

## **CHAPTER 25-04 CARE OF DEVELOPMENTALLY DISABLED**

### **25-04-00.1. Definitions.**

For the purposes of this chapter:

1. "Department" means the department of health and human services.
2. "Eligible" means an individual has been deemed eligible by the department for developmental disability services.
3. "Individual served" is an individual who is a legal resident of the state of North Dakota and is receiving services from the life skills and transition center.
4. "Nonresident individual served" includes:
  - a. Any individual served by the life skills and transition center who is under eighteen years old and whose responsible relative is not a bona fide resident of this state.
  - b. Any enrolled member of a federally recognized Indian tribe for whom the United States government has, through its statutes and regulations, a responsibility for their care.
5. "Nonresident responsible relative" includes the nonresident spouse, father, or mother of the individual served. It includes the bureau of Indian affairs in those cases involving an enrolled member of a federally recognized Indian tribe for whom the United States government has, through its statutes and regulations, a responsibility for their care.
6. "Nonresidential services" means rehabilitative services and supports that are provided in a family home or community setting.
7. "Residential services" are specialized services and supports provided at the life skills and transition center facility which include both room and board and rehabilitative services in accordance with an individual's care and support plan. Residential services provided at the life skills and transition center are available to address an individual's needs for stabilization.

### **25-04-01. Life skills and transition center - Name - Administration and control.**

A facility for individuals with developmental disabilities must be maintained at or near the city of Grafton in Walsh County. The facility must be known and designated as the life skills and transition center. The department has administrative authority and control of the life skills and transition center.

#### **25-04-01.1. Life skills and transition center to be substituted for developmental center at westwood park, Grafton.**

The legislative council shall delete, where appropriate, "developmental center at westwood park, Grafton", "developmental center", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in the North Dakota Century Code, in supplements to the North Dakota Century Code, and in the North Dakota Administrative Code, and to insert in lieu of each deletion "life skills and transition center" or an appropriate derivative of that phrase. These changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. Life skills and transition center is to be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the developmental center at westwood park, Grafton.

### **25-04-02. Purpose of life skills and transition center.**

1. The purpose of the life skills and transition center is to serve as a specialty care and support resource for eligible individuals with developmental disabilities who are experiencing crisis or who would benefit from stabilization, and to work together with parent, guardian, or legal custodian and care teams to identify opportunities for each individual served to live in a family home or community setting of their choice when possible.
2. The life skills and transition center must be maintained to provide care, treatment, training, rehabilitation, and supervision for eligible individuals. For this purpose the

department may introduce and establish such rehabilitative and support services as, in its judgment, will best prepare the individuals served to live in the most integrated, independent setting possible.

3. The life skills and transition center may provide both residential services and nonresidential services and effectuate its powers and duties to best serve eligible individuals who may benefit from those activities.

#### **25-04-02.1. Accreditation of life skills and transition center.**

The department may request appropriations and resources sufficient to allow for maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities or certification by the centers for Medicare and Medicaid services or, if deemed necessary, by similar accrediting and certifying organizations and agencies possessing standards applicable to an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

#### **25-04-02.2. Institutional sale of services - Budget section approval.**

Subject to approval of the legislative assembly or the budget section if the legislative assembly is not in session, the life skills and transition center may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The life skills and transition center shall determine the rates for services provided. The legislative assembly or the budget section may approve the provision of a service under this section only after determining the service is not otherwise being provided by either the private or public sector. Any request considered by the budget section must comply with section 54-35-02.9.

#### **25-04-03. Qualifications of superintendent.**

The superintendent of the life skills and transition center must be a skilled administrator with professional training and experience relating to the needs of individuals with developmental disabilities. All employees must be appointed and removed by the superintendent or by the superintendent's designee. The salaries of all employees shall be fixed by the superintendent or the superintendent's designee within the limits of the legislative appropriations made for such purpose.

#### **25-04-03.1. Biennial report - Assistant superintendent.**

Repealed by S.L. 1989, ch. 338, § 6.

#### **25-04-04. Who may receive benefits of life skills and transition center.**

1. Subject to this chapter and to any rules adopted by the department, the benefits of the life skills and transition center may be received only by:
  - a. Eligible individuals who may benefit from services provided by the life skills and transition center who, in the opinion of the superintendent of the life skills and transition center are of suitable age and capacity to receive care, treatment, training, rehabilitation, or supervision by the life skills and transition center or whose disabilities prevent them from receiving training and instruction in the public schools;
  - b. Eligible individuals who, in the opinion of the superintendent of the life skills and transition center, may benefit from services provided by the life skills and transition center and who are in need of stabilization supports and cannot be properly cared for in their family home or other available community settings; or
  - c. Eligible individuals who, in the opinion of the superintendent of the life skills and transition center, may benefit from either residential services or nonresidential services provided by the life skills and transition center.
2. Residents and nonresidents of this state may receive services from the life skills and transition center. Priority, however, must be given to residents of this state.

#### **25-04-04.1. Program management for an individual served.**

The department shall ensure active program management is maintained for eligible individuals receiving residential services at the life skills and transition center.

#### **25-04-05. Qualifications for accessing services provided by life skills and transition center - Educational or related services without charge for individuals twenty-one years of age and under.**

1. The superintendent may admit an eligible individual to the life skills and transition center for residential services based on consideration of the following factors:
  - a. Ability of the life skills and transition center to provide the appropriate level of care based on the individual's need.
  - b. Health and safety considerations for both the individual served and other individuals currently being served by the life skills and transition center.
  - c. The individual may be admitted without exceeding the resident capacity of the facility as specified in the professional standards of the department.
2. The superintendent may approve an eligible individual for nonresidential services provided by the life skills and transition center if all of the following conditions have been met:
  - a. Application has been made on behalf of the individual by a department developmental disabilities program manager, a parent, guardian, or legal custodian, in accordance with procedures established by the department.
  - b. Information has been submitted to the life skills and transition center which allows the superintendent to determine that the individual served would benefit from nonresidential stabilization services offered by the life skills and transition center for the purpose of avoiding institutionalization or further destabilization of the individual's living situation.
3. Notwithstanding any other provision of this chapter, no eligible individual served, twenty-one years of age or under, or the estate or the parent of such individual, may be charged for educational or related services provided at the life skills and transition center. Except as provided in subsection 4, the department has prior claim on all benefits accruing to such individuals served for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workforce safety and insurance, or medical care and disability programs. For purposes of this subsection, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist an individual with a developmental disability to benefit from special education. The cost of related services other than medical and medically related services must be paid by the life skills and transition center, the school district of residence of the child with a developmental disability, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department, 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 agency and political subdivision is liable. The department of public instruction may adopt rules necessary to implement this section.
4. Parents of an eligible individual, who is twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of children with disabilities. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:
  - a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
  - b. An increase in premiums or the discontinuation of a policy.

- c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the life skills and transition center pays or waives the out-of-pocket expense.

**25-04-05.1. Transfer of individuals - Visiting privileges - Release and placement of individuals served.**

1. The superintendent shall have the right of temporary transfer of any individual served at the life skills and transition center to an appropriate hospital or other specialized facility when in the superintendent's opinion the immediate health and safety of the individual or the immediate health and safety of others requires the transfer.
2. Subject to reasonable rules for the orderly operation of the life skills and transition center, any parent, guardian, or legal custodian of the individual served shall have the right of visiting and communicating with the individual served and authorizing visits and communications with others.
3. The superintendent may authorize the temporary discharge of any individual served to the custody of the individual served's parent, guardian, or legal custodian of the individual, or to another person designated by the parent, guardian, or legal custodian. In the absence of such authorization, any parent, guardian, or legal custodian of the individual served may formally request, in writing, the individual served's temporary discharge. The discharge must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a discharge is, or would be, effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent, guardian, or legal custodian in writing.
4. The superintendent may arrange for the suitable placement of an individual served outside the life skills and transition center and to discharge the individual, provided placement has been preceded by a comprehensive evaluation. No such placement may be effected until all reasonable efforts have been made to consult with the individual served's care team and parent, guardian, or legal custodian of the individual served.

**25-04-05.2. San haven - Transportation costs - Payment limited.**

Repealed by S.L. 1989, ch. 338, § 6.

**25-04-06. Juvenile court order for assessment of dependent, neglected, or delinquent child with developmental disability - Appeal.**

1. In any proceeding instituted in juvenile court, the court may make an order for assessment of the child by the life skills and transition center for developmental disability determination whenever it appears to the satisfaction of the court that the child involved in the proceeding is:
  - a. Dependent and eligible for services at the life skills and transition center;
  - b. Neglected and eligible for services at the life skills and transition center; or
  - c. Delinquent and eligible for services at the life skills and transition center.
2. If it is ascertained as a result of such assessment that the child is eligible for residential services offered at the life skills and transition center and the child qualifies for accessing services from the life skills and transition center in accordance with section 25-04-04 and subsection 1 of section 25-04-05, a report to such effect must be made by the authorities of the life skills and transition center to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be eligible and qualifying for accessing services offered at the life skills and transition center. Notice of the hearing must be given to the parents, custodian, or guardian of such child in the manner prescribed by law for the giving of notice in other proceedings in juvenile court. Upon such hearing, the court shall make such order as it may deem proper. Any parent, custodian, guardian, or other person charged with the control of such child may take an appeal from the order made by the court in the

manner now prescribed by law for the taking of appeals from decisions of the juvenile court. Admission to residential services at the life skills and transition center must follow the procedures established by the department and in accordance with section 25-04-04 and subsection 1 of section 25-04-05. Any orders for assessment may be accomplished without admission for residential services or transportation to the life skills and transition center.

**25-04-07. Disabled defendants.**

Repealed by S.L. 1991, ch. 121, § 5.

**25-04-08. Discharge of individual served from life skills and transition center.**

An individual who receives residential services at the life skills and transition center must be discharged if any one of the following conditions are present:

1. The superintendent, on the basis of a comprehensive evaluation and in consultation with the individual's parent, guardian, legal custodian, or care team, finds that the care, treatment, training, rehabilitation, and supervision offered by the life skills and transition center are no longer needed.
2. The parent, guardian, or legal custodian who voluntarily admitted the individual to residential services at the life skills and transition center and who retains legal custody makes a written request for discharge.
3. The individual is admitted on indefinite transfer to a hospital, school, or other facility, or a protective service under the jurisdiction of another state, or another agency or department of this state.
4. A court of competent jurisdiction orders the discharge of the individual.

**25-04-08.1. Notification before discharge.**

Before discharge the superintendent shall meet with the parent, guardian, legal custodian, or care team of the individual served to be discharged, or with the court that ordered the individual served to receive services at the life skills and transition center pursuant to section 25-04-06.

**25-04-09. Expense for care of inmates to be charge upon county - County to remit to state treasurer.**

Repealed by S.L. 1961, ch. 211, § 9.

**25-04-10. Transfer of inmate of state school when person legally responsible for support moves to another state.**

Repealed by S.L. 1961, ch. 211, § 9.

**25-04-11. Disposition of individual who is not a legal resident.**

If an individual who has no legal residence in this state is subject to admission to the life skills and transition center, by order of a court pursuant to section 25-04-06, such individual must be admitted, at the expense of the county, to the life skills and transition center in the same manner as a resident of this state who is found to be in need of services offered at the life skills and transition center, and the superintendent of the life skills and transition center shall then arrange for the transportation of such individual to the place where the individual belongs. The department shall ascertain the place where such individual belongs when the same conveniently can be done.

**25-04-11.1. Admission and disposition of nonresidents - Reciprocal agreements.**

If an individual who has no legal residence in this state or whose residence is unknown is found to be an eligible individual requiring care, treatment, training, rehabilitation, or supervision from the life skills and transition center, the individual to be served must be admitted to the life skills and transition center in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The department shall immediately inquire as to the

residence of the individual or the individual's responsible relatives, and, if the residence is found to be in another state or country, the department shall arrange for transportation of the individual to the place of legal residence or legal settlement unless the individual can be accommodated at the life skills and transition center without depriving a North Dakota resident of care and treatment at the life skills and transition center and adequate costs of care are paid for within a reasonable time, or unless a reciprocal agreement has been entered into with another state regarding the care and commitment of the nonresident. The department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of individuals who are within one state but have legal residence or legal settlement in another state. The agreements may not contain any provision conflicting with any law of this state.

**25-04-11.2. Liability for care and treatment of nonresident individuals served.**

Nonresident individuals served by the life skills and transition center and nonresident responsible relatives of individuals served are liable for the chargeable costs of care and treatment at the life skills and transition center.

**25-04-12. Electric power may be furnished to city of Dunseith from state school power plant.**

Repealed by S.L. 1961, ch. 209, § 5.

**25-04-13. Guardianship of person and estate - Superintendent and director of institutions to act as guardians in lieu of court appointment or assumption by parent.**

Repealed by S.L. 1973, ch. 257, § 82.

**25-04-13.1. Guardianship - Superintendent to act as guardian.**

Repealed by S.L. 1987, ch. 326, § 2.

**25-04-14. Expenses chargeable against individual or individual's estate - Filing claims.**

Expenses for care and treatment of each individual served by the life skills and transition center must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the individual served's ability to pay which must include an estimate of potential future receipts, including amounts from estates. The department shall recover from the individual served or from a discharged individual expenses chargeable for care and treatment. If any individual served is receiving social security benefits or is a veteran or a dependent of a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, the expenses are a current claim against the individual served and may be recovered monthly by the department except that any amount required by the payer of the benefits to be paid directly to the individual served must, upon approval of the department, be credited to the individual served's personal account from any money thus received.

**25-04-15. Expenses chargeable against guardianship estate of individual served - Restrictions.**

The expenses chargeable by the state for the care and treatment of any individual served over twenty-one years of age at the life skills and transition center must be charged against the guardianship estate of such individual, if the individual has such an estate, subject to the following restrictions:

1. No part of the estate may be taken for such purpose if the individual has dependents within the United States dependent upon the estate for support and the taking of all or a portion of the estate would result in undue hardship to those dependents.
2. No real property belonging to the estate may be sold during the lifetime of the individual served except for the maintenance and support of the individual served's dependents, unless it is shown that the sale of the property will not result in undue

hardship to those dependents, and it may be sold only upon the order of the district court having jurisdiction of the estate, with the consent of the department.

3. No personal property belonging to the estate may be sold within five years from the date upon which the individual was sent to the life skills and transition center unless the property is ordered sold by the district court having jurisdiction of the estate for the reason that the property is likely to deteriorate in value during the time herein specified.
4. No claim may be made to recover from the estate of a former individual served of the life skills and transition center who has left the life skills and transition center and married and leaves a spouse or issue dependent upon such estate.

**25-04-15.1. Statute of limitations not bar to recovery.**

No statute of limitations or similar statute or the doctrine of laches may bar the recovery of costs of care furnished under this chapter. It is not necessary to bill currently any person for those accounts determined to be inactive, currently uncollectible, or for which it has been determined as provided by law that there is no present ability to pay. Current billings may be made for amounts chargeable by law or for which it has been determined the responsible party presently has an ability to pay, but the manner of billing may not affect the total amount due. This section applies to claims for the cost of care furnished on or after July 1, 1961.

**25-04-16. Waiver of payment - Use of income tax data - Confidentiality - Definition.**

1. Except with respect to services provided and duties effectuated for persons other than individuals served by the life skills and transition center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the individual served, former individual served, parent of an individual served or former individual served under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the individual served's care and treatment at the life skills and transition center. An application from an individual served, former individual, personal representative, or guardian must be accompanied by proof of the individual served's or the estate of the individual served's inability to pay. An application from a parent of an individual served or former individual served must be accompanied by proof that the parent has applied for or cooperated fully in an application for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workforce safety and insurance, or medical care and disability programs for provision of services to the individual served, and has assured the contribution of those services, compensation, and contract and program benefits to meet the cost of care provided to the individual served by the life skills and transition center. A waiver must be granted upon receipt of an application from such a parent, which is complete and supported by the required proofs and is effective for so long as the parent continues to apply for or cooperate fully in applications for services, compensation, and contract and program benefits, and continues to assure the contribution of those services, compensation, and benefits to meet the costs of care. A waiver, once granted with respect to an individual served under age eighteen, extinguishes any debt that would otherwise be owed by the individual served, the individual served's parents, or the individual served's estate with respect to care and treatment furnished during times the waiver is effective.
2. Upon receipt of such application, the department shall direct the human service zone of the county from which the individual served was admitted to determine whether the application is complete and supported by the required proofs. The department shall approve, reject, or amend the determination made by the human service zone. The determination made by the department may be appealed to the district court of the county of residence of the individual served.
3. Any individual served, former individual served, parent of an individual served or former individual served, guardian, or personal representative who seeks relief from

the payment of the cost of care and treatment by filing an application for relief of payment shall do so with the understanding that the department may, in its discretion, and to its satisfaction, verify any statement made in such application for relief of payment by a request for information from financial institutions, including commercial banks, and from other sources likely to possess verifying information. Notwithstanding the provisions of section 57-38-57, this verification may include a review of such applicant's state income tax return or any other document or report submitted to or held by any office or department of the state of North Dakota or any of its political subdivisions.

4. When any official or employee of the life skills and transition center who, pursuant to subsection 1, obtains income tax information or other tax information from the state tax commissioner the confidentiality of which is protected by law, such official or employee may not divulge such information except to the extent necessary for the administration of this chapter or when otherwise directed by judicial order or when otherwise provided by law.

**25-04-17. Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee.**

The department may authorize the reduction or writeoff of an individual served's past-due account from the life skills and transition center's financial records upon determining that the account is not collectible. The department, by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year. The report must include:

1. An aging by individual classification of accounts remaining unpaid.
2. The amounts by individual classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

**25-04-18. Limitations of this chapter.**

The provisions of this chapter may not be construed to limit or broaden the plaintiff class as defined by order of the United States district court for the district of North Dakota entered on January 13, 1981, in civil number A1-80-141.

**25-04-19. Quality assurance review committees - Reports - Immunity.**

Any information, data, report, or record generated by or made available to an internal quality assurance review committee of the life skills and transition center or members thereof is confidential and may be used by the committee and the members thereof only in the exercise of the proper functions of the committee. The proceedings and records of the committee and the members thereof are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter under consideration by the committee. Any information, document, or record otherwise available from original sources is not immune from discovery or use in any civil action merely because it was presented during the proceedings of the committee, nor may any person who testified before the committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness's testimony before the committee. This section does not relieve any person of any liability incurred as a result of furnishing health care to the resident. No person furnishing information, data, reports, or records to the committee with respect to any resident of the life skills and transition center is, by reason of furnishing the information, data, reports, or records, liable in damages to any resident, or answerable for willful violation of a privileged or confidential communication. No member of the committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member.

**25-04-20. Westwood park assets management committee.**

Repealed by S.L. 1999, ch. 34, § 39.