

# MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

## CHAPTER 332

HOUSE BILL NO. 1279  
(Committee on Social Services and Veterans Affairs)  
(At the request of the Health Department)

### STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

AN ACT to amend and reenact section 25-01-01.1 of the North Dakota Century Code, relating to the coordinating committee on mental retardation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

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

25-01-01.1. ~~COORDINATING--COMMITTEE--ON--MENTAL--RETARDATION~~  
~~STATE COUNCIL ON DEVELOPMENTAL DISABILITIES.)~~ There is hereby  
created and shall be maintained ~~a state coordinating committee on~~  
~~mental-retardation~~ in the state department of health a state council  
on developmental disabilities consisting of one ~~or more~~  
~~representatives~~ representative of each of the following departments,  
divisions, institutions, and organizations designated by the head of  
such agency or organization:

1. Office of superintendent of public instruction.
2. Social services board of North Dakota.
3. ~~Department~~ State department of health.
4. Grafton state school.
5. ~~Division--of--vocational--rehabilitation~~ Employment security  
bureau.
6. ~~A--nerveting--consultant--representing--the--North--Dakota~~  
~~association--for--retarded--children~~ Director of  
institutions.
7. Community mental health and retardation and human service  
center.

The council shall have consumer representation in conformity with federal regulations regarding developmental disabilities. All members of the council shall be appointed by the governor. Such committee The council shall select its own officers who shall serve for a term of one two year years commencing on July October first of each year. Meetings shall be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the committee council. Representatives--of four--of--the--above--agencies A simple majority of the council shall constitute a quorum and a--majority--of--such--quorum shall have authority to act upon any matter coming before the committee council. Members of the committee council shall receive--no compensation--for--service--upon--such--committee--except--compensation otherwise--normally--due--them--from--their--respective--departments, divisions,--institutions,--or--organizations,-- Members representing departments, divisions, or institutions of the state shall be reimbursed for--their--actual--expenses--incurred--in--serving--upon--such committee--by--their--respective--department,--division,--or--institution in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities, provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution or organization, and establish a committee on professional standards and certification that will develop rules and regulations for the certification of developmental disability professionals. The committee council shall have the duty and--responsibility--of--making--or--providing--for--such also perform studies and surveys of the needs of retarded the developmentally disabled persons in North Dakota as--it--may--deem--necessary, and shall facilitate coordinate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of mental--retardation developmental disabilities.

Approved March 7, 1979

## CHAPTER 333

SENATE BILL NO. 2059  
(Legislative Council)  
(Interim Committee on Education)

## SURROGATE PARENTS AND STATE HOSPITAL CARE CHARGES

AN ACT to create and enact a new section to chapter 25-01.1 of the North Dakota Century Code, relating to the duty of the heads of state institutions to provide for surrogate parents where necessary; to create and enact a new section to chapter 25-09 of the North Dakota Century Code, relating to the duty of certain handicapped patients to pay for costs of education and related services; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 25-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

HEADS OF INSTITUTIONS - DUTY TO APPOINT SURROGATE PARENTS.) The heads of each of the state institutions shall establish as required by the state superintendent a procedure for determining whether a patient under the age of twenty-one years needs a surrogate parent and for assigning such a surrogate parent for the purpose of special education and related services.

SECTION 2.) A new section to chapter 25-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

HANDICAPPED PATIENTS - LIMITATION.) Notwithstanding any other provision of this chapter, no handicapped patient under twenty-one years of age nor the estate nor the responsible relative of such patient may be charged for educational or related services provided at the state hospital. However, the state hospital shall have prior claim on all benefits accruing to such patients for medical and medically related services under entitlement by the federal government, medical or hospital insurance contracts, workmen's compensation or medical care and disability provisions of programs administered by the social service board of North Dakota. For the purposes of this section, "related services" means transportation and such developmental, corrective, and other supportive services,

as determined by the state department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services, other than medical and medically related services, shall be paid by the state hospital, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the state hospital, the school district of residence and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each such agency and political subdivision shall be liable. The department of public instruction shall have the authority to adopt such regulations and guidelines as shall be necessary to implement the provisions of this section.

SECTION 3. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 21, 1979

## CHAPTER 334

SENATE BILL NO. 2411  
(Senators Christensen, Goodman)  
(Representative Stenehjem)

## MENTAL HEALTH COMMITMENT

AN ACT to create and enact a new subsection to section 25-03.1-30 of the North Dakota Century Code, relating to modification of treatment orders and to the rights of patients; to amend and reenact sections 12-47-27, 12-47-28, 12-47-29, 25-03.1-04, 25-03.1-05, 25-03.1-06, 25-03.1-08, 25-03.1-09, 25-03.1-10, 25-03.1-11, 25-03.1-13, 25-03.1-14, 25-03.1-16, 25-03.1-19, 25-03.1-21, 25-03.1-22, 25-03.1-23, 25-03.1-24, 25-03.1-25, 25-03.1-26, 25-03.1-27, and 25-03.1-31, subsection 3 of section 25-03.1-34, section 25-03.1-41, and subsection 2 of section 25-03.1-42 of the North Dakota Century Code, and to amend and reenact in the alternative sections 25-03.1-02, 25-03.1-03, and 25-03.1-29 of the North Dakota Century Code, all sections relating to the transfer of penitentiary inmates to the state hospital or other treatment facility, delivery of the written order by the warden, recovery of the person transferred, definitions, jurisdiction, voluntary admission, discharge of voluntary patients, right to release on application, petition for involuntary treatment, review of petition for involuntary treatment, involuntary treatment, examination and report on involuntary treatment, right to counsel, duty of state's attorney, medication pending treatment order, involuntary treatment hearing, alternatives to hospitalization, involuntary treatment orders, petition for continuing treatment orders, right to treat, emergency detention or hospitalization, emergency procedure, notice and statement of rights, appeal, review of the current status of continuing treatment, transfer of patients, rights of patients, limitations and restrictions of patient's rights, and limitation of liability; and to repeal section 25-03.1-32 of the North Dakota Century Code, relating to a periodic hearing and petition for discharge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-47-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-27. TRANSFER OF PENITENTIARY INMATE TO STATE HOSPITAL OR OTHER TREATMENT FACILITY - EVALUATION PROCEDURE - RIGHT TO ADMINISTRATIVE HEARING - WRITTEN ORDER BY WARDEN.) ~~Whenever the warden of the penitentiary believes that a person confined in the penitentiary has become mentally ill during his confinement, he may require such person to be given a psychiatric evaluation or transfer such person to the state hospital for such evaluation. If it is found from the evaluation that such person is mentally ill, such person shall be confined and treated in the state hospital upon a written order by the warden.~~

1. A person confined to the penitentiary may request in writing a transfer to the state hospital or other appropriate treatment facility. The request may be delivered to the warden or to a member of the penitentiary staff who shall immediately submit the request to the warden. Whenever the warden receives a request for transfer and has reason to believe that a person confined in the penitentiary requires treatment beyond what is available at the penitentiary and the treatment can be provided without violating penitentiary security requirements, he shall appoint an evaluation committee, which shall include a psychiatrist, to review the person's mental and physical condition. The warden may appoint an evaluation committee whenever the warden has reason to believe a person confined in the penitentiary requires treatment beyond what is available at the penitentiary. The evaluation committee, upon a finding that the confined person has treatment needs which cannot be met by the penitentiary and which can be provided elsewhere without violating penitentiary security requirements, shall submit a written report to the warden of its findings, which may be accompanied by a written statement of the person requesting or consenting to transfer to the state hospital or other appropriate treatment facility. The warden shall notify the person of the results of the evaluation, the right to an administrative hearing if the person objects to the results, and the right to be represented by a prison employee of his choice at the administrative hearing. If the person has consented to or requested the transfer, the warden shall order in writing that the person be transferred to the state hospital or other appropriate treatment facility.
2. If the person objects to the findings of the evaluation committee or to the transfer to the state hospital or other appropriate treatment facility, the warden shall set a date for an administrative hearing. The hearing shall be conducted by a three-member board appointed by the warden. The board shall include a member of the prison counseling staff, a licensed physician, psychiatrist, or clinical psychologist, and shall be chaired by an employee designated by the warden. In no event may a member of this board have been involved in the development of the

evaluation report. Following the hearing, the board shall submit its findings and the basis of those findings to the warden in writing. Unless the board determines that the person does not meet the criteria of a person requiring treatment, the warden may order the person transferred to the state hospital or other appropriate treatment facility. The warden shall notify the person of the results of the administrative hearing and the right to an involuntary treatment hearing fourteen days after transfer, pursuant to section 25-03.1-19, before a magistrate of the court where the hospital or treatment facility is located. If the hearing determines that the transferred person should be discharged, the hospital or treatment facility shall return the person to the custody of the warden for transfer to the penitentiary unless his sentence has expired.

SECTION 2. AMENDMENT.) Section 12-47-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-28. COPY OF WRITTEN ORDER BY WARDEN DELIVERED TO SUPERINTENDENT OF STATE HOSPITAL OR OTHER FACILITY - SUPERINTENDENT TO RECEIVE INMATE - FILING OF RECEIPT.) The warden of the penitentiary shall deliver to the superintendent of the state hospital or the admitting officer of another appropriate facility, with any person transferred thereto as provided in section 12-47-27, a correct copy of the written order of the warden directing such transfer, accompanied by a copy of the person's request for or consent to hospitalization, the evaluation committee's report, and the findings of the administrative hearing, if one has been held. The superintendent of the state hospital or the admitting officer of another appropriate facility shall receive such person into the hospital or facility upon the presentation of such order and shall deliver to the warden a certificate acknowledging the receipt of such person and of the original order. The certificate of the superintendent of the state hospital or the admitting officer of another appropriate facility shall be retained by the warden and filed in his office.

SECTION 3. AMENDMENT.) Section 12-47-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-29. RECOVERY OF PERSON TRANSFERRED - DUTY OF SUPERINTENDENT OR OFFICER - RETURN OR RELEASE - ALLOWANCE ON DISCHARGE.) The superintendent of the state hospital or the chief administrative officer of another appropriate facility shall notify the warden of the penitentiary ~~of the recovery of~~ in writing when any person transferred to the state hospital or other facility from the penitentiary, ~~and if~~ no longer requires treatment, and provide the warden with a written report showing the treatment provided and the future prognosis of the person provided treatment. If the term of sentence of such person has not expired, the warden shall return him to the penitentiary immediately. If the term of commitment of such person has expired at the time of his ~~recovery~~ no longer

requiring treatment, the warden shall direct that he be released from further custody by the superintendent or chief administrative officer. The warden shall provide any person so released with the same allowance of clothing, money, and transportation as that to which other persons discharged from the penitentiary are entitled.

SECTION 4. AMENDMENT.) If House Bill No. 1066 is not approved by the forty-sixth legislative assembly, then section 25-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter requires otherwise:

1. "Alcoholic individual" means an individual who has lost the power of self-control, exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to his drinking.
2. "Court" means, except where otherwise indicated, the county court of increased jurisdiction or the county justice court of the county wherein the respondent resides ~~or of the county closest geographically thereto as determined by the petitioner if no county court of increased jurisdiction is established therein.~~ Only the county justice courts wherein a licensed attorney presides may exercise jurisdiction under this chapter.
3. "Department" means the state department of health pursuant to chapter 23-01.
4. "Director" means the director of a treatment facility.
5. ~~"District" means the geographical area composed of these counties without county courts of increased jurisdiction surrounding, adjacent to, or geographically closest to a county court of increased jurisdiction, as determined by the petitioner. It does not refer to any established judicial, administrative, or executive district within the state.~~
- 6- "Drug addict" means an individual who has a physical or emotional dependence on a drug or drugs which he uses in a manner not prescribed by a physician.
6. "Expert examiner" means a licensed physician, psychiatrist, or clinical psychologist appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, while an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist.

7. "Independent expert examiner" means a licensed physician, psychiatrist, or clinical psychologist licensed--in--North Dakota chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment.
8. "Magistrate" means the judge of the appropriate county court of increased jurisdiction or the appropriate county justice.
9. "Mental health professional" means:
- a. A licensed--clinical psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a qualified-mental-health-professional-defined-by subdivision-a-or-b registered nurse as defined by subdivision c or an expert examiner as defined by subsection 6.
  - d. e. An addiction counselor certified by the department.
10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.
11. "Person requiring treatment" means either a person:
- a. A---person---who Who is severely mentally ill, --an alcoholic,--or--a--drug--addict--and--who--as--a--result--of--such--condition--can--reasonably--be--expected--within--the--near--future--to--intentionally---or---unintentionally--seriously--physically--harm--himself--or--another--person,--and--who--has--engaged--in--an--act--or--acts--or--made

~~significant--threats-that-are-substantially-supportive of-this-expectation; or~~

- b. ~~A--person-who-is-mentally-ill,-an-alcoholic,-or-a-drug addict-and-who-as-a-result-of-such-condition-is-unable to--attend--to-his-basic-physical-needs,-such-as-feed, clothing,-or-shelter,-that-must-be-attended-to-for-him to--avoid-serious-harm-in-the-near-future,-and-who-has demonstrated-that-inability-by-failing-to--meet--these basic---physical--needs.~~ Who is mentally ill, an alcoholic, or drug addict, and there is a reasonable expectation that if the person is not hospitalized there exists a serious risk of harm to himself, others or property. "Serious risk of harm" means a substantial likelihood of:

- (1) Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential; or
- (2) Killing or inflicting serious bodily harm on another person, inflicting significant property damage, as manifested by acts or threats; or
- (3) Substantial deterioration in physical health, or substantial injury, disease, or death resulting from poor self-control or judgment in providing one's shelter, nutrition, or personal care.

~~12. "Physician"--means--a-physician-licensed-under-the-laws-of this-state-~~

~~13-~~ 13. "Private treatment facility" means any facility established pursuant to chapters 10-19 through 10-24 and licensed pursuant to chapter 23-16 or 23-17.1.

~~14-~~ 13. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.

~~15-~~ 14. "Respondent" means a person subject to petition for involuntary treatment.

~~16-~~ 15. "Superintendent" means the state hospital superintendent.

~~17-~~ 16. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown, or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder, alcoholism, or drug addiction.

SECTION 5. AMENDMENT.) If House Bill No. 1066 is approved by the forty-sixth legislative assembly, then section 25-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-02. DEFINITIONS.) In this chapter, unless the context or subject matter requires otherwise:

1. "Alcoholic individual" means an individual who has lost the power of self-control, exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to his drinking.
2. "Court" means, except where otherwise indicated, the ~~county district court of--increased--jurisdiction~~ of the county wherein the respondent resides ~~or-of-the-county closest--geographically--thereto--as--determined--by--the petitioner-if-no-county-court-of-increased-jurisdiction-is established-therein.~~
3. "Department" means the state department of health pursuant to chapter 23-01.
4. "Director" means the director of a treatment facility.
5. ~~"District"--means--the-geographical-area-composed-of-these counties-without-county-courts-of--increased--jurisdiction surrounding--adjacent--to--or-geographically-closest-to-a county-court-of-increased-jurisdiction,--as--determined--by the--petitioner,---It--does--not--refer--to--any-established judicial--administrative,--or--executive-district-within-the state-~~
6. "Drug addict" means an individual who has a physical or emotional dependence on a drug or drugs which he uses in a manner not prescribed by a physician.
6. "Expert examiner" means a licensed physician, psychiatrist, or clinical psychologist appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, while an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist.
7. "Independent expert examiner" means a licensed physician, psychiatrist, or clinical psychologist ~~licensed--in--North Dakota~~ chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment.

8. "Magistrate" means the judge of the appropriate county district court of increased jurisdiction.
9. "Mental health professional" means:
- a. A licensed-clinical psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a qualified mental health professional defined by subdivision a or b registered nurse as defined by subdivision c or an expert examiner as defined by subsection 6.
  - ~~d~~ e. An addiction counselor certified by the department.
10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.
11. "Person requiring treatment" means either a person:
- a. ~~A---person---who Who is severely mentally ill,---an alcoholic,---or---a---drug---addict---and---who---as---a---result---of such---condition---can reasonably be expected within the near---future---to---intentionally---or---unintentionally seriously---physically---harm---himself---or---another---person, and---has---engaged---in---an---act---or---acts---or---made significant---threats---that---are---substantially---suppervive of---this---expectation; or~~
  - b. ~~A---person---who---is---mentally---ill,---an---alcoholic,---or---a---drug addict---and---who---as---a---result---of---such---condition---is---unable to---attend---to---his---basic---physical---needs,---such---as---feed, clothing,---or---shelter,---that---must---be---attended---to---for---him~~

~~to avoid serious harm in the near future, and who has demonstrated that inability by failing to meet these basic physical needs.~~ Who is mentally ill, an alcoholic, or drug addict, and there is a reasonable expectation that if the person is not hospitalized there exists a serious risk of harm to himself, others or property. "Serious risk of harm" means a substantial likelihood of:

- (1) Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential; or
- (2) Killing or inflicting serious bodily harm on another person, inflicting significant property damage, as manifested by acts or threats; or
- (3) Substantial deterioration in physical health, or substantial injury, disease, or death resulting from poor self-control or judgment in providing one's shelter, nutrition, or personal care.

12. ~~"Physician" means a physician licensed under the laws of this state.~~
13. "Private treatment facility" means any facility established pursuant to chapters 10-19 through 10-24 and licensed pursuant to chapter 23-16 or 23-17.1.
14. 13. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
15. 14. "Respondent" means a person subject to petition for involuntary treatment.
16. 15. "Superintendent" means the state hospital superintendent.
17. 16. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown, or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder, alcoholism, or drug addiction.

SECTION 6. AMENDMENT.) If House Bill No. 1066 is not approved by the forty-sixth legislative assembly, then section 25-03.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-03. JURISDICTION.) The county courts of increased jurisdiction and the county justice courts shall both have original ~~and exclusive~~ jurisdiction over the proceedings governed by this

chapter, which jurisdiction is exclusively vested in those courts, except as provided in this section. They shall have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation. For the limited purpose of proceedings under this chapter the supreme court shall designate the county justice courts as courts of record.

SECTION 7. AMENDMENT.) If House Bill No. 1066 is approved by the forty-sixth legislative assembly, then section 25-03.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-03. JURISDICTION.) The ~~county district courts of increased---~~jurisdiction shall have original and exclusive jurisdiction over the proceedings governed by this chapter. They shall have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation.

SECTION 8. AMENDMENT.) Section 25-03.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. VOLUNTARY ADMISSION.) An application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses, by his parent or legal guardian. The application may be submitted to a public treatment facility or to the state hospital, both of which shall have the authority to admit and treat the applicant. Upon admittance, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

SECTION 9. AMENDMENT.) Section 25-03.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-05. DISCHARGE OF VOLUNTARY PATIENTS.) Any voluntary patient who has recovered, or whose treatment the superintendent or director determines is no longer advisable, shall be discharged. Upon If, upon discharge there shall be a release plan--- Appropriate it is determined that the individual would benefit from the receipt of further treatment, the superintendent or director shall offer him appropriate treatment on a voluntary basis or shall aid him to obtain treatment from another source on a voluntary basis. With the patient's consent, appropriate referrals may be made for the patient.

SECTION 10. AMENDMENT.) Section 25-03.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-06. RIGHT TO RELEASE ON APPLICATION - EXCEPTION - JUDICIAL PROCEEDINGS.) Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital shall be orally advised of the right to release and shall be further advised in writing of his rights under this chapter. A voluntary patient who requests his release shall be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county ~~or district~~ where the hospital or facility is located. The ~~court~~ patient must be ~~petitioned to begin such proceedings~~ served the petition within twenty-four hours, exclusive of weekends and holidays, ~~of from~~ the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing shall be held within ~~seventy-two hours of five days, excluding weekends and holidays, from~~ the time the ~~written request--for--release--is--received--by--the--superintendent--or--director~~ petition is served.

SECTION 11. AMENDMENT.) Section 25-03.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-08. PETITION FOR INVOLUNTARY TREATMENT.) Proceedings for the involuntary treatment of an individual may be commenced by any person eighteen years of age or over by filing a written petition with the clerk of court of the county where the respondent is presently located, or which is the respondent's place of residence, ~~or of the court within the district~~. The clerk of court shall assist the person in completing the petition. The petition shall contain assertions that the respondent is the person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names and addresses, if known, of any witnesses to such facts; and, if known, the name and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist ~~or~~, physician, or clinical psychologist who has personally examined the respondent within ~~thirty~~ forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.
3. Corroborative information obtained and reduced to writing by the clerk of court, but only when it is not feasible to comply with, or when he considers it appropriate to

supplement, the information supplied pursuant to either subsection 1 or 2.

SECTION 12. AMENDMENT.) Section 25-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-09. REVIEW OF PETITION FOR INVOLUNTARY TREATMENT - PROBABLE CAUSE ESTABLISHED - RESPONDENT NOTIFIED - RIGHTS - INVESTIGATION.)

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 25-03.1-08 and whether it establishes probable cause to believe the respondent meets the criteria of a person requiring treatment. If probable cause has not been so established, the petition shall be dismissed unless an amendment would cure the defect.
2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent, copies of the petition and supporting documentation. This shall be accompanied by notice informing the respondent of the procedures required by this chapter and an explanation of the intended uses and possible effects of the investigation mandated in subsection 3. This notice shall also include notice of the respondent's right to a preliminary and a treatment hearing when in custody pursuant to section 25-03.1-25 or, if not in custody, the right to a treatment hearing; of his right to be present at the hearings; of his right to have counsel prior to the hearings and any court-ordered examination; of his right to an ~~additional independent expert-examiner~~ independent evaluation; and, if the respondent is indigent, of his right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. If an independent expert examiner is to be appointed, the respondent shall be given an opportunity to select that examiner.
3. The magistrate shall direct the city, county, or district mental health outreach worker or other qualified person to investigate and evaluate the specific facts alleged and ~~the reliability and credibility of the person providing the information unless the respondent is in a facility.~~ The investigation, to be completed as promptly as possible, shall include observations of and conversation with the respondent in his home or other surroundings where he can be found or desires to meet, unless he cannot be found or refuses to meet with the outreach worker. A

written report of the results of the investigation shall be delivered to the magistrate. Copies of the report shall be made available upon request to the respondent, his counsel, and any ~~psychiatrist--or--physician~~ expert examiner conducting an examination pursuant to section 25-03.1-11.

SECTION 13. AMENDMENT.) Section 25-03.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-10. INVOLUNTARY TREATMENT - COURT-ORDERED EXAMINATION.) If the petition is not accompanied by a written supportive statement of a psychiatrist ~~or~~, physician, or clinical psychologist who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by a ~~psychiatrist--or--physician~~ an expert examiner of his own choice or one appointed by the court. The order shall state the date and time within which the respondent must appear, the address to which the respondent is to report, and a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, he may be involuntarily taken into custody and transported to the appointed place. Accompanying the order shall be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at the state hospital or a treatment facility, at the respondent's home, or at any other suitable place in the community. The respondent may be accompanied by one or more of his relatives or friends at the place of the examination. The costs of the court-ordered examination shall be borne by the county which is the respondent's place of residence.

SECTION 14. AMENDMENT.) Section 25-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-11. INVOLUNTARY TREATMENT - EXAMINATION - REPORT.) The respondent shall be examined within a reasonable time by a ~~psychiatrist--or--physician~~ an expert examiner as ordered by the court. If the respondent is taken into custody pursuant to the emergency treatment provisions of this chapter, the examination shall be conducted within twenty-four hours of custody. Any ~~psychiatrist--or--physician~~ expert examiner conducting an examination pursuant to this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by such mental health professional. This examination report, and that of the independent examiner, if one has been requested, shall be filed with the court. The report shall contain:

1. Evaluations of the respondent's physical, ~~social, and~~ educational condition and mental status.
2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear

explanation of how that conclusion was derived from the evaluation required.

3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner who prepared the report.

If the ~~examining--psychiatrist--or--physician~~ expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the ~~examination~~ expert examiner concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in section 25-03.1-12. The If the respondent is in custody, the preliminary hearing date must be within seventy-two hours, exclusive of weekends and holidays, of the date the court received the commitment petition respondent was taken into custody through emergency commitment pursuant to section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If the preliminary hearing is not required, the treatment hearing shall be held within seventy-two hours of the date the court received the expert examiner's report, not to exceed fourteen days, excluding weekends and holidays, from the time the petition was served.

SECTION 15. AMENDMENT.) Section 25-03.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-13. RIGHT TO COUNSEL - INDIGENCY - WAIVER.)

1. Every respondent under this chapter is entitled to legal counsel.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within ~~twenty-four~~ seventy-two hours, exclusive of weekends or holidays, ~~of its receipt of any petition~~ from the time the petition was served, appoint counsel to represent the respondent. If an individual has been hospitalized pursuant to the emergency procedure, counsel shall be appointed within twenty-four hours, exclusive of weekends or holidays, of such hospitalization.
3. If, after consultation with appointed counsel, the respondent wants to waive his right to counsel or his right to any of the hearings provided for under this chapter, he may do so by notifying the court in writing.

This notification shall clearly state his reasons for the waiver and it shall also be signed by counsel.

4. If the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county which is the respondent's place of residence in a reasonable amount based upon time and expenses.

SECTION 16. AMENDMENT.) Section 25-03.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-14. DUTY OF STATE'S ATTORNEY.) The state's attorney for the county in which proceedings under this chapter are initiated shall represent the petitioners state in court proceedings and hearings conducted under section 25-03.1-19. ~~A state's attorney need not participate in or be present at a hearing whenever a petitioner has retained private counsel, or whenever any criminal charge is pending or contemplated arising from an act of the respondent.~~ The county of residence of the respondent shall bear the cost of the state's attorney in such proceeding in a reasonable amount based upon time and expenses.

SECTION 17. AMENDMENT.) Section 25-03.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-16. MEDICATION PENDING HOSPITALIZATION TREATMENT ORDER.) A patient who has requested release or a person who is the subject of a petition for hospitalization has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, ~~state hospital or treatment facility personnel shall be able to treat him with medication or a less restrictive alternative of his preference if, in the opinion of the psychiatrist or physician, these treatments may be necessary to prevent bodily harm to the respondent or others~~ a physician may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescribing physician, the need for the medication still exists or discontinuation would hamper preparation of and participation in the proceedings.

SECTION 18. AMENDMENT.) Section 25-03.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-19. INVOLUNTARY TREATMENT HEARING.) The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, shall be held within fourteen days of the preliminary hearing. If the preliminary

hearing is not required, the involuntary treatment hearing shall be held within seventy-two hours of the date the court received the expert examiner's report, not to exceed fourteen days, excluding weekends and holidays, from the time the petition was served. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing may shall be held in the county ~~ex-district~~ of the respondent's residence or location, or the county ~~ex-district~~ wherein the state hospital or treatment facility treating the respondent is located, ~~or the county of the court ordering detention pursuant to section 25-03.1-17, at the discretion of the respondent or his counsel.~~ At the hearing, evidence in support of the petition shall be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing shall be conducted in as informal a manner as practical, but the issue shall be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There shall be a presumption in favor of the respondent, and the burden of proof in support of the petition shall be upon the petitioner.

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

SECTION 19. AMENDMENT.) Section 25-03.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-21. ALTERNATIVES TO HOSPITALIZATION.) Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility.

If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization

is appropriate for a period of ninety days. If, during this period, the court learns that the respondent is not complying with the order, or that the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the court may without a hearing and based upon the record and other available information:

1. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
2. Enter a new order directing that the individual be hospitalized for the remainder of the ninety-day period. If the individual refuses to comply with this hospitalization order, the court may direct a peace officer to take the individual into protective custody and transport him to a treatment facility.

If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court ~~that--originally--ordered--hospitalization--or--alternative treatment~~ where the facility is located.

SECTION 20. AMENDMENT.) Section 25-03.1-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-22. INVOLUNTARY HOSPITALIZATION TREATMENT ORDERS.)

1. An initial order for involuntary hospitalization treatment shall be for a period not to exceed ninety days.
2. ~~If--prior--to--the--expiration--of--a--ninety--day--order--the--director--or--superintendent--believes--that--a--patient's--condition--is--such--that--he--continues--to--require--treatment--the--director--or--superintendent--shall--not--less--than--fourteen--days--prior--to--the--expiration--of--the--order--petition--the--court--that--originally--ordered--hospitalization--for--a--determination--that--the--patient--continues--to--require--treatment--and--for--an--order--authorizing--additional--hospitalization--for--a--period--not--to--exceed--ninety--days--~~
- 3- If, prior to the expiration of the ~~second~~ ninety-day order, the director or superintendent believes that a patient's condition is such that he continues to require treatment, the director or superintendent shall, not less than fourteen days prior to the expiration of the order, petition the court ~~that--originally--ordered--hospitalization~~ where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing hospitalization treatment,

which order may be for an unspecified period of time. If the patient has been hospitalized for the treatment of alcoholism, the continuing ~~hospitalization~~ treatment order may be only for thirty days after which time the patient must be released.

SECTION 21. AMENDMENT.) Section 25-03.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-23. PETITION FOR ~~SUBSEQUENT---HOSPITALIZATION~~ CONTINUING TREATMENT ORDERS.) A petition for an order authorizing a ~~second--ninety--days--of~~ continuing ~~hospitalization~~ treatment shall contain: a statement setting forth the reasons for the superintendent's or director's determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition shall be accompanied by a certificate executed by a physician ~~or~~ psychiatrist, or clinical psychologist. The court shall set a hearing date which shall be within fourteen days of the receipt date of service of the petition.

SECTION 22. AMENDMENT.) Section 25-03.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-24. RIGHT TO TREAT.) State hospital or treatment facility personnel shall be able to treat a patient with prescribed medication or a less restrictive alternative ~~of his preference~~ if, in the opinion of a psychiatrist or physician, these treatments may be necessary to prevent bodily harm to the patient or others or to prevent imminent deterioration of the respondent's physical or mental condition. Nothing in this chapter shall be deemed to prohibit a hospital from rendering emergency medical care without the need for consultation, if in the exercise of sound medical judgment that care is immediately necessary for the well-being of the patient.

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

25-03.1-25. DETENTION OR HOSPITALIZATION - EMERGENCY PROCEDURE.)

1. When a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional has reasonable cause to believe that a person is suffering from mental illness, alcoholism, or drug addiction, and is likely to cause serious injury to himself or others of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, clinical

psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.

2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired, an alcoholic, or a drug addict, and is imminently likely to injure himself or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody ~~by--the--sheriff~~ and be detained as provided in subsection 3 until the preliminary hearing, which shall be held no more than seventy-two hours, exclusive of weekends and holidays, after the date of the order.
3. Detention under this section may be:
  - a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been ordered. The facility may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
  - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
4. Immediately upon being taken into custody, the person shall be advised of the purpose of custody, of the intended uses and possible effects of any evaluation he undergoes, and of his right to counsel and to a preliminary hearing.
5. Upon arrival at a facility the peace officer, physician, psychiatrist, clinical psychologist, or the mental health professional who conveyed the person, or caused him to be conveyed, shall complete an application for evaluation and be interviewed by a mental health professional at the facility. The application for emergency admission shall state in detail the circumstances under which the person was taken into custody. It must allege in detail the

overt act which constituted the basis for the petitioner's belief that the person is mentally ill, an alcoholic, or drug addict and that, because of such condition, he could reasonably be expected to cause serious physical injury to himself or another if not immediately detained.

SECTION 24. AMENDMENT.) Section 25-03.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-26. EMERGENCY PROCEDURE - ACCEPTANCE OF PETITION AND INDIVIDUAL - NOTICE - COURT HEARING SET.)

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if he finds that the subject does not meet the emergency commitment standards, or file a petition with the magistrate of the county ~~ex--district~~ of the person's residence giving notice to the court and stating in detail the circumstances and facts of the case.
2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing to be held no later than seventy-two hours, exclusive of weekends or holidays, after detention unless the person has been released as a person not requiring treatment ~~or~~, has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

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

25-03.1-27. NOTICE AND STATEMENT OF RIGHTS.)

1. Whenever any person is detained for emergency evaluation and treatment pursuant to this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of his immediate family, a guardian, or a friend, if any, to receive:
  - a. A copy of the petition which asserted that the individual is a person requiring treatment.
  - b. A written statement explaining that the individual will be examined by a ~~physician--or--psychiatrist~~ an

- expert examiner within twenty-four hours of his hospitalization, excluding Sundays and holidays.
- c. A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if he is certified by ~~the--medical~~ an expert examiner or examiners as a person requiring treatment.
  - d. A written statement in simple terms explaining the rights of the individual to a full court hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.
2. If the individual is unable to read or understand the written materials, every effort shall be made to explain them to him in a language he understands, and a note of the explanation and by whom made shall be entered into his patient record.

SECTION 26. AMENDMENT.) If House Bill No. 1066 is not approved by the forty-sixth legislative assembly, then section 25-03.1-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-29. APPEAL.) The respondent shall have the right to an expedited appeal from an order of involuntary commitment or alternative treatment, a continuing treatment order, an order denying a petition for discharge, or an order of transfer. Upon entry of an appealable order, the court shall notify the respondent of the right of appeal and the right to counsel. The notice of appeal must be filed within thirty days after the order has been entered. Such appeal shall be to the district court and the hearing shall be commenced within fourteen days of filing of the notice of appeal. The hearing shall be limited to a review of the procedures, findings, and conclusions of the lower court.

Pending appeal, the order appealed from shall remain in effect, unless the district court determines otherwise. The respondent shall not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.

SECTION 27. AMENDMENT.) If House Bill No. 1066 is approved by the forty-sixth legislative assembly, then section 25-03.1-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-29. APPEAL.) The respondent shall have the right to an expedited appeal from an order of involuntary commitment or

~~alternative treatment, a continuing treatment order, an order denying a petition for discharge, or an order of transfer. Upon entry of an appealable order, the court shall notify the respondent of the right of appeal and the right to counsel. The notice of appeal must be filed within thirty days after the order has been entered. Such appeal shall be to the district supreme court and the hearing shall be commenced within fourteen days of filing of the notice of appeal. The hearing shall be limited to a review of the procedures, findings, and conclusions of the lower court.~~

~~Pending appeal, the order appealed from shall remain in effect, unless the district supreme court determines otherwise. The respondent shall not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.~~

SECTION 28.) A new subsection to section 25-03.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

If, prior to the expiration of a ninety-day order, the superintendent or director determines that a less restrictive form of treatment would be more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court which last ordered the patient's hospitalization to modify its order. The petition shall contain a statement setting forth the reasons for the determination that the patient continues to require treatment, a statement setting forth the reasons for the determination that a less restrictive form of treatment would be more appropriate for the patient, and a statement describing the recommended treatment program. If the patient consents, the court may, without a hearing, modify its treatment order by directing the patient to undergo the agreed treatment program for the remainder of the ninety-day order. The patient shall be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of his protest.

SECTION 29. AMENDMENT.) Section 25-03.1-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-31. REVIEW OF CURRENT STATUS OF CONTINUING HOSPITALIZATION TREATMENT.) Every individual subject to an order of continuing hospitalization treatment has the right to regular, adequate, and prompt review of his current status as a person requiring treatment and in need of hospitalization. Six months from the date of an order of continuing hospitalization treatment, and every six months year thereafter, the director or superintendent where an individual is hospitalized shall review his status as a

person requiring treatment and in need of hospitalization. The results of each periodic review conducted under this chapter shall be made part of the patient's record, and shall be filed within five days of the review, in the form of a written report, with the court ~~which--last-ordered-the-patient's-hospitalization~~ where the facility is located. Within this five-day period, the director or superintendent shall give notice of the results of the review to the patient, his attorney, and his nearest relative or guardian.

If a periodic review report concludes that the patient continues to require treatment and hospitalization, and the patient objects to either or both of those conclusions, the patient shall have the right to a hearing, an independent evaluation, and may petition the court for discharge. This petition may be presented to the court or a representative of the hospital or facility within seven days, excluding weekends and holidays, after the report is received. If the petition is presented to a representative of the hospital or facility, he shall transmit it to the court forthwith. ~~The court shall set a hearing date which shall be within fourteen days of the date of receipt of the petition.~~ The petition shall be accompanied by a report from a physician, psychiatrist, or clinical psychologist setting forth the reasons for his or her conclusions that the patient no longer is a person requiring treatment or in need of hospitalization. If no such report accompanies the petition because the patient is indigent or is unable for reasons satisfactory to the court to procure such a report, the court shall appoint an independent expert examiner to examine the patient, and the examiner shall furnish a report to the court.

If such report concludes that the patient continues to be a person requiring treatment and in need of hospitalization, the court shall so notify the patient and shall dismiss the petition for discharge. If the conclusion is to the contrary, the court shall set a hearing date which shall be within fourteen days of receipt of the examiner's report. At the hearing, the burden of proof shall be the same as in an involuntary treatment hearing.

SECTION 30. AMENDMENT.) Subsection 3 of section 25-03.1-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No patient shall be transferred to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ordering hospitalization. The patient shall be given an opportunity to ~~oppose~~ protest the transfer and to receive a hearing on the merits of his protest ~~before--the magistrate--upon--whose--order--he--was--committed.~~ The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the hospital or facility within five days, excluding weekends and holidays, after the notice of transfer was received. If the objection is presented to a

representative of the hospital or facility, he shall transmit it to the court forthwith. The court shall set a hearing date which shall be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 31. AMENDMENT.) Section 25-03.1-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-41. LIMITATIONS AND RESTRICTIONS OF PATIENT'S RIGHTS.) The rights enumerated in section 25-03.1-40 may be limited or restricted by the treating physician ~~or~~, psychiatrist, or clinical psychologist, if in his ~~medical~~ professional judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules and regulations promulgated pursuant to section 25-03.1-46. Whenever a physician ~~or~~, psychiatrist, or clinical psychologist responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules and regulations, a written order specifying the restriction and the reasons therefor shall be signed by the physician ~~or~~, psychiatrist, or clinical psychologist and attached to the patient's chart. These restrictions shall be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 32. AMENDMENT.) Subsection 2 of section 25-03.1-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A physician, psychiatrist, clinical psychologist, mental health professional, employee of a treatment facility, or peace officer who in good faith exercises his professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for his act unless it can be shown that it was done in a negligent manner.

SECTION 33. REPEAL.) Section 25-03.1-32 of the North Dakota Century Code is hereby repealed.

Approved April 7, 1979

## CHAPTER 335

SENATE BILL NO. 2057  
(Legislative Council)  
(Interim Committee on Education)

## TRANSPORTATION AT GRAFTON AND SAN HAVEN

AN ACT to create and enact a new section of the North Dakota Century Code, relating to transportation costs to and from the San Haven state hospital; and to amend and reenact subsection 3 of section 25-04-05 of the North Dakota Century Code, relating to transportation costs to and from the Grafton state school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 3 of section 25-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. On and after July 1, 1975, care and treatment at the state school shall be provided without charge to anyone under twenty-one years of age who is qualified for admission pursuant to this chapter. Residents not more than twenty-one years of age admitted to the state school shall be entitled to transportation as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for more than six round trips home per year at a rate not to exceed that paid state officials. On and after July 1, 1975, persons over twenty-one years of age who are qualified for admission pursuant to this chapter shall be responsible for expenses incurred through care and treatment at the state school in the manner provided by chapter 25-09.

SECTION 2.) A new section of the North Dakota Century Code is hereby created and enacted to read as follows:

TRANSPORTATION COSTS - PAYMENT LIMITED.) All residents not more than twenty-one years of age admitted to San Haven, shall be entitled to transportation as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for more than six round trips home per year at a rate not to exceed that paid state officials.

Approved April 7, 1979

## CHAPTER 336

SENATE BILL NO. 2058  
(Legislative Council)  
(Interim Committee on Education)

### TRANSPORTATION AT SCHOOLS FOR BLIND AND DEAF

AN ACT to amend and reenact sections 25-06-04 and 25-07-04 of the North Dakota Century Code, relating to transportation of pupils of the school for the blind and the school for the deaf; and to repeal sections 25-06-06 and 25-07-07 of the North Dakota Century Code, relating to transportation of indigent persons to the school for the blind and the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 25-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-04. QUALIFICATIONS FOR ADMISSION TO SCHOOL FOR THE BLIND - RESIDENTS OF STATE ENTITLED TO FREE EDUCATION.) Applicants for admission to the school for the blind must be blind or partially blind, ~~of school age, capable of receiving an education, of good moral character, and free from chronic infection~~ and unable to make suitable progress in the public schools of the state. The superintendent, with the approval of the director, may ~~modify the age requirement as to any applicant~~ determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director may require has been returned to and approved by the superintendent of the school for the blind. An applicant admitted to the school for the blind ~~must be transported thereto at the expense of his parents or of the county of which he is a resident~~ shall be entitled to transportation as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for more than six round trips home per year at a rate not to exceed that paid state officials. Each

such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the blind at the expense of the state.

SECTION 2. AMENDMENT.) Section 25-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-04. QUALIFICATIONS FOR ADMISSION TO SCHOOL FOR DEAF - RESIDENTS OF STATE ENTITLED TO FREE EDUCATION.) In order to be admitted as a pupil in the school for the deaf, an applicant's hearing must be impaired to such extent that he cannot make suitable progress in the public schools of the state. ~~An applicant must be at least four years of age, and capable of caring for himself, and capable of receiving an education.~~ The superintendent, with the approval of the director, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director of institutions may require has been returned to and approved by the superintendent. An applicant admitted to the school ~~must be transported thereto at the expense of his parents or of the county of which he is a resident~~ shall be entitled to transportation as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for at least eighty percent of the costs incurred by it in providing transportation for the applicant. The reimbursement shall not be for more than six round trips home per year at a rate not to exceed that paid state officials. Each such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the deaf at the expense of the state.

SECTION 3. REPEAL.) Sections 25-06-06 and 25-07-07 of the North Dakota Century Code are hereby repealed.

Approved April 7, 1979

## CHAPTER 337

HOUSE BILL NO. 1060  
(Legislative Council)  
(Interim Committee on Health Services)

## MENTAL HEALTH AND RETARDATION SERVICE UNITS

AN ACT to create and enact a new section to chapter 25-10 of the North Dakota Century Code, relating to the authority of the mental health and retardation division; and to amend and reenact sections 25-12-01, 25-12-02, 25-12-03, and 25-12-04 of the North Dakota Century Code, relating to the operation of mental health and retardation service units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 25-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

MENTAL HEALTH AND RETARDATION SERVICE UNITS.) The mental health and retardation division shall supervise and direct, within the limits of legislative appropriations, any mental health and retardation service unit established pursuant to chapter 25-12. The mental health and retardation division shall have those powers necessary to supervise and direct such units. The division shall, with respect to each unit:

1. Supervise and direct the service unit within the central personnel system.
2. Supervise and direct the service unit within limits of state budgetary controls and in compliance with state budget procedures.
3. Supervise and direct the service unit subject to the same laws relating to administration which govern other state agencies.
4. Collocate the service unit in each region with the area social service center in each region by July 1, 1981.
5. Develop such rules and regulations as may be necessary to operate a collocated service unit.

SECTION 2. AMENDMENT.) Section 25-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-12-01. ESTABLISHMENT OF MENTAL HEALTH AND RETARDATION SERVICE UNITS.) Upon petition of eight percent of the voters of any city as determined by the number voting for the office of governor in such city at the most recent general election at which a governor was elected, the governing body of any city having a population of five thousand or more according to the last federal census may, with the approval of the board of county commissioners of the county within which such city is located, establish and maintain a mental health and retardation service unit.

Upon petition of eight percent of the voters of any county as determined by the number voting for the office of governor in such county at the most recent general election at which a governor was elected, the board of county commissioners of any county containing a city having a population of five thousand or more according to the most recent federal census may establish and maintain a mental health and retardation service unit.

In addition to the other methods provided by law, a mental health and retardation service unit may be established upon the petition of eight percent of the voters of any county as determined by the number voting for the office of governor in such county at the most recent general election at which a governor was elected, the board of county commissioners of any county not containing a city having a population of five thousand or more according to the most recent federal census, may enter into agreements for the joint operation or for the participation in the operation or contracts with other cities or counties who have established a mental health and retardation service unit pursuant to this section. Such counties may act in accordance with the provisions of section 54-40-08 in making such agreements.

Any county or city establishing a mental health and retardation service unit may in accordance with section 54-40-08 make agreements with the governing bodies of other political subdivisions for the joint operation or participation in the operation of such service unit or contracts as provided in this chapter.

~~Such service unit may be established by the county or city and operated by the political subdivisions involved, or in the discretion of their respective governing bodies such service unit may be operated by contract with a nonprofit corporation which shall agree to furnish such services in the field of mental health and retardation in accordance with such contract in a manner consistent with state law and rules of the mental health and retardation division of the state department of health.~~

Such service unit shall be supervised and directed by the mental health and retardation division of the state department of health.

These units will take into consideration and be coordinated with existing mental health and retardation services which are under other local, state, or private administrations, such as social service programs of county social service boards, area child welfare and family services of the social service board of North Dakota, special education programs, specialized services of the division of vocational rehabilitation, and other facilities providing services in the broad field of mental health.

SECTION 3. AMENDMENT.) Section 25-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-12-02. STATE-AID---APPLICATION---PROGRAM-APPROVAL-- LOCAL SUPPORT - LICENSING.)

- 1.---Cities,---counties,---or-other-political-subdivisions-or-any combination-thereof,---and---private-nonprofit---corporations may-apply-to-the-mental-health-and-retardation-division-of the--state--department--of--health---for---assistance---in establishing-and-maintaining-mental-health-and-retardation service-units---in---the---case---of---a---private---nonprofit corporation---a---contract---between---the---mental---health-and retardation-division-and-the-corporation-shall-be-entered into---for-state-aid-and-for-the-provision-of-mental-health and--retardation--services--by--such--corporation,---which contract---shall---be---upon-such-terms-as-the-division-shall prescribe---The-unit-or-corporation-requesting--state--aid shall-submit-to-the-mental-health-and-retardation-division of-the-state-department-of-health-not-later-than--March first--of--each-year-the-proposed-budget-for-the-following year,---plus-detailed-plans-with-regard--to--the--extent--of services--which--shall--include-fee-schedules-based-on-the ability--to--pay--and--programs--to--be--undertaken,---The division---shall---not---allocate---any---funds---to---any---unit maintaining-or-establishing-mental-health-and--retardation service-units-until-the-proposed-budget-and-detailed-plans shall-be-approved-by-the-division,---During--July--of--each year--the--division--shall--allocate--funds,---to--the--extent available,---to--the--various--units--in--accordance---with approved--budgets--and--programs,---The-division-shall-have authority-to-reallocate-unenumerated-funds-that-have-been allocated--and--may--withdraw--unenumerated--funds--if-the services-and-programs-of-the-mental-health-and-retardation service--unit-do-not-correspond-to-the-approved-budget-and plans-forwarded-to-the-department-of-health.
- 2.---State--support-to-any-mental-health-or-retardation-service unit-shall-not-exceed-forty-percent-of-such-units--total expenditure---for---salaries,---contract---facilities--and services,---maintenance-and-service-costs,---expenses---of--the board--of--directors--of--the--unit,---and--other--expenses authorized-by-the-mental-health-and--retardation--division of--the-state-department-of-health,---No-reimbursement-from moneys-appropriated-to-the-mental-health--and--retardation

~~division--of--the--state--department--of--health--by--the  
legislative--assembly--shall--be--authorized--for--any--capital  
expenditures-~~

- 3- 1. A mental health and retardation service unit comprising only one political subdivision may receive aid from such political subdivision to the extent that its governing body agrees to participate. If a mental health or retardation service unit comprises more than one political subdivision, the unit shall receive aid from the political subdivisions in proportion to the assessed valuation of each political subdivision or in such other manner as their governing bodies shall agree. ~~A-private-nonprofit corporation may receive aid from any political subdivision on--a-contract-basis,--entered-into-between-the-officers-of-the-corporation-and-the-governing-body--of--the--political-subdivision--or--subdivisions,--for-services-to-be-rendered-to-the-political-subdivision-and-its-residents-~~
- 4- 2. The governing body of any such political subdivisions for the purpose of operating, maintaining, or participating in the operation and maintenance of mental health and retardation service units or providing such services by contract in accordance with this chapter, may by resolution of the governing body thereof submit the question of the authorization of a tax upon all taxable property in the political subdivision of not to exceed three-quarters of one mill to the electorate of the political subdivision at any special or regular election. If such levy shall be approved by the majority of the electors voting thereon, a tax not in excess of that authorized may be levied by the governing body of the political subdivision for the purpose of providing services as authorized in this chapter. Such levy, when authorized, shall be over and above any mill levy limitation provided by law, provided, however, there shall not be more than one election per year on the mill levy.
- 5- 3. The mental health and retardation division of the state department of health is hereby authorized to license mental health and retardation service units established pursuant to this chapter. The division shall promulgate standards, rules, and regulations for the operation of the mental health and retardation facilities licensed hereunder in accordance with chapter 28-32 and may, in accordance with chapter 28-32, suspend the license of any facility which does not remain in compliance with the standards, rules, and regulations so promulgated. No mental health and retardation service unit may operate after July 1, 1975, without a license issued hereunder.

SECTION 4. AMENDMENT.) Section 25-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-12-03. BOARD OF DIRECTORS - APPOINTMENT - TERM.) Each mental health and retardation service unit, ~~whether established by a political subdivision or a body corporate, except the south central mental health and retardation center,~~ shall be governed by and under ~~the general supervision of a board of directors~~ have a board of directors. The board of directors shall be appointed by the governing body of the political subdivision which comprises such unit, and if more than one political subdivision comprises such unit then appointed by the governing bodies of each such political subdivision meeting jointly. The board of directors shall not exceed thirteen members, but may be less in the discretion of such governing bodies. The term of office of the board members shall be three years, staggered so that the term of office of an equal number of the board members, if possible, expires each year. Vacancies occurring on the board for other than the expiration of a term shall be filled in the same manner as original appointments, except that appointments shall be made only for the unexpired term. No compensation shall be allowed the board members, but they shall be allowed the same mileage and expenses as ~~is~~ are allowed state officials. The board shall elect a chairman from their membership and such other officers as the board deems necessary. All members of each board of directors shall be residents of the area served by the mental health and retardation service unit and such membership shall represent as nearly as possible local health departments, medical societies, county social service boards, hospital boards, and other lay and professional organizations and people. ~~The south central mental health and retardation center shall be operated in conjunction with and under the general supervision of the state hospital. The board of directors of the south central mental health and retardation center shall serve in an advisory capacity to the state hospital in matters related to such center. The state hospital shall have the authority to exercise such powers in matters related to the south central mental health and retardation center as are provided in this chapter for the boards of directors of mental health and retardation units.~~

SECTION 5. AMENDMENT.) Section 25-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-12-04. POWERS AND DUTIES OF BOARD OF DIRECTORS - ADMINISTRATION.) The following powers and duties shall be performed by the board of directors of the mental health and retardation service unit:

1. Determine, review, and evaluate services and programs provided by the unit and make periodic reports thereon to the mental health and retardation division of the state department of health, together with any recommendations the board may have for improvement in services, programs, or facilities.
2. Recruit and promote local financing from private and public sources.

3. Promote and arrange for cooperation and working agreements with other social service agencies, public and private, and with individuals and organizations in the educational field and judicial branch of government.
4. Determine the budgets and submit them to the governing bodies of the political subdivisions concerned for their approval and prepare detailed plans for services and programs of the unit for the forthcoming year mental health and retardation division for approval and submission within the state health department's budget request.
5. Perform any other act necessary to properly administer the mental health and retardation service unit.
6. Determine the type of services to be provided by the unit, subject to the approval of the director of the mental health and retardation division.

The board may employ such professional personnel as may be necessary to properly staff the mental health and retardation service unit and may in its discretion employ such administrative personnel as may be necessary to assist them in the performance of their duties, including an administrator. The board may delegate to the administrator such of its powers and duties as the board deems necessary and desirable. The professional staff of such mental health and retardation service unit shall be under the medical direction of a qualified psychiatrist. The board shall, within the limits of legislative appropriations, employ such personnel as may be necessary to properly staff the mental health and retardation service unit. The employment of the executive director and the medical director shall be subject to the approval of the director of the mental health and retardation division.

Approved March 3, 1979

## CHAPTER 338

HOUSE BILL NO. 1061  
(Legislative Council)  
(Interim Committee on Health Services)

## MENTAL HEALTH AND SOCIAL SERVICE UNIT COLLOCATION

AN ACT to improve the quality, and efficiency in delivery, of human services through the collocation of social services and mental health services in each of the eight regions of the state; providing for joint intake, interagency referral, and interprogram planning and coordination; encouraging regional collocation of other related human services; providing for a fiscal incentive for the collocation of county social services in the regional centers; providing for the North Dakota social service board to reimburse qualifying mental health and retardation service units and human service centers for provision of clinical services to medical assistance individuals; and to amend and reenact section 50-24.1-03 of the North Dakota Century Code, relating to medical assistance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. COLLOCATION OF MENTAL HEALTH AND RETARDATION SERVICE UNITS AND AREA SOCIAL SERVICE CENTERS - REGIONAL INTERAGENCY COORDINATING COUNCILS - FISCAL INCENTIVES FOR COUNTY SOCIAL SERVICE BOARD COLLOCATION.) Mental health and retardation service units established under chapter 25-12 and area social service centers under the jurisdiction of the social service board shall, not later than July 1, 1981, collocate their respective regional offices in each of the regions designated by the governor's executive order 49, dated September 18, 1969. Each collocated office shall provide joint client intake, identification of client needs, interagency referral, interprogram policy development, interprogram planning and coordination, and interprogram staff development and training. Such collocated offices shall encourage the collocation of other public and private human service agencies within the centers. Each collocated agency shall be represented by its chief officer on an interagency coordinating council for the center which shall meet monthly to plan and coordinate the delivery of center human services within the region. The council shall, not less than annually, meet with the advisory boards, boards of directors, supervising departments, and other interested human service delivery entities within the region for purposes of developing and implementing a

coordinated and comprehensive human service delivery plan for the region. Any county social service board collocating its offices within the center shall, within the limits of legislative appropriation, be reimbursed up to fifty percent of the amount expended for space costs in excess of the amount provided by the federal government.

SECTION 2. CLINIC SERVICES - PROVIDER QUALIFICATION - UTILIZATION OF FEDERAL FUNDS.) Within the limits of legislative appropriation therefor and in accordance with rules and regulations established by the social service board, the board may defray the costs of preventive diagnostic, therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible individuals by:

1. Human service centers established under section 54-40-09 which fulfill mental health and social service quality assurance standards jointly prescribed, promulgated, and adopted by the social service board and the state department of health.
2. Mental health and retardation service units established and licensed under chapter 25-12.

Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in qualifying human service and mental health centers and that federal funds available under title XX of the Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable social services furnished eligible individuals by county social service boards, area social service centers, and human service centers.

SECTION 3. AMENDMENT.) Section 50-24.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-03. COUNTY SHARE OF MEDICAL ASSISTANCE - REIMBURSEMENT FOR CLINIC SERVICES NOT REQUIRED.) Each county in this state shall reimburse the state department for amounts expended for medical assistance in such county in excess of the amount provided by the federal government, in the amount of fifteen percent. This section shall not be construed to require a county to reimburse the state department for clinic services furnished by mental health and retardation service units or human service centers, but it shall also not be construed as preventing payments under chapter 25-12.

Approved March 3, 1979

## CHAPTER 339

SENATE BILL NO. 2383  
(Solberg)

## VOCATIONAL REHABILITATION FACILITIES

AN ACT to amend and reenact sections 25-15-01, 25-15-02, 25-15-03, 25-15-04, 25-15-05, 25-15-06, and 25-15-07 of the North Dakota Century Code, relating to vocational rehabilitation facilities for the handicapped.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 25-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-01. LEGISLATIVE INTENT.) The purposes of this chapter are:

1. To improve rehabilitation services for the seriously handicapped including the mentally retarded in North Dakota by providing for the development and continuation of ~~long-term-sheltered-workshops~~ vocational rehabilitation facilities.
2. To provide for licensure and standard-setting for ~~sheltered-workshops~~ vocational rehabilitation facilities, and to establish responsibility for development and continuation of a statewide program by the division of vocational rehabilitation.

SECTION 2. AMENDMENT.) Section 25-15-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-02. ~~SHELTERED---WORKSHOP~~ VOCATIONAL REHABILITATION FACILITIES - DEFINITION.) For purposes of this chapter, a ~~sheltered workshop~~ vocational rehabilitation facility is a nonprofit organization ~~where-useful-work-is-carried-on,~~ and which is operated for the purpose of providing ~~remunerative-employment~~ rehabilitation to ~~severely~~ severely handicapped individuals, ~~---including---the---mentally~~ retarded, who are unable to participate in competitive employment due to their disability. A ~~long-term-sheltered-workshop~~ vocational rehabilitation facility shall supply ~~such-employment.~~

- ~~1.---As two or more of the following as a step in the rehabilitative process for those who cannot be readily absorbed in the competitive labor market-~~
- ~~2.---During and during such time as employment opportunities for them in the competitive labor market do not exist-:~~
- ~~1. Work Activity. The provision of therapeutic activities to handicapped individuals whose physical and mental impairment is so severe as to make their productive capacity inconsequential, for the purpose of enhancing their ability to function as independently as possible in their homes and community.~~
  - ~~2. Extended Employment. A work situation in a supervised environment which provides employment opportunities for indefinite periods of time.~~
  - ~~3. Vocational Evaluation. A comprehensive process that systematically utilizes work as the focal point for assessment and vocational exploration, the purpose of which is to assist individuals in vocational development. Vocational evaluation incorporates medical, psychological, social, vocational, educational, cultural, and economic data.~~
  - ~~4. Vocational Development. A program which applies vocational services including evaluation, training, transitional or interim employment, to resolve the problem of unemployment and to enable the person served to obtain competitive employment or further education or training, or both, leading to employment.~~
  - ~~5. Residential Rehabilitation. The provision of supervised training within a community living setting which is designed to prevent the need for institutional living, and is programmed to meet individual needs. Services offered provide activities designed to maximize community contact and develop positive cultural, social, occupational and educational attitudes.~~

SECTION 3. AMENDMENT.) Section 25-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-03. ADVISORY COMMITTEE.) The division of vocational rehabilitation shall appoint a ~~sheltered---workshop~~ vocational rehabilitation facilities advisory committee ~~of---eleven-members,~~ seven nine members of which shall be representatives of each of the following state organizations or agencies:

1. Division of vocational rehabilitation.
2. Department of public instruction - special education.

3. ~~Workmen's--compensation--bureau~~ Department of accounts and purchases.
4. North Dakota state employment service.
5. Organized labor.
6. ~~Seoial-service-board-of-Nerth-Dakota---~~ medical Division of mental health and retardation services.
7. ~~Nerth--Dakota--asseeiation--fer--retarded--children~~ North Dakota chapter association of retarded persons.
8. Vocational education - special needs.
9. Grafton state school.

~~The---ether~~ At least four members shall be appointed from professional, legislative, or civic groups, or from other public or nonpublic voluntary agencies. Such members shall serve at the pleasure of the division of vocational rehabilitation without compensation.

It shall be the duty of the ~~sheltered-workshop~~ vocational rehabilitation facilities advisory committee to recommend standards for community ~~sheltered-workshops~~ rehabilitation facilities for the ~~seriously~~ handicapped, including the mentally retarded. These standards shall include those for physical plant, programming, staff, ratio of staff to persons served, policies, records and reports required, and such other standards deemed appropriate, and shall submit the same to the division for its approval. The committee shall also advise the division on the general policy involved in the provision of ~~sheltered--workshop~~ rehabilitation facilities services and shall perform such other functions as the division may request.

SECTION 4. AMENDMENT.) Section 25-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-04. DUTIES OF THE DIVISION OF VOCATIONAL REHABILITATION.)

1. The division of vocational rehabilitation shall issue licenses on an annual basis to programs meeting approved standards and applying for licensure.
2. Other duties of the division:
  - a. To encourage the development of local community initiative in broadening the scope of noninstitutional care and training programs for persons who are mentally retarded or seriously handicapped.

- b. To maintain ~~minimum~~ standards for the operation of such programs.
- c. To review ~~the--experience--of--individual~~ and assist programs as they develop.
- d. To foster the progress of ~~sheltered--workshops~~ vocational rehabilitation facilities to higher levels of service and to stimulate their rehabilitative aspects.

SECTION 5. AMENDMENT.) Section 25-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-05. ORGANIZATIONS ELIGIBLE FOR LICENSURE.) Eligible ~~local-community-organizations~~ vocational rehabilitation facilities shall be organizations which are nonprofit ~~corporations~~ entities, operating ~~sheltered-workshops~~ vocational rehabilitation facilities and serving the ~~seriously~~ handicapped, including the mentally retarded, without regard to race, religion, or national origin. Such organizations shall be licensed in accordance with this chapter and conform to standards recommended by the advisory committee and established by the division of vocational rehabilitation.

SECTION 6. AMENDMENT.) Section 25-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-06. QUALIFICATIONS FOR LICENSURE.) In order to be eligible for licensure, the ~~sheltered--workshops~~ vocational rehabilitation facilities shall operate their program under the direction of a board of directors ~~from the local-community-and~~ shall be--appointed--by--the--officers-of-the-nonprofit-corporation-- This board of directors shall be made up of a minimum of nine members and ~~not--more--than--thirteen--members--~~ It--shall--serve--without compensation. ~~Membership shall include representatives of local health, education, welfare, employment and vocational rehabilitation agencies, lay associations for the disabled, and business and civic groups. It may also include individuals who are legislators, members of a city council or a board of county commissioners, as well as professional members and the lay public.~~

~~The--term--of--office--of--each--member--of--the--community-sheltered workshop-board--shall--be--for--four--years,--measured--from--the--first--day--of--the--year--of--appointment--except--as--follows--of--the--members--first appointed,--at--least--three--shall--be--appointed--for--a--term--of--two years,--at--least--three--for--a--term--of--three--years,--and--at--least--three for--a--term--of--four--years. Vacancies shall be filled for the unexpired term in the same manner as original appointments. Any member of a board may be removed by the appointing authority for neglect of duty, misconduct or malfeasance in office, after being given a written statement of charges and an opportunity to be heard thereon appointed according to the constitutions and bylaws of the entity operating the vocational rehabilitation facility.~~

SECTION 7. AMENDMENT.) Section 25-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-07. DUTIES OF COMMUNITY SHELTERED-WORKSHOP VOCATIONAL REHABILITATION FACILITIES BOARD.) Subject to the provisions of this chapter and rules and regulations of the division of vocational rehabilitation, each ~~community-sheltered-workshop--board~~ vocational rehabilitation facility shall:

- 1--~~Employ--necessary--and--qualified--personnel--including--an--employee--who--will--administer--the--program--~~
- 2--~~Review--and--evaluate--the--need--for--a--sheltered-workshop--program--as--provided--for--by--this--chapter--and--report--thereon--to--the--division--of--vocational--rehabilitation--the--administrator--of--the--program--and--when--indicated--the--public--together--with--recommendations--for--additional--services--and--facilities--~~
- 3--~~Recruit--and--promote--financial--support--for--the--program--from--private--sources--such--as--community--chests--business--industrial--and--private--foundations--voluntary--agencies--and--other--lawful--sources--~~
- 4--~~Promote--arrange--and--implement--working--agreements--with--other--public--and--private--agencies--~~
- 5--~~Advise--the--administrator--of--the--sheltered-workshop--on--the--adoption--and--implementation--of--policies--to--stimulate--effective--community--relations--~~
- 6--~~Review--the--annual--plan--and--budget--and--make--recommendations--thereon~~ operate according to its established constitution and bylaws.

Approved April 7, 1979