

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1107
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 1 of section 50-10.1-03, section 50-25.2-02, subsection 1 of section 50-25.2-03, section 50-25.2-04, subsection 1 of section 50-25.2-05, and sections 50-25.2-12, 50-25.2-13, and 50-25.2-14 of the North Dakota Century Code, relating to the duties of the state long-term care ombudsman and vulnerable adult protective services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

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

personnel, or any other person providing medical and mental health services to a vulnerable adult.

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

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

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

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

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 50-25.2-03, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
 - a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other ~~person~~personan individual who may have knowledge of the circumstances surrounding the report;
 - b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
 - c. Have access to all records of the vulnerable adult:
 - (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; ~~or~~
 - (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is a ~~person~~personan individual with respect to whom a report was received by the department or the department's designee; ~~and~~or
 - (3) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, the legal guardian or other legal representative is alleged to cause the circumstances surrounding the report, and is an individual with respect to whom a report was received by the department or the department's designee;
 - d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the agency of the protection and advocacy project, or private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult; ~~and~~
 - e. Request records, except as prohibited under title 42, Code of Federal Regulations, part 2, from a medical, dental, or mental health professional, hospital, medical or mental health facility, or health care clinic regarding a vulnerable adult with respect to whom a report was received by the department or the department's designee. A medical, dental,

or mental health professional, hospital, medical or mental health facility, or health care clinic shall disclose to the department or the department's designee, upon request, the records of a patient or client which are relevant to a vulnerable adult evaluation, assessment or other adult protective services. The department, or the department's designee, shall limit the request for records to the minimum amount of records necessary to enable a determination to be made or to support other adult protective services.

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

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

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

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect if the identity of individuals reporting under section 50-25.2-03 is protected.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A ~~person~~vulnerable adult who is the subject of a report if the identity of ~~persons~~individuals reporting under section 50-25.2-03 is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.
7. A guardian or legal representative of the vulnerable adult who is the subject of a report if the identity of individuals reporting under section 50-25.2-03 is protected and the guardian or legal representative is not suspected of abusing or neglecting the vulnerable adult.

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

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

1. ~~The department, in cooperation with county social service boards and law enforcement agencies,~~ shall conduct a public information and education program. The elements and goals of the program must include:
 - a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary and mandatory reporting authorized by this chapter, and the need for and availability of adult protective services.
 - b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.
2. ~~The department, in cooperation with county social service boards and law enforcement agencies,~~ shall institute a program of education and training for the department, the

department's designee, and law enforcement agency staff and other ~~persons~~individuals who provide adult protective services.

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

50-25.2-14. Implementation contingent upon appropriation.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1107.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State