

**TITLE 25  
MENTAL AND PHYSICAL ILLNESS OR DISABILITY**

**CHAPTER 25-01  
GENERAL PROVISIONS**

**25-01-01. Definitions.**

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

1. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of the physician's official duties.
2. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs the individual's mental health.
3. "North Dakota vision services - school for the blind" means the North Dakota vision services - school for the blind as maintained under section 25-06-01.
4. "School for the deaf" means the school for the deaf of North Dakota.
5. "State hospital" means the state hospital for the mentally ill.
6. "Superintendent" means the superintendent of the state hospital, of the life skills and transition center, of North Dakota vision services - school for the blind, or of the school for the deaf, as the case may be.
7. "Supervising officer" means the commissioner of the department of health and human services or designee or the superintendent of public instruction, as the case may be.
8. "Tier 1 mental health professional" means a tier 1a or tier 1b mental health professional.
  - a. A tier 1a mental health professional is a psychiatrist licensed under chapter 43-17 or a psychologist licensed under chapter 43-32.
  - b. A tier 1b mental health professional is a licensed physician or a physician assistant licensed under chapter 43-17 or an advanced practice registered nurse licensed under chapter 43-12.
9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health professional.
  - a. A tier 2a mental health professional is an independent clinician who is a licensed clinical social worker licensed under chapter 43-41, a licensed professional clinical counselor licensed under chapter 43-47, or a licensed marriage and family therapist licensed under chapter 43-53.
  - b. A tier 2b mental health professional is an addiction counselor licensed under chapter 43-45 or a registered nurse licensed under chapter 43-12.
10. "Tier 3 mental health professional" means a licensed associate professional counselor licensed under chapter 43-47, a licensed master social worker or licensed baccalaureate social worker licensed under chapter 43-41, a licensed professional counselor licensed under chapter 43-47, an associate marriage and family therapist licensed under chapter 43-53, an occupational therapist licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12, a behavior analyst licensed or registered under chapter 43-32, a vocational rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a human relations counselor.
11. "Tier 4 mental health professional" means a direct care associate or technician.

**25-01-01.1. State council on developmental disabilities.**

1. There must be maintained in the department of health and human services a state council on developmental disabilities consisting of:
  - a. One 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) Job service North Dakota.

- b. Three representatives of the department of health and human services to include at least:
  - (1) One representative from the life skills and transition center designated by its superintendent; and
  - (2) One representative from the department's public health division.
2. The council shall, at a minimum, include representation that conforms to federal law requirements regarding state councils on developmental disabilities. All members of the council must be appointed by the governor. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings must 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 council. A simple majority of the council constitutes a quorum and may act upon any matter coming before the council. Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.
3. The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, and review and comment on all state plans in the state which relate to programs affecting individuals with developmental disabilities. The council may take any action reasonably necessary to secure and administer any money made available to state councils on developmental disabilities through the Developmentally Disabled and Bill of Rights Act [Pub. L. 95-602; 92 Stat. 2955; 42 U.S.C. 6000 et seq.]. The council, if approved by the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of individuals with developmental disabilities in North Dakota and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

#### **25-01-02. Transfer of patients between institutions.**

The supervising officer may transfer patients of the state hospital or life skills and transition center between such institutions whenever the superintendent of any such institution shall recommend such transfer and the supervising department is satisfied, upon investigation, that such transfer is advisable. If any patient, so transferred, is maintained at the expense of the county from which the patient was committed, the cost of the patient's maintenance in the institution to which the patient is transferred must be charged to such county and must be collected therefrom upon notice to the county auditor of such county by the supervising officer.

#### **25-01-02.1. Health council to investigate mental health of patients.**

Repealed by S.L. 1987, ch. 570, § 45.

#### **25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal.**

1. The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent in consultation with a state hospital governing body.
2. The tenure of office of each superintendent is two years from the date of the superintendent's appointment, and the superintendent must possess qualifications required by this title. Any superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing the superintendent's inability or refusal properly to perform the duties of office. A removal at a time other than a termination of the superintendent's two-year tenure may be had only after an opportunity is given to the person to be heard before a board consisting of the governor, attorney general, and supervising officer of the institution on preferred written charges. A removal when made, however, is final. This subsection does not apply to the superintendent of the life skills and transition center, the superintendent of

North Dakota vision services - school for the blind, or the superintendent of the school for the deaf, whose positions are included in the classified service as provided in section 54-44.3-20.

3. The supervising officer shall fix the compensation of each superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for compensation.

**25-01-04. Superintendent of each institution to qualify.**

The superintendent of each of the institutions mentioned in this chapter, before entering upon the duties of office, shall take the oath prescribed for civil officers.

**25-01-05. General powers and duties of superintendents of various institutions.**

The superintendent of each of the institutions mentioned in this chapter is the chief executive officer of the institution of which the person is superintendent and, in connection with such institution, shall:

1. Employ all employees and assistants required in the management of the institution, the number of whom must be determined in cooperation with the supervising officer.
2. Have general charge of the institution and of the grounds thereof.
3. Have general charge of the direction, treatment, control, and discipline of all persons, employees, and patients at or connected with the institution.
4. Formulate, subject to the approval of the supervising officer, all rules and regulations relating to the conduct of the persons within and employees of the institution.
5. Maintain salutary discipline among all employees and persons or patients in or connected with the institution and enforce strict obedience to all rules and regulations thereof.
6. Cause complete records to be kept of all persons admitted to the institution.
7. Submit to the supervising officer reports of the institution in such form, at such times, and containing such information, as may be required by the supervising officer.
8. Employ only licensed physicians as members of the institutional physician staff.

**25-01-06. Duty of superintendent and the supervising officer in case of questionable commitment.**

The superintendent of the state hospital and the superintendent of the life skills and transition center shall notify the supervising officer immediately if there is any question as to the propriety of the commitment or detention of any person received at the institution, and the supervising officer, upon such notification, shall inquire into the matter presented and shall take such action as may be deemed proper in the premises.

**25-01-07. Salaries of officers and employees other than superintendent - How fixed.**

The supervising officer in cooperation with the superintendent, prior to July first in each year, shall fix the annual or monthly salaries of all of the officers, exclusive of the superintendent, and all of the employees in each of the several institutions mentioned in this chapter. It shall classify such officers and employees into grades, and the salaries paid to those in each grade, all other factors being equal, must be uniform in the several institutions. The schedule of salaries fixed by the supervising officer shall become operative on July first in the year in which the same are fixed. The supervising officer in cooperation with the superintendent may fix the salaries of additional employees hired after July first and may increase the salary of any employee deemed worthy of such increase. Such salaries must be paid in the same manner as other expenses of the several institutions are paid. All of the salaries in each institution, however, must be within the limits fixed by the appropriations made by the legislative assembly for salaries in such institution.

**25-01-08. Discharge of subordinate officers and employees.**

The superintendent of any institution mentioned in this chapter may discharge any person employed therein, subject to such restrictions as may be placed upon such power by the

supervising officer. The superintendent shall show in the record of any person discharged the reason therefor.

**25-01-09. Officers of institutions to be furnished food supplies.**

Repealed by S.L. 1971, ch. 501, § 2.

**25-01-10. Supervising officer may accept gifts and bequests - State treasurer to have custody of funds.**

The supervising officer may accept in the name of the state and hold in trust for any institution mentioned in this chapter any lands conveyed or devised and any money or other personal property given or bequeathed for application to any purpose connected with such institution. All moneys and property coming into the hands of the supervising officer as grants, donations, devises, gifts, and bequests must be used for the specific purposes for which they are granted, donated, devised, bequeathed, or given. If no terms are imposed upon the use of any grant, donation, devise, bequest, or gift, it must be used for the general maintenance of the institution for the benefit of which it is made.

**25-01-11. State treasurer to have custody of income from granted lands.**

The state treasurer is custodian of all funds arising from the sale of any lands granted to any institution named in this chapter, and such funds must be deposited with the state treasurer. The state treasurer shall keep a separate account for each such institution to which a land grant has been made, and moneys in each such separate fund must be used exclusively for the benefit of the institution to which the same belongs.

**25-01-12. Drawing of funds - Sale of lands - Release of mortgages - Appropriations limit power to contract.**

Moneys appropriated or given to any institution mentioned in this chapter shall be expended only upon order of the supervising officer. The supervising officer, however, does not have the power to bind the state for any purpose in connection with any such institution beyond the amount of the appropriation which may have been made to such institution for such purpose, nor to sell or convey any part of the real estate belonging to any such institution without the consent of the legislative assembly, except that it may release any mortgage or convey any real estate which may have been received by it through any gift, bequest, or devise or upon any trust, the terms of which authorize such satisfaction or conveyance.

**25-01-13. Members of board and officers of institutions not to be interested in certain contracts.**

Repealed by S.L. 1965, ch. 203, § 86.

**25-01-14. Claim for or proceedings to recover money in inmates' or patients' fund - Limitation.**

Repealed by S.L. 1961, ch. 211, § 9.

**25-01-15. Money remaining in inmates' or patients' personal accounts transferred to general welfare account of institution.**

Repealed by S.L. 1975, ch. 425, § 29.

**25-01-16. Treating patients cruelly - Penalty.**

Any person responsible for the care or custody of any person admitted to a state institution in accordance with the provisions of this title, who treats the person admitted with severity, harshness, or cruelty, or who abuses that person in any way, is guilty of a class A misdemeanor.

**25-01-17. Religious exercise of patient or resident under the care of the department of health and human services.**

1. The department of health and human services may not:

- a. Substantially burden the exercise of religion by patient or resident under the department's care unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;
  - b. Treat religious conduct more restrictively than any comparable secular conduct unless the department demonstrates the disparate treatment is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; or
  - c. Deny clergy access to a patient or resident for the purpose of providing religious services unless the department demonstrates the denial is necessary to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
2. A patient or resident of the department of health and human services claiming to be aggrieved by a violation of this section, may assert, after exhausting appropriate administrative remedies, that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.