

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 25-01.2-01, 25-01.2-03, 25-01.2-04,
2 25-01.2-05, 25-01.2-06, 25-01.2-08, 25-01.2-09, 25-01.2-10, 25-01.2-11, 25-01.2-12,
3 25-01.2-14, 25-01.2-15, 25-01.2-16, and 25-04-02.1, subsection 4 of section 25-04-05,
4 subsection 2 of section 25-16-01, section 25-16-04, subsection 2 of section 25-16.1-01, section
5 25-16.1-03, and subsection 2 of section 25-18-01 of the North Dakota Century Code, relating to
6 updating definitions and code sections to reflect person first language, updating language to
7 reflect rights of the developmentally disabled, and to clarify inspection of facilities.

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

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

11 **25-01.2-01. Definitions.**

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

- 13 1. "Applicant" means an entity that has requested licensure from the department.
14 2. "Department" means the department of human services.
15 3. "Developmental disability" means a severe, chronic disability of an individual which:
16 a. Is attributable to a mental or physical impairment or combination of mental and
17 physical impairments;
18 b. Is manifested before the individual attains age twenty-two;
19 c. Is likely to continue indefinitely;
20 d. Results in substantial functional limitations in three or more of the following areas
21 of major life activity:
22 (1) Self-care;
23 (2) Receptive and expressive language;
24 (3) Learning;

- 1 (4) Mobility;
- 2 (5) Self-direction;
- 3 (6) Capacity for independent living; and
- 4 (7) Economic sufficiency; and
- 5 e. Reflects the individual's needs for a combination and sequence of special,
- 6 interdisciplinary, or generic care, treatment, or other services which are of lifelong
- 7 or extended duration and are individually planned and coordinated.
- 8 4. "Individualized setting" means a setting where an individual owns or rents the
- 9 individual's residence and a public or private agency or organization provides services
- 10 to an individual with a developmental disability.
- 11 ~~2-5.~~ "Institution or facility" means any school, hospital, residence center, group home, or
- 12 any other ~~facility~~setting operated by any public or private agency, or organization, ~~or~~
- 13 ~~institution, which~~that provides services to an individual with a developmental disability.
- 14 ~~3-6.~~ "Least restrictive appropriate setting" means that setting ~~which~~that allows ~~the~~an
- 15 individual with a developmental disability to develop and realize the individual's fullest
- 16 potential and enhances the individual's ability to cope with the individual's environment
- 17 without unnecessarily curtailing fundamental personal liberties.
- 18 7. "License" means authorization by the department to provide services to individuals
- 19 with developmental disabilities, pursuant to chapter 25-16.
- 20 ~~4-8.~~ "Service or services ~~for~~to an individual with a developmental disability" means services
- 21 provided by any public or private agency, or organization, ~~or institution~~, directed
- 22 toward the alleviation of a developmental disability or toward the social, personal,
- 23 physical, or economic habilitation or rehabilitation of an individual with a
- 24 developmental disability.

25 **SECTION 2. AMENDMENT.** Section 25-01.2-03 of the North Dakota Century Code is

26 amended and reenacted as follows:

27 **25-01.2-03. Presumption of incompetence prohibited - Discrimination prohibited -**

28 **Deprivation of constitutional, civil, or legal rights prohibited.**

29 An individual with a developmental disability may not be presumed to be incompetent and

30 may not be deprived of any constitutional, civil, or legal right solely because of admission to or

31 residence at an institution ~~or~~, facility, or individualized setting or solely because of receipt of

1 services ~~for~~to individuals with a developmental ~~disability~~disabilities. However, nothing in this
2 section may be construed to limit or modify section 16.1-01-04. The constitutional, civil, or legal
3 rights which may not be varied or modified under the provisions of this section include:

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

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

11 **25-01.2-04. Mail, telephone, and visitationCommunication rights –Application to**
12 **residential institution or facility.**

- 13 1. Except as provided in this section, ~~every~~subsection, a public or private agency or
14 organization licensed by the department to provide services to an individual with a
15 developmental disability who resides in a mental health or developmental
16 disabilitiesan institution or, facility, or individualized setting, shall ensure the individual
17 has the right of private, unimpeded, and uncensored communication, including
18 visitation, with persons of the resident'sindividual's choice by mail, telephone, and
19 visitation. Any restriction of these rights must be documented in the individual's
20 person-centered service plan.
- 21 a.2. ~~The facility director~~Except as provided in this subsection, a public or private agency or
22 organization not licensed by the department to provide services to an individual with a
23 developmental disability who resides in an institution, facility, or individualized setting
24 shall ensure that correspondence can be conveniently received and mailed, that
25 telephones are reasonably accessible, and that space for private visitation is available.
- 26 b. ~~The facility director~~public or private agency or organization may establish in writing
27 reasonable times and places for use of telephones and for visits, provided that a
28 resident'san individual's ability to contact an attorney, guardian, or custodian, may not
29 be restricted and provided that any rules or restrictions must be posted in each
30 residentialinstitution, facility, or individualized setting. A copy of any rules or restrictions
31 must be given to all residentsindividuals over eighteen years of age and, to the

1 parents or custodians of all individuals under eighteen years of age, or guardian of all-
2 residents under eighteen years of age, upon admission.

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

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

7 **25-01.2-05. Personal property ~~Application to residential institution or facility.~~**

8 ~~1.~~ Except in the circumstances and under the conditions as provided in this
9 section subsection, every resident of an institution or facility a public or private agency
10 or organization licensed by the department to provide services to an individual with a
11 developmental disability who resides in an institution, facility, or individualized setting
12 must be permitted to receive, possess, and use lawful personal property and must be
13 provided with a secure, convenient, and reasonable amount of storage space for that
14 property. Any restriction of these rights must be documented in the individual's
15 person-centered service plan.

16 ~~1.2.~~ The facility director A public or private agency or organization not licensed by the
17 department to provide services to an individual with a developmental disability who
18 resides in an institution, facility, or individualized setting may restrict the possession
19 and use of certain classes of property which may be dangerous or may harm a
20 resident an individual.

21 ~~2.3.~~ Notice of any restrictions must be immediately given in writing to all
22 residents individuals over eighteen years of age and, to the parents or custodian of all
23 individuals under eighteen years of age, or guardian of all residents under eighteen-
24 years of age, upon admission.

25 ~~3.4.~~ When a resident an individual is discharged from the institution or facility services
26 provided from a public or private agency or organization, all of the
27 resident's individual's lawful personal property which that is in the custody of the
28 facility public or private agency or organization must be returned to the
29 resident individual.

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

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

3 **25-01.2-06. Labor - Wages - Money --~~Application to residential institution or facility.~~**

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

7 1. ~~A resident or service recipient~~An individual with a developmental disability must be
8 permitted to seek employment and work in integrated settings if the individual's
9 person-centered service plan identifies this as a desire of the individual.

10 2. An individual with a developmental disability who performs labor ~~which~~that is of any
11 consequential economic benefit to a ~~service provider~~public or private agency or
12 organization shall receive wages ~~which~~that are commensurate with the value of the
13 work performed, in accordance with applicable federal and state laws and regulations.
14 ~~A resident~~An individual of an institution, facility, or individualized setting may be
15 required to perform tasks of a personal housekeeping nature in the individual's living
16 quarters without compensation.

17 ~~2.3.~~ ~~A resident~~An individual with a developmental disability may use the
18 ~~resident's~~individual's money as the ~~resident~~individual chooses, unless the
19 ~~resident~~individual is a minor, is prohibited from doing so under a court guardianship or
20 conservatorship order, or the use would be inconsistent with the ~~resident's individual~~
21 ~~habilitation~~individual's person-centered service plan. ~~A minor or a person under~~
22 ~~guardianship or conservatorship may be required to deposit the person's money with~~
23 ~~the service provider, or in a financial institution in the name of a parent, guardian, or~~
24 ~~conservator, and may be permitted to use the money in accordance with written~~
25 ~~instructions of the parent, guardian, or conservator.~~

26 ~~3.4.~~ ~~A resident~~An individual with a developmental disability may deposit money, or cause
27 money to be deposited, in the ~~resident's~~individual's name with a financial institution of
28 the ~~resident's~~individual's choice, or the ~~resident~~individual may deposit the money with
29 a ~~service provider~~public or private agency or organization. The ~~service provider~~public
30 or private agency or organization may not retain any money deposited with the ~~service~~
31 ~~provider~~public or private agency or organization under this subsection, but shall hold

1 all such funds in an account in the resident's ~~individual's~~ name. All earnings attributable
2 to a resident's ~~an individual's~~ money shall ~~must~~ accrue to the resident ~~individual~~.

3 ~~4.5.~~ No service provider ~~public or private agency or organization~~, nor any of the service-
4 provider's ~~public or private agency or organization's~~ employees shall ~~may~~ be made
5 representative payee for a resident's social security, pension, annuity, trust fund, or
6 any other form of direct payment or assistance ~~an individual~~ without the
7 resident's ~~individual's~~ informed consent.

8 ~~5.6.~~ When a resident ~~an individual~~ is discharged, all of the resident's ~~individual's~~ money,
9 including earnings, shall ~~must~~ be returned to the resident ~~individual~~.

10 ~~7.~~ This section applies only with respect to an institution or facility that provides
11 residential care ~~public or private agency or organization licensed by the department~~
12 ~~to provide services to an individual with a developmental disability~~.

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

15 **25-01.2-08. Medication - Chemical restraints.**

16 ~~No~~ An individual with a developmental disability receiving services at ~~any institution or~~
17 ~~facility for individuals~~ from a public or private agency or organization licensed by the department
18 to provide services to an individual with ~~a developmental disabilities~~ disability may ~~at any time~~ not
19 be administered at any time any drug or medication, or be chemically restrained or tranquilized
20 in any manner, except upon the written authorization of a licensed physician when necessary
21 and appropriate as an element of the service being received or as a treatment of any medical or
22 physical condition in conformity with accepted standards for that treatment. The nature, amount
23 of, and reasons for the administration of any drug or medication must be promptly recorded in
24 the ~~person's~~ individual's medical record. This intervention must be approved by the individual
25 over eighteen years of age, parents or custodian of the individual under eighteen years of age,
26 or guardian and must be documented in the individual's person-centered service plan.

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

1 **25-01.2-09. Punishment - Isolation - Physical restraints - Psychosurgery - Sterilization**
2 **- Shock treatment.**

3 ~~No~~An individual with a developmental disability receiving services at any institution or
4 facility for individuals from a public or private agency or organization licensed by the department
5 to provide services to an individual with a developmental disabilities ~~disability~~ may not at any
6 time:

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

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

26 **25-01.2-10. Seclusion or physical restraint - ~~Facility administrator~~Administrator to be**
27 **notified.**

- 28 1. Whenever a ~~person~~an individual with a developmental disability receiving services
29 from a public or private agency or organization not licensed by the department, is
30 placed in seclusion or is physically restrained, the ~~facility~~public or private agency or
31 organization administrator or the administrator's representative must be notified and

1 shall determine if the isolation or restraint is necessary. The isolation or restraint may
2 be continued only upon written order of the administrator or the administrator's
3 representative and for a period of not more than twenty-four hours. Any
4 ~~person~~individual who is in seclusion or who is physically restrained must be checked
5 by an attendant at least once every thirty minutes.

6 2. A public or private agency or organization licensed by the department to provide
7 services to an individual with a developmental disability may not place an individual in
8 seclusion. If an individual with a developmental disability receiving services from a
9 public or private agency or organization licensed by the department is physically
10 restrained, the public or private agency or organization administrator or the
11 administrator's representative must be notified and shall determine if the restraint is
12 necessary. The restraint may be continued only upon written order of the administrator
13 or the administrator's representative and for a period of not more than twenty-four
14 hours. An individual who is physically restrained must be checked by an attendant at
15 least once every thirty minutes.

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

18 **25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing -**
19 **Right to attorney at public expense - ~~Application to residential institution or facility.~~**

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

- 25 1. The individual receiving or entitled to treatment shall:
- 26 a. Receive prior notice of the hearing;
 - 27 b. Have the right and the opportunity to present evidence; and
 - 28 c. Have the right to be confronted with and to cross-examine witnesses.
- 29 2. If the individual with a developmental disability is indigent, counsel shall be provided at
30 public expense not less than ten days before the hearing.

1 3. The burden of proof is on the party alleging the necessity of the procedure or
2 treatment.

3 4. An order allowing the procedure or treatment may not be granted unless the party
4 alleging the necessity of the procedure or treatment proves by clear and convincing
5 evidence that the procedure is in the best interest of the recipient and that no less
6 drastic measures are feasible.

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

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

10 **25-01.2-12. Diet ~~–Application to residential institution or facility.~~**

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

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

21 **25-01.2-14. ~~Individualized habilitation~~Person-centered service or education plan -**
22 **Contents.**

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

30 1. Be developed and put into effect within thirty days following admission of the
31 individual.

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

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

21 **25-01.2-15. Right to refuse services.**

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

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

1 **25-01.2-16. Notice of rights.**

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

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

11 **25-04-02.1. Accreditation of life skills and transition center.**

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

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

- 20 4. Parents of a ~~handicapped patient~~an individual with a developmental disability, who is
21 twenty-one years of age or under, are not required to file, assist in filing, agree to filing,
22 or assign an insurance claim when filing the claim would pose a realistic threat that the
23 parents would suffer a financial loss not incurred by similarly situated parents of
24 ~~nonhandicapped~~nondisabled children. Financial losses do not include incidental costs
25 such as the time needed to file or assist in filing an insurance claim or the postage
26 needed to mail the claim. Financial losses include:
- 27 a. A decrease in available lifetime coverage or any other benefit under an insurance
28 policy.
 - 29 b. An increase in premiums or the discontinuation of a policy.

- 1 c. An out-of-pocket expense such as the payment of a deductible amount incurred
2 in filing a claim unless the life skills and transition center pays or waives the
3 out-of-pocket expense.

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

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

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

12 **25-16-04. Inspection and report by department.**

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

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

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

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

24 **25-16.1-03. Appointment of receiver.**

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

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

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