

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 200

HOUSE BILL NO. 1108

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

AN ACT to amend and reenact sections 25-01-01.1, 25-01.2-01, 25-01.2-02, 25-01.2-03, 25-01.2-04, 25-01.2-08, 25-01.2-09, 25-01.2-11, 25-01.2-13, 25-01.2-14, 25-01.2-17, 25-04-01, 25-04-02, 25-04-03, 25-04-04, 25-04-05.1, 25-16-01, 25-16-02, 25-16-03, 25-16-03.1, 25-16-05, 25-16-06, 25-16-07, 25-16-08, 25-16-09, 25-16-12, 25-16-14, 25-16.1-01, 25-18-15, subsection 9 of section 43-12.1-04, sections 50-06-01.4, 50-06-06.3, 50-06-06.4, 50-10.1-01, and 57-38-01.16 of the North Dakota Century Code, relating to changing statutory references to "developmentally disabled persons" to "individual with a developmental disability" or "individuals with developmental disabilities".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01.1. State council on developmental disabilities.

There must be maintained in the department of human services a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. North Dakota department of human services.
3. State department of health.
4. Life skills and transition center.
5. Job service North Dakota.

The council shall, at a minimum, include representation that conforms to federal law requirements regarding state councils on developmental disabilities. All members of the council must be appointed by the governor. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings must be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council constitutes a quorum and may act upon any matter coming

before the council. Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, and review and comment on all state plans in the state which relate to programs affecting ~~persons~~individuals with developmental disabilities. The council may take any action reasonably necessary to secure and administer any money made available to state councils on developmental disabilities through the Developmentally Disabled and Bill of Rights Act [Pub. L. 95-602; 92 Stat. 2955; 42 U.S.C. 6000 et seq.]. The council, if approved by the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of ~~developmentally disabled persons~~individuals with developmental disabilities in North Dakota and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

SECTION 2. AMENDMENT. Section 25-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-01. Definitions.

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

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

2. "Institution or facility" means any school, hospital, residence center, group home, or any other facility operated by any public or private agency, organization, or institution, which provides services to ~~developmentally disabled persons~~ an individual with a developmental disability.
3. "Least restrictive appropriate setting" means that setting which allows the ~~developmentally disabled person~~ individual with a developmental disability to develop and realize the ~~person's~~ individual's fullest potential and enhances the ~~person's~~ individual's ability to cope with the ~~person's~~ individual's environment without unnecessarily curtailing fundamental personal liberties.
4. "Service or services for ~~developmentally disabled persons~~ an individual with a developmental disability" means services provided by any public or private agency, organization, or institution, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of a ~~developmentally disabled person~~ an individual with a developmental disability.

SECTION 3. AMENDMENT. Section 25-01.2-02 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-02. Appropriate treatment, services, and habilitation - Treatment in least restrictive appropriate setting.

All ~~persons~~ individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for those disabilities. Treatment, services, and habilitation for ~~developmentally disabled persons~~ individuals with a developmental disability must be provided in the least restrictive appropriate setting.

SECTION 4. AMENDMENT. Section 25-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

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

~~No developmentally disabled person~~ An individual with a developmental disability may not be presumed to be incompetent ~~or~~ and may not be deprived of any constitutional, civil, or legal right solely because of admission to or residence at an institution or facility or solely because of receipt of services for ~~developmentally disabled persons~~ individuals with a developmental disability. However, nothing in this section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal rights which may not be varied or modified under the provisions of this section include:

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

SECTION 5. AMENDMENT. Section 25-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as provided in this section, every person/individual who resides in a mental health or developmental disabilities institution or facility has the right of private, unimpeded, uncensored communication with persons of the resident's choice by mail, telephone, and visitation.
 - 1-a. The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for private visitation is available.
 - 2-b. The facility director may establish in writing reasonable times and places for use of telephones and for visits, provided that a resident's ability to contact an attorney may not be restricted and provided that any rules or restrictions must be posted in each residential facility. A copy of any rules or restrictions must be given to all residents over eighteen years of age and to the parents or guardian of all residents under eighteen years of age, upon admission.
2. This section applies only with respect to an institution or facility that provides residential care.

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

25-01.2-08. Medication - Chemical restraints.

No person/individual receiving services at any institution or facility for the ~~developmentally disabled/individuals with developmental disabilities~~ may at any time be administered any drug or medication, or be chemically restrained or tranquilized in any manner, except upon the written authorization of a licensed physician when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for that treatment. The nature, amount of, and reasons for the administration of any drug or medication must be promptly recorded in the person's medical record.

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

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

No person/individual receiving services at any institution or facility for the ~~developmentally disabled/individuals with developmental disabilities~~ may at any time:

1. Be subjected to any corporal punishment.
2. Be isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person/individual or other persons/individuals.
3. Be physically restrained in any manner, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that person/individual or to other persons/individuals.

4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may ~~a person~~ an individual receiving treatment be subjected to hazardous or intrusive experimental research which is not directly related to the specific goals of that ~~person's~~ individual's treatment program.
5. Be subjected to electroconvulsive therapy or shock treatment without that ~~person's~~ individual's written and informed consent. If the recipient of services is a minor, the recipient's parent or guardian may provide informed consent for that treatment which the parent or guardian believes to be in the recipient's best interests.

SECTION 8. AMENDMENT. Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

SECTION 9. AMENDMENT. Section 25-01.2-13 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-13. Education.

Every ~~developmentally disabled child~~ with a developmental disability is entitled to a free and appropriate education in the least restrictive appropriate setting in accordance with chapter 15.1-32.

SECTION 10. AMENDMENT. Section 25-01.2-14 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-14. Individualized habilitation or education plan - Contents.

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

1. Be developed and put into effect within thirty days following admission of the ~~person~~ individual.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation or education goals for the ~~person~~ individual and the intermediate objectives relating to the attainment of those goals. The objectives must be stated specifically, in sequence, and in behavioral or other terms that provide measurable indices of progress.
4. State an objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe the personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the ~~developmentally disabled person~~ individual with a developmental disability appears to need a guardian and determine the type of protection needed by the individual based on the individual's actual mental and adaptive limitations and other conditions which may warrant the appointment of a guardian. Any member of the individual habilitation plan team may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian.

SECTION 11. AMENDMENT. Section 25-01.2-17 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-17. Enforcement of rights.

Every ~~developmentally disabled person~~ individual with a developmental disability is entitled to enforce any of the rights guaranteed by this chapter by civil action or any other remedy available by common law or statute. In any proceeding to enforce these rights, the court may, in its discretion, award reasonable attorney's fees and costs to a successful plaintiff. A ~~developmentally disabled person~~ An individual with a developmental disability who is successful in an administrative proceeding may also

be awarded reasonable attorney's fees and costs. Any award of attorney's fees and costs must be in addition to any actual or punitive damages to which the ~~person~~individual may be entitled.

SECTION 12. AMENDMENT. Section 25-04-01 of the North Dakota Century Code is amended and reenacted as follows:

25-04-01. Life skills and transition center - Name - Administration and control.

A facility for ~~developmentally disabled persons~~individuals with developmental disabilities must be maintained at or near the city of Grafton in Walsh County. The facility must also be available for a ~~person~~an individual who is determined to be a ~~person~~an individual who may benefit from the facility's services. The facility must be known and designated as the life skills and transition center. The department of human services has administrative authority and control of the life skills and transition center.

SECTION 13. AMENDMENT. Section 25-04-02 of the North Dakota Century Code is amended and reenacted as follows:

25-04-02. Purpose of life skills and transition center.

1. The life skills and transition center must be maintained for the relief, instruction, care, and custody of ~~persons who are developmentally disabled~~individuals with developmental disabilities or other ~~persons~~individuals who may benefit from the services offered at the center. For this purpose the department of human services may introduce and establish such trades and manual industries as in its judgment will best prepare the residents for future self-support.
2. The department may provide onsite and offsite additional services and effectuate its powers and duties to best serve ~~persons who are developmentally disabled~~individuals with developmental disabilities and other ~~persons~~individuals who may benefit from those activities. The services provided and the duties effectuated need not be accredited by the accreditation council on services for people with developmental disabilities or certified by the health care financing administration, or any other similar accrediting or certifying organization, if the service or duty is not provided to ~~persons who are developmentally disabled~~individuals with developmental disabilities or if such accrediting or certifying organization does not accredit or certify the service or duty.

SECTION 14. AMENDMENT. Section 25-04-03 of the North Dakota Century Code is amended and reenacted as follows:

25-04-03. Qualifications of superintendent.

The superintendent of the life skills and transition center must be a skilled administrator with professional training and experience relating to the needs of the ~~developmentally disabled~~individuals with developmental disabilities. All employees must be appointed and removed by the superintendent or by the superintendent's designee. The salaries of all employees shall be fixed by the superintendent or the superintendent's designee within the limits of the legislative appropriations made for such purpose.

SECTION 15. AMENDMENT. Section 25-04-04 of the North Dakota Century Code is amended and reenacted as follows:

25-04-04. Who may receive benefits of life skills and transition center.

Subject to this chapter and to any rules adopted by the department of human services, the benefits of the life skills and transition center may be received by:

1. ~~Persons who are developmentally disabled~~Individuals with developmental disabilities and other ~~persons~~individuals who may benefit from services provided at the life skills and transition center who, in the opinion of the superintendent of the life skills and transition center are of suitable age and capacity to receive instruction in the center and whose deficiencies prevent them from receiving proper training and instruction in the public schools;
2. ~~Persons who are developmentally disabled~~Individuals with developmental disabilities and other ~~persons~~individuals who may benefit from services provided at the life skills and transition center who cannot be properly cared for in their homes or other available facilities; or
3. ~~Persons who are developmentally disabled~~Individuals with developmental disabilities and other ~~persons~~individuals who may benefit from onsite and offsite services provided or duties effectuated by the life skills and transition center.

Residents and nonresidents of this state may receive the benefits of the life skills and transition center. Priority, however, must be given to residents of this state and first priority must be given to ~~persons who are developmentally disabled~~individuals with developmental disabilities.

SECTION 16. AMENDMENT. Section 25-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-05.1. Transfer of residents - Visiting privileges - Release and placement of patients.

1. The superintendent shall have the right of temporary transfer of any resident of the life skills and transition center to an appropriate hospital or other specialized facility when in the superintendent's opinion the immediate health and safety of the resident requires the transfer. The superintendent shall also have the right and responsibility of indefinite transfer of a resident from one state facility for the ~~developmentally disabled~~individuals with developmental disabilities to another when the best interest of the resident will be served thereby, or when the transfer is required in conformity with the policies of the department of human services; provided, however, that no transfer may be effected until all reasonable efforts have been made to consult with the resident's parent or guardian of the person.
2. Subject to reasonable rules for the orderly operation of the life skills and transition center or other state facility for the ~~developmentally disabled~~individuals with developmental disabilities, any parent or guardian of the person of a resident shall have the right of visiting and communicating with a child or ward and authorizing visits and communications with others.
3. The superintendent may authorize the temporary release of any resident to the custody of the resident's parent or guardian of the person, or to another

person designated by the parent or such guardian. In the absence of such authorization, any parent or guardian of the person of any resident may formally request, in writing, the resident's temporary release. The release must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a release is, or would be, effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent or such guardian in writing.

4. The superintendent may arrange for the suitable placement of a resident outside the life skills and transition center or other state facility and to release the resident on placement, provided placement has been preceded by a comprehensive evaluation. No such placement may be effected until all reasonable efforts have been made to consult with the resident's parent or guardian of the person.

SECTION 17. AMENDMENT. Section 25-16-01 of the North Dakota Century Code is amended and reenacted as follows:

25-16-01. Definitions.

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

1. "Department" means the department of human services.
2. "Treatment or care center" means any hospital, home, or other premises operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to ~~developmentally disabled persons~~individuals with a developmental disability.

SECTION 18. AMENDMENT. Section 25-16-02 of the North Dakota Century Code is amended and reenacted as follows:

25-16-02. License required.

The operator of a treatment or care center for ~~developmentally disabled persons~~individuals with a developmental disability shall secure annually from the department a license as required by rules adopted under this chapter.

SECTION 19. AMENDMENT. Section 25-16-03 of the North Dakota Century Code is amended and reenacted as follows:

25-16-03. Requirements for license.

The department shall issue a license for the operation of a treatment or care center for ~~developmentally disabled persons~~individuals with a developmental disability upon a showing that:

1. The premises to be used are in fit, safe, sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the center and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The health, ~~morality~~, safety, and well-being of the residents cared for and treated therein will be properly safeguarded;

4. There is sufficient entertainment, treatment, educational, and physical facilities and services available to the residents therein;
5. Appropriate arrangements are made for a medical and psychological examination of each resident; and
6. The provider is in compliance with rules adopted by the department under this chapter.

SECTION 20. AMENDMENT. Section 25-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

25-16-03.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the division determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a treatment or care center for ~~developmentally disabled persons~~individuals with a developmental disability, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 21. AMENDMENT. Section 25-16-05 of the North Dakota Century Code is amended and reenacted as follows:

25-16-05. Content of license.

The license to operate a treatment or care center for ~~developmentally disabled persons~~individuals with a developmental disability issued under the provisions of this chapter must specify:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of residents who may be received in such premises at any one time.
4. The date of expiration of the license.

SECTION 22. AMENDMENT. Section 25-16-06 of the North Dakota Century Code is amended and reenacted as follows:

25-16-06. Department to prescribe forms - Rules.

The department may prescribe forms for the registration and record of the persons residing in treatment or care centers for ~~developmentally disabled persons~~individuals with a developmental disability and may adopt reasonable rules for the conduct of such centers as are necessary to carry out the purposes of this chapter.

SECTION 23. AMENDMENT. Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

25-16-07. Records of treatment or care center confidential.

Except as otherwise authorized by law, an agent of the department of human services or the superintendent of the life skills and transition center or the licensee or

their agents or employees may not disclose the contents of the individual records of a treatment or care center for ~~developmentally disabled persons~~ developmentally disabled individuals with a developmental disability, nor of the reports received from those records, except:

1. In a judicial proceeding when ordered by the presiding judge;
2. To a law enforcement official for a law enforcement purpose or any other legally constituted boards or agencies serving the interests of the residents for treatment, payment, or health care operations, to arrange, facilitate, or coordinate service to any such person;
3. To the parents or legal guardians of the resident;
4. To a physician to aid in the treatment of an individual within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to genetic health information that has a direct bearing on the health of the relative, the relative's child, or the relative's decision to have a child; or
5. To an individual who is within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to information about a resident needed to establish a family's genealogy.

SECTION 24. AMENDMENT. Section 25-16-08 of the North Dakota Century Code is amended and reenacted as follows:

25-16-08. Revocation of license.

The department may revoke a license of a treatment or care center for ~~developmentally disabled persons~~ individuals with a developmental disability upon a proper showing that:

1. Any of the conditions set forth in section 25-16-03 as requirements for the issuance of the license no longer exists;
2. The license was issued upon fraudulent or untrue representations;
3. The owner or operator has violated any of the rules of the department; or
4. The owner or operator of the center has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the department determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 25. AMENDMENT. Section 25-16-09 of the North Dakota Century Code is amended and reenacted as follows:

25-16-09. Hearing on denial or revocation of license.

Before any application for a license to conduct a treatment or care center for ~~developmentally disabled persons~~ individuals with a developmental disability is denied or before the revocation of such license by the department, written charges as to the reasons ~~therefor~~ for the revocation or denial must be served upon the applicant or licensee, who ~~shall have the~~ has a right to a hearing before the department, if a hearing is requested within ten days after service of written charges.

SECTION 26. AMENDMENT. Section 25-16-12 of the North Dakota Century Code is amended and reenacted as follows:

25-16-12. Efforts to obtain private and governmental grants.

The department of human services and the duly licensed treatment or care centers for ~~developmentally disabled persons~~individuals with a developmental disability may exert all possible efforts to obtain grants, both private and governmental, for the care, custody, treatment, training, and education of ~~developmentally disabled persons~~individuals with a developmental disability.

SECTION 27. AMENDMENT. Section 25-16-14 of the North Dakota Century Code is amended and reenacted as follows:

25-16-14. Definitions - Group homes for ~~developmentally disabled persons~~individuals with developmental disabilities - Zoning.

1. For the purposes of this section:

- a. "Group home" means any community residential facility, foster home, family care facility, or other similar home for individuals with a developmental disability.
- b. "Developmentally disabled personIndividual with a developmental disability" means ~~a person~~an individual with a severe, chronic disability which:
 - (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (2) Is manifested before the ~~person~~individual attains age twenty-two;
 - (3) Is likely to continue indefinitely;
 - (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (a) Self-care;
 - (b) Receptive and expressive language;
 - (c) Learning;
 - (d) Mobility;
 - (e) Self-direction;
 - (f) Capacity for independent living; and
 - (g) Economic sufficiency; and
 - (5) Reflects the ~~person's~~individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are lifelong or extended duration and are individually planned and coordinated.

- b. ~~"Group home" means any community residential facility, foster home, family care facility, or other similar home for developmentally disabled persons.~~
2. Notwithstanding the provisions in chapter 11-33, 40-47, or 58-03, or any other provisions authorizing any political subdivision to establish or enforce zoning regulations, a licensed group home serving six or fewer ~~developmentally disabled persons~~individuals with a developmental disability must be considered a permitted use in a single-family or equivalent least-density residential zone, and a licensed group home serving eight or fewer ~~developmentally disabled persons~~individuals with a developmental disability must be considered a permitted use in any area zoned for residential use of greater density than single-family use.

SECTION 28. AMENDMENT. Section 25-16.1-01 of the North Dakota Century Code is amended and reenacted as follows:

25-16.1-01. Definitions.

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

1. "Department" means the department of human services.
2. "Treatment or care center" means any hospital, home, or other premises, operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to ~~developmentally disabled persons~~individuals with developmental disabilities.

SECTION 29. AMENDMENT. Section 25-18-15 of the North Dakota Century Code is amended and reenacted as follows:

25-18-15. Payment for services to medically fragile children.

The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty-one years of age, and the actual and reasonable cost of providing services to ~~developmentally disabled individuals~~individuals with developmental disabilities when reimbursing an intermediate care facility for individuals with intellectual disabilities.

SECTION 30. AMENDMENT. Subsection 9 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. A person that provides medications, other than by the parenteral route:
 - a. Within a correctional facility, in compliance with section 12-44.1-29;
 - b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
 - c. Within a treatment or care center for ~~developmentally disabled persons~~individuals with developmental disabilities licensed under chapter 25-16;
 - d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16;

- e. Within the life skills and transition center, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services;
- f. Within a human service center licensed under chapter 50-06; or
- g. Within a primary or secondary school under a program established under section 15.1-19-23 if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian.

SECTION 31. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department.

1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:
 1. a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
 2. b. Administration of programs for ~~persons~~individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
 3. c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.
 4. d. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
 5. e. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.

- 6- f. Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance program, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
- 7- g. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, utilization control, and claims processing.
2. The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the North Dakota vision services - school for the blind to develop programs for ~~developmentally disabled persons~~individuals with developmental disabilities; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 32. AMENDMENT. Section 50-06-06.3 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.3. Facility staff training.

It is the intent of the legislative assembly that the department of human services design and implement a facility staff training system in cooperation with the board of higher education to assure adequate and appropriate staff development and training for the providers of community-based care on behalf of ~~developmentally disabled persons~~individuals with developmental disabilities.

SECTION 33. AMENDMENT. Section 50-06-06.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.4. Comprehensive community residential program.

It is the intent of the legislative assembly that the department of human services implement a comprehensive community residential program for ~~developmentally disabled children~~with developmental disabilities, including the use of intermediate care facilities and other such foster home and group home resources as deemed appropriate.

SECTION 34. AMENDMENT. Section 50-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

50-10.1-01. Definitions.

As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.
3. "Long-term care facility" means any skilled nursing facility, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, assisted living facility, or swing-bed hospital approved to furnish long-term care services;

provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to ~~developmentally disabled persons~~individuals with developmental disabilities is not a long-term care facility.

4. "Resident" means ~~a person~~an individual residing in and receiving personal care from a long-term care facility.

SECTION 35. AMENDMENT. Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.16. Income tax credit for employment of ~~developmentally disabled individuals with developmental disabilities~~ or chronically mentally ill persons.

A taxpayer filing an income tax return under this chapter may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to ~~a developmentally disabled~~an employee with a developmental disability or a chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each ~~developmentally disabled~~employee with a developmental disability or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

Approved March 25, 2015

Filed March 25, 2015

CHAPTER 201

HOUSE BILL NO. 1040

(Legislative Management)
(Health Care Reform Review Committee)

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-04, 25-03.1-06, 25-03.1-07, 25-03.1-08, 25-03.1-10, 25-03.1-11, 25-03.1-16, 25-03.1-17, 25-03.1-18.1, and 25-03.1-19, subsection 3 of section 25-03.1-21, and sections 25-03.1-23, 25-03.1-25, 25-03.1-26, 25-03.1-27, 25-03.1-41, and 25-03.1-42 of the North Dakota Century Code, relating to scope of practice in involuntary commitment proceedings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions.

In this chapter, unless the context requires otherwise:

1. "Advanced practice registered nurse" means an individual who is licensed as an advanced practice registered nurse under chapter 43-12.1 within the role of certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree in psychiatric and mental health nursing from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing. This chapter does not expand the scope of practice of an advanced practice registered nurse beyond the scope of practice established by the state board of nursing.
2. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
- ~~2-3.~~ "Chemically dependent person" or "person who is chemically dependent" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
- ~~3-4.~~ "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
- ~~4-5.~~ "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
- ~~5-6.~~ "Department" means the department of human services.
- ~~6-7.~~ "Director" means the director of a treatment facility or the director's designee.

- 7-8. "Expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.
- 8-9. "Independent expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.
- 9-10. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
- 40-11. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. ~~A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program~~An advanced practice registered nurse.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of ~~a registered nurse as defined by subdivision c or~~ of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
 - g. A physician assistant.
- 44-12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder ~~which~~that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. ~~"Mentally ill person"~~The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning ~~which~~that originates during the developmental period and is associated with impairment in adaptive behavior, although ~~a person~~an individual who is intellectually disabled may also ~~suffer from a mental illness~~be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although ~~persons suffering from that condition~~a person who is chemically dependent may also be ~~suffering from mental illness~~a person who is mentally ill.

- ~~42-13.~~ "Person requiring treatment" means a person who is mentally ill or a person who is chemically dependent, and there is a reasonable expectation that if the ~~person~~individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that ~~person~~individual, others, or property. "Serious risk of harm" means a substantial likelihood of:
- ~~a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;~~
 - ~~b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;~~
 - ~~c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or~~
 - ~~d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.~~
- ~~43-14.~~ "Physician assistant" means an individual licensed to practice as a physician assistant under chapter 43-17, who is authorized by the state board of medical examiners to practice in the field of psychiatry, holds a certification in psychiatry approved by the board, and is practicing under the supervision of a psychiatrist licensed to practice medicine in this state. This chapter does not expand the scope of practice of a physician assistant beyond the scope of practice authorized by the state board of medical examiners.
15. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.
- 44-16. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
- 45-17. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
- 46-18. "Qualified service organization" means a ~~person or entity~~ that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
- 47-19. "Respondent" means ~~a person~~an individual subject to petition for involuntary treatment.
20. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;

- b. Killing or inflicting serious bodily harm on another individual or inflicting significant property damage, as manifested by acts or threats;
- c. Substantial deterioration in physical health or substantial injury, disease, or death based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
- d. Substantial deterioration in mental health which would predictably result in dangerousness to that individual, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions or based upon acts, threats, or patterns in the individual's treatment history, current condition, and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.

~~48-21.~~ "Superintendent" means the state hospital superintendent or the superintendent's designee.

~~49-22.~~ "Third-party payer" means a person ~~or entity who~~that pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person ~~or entity~~ providing audit or evaluation activities for the third-party payer.

~~20-23.~~ "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to ~~persons~~individuals suffering from a mental disorder or chemical dependencywho are mentally ill or chemically dependent.

SECTION 2. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility.

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed, in person ~~whenever~~when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall

immediately designate a physician, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional to examine the individual.

SECTION 3. AMENDMENT. Section 25-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-06. Right to release on application - Exception - Judicial proceedings.

Any ~~person~~individual voluntarily admitted for inpatient treatment to any treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.

SECTION 4. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-07. Involuntary admission standards.

~~A person~~An individual may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined that the individual is a person requiring treatment.

SECTION 5. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional.

1. Any ~~person~~individual eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that ~~person~~applicant to represent the applicant throughout the proceedings. The attorney shall assist the ~~person~~applicant in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent.
2. The petition may be accompanied by any of the following:
 - 1-a. A written statement supporting the petition from a psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse, or addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.

2-b. One or more supporting affidavits otherwise corroborating the petition.

3. In assisting the ~~person~~applicant in completing the petition, the state's attorney may direct a qualified mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 6. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination.

If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse, or addiction counselor who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

SECTION 7. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental

health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:

- a. Evaluations of the respondent's physical condition and mental status.
 - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.
2. For purposes of any examination conducted pursuant to this section:
- a. An evaluation of a respondent's physical condition may be made only by a licensed physician or physician assistant, psychiatrist, or advanced practice registered nurse.
 - b. An evaluation of a respondent's mental status may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program.
 - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be ~~suffering from mental illness~~ person who is mentally ill or a combination of ~~mental illness and chemical dependency~~ person who is both mentally ill and chemically dependent, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 8. AMENDMENT. Section 25-03.1-16 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-16. Medication pending treatment order.

A patient who has requested release or a ~~person~~ individual who is the subject of a petition for treatment has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, a physician, a physician assistant, or an advanced practice registered nurse may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the ~~prescribing physician~~ prescriber, the need for the medication still exists or discontinuation would hamper the respondent's preparation for and participation in the proceedings.

SECTION 9. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - Right to preliminary hearing.

A respondent who is in custody under section 25-03.1-25 and who is alleged to be a mentally ill ~~person~~ or to be suffering from a combination of chemical dependency and mental illness ~~person who is both mentally ill and chemically dependent~~ is entitled to a preliminary hearing. At the preliminary hearing the magistrate shall review the medical report. During the hearing the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The ~~person~~ individual must be ordered discharged from the treatment facility if that ~~person~~ individual has been detained before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it shall consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it finds that alternative treatment is not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent and give written notice that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

SECTION 10. AMENDMENT. Section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.1. Court-authorized involuntary treatment with prescribed medication.

1. a. Upon notice and hearing, a treating psychiatrist may request authorization from the court to treat a ~~person~~ individual under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, the treating psychiatrist and another licensed physician ~~or, physician assistant, psychiatrist, or advanced practice registered nurse~~ not involved in the current diagnosis or treatment of the patient shall certify:

- (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
 - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - (4) That the benefits of the treatment outweigh the known risks to the patient.
 - b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.
2. a. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22, or at a separate hearing after motion and notice. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
- (1) The danger the patient presents to self or others;
 - (2) The patient's current condition;
 - (3) The patient's treatment history;
 - (4) The results of previous medication trials;
 - (5) The efficacy of current or past treatment modalities concerning the patient;
 - (6) The patient's prognosis; and
 - (7) The effect of the patient's mental condition on the patient's capacity to consent.
- b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.
3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision, or it may issue a separate order after notice and hearing, authorizing the treating psychiatrist to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days.

4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the treating psychiatrist has requested authorization for involuntary treatment with prescribed medication, only a psychiatrist may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 11. AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing.

The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All ~~persons~~individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit ~~persons~~individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence ~~which~~that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, ~~it~~the court shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

SECTION 12. AMENDMENT. Subsection 3 of section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

3. If a peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, clinical psychologist, advanced practice registered nurse, or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment, that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that considerations of time and safety do not allow intervention by a court, the designated professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the

circumstances and factors of the case. The state hospital or public treatment facility ~~must~~shall immediately accept, if appropriately screened and medically stable, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the evidence presented and other available information:

- a. Release the individual from hospitalization and continue the alternative treatment order;
- b. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or
- c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital under section 25-03.1-30.

SECTION 13. AMENDMENT. Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-23. Petition for continuing treatment orders.

A petition for an order authorizing continuing treatment must contain a statement setting forth the reasons for the determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or licensed addiction counselor, any of whom is practicing within that individual's professional scope of practice.

SECTION 14. AMENDMENT. Section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that ~~person~~individual, ~~other persons~~others, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the ~~person~~individual to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that

individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:

- a. Without conducting an immediate examination required under section 25-03.1-26; and
 - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, ~~other persons~~others, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.
3. Detention under this section may be:
- a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
 - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
4. Immediately upon being taken into custody, the ~~person~~individual must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the ~~person~~individual undergoes, and of the ~~person's~~individual's rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional who conveyed the ~~person~~individual or who caused the ~~person~~individual to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or the mental health professional who caused the ~~person~~individual to be conveyed. The written report must state the circumstances under which the ~~person~~individual was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that ~~person's~~individual's condition, there exists a serious risk of harm to that ~~person~~individual, ~~another person~~others, or property if the ~~person~~individual is not immediately detained.

SECTION 15. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the ~~person~~individual admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the ~~person~~individual if the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of the ~~person's~~individual's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.
2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be ~~suffering from mental illness~~a person who is mentally ill or ~~from a combination of mental illness and chemical dependency~~a person who is both mentally ill and chemically dependent, or a treatment hearing, if the respondent is alleged to be ~~suffering from chemical dependency~~a person who is chemically dependent, to be held no later than four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 16. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. ~~Whenever any person~~When an individual is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:
 - a. A copy of the petition which asserted that the individual is a person requiring treatment.
 - b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.
 - c. A written statement in simple terms explaining the rights of the individual alleged to be ~~suffering from mental illness~~a person who is mentally ill or ~~from a combination of mental illness and chemical dependency~~a person who is both mentally ill and chemically dependent to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.

- d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.
2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain ~~them~~the written material in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 17. AMENDMENT. Section 25-03.1-41 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-41. Limitations and restrictions of patient's rights.

The rights enumerated in subsections 5, 6, 7, and 8 of section 25-03.1-40 may be limited or restricted by the treating physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program, if in that ~~person's~~individual's professional judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules adopted pursuant to section 25-03.1-46. ~~Whenever~~When a physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules, a written order specifying the restriction and the reasons for the restriction must be signed by the physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program and attached to the patient's chart. These restrictions must be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 18. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information ~~whewhich~~ makes the petition for involuntary treatment of ~~another person~~an individual under this chapter is not subject to civil or criminal liability.
2. A physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.
3. A person ~~whothat~~ makes a petition for involuntary treatment of ~~another person~~an individual without having good cause to believe that the ~~other person~~individual is ~~suffering from mental illness or chemical dependency~~a person who is both mentally ill and chemically dependent and as a result is likely to cause serious harm to self or others is guilty of a class A misdemeanor.

Approved April 13, 2015
 Filed April 13, 2015

CHAPTER 202

SENATE BILL NO. 2047

(Legislative Management)
(Human Services Committee)

AN ACT to amend and reenact sections 25-03.2-01, 25-03.2-03, 25-03.2-07, and 25-03.2-10 of the North Dakota Century Code, relating to psychiatric residential treatment facilities for children and rulemaking authority of the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.2-01 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Child" or "children" means a person or persons under the age of twenty-one.
2. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery, ~~provided by qualified mental health professionals.~~
3. "Department" means the department of human services.
4. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques ~~provided by a mental health professional.~~
5. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
6. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
7. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must meet the requirements of a psychiatric residential treatment facility as set out in title 42, Code of Federal Regulations, part 483.352.

8. ~~"Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.~~
9. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

SECTION 2. AMENDMENT. Section 25-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03. Requirements for license.

The department shall issue a license for the operation of a psychiatric residential treatment facility for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the facility holds, at a minimum, a master's degree in social work, psychology, or in a related field with at least two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances. The executive director of the facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the facility is supervised by the program director and qualified by training and experience to provide services to children suffering from mental illnesses or emotional disturbances. The facility annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the children cared for and treated in the facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the children in the facility;
6. The facility will provide for a medical and psychological examination of each child within seventy-two hours of admission and thereafter as needed by the child;
7. ~~An interdisciplinary team consisting of at least one qualified mental health professional~~ will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the child;
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's family, school, and community upon discharge to ensure continuity of care; and
9. The facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and

title 42, Code of Federal Regulations, part 441, and with this chapter and rules adopted under this chapter.

SECTION 3. AMENDMENT. Section 25-03.2-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-07. Method of providing service.

A psychiatric residential treatment facility for children shall provide for the development of an individual treatment plan, based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the therapeutic activities and treatment, provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services, consistent with the individual treatment plan, to children. Clinical supervision of the individual treatment plan must be accomplished ~~by full-time or part-time employment of or contracts with qualified mental health professionals as set forth by the department in rules.~~ Clinical supervision must be documented ~~by the qualified mental health professionals co-signing in~~ individual treatment plans and by entries in the child's record regarding supervisory activity.

SECTION 4. AMENDMENT. Section 25-03.2-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.2-10. Department may adopt rules.

The department may adopt rules for the conduct of psychiatric residential treatment facilities for children and shall adopt rules defining which professionals may provide clinical supervision and review, and may develop, update, and sign an individual treatment plan within a psychiatric residential treatment facility for children.

Approved March 13, 2015

Filed March 13, 2015

CHAPTER 203

HOUSE BILL NO. 1366

(Representatives Maragos, Hofstad, D. Johnson)
(Senator Oehlke)

AN ACT to provide for collaboration between the school for the deaf and school districts on the provision of appropriate services and resources to children who are deaf or hearing impaired and the families of children who are deaf or hearing impaired.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. COLLABORATION BETWEEN SCHOOL FOR THE DEAF AND SCHOOL DISTRICTS TO PROVIDE SERVICES AND RESOURCES TO CHILDREN WHO ARE DEAF OR HEARING IMPAIRED.

1. The school for the deaf shall collaborate with school districts to ensure that children who are deaf or hearing impaired and families of children who are deaf or hearing impaired receive appropriate services and have access to appropriate resources including:
 - a. Screening and assessment of hearing capabilities and communication and language needs at the earliest possible age, and continuation of screening services throughout the child's educational experience;
 - b. Early intervention to provide for acquisition of solid language bases at the earliest age possible;
 - c. The opportunity to interact in person or through technological mediums with adult role models and peers who are deaf or hearing impaired;
 - d. Qualified teachers, interpreters, and resource personnel, who communicate effectively with the child in the child's mode of communication; and
 - e. Placement best suited to the child's needs such as social, emotional, cultural, age-related, hearing loss, academic level, mode of communication, style of learning, motivational level, and family support needs.
2. The school for the deaf shall:
 - a. Make information available to parents of children who are deaf or hearing impaired; and
 - b. Provide awareness information to the public concerning medical, cultural, and linguistic issues of deafness and hearing loss.

Approved April 15, 2015
Filed April 15, 2015

CHAPTER 204

SENATE BILL NO. 2334

(Senators J. Lee, Anderson)
(Representatives Delmore, Hofstad, Weisz)

AN ACT to create and enact sections 25-17-02.1 and 25-17-07 of the North Dakota Century Code, relating to the state's newborn screening program; to amend and reenact sections 23-01-03.1, 25-17-00.1, 25-17-01, 25-17-03, 25-17-05, and 25-17-06 of the North Dakota Century Code, relating to the state's newborn screening program; and to repeal section 25-17-04 of the North Dakota Century Code, relating to the state's newborn screening program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-01-03.1. Newborn metabolic and genetic disease screening tests.

1. The health council may authorize the use of newborn metabolic and genetic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected. shall adopt rules relating to the storage, maintenance, and disposal of blood spots or other newborn screening specimens.
2. The health council shall specify a panel of metabolic diseases and genetic diseases for which newborn screening must be performed. The screening panel must include disorders and diseases selected by the state health officer with input from an advisory committee that is approved by the health council.

SECTION 2. AMENDMENT. Section 25-17-00.1 of the North Dakota Century Code is amended and reenacted as follows:

25-17-00.1. Definitions.

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

1. "Confirmatory-diagnostic testing" means testing to prove or disprove the presence of a specific metabolic disease or genetic disease.
2. "Confirmatory-diagnostic testing laboratory" means a laboratory performing confirmatory-diagnostic testing.
3. "Department" means the state department of health.
4. "Licensed clinician" means a currently licensed physician, physician assistant, or advanced practice registered nurse.

5. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physicianlicensed clinician for the dietary treatment of a metabolic disease. The term does not include a natural food that is naturally low in protein.
- 2-6. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physicianlicensed clinician.
- 3-7. "Metabolic disease" and "genetic disease" mean a disease as designated by rule of the state health council for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.
8. "Newborn screening program" means a program facilitating access to appropriate testing, followup, diagnosis, intervention, management, evaluation, and education regarding metabolic diseases and genetic diseases identified in newborns.
9. "Out-of-range screening result" means a screening result that is outside of the expected range of testing results established for a particular disease.
10. "Responsible clinician" means the licensed clinician, midwife, naturopath, or birth attendant attending a newborn.
11. "Screening" means initial testing of a newborn for the possible presence of metabolic disease or genetic disease.
12. "Screening laboratory" means the laboratory the department selects to perform screening.

SECTION 3. AMENDMENT. Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

25-17-01. Newborn screening education programs and tests.

The state department of health shall:

1. Develop and implement a metabolic disease and genetic disease educational program among physicianslicensed clinicians, hospital staffs, public health nurses, and the citizens of this state. This educational program must include information about the nature of the diseases and about screening for the early detection of these diseases so that proper measures may be taken to reduce mortality, morbidity, and associated disabilities.
2. Provide, on a statewide basis, a newborn screening ~~system and short-term followup services for metabolic and genetic diseases~~program.
3. Coordinate with or refer individuals to public and private health care service providers for long-term followup services for metabolic diseases ~~or~~ and genetic diseases, ~~or both~~.
4. Select a screening laboratory.

5. Store, maintain, and dispose of blood spots used for screening.

SECTION 4. Section 25-17-02.1 of the North Dakota Century Code is created and enacted as follows:

25-17-02.1. Testing and reporting requirements.

1. A responsible clinician shall provide the parents and guardians of a newborn written information on the nature of newborn screening and confirmatory-diagnostic testing. The parents or guardians of a newborn may object to screening after receiving the written information. A newborn may not be subject to screening to which the newborn's parents or guardians object. In the case of an objection, the responsible clinician shall record the objection in a document signed by the parents or guardians and shall submit the document to the department.
2. The responsible clinician attending a newborn shall cause that newborn to be subjected to screening in the manner prescribed by the department.
3. The screening laboratory shall provide to the department screening results and any blood spots used in screening.
4. If screening shows an out-of-range screening result, the responsible clinician shall cause the newborn to be subjected to appropriate clinical followup by a licensed clinician which may include confirmatory-diagnostic testing. The responsible clinician shall ensure the department receives any confirmatory-diagnostic testing results.
5. A licensed clinician attending a patient with a metabolic disease or genetic disease that was not detected by the state's newborn screening program shall report the case to the department.

SECTION 5. AMENDMENT. Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

25-17-03. Treatment for positive diagnosis - Registry of cases.

The state department of health shall:

1. Follow up with attending physicians~~Notify responsible clinicians regarding cases with positive tests for metabolic diseases or genetic diseases, or both,~~out-of-range screening results or positive confirmatory-diagnostic testing results in order to determine the exact diagnosis~~facilitate access to appropriate treatment. If the responsible clinician is not a licensed clinician, the responsible clinician shall refer the patient to a licensed clinician for appropriate followup care.~~
2. Refer every diagnosed case of a metabolic disease or genetic disease,~~or both,~~ to a qualified health care provider~~licensed clinician~~ for necessary treatment.
3. Maintain a registry of cases of metabolic diseases and genetic diseases.
4. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this

subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides coverage to that individual for the treatment services provided by the department.

5. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. These individuals are responsible for payment to the department for the cost of medical food.
6. Provide low-protein modified food products, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

SECTION 6. AMENDMENT. Section 25-17-05 of the North Dakota Century Code is amended and reenacted as follows:

25-17-05. Testing charges.

~~The state health council may adopt rules that establish reasonable fees and may impose those fees to cover the costs of administering tests under this chapter. All test fees collected by the state department of health must be deposited in the state department of health operating account. A screening and confirmatory diagnostic testing laboratory may charge fees for necessary services.~~

SECTION 7. AMENDMENT. Section 25-17-06 of the North Dakota Century Code is amended and reenacted as follows:

25-17-06. Pulse oximetry screening for critical congenital heart defects - Exception.

Before discharge of a newborn child born in a hospital with a birthing center, the newborn child must receive a pulse oximetry screening for critical congenital heart defects. The screening requirement of this section does not apply if the parents or guardians of a newborn child object to the screening. The state department of health shall provide medical staff and facilities that provide birthing services with notice regarding this screening requirement. For purposes of this chapter, pulse oximetry screening is not a test under section 25-17-05 and a congenital heart defect detected by screening under this section is not a metabolic disease or genetic disease as those terms are used under this chapter.

SECTION 8. Section 25-17-07 of the North Dakota Century Code is created and enacted as follows:

25-17-07. Institutional review board.

A person that conducts research on blood spots, other specimens, or registry data that is maintained by the department shall follow institutional review board processes for human research which must include obtaining parent or guardian authorization.

SECTION 9. REPEAL. Section 25-17-04 of the North Dakota Century Code is repealed.

Approved April 16, 2015
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