

**HOUSE BILL NO. 1107**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact subsection 1 of section 50-10.1-03, section 50-25.2-02,  
2 subsection 1 of section 50-25.2-03, section 50-25.2-04, subsection 1 of section 50-25.2-05, and  
3 sections 50-25.2-12, 50-25.2-13, and 50-25.2-14 of the North Dakota Century Code, relating to  
4 the duties of the state long-term care ombudsman and vulnerable adult protective services.

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

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 50-10.1-03 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 1. Investigate and resolve complaints about administrative actions that may adversely  
9 affect or may have adversely affected the health, safety, welfare, or personal or civil  
10 rights of ~~persons~~individuals in long-term care facilities or ~~persons~~individuals who have  
11 been discharged from long-term care facilities within ~~nine months~~one month of the  
12 complaint against the facility.

13 **SECTION 2. AMENDMENT.** Section 50-25.2-02 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **50-25.2-02. Adult protective services program - Rules.**

16 The department, ~~with the advice and cooperation of county social service boards,~~ shall  
17 develop, administer, and cause to be implemented a program of protective services for  
18 vulnerable adults consistent with this chapter. In developing and administering the program, the  
19 department, within the limits of legislative appropriation, shall allocate and distribute funds for  
20 the purpose of providing adult protective services. All law enforcement agencies, courts of  
21 competent jurisdiction, and appropriate state and local agencies shall cooperate in the  
22 implementation and enforcement of this chapter. The department may adopt rules in  
23 accordance with chapter 28-32 for the purpose of implementing the provisions of this chapter.

1           **SECTION 3. AMENDMENT.** Subsection 1 of section 50-25.2-03 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           1. Any medical or mental health professional or personnel, law enforcement officer,  
4 firefighter, member of the clergy, or caregiver having knowledge a vulnerable adult has  
5 been subjected to abuse or neglect, or who observes a vulnerable adult being  
6 subjected to conditions or circumstances that reasonably would result in abuse or  
7 neglect, shall report the information to the department, or the department's designee,  
8 or to an appropriate law enforcement agency if the knowledge is derived from  
9 information received by that individual in that individual's official or professional  
10 capacity. A member of the clergy, however, is not required to report the information if  
11 the knowledge is derived from information received in the capacity of spiritual adviser.  
12 An individual in the position of a long-term care ombudsman is not a mandated  
13 reporter of suspected abuse or neglect. For purposes of this subsection, "medical or  
14 mental health professional or personnel" means a professional or personnel providing  
15 health care or services to a vulnerable adult, on a full-time or part-time basis, on an  
16 individual basis or at the request of a caregiver, and includes a medical examiner,  
17 coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist,  
18 physical therapist, occupational therapist, tier 1 through tier 4 mental health  
19 professional as defined under section 25-01-01, emergency medical services  
20 personnel, hospital personnel, nursing home personnel, congregate care personnel, or  
21 any other person providing medical and mental health services to a vulnerable adult.

22           **SECTION 4. AMENDMENT.** Section 50-25.2-04 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **50-25.2-04. Referral of complaints concerning long-term care facilities.**

25           Any report received by the department or the department's designee under section  
26 50-25.2-03 complaining of any administrative action, as defined in section 50-10.1-01, that may  
27 adversely affect or may have adversely affected the health, safety, welfare, or personal or civil  
28 rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or a person an  
29 individual who was discharged from a long-term care facility within ~~nine months~~one month of  
30 the complaint, must be referred to the state long-term care ombudsman ~~for investigation~~  
31 ~~pursuant to chapter 50-10-1.~~

1           **SECTION 5. AMENDMENT.** Subsection 1 of section 50-25.2-05 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           1. The department or the department's designee shall immediately evaluate and assess  
4 any report received by the department or the department's designee under section  
5 50-25.2-03, including the residence of the alleged vulnerable adult and the  
6 circumstances surrounding the report. For the purpose of evaluating a report or  
7 providing other adult protective services, the department or the department's designee  
8 may:

9           a. Interview the alleged vulnerable adult, with or without notice to the caregiver or  
10 any other person, and interview the caregiver and any other ~~person~~individual who  
11 may have knowledge of the circumstances surrounding the report;

12           b. Enter any premises in which the alleged vulnerable adult is an occupant, with the  
13 consent of the alleged vulnerable adult or the caregiver;

14           c. Have access to all records of the vulnerable adult:

15           (1) If the vulnerable adult, or the caregiver or legal representative of the  
16 vulnerable adult, has authorized the department or the department's  
17 designee to have access; ~~or~~

18           (2) If the vulnerable adult, because of a substantial functional or mental  
19 impairment, is unable to authorize the department or the department's  
20 designee to have such access, does not have a legal guardian or other legal  
21 representative, and is ~~a person~~an individual with respect to whom a report  
22 was received by the department or the department's designee; ~~and~~or

23           (3) If the vulnerable adult, because of a substantial functional or mental  
24 impairment, is unable to authorize the department or the department's  
25 designee to have such access, the legal guardian or other legal  
26 representative is alleged to cause the circumstances surrounding the report,  
27 and is an individual with respect to whom a report was received by the  
28 department or the department's designee;

29           d. Coordinate the assessment and the provision of other adult protective services  
30 with other state or local agencies, departments, or institutions, including the  
31 agency of the protection and advocacy project, or private agencies,

1 organizations, and professionals providing services necessary or advisable for  
2 the vulnerable adult; and

3 e. Request records, except as prohibited under title 42, Code of Federal  
4 Regulations, part 2, from a medical, dental, or mental health professional,  
5 hospital, medical or mental health facility, or health care clinic regarding a  
6 vulnerable adult with respect to whom a report was received by the department  
7 or the department's designee. A medical, dental, or mental health professional,  
8 hospital, medical or mental health facility, or health care clinic shall disclose to the  
9 department or the department's designee, upon request, the records of a patient  
10 or client which are relevant to a vulnerable adult evaluation, assessment or other  
11 adult protective services. The department, or the department's designee, shall  
12 limit the request for records to the minimum amount of records necessary to  
13 enable a determination to be made or to support other adult protective services.

14 **SECTION 6. AMENDMENT.** Section 50-25.2-12 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **50-25.2-12. Confidentiality of records - Authorized disclosures.**

17 All reports made under this chapter and all records and information obtained or generated  
18 as a result of the reports are confidential, but must be made available to:

- 19 1. A physician who examines a vulnerable adult whom the physician reasonably  
20 suspects may have been subject to abuse or neglect if the identity of individuals  
21 reporting under section 50-25.2-03 is protected.
- 22 2. Authorized staff of the department or the department's designee, law enforcement  
23 agencies, and other agencies investigating, evaluating, or assessing the report or  
24 providing adult protective services.
- 25 3. A ~~person~~vulnerable adult who is the subject of a report if the identity of  
26 ~~persons~~individuals reporting under section 50-25.2-03 is protected.
- 27 4. Public officials, and their authorized agents, who require the information in connection  
28 with the discharge of their official duties.
- 29 5. A court when it determines that the information is necessary for determination of an  
30 issue before the court.

1           6. A person engaged in a bona fide research or auditing purpose if no information  
2           identifying the subjects of a report is made available to the researcher or auditor.

3           7. A guardian or legal representative of the vulnerable adult who is the subject of a report  
4           if the identity of individuals reporting under section 50-25.2-03 is protected and the  
5           guardian or legal representative is not suspected of abusing or neglecting the  
6           vulnerable adult.

7           **SECTION 7. AMENDMENT.** Section 50-25.2-13 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **50-25.2-13. Information, education, and training programs.**

- 10          1. The department, ~~in cooperation with county social service boards and law-~~  
11           ~~enforcement agencies,~~ shall conduct a public information and education program. The  
12           elements and goals of the program must include:
- 13           a. Informing the public regarding the laws governing the abuse or neglect of  
14           vulnerable adults, the voluntary and mandatory reporting authorized by this  
15           chapter, and the need for and availability of adult protective services.
  - 16           b. Providing caregivers with information regarding services to alleviate the  
17           emotional, psychological, physical, or financial stress associated with the  
18           caregiver and vulnerable adult relationship.
- 19          2. The department, ~~in cooperation with county social service boards and law-~~  
20           ~~enforcement agencies,~~ shall institute a program of education and training for the  
21           department, the department's designee, and law enforcement agency staff and other  
22           ~~persons~~individuals who provide adult protective services.

23          **SECTION 8. AMENDMENT.** Section 50-25.2-14 of the North Dakota Century Code is  
24          amended and reenacted as follows:

25          **50-25.2-14. Implementation contingent upon appropriation.**

26          The department ~~and county social service boards are~~is not required to implement or  
27          enforce this chapter with respect to any region, area, or county of this state if the legislative  
28          assembly does not provide an appropriation to support the implementation and enforcement of  
29          this chapter within that region, area, or county.