contract and education expenses for the individual have previously been claimed in any report year, the facility shall report the amount of repayment on the facility's cost report in the report year in which the default occurs.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 432

HOUSE BILL NO. 1433

(Representatives S. Meyer, N. Johnson, Schatz, Wald)
(Senators Nodland, Wardner)

AN ACT to amend and reenact section 50-24.4-16 of the North Dakota Century Code, relating to nursing home rates; to provide an appropriation; to provide legislative intent; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-16. Special rates.

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the limits of any cost category, the department shall establish procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than eighteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up for periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities.
3. Notwithstanding section 50-24.4-19, the department shall provide for a special care rate to be paid to a nursing home that has a capacity of fewer than thirty-one licensed beds, was not previously a hospital with critical access designation after May 31, 2009, and is owned and operated by a nonstate governmental unit.
 - a. To qualify for a special care rate, a nursing home shall document that the nursing home's allowable costs are in excess of the standard nursing home rates that are otherwise established in accordance with this chapter and shall demonstrate to the department's satisfaction that access to nursing home services may be jeopardized if additional reimbursement is not provided.
 - b. The special care rate established in accordance with this subsection may not exceed the lesser of the difference between the nursing home's costs per medical assistance day of care and the standard medical assistance nursing home per diem rates established in accordance with this chapter or the medical assistance upper payment limit established in accordance with federal regulations.

- c. For a new nursing home, the department shall establish an interim special care rate that must be in effect for no fewer than ten months and no more than eighteen months. Costs for the period in which the interim special care rate is in effect must be used to establish a final special care rate.
- d. The matching funds for the special care rate must be from municipal or county funds.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$28,761, or so much of the sum as may be necessary, and from special funds derived from federal and other funds, the sum of \$337,114, or so much of the sum as may be necessary, to the department of human services for the purpose of funding a special care rate for qualifying nursing homes, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that before a political subdivision may provide local matching funding for the special care rate for qualifying nursing homes, the governing body of the political subdivision shall submit the question for approval of the funding from the general fund of the political subdivision to the qualified electors of the political subdivision.

SECTION 4. CONTINGENT EFFECTIVE DATE. This Act is contingent on the state department of health certifying to the legislative council, before April 16, 2009, that Richardton memorial hospital has notified the state department of health that the hospital is releasing the hospital's critical access designation.

SECTION 5. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2011, and after that date is ineffective.

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

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 433**HOUSE BILL NO. 1385**

(Representatives Weisz, Nelson, Pollert)
(Senators Erbele, Nething)

AN ACT to amend and reenact sections 50-24.6-02 and 50-24.6-04 of the North Dakota Century Code, relating to the drug use review board and the prior authorization program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

50-24.6-02. Drug use review board.

1. The board is established within the department for the implementation of a drug use review program.
2. The board consists of ~~sixteen~~ seventeen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have participated in programs in which prior authorization is used. The appointed members of the board must be:
 - a. Four physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, appointed by the North Dakota medical association;
 - b. Two physicians licensed in this state and actively engaged in the practice of medicine, appointed by the executive director of the department;
 - c. Four pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the North Dakota pharmaceutical association;
 - d. Two pharmacists licensed in this state and actively engaged in the practice of pharmacy, appointed by the executive director of the department;
 - e. One individual who represents consumer interests, appointed by the governor; ~~and~~
 - f. One pharmacist or physician representing the brand pharmaceutical industry appointed by the pharmaceutical research and manufacturers of America; and

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

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

50-24.6-04. (Effective through July 31, 2009) Prior authorization program.

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
 - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
 - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
 - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and

utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.

3. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or ~~AB-rated, or brand name drugs with a~~ generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize ~~or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses, such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:~~
 - a. ~~Acquired immune deficiency syndrome or human immunodeficiency virus; and~~
 - b. ~~Cancer~~ the following medication classes:
 - a. Antipsychotics;
 - b. Antidepressants;
 - c. Anticonvulsants;
 - d. Antiretrovirals, for the treatment of human immunodeficiency virus;
 - e. Antineoplastic agents, for the treatment of cancer; and
 - f. Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder.
4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
 - a. Establish policies and procedures necessary to implement the prior authorization program.
 - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
 - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

(Effective after July 31, 2009) Prior authorization program.

4. ~~The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance~~

recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:

- a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
 - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
 - e. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
 3. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
 4. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
 - a. Establish policies and procedures necessary to implement the prior authorization program.
 - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
 - e. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 434**SENATE BILL NO. 2097**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 3 of section 50-25.1-02 and section 50-25.1-11 of the North Dakota Century Code, relating to the definition of a sexually abused child and to who may receive confidential reports of child abuse and neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in subdivision a of subsection 1 of section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare ~~to any act, or by any individual who acts~~ in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.

SECTION 2. AMENDMENT. Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. ~~All reports~~ A report made under this chapter, as well as any other information obtained, ~~are~~ is confidential and must be made available to:

1. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information ~~in order~~ to determine whether to place the child in protective custody.
3. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
4. Any person who is the subject of a the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.
5. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.

6. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information identifying the subjects of a report as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. ~~Parents~~ A parent or a legally appointed guardian of a the child who is identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making reports the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

Approved May 1, 2009
Filed May 4, 2009

CHAPTER 435

HOUSE BILL NO. 1263

(Representatives Kreidt, Metcalf, Pietsch, Weisz)
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 50-32 of the North Dakota Century Code, relating to duties of assisted living facilities; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

Assisted living facilities - Duties - Educational requirements.

1. Each assisted living facility must have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria.
2. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. 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.
3. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:
 - a. An initial evaluation to meet tenancy criteria;
 - b. The tenancy agreement signed by the tenant or the tenant's legal representative;
 - c. If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; and
 - d. An itemized list of services provided for the tenant.

4. 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. 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.

SECTION 2. LEGISLATIVE COUNCIL STUDY - BASIC CARE AND ASSISTED LIVING FACILITIES. During the 2009-10 interim, the legislative council shall study how the state laws and administrative rules regulate basic care and assisted living facilities. The study must include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 436**HOUSE BILL NO. 1090**

(Human Services Committee)

(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to child care assistance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. For the purposes of this chapter:

1. "Allowable activities" means paid work, job search, attending job training or an education program, any activity in the job opportunity and basic skills program, transportation time related to the activities, temporary illness or incapacity of a current recipient, and temporary illness of the child.
2. "Approved relative" means an individual provider related to a child in that provider's care by marriage, blood, or court decree as a grandparent, step-grandparent, great grandparent, step-great grandparent, aunt, step-aunt, uncle, step-uncle, sibling, or step-sibling, who has been approved to care for specific children in the provider's own home, but does not mean a sibling provider who resides in the home of a child in that provider's care.
3. "Caretaker" means a child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request, but does not mean a provider.
4. "Child care assistance unit" means all members of the caretaker's immediate household, including a child through the month of that child's nineteenth birthday, and any parent or stepparent of a child, including an acknowledged or adjudicated father of one or more children in the household, but does not mean any other person who is not acting in the stead of a parent, a child who is nineteen years of age or older, a child for whom the household receives foster care payments, or a minor parent of a child in the household unless the minor parent also requires child care or is incapable of caring for the child.
5. "Child care center" has the meaning provided in chapter 50-11.1.
6. "County agency" means any county social services office.
7. "Department" means the department of human services.
8. "Family child care" has the meaning provided in chapter 50-11.1.

9. "Group child care" has the meaning provided in chapter 50-11.1.
10. "Provider" means an individual who is eighteen years of age or older, licensed as a provider in a family child care, group child care, or child care center, with a self-declaration as a provider of early childhood services who requires no license, registered as a child care provider by a tribal entity, or an approved relative, who meets criteria established by the jurisdiction with authority to regulate child care services.
11. "Recipient" means an individual who is receiving child care assistance.
12. "Tribal entity" means an organization authorized by the government of an Indian tribe within North Dakota to license, register, or otherwise recognize a child care provider operating within the jurisdiction of that Indian tribe.
13. "Work":
 - a. Means any paid employment and any self-employment providing commensurate income; and
 - b. Does not mean any unpaid activity except:
 - (1) With respect to a caretaker who is involved in job opportunity and basic skills or tribal native employment works required by temporary assistance for needy families, any approved activity for the program; and
 - (2) When a state has been determined to have a major disaster, activity by an individual who is residing in the disaster area and involved in unpaid work activities, including the cleaning, repair, restoration, and rebuilding of homes, businesses, and schools.

Child care assistance - Application for benefits - Applicant's duty to establish eligibility - Decisions - Rules.

1. An individual desiring child care assistance or an individual seeking assistance on behalf of another individual may apply for child care assistance. An applicant shall submit a request for child care assistance in writing to a county agency on a form prescribed by the department. The applicant shall complete, sign, and date the application. Eligibility begins on the first day of the month in which a signed and dated application is received by the county agency. Eligibility may begin on the first day of the month prior to the month in which a signed and dated application is received by the county agency, if the applicant requests child care assistance for that month and demonstrates eligibility in that month.
2. The applicant shall provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the age, verification of relative relationship, citizenship or resident alien status of the children, verification of participation in an allowable activity, and financial eligibility.

3. An eligibility decision must be made within fifteen days on child care assistance applications whenever possible. The county agency shall notify the applicant following a determination of eligibility or ineligibility.
4. The department shall establish rules for the administration of the child care assistance program, including rules on income requirements, appeals of eligibility determinations for child care assistance, closure of a child care assistance case, and a sliding scale fee schedule for child care assistance benefits and to establish and enforce standards against program fraud and abuse.

Available benefits.

1. The department shall pay child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families household or diversion assistance household. The department shall pay a portion of child care costs required as a result of participation in allowable activities by the caretaker based on family size and countable income by applying a sliding fee schedule established under rules to be adopted by the department.
2. Subject to the availability of funding, the department may expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a one-year, two-year, or four-year degree or certificate. If a child care assistance unit includes two parents, child care assistance may be paid with respect to any child only during times that both parents are engaged in an allowable activity.

Caretaker temporarily out of the home. A caretaker, temporarily living apart from the remaining members of the child care assistance unit due to employment, education, training, medical care, incarceration, or uniformed service, is not considered absent from the home as long as the caretaker continues to function as caretaker, even if the level of support or care is reduced. The caretaker is counted as a child care assistance unit member and all gross countable income of that caretaker is included as child care assistance unit income used to determine the child care assistance payment.

State of residence. Only child care assistance units physically residing within the boundaries of the state are eligible for child care assistance.

Approved relative provider.

1. The department may approve a relative provider to provide care for specific children within a specified county. The department shall provide an approved relative provider with a provider identification number. An approved relative provider may provide care for no more than five children under the age of twelve or three children under the age of two, including the provider's children.
2. Before approving an individual as an approved relative provider, the department shall seek a criminal history record investigation as provided under section 50-11.1-06.2 and pursuant to section 12-60-24. The department shall consider any criminal history record information available at the time approval decision is made. A background check

must be completed for each adult living in the household of the prospective provider.

3. No payment may be made to a relative provider who is not an approved relative provider.

Sliding fee schedule.

1. The sliding fee schedule established by the department for inclusion within the child care and development fund state plan to determine eligibility, benefit levels, and the portion of the allowable child care cost that may be paid as a benefit under this chapter, must not:
 - a. Exceed available federal and non-federal funding; and
 - b. Provide benefits to a family whose income exceeds eighty-five percent of the state median income for a family of the same size.
2. Child care costs that exceed maximums established under this section are the responsibility of the family and may not be considered in determining the child care assistance program payment amount.

Limitations on in-home child care benefits. No benefits under this chapter may be provided for in-home child care unless:

1. A health professional provides written documentation demonstrating to the department's satisfaction that the child's health would be at risk if taken to an outside provider; or
2. A developmental disabilities case manager or a special education case manager provides written documentation demonstrating to the department's satisfaction that the child's disability is such that taking the child to an outside provider creates an undue hardship.

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