HEALTH AND SAFETY

CHAPTER 212

SENATE BILL NO. 2168

(Senators J. Lee, Hogue, Warner)
(Representatives Delmore, Kreidt, Nathe)

AN ACT to create and enact section 23-01-05.5 of the North Dakota Century Code, relating to the confidentiality of autopsy reports; to amend and reenact sections 11-19.1-01, 11-19.1-03, 11-19.1-04, 11-19.1-06, 11-19.1-07, 11-19.1-08, 11-19.1-10, 11-19.1-11, 11-19.1-13, 11-19.1-15, 11-19.1-17, 11-19.1-18, 11-19.1-19, 11-19.1-20, and 23-01-05.4 of the North Dakota Century Code, relating to the powers and duties of the coroner and state forensic examiner; to repeal chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code, relating to the county coroner and the appointment of an assistant coroner; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-01. Definitions. ~~The following words and phrases when~~ As used in this chapter ~~have the meanings ascribed to them in this section except in those instances when~~, unless the context ~~clearly indicates a different meaning~~ otherwise requires:

1. "Autopsy" means the inspection or dissection of a ~~dead~~ deceased human body ~~for the purpose of inquiring into the cause of death~~ and retention of organs, tissue, or fluids for diagnostic, educational, public health, or research purposes.

2. "Casualty" means death arising from accidental or unusual means.

3. "City" means a city organized under the laws of this state.

4. "Physician" includes physicians and surgeons licensed under ~~the provisions of~~ chapter 43-17~~, as amended~~.

5. "~~Suspicious~~ Reportable circumstances" ~~means the existence of~~ includes one or more of the following factors:

   a. ~~Self-inflicted~~ Obvious or suspected homicidal, suicidal, or accidental injury;

   b. Firearm injury;

   c. Severe, unexplained injury;

   d. ~~Pedestrian driveway~~ Occupant or pedestrian motor vehicle injury;

e. An injury to a ~~child which is not witnessed by the individual responsible for the child at the time the injury occurred~~ minor;

f. ~~Inadequate supervision~~ Fire, chemical, electrical, or radiation;

g. ~~Malnutrition or delay in seeking medical care~~ Starvation;

h. ~~Confinement~~ Unidentified or skeletonized human remains;

i. ~~Bathtub or bucket drowning~~ Drowning;

j. Suffocation, smothering, or strangulation;

k. Poisoning or illegal drug use;

l. Prior child abuse or neglect assessment concerns;

m. Open child protection service case on the victim;

n. Victim is in the custody of the department of human services, county social services, ~~or the division of juvenile services~~ the department of corrections and rehabilitation or other correctional facility, or law enforcement;

o. Unexplained death or death in an undetermined manner;

p. Suspected sexual assault; or

q. Any other suspicious factor.

SECTION 2. AMENDMENT. Section 11-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-03. Appointment of coroner~~, term, assistant~~ - Term - Vacancy. The ~~coroner shall be appointed by the~~ board of county commissioners shall appoint a coroner for a term of ~~two~~ five years. The board shall notify the state forensic examiner in writing of any appointment under this section. If ~~such~~ the office ~~shall become~~ of coroner becomes vacant by death, resignation, expiration of the term of office, or otherwise, or ~~when~~ if the coroner becomes permanently unable to perform the duties of office, the board of county commissioners shall appoint a ~~person with the qualifications as hereinafter set forth~~ qualified individual to fill ~~such~~ the vacancy, who shall give and take the oath of office as prescribed for coroners. If the duly appointed, qualified, and acting coroner is absent temporarily from the county~~, or when on duty with the armed services of the United States, or the state militia, or with the American red cross,~~ or ~~when~~ is unable to discharge the duties of office for any ~~other~~ reason, ~~such~~ the coroner may appoint ~~a person~~ an individual with the qualifications of coroner to act in the coroner's absence~~, service,~~ or disability, upon taking the prescribed oath for coroners.

SECTION 3. AMENDMENT. Section 11-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-04. Eligibility ~~for office~~. ~~No person shall be eligible for the office of county coroner except a physician who has been duly licensed to practice as such in this state and who is in good standing in the profession.~~

1. Subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner, the following individuals are eligible to serve as coroner:

   a. A physician licensed under chapter 43-17;

   b. An advanced practice registered nurse or registered nurse licensed under chapter 43-12.1;

   c. A physician assistant licensed under chapter 43-17; and

   d. Any other individual determined by the state forensic examiner to be qualified to serve as coroner.

2. The coroner may appoint assistant or deputy coroners subject to the qualifications, training, and continuing education requirements determined by the state forensic examiner.

SECTION 4. AMENDMENT. Section 11-19.1-06 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-06. ~~Persons~~ Individuals authorized to act ~~where no resident physician~~ in absence of coroner. In ~~such~~ those counties in which ~~no physician is residing or~~ a coroner does not reside or is not available, the duties of coroner ~~as herein provided~~ must be performed by the sheriff, the state highway patrol, or any special agent of the bureau of criminal investigation. The sheriff, the state highway patrol, or special agent shall call upon the nearest ~~physician~~ coroner or deputy coroner from an adjacent county to investigate the medical cause of death of all coroner cases within said county. ~~Where~~ In those situations in which, because of distance or adverse conditions, a ~~physician~~ coroner is not available, the sheriff, the state highway patrol, or special agent shall ~~have~~ request the state forensic examiner or the forensic examiner's designee ~~called in~~ to investigate and certify as to the medical cause of death.

SECTION 5. AMENDMENT. Section 11-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-07. ~~Death to be reported to coroner by physician or persons discovering body - Penalty - Notice to state health officer - Right to autopsy~~ Reports of death - Death of minor.

1. Any person who discovers the ~~dead~~ deceased human body~~,~~ or acquires the first knowledge of the death of any ~~person~~ individual, and any physician with knowledge that ~~a person~~ an individual died as a result of criminal or violent means, ~~casualty, suicide, accidental death, or~~ died suddenly when in apparent good health in a suspicious or unusual manner, or died as the result of any other reportable circumstance, shall notify immediately ~~notify~~ the office of coroner or any law enforcement officer of the known facts concerning the time, place, manner, and circumstances of ~~such~~ that death, and any other information ~~which~~ that may be required pursuant to this chapter. Any person who violates ~~the provisions of~~ this section ~~shall be~~ is guilty of a class B misdemeanor.

2. Any person who discovers the ~~dead~~ deceased human body ~~of,~~ or acquires the first knowledge of the death of~~,~~ any minor who has received or is eligible to receive a ~~certificate of live~~ birth record, when

the minor died suddenly when in apparent good health, shall notify immediately ~~notify~~ law enforcement ~~and~~ or the office of coroner of the known facts concerning the time, place, manner, and circumstances of the death. The death of a minor must be reported to the department of human services as provided under chapter 50-25.1. The coroner shall take custody of the body and immediately ~~notify the state's attorney of the county in which the body was discovered. Within twenty-four hours of the notice of a death that occurs under suspicious circumstances, the state's attorney shall~~ consult with a law enforcement agency ~~and the state department of health~~. The law enforcement agency shall investigate the death and notify the state's attorney of the findings. The coroner shall notify the state ~~health officer~~ forensic examiner of each such death, and shall provide the state ~~health officer~~ forensic examiner the information concerning the death as the state ~~health officer shall require~~ forensic examiner requires. The coroner or the ~~coroner's medical deputy~~ assistant or deputy coroner shall notify the parent or guardian of a child under the age of one year of the right to the performance of an autopsy, at state expense, as provided by this chapter.

SECTION 6. AMENDMENT. Section 11-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-08. Records of coroner's office. ~~It is the duty of the~~ The coroner ~~to~~ shall keep ~~a~~ full and complete ~~record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction~~ records. All records must be kept in the office of the coroner~~,~~ if the coroner maintains an office as coroner~~, and if~~. If the coroner maintains no separate office, ~~then~~ the records must be kept in the office of the recorder of the county, unless the board of county commissioners designates a different official~~, and~~. The records must be properly indexed, stating the name, if known, of every deceased ~~person~~ individual, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner ~~shall~~ promptly shall deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. ~~All~~ Except for a report of death and autopsy reports, which may be used and disclosed only as authorized by subsection 4 of section 11-19.1-11, all records of the coroner ~~shall become and remain~~ are the property of the county and are public records.

SECTION 7. AMENDMENT. Section 11-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-10. ~~Dead~~ Deceased human bodies to be held pending investigation. All ~~dead~~ deceased human bodies in the custody of the coroner ~~shall~~ must be held until such time as the coroner after consultation with the state's attorney, the police department of the city, the state highway patrolmen on duty in that county, or the sheriff has reached a decision that it is not necessary to hold the ~~dead~~ body longer to enable the coroner to decide on a diagnosis, giving a reasonable and true cause of death, or that the ~~dead~~ body is no longer necessary to

assist any one of ~~the above-named~~ those officials in their duties~~, but no dead body shall be held longer than twelve hours from the time the coroner was notified without embalming~~.

SECTION 8. AMENDMENT. Section 11-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-11. ~~Coroner may perform autopsy~~ Autopsies - Notice of results.

1. The coroner or the coroner's medical deputy, if the coroner deems it necessary, may take custody of the ~~dead~~ deceased human body for the purpose of autopsy. When the coroner does not deem an autopsy necessary, the sheriff ~~and~~ or state's attorney may direct an autopsy be performed.

2. The autopsy must be performed by the state forensic examiner or by the state forensic examiner's authorized pathologist at a facility approved by the state forensic examiner.

3. Upon the death of a ~~child~~ minor whose cause of death is suspected by the ~~child's~~ minor's parent or guardian or the coroner or the coroner's medical deputy to have been the sudden infant death syndrome, the coroner or the coroner's medical deputy, after consultation with the parent or guardian, shall take custody of the ~~dead~~ body and shall arrange for the performance of the autopsy by ~~a qualified~~ the state forensic examiner or a pathologist designated by the state forensic examiner, unless the county coroner, sheriff, state's attorney, and the parent or guardian all agree that an autopsy is unnecessary. The parents or guardian and the state health officer ~~shall~~ must be promptly notified of the results of that autopsy.

4. A report of death, an autopsy report, and any working papers, notes, images, pictures, photographs, or recordings in any form are confidential but the coroner may use or disclose these materials for purposes of an investigation, inquest, or prosecution. The coroner may disclose a copy of the report of death in accordance with the authority of the state forensic examiner under section 23-01-05.5 and may disclose an autopsy photograph or other visual image or video or audio recording subject to limitations in section 44-04-18.18. The coroner shall disclose a copy of the autopsy report to the state forensic examiner.

SECTION 9. AMENDMENT. Section 11-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-13. Cause of death - Determination. The cause of death, the manner of death, and the mode in which the death occurred~~, as delivered by the coroner and incorporated in the coroner's verdict,~~ must be incorporated in the death certificate filed with the registrar of vital statistics of this state. The term "sudden infant death syndrome" may be entered on the death certificate as the principal cause of death only if the child is under the age of one year and the death remains unexplained after a case investigation that includes a complete autopsy of the infant at the state's expense, examination of the death scene, and a review of the clinical history of the infant.

SECTION 10. AMENDMENT. Section 11-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of body when next of kin cannot be found. The coroner of the county ~~where~~ in which a death is discovered shall take charge of the case and ~~notify~~ ensure that relatives or friends of the deceased ~~person~~ individual, if known, are notified as soon as possible ~~by telephone, telegram, or otherwise~~, giving details of the death and disposition of the deceased ~~person~~ individual. If the relatives or friends of the deceased are unknown, the coroner shall dispose of the personal effects and body in the following manner:

1. After using such clothing as may be necessary in the burial of the body, the remaining personal effects of the deceased ~~shall~~ must be turned over to ~~the public administrator~~ law enforcement for appropriate disposition ~~of such personal property in accordance with the laws, regulations, and policies governing the office of the public administrator~~.

2. The remains ~~shall~~ must be:

   a. Disposed of in accordance with ~~the provisions of~~ section 23-06-14; or

   b. Buried in accordance with the laws governing the burial of indigent persons within this state.

SECTION 11. AMENDMENT. Section 11-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-17. Application. ~~This~~ The requirements of this chapter ~~applies~~ apply to every county in this state ~~having a population of eight thousand or more, and chapter 11-19 and section 11-10-02 are not applicable to such counties. This chapter does not apply to counties having a population of less than eight thousand and such counties are governed by chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03, these counties shall pay coroner's fees to other counties under subsection 1 of section 11-19.1-16, and these counties are subject to sections 11-19.1-18 through 11-19.1-20~~.

SECTION 12. AMENDMENT. Section 11-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-18. State forensic examiner - Authority - Costs.

1. The state forensic examiner may order an autopsy and exercise all powers and authority bestowed upon the office of the coroner and, at any time, may assume jurisdiction over a deceased human body. Whenever requested to do so by the local coroner, acting coroner, or the local state's attorney, the state forensic examiner or the examiner's designee shall assume jurisdiction over a ~~dead~~ deceased human body for purposes of investigating the cause of death, the manner of death, and the mode in which the death occurred. ~~The state forensic examiner may exercise all powers and authority bestowed upon the office of the coroner. The cost of performing an autopsy, investigation, or inquiry remains with the county, except for an autopsy, investigation, or inquiry resulting from the death of a patient or resident of the state hospital or~~

~~any other state residential facility or an inmate of a state penal institution.~~

2. Except for the cost of an autopsy performed by the state forensic examiner or the examiner's designee and for the cost of an autopsy, investigation, or inquiry that results from the death of a patient or resident of the state hospital or any other state residential facility or an inmate of a state penal institution, all costs with respect to the autopsy, the transporting of the body for autopsy, and the costs of the investigation or inquiry are the responsibility of the county.

SECTION 13. AMENDMENT. Section 11-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-19. ~~State forensic examiner~~ - Required reports to state forensic examiner. ~~The~~ On the form and in the manner prescribed by the state forensic examiner, the coroner or any ~~person~~ individual acting as coroner shall report to the state forensic examiner every death ~~that occurs:~~

~~1. As a result of violence or casualty;~~

~~2. Suddenly when in apparent good health;~~

~~3. In a suspicious or unusual manner; or~~

~~4. Involving a patient or resident of the state hospital or any other state residential facility or an inmate of a state, county, or city penal institution~~ of which the coroner is notified or which the coroner investigates.

SECTION 14. AMENDMENT. Section 11-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-20. State forensic examiner - Required consultation. The coroner or any ~~person~~ individual acting as a coroner shall actively consult with the state forensic ~~examiner~~ examiner's office in every death involving an inmate of a state, county, or city penal institution; death involving a child under the age of one when in apparent good health; and death that the coroner or acting coroner believes may have resulted from an accident, a suicide, or a homicide, under suspicious circumstances, or as a result of child abuse or neglect.

SECTION 15. AMENDMENT. Section 23-01-05.4 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties. The state department of health may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a ~~licensed~~ physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;

2. Consult with local coroners on the performance of their duties as coroners;

~~2.~~ 3. Conduct investigations into the cause of death of and perform autopsies on any ~~dead~~ deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;

~~3.~~ 4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary; ~~and~~

5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and

~~4.~~ 6. Perform other duties assigned by the state health officer.

SECTION 16. Section 23-01-05.5 of the North Dakota Century Code is created and enacted as follows:

23-01-05.5. Autopsy reports - Confidential - Exceptions.

1. As used in this section:

   a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.

   b. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.

2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is a public record subject to disclosure under section 44-04-18.

3. Subject to the limitations on the disclosure of an autopsy photograph or other visual image or video or audio recording of an autopsy required under section 44-04-18.18, any working papers and notes relating to a final autopsy report may be disclosed pursuant to a court order and as otherwise expressly provided by law.

4. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report:

   a. To any county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.

   b. To any state's attorney or criminal justice agency, including a prosecutor or criminal justice agency of the United States, any

state, or any Canadian province, with jurisdiction over an investigation of the death and the state's attorney or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.

c. To workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.

d. To the child fatality review panel if there is no active criminal investigation.

e. In accordance with a court order.

5. The state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:

a. The decedent's personal representative and to the decedent's spouse, child, or parent, upon proof of the relationship, if there is no active criminal investigation.

b. A physician or hospital who treated the deceased immediately prior to death if there is no active criminal investigation.

c. An insurance company upon proof that the decedent's life was covered by a policy issued by the company if there is no active criminal investigation.

d. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.

e. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.

6. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

SECTION 17. REPEAL. Chapter 11-19 and section 11-19.1-05 of the North Dakota Century Code are repealed.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 213

SENATE BILL NO. 2046

(Legislative Council)
(Long-Term Care Committee)

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to surveys during construction or renovation projects of health facilities licensed by the state department of health; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Survey program - Health facilities construction or renovation projects.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.

2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.

3. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with medicare-certified life safety surveys.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 214

SENATE BILL NO. 2048

(Legislative Council)
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 23-01.2 of the North Dakota Century Code, relating to hospitals licensed as primary care or acute care participating in the trauma system; to amend and reenact section 23-27-04.6 of the North Dakota Century Code, relating to licensure of quick response units; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01.2 of the North Dakota Century Code is created and enacted as follows:

Trauma center designation.

1. Effective January 1, 2011, a hospital that offers emergency services to the public shall meet trauma center designation standards and participate in the trauma system.

2. The state health council shall adopt rules that allow provisional trauma designation status for a hospital that is partially compliant with trauma designation standards. When issuing a provisional trauma designation, the state health council shall allow a reasonable amount of time, determined by the department, for a hospital to fully meet all trauma designation standards.

SECTION 2. AMENDMENT. Section 23-27-04.6 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.6. Quick response units. ~~Notwithstanding contrary licensing and certification requirements under this chapter, department~~ Department licensure ~~or certification~~ as a quick response unit is not optional. The department's standards under section 23-27-04 for the time when a quick response unit's services must be available may not require twenty-four hour availability.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective January 1, 2010.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 215

HOUSE BILL NO. 1323

(Representatives Dahl, DeKrey, Nathe)
(Senators Olafson, Schneider)

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to preparations for disposition at death; and to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to duty of burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial.

1. The duty of burying the body of a deceased ~~person~~ individual devolves upon the surviving husband or wife if the deceased was married or, if the deceased was not married but left kindred, upon ~~the person or persons~~ one or more individuals in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses.

2. If the ~~person~~ individual who has the duty of burial does not bury the body within the time required by this chapter, the ~~person~~ individual next specified shall bury the body.

3. If the deceased is not survived by ~~a person~~ an individual described by subsection 1 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, the county social service board of the county in which the death occurs shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

4. ~~A~~ If the person with the duty of burial under this section, or the personal representative of the decedent's estate, if any, is aware of the decedent's instructions regarding the disposition of the remains, that

person shall honor those instructions, to the extent reasonable and possible, ~~any~~ to the extent the instructions do not impose an economic or emotional hardship. A decedent's instructions may be reflected in a variety of methods, including pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract, a health care directive, a durable power of attorney for health care, a power of attorney, a will, a document created under section 2 of this Act, or a document of gift for an anatomical gift.

SECTION 2. A new section to chapter 23-06 of the North Dakota Century Code is created and enacted as follows:

Cremation or other lawful disposition of a body - Authorization document - Immunity.

1. A legally competent adult may prepare a written statement directing the cremation or other lawful disposition of that adult's own remains pursuant to section 23-06-03. The written statement must be signed and dated by the legally competent adult and may be part of the legally competent adult's will.

2. A document that conforms to this section authorizes a crematorium or funeral establishment to carry out the instructions of the legally competent adult who is the subject of the document. It is not necessary for a crematorium or funeral establishment to obtain the consent or concurrence of any other person when the crematorium or funeral establishment cremates or otherwise provides for the lawful disposition of a body pursuant to instructions contained in a document that conforms to this section.

3. This section does not mandate that a crematorium or funeral establishment cremate or otherwise provide for the lawful disposition of a body pursuant to the document unless the legally competent adult who executed the document articulated and funded in a pre-need funeral service contract the legally competent adult's instructions as expressed in the document.

4. A crematorium or funeral establishment that cremates or otherwise provides for the lawful disposition of a body in good-faith reliance upon instructions of a decedent pursuant to section 23-06-03 or on an apparently genuine document executed pursuant to this section is not subject to civil liability or professional discipline. The decision of a crematorium or funeral establishment to cremate or otherwise provide for the lawful disposition of a body in reliance on a document executed pursuant to this section is presumed to be made in good faith.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 216

SENATE BILL NO. 2237

(Senators Fiebiger, Mathern)
(Representatives Gruchalla, Klemin)

AN ACT to create and enact a new section to title 23 of the North Dakota Century Code, relating to a health care record registry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 23 of the North Dakota Century Code is created and enacted as follows:

Health care record registry - Fees.

1. As used in this section:

   a. "Health care record" means a health care directive or a revocation of a health care directive executed in accordance with chapter 23-06.5.

   b. "Registration form" means a form prescribed by the secretary of state to facilitate the filing of a health care record.

2. a. The secretary of state may establish and maintain a health care record registry, through which a health care record may be filed. The registry must be accessible through a website maintained by the secretary of state.

   b. An individual who is the subject of a health care record, or that individual's agent, may submit to the secretary of state for registration, using a registration form, a health care record executed in accordance with chapter 23-06.5.

3. Failure to register a health care record with the secretary of state under this section does not affect the validity of the health care record. Failure to notify the secretary of state of the revocation of a health care record filed under this section does not affect the validity of a revocation that otherwise meets the statutory requirements for revocation.

4. a. Upon receipt of a health care record and completed registration form, the secretary of state shall create a digital reproduction of the health care record, enter the reproduced health care record into the health care record registry database, and assign each registration a unique file number. The secretary of state is not required to review a health care record to ensure the health care record complies with any particular statutory requirements that may apply to the health care record.

   b. The secretary of state shall delete a health care record filed with the registry under this section upon receipt of a revocation of the health care record along with that document's file number.

c. The entry of a health care record under this section does not affect or otherwise create a presumption regarding the validity of the health care record or the accuracy of the information contained in the health care record.

5. a. The registry must be accessible by entering the file number and password on the internet website. Registration forms, file numbers, and other information maintained by the secretary of state under this section are confidential and the state may not disclose this information to any person other than the subject of the document, or the subject's agent. The secretary of state may not use information contained in the registry except as provided under this chapter.

b. At the request of the subject of the health care record, or the subject's agent, the secretary of state may transmit the information received regarding the health care record to the registry system of another jurisdiction as identified by the requester.

c. This section does not require a health care provider to seek to access registry information about whether a patient has executed a health care record that may be registered under this section. A health care provider who makes good-faith health care decisions in reliance on the provisions of an apparently genuine health care record received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section 23-06.5-12. This section does not affect the duty of a health care provider to provide information to a patient regarding health care directives as may be required under federal law.

6. The secretary of state may accept a gift, grant, donation, bequest, or other form of voluntary contribution to establish, support, promote, and maintain the registry. Any funds contributed under this subsection and any fees collected under this section must be deposited in the secretary of state's general services operating fund. The secretary of state shall charge and collect a reasonable fee for filing a health care record and a revocation of a health care record.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 217

SENATE BILL NO. 2195

(Senators Kilzer, Hogue, J. Lee, Nething)
(Representatives Klemin, Kretschmar)

AN ACT to amend and reenact subsection 3 of section 23-06.6-13 and section 23-06.6-20 of the North Dakota Century Code, relating to revisions and updates to the revised Uniform Anatomical Gift Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 23-06.6-13 of the North Dakota Century Code is amended and reenacted as follows:

3. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent <u>or the measures are contrary to reasonable medical standards</u>.

SECTION 2. AMENDMENT. Section 23-06.6-20 of the North Dakota Century Code is amended and reenacted as follows:

23-06.6-20. Effect of anatomical gift on advance health care directive.

1. In this section:

   a. "Advance health care directive" means a health care directive under chapter 23-06.5, a power of attorney for health care, or a record signed <u>or authorized</u> by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

   b. "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

   c. "Health care decision" means any decision ~~made~~ regarding the health care of the prospective donor.

2. If a prospective donor has a declaration or advance health care directive~~,~~ <u>and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of</u> measures necessary to ensure the medical suitability of ~~an organ~~ <u>a part</u> for transplantation or therapy ~~may not be withheld or withdrawn from the prospective donor, unless the declaration or advance health care directive expressly provides to the~~

~~contrary~~, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor shall act for the donor to resolve the conflict. If involved in resolving the conflict, the agent or other person authorized by law shall make the decision in accordance with the agent's or person's knowledge of the prospective donor's wishes and religious or moral beliefs as stated orally or as contained in the declaration or advance health care directive. The conflict must be resolved as expeditiously as possible. If the conflict is not resolved expeditiously, the direction of the declaration or advance directive controls. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 23-06.6-09. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contrary to reasonable medical standards.

Approved April 30, 2009
Filed May 4, 2009

CHAPTER 218

SENATE BILL NO. 2044

(Legislative Council)
(Long-Term Care Committee)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on expansion of basic care bed capacity and the moratorium on expansion of long-term care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2007~~ 2009, and July 31, ~~2009~~ 2011, except when:

   a. A nursing facility converts nursing facility beds to basic care;

   b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

   c. If the state department of health and the department of human services grant approval of new basic care beds to an entity, the approved entity shall license the beds within forty-eight months from the date of approval.

SECTION 2. AMENDMENT. Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2007~~ 2009, and July 31, ~~2009~~ 2011. A nursing facility may not convert licensed nursing bed capacity to basic care bed capacity or convert basic care beds back to nursing facility beds more than one time in a twelve-month period if the beds have been licensed as basic care.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 219

SENATE BILL NO. 2167

(Senators J. Lee, Flakoll, G. Lee)
(Representatives Delmore, Uglem, Wieland)

AN ACT to provide for a state policy for reuse, recycling, or resale of state-provided medical equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State agency provision of medical equipment - Policy for reuse, recycling, or resale. If a state agency uses state funds to provide free medical equipment to an individual, that state agency shall establish a policy addressing the possible reuse, recycling, or resale value of the medical equipment upon replacement of the medical equipment by that state agency or upon disuse of the medical equipment by the individual.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 220

SENATE BILL NO. 2344

(Senators Marcellais, Bakke, Mathern, Oehlke)
(Representatives Conrad, Potter)

AN ACT to create and enact two new sections to chapter 23-12 of the North Dakota Century Code, relating to breastfeeding; and to amend and reenact section 12.1-20-12.1 of the North Dakota Century Code, relating to exempting the act of breastfeeding from the offense of indecent exposure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-12.1. Indecent exposure.

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:

   a. Masturbates in a public place or in the presence of a minor; or

   b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

SECTION 2. Two new sections to chapter 23-12 of the North Dakota Century Code are created and enacted as follows:

Right to breastfeed. If the woman acts in a discreet and modest manner, a woman may breastfeed her child in any location, public or private, where the woman and child are otherwise authorized to be.

Workplace breastfeeding policies - Infant friendly designation.

1. An employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes the following:

   a. Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;

   b. A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;

   c. A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in subdivision b; and

   d. A convenient hygienic refrigerator in the workplace for the temporary storage of the mother's breast milk.

2. The state department of health shall establish guidelines for employers concerning workplace breastfeeding and infant friendly designations.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 221

SENATE BILL NO. 2399

(Senators Heckaman, Dever, Hogue)
(Representatives Kaldor, Kerzman, Wrangham)

AN ACT to provide for medical facilities and providers to give notice of programs and payments for ratings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Medical facility and provider performance reviews and ratings - Notice.

1. If a medical facility or provider in this state has a performance review that results in the receipt of a rating, and at any time pays a fee to the person completing the rating, the medical facility or provider shall include a public notice in any promotional or marketing activities referring to the rating information stating that the medical facility or provider made a payment and stating the amount of that payment made to the person performing the rating.

2. Subsection 1 does not apply to a performance review required to maintain licensure or accreditation by governmental or third-party payers or to maintain accreditation by a quality assurance organization.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 222

SENATE BILL NO. 2366

(Senators Oehlke, Horne)
(Representatives Pinkerton, Weiler)

AN ACT to amend and reenact section 23-15-01 of the North Dakota Century Code, relating to the sale of fireworks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-15-01 of the North Dakota Century Code is amended and reenacted as follows:

23-15-01. Fireworks defined - Sale of fireworks.

1. The term fireworks means any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation. The term includes any blank cartridge, toy pistol, toy cannon, toy cane, or toy gun in which an explosive other than a toy paper cap is used; balloon that requires fire underneath to propel the balloon; firecracker, torpedo, skyrocket, Roman candle, daygo bomb, sparkler, or other item of like construction; item containing any explosive or flammable compound; or any tablet or other device containing any explosive substance. This section does not apply to any toy paper cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

2. Any person operating a retail business and who has a retail license as provided in section 23-15-04 may offer for sale and sell at retail that year, to any individual who is at least twelve years of age, only during the period June twenty-seventh through July fifth, the following items:

~~1.~~ a. A star light, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball). However, a person may not offer to sell or offer to distribute a skyrocket, customarily known as a bottle rocket, if the outside diameter of the casing is less than five-eighths inch [15.875 millimeters] and the length of the casing is less than three and one-half inches [88.9 millimeters].

~~2.~~ b. A helicopter type flyer, total pyrotechnic composition not to exceed twenty grams each in weight.

~~3.~~ c. A cylindrical fountain, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].

~~4.~~ d. A cone fountain, total pyrotechnic composition not to exceed fifty grams each in weight.

~~5.~~ e. A wheel, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of a driver tube may not be over one-half inch [12.7 millimeters].

~~6.~~ f. An illuminating torch or a colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.

~~7.~~ g. A sparkler or a dipped stick, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.

~~8.~~ h. A comet or shell, of which the mortar is an integral part, except a comet or shell designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.

~~9.~~ i. A soft shell firecracker not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.

~~10.~~ j. A whistle without report, total pyrotechnic composition not to exceed forty grams each in weight.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 223

SENATE BILL NO. 2050

(Legislative Council)
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to regulation of emergency medical services operation dispatch; to amend and reenact section 23-27-02, subsection 1 of section 23-27-04, and section 23-27-04.7 of the North Dakota Century Code, relating to the definition of emergency medical services, emergency medical services operation licensure standards, and distribution of property tax revenues to emergency medical services operations; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

23-27-02. Definitions. For the purpose of this chapter, unless the context otherwise requires:

1. "Department" means the state department of health.

2. "Emergency medical services" means the prehospital medical stabilization ~~and~~ or transportation of ~~individuals~~ an individual who ~~are~~ is sick, injured, wounded, or otherwise incapacitated or helpless, or in a real or perceived acute medical condition, by ~~emergency medical services personnel with physician oversight~~ a person that holds oneself out to the public as being in that service or that regularly provides that service. The term includes ~~assessing,~~:

   a. Assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions; or

   b. Transporting a patient who is in a real or perceived acute medical condition to a hospital emergency room.

3. "Emergency medical services operation" means an entity licensed to offer and provide emergency medical services by emergency medical services personnel with physician oversight. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick response unit services.

4. "Emergency medical services personnel" means individuals who provide emergency medical services for emergency medical services operations. The term includes emergency medical services professionals, drivers, and department-certified emergency medical services providers, such as cardiopulmonary resuscitation drivers and first responders.

5. "Emergency medical services professional" means an individual licensed by the department as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.

SECTION 2. AMENDMENT. Subsection 1 of section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An emergency medical services operation within this state may not operate unless the operation is licensed in accordance with this chapter and rules adopted by the state health council. The rules must include:

   a. Time when operator's services must be available.

   b. Type of motor vehicle operator's license needed for drivers of ground vehicles.

   c. Training standards for operation personnel.

   d. Equipment and ground vehicle standards.

   e. Annual license fees.

   f. Number of personnel required for each run.

   g. The scope of practice for uncertified drivers, certified personnel, and emergency medical services professionals.

   h. Performance standards, which may include response time standards.

   i. Other requirements as may be found necessary to carry out the intent of this chapter.

SECTION 3. AMENDMENT. Section 23-27-04.7 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.7. ~~Study of standards of reasonable coverage~~ - County reporting - Use of property tax levies.

~~1. During the 2007-08 interim, the state health council shall study the minimum requirements of reasonable emergency medical services coverage which must take into account the response time for emergency medical services. Before July 1, 2008, the state health officer shall report to the legislative council the outcome and recommendations of this study.~~

~~2.~~ The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health.

~~3.~~ A taxing district that levies ~~property taxes for support of~~ a special emergency medical services or ambulance service levy shall ensure that every ~~emergency medical services operation~~ ambulance service that ~~operates~~ has portions of its service area in that taxing district

receives a ~~benefit~~ portion of the revenue from this tax. The taxing district shall allocate the special tax levy revenue to each ambulance service based upon the taxable value of the property within each township of the taxing district, allocating the taxable value of each township to the ambulance service that serves the largest area within that township.

SECTION 4. A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

Emergency medical services operation communications. The department may regulate the communications methods and protocols for emergency medical services operations in a manner consistent with the protocols established by the department of emergency services.

SECTION 5. LEGISLATIVE COUNCIL STUDY - EMERGENCY MEDICAL SERVICES. The legislative council shall consider studying, during the 2009-10 interim, the emergency medical services funding system within the state, including state and local emergency medical services and ambulance services funding and the feasibility and desirability of transitioning to a statewide funding formula. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 224

HOUSE BILL NO. 1215

(Representatives Uglem, Kaldor, Pollert, Porter, Potter)
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to influenza vaccinations administered by emergency medical technicians-paramedics; and to amend and reenact section 23-27-04.4 of the North Dakota Century Code, relating to supervision of emergency medical technicians and paramedics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.4 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.4. Supervision of certified or licensed emergency medical technician hospital personnel. Certified or licensed emergency medical technicians-intermediate and paramedics, who are employed by a hospital ~~and who are working in a nonemergency setting~~ may provide patient care within a scope of practice established by the department. Under this section, these emergency medical services professionals are under the supervision of the hospital's nurse executive.

SECTION 2. A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

Administration of influenza vaccination.

1. A licensed emergency medical technician-paramedic working for a hospital or an emergency medical services operation may administer the influenza vaccine to an individual who is at least eighteen years of age if:

   a. The physician providing oversight for the emergency medical services operation or the hospital medical director has established protocols that meet department standards that may be based on the advisory committee on immunization practices of the federal centers for disease control and prevention; and

   b. The emergency medical technician-paramedic has satisfactorily completed a department-approved course on administering vaccines.

2. If a hospital or emergency medical services operation allows the administration of vaccines under this section, the hospital or emergency medical services operation shall maintain records documenting the emergency medical technician-paramedic's completion of the training required under subsection 1. These records are subject to review by the department.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 225

SENATE BILL NO. 2333

(Senators J. Lee, Fischer, Heckaman)
(Representatives Klein, Pinkerton, Weisz)

AN ACT to create and enact chapter 23-35.1 of the North Dakota Century Code, relating to the creation of regional public health networks; to provide for a regional public health network task force; to provide for reports to the legislative council; to provide an appropriation; to provide a contingent appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-35.1 of the North Dakota Century Code is created and enacted as follows:

23-35.1-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. The definitions of section 23-35-01 apply; and

2. "Regional public health network" means a group of public health units that have entered a joint powers agreement or an existing lead multidistrict health unit identified in the emergency preparedness and response region which has been reviewed by the state health officer and has been verified as meeting the requirements of this chapter and chapter 54-40.3.

23-35.1-02. Regional public health network - Joint powers agreement - Review by state health officer - Criteria. Before a group of public health units may be designated as a regional public health network, the state health officer shall review the joint powers agreement the districts entered and verify that:

1. The geographical region covered by the regional public health network corresponds to one of the emergency preparedness and response regions established by the state department of health.

2. The joint powers agreement requires that the participating public health units:

   a. Share various administrative functions and public health services in accordance with subsection 3;

   b. Comply with requirements the health council adopts by rule; and

   c. Meet department maintenance of effort funding requirements, which must be calculated based on each unit's dollar or mill levy public health unit contribution in calendar year 2007.

3. The joint powers agreement requires:

a. A regional public health network to share the following public health services:

(1) Emergency preparedness and response;

(2) Environmental health services; and

(3) A regional public health network health officer, although this paragraph does not prohibit a public health unit from appointing a local health officer.

b. A regional public health network to select and share at least three administrative functions and at least three public health services, as provided under this subdivision:

(1) "Administrative functions" are:

(a) Financial accounting, billing, and accounts receivable;

(b) Community assessment and planning;

(c) Contract compliance;

(d) Public health service improvement planning;

(e) Human resource management;

(f) Technology support;

(g) Budgeting;

(h) Workforce development;

(i) Public information;

(j) Grant writing;

(k) Inventory management, including vaccines; and

(l) Any other functions approved by the state health officer.

(2) "Public health services" are:

(a) School health;

(b) Nutrition;

(c) Family planning;

(d) Injury prevention;

(e) Violence prevention;

(f) Tobacco prevention and cessation;

(g) Oral health;

(h) Cancer prevention;

(i) Maternal and child health;

(j) Asthma;

(k) Diabetes;

(l) Cardiovascular health;

(m) Physical activity;

(n) Immunizations;

(o) Communicable disease programs;

(p) Mental health;

(q) Chronic disease;

(r) Public health visits; and

(s) Any other services approved by the state health officer.

4. The joint powers agreement provides:

a. Criteria for the future participation of public health units that were not parties to the original joint powers agreement;

b. An application process by which public health units that were not parties to the original joint powers agreement may become participating districts; and

c. A process by which public health units that were not parties to the original joint powers agreement may appeal a decision to deny an application to participate in the agreement to the state health officer.

5. The joint powers agreement provides for the structure of the governing body of the network.

23-35.1-03. Regional public health network - Annual plan. A regional public health network shall prepare an annual plan regarding the provision of the required and optional public health services and shall submit the plan to the state health officer for approval.

23-35.1-04. Regional public health networks - Receipt and use of moneys. The board of a regional public health network may receive and expend moneys for the provision of administrative functions, public health services, and any other lawful activities.

23-35.1-05. Compensation - Reimbursement - Extraordinary service. The board of a regional public health network may provide compensation and

reimbursement to any board member who, at the direction of the board, performs extraordinary service on behalf of the board. For purposes of this section, "extraordinary service" means duties beyond those reasonably expected of members of the board and includes travel to and attendance at national meetings or conventions.

SECTION 2. STATE DEPARTMENT OF HEALTH - REGIONAL PUBLIC HEALTH NETWORK TASK FORCE - REPORTS TO LEGISLATIVE COUNCIL.

1. The state health officer shall appoint a regional public health network task force to meet during the 2009-10 interim to establish protocol for the regional public health network.

2. The task force must consist of at least seven members, including at least three members representing local public health districts, three members representing private health care providers, and representatives of the state department of health. The state health officer shall appoint the task force members representing local public health units from a list of names submitted by an organization representing public health administrators. The state health officer shall appoint the task force members representing private health care providers from a list of names submitted by the North Dakota medical association.

3. During the 2009-10 interim, the task force shall provide periodic reports to the legislative council regarding the development of the regional public health network. During the 2009-10 interim, the state health officer shall provide periodic reports to the legislative council regarding the development of the regional public health network.

SECTION 3. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS. There is appropriated out of any federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, the sum of $1,200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funds to local public health units for providing immunization services statewide, according to a funding formula established by the state health council in consultation with local public health units, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

SECTION 4. CONTINGENT GENERAL FUND APPROPRIATION. If the federal funds appropriated under section 3 of this Act are not available to provide the sum of $1,200,000, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $1,200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing funds to local public health units for providing immunization services statewide, according to a funding formula established by the state health council in consultation with local public health units, for the biennium beginning July 1, 2009, and ending June 30, 2011. The state department of health may spend the general fund moneys only to the extent that federal funds are not available to provide the $1,200,000 appropriated under section 3 of this Act.

General fund amounts appropriated under this section reflect one-time funding and are not a part of the agency's base budget for the 2011-13 biennium.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $275,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding a regional public health network pilot project, in consultation with the regional public health network task force and according to a funding formula established by the state health council in consultation with local public health units, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 6. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.

Approved May 7, 2009
Filed May 19, 2009

CHAPTER 226

SENATE BILL NO. 2403

(Senators Dever, J. Lee, Triplett)
(Representatives Keiser, Schneider, Weisz)

AN ACT to create and enact a new section to chapter 23-34 of the North Dakota Century Code, relating to the admissibility of peer review reports; and to amend and reenact sections 23-34-01, 23-34-02, 23-34-03, 23-34-04, and 23-34-06 of the North Dakota Century Code, relating to peer review records and reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-01 of the North Dakota Century Code is amended and reenacted as follows:

23-34-01. Definitions. As used in this chapter:

1. "Health care organization" means ~~any~~:

   a. A hospital~~,~~;

   b. A hospital medical staff~~,~~;

   c. A clinic~~,~~;

   d. A long-term or extended care facility~~,~~;

   e. An ambulatory surgery center~~,~~;

   f. An emergency medical services unit~~,~~;

   g. A physician~~,~~;

   h. A group of physicians operating a clinic or outpatient care facility~~,~~;

   i. An association or organization, whether domestic or foreign, of medical institutions or medical professionals;

   j. A nonprofit corporation, whether domestic or foreign, that owns, operates, or is established by any entity set forth in subdivisions a through i;

   k. Any combination of ~~these~~ entities~~,~~ set forth in subdivisions a through j; or

   l. Any federally designated state peer review organization.

2. "Health care provider" means a physician or other person licensed, certified, or otherwise authorized by the law of this state to provide health care services.

3. "Peer review ~~committee~~ organization" means ~~any~~:

   a. A health care organization; or

   b. A committee of a health care organization~~,~~ which:

      (1) Is composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body~~, which conducts~~; and

      (2) Conducts professional peer review.

4. a. "Peer review records" ~~means all data~~ means:

      (1) Data, information, reports, documents, findings, compilations and summaries, testimony, and any other records generated by, acquired by, or given to a peer review ~~committee~~ organization as a part of any professional peer review, regardless of when the record ~~is~~ was created~~. The term does not include original patient source documents. Peer review records also include all communications~~; and

      (2) Communications relating to a professional peer review, whether written or oral, between ~~peer~~:

         (a) Peer review ~~committee~~ organization members~~, peer~~;

         (b) Peer review ~~committee~~ organization members and the peer review ~~committee's~~ organization's staff~~,~~; or ~~peer~~

         (c) Peer review ~~committee~~ organization members and other persons participating in a professional peer review, including the person who is the subject of the professional peer review.

   b. The term does not include original patient source documents.

5. "Professional peer review" means all procedures a peer review ~~committee~~ organization uses or functions it performs to monitor, evaluate, and take action to review the medical care provided to patients by health care organizations or health care providers ~~to improve patient care and treatment or to provide~~ and includes procedures or functions to:

   a. Evaluate and improve the quality of health care;

   b. Obtain and disseminate data and statistics relative to the treatment and prevention of disease, illness, or injury;

   c. Develop and establish guidelines for medical care and the costs of medical care;

   d. Provide to other affiliated or nonaffiliated peer review organizations information that is originally generated within the peer review organization for the purposes of professional peer review;

e. Identify or analyze trends in medical error, using among other things a standardized incident reporting system; and

f. Provide quality assurance.

SECTION 2. AMENDMENT. Section 23-34-02 of the North Dakota Century Code is amended and reenacted as follows:

23-34-02. Peer review records - Confidentiality.

1. Peer review records are confidential and may be used by a peer review ~~committee~~ organization and the ~~committee~~ organization members only for conducting a professional peer review.

2. A health care organization may release reports, data compilations, analyses, and summaries, which are prepared by a peer review organization and which identify or analyze trends in medical errors to the state department of health, the North Dakota healthcare association, and the North Dakota hospital foundation.

3. The state department of health, the North Dakota healthcare association, and the North Dakota hospital foundation may release any information provided under subsection 2 to the public.

4. This section does not prohibit access of the state department of health to peer review records to determine compliance with requirements of federal or state law for the survey and certification of a health care facility or for trauma center designation and as authorized under any rules issued under section 23-01.2-01 or 23-01-11 to enable the state to be in compliance with any federal laws to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

SECTION 3. A new section to chapter 23-34 of the North Dakota Century Code is created and enacted as follows:

Peer review organization reports - Admissibility. Any report, data, data compilation, analyses, or summary that is generated by a peer review organization and made available to the state department of health or the public by the state department of health, the North Dakota healthcare association, or the North Dakota hospital foundation, may not be introduced into evidence, for any purpose, in any civil or administrative proceeding.

SECTION 4. AMENDMENT. Section 23-34-03 of the North Dakota Century Code is amended and reenacted as follows:

23-34-03. Peer review records - Privileged - Exceptions.

1. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

~~1.~~ a. Records gathered from an original source that is not a peer review ~~committee~~ organization;

~~2.~~ b. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or

~~3.~~ c. Peer review records subpoenaed in an investigation conducted by an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1.

2. Any peer review records provided to an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 5. AMENDMENT. Section 23-34-04 of the North Dakota Century Code is amended and reenacted as follows:

23-34-04. Peer review ~~committee~~ organization - Mandatory reports - Penalty.

1. A peer review ~~committee~~ organization shall report to an investigative panel of the board of medical examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31.

2. A health care organization is guilty of a class B misdemeanor if its peer review ~~committee~~ organization fails to make any report required by this section.

SECTION 6. AMENDMENT. Section 23-34-06 of the North Dakota Century Code is amended and reenacted as follows:

23-34-06. Limitation of liability.

1. A person furnishing peer review records to a peer review ~~committee~~ organization with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.

2. A health care organization, health care provider, or member of a peer review ~~committee~~ organization is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the health care organization, health care provider, or ~~committee~~ member of the peer review organization acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the health care organization, health care provider, or ~~committee~~ member of the peer review organization.

Approved April 9, 2009
Filed April 13, 2009

CHAPTER 227

HOUSE BILL NO. 1098

(Representative Wald)

AN ACT to amend and reenact sections 23-37-01, 23-37-02, 23-37-03, 23-37-04, 23-37-05, 23-37-06, 23-37-07, 23-37-08, 23-37-09, 23-37-10, 23-37-11, 23-37-12, 23-37-13, 23-37-14, 23-37-15, 23-37-16, 23-37-17, 23-37-18, 23-37-19, 23-37-20, 23-37-21, 23-37-22, 23-37-23, 23-37-24, 23-37-25, 23-37-26, 23-37-27, 23-37-28, 23-37-29, and 23-37-30 of the North Dakota Century Code, relating to providing an effective date for petroleum release mediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-37-01 of the North Dakota Century Code is amended and reenacted as follows:

23-37-01. ~~(Effective through July 31, 2011)~~ Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and

2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. AMENDMENT. Section 23-37-02 of the North Dakota Century Code is amended and reenacted as follows:

23-37-02. ~~(Effective through July 31, 2011)~~ Definitions. As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.

2. "Administrator" means the manager of the state fire and tornado fund.

3. "Board" means the petroleum release compensation board.

4. "Commissioner" means the insurance commissioner.

5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.

6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.

7. "Department" means the state department of health.

8. "Fund" means the petroleum release compensation fund.

9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

10. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.

11. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.

12. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.

13. "Petroleum" means any of the following:

    a. Gasoline and petroleum products as defined in chapter 19-10.

    b. Constituents of gasoline and fuel oil under subdivision a.

    c. Oil sludge and oil refuse.

14. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.

15. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

16. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:

    a. Tanks owned by the federal government.

    b. Tanks used for the transportation of petroleum.

    c. A pipeline facility, including gathering lines, regulated under:

        (1) The Natural Gas Pipeline Safety Act of 1968.

        (2) The Hazardous Liquid Pipeline Safety Act of 1979.

        (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.

d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.

e. A tank used for storing heating oil for consumptive use on the premises where stored.

f. A surface impoundment, pit, pond, or lagoon.

g. A flowthrough process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.

i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

j. A tank used for the storage of propane.

k. A tank used to fuel rail locomotives or surface coal mining equipment.

l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.

m. A portable tank.

n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.

17. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.

18. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 3. AMENDMENT. Section 23-37-03 of the North Dakota Century Code is amended and reenacted as follows:

23-37-03. ~~(Effective through July 31, 2011)~~ Petroleum release compensation board. The petroleum release compensation advisory board consists of five members appointed by the governor, three of whom are active in petroleum marketing, one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in

petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. AMENDMENT. Section 23-37-04 of the North Dakota Century Code is amended and reenacted as follows:

23-37-04. ~~(Effective through July 31, 2011)~~ Administration of fund - Staff. The administrator shall administer the fund according to this chapter. The administrator shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

SECTION 5. AMENDMENT. Section 23-37-05 of the North Dakota Century Code is amended and reenacted as follows:

23-37-05. ~~(Effective through July 31, 2011)~~ Adoption of rules. The administrator shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

SECTION 6. AMENDMENT. Section 23-37-06 of the North Dakota Century Code is amended and reenacted as follows:

23-37-06. ~~(Effective through July 31, 2011)~~ Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. AMENDMENT. Section 23-37-07 of the North Dakota Century Code is amended and reenacted as follows:

23-37-07. ~~(Effective through July 31, 2011)~~ Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. AMENDMENT. Section 23-37-08 of the North Dakota Century Code is amended and reenacted as follows:

23-37-08. ~~(Effective through July 31, 2011)~~ Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. AMENDMENT. Section 23-37-09 of the North Dakota Century Code is amended and reenacted as follows:

23-37-09. ~~(Effective through July 31, 2011)~~ Duty to notify. This chapter does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

SECTION 10. AMENDMENT. Section 23-37-10 of the North Dakota Century Code is amended and reenacted as follows:

23-37-10. ~~(Effective through July 31, 2011)~~ Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. AMENDMENT. Section 23-37-11 of the North Dakota Century Code is amended and reenacted as follows:

23-37-11. ~~(Effective through July 31, 2011)~~ Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 23-37-10; and

2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23-37-10, conducting surveys and investigations, and taking corrective action.

SECTION 12. AMENDMENT. Section 23-37-12 of the North Dakota Century Code is amended and reenacted as follows:

23-37-12. ~~(Effective through July 31, 2011)~~ Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. AMENDMENT. Section 23-37-13 of the North Dakota Century Code is amended and reenacted as follows:

23-37-13. ~~(Effective through July 31, 2011)~~ Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;

2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

3. Bar a claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. AMENDMENT. Section 23-37-14 of the North Dakota Century Code is amended and reenacted as follows:

23-37-14. ~~(Effective through July 31, 2011)~~ Other remedies. This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 15. AMENDMENT. Section 23-37-15 of the North Dakota Century Code is amended and reenacted as follows:

23-37-15. ~~(Effective through July 31, 2011)~~ Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23-37-17;

2. Any money recovered by the fund under section 23-37-23, and any money paid under an agreement, stipulation, or settlement;

3. Any interest attributable to investment of money in the fund; and

4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. AMENDMENT. Section 23-37-16 of the North Dakota Century Code is amended and reenacted as follows:

23-37-16. ~~(Effective through July 31, 2011)~~ Penalty. A tank owner violating section 23-37-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

SECTION 17. AMENDMENT. Section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

23-37-17. ~~(Effective through July 31, 2011)~~ Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars.

2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund on or before July 1, 2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not, on or before July 1, 2007, must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.

4. If accepted for registration with the fund, the owner or operator of the tank shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for an underground tank for each underground tank for each previous year that the tank was required to

be registered for which a fee was not paid, regardless of ownership in each of those years.

5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

SECTION 18. AMENDMENT. Section 23-37-18 of the North Dakota Century Code is amended and reenacted as follows:

23-37-18. ~~(Effective through July 31, 2011)~~ Reimbursement for corrective action.

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:

   a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;

   b. The department was given notice of the release as required by federal and state law;

   c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and

   d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.

3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

   a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;

   b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or

c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.

4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.

5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.

6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.

7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 19. AMENDMENT. Section 23-37-19 of the North Dakota Century Code is amended and reenacted as follows:

23-37-19. ~~(Effective through July 31, 2011)~~ Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 20. AMENDMENT. Section 23-37-20 of the North Dakota Century Code is amended and reenacted as follows:

23-37-20. ~~(Effective through July 31, 2011)~~ Administrator to determine costs. A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 21. AMENDMENT. Section 23-37-21 of the North Dakota Century Code is amended and reenacted as follows:

23-37-21. ~~(Effective through July 31, 2011)~~ Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 22. AMENDMENT. Section 23-37-22 of the North Dakota Century Code is amended and reenacted as follows:

23-37-22. ~~(Effective through July 31, 2011)~~ Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 23. AMENDMENT. Section 23-37-23 of the North Dakota Century Code is amended and reenacted as follows:

23-37-23. ~~(Effective through July 31, 2011)~~ Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 24. AMENDMENT. Section 23-37-24 of the North Dakota Century Code is amended and reenacted as follows:

23-37-24. ~~(Effective through July 31, 2011)~~ Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 25. AMENDMENT. Section 23-37-25 of the North Dakota Century Code is amended and reenacted as follows:

23-37-25. ~~(Effective through July 31, 2011)~~ Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 26. AMENDMENT. Section 23-37-26 of the North Dakota Century Code is amended and reenacted as follows:

23-37-26. ~~(Effective through July 31, 2011)~~ Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.

2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who

receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator within fourteen days of the demand or the negotiations.

3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.

4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 27. AMENDMENT. Section 23-37-27 of the North Dakota Century Code is amended and reenacted as follows:

23-37-27. ~~(Effective through July 31, 2011)~~ Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.

2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.

3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.

4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.

5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.

6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23-37-18.

8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.

9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 28. AMENDMENT. Section 23-37-28 of the North Dakota Century Code is amended and reenacted as follows:

23-37-28. ~~(Effective through July 31, 2011)~~ Matching federal funds. The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

SECTION 29. AMENDMENT. Section 23-37-29 of the North Dakota Century Code is amended and reenacted as follows:

23-37-29. ~~(Effective through July 31, 2011)~~ Fund appropriations. Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this chapter.

SECTION 30. AMENDMENT. Section 23-37-30 of the North Dakota Century Code is amended and reenacted as follows:

23-37-30. ~~(Effective through July 31, 2011)~~ Investment of fund. Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the fund. The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

Approved March 19, 2009
Filed March 24, 2009

CHAPTER 228

HOUSE BILL NO. 1339

(Representatives Porter, Delmore, Hawken)
(Senators Erbele, Nelson)

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to hospital designation as a primary stroke center and related services offered by emergency medical services operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

Primary stroke centers.

1. Effective January 1, 2010, the state department of health shall designate qualified hospitals as primary stroke centers. A hospital seeking designation as a primary stroke center shall apply to the department for that designation and shall demonstrate to the department that the hospital meets the applicable criteria established by the department.

2. The criteria established by the department for designation as a primary stroke center must include a requirement that the hospital be certified as a primary stroke center by the joint commission on accreditation of health care organizations or by a similar accrediting or certifying organization possessing hospital standards recognized nationally by the health care industry and accepted by the department.

3. The department may suspend or revoke a hospital's designation as a primary stroke center, after notice and opportunity for a hearing, if the department determines the hospital is not in compliance with the requirements of this chapter.

4. Annually, the state department of health shall provide a list of hospitals designated as primary stroke centers to each emergency medical services operation licensed in this state. The department shall post to the department's web site a list of the hospitals designated as primary stroke centers.

Stroke system of care task force.

1. The state department of health shall establish a stroke system of care task force. The purpose of the task force is to encourage and ensure the establishment of an effective stroke system of care throughout the state. The state health officer, or the officer's designee, shall serve on the task force. The state health officer shall appoint members to the task force who represent rural hospitals, physicians who treat patients in rural areas, and members representing emergency medical services operations that provide services in rural areas of the state. Members of the task force serve at the pleasure of the state health officer.

2. Before April 1, 2010, the stroke system of care task force shall provide the state department of health with recommendations regarding the establishment of an effective stroke system of care in the rural areas of this state. The initial recommendations must include:

   a. Protocols for the triage, stabilization, and appropriate routing of stroke patients by emergency medical services operations in rural areas; and

   b. A plan to provide for coordination and communication between rural hospitals, primary stroke centers, and other support services in order to assure that residents of all regions of the state have access to effective and efficient stroke care.

3. The state health council may adopt rules, based on the task force's recommendations.

Stroke triage - Emergency medical services.

1. Before January 1, 2011, the state department of health shall adopt a nationally recognized standardized stroke-triage assessment tool. The department shall post this standardized stroke-triage assessment tool to the department's website and shall provide a copy to each emergency medical services operation licensed in this state. As a term of licensure under chapter 23-27, each licensed emergency medical services operation shall adopt and implement a stroke-triage assessment tool that is substantially similar to the standardized stroke-triage assessment tool adopted by the department.

2. The department shall work with the stroke task force to establish protocols related to the assessment, treatment, and transport of stroke patients by emergency medical services operations licensed by the state. The protocols may include regional transport plans for the triage and transport of stroke patients to the closest, most appropriate facility, including the bypass of health care facilities not designated as primary stroke centers when it is safe to do so.

3. Effective April 1, 2012, each emergency medical services operation licensed under chapter 23-27 shall comply with this chapter.

Reports. Semiannually, each hospital designated as a primary stroke center shall provide the state department of health a report on the center's quality initiatives. The data in the report is an exempt record and is not subject to the state's open records law. However, the department shall make the data in these reports available to state and local government entities that have responsibility for the management and administration of emergency medical services throughout the state. Annually, the department shall compile the report data in aggregate form as a report card and post this report card to the department's website. The results of this report card may be used by the department to conduct training.

Standard of care. This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital has been licensed. This chapter must be interpreted to recognize that all patients should be treated individually based on each patient's needs and circumstances.

Advertisement. A person may not advertise to the public that a hospital is a primary stroke center unless the hospital has been designated as such under this chapter.

Approved April 21, 2009
Filed April 22, 2009