

CHAPTER 25-04 CARE OF DEVELOPMENTALLY DISABLED

25-04-00.1. Definitions. For the purposes of this chapter:

1. "Nonresident patient at the developmental center at westwood park, Grafton" includes:
 - a. Any patient at the developmental center at westwood park, Grafton who is under eighteen years old and whose responsible relative is not a bona fide resident of this state.
 - b. Any Indian patients for whom the United States government has, through its statutes and regulations, a responsibility for their care.
2. "Nonresident responsible relative" includes the patient's nonresident spouse, father, or mother. It includes the bureau of Indian affairs in those cases involving Indian patients for whom the United States government has, through its statutes and regulations, a responsibility for their care.

25-04-01. Developmental center at westwood park, Grafton - Name - Administration and control. A facility for developmentally disabled persons must be maintained at or near the city of Grafton in Walsh County. The facility must also be available for a person who is determined to be a person who may benefit from the facility's services. The facility must be known and designated as the developmental center at westwood park, Grafton. The department of human services has administrative authority and control of the developmental center at westwood park, Grafton, and westwood park.

25-04-02. Purpose of developmental center at westwood park, Grafton.

1. The developmental center at westwood park, Grafton must be maintained for the relief, instruction, care, and custody of persons who are developmentally disabled or other persons who may benefit from the services offered at the center. For this purpose the department of human services may introduce and establish such trades and manual industries as in its judgment will best prepare the residents for future self-support.
2. The department may provide onsite and offsite additional services and effectuate its powers and duties to best serve persons who are developmentally disabled and other persons who may benefit from those activities. The services provided and the duties effectuated need not be accredited by the accreditation council on services for people with developmental disabilities or certified by the health care financing administration, or any other similar accrediting or certifying organization, if the service or duty is not provided to persons who are developmentally disabled or if such accrediting or certifying organization does not accredit or certify the service or duty.

25-04-02.1. Accreditation of developmental center. The department of human services shall request appropriations and resources sufficient to ensure maintenance of the developmental center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing standards applicable to handicapped individuals 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 budget section of the legislative management, the developmental center at westwood park, Grafton may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The developmental center at westwood park,

Grafton shall determine the rates for services provided. The budget section may approve the provision of a service under this section only after determining that the service is not otherwise being provided by either the private or public sector.

25-04-03. Qualifications of superintendent. The superintendent of the developmental center at westwood park, Grafton must be a skilled administrator with professional training and experience relating to the needs of the developmentally disabled. 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 developmental center. Subject to this chapter and to any rules adopted by the department of human services, the benefits of the developmental center at westwood park, Grafton may be received by:

1. Persons who are developmentally disabled and other persons who may benefit from services provided at the developmental center who, in the opinion of the superintendent of the developmental center at westwood park, Grafton, are of suitable age and capacity to receive instruction in the center and whose deficiencies prevent them from receiving proper training and instruction in the public schools;
2. Persons who are developmentally disabled and other persons who may benefit from services provided at the developmental center who cannot be properly cared for in their homes or other available facilities; or
3. Persons who are developmentally disabled and other persons who may benefit from onsite and offsite services provided or duties effectuated by the developmental center.

Residents and nonresidents of this state may receive the benefits of the developmental center. Priority, however, must be given to residents of this state and first priority must be given to persons who are developmentally disabled.

25-04-05. Qualifications for admission to state facility - Screening required prior to admission or readmission - Educational or related services without charge for persons twenty-one years of age and under.

1. The superintendent may admit a person to the developmental center at westwood park, Grafton when all of the following conditions have been met:
 - a. Application for admission has been made on behalf of the person by a parent or guardian or the person or agency having legal custody, or by the person seeking admission, in accordance with procedures established by the department of human services.
 - b. A comprehensive evaluation of the person has been made within three months of the date of application, a report of which has been filed with the superintendent and which, together with such other information or reviews as the department of human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission to the developmental center at westwood park, Grafton.
 - c. The person may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted by the department of human services.

2. No person may be admitted or readmitted to the developmental center at westwood park, Grafton, unless that person has undergone a screening process at the developmental center to determine whether the admission or readmission is appropriate. Length of stay criteria may be established under rules as the department of human services may adopt. Any person who is suspected of being able to benefit from the services offered at the center may be screened to ascertain whether or not that person is actually a proper case for care, treatment, and training at the developmental center. If in the opinion of the superintendent the person screened under this subsection is a proper subject for institutional care, treatment, and training at the developmental center, that person may remain as a voluntary resident at the center at the discretion of the superintendent if all other conditions for admission required by this section are met.
3. Notwithstanding any other provision of this chapter, no handicapped patient, twenty-one years of age or under, or the estate or the parent of such patient, may be charged for educational or related services provided at the developmental center at westwood park, Grafton. Except as provided in subsection 4, the department of human services has prior claim on all benefits accruing to such patients 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 a handicapped patient to benefit from special education. The cost of related services other than medical and medically related services must be paid by the developmental center at westwood park, Grafton, 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 department of human services, 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 a handicapped patient, 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 nonhandicapped children. 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 developmental center pays or waives the out-of-pocket expense.

25-04-05.1. Transfer of residents - Visiting privileges - Release and placement of patients.

1. The superintendent shall have the right of temporary transfer of any resident of the developmental center at westwood park, Grafton to an appropriate hospital or other specialized facility when in the superintendent's opinion the immediate health and safety of the resident requires the transfer. The superintendent shall also have the right and responsibility of indefinite transfer of a resident from one state facility for

the developmentally disabled to another when the best interest of the resident will be served thereby, or when the transfer is required in conformity with the policies of the department of human services; provided, however, that no transfer may be effected until all reasonable efforts have been made to consult with the resident's parent or guardian of the person.

2. Subject to reasonable rules for the orderly operation of the developmental center at westwood park, Grafton or other state facility for the developmentally disabled, any parent or guardian of the person of a resident shall have the right of visiting and communicating with a child or ward and authorizing visits and communications with others.
3. The superintendent may authorize the temporary release of any resident to the custody of the resident's parent or guardian of the person, or to another person designated by the parent or such guardian. In the absence of such authorization, any parent or guardian of the person of any resident may formally request, in writing, the resident's temporary release. The release must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a release 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 or such guardian in writing.
4. The superintendent may arrange for the suitable placement of a resident outside the developmental center or other state facility and to release the resident on placement, 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 resident's parent or guardian of the person.

25-04-05.2. San haven - Transportation costs - Payment limited. Repealed by S.L. 1989, ch. 338, § 6.

25-04-06. Juvenile court commitment of dependent, neglected, or delinquent mentally deficient - Commitment for observation - Appeal. In any proceeding instituted in juvenile court, the court may make an order committing the child to the developmental center at westwood park, Grafton whenever it appears to the satisfaction of the court that the child involved in the proceeding is:

1. Dependent and a candidate for services at the developmental center;
2. Neglected and a candidate for services at the developmental center; or
3. Delinquent and a candidate for services at the developmental center.

If the court is in doubt as to whether the child is a candidate for services offered at the developmental center, the court may make an order committing the child to the developmental center at westwood park, Grafton for observation only by the authorities of such institution. If it is ascertained as a result of such observation that the child is a candidate for services offered at the developmental center, a report to such effect must be made by the authorities of the developmental center at westwood park, Grafton to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be in need of these services. 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. The procedure provided in this section is not exclusive but is in addition to other procedures provided in this chapter for the commitment of children to the developmental center at westwood park, Grafton.

25-04-07. Disabled defendants. Repealed by S.L. 1991, ch. 121, § 5.

25-04-08. Discharge of resident from institution. A person who has been admitted as a resident must be permanently discharged within thirty days under any one of the following conditions:

1. The superintendent, on the basis of a comprehensive evaluation, finds that the care, treatment, training, rehabilitation, and supervision offered by the state are no longer required.
2. The parent or guardian who voluntarily committed the parent's child or the guardian's ward as a resident and who retains legal custody makes a written request for discharge.
3. The person 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; provided, however, that if such admission be by contractual arrangement made by the department of human services, the person must be placed on nonresident release status, but not discharged.
4. A court of competent jurisdiction orders the discharge of the person.

Any person who is to be discharged under subsection 2 or 4 shall first receive a comprehensive evaluation unless such evaluation is not completed within thirty days of the request for discharge.

25-04-08.1. Notification prior to discharge. Prior to discharge the superintendent shall consult with the parent or guardian of the person to be discharged, or with the court which ordered the commitment, and shall notify the director of the county social service board of the county wherein it is proposed that such person will assume residence and also shall notify the executive director of the department of human services.

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 person who is not a legal resident. If a person who has no legal residence in this state is subject to admission to the developmental center at westwood park, Grafton or other appropriate state facility, by order of a court of competent jurisdiction, such person must be sent, at the expense of the county, to the developmental center at westwood park, Grafton in the same manner as a resident of this state who is found to be in need of services offered at the developmental center, and the superintendent of the developmental center at westwood park, Grafton shall then arrange for the transportation of such person to the place where the person belongs. The department of human services shall ascertain the place where such person belongs when the same conveniently can be done.

25-04-11.1. Disposition of nonresidents - Exceptions - Reciprocal agreements. If a person who has no legal residence in this state or whose residence is unknown is found to be a person requiring care and treatment in the developmental center at westwood park, Grafton, the person must be sent to the developmental center in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The supervising department shall immediately inquire as to the residence of the person or the person's responsible relatives, and, if the residence is found to be in another state or country, the supervising department shall arrange for transportation of the person to the place of legal residence or legal settlement unless the person can be accommodated at the developmental center without depriving a North Dakota resident of care and treatment at the developmental 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 supervising department may

enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of persons 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 patients. Nonresident patients at the developmental center at westwood park, Grafton and nonresident responsible relatives of patients are liable for the chargeable costs of care and treatment at the developmental 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 patient or patient's estate - Filing claims. Expenses for care and treatment of each patient at the developmental center at westwood park, Grafton 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 patient's ability to pay which must include an estimate of potential future receipts, including amounts from estates. The supervising department shall recover from the patient or from a discharged patient expenses chargeable for care and treatment. If any patient 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 patient and may be recovered monthly by the supervising department except that any amount required by the payer of the benefits to be paid directly to the patient must, upon approval of the department of human services, be credited to the patient's personal account from any money thus received.

25-04-15. Expenses chargeable against guardianship estate of patient - Restrictions. The expenses chargeable by the state for the care and treatment of any patient over twenty-one years of age at the developmental center at westwood park, Grafton must be charged against the guardianship estate of such patient, if the patient has such an estate, subject to the following restrictions:

1. No part of the estate may be taken for such purpose if the patient 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 patient except for the maintenance and support of the patient'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 of human services.
3. No personal property belonging to the estate may be sold within five years from the date upon which the patient was sent to the developmental center at westwood park, Grafton 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 resident of the developmental center at westwood park, Grafton who has left the developmental

center at westwood park, Grafton 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 residents of the developmental center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the resident, former resident, parent of a resident or former resident 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 resident's care and treatment at the developmental center at westwood park, Grafton. An application from a resident, former resident, personal representative, or guardian must be accompanied by proof of the resident's or the estate of the resident's inability to pay. An application from a parent of a resident or former resident 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 resident, and has assured the contribution of those services, compensation, and contract and program benefits to meet the cost of care provided to the resident by the developmental center at westwood park, Grafton. 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 a resident under age eighteen, extinguishes any debt that would otherwise be owed by the resident, the resident's parents, or the resident's estate with respect to care and treatment furnished during times the waiver is effective.
2. Upon receipt of such application, the supervising department shall direct the county social service board of the county from which the patient was admitted to determine whether the application is complete and supported by the required proofs. The supervising department shall approve, reject, or amend the determination made by the county social service board. The determination made by the supervising department may be appealed to the district court of the county of residence of the patient.
3. Any patient, former patient, parent of a patient or former patient, 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 supervising 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 developmental 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.
5. As used in this chapter, "supervising department" means the department of human services.

25-04-17. Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee. The supervising department may authorize the reduction or writeoff of a patient's past-due account from the developmental center's financial records upon determining that the account is not collectible. The supervising 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 patient classification of accounts remaining unpaid.
2. The amounts by patient 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 made available to an internal quality assurance review committee of the developmental center at westwood park, Grafton 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 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 developmental 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.