

**TITLE 23  
HEALTH AND SAFETY**

**CHAPTER 23-01  
HEALTH DIVISION**

**23-01-01. Health division - Officers.**

Repealed by S.L. 2023, ch. 229, § 136.

**23-01-01.1. Department of health and human services to replace state department of health and consolidated laboratories.**

The legislative council shall replace, where appropriate, "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", "state laboratories director", "state department of health", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in this code, and in the North Dakota Administrative Code, with "department of health and human services" or an appropriate derivative of that phrase. The legislative council may replace references to the "state department of health" or any derivatives of that term with "department of health and human services" in any measure enacted by the sixty-seventh legislative assembly.

**23-01-01.2. State department of health designated primary state environmental agency.**

Repealed by S.L. 2017, ch. 199, § 74.

**23-01-02. Health council - Members, terms of office, compensation, officers, meetings.**

1. The health council shall assure the coordination of the health division with all other health activities of the state. The health council consists of twelve members:
  - a. One member representing tribal health, appointed by the director of the Indian affairs commission for a term of at least one year.
  - b. One member representing the university of North Dakota school of medicine and health sciences, appointed by the dean of the school for a term of at least one year.
  - c. One member representing the university of North Dakota, appointed by the president of the university for a term of at least one year.
  - d. One member representing North Dakota state university, appointed by the president of the university for a term of at least one year.
  - e. One local health officer from a public health unit, appointed by the state health officer for a term of at least one year.
  - f. Seven members appointed by the state health officer as provided under this subdivision for terms of three years. The state health officer shall identify statewide entities representing each of the following interests and shall request each entity submit the name of one individual to represent the entity.
    - (1) An entity representing pharmacists.
    - (2) An entity representing physicians.
    - (3) An entity representing hospitals.
    - (4) An entity representing public health unit administrators.
    - (5) An entity representing nurses.
    - (6) An entity representing long-term care facilities.
    - (7) An entity representing dietitians.
2. Each member of the health council shall serve until the member's successor is appointed. If a member ceases to represent the entity the member is appointed to represent, the member is no longer qualified to serve and must be replaced.

3. The council shall elect from its membership a presiding officer. The state health officer shall serve as executive secretary of the health council. The executive secretary does not have voting privileges. The council shall meet no fewer than two times per year and shall meet at the call of the presiding officer and at the request of the state health officer.
4. At the request of the health council, a state agency may serve in an advisory capacity to the council.
5. The health council may appoint standing committees as determined necessary. The presiding officer shall select the members of any standing committee.
6. A member of the health council is entitled to receive per diem at the rate set for a member of the legislative assembly under subsection 1 of section 54-03-20 and necessary mileage and travel expenses as provided under sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. To the extent a member of the council receives salary or other compensation from the state or a political subdivision, that member is not eligible to receive per diem or reimbursement under this subsection.

**23-01-02.1. Hospital utilization committees - Internal quality assurance review committees - Reports - Immunity.**

Repealed by S.L. 1997, ch. 234, § 5.

**23-01-03. Powers and duties of the health council.**

The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.
2. Make regulations for the government of the council and its officers and meetings.
3. Collaborate and advise in the establishment of standards, rules, and regulations, which are found necessary for the maintenance of public health, including sanitation and disease control.
4. Collaborate and support the development of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of the institutions, standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. A rule may not be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before the council by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination regarding these matters.
6. Inform and advise the governor, department of health and human services, legislative assembly, and North Dakotans on public health issues that are important to the needs of North Dakotans, and in the event of a public health emergency.
7. Monitor progress on the state public health strategic plan and advocate for evidence-based practices and policies necessary to improve the health of North Dakotans.
8. In consultation with the state health officer and other agencies, associations, and institutions represented on the health council, study and make recommendations regarding the strategic plan and programs of the health division of the department of health and human services. The recommendation may address public health education and training, factors influencing the practice environment for health care professionals, access to health care, and patient safety.
9. As the health council determines appropriate, consult with an individual or entity in performing the council's duties under this section.

**23-01-03.1. Newborn metabolic and genetic disease screening tests.**

1. The department of health and human services shall adopt rules relating to the storage, maintenance, and disposal of blood spots or other newborn screening specimens.
2. The state health officer shall specify a panel of metabolic diseases and genetic diseases for which newborn screening must be performed. The screening panel must include disorders and diseases selected with input from an advisory committee.

**23-01-03.2. Duties of the health council.**

Repealed by S.L. 2017, ch. 184, § 1.

**23-01-03.3. Long-term care nursing scholarship and loan repayment grant program.**

1. The department of health and human services, in cooperation with the North Dakota long term care association, shall administer the long-term care nursing scholarship and loan repayment grant program. The purpose of the program is to provide matching funds to nursing facilities for the facilities to use in recruiting and retaining nurses by providing scholarships to nursing facility staff and other individuals to obtain a nursing education and by assisting in the repayment of student loans for licensed nurses employed in a nursing facility. The department of health and human services shall adopt rules necessary to administer the program, including rules establishing criteria regarding eligibility for and distribution of program grants.
2. An applicant for a program grant shall establish that the applicant:
  - a. Is a licensed nursing facility;
  - b. Has available matching funds equal to the amount of the grant request; and
  - c. Meets the eligibility criteria established by rule.
3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the department of health and human services.

**23-01-04. Effect of rules and regulations.**

All rules and regulations adopted by the department of health and human services under the powers granted by any provisions of this title are binding upon all county and municipal health officers, and upon all county, municipal, and private medical hospitals and upon related institutions, and have the force and effect of law.

**23-01-04.1. Rulemaking authority and procedure.**

Repealed by S.L. 2017, ch. 199, §74.

**23-01-04.2. Legislative intent - Health vaccination charges.**

It is the intent of the legislative assembly that the state department of health adopt rules defining appropriate administration charges for vaccine provided by the department to physicians, private clinics, and hospitals.

**23-01-04.3. Alternative health care services pilot project - Application - Notice - Hearing - Approval - Duration.**

1. At any time that the health care needs of a city, township, or other geographic area are not being adequately met, any person may apply to the department of health and human services for approval to conduct an alternative health care services pilot project. The application must address the need for and benefits of the pilot project. It must also contain a detailed description of the nature and scope of the project, quality control, organization, accountability, responsibility, and financial feasibility.
2. Upon receipt of an application under subsection 1, the department of health and human services shall schedule a public hearing, send notice to all interested parties, and give public notice of the hearing by publication in the official newspaper of each

county in the pilot project area. At the hearing, the department of health and human services shall accept written and oral testimony. The department of health and human services shall review the application and all testimony presented at the hearing and approve, disapprove, or modify and approve the application based on criteria established by the department of health and human services. The criteria must address the availability and use of health personnel, facilities, and services.

3. Notwithstanding any other provisions of law, upon approval of an application submitted under subsection 1, the department of health and human services, in consultation with the state health officer and any other public or private entity consulted by the department of health and human services, shall set the standards for the delivery of health care services by the pilot project. The standards may not adversely affect the state's participation in federal Medicare and Medicaid programs. No more than three separate projects may be operational at any time and no project may be operational for longer than five years.

**23-01-05. Health officer - Qualifications, salary, term, duties.**

1. The governor shall appoint a state health officer who has:
  - a. Education, training, or experience in public health; and
  - b. Relevant leadership experience.
2. The governor shall set the salary of the state health officer within the limits of legislative appropriations to the department.
3. The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business.
4. The state health officer serves at the pleasure of the governor.
5. The commissioner of the department of health and human services may appoint an advisory committee to advise the state health officer on matters of public health as requested by the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. A committee member serves at the pleasure of the commissioner of the department of health and human services. A meeting of the advisory committee is not subject to open meeting requirements of chapter 44-04.
6. The duties of the state health officer are as follows:
  - a. Provide strategy and policy advice to improve health and wellness.
  - b. Serve in an advisory capacity for local public health and local health officers.
  - c. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions.
  - d. Issue a written order relating to a disease control measure necessary to prevent the spread of a communicable disease. A disease control measure may include a special immunization activity and decontamination measure.
    - (1) The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.
    - (2) A written order issued under this section has the same effect as a physician's standing medical order.
    - (3) The state health officer shall apply to the district court in a judicial district in which a communicable disease is present for an injunction canceling a public event or closing a place of business. On application of the state health officer showing the necessity of the cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
    - (4) Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:

- (a) Substantially burden a person's exercise of religion unless the order 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 secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
  - (c) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
- (5) A person claiming to be aggrieved by a violation of paragraph 1 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.
- e. Perform all duties required or provided by law.

**23-01-05.1. Organ or tissue transplant assistance administration - Standing appropriation.**

The department of health and human services shall select a private nonprofit patient-oriented organization incorporated in this state for the purpose of administering financial assistance to organ or tissue transplant patients who are residents of this state. The department of health and human services shall adopt rules governing administration of this section. The organization selected shall administer and provide grants from available funds to alleviate demonstrated financial needs of transplant patients for any costs associated with transplant operations, under guidelines based on current social service eligibility requirements. There is hereby created as a special fund in the state treasury an organ transplant support fund, the principal and income of which is hereby appropriated to the organization selected under this section. The organization administering the fund may solicit contributions from private or governmental sources and such contributions may be deposited in the fund.

**23-01-05.2. Epinephrine prescription, distribution, possession, or use - Immunity from liability.**

- 1. As used in this section:
  - a. "Epinephrine" means a single-use disposable device that automatically injects a premeasured dose of epinephrine.
  - b. "Health care professional" means a licensed or certified health care professional who is working within the scope of practice for that profession. The term may include a physician, physician assistant, advanced practice registered nurse, and pharmacist acting in the professional's scope of practice.
- 2. A health care professional acting in good faith may directly or by standing order prescribe, distribute, or dispense epinephrine, if the health care professional provides training to:
  - a. An individual at risk of experiencing a severe allergic reaction; or
  - b. A family member, friend, or other person in a position to assist an individual at risk of experiencing a severe allergic reaction.
- 3. A person acting in good faith may receive or possess epinephrine if that person is:
  - a. An individual at risk of experiencing a severe allergic reaction; or
  - b. A family member, friend, or other person in a position to assist an individual at risk of experiencing a severe allergic reaction.
- 4. An individual acting in good faith may self-administer epinephrine or administer epinephrine to another individual who the administering individual suspects is at risk of experiencing a severe allergic reaction.
- 5. A person may receive, possess, or administer epinephrine under subsection 3 or 4, regardless of whether the person is the individual for or the person to which the epinephrine is prescribed, distributed, or dispensed. A person in possession of epinephrine which is acting in good faith may provide training on how to use epinephrine.

6. A health care professional who prescribes, distributes, trains on the use of, or dispenses epinephrine as authorized under this section is not subject to professional discipline for such action. This section does not expand the scope of practice of a health care professional.
7. A person that prescribes, distributes, dispenses, receives, possesses, trains in the use of, or administers epinephrine as authorized under this section is immune from civil and criminal liability for such action. This subsection provides immunity to the person responsible for the site on which the epinephrine is located. Immunity from liability or discipline under this subsection does not apply if the person's actions constitute recklessness, gross negligence, or intentional misconduct.

#### **23-01-05.3. Immunization data.**

1. The department of health and human services may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The department of health and human services may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
  - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
  - b. The department of health and human services shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the department of health and human services may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.
4. The department of health and human services may not create, administer, provide, or contract for electronic machine-readable code or a vaccine passport.

#### **23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties.**

The department of health and human services may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;
2. Consult with local coroners on the performance of their duties as coroners;
3. Conduct investigations into the cause of death of and perform autopsies on any deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;
4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary;
5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and

6. Perform other duties assigned by the commissioner of the department of health and human services.

**23-01-05.5. Autopsy reports, working papers, and images - Confidential - Exceptions.**

1. As used in this section:
  - a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.
  - b. "Notes" means the notes or dictations taken or created by the state forensic examiner or the examiner's designee during the course of an investigation into the cause and manner of death of a decedent.
  - c. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.
  - d. "Working papers" means the medical records, investigatory records, law enforcement records, and other records or materials collected or compiled by the state forensic examiner or the examiner's designee and the notes or dictations created by the state forensic examiner or the examiner's designee during the course of an investigation into the cause and manner of death of a decedent. The term does not include autopsy photographs or other visual images or video or audio recordings of an autopsy taken by the state forensic examiner, the examiner's designee, prosecutor, criminal justice agency, any employee or agent of a criminal justice agency, or any other individual, or other photographs or visual images of the decedent which may have been taken by law enforcement or other individuals.
2. The report of death is subject to disclosure as follows:
  - a. If requested before the report of death becomes a public record, the next of kin or authorized representative requesting the report of death is responsible for providing to the state forensic examiner or the examiner's designee satisfactory proof of relationship to the deceased and contact information for notification of the report of death.
  - b. When in receipt of the information in subdivision a, the state forensic examiner, examiner's designee, county coroner, or pathologist who performed the autopsy shall make a good faith effort to immediately notify the decedent's next of kin or authorized representative of the availability of the report of death. The notification or attempts to notify the next of kin or authorized representative must be recorded and must precede any public disclosure of the report of death.
  - c. The report of death becomes a public record eight days after the report of death is finalized.
3. Working papers relating to a final autopsy report may be disclosed in accordance with section 44-04-18.11 and subsection 5.
4. An autopsy report is confidential and may be disclosed in accordance with section 44-04-18.11 and subsections 5 and 6.
5. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report and working papers to:
  - a. A county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.
  - b. A prosecutor or criminal justice agency, as defined by section 44-04-18.7, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the prosecutor or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.

- c. Workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.
  - d. The child fatality review panel if there is no active criminal investigation.
  - e. The suicide fatality review commission if there is no active criminal investigation.
  - f. To the department of corrections and rehabilitation if the decedent was an inmate in a county, regional, or state correctional facility.
  - g. In accordance with a court order.
6. If there is no active criminal investigation, the state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:
- a. The decedent's personal representative.
  - b. The decedent's spouse, child eighteen years of age or older, or parent, upon proof of the relationship.
  - c. A physician or hospital that treated the decedent immediately before death.
  - d. An insurance company upon proof the decedent's life was covered by a policy issued by the company.
  - e. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.
  - f. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.
  - g. The maternal mortality review committee.
7. An autopsy photograph or other visual image or a video or audio recording of an autopsy taken by the state forensic examiner, the examiner's designee, prosecutor, criminal justice agency, any employee or agent of a criminal justice agency, or any other individual is confidential and may be disclosed in accordance with section 44-04-18.11 and as provided in this subsection:
- a. The state forensic examiner or the examiner's designee shall, upon request, disclose a copy of autopsy photographs or other visual images or video or audio recordings of an autopsy to any prosecutor or criminal justice agency as defined by section 44-04-18.7, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the prosecutor or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.
  - b. After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or video or audio recording for:
    - (1) Medical or scientific teaching or training purposes;
    - (2) Teaching or training of law enforcement personnel;
    - (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
    - (4) Conferring with medical or scientific experts;
    - (5) Publication in a scientific or medical journal or textbook; or
    - (6) Teaching or training of coroner personnel or other licensed or certified medical professionals.
  - c. The decedent's spouse, child eighteen years of age or older, or parent, upon proof of the relationship, may view an autopsy photograph, image, or recording in the business office of a medical examiner, coroner, or physician who has possession of the materials, if there is not an active criminal investigation or prosecution.



- d. Upon receipt by the requestor of a court order requiring disclosure and a court-issued protective order in accordance with section 44-04-18.11, the state forensic examiner or the examiner's designee shall disclose a copy of autopsy photographs or other visual images or video or audio recordings of an autopsy to the decedent's spouse, child eighteen years of age or older, or parent, upon proof of the relationship.
8. Other photographs or visual images of the decedent in the possession of the forensic examiner, the examiner's designee, or any county coroner which may have been taken by law enforcement or other persons are confidential.
9. Notes are confidential records.
10. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, working papers, autopsy photograph, notes, other photographs or visual images of a decedent, or a video or audio recording of an autopsy, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

#### **23-01-06. Biennial report - Contents.**

Repealed by S.L. 2023, ch. 229, § 136.

#### **23-01-07. Structure of department.**

Repealed by S.L. 1993, ch. 218, § 10.

##### **23-01-07.1. Powers and duties of the public health division.**

The public health division shall:

1. Enforce rules adopted by the department of health and human services.
2. Hold public health unit boards of health responsible for enforcement of state rules, serve in an advisory capacity to public health unit boards of health, and provide for coordination of health activities.
3. Establish and enforce minimum standards of performance of the work of the local department of health.
4. Study health problems and plan for their solution as may be necessary.
5. Establish a service for medical hospitals and related institutions to include licensing of the institutions according to the standards promulgated by the department and consultation service to communities planning the construction of new hospitals and related institutions.
6. Maintain a central public health laboratory and where necessary, branch laboratories.
7. Perform all duties required or provided by law.

##### **23-01-07.2. Powers and duties of the central public health laboratory.**

The central public health laboratory:

1. Must be maintained for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.
2. Shall make bacteriological examination of bodily secretions and excretions and of waters and foods.
3. Shall make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.
4. Shall make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.

5. Shall cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
6. From time to time, shall cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year.
7. Shall establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. A charge may not be made for any analysis conducted in connection with a public health incident affecting an entire region, community, or neighborhood.
8. Shall establish a review process for instances in which the department of health and human services is requested to conduct an epidemiological assessment of a commercial building.
  - a. The epidemiological assessment must include:
    - (1) A statement of whether there are known environmental causes;
    - (2) If there are known environmental causes identified, a recommendation of how the causes can be remediated or mitigated; and
    - (3) If there are no known environmental causes identified, a statement that no known causes exist.
  - b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

### **23-01-07.3. Surge staffing.**

The department of health and human services may employ staff to deploy to local hospitals, basic care facilities, long-term care facilities, and other health care settings to cover staff shortages. The hospital or facility must be responsible for insuring the staff members while the staff work at the hospital or facility. For indemnification and liability purposes, the staff member must be considered an employee of the hospital or facility during deployment at the hospital or facility. The department of health and human services may adopt rules to effectuate this section.

### **23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.**

The commissioner of the department of health and human services or designee shall appoint directors of the various divisions of the department and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the commissioner of the department of health and human services or designee. The state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the state health officer.

#### **23-01-08.1. Criminal history background checks.**

The department of health and human services may require a final applicant for a job opening or a current employee with the department, as designated by the commissioner of the department of health and human services, complete a state and national criminal history record check as provided under section 12-60-24.

### **23-01-09. Duties of director of consolidated laboratories branch.**

Repealed by S.L. 1993, ch. 218, § 10.

#### **23-01-09.1. Duties of state toxicologist.**

Repealed by S.L. 2003, ch. 469, § 13.

**23-01-10. Office space.**

The state shall provide suitable office space in Bismarck for housing and maintaining the department of health and human services. Special fireproof vaults must be provided for the storage of birth and death certificates.

**23-01-11. Acceptance of funds and right to qualify for benefits under federal laws authorized.**

The department of health and human services may:

1. Accept funds from cities, counties, the federal government, private organizations, and individuals for infancy and maternal hygiene, for other public health work and for the purpose of conducting a survey of existing medical hospitals and related institutions, planning of needed hospital construction and for construction and maintenance of such medical hospitals and related institutions. When approved by the governor of this state, the department of health and human services may match the same from any unexpended portion of its appropriation in accordance with specifications agreed to or required by congressional act. All infancy and maternal hygiene and public health work must be done under the supervision of the department of health and human services.
2. Adopt rules necessary to enable the state to be in compliance with any federal laws in order to qualify for any federal funds related to medical facilities or agencies licensed by the department of health and human services.

**23-01-12. Hospital records to be kept at direction of department.**

When any person is admitted into a lying-in hospital or other institution, public or private, to which persons resort for the treatment of disease or for confinement, or to which persons are committed by process of law, the superintendent, manager, or other person in charge of such institution shall make a record of all the personal and statistical particulars relative to such person. The record must be in such form as is directed by the department of health and human services. In the case of any person admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the records the nature of the disease and where, in the physician's opinion, it was contracted. The personal particulars and information required for compliance with the provisions of this section must be obtained from the individual personally if practicable, and when the information cannot be obtained from the individual, from the individual's relatives or friends or from any other person acquainted with the facts.

**23-01-13. Blood plasma - Obtaining, storing, and distributing.**

Repealed by S.L. 1991, ch. 263, § 1.

**23-01-14. Department of health and human services authorized to transfer future accumulated fees.**

As a continuing policy, the department of health and human services may automatically from time to time transfer unclaimed fees on deposit with the Bank of North Dakota or other authorized depository to the state general fund when the unclaimed status has existed for a period of at least three years.

**23-01-15. Research studies confidential - Penalty.**

1. All information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the department of health and human services, in connection with studies conducted by the department of health and human services, or carried on by the department jointly with other persons, agencies, or organizations, or procured by such other persons, agencies, or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition of health is confidential and must be used solely for the purposes of medical or scientific research.
2. Such information, records, reports, statements, notes, memoranda, or other data is not admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements,

notes, memoranda, or other data may not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department of health and human services, nor by any other person, except as may be necessary for the purpose of furthering the research project to which they relate. No person participating in such research project may disclose, in any manner, the information so obtained except in strict conformity with such research project. No officer or employee of said department may interview any patient named in any such report, nor a relative of any such patient, unless the consent of the attending physician and surgeon is first obtained.

3. The furnishing of such information to the department of health and human services or its authorized representative, or to any other cooperating agency in such research project, does not subject any person, hospital, sanitarium, rest home, nursing home, or other person or agency furnishing such information, to any action for damages or other relief.

#### **23-01-16. Dairy products - Joint standards.**

The department of health and human services and the dairy department of the department of agriculture shall jointly adopt a set of uniform standards in relation to all matters falling within their joint jurisdiction regarding dairy products. The department of health and human services, district health units, municipal health departments or units, and the dairy department shall each be permitted to accept any inspection report of the other department or unit regarding the inspection of dairy products and the producers and processors of such products, when such report is based substantially upon standards conforming with the milk ordinance and code recommended by the United States public health service.

#### **23-01-17. Noise harmful to health and safety - Power to regulate - Hearings - Appeal - Penalty - Injunction.**

Repealed by S.L. 1991, ch. 264, § 1.

#### **23-01-18. State department of health responsible for control of rabies.**

Repealed by S.L. 1999, ch. 243, § 2.

#### **23-01-19. Extermination of rabies.**

Repealed by S.L. 1999, ch. 243, § 2.

#### **23-01-20. Traumatic head injury defined.**

Repealed by S.L. 1999, ch. 231, § 1.

#### **23-01-21. Central registry of traumatic head injury - Establishment - Reports.**

Repealed by S.L. 1999, ch. 231, § 1.

#### **23-01-22. Department to employ waste management facility inspectors.**

The department of health and human services shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.6 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.6 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23-29-10 and 23-29-11.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislative appropriation.

**23-01-23. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57.**

Repealed by S.L. 2017, ch. 199, §74.

**23-01-24. Health care cost and quality review program - Penalty.**

The department of health and human services shall conduct a continuous program to review and improve the quality of health care in the state. The department may contract with a qualified person or organization to develop and implement the program. The department shall use the program to compile relevant information about the quality of health care in this state which will allow the department to evaluate the cost, quality, and outcomes of health care. The department shall establish and consult a provider advisory committee composed of health care providers regarding the data that is a cost-effective process for collecting and evaluating the information. The department may assess against a provider a penalty of one hundred dollars per day for each day the provider willfully refuses to provide the department with information requested for use with the program, but the penalty may not exceed one thousand dollars for each request. A provider against whom a fee is assessed may appeal that assessment to the department. If the provider fails to pay the penalty, the department may, in the county where the provider's principal place of business is located, initiate a civil action against the provider to collect the penalty. As used in this section, "provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or professional practice. The department shall ensure that patient privacy is protected throughout the compilation and use of the information. The department shall evaluate data management capabilities in the state and shall organize its capabilities to provide information about the cost of care on an individual provider basis as well as a collective basis.

**23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.**

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 4.1-34, 4.1-40, or 4.1-41 must be performed by the department of health and human services for the agriculture commissioner at no charge.

**23-01-26. Department - Indirect cost recoveries.**

Notwithstanding section 54-44.1-15, the department of health and human services may deposit indirect cost recoveries in its operating account.

**23-01-27. Donated dental services program.**

The department of health and human services shall contract with the North Dakota dental association, or other appropriate and qualified organizations, to develop and administer a donated dental services program through which volunteer dentists provide comprehensive dental care for needy, disabled, aged, or medically compromised individuals. The volunteers will treat individuals through the program and, with the exception of certain dental laboratory costs, will fully donate their services and supplies. The contract must specify the responsibilities of the administering organization and include:

1. Establishment of a network of volunteer dentists, including dental specialists, volunteer dental laboratories, and other appropriate volunteer professionals to donate dental services to eligible individuals;
2. Establishment of a system to refer eligible individuals to appropriate volunteers;
3. Development and implementation of a public awareness campaign to educate eligible individuals about the availability of the program;
4. Provision of appropriate administrative and technical support to the program; and
5. Submission of an annual report to the department of health and human services that:
  - a. Accounts for all program funds;
  - b. Reports the number of individuals served by the program and the number of dentists and dental laboratories participating as providers in the program;
  - c. Includes any other information required by the department of health and human services; and
  - d. Performs, as required by the department of health and human services, any other duty relating to the program.

**23-01-28. Combined purchasing with local public health units - Continuing appropriation.**

The department of health and human services may make combined or joint purchases with or on behalf of local public health units for items or services. Payments received by the department of health and human services from local public health units pursuant to a combined or joint purchase must be deposited in the operating fund and are appropriated as a standing and continuing appropriation to the department of health and human services for the purpose of this section.

**23-01-29. Bone marrow donor education.**

The department of health and human services shall provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program. The department shall seek assistance from the national marrow donor program to establish a system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations.

**23-01-30. Zoning regulation of concentrated animal feeding operations - Central repository.**

Repealed by S.L. 2017, ch. 199, §74.

**23-01-31. North Dakota health information technology steering committee.**

Repealed by S.L. 2009, ch. 519, § 6.

**23-01-32. Viral hepatitis program - Vaccination - Study.**

1. The department of health and human services shall establish and administer a viral hepatitis program with the goal of distributing to residents of the state who are at an increased risk for exposure to viral hepatitis information that addresses the higher incidence of hepatitis C exposure and infection among these populations, addresses the dangers presented by the disease, and provides contacts for additional information and referrals.
2. The department shall establish a list of classes of individuals by category that are at increased risk for viral hepatitis exposure. The list must be consistent with recommendations developed by the federal centers for disease control and prevention. The department shall determine the type of information the department will distribute under the program and the form and manner of distribution.
3. The department shall establish a vaccination and testing program, to be coordinated by the department through local public health units.

### **23-01-33. Human papilloma virus - Information.**

The department of health and human services shall educate the public about the human papilloma virus and the availability of a human papilloma virus vaccine; promote immunization against the human papilloma virus; and distribute informational material regarding the human papilloma virus and the human papilloma virus vaccine. The department shall distribute the informational material through relevant department programs and divisions, including breast and cervical cancer control programs; immunization programs; family planning programs; and human immunodeficiency virus and sexually transmitted disease programs. Informational materials distributed must include the recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention; contain information relevant to the target populations of each of the participating programs and divisions distributing the informational material; and contain information regarding the availability of the vaccine through the vaccines for children program operated by the department under 42 U.S.C. 1396s, and the medical assistance program.

### **23-01-34. Children with special health care needs - Program administration.**

The department of health and human services shall administer programs for children with special health care needs as may be necessary to conform to title 5, part 2, of the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.], including providing services and assistance to children with special health care needs and their families and developing and operating clinics for the identification, screening, referral, and treatment of children with special health care needs.

### **23-01-35. Tattooing, body piercing, branding, subdermal implants, or scarification - License - Fee - Adoption of rules - Exemptions - Injury reports - Penalty.**

1. As used in this section:
  - a. "Body piercing" means any method of piercing the skin or mucosa to place jewelry through the skin or mucosa.
  - b. "Branding" means the process in which a mark or marks are burned into human skin tissue with the intention of leaving a permanent mark.
  - c. "Scarify" or "scarification" means the practice in which a mark or marks are cut into human skin tissue with the intention of leaving a permanent mark.
  - d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.
  - e. "Tattoo" or "tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.
2. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, or scarification services without a license issued by the department under this section.
  - a. An applicant for a license shall submit an application for a license to the department, on a form provided by the department, with a license fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
  - b. The department shall inspect each facility to ensure compliance with this section and any rules adopted by the department prior to issuing a license. The operator of a facility shall grant the department access to the premises of a facility during normal hours of operation, including access to customer and personnel records. The inspection must be conducted at a frequency determined by the department and as often as necessary to ensure compliance with this section and any rules adopted by the department.
  - c. The holder of a license shall display the license in a conspicuous place at the facility for which the license is issued.

- d. A license issued under this section expires annually. Within sixty days after December thirty-first, an expired license may be renewed by submitting the renewal application, renewal fee, and a late fee established by the department by rule.
- e. The license may not be transferable from one place or person to another.
- 3. The department shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, scarification, branding, or subdermal implants and may prohibit any practice that the department deems unsafe or a threat to public health.
- 4. A facility is exempt from subsection 2 if the facility provides body piercing that is limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the facility does not provide tattooing, branding, scarification, or subdermal implants. A person is exempt from regulation under subsection 3 if the person's practice under this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A licensed health care professional acting within that professional's scope of practice and the associated medical facility are exempt from this section.
- 5. If a customer of a facility regulated under this section reports to the facility an injury the customer or operator of the facility believes to have resulted from the tattooing, body piercing, branding, subdermal implanting, or scarification provided at the facility, the operator of the facility shall provide the customer with written information on how to report the alleged injury to the department. If a licensed health care professional treats a patient for an injury the professional determines, in the exercise of professional judgment, occurred as a result of a service regulated under this section, the professional shall report the circumstances to the department. A licensed health care professional is immune from liability for making or not making a report under this subsection.
- 6. The fees established by the department must be based on the cost of conducting plan reviews, conducting routine and complaint inspections and enforcement actions, and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.
- 7. A person operating a facility providing tattooing, body piercing, branding, subdermal implant, or scarification services without first obtaining a license issued by the department under this section is guilty of a class B misdemeanor.
- 8. An individual that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implant, or scarification services who fails to comply with this section or any of the rules adopted by the department is guilty of a class B misdemeanor.
- 9. In addition to the criminal penalties provided in this section, the department may issue a cease and desist order or obtain a court order or injunction to restrain and enjoin violations of any provision of this section without proof of actual damages sustained by an individual and without the department being required to file an undertaking.
- 10. The department may deny a license application or, after notice and a hearing in accordance with chapter 28-32, suspend, revoke, or take other disciplinary action against the license of an individual who fails to comply with this section or with any of the rules adopted by the department.

**23-01-36. Appeal from permit proceedings.**

Repealed by S.L. 2017, ch. 199, §74.



**23-01-37. Survey program - Health care facilities construction or renovation projects - Innovation waivers - Continuing appropriation.**

1. The department of health and human services shall conduct a life safety survey process for all health care facilities licensed by the department of health and human services during and at the conclusion of a construction, renovation, or construction and renovation project.
  - a. In conducting a survey under this section, if the department uses a third party to review construction and renovation plans, the licensed provider shall negotiate and approve the price of the review services, the department shall contract with the third party, and the licensed provider shall pay the department for the review services.
  - b. The department shall deposit in the department's operating account any payments received from a licensed provider under subdivision a. There is appropriated to the department on a continuing basis any funds deposited under subdivision a for the purpose of paying a third-party reviewer.
2. The department of health and human services may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The department of health and human services shall make an initial determination on a construction, renovation, or construction and renovation project of:
  - a. No more than one million dollars within twenty-eight days of receipt of a complete application;
  - b. More than one million dollars but no more than four million dollars within forty-two days of receipt of a complete application;
  - c. More than four million dollars, and less than fifteen million dollars, within fifty-six days of receipt of a complete application; and
  - d. More than fifteen million dollars by notifying the applicant of the time the department will require to complete the review, allowing the applicant to determine whether to use a third-party reviewer.
4. Following an initial determination under subsection 3, the department of health and human services shall make any followup determination on a construction, renovation, or construction and renovation project within fourteen days of receipt of the licensed provider's response to the initial determination.
5. The department of health and human services may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
6. The department of health and human services shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

**23-01-38. Electronic drug prior authorization and transmission - Limitations.**

1. Except as otherwise provided under this subsection, effective August 1, 2015, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request. For purposes of this section, a facsimile is not an electronic transmission. The requirements in this section do not apply to workforce safety and insurance.
2. Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence through economic incentives the prescribing

decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements must be consistent with the product label, supported by scientific evidence, and meet the federal food and drug administration requirements for advertising pharmaceutical products.

3. Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

### **23-01-39. Immunization program - Provider choice - Purchasing.**

1. As used in this section:
  - a. "Department" means the department of health and human services.
  - b. "North Dakota immunization advisory committee" means the group of private health care providers, local public health units, department staff, and other applicable individuals which makes immunization and vaccine selection recommendations to the North Dakota immunization program.
  - c. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
  - d. "Program-eligible child" means any child, who is under nineteen years of age, whose custodial parent or legal guardian resides in this state.
  - e. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.
  - f. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396s].
2. As part of the North Dakota immunization program:
  - a. The department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered through the state using federal or state funds, may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This subsection does not apply in the event of a shortage or delay in vaccine availability, disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
  - b. The department may establish a program through which the department purchases vaccines through the federal vaccine purchasing contract.
    - (1) The department shall supply public health units with the purchased vaccines. A public health unit that receives vaccines under this subdivision shall administer the vaccines to program-eligible children.
    - (2) A public health unit that receives vaccines under this purchasing program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
    - (3) The department shall fund this purchasing program through participation in the vaccines for children program, the federal section 317 vaccine program, and state funds appropriated for this purpose. If it appears there will be inadequate funds to fund this purchasing program, the department shall petition the emergency commission for a transfer from the state contingency fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, to fund this purchasing program.

### **23-01-40. Diabetes goals and plans - Report to legislative management.**

Repealed by S.L. 2025, ch. 235, § 1.

### **23-01-41. Autism spectrum disorder database - Rulemaking - Confidentiality.**

1. The department of health and human services shall establish and administer an autism spectrum disorder database. The database must include a record of all reported cases of autism spectrum disorder in the state and any other information determined relevant and appropriate by the department in order to complete epidemiologic surveys of the autism spectrum disorder, enable research and analysis of the autism spectrum disorder, and provide services to individuals with an autism spectrum disorder.
2. The department of health and human services shall establish criteria regarding who is qualified to report a case of autism spectrum disorder to the database. In establishing this criteria, the department shall require that the reporter be a physician or psychologist or any other licensed or certified health care professional who is qualified by training and by licensure or certification to make the diagnosis of autism spectrum disorder.
3. The database established under this section must:
  - a. Include the reported individual's diagnoses under the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders; and
  - b. Indicate whether a complete physical evaluation was performed by a licensed independent practitioner as part of the diagnostic process for autism spectrum disorder.
4. The department of health and human services shall adopt rules to provide for mandatory reporting to the autism spectrum disorder database and to establish reporting requirements, including timeliness requirements. A reporter who makes the diagnosis an individual is affected with autism spectrum disorder, or the reporter's designee, shall report this diagnosis in the form or manner prescribed by the department of health and human services.
5. The department of health and human services shall keep confidential all records of the database which could be used to identify a reported individual; however, the department may provide these records to other state agencies as necessary to effect the purposes of this database without regard to the confidential nature of the records. If the department provides confidential records of the database to a state agency, the department shall notify the receiving agency of the confidential nature of the records and the receiving agency shall treat these records as confidential.

### **23-01-42. Opioid antagonist prescription, distribution, possession, or use - Immunity from liability.**

1. As used in this section:
  - a. "Health care professional" means a licensed or certified health care professional who is working within the scope of practice for that profession. The term may include a physician, physician assistant, advanced practice registered nurse, and pharmacist acting in the professional's scope of practice.
  - b. "Opioid antagonist" means a drug:
    - (1) That is approved by the United States food and drug administration for the treatment of a drug overdose and is recognized by the department of health and human services for the treatment of a drug overdose; and
    - (2) That when administered negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.
2. A health care professional acting in good faith may directly or by standing order prescribe, distribute, or dispense an opioid antagonist.
3. An individual acting in good faith may administer an opioid antagonist to another individual who the administering individual suspects is at risk of experiencing an opioid overdose.

4. An individual may receive, possess, or administer an opioid antagonist under subsection 3, regardless of whether the individual is the individual for or to whom the opioid antagonist is prescribed, distributed, or dispensed.
5. An individual who prescribes, distributes, dispenses, receives, possesses, or administers an opioid antagonist as authorized under this section is immune from civil and criminal liability for such action. A health care professional who prescribes, distributes, or dispenses an opioid antagonist as authorized under this section is not subject to professional discipline for such action. This section does not expand the scope of practice of a health care professional. Immunity from liability or discipline under this subsection does not apply if the individual's actions constitute recklessness, gross negligence, or intentional misconduct.

**23-01-43. Mammogram results.**

Expired by S.L. 2015, ch. 186, §2.

**23-01-44. Syringe or needle exchange program - Authorization.**

1. As used in this section:
  - a. "Program" means a syringe exchange program established and operated under this section.
  - b. "Qualified entity" means:
    - (1) A local health department;
    - (2) A city that operates a program within the boundaries of the city; or
    - (3) An organization that has been authorized to operate a program by the department of health and human services, the board of county commissioners, or the governing body for the operation of a program within the boundaries of the city.
  - c. "Supplies" include needles, syringes, sterile disposal preparation spoons, cotton, sterile filters, alcohol wipes, sterile water, saline, tourniquets, disposal containers, wound care, testing strips, naloxone, and other items recognized as supporting safe drug use.
2. The department of health and human services shall design and administer a syringe exchange program.
3. The department of health and human services may authorize a qualified entity to operate a program in a county if:
  - a. The area to be served is at risk of an increase or potential increase in prevalence of viral hepatitis or human immunodeficiency virus;
  - b. A syringe exchange program is medically appropriate as part of a comprehensive public health response; and
  - c. The qualified entity conducted a public hearing and submitted a report of the findings and an administration plan for the program to the department of health and human services.
4. A qualified entity operating a program under this chapter shall:
  - a. Register the program annually in the manner prescribed by the department of health and human services;
  - b. Have a pharmacist, physician, or advanced practice registered nurse who is licensed in the state to provide oversight for the program;
  - c. Store and dispose of all syringes, needles, and supplies collected in a safe and legal manner;
  - d. Provide education and training on drug overdose response and treatment, including the administration of an overdose reversal medication;
  - e. Provide education, referral, and linkage to human immunodeficiency virus, viral hepatitis, and sexually transmitted disease prevention, treatment, and care services;
  - f. Provide addiction treatment information and referrals to drug treatment programs, including programs in the local area and programs that offer medication-assisted treatment that includes a federal food and drug administration approved

- long-acting, non-addictive medication for the treatment of opioid or alcohol use disorder;
  - g. Provide syringe, needle, supply, and injection supply distribution and collection without collecting or recording personally identifiable information;
  - h. Operate in a manner consistent with public health and safety; and
  - i. Ensure the program is medically appropriate and part of a comprehensive public health response.
5. The department of health and human services may terminate a program for failure to comply with any of the provisions in this section.
  6. A state agency may not provide general fund moneys to a program to purchase or otherwise acquire hypodermic syringes, needles, or injection supplies for a program under this section.
  7. A law enforcement officer may not stop, search, or seize an individual based on the individual's participation in a program under this section. Syringes, needles, and supplies appropriately collected under this section are not considered drug paraphernalia as provided in chapter 19-03.4 or possession of a controlled substance under section 19-03.1-23.
  8. Each program shall file a semiannual report with the department of health and human services containing the following information listed on a daily basis and by location, identified by the postal zip code, where the program distributed and collected syringes, needles, and supplies:
    - a. The number of individuals served;
    - b. The number of syringes, needles, and supplies collected;
    - c. The number of syringes and needles distributed; and
    - d. Any additional information requested by the department of health and human services.