

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1012

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of  
2 human services; to authorize the department of human services to convey land in Walsh  
3 County; to amend and reenact subsection 1 of section 23-09.3-01.1, subsection 1 of section  
4 23-16-01.1, and section 50-24.1-37 of the North Dakota Century Code, relating to the  
5 moratorium on basic care, nursing facility bed capacity, and Medicaid expansion; to repeal  
6 section 50-24.1-37 of the North Dakota Century Code, relating to the Medicaid expansion  
7 program; to provide for exemptions; to provide statements of legislative intent; to provide ~~a~~  
8 ~~report~~for reports to the legislative management; to provide for a legislative management study;  
9 to provide appropriations; to provide an expiration date; to provide a contingent effective date;  
10 and to declare an emergency.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the  
13 funds as may be necessary, are appropriated out of any moneys in the general fund in the state  
14 treasury, not otherwise appropriated, and from special funds derived from federal funds and  
15 other income, to the department of human services for the purpose of defraying the expenses  
16 of its various divisions, for the biennium beginning July 1, 2017, and ending June 30, 2019, as  
17 follows:

18 Subdivision 1.

	MANAGEMENT		
	Base Level	Adjustments or Enhancements	Appropriation
22 <del>Salaries and wages</del>	<del>\$28,049,386</del>	<del>(\$4,612,071)</del>	<del>\$23,437,315</del>
23 <del>Operating expenses</del>	<del>87,542,966</del>	<del>71,922,860</del>	<del>159,465,826</del>
24 <del>Capital assets</del>	<del>26,000</del>	<del>(26,000)</del>	<del>0</del>

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1	<del>Grants</del>	<del>0</del>	<del>204,000</del>	<del>204,000</del>
2	<del>Total all funds</del>	<del>\$115,618,352</del>	<del>\$67,488,789</del>	<del>\$183,107,141</del>
3	<del>Less estimated income</del>	<del>71,324,758</del>	<del>56,767,760</del>	<del>128,092,518</del>
4	<del>Total general fund</del>	<del>\$44,293,594</del>	<del>\$10,721,029</del>	<del>\$55,014,623</del>
5	Salaries and wages	\$28,049,386	\$144,142	\$28,193,528
6	Operating expenses	87,542,966	73,025,478	160,568,444
7	Capital assets	26,000	(26,000)	0
8	Grants	0	204,000	204,000
9	Total all funds	\$115,618,352	\$73,347,620	\$188,965,972
10	Less estimated income	71,324,758	59,038,552	130,363,310
11	Total general fund	\$44,293,594	\$14,309,068	\$58,602,662

Subdivision 2.

PROGRAM AND POLICY

		Adjustments or		
	Base Level	Enhancements	Appropriation	
15	<del>Salaries and wages</del>	<del>\$58,102,898</del>	<del>\$2,884,535</del>	<del>\$60,987,433</del>
16	<del>Operating expenses</del>	<del>107,383,843</del>	<del>17,207,206</del>	<del>124,591,049</del>
17	<del>Capital assets</del>	<del>0</del>	<del>10,000</del>	<del>10,000</del>
18	<del>Grants</del>	<del>457,953,280</del>	<del>5,921,488</del>	<del>463,874,768</del>
19	<del>Grants - medical assistance</del>	<del>2,384,560,568</del>	<del>(30,582,216)</del>	<del>2,353,978,352</del>
20	<del>Total all funds</del>	<del>\$3,008,000,589</del>	<del>(\$4,558,987)</del>	<del>\$3,003,441,602</del>
21	<del>Less estimated income</del>	<del>1,995,024,801</del>	<del>(90,849,740)</del>	<del>1,904,175,061</del>
22	<del>Total general fund</del>	<del>\$1,012,975,788</del>	<del>\$86,290,753</del>	<del>\$1,099,266,541</del>
23	Salaries and wages	\$58,102,898	\$3,618,130	\$61,721,028
24	Operating expenses	107,383,843	17,540,098	124,923,941
25	Capital assets	0	10,000	10,000
26	Grants	457,953,280	7,106,488	465,059,768
27	Grants - medical assistance	2,384,560,568	220,075,998	2,604,636,566
28	Total all funds	\$3,008,000,589	\$248,350,714	\$3,256,351,303
29	Less estimated income	1,995,024,801	156,036,536	2,151,061,337
30	Total general fund	\$1,012,975,788	\$92,314,178	\$1,105,289,966

1 Subdivision 3.

2 FIELD SERVICES

3		Adjustments or		
4	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>	
5	<del>Human service centers</del>	<del>\$198,888,443</del>	<del>(\$3,083,589)</del>	<del>\$195,804,854</del>
6	<del>Institutions</del>	<del>139,587,498</del>	<del>258,930</del>	<del>139,846,428</del>
7	<del>Total all funds</del>	<del>\$338,475,941</del>	<del>(\$2,824,659)</del>	<del>\$335,651,282</del>
8	<del>Less estimated income</del>	<del>132,820,302</del>	<del>5,301,710</del>	<del>138,122,012</del>
9	<del>Total general fund</del>	<del>\$205,655,639</del>	<del>(\$8,126,369)</del>	<del>\$197,529,270</del>
10	Human service centers	\$198,888,443	(\$1,791,587)	\$197,096,856
11	Institutions	139,587,498	1,167,951	140,755,449
12	Total all funds	\$338,475,941	(\$623,636)	\$337,852,305
13	Less estimated income	132,820,302	6,293,949	139,114,251
14	Total general fund	\$205,655,639	(\$6,917,585)	\$198,738,054

15 Subdivision 4.

16 BILL TOTAL

17		Adjustments or		
18	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>	
19	<del>Grand total general fund</del>	<del>\$1,262,925,021</del>	<del>\$88,885,413</del>	<del>\$1,351,810,434</del>
20	<del>Grand total special funds</del>	<del>2,199,169,861</del>	<del>(28,780,270)</del>	<del>2,170,389,591</del>
21	<del>Grand total all funds</del>	<del>\$3,462,094,882</del>	<del>\$60,105,143</del>	<del>\$3,522,200,025</del>
22	<del>Full-time equivalent positions</del>	<del>2,211.08</del>	<del>(74.85)</del>	<del>2,136.23</del>
23	Grand total general fund	\$1,262,925,021	\$99,705,661	\$1,362,630,682
24	Grand total special funds	2,199,169,861	221,369,037	2,420,538,898
25	Grand total all funds	\$3,462,094,882	\$321,074,698	\$3,783,169,580
26	Full-time equivalent positions	2,211.08	(45.85)	2,165.23

27 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act  
 28 includes the sum of ~~\$6,376,445~~\$5,914,453, of which ~~\$5,350,004~~\$4,962,381 is from the general  
 29 fund, for increases in employee health insurance premiums from \$1,130 to ~~\$1,249~~\$1,241 per  
 30 month.

1       **SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**

2       **SIXTY-SIXTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding  
3 items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium  
4 and the 2017-19 biennium one-time funding items included in the appropriations in section 1 of  
5 this Act:

6 <u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
7       Developmental disabilities equipment	\$10,000	\$0
8       Heating plant repairs and upgrades - state hospital	1,156,000	0
9       Heating plant repairs and upgrades - life skills and	75,000	0
10      transition center		
11      Window replacement - life skills and transition center	44,000	0
12      Equipment over \$5,000 - state hospital	275,000	0
13      Equipment over \$5,000 - life skills and transition center	200,000	0
14      Extraordinary repairs - state hospital	1,000,000	0
15      Extraordinary repairs - life skills and transition center	1,250,000	0
16      Assistive technology services	80,000	0
17      Modification of eligibility systems	60,872,269	0
18      Child care licensing and data system	0	3,000,000
19      Health information network/care coordination	0	40,800,000
20      Total all funds	\$64,962,269	\$43,800,000
21      Less estimated income	<u>46,870,102</u>	<u>43,800,000</u>
22      Total general fund	\$18,092,167	\$0

23      The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for  
24 the 2019-21 biennium. The department of human services shall report to the appropriations  
25 committees of the sixty-sixth legislative assembly on the use of this one-time funding for the  
26 biennium beginning July 1, 2017, and ending June 30, 2019.

27       **SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding  
28 section 54-16-04, the department of human services may transfer appropriation authority  
29 between line items within subdivisions 1, 2, and 3 of section 1 of this Act for the biennium  
30 beginning July 1, 2017, and ending June 30, 2019. The department of human services shall  
31 notify the office of management and budget and the legislative council of any transfer made

1 pursuant to this section. The department shall report to the budget section after June 30, 2018,  
2 any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-sixth  
3 legislative assembly regarding any transfers made pursuant to this section.

4 **SECTION 5. EXEMPTION.** The amount appropriated for the replacement of the Medicaid  
5 management information system and related projects in chapter 50 of the 2007 Session Laws  
6 and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11.  
7 Any unexpended funds from these appropriations approved under section 54-44.1-11 for  
8 continuation into the 2009-11 biennium and then the 2011-13 biennium and then the 2013-15  
9 biennium and then the 2015-17 biennium are available for the completion of the Medicaid  
10 management information system and related projects during the biennium beginning July 1,  
11 2017, and ending June 30, 2019.

12 **SECTION 6. EXEMPTION.** The amount appropriated for the modification of the department  
13 of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws  
14 is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this  
15 appropriation approved under section 54-44.1-11 for continuation into the 2013-15 biennium  
16 and then the 2015-17 biennium are available for the completion of the modification of the  
17 eligibility systems project during the biennium beginning July 1, 2017, and ending June 30,  
18 2019.

19 **SECTION 7. EXEMPTION.** The amount appropriated for the development of the electronic  
20 health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of  
21 section 54-44.1-11. Any unexpended funds from this appropriation approved under section  
22 54-44.1-11 for continuation into the 2015-17 biennium are available for the completion of the  
23 electronic health records system during the biennium beginning July 1, 2017, and ending  
24 June 30, 2019.

25 **SECTION 8. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,  
26 ~~\$16,000,000~~\$37,779,159 is from the tobacco prevention and control trust fund for the purpose  
27 of defraying expenses in the medical services division, for the biennium beginning July 1, 2017,  
28 and ending June 30, 2019.

29 **SECTION 9. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,  
30 \$686,191 is from the health care trust fund for the purpose of defraying expenses of long-term  
31 care services programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

1       **SECTION 10. APPROPRIATION - 2015-17 BIENNIUM.** There is appropriated out of special  
2 funds derived from federal funds, not otherwise appropriated, the sum of \$9,000,000, or so  
3 much of the sum as may be necessary, to the department of human services for the purpose of  
4 defraying medical assistance grant costs, for the period beginning with the effective date of this  
5 Act and ending June 30, 2017.

6       **SECTION 11. APPROPRIATION - 2015-17 BIENNIUM - REBASING ~~AND~~ OPERATING**  
7 **MARGINS, AND INCENTIVES.** There is appropriated out of any moneys in the general fund in  
8 the state treasury, not otherwise appropriated, the sum of ~~\$329,636~~\$417,010, or so much of the  
9 sum as may be necessary, and from special funds derived from federal funds and other income,  
10 the sum of ~~\$329,636~~\$417,010, or so much of the sum as may be necessary, to the department  
11 of human services for the purpose of adjusting long-term care facility rates relating to rebasing  
12 ~~and~~ operating margins, and incentives, for the period beginning June 1, 2017, and ending  
13 June 30, 2017.

14       **SECTION 12. APPROPRIATION - 2015-17 BIENNIUM - SUBSTANCE USE DISORDER**  
15 **VOUCHER PROGRAM.** There is appropriated out of any moneys in the general fund in the  
16 state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may  
17 be necessary, to the department of human services for the purpose of defraying the expenses  
18 of the substance use disorder voucher program, for the period beginning with the effective date  
19 of this Act, and ending June 30, 2017.

20       **SECTION 13. LEGISLATIVE INTENT - RESTORATION FUNDING FOR BASIC CARE.** It  
21 is the intent of the sixty-fifth legislative assembly that the funding appropriated to the  
22 department of human services for the restoration of basic care provider rates be prioritized in  
23 the following order:

- 24       1. Operating margin;
- 25       2. Medical leave days; and then
- 26       3. Increase to limits.

27       **SECTION 14. LEGISLATIVE INTENT - POLICY CHANGES AND CLARIFICATION**  
28 **RELATED TO HOME HEALTH.** It is the intent of the sixty-fifth legislative assembly that the  
29 department of human services adopt rules in accordance with the Medicaid program, face-  
30 to-face requirements for home health services; policy changes and clarifications related to  
31 home health final rule published by the centers for Medicare and Medicaid services on

1 February 2, 2016; title 42, Code of Federal Regulations, part 440. It is further the intent of the  
2 legislative assembly that the department require certified home health agencies to ensure a  
3 face-to-face visit occurred between a physician and Medicaid beneficiary before initiating home  
4 health services, and to ensure a face-to-face visit between a physician or nonphysician provider  
5 occurred before providing medical equipment, supplies, and appliances. It is further the intent of  
6 the legislative assembly that the department adopt rules to define medical equipment, supplies,  
7 and appliances and specify allowable time frames for the face-to-face visits.

8 **SECTION 15. LEGISLATIVE INTENT - CARE COORDINATION AGREEMENTS.** It is the  
9 intent of the sixty-fifth legislative assembly that the department of human services establish  
10 requisite agreements with tribal health care organizations that will result in one hundred percent  
11 federal funding for eligible medical assistance provided to American Indians through care  
12 coordination agreements for the biennium beginning July 1, 2017, and ending July 30, 2019.

13 **SECTION 16. LEGISLATIVE INTENT - ~~TRAUMATIC~~ BRAIN INJURY - 1915(i) STATE**  
14 **PLAN AMENDMENT.** It is the intent of the sixty-fifth legislative assembly that the department of  
15 human services ~~apply for a~~ include services for individuals with a brain injury as part of the  
16 comprehensive assessment for a Medicaid 1915(i) state plan amendment ~~for traumatic brain~~  
17 ~~injury services~~. The department may utilize ~~an existing 0.5 full-time equivalent position and~~  
18 funding available in the department's budget for ~~this purpose~~ enhancing services through a  
19 Medicaid 1915(i) state plan amendment for individuals with a brain injury for the biennium  
20 beginning July 1, 2017, and ending June 30, 2019.

21 **SECTION 17. LEGISLATIVE INTENT - GRAFTON JOB SERVICE NORTH DAKOTA**  
22 **BUILDING PURCHASE.** It is the intent of the sixty-fifth legislative assembly that the department  
23 of human services purchase the Grafton job service North Dakota building using donated funds  
24 for the use of the life skills and transition center, but only if anticipated revenues generated from  
25 use of the building will be sufficient to provide for the operating and maintenance costs of the  
26 building.

27 **SECTION 18. STAFF OVERTIME FUNDING - UNSPENT APPROPRIATION AUTHORITY.**  
28 The appropriations in section 1 of this Act, include \$1,832,267, of which \$1,082,857 is from the  
29 general fund, for compliance with state and federal laws and regulations relating to staff  
30 overtime. Any funding not needed specifically for complying with state or federal overtime

1 regulations may not be spent and must be included in the department's unspent appropriation  
2 authority canceled pursuant to section 54-44.1-11, at the end of the 2017-19 biennium.

3 **SECTION 19. CONVEYANCE OF LAND AUTHORIZED - LIFE SKILLS AND TRANSITION**

4 **CENTER.** The state of North Dakota by and through the department of human services may  
5 convey real property containing 3.46 acres, more or less, associated with the life skills and  
6 transition center in Grafton. The department may convey a parcel of land described as follows:  
7 the north fifty-eight feet of said north half of the southeast quarter of section twenty-five less the  
8 railroad right-of-way and the south forty feet of the north ninety-eight feet of the west one  
9 hundred twenty-three feet of said north half of the southeast quarter of section twenty-five less  
10 the railroad right-of-way on the terms and conditions determined appropriate by the department  
11 and the attorney general. Section 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

12 **SECTION 20. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES CASE**

13 **MANAGEMENT.** It is the intent of the sixty-fifth legislative assembly that the department of  
14 human services provide case management services for individuals with a developmental  
15 disability within the ratio provided pursuant to North Dakota Administrative Code for the  
16 biennium beginning July 1, 2017, and ending June 30, 2019. If case management services for  
17 individuals with a developmental disability exceed the ratio requirement provided in the North  
18 Dakota Administrative Code, the department may hire temporary staff or the department may  
19 propose a change to North Dakota Administrative Code to meet the ratio requirement.

20 **SECTION 21. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES -**

21 **PROGRAMMATIC AND ADMINISTRATIVE REQUIREMENTS.** It is the intent of the sixty-fifth  
22 legislative assembly that the department of human services report all new programmatic and  
23 administrative requirements to the centers for Medicare and Medicaid services and seek  
24 waivers of the same unless the director finds immediate full compliance necessary for  
25 individuals with disabilities.

26 **SECTION 22. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - CONFLICT-**  
27 **FREE CASE MANAGEMENT.** It is the intent of the sixty-fifth legislative assembly that the  
28 department of human services request waivers or delays of implementation of conflict-free case  
29 management rules and requirements for individuals with a developmental disability.

30 **SECTION 23. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - VARIANCE.** It  
31 is the intent of the sixty-fifth legislative assembly that during the 2017-19 biennium, the



1 department of human services may authorize a treatment or care center's variance request  
2 relating to the treatment or care center's bedrooms or bathrooms, if the department determines  
3 the variance does not pose a health or safety risk. It is also the intent that the department of  
4 human services adopt rules to establish a variance process that allows the department to grant  
5 a variance if the variance will not pose a danger to the health or safety of an individual served  
6 by the treatment or care center.

7 **SECTION 24. LEGISLATIVE INTENT - PROCESS AND OUTCOME MEASURES.** It is the  
8 intent of the sixty-fifth legislative assembly that behavioral health service providers that receive  
9 funding from the department of human services submit process and outcome measures to the  
10 department for programs and services supported by state funding.

11 **SECTION 25. LEGISLATIVE INTENT - TELEPHONE SUPPORT AND DIRECTORY**  
12 **SERVICES.** It is the intent of the sixty-fifth legislative assembly that the vendor of telephone and  
13 directory services, under contract with the department of human services, include private  
14 behavioral health service providers in the vendor's directory at no cost to the private behavioral  
15 health service providers.

16 **SECTION 26. REPORTING REQUIREMENTS - YOUTH ACCESS TO TOBACCO.** The  
17 operating expenses line item in subdivision 2 of section 1 of this Act includes \$75,000 from the  
18 tobacco prevention and control trust fund for costs of complying with youth access to tobacco  
19 reporting requirements under title 45, Code of Federal Regulations, part 96, section 130, for the  
20 biennium beginning July 1, 2017, and ending June 30, 2019. The state department of health  
21 and local public health units shall collect and disclose all required data reporting elements to the  
22 department of human services.

23 **SECTION 27. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS.** It is the  
24 intent of the sixty-fifth legislative assembly that, based on staffing needs, the department of  
25 human services transfer full-time equivalent positions as necessary among the department's  
26 programs.

27 **SECTION 28. ROBINSON RECOVERY CENTER FUNDING.** Notwithstanding the  
28 designation of funding for the Robinson recovery center in the appropriation for the department  
29 of human services in section 1 of this Act, the department of human services may utilize other  
30 providers for substance use disorder treatment services if the current contractor is unable to

1 provide the full capacity of services anticipated under the current contract for the biennium  
2 beginning July 1, 2017, and ending June 30, 2019.

3 **SECTION 29. LEGISLATIVE INTENT - OPERATING EXPENSES.** It is the intent of the  
4 sixty-fifth legislative assembly that the department of human services analyze its budgetary  
5 needs and allocate up to \$1,102,618 from the general fund included in the operating expenses  
6 line item in subdivision 1 of section 1 of this Act to other subdivisions within section 1 of this Act  
7 based on the department's priorities resulting from its analysis.

8 **SECTION 30. ~~LEGISLATIVE MANAGEMENT~~ DEPARTMENT OF HUMAN SERVICES**  
9 **STUDY - STATE MEDICAL ASSISTANCE PROGRAMS - REPORTS TO LEGISLATIVE**  
10 **MANAGEMENT.**

- 11 1. During the 2017-18 interim, the ~~legislative management~~ department of human services  
12 shall ~~consider studying~~ study options to operate the state medical assistance program  
13 and other related programs, as managed care. The study must:
- 14 a. Identify and review populations to consider for managed care, including  
15 individuals eligible under traditional medical assistance, Medicaid expansion, the  
16 children's health insurance program, and individuals receiving services through  
17 the long-term care and developmental disabilities programs.
  - 18 b. Consider the needs of individuals receiving services from managed care  
19 programs in similar-sized states, and the alignment of benefit packages.
  - 20 c. Review populations covered by the program of all-inclusive care for the elderly in  
21 other states.
  - 22 d. Consider options for including services under a managed care arrangement.
  - 23 ~~e. Consider developing a proposed plan, cost estimates, and potential timeline for~~  
24 ~~implementing the managed care options identified.~~
  - 25 ~~f. Consider preparing and distributing a request for information from managed care~~  
26 ~~organizations regarding the managed care options identified.~~
  - 27 e. Prepare and distribute a request for proposal to managed care organizations.
  - 28 f. Develop a proposed plan, cost estimates, and timeline for implementing  
29 managed care, and submit the plan as part of the department's 2019-21 budget  
30 request.

- 1           2. The ~~legislative management~~department of human services shall provide periodic  
2           updates and report its findings and recommendations, together with any legislation  
3           necessary to implement the recommendations, to the ~~sixty-sixth legislative-~~  
4           ~~assembly~~legislative management.

5           **SECTION 31. LEGISLATIVE MANAGEMENT STUDY - HOME- AND COMMUNITY-**  
6 **BASED SERVICES.** During the 2017-18 interim, the legislative management shall consider  
7 studying the quality and availability of home- and community-based services for individuals  
8 across the state who have developmental disabilities. The study must identify whether there are  
9 gaps in service and make recommendations to address identified gaps. The study also must  
10 include an evaluation of the funding, mission, and caseload at the life skills and transition  
11 center, including the center's transition plan and the number of clients determined eligible for  
12 community placement. The legislative management shall report its findings and  
13 recommendations, together with any legislation required to implement the recommendations, to  
14 the sixty-sixth legislative assembly.

15           **SECTION 32. LEGISLATIVE MANAGEMENT STUDY - STATE HOSPITAL LAND.** During  
16 the 2017-18 interim, the legislative management shall consider studying the use of land at the  
17 state hospital to determine the most effective and efficient use of the land. The study must  
18 include the feasibility and desirability of selling land owned by the state hospital. The legislative  
19 management shall report its findings and recommendations, together with any legislation  
20 required to implement the recommendations, to the sixty-sixth legislative assembly.

21           **SECTION 33. LEGISLATIVE MANAGEMENT STUDY - BEHAVIORAL HEALTH AND**  
22 **DEVELOPMENTAL DISABILITIES SERVICES.** During the 2017-18 interim, the legislative  
23 management shall consider studying state and federal laws and regulations relating to the care  
24 and treatment of individuals with developmental disabilities or behavioral health needs. The  
25 study must include a review of the following:

- 26           1. The state's services and delivery systems, including whether changes are necessary  
27           to maintain compliance with state and federal laws and regulations;  
28           2. Efforts by other states to comply with the 1999 Olmstead v. L.C. case, including the  
29           planning and implementation process for any new programs;  
30           3. Community- and non-community-based services, including the costs and effectiveness  
31           of services;

- 1 4. Noncompliance with state and federal laws and regulations, including a review of the
- 2 fees and penalties for noncompliance;
- 3 5. A comparison of voluntary and involuntary compliance with state and federal laws and
- 4 regulations, including a review of long-term costs and effectiveness;
- 5 6. The impact of implementation and expansion of selected programs that were added to
- 6 address unmet needs, including the impact on costs and effectiveness of new
- 7 programs;
- 8 7. Needed changes to address noncompliance and a timeline for completing changes;
- 9 and
- 10 8. Data on the number of individuals that would be impacted by voluntary compliance
- 11 efforts, and data on the type of services that may need changing, including housing,
- 12 peer counseling, outpatient treatment, crisis line access, and transportation services.

13 The legislative management shall report its findings and recommendations, together with  
14 any legislation necessary to implement those recommendations, to the sixty-sixth legislative  
15 assembly.

16 **SECTION 34. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18 1. Basic care beds may not be added to the state's licensed bed capacity during the
- 19 period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019, except when:
  - 20 a. A nursing facility converts nursing facility beds to basic care;
  - 21 b. An entity licenses bed capacity transferred as basic care bed capacity under
  - 22 section 23-16-01.1;
  - 23 c. An entity demonstrates to the state department of health and the department of
  - 24 human services that basic care services are not readily available within a
  - 25 designated area of the state or that existing basic care beds within a fifty-mile
  - 26 [80.47-kilometer] radius have been occupied at ninety percent or more for the
  - 27 previous twelve months. In determining whether basic care services will be
  - 28 readily available if an additional license is issued, preference may be given to an
  - 29 entity that agrees to any participation program established by the department of
  - 30 human services for individuals eligible for services under the medical assistance
  - 31 program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

1 d. The state department of health and the department of human services grant  
2 approval of new basic care beds to an entity. The approved entity shall license  
3 the beds within forty-eight months from the date of approval.

4 **SECTION 35. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6 1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic  
7 care beds to nursing facility beds or relicenses nursing facility beds delicensed after  
8 July 31, 2011, nursing facility beds may not be added to the state's licensed bed  
9 capacity during the period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019. A  
10 nursing facility may not delicense nursing facility bed capacity, relicense nursing facility  
11 bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert  
12 licensed basic care bed capacity back to nursing facility bed capacity, or otherwise  
13 reconfigure licensed nursing facility bed capacity more than one time in a  
14 twelve-month period.

15 **SECTION 36. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **50-24.1-37. (Effective January 1, 2014, through July 31, ~~2017~~2019) Medicaid**  
18 **expansion - Legislative management report.**

- 19 1. The department of human services shall expand medical assistance coverage as  
20 authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148],  
21 as amended by the Health Care and Education Reconciliation Act of 2010 [Pub.  
22 L. 111-152] to individuals under sixty-five years of age with income below one hundred  
23 thirty-eight percent of the federal poverty level, based on modified adjusted gross  
24 income.
- 25 2. The department of human services shall inform new enrollees in the medical  
26 assistance program that benefits may be reduced or eliminated if federal participation  
27 decreases or is eliminated.
- 28 3. ~~Effective January 1, 2018, medical assistance expansion program applicants and~~  
29 ~~recipients who are at least nineteen but less than twenty-one years of age must~~  
30 ~~receive coverage through traditional medical assistance.~~

1 | ~~4.~~ The department shall implement the expansion by bidding through private carriers or  
2 | utilizing the health insurance exchange.

3 | 5.4. The contract between the department and the private carrier must:

4 | a. Provide a reimbursement methodology for all medications and dispensing fees  
5 | which identifies the minimum amount paid to pharmacy providers for each  
6 | medication. The reimbursement methodology, at a minimum, must:

7 | (1) Be available on the department's website; and

8 | (2) Encompass all types of pharmacy providers regardless of whether the  
9 | pharmacy benefits are being paid through the private carrier or contractor or  
10 | subcontractor of the private carrier under this section.

11 | b. Provide full transparency of all costs and all rebates in aggregate.

12 | c. Allow an individual to obtain medication from a pharmacy that provides mail order  
13 | service; however, the contract may not require mail order to be the sole method  
14 | of service.

15 | d. Ensure that pharmacy services obtained in jurisdictions other than this state and  
16 | its three contiguous states are subject to prior authorization and reporting to the  
17 | department for eligibility verification.

18 | e. Ensure the payments to pharmacy providers do not include a required payback  
19 | amount to the private carrier or one of the private carrier's contractors or  
20 | subcontractors which is not representative of the amounts allowed under the  
21 | reimbursement methodology provided in subdivision a.

22 | f. *Any*

23 | 6.5. The contract between the department and the private carrier must provide the  
24 | department with full access to provider reimbursement rates. The department shall  
25 | consider provider reimbursement rate information in selecting a private carrier under  
26 | this section. Before August first of each even-numbered year, the department shall  
27 | submit a report to the legislative management regarding provider reimbursement rates  
28 | under the medical assistance expansion program. This report may provide cumulative  
29 | data and trend data but may not disclose identifiable provider reimbursement rates.

30 | 7.6. Provider reimbursement rate information received by the department under this  
31 | section and any information provided to the department of human services or any

1           audit firm by a pharmacy benefit manager under this section is confidential under-  
2           ~~section 44-04-17.1~~, except the department may use the reimbursement rate  
3           information to prepare the report to the legislative management as required under this  
4           section.

5           **SECTION 37. REPEAL.** Section 50-24.1-37 of the North Dakota Century Code is repealed.

6           **SECTION 38. CONTINGENT EFFECTIVE DATE.** Section ~~24~~37 of this Act becomes  
7           effective if the executive director of the department of human services certifies to the secretary  
8           of state and the legislative council the federal government ended the medical assistance  
9           expansion program.

10          **SECTION 39. EMERGENCY.** Sections 10, 11, 12, and ~~45~~19 of this Act are declared to be  
11          an emergency measure.