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Sixtieth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Conference Committee Amendments

ENGROSSED SENATE BILL NO. 2012

Introduced by

Appropriations Committee

(At the request of the Governor)

A BILL for an Act to provide an appropriation for defraying the expenses of the department of human services; to provide statements of legislative intent; to provide for a legislative council report; to provide for legislative council studies; to authorize a Bank of North Dakota loan; to provide a contingent appropriation; to provide for transfers; to create and enact a new section to chapter 23-01 and chapter 23-39 of the North Dakota Century Code, relating to programs for children with special health care needs; to amend and reenact sections 25-17-02, 25-17-03, 50-06-01.2, 50-06-01.4, 50-06-24, and 50-24.4-15 of the North Dakota Century Code, relating to rulemaking and to the provision of medical food for individuals with metabolic disorders, the structure of the department of human services, guardianship services, and to nursing home property-related costs; and to repeal chapter 50-10 of the North Dakota Century Code, relating to aid to crippled children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BASE LEVEL FUNDING INFORMATION. The amounts identified in this section represent the base level funding component appropriated to the department of human services in section 3 of this Act as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	$10,708,738
Operating expenses	60,968,708
Capital assets	2,756
Total all funds - Base level	$71,680,202
Less estimated income - Base level	52,153,741
Total general fund - Base level	$19,526,461

Subdivision 2.

PROGRAM AND POLICY	
Salaries and wages	$22,812,481
Operating expenses	39,780,685
Capital assets	33,864
Grants	332,838,450
Grants - Medical assistance	1,006,356,338
Total all funds - Base level	$1,401,821,818
Less estimated income - Base level	1,035,138,447
Total general fund - Base level	$366,683,371

Subdivision 3.

HUMAN SERVICE CENTERS AND INSTITUTIONS	
Northwest human service center	$7,352,302
North central human service center	15,347,691
Lake region human service center	9,143,432
Northeast human service center	20,583,131
Southeast human service center	23,765,764
South central human service center	12,196,647
West central human service center	18,587,469
Badlands human service center	9,241,398
State hospital	47,917,171
Developmental center	42,425,282
Total all funds - Base level	$206,560,287
Less estimated income - Base level	108,348,645
Total general fund - Base level	$98,211,642
Grand total general fund appropriation - Base level	$484,421,474
Grand total special funds appropriation - Base level	$1,195,640,833
Grand total all funds appropriation - Base level	$1,680,062,307

SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION. The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of human services which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	$815,145
Operating expenses	(28,594,686)
Capital assets	(2,471)
Total all funds - Adjustments/enhancements	($27,782,012)
Less estimated income - Adjustments/enhancements	(29,068,576)
Total general fund - Adjustments/enhancements	$1,286,564

Subdivision 2.

PROGRAM AND POLICY

Salaries and wages	$2,456,130
Operating expenses	26,791,117
Capital assets	(33,465)
Grants	9,023,335
Grants - Medical assistance	102,286,592
Total all funds - Adjustments/enhancements	$140,523,709
Less estimated income - Adjustments/enhancements	75,226,362
Total general fund - Adjustments/enhancements	$65,297,347

Subdivision 3.

HUMAN SERVICE CENTERS AND INSTITUTIONS

Northwest human service center	$146,655
North central human service center	1,446,512
Lake region human service center	683,064
Northeast human service center	1,537,933
Southeast human service center	2,316,347
South central human service center	2,496,321
West central human service center	2,113,795
Badlands human service center	564,763
State hospital	16,838,960
Developmental center	5,331,330
Total all funds - Adjustments/enhancements	$33,475,680

Less estimated income - Adjustments/enhancements	4,472,489
Total general fund - Adjustments/enhancements	$29,003,191
Grand total general fund appropriation - Adjustments/enhancements	$95,587,102
Grand total special funds appropriation - Adjustments/enhancements	$54,130,275
Grand total all funds appropriation - Adjustments/enhancements	$149,717,377

SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	$11,523,883
Operating expenses	32,374,022
Capital assets	285
Total all funds	$43,898,190
Less estimated income	23,085,165
Total general fund	$20,813,025

Subdivision 2.

PROGRAM AND POLICY

Salaries and wages	$25,268,611
Operating expenses	66,571,802
Capital assets	399
Grants	341,861,785
Grants - Medical assistance	1,108,642,930
Total all funds	$1,542,345,527
Less estimated income	1,110,364,809
Total general fund	$431,980,718

Subdivision 3.

HUMAN SERVICE CENTERS AND INSTITUTIONS

Northwest human service center	$7,498,957
North central human service center	16,794,203
Lake region human service center	9,826,496
Northeast human service center	22,121,064
Southeast human service center	26,082,111
South central human service center	14,692,968
West central human service center	20,701,264
Badlands human service center	9,806,161
State hospital	64,756,131
Developmental center	47,756,612
Total all funds - Subdivision 3	$240,035,967
Less estimated income - Subdivision 3	112,821,134
Total general fund - Subdivision 3	$127,214,833
Grand total general fund appropriation - S.B. 2012	$580,008,576
Grand total special funds appropriation - S.B. 2012	$1,249,771,108
Grand total all funds appropriation - S.B. 2012	$1,829,779,684

SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION. Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 3 of this Act and between subdivisions within section 3 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2008, any transfers made in excess of $50,000 and to the appropriations committees of the sixty-first legislative assembly regarding any transfers made pursuant to this section.

SECTION 5. BANK OF NORTH DAKOTA LOAN AUTHORIZATION - BUDGET SECTION APPROVAL - CONTINGENT APPROPRIATION. If cost and caseload/utilization of developmental disabilities services is more than anticipated by the sixtieth legislative assembly, the department of human services, subject to budget section approval, may borrow the sum of $3,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing the state matching share of additional

medical assistance grants for developmental disabilities services for the biennium beginning July 1, 2007, and ending June 30, 2009. The department of human services shall request funding from the sixty-first legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest.

SECTION 6. CRITICAL ACCESS HOSPITALS - MEDICAL ASSISTANCE REIMBURSEMENT METHOD. The department of human services shall implement a cost-based reimbursement system for inpatient and outpatient hospital services of critical access hospitals based on the funding provided in section 3 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 7. DEPARTMENT OF HUMAN SERVICES STUDY - REBASING MEDICAL SERVICES PAYMENT RATES - REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall determine, during the 2007-08 interim and with the assistance of a health care consultant, the estimated cost of rebasing payment rates under the medical assistance program for hospital, physician, dentist, ambulance, and chiropractic services to the actual cost of providing these services for use in preparing the department's budget request for the 2009-11 biennium. The base year used in developing the cost estimate must be the most recent calendar year for which complete financial information is available to the department. The department shall report its findings and recommendations to the appropriations committees of the sixty-first legislative assembly. The department's recommendations may include options for staggered implementation or earlier implementation date preferences for service providers that have medical assistance service revenue that is ten percent or more of its total patient revenue. Any funds appropriated by the sixtieth legislative assembly to the department for providing the information required by this section may not be spent for other purposes during the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 8. LEGISLATIVE COUNCIL STUDY - NURSING HOME RATE EQUALIZATION. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of continuing the equalization of nursing home payment rates and the feasibility and desirability of establishing a provider tax or assessment on nursing homes. The study must include input from representatives of the department of human services, other appropriate state agencies, and the nursing home industry. The legislative council shall report

its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 9. LEGISLATIVE COUNCIL STUDY - INFANT DEVELOPMENT PROGRAM. The legislative council shall consider studying, during the 2007-08 interim, infant development programs. The study, if conducted, must include a review of the state's lead agency agreement, service coordination, staffing, and funding structure, including the adequacy of the funding and the equitable distribution of the funds to providers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 10. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES SERVICE PROVIDERS FUNDING INCREASES - EMPLOYEE SALARY INCREASE PRIORITY. It is the intent of the sixtieth legislative assembly that developmental disabilities service providers give priority to using the increased funding being provided for the 2007-09 biennium for increasing employees' salaries.

SECTION 11. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY. The total general fund appropriation line item in subdivision 3 of section 3 of this Act includes $8,244,131 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The department of human services shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

State hospital	
Sex offender treatment addition	$3,100,000
Capital improvements	3,062,757
Extraordinary repairs	1,153,500
Developmental center	
Capital improvements	300,000
Extraordinary repairs	547,092
Equipment	80,782
Total	$8,244,131

SECTION 12. METHAMPHETAMINE TREATMENT SERVICES. The department of human services shall use the $700,000 from the general fund included in the operating expenses line item in subdivision 2 of section 3 of this Act for increasing the number of individuals receiving treatment services under the department's existing contract for methamphetamine treatment services for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 13. ESTIMATED INCOME - LIMIT - HEALTH CARE TRUST FUND. The estimated income line item in subdivision 2 of section 3 of this Act includes $525,597 from the health care trust fund. The department of human services expenditures from this fund may not exceed this amount for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 14. LEGISLATIVE INTENT - STATE CHILDREN'S HEALTH INSURANCE PROGRAM. The funding appropriated in subdivision 2 of section 3 of this Act includes $453,000 for a state children's health insurance program outreach program. It is the intent of the sixtieth legislative assembly that the department of human services provide this funding to an entity that focuses on statewide community health care initiatives and issues.

SECTION 15. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Children with special health care needs - Program administration. The state department of health 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.

SECTION 16. Chapter 23-39 of the North Dakota Century Code is created and enacted as follows:

23-39-01. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "County agency" means the county social service boards in this state.
2. "Department" means the state department of health.

23-39-02. Administration of services for children with special health care needs. Services for children with special health care needs must be administered by the department in conformity with 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.].

23-39-03. Duties of the department. The department, in administering this chapter, shall:

1. Cooperate with the federal government in the development of plans and policies for services for children with special health care needs.
2. Adopt rules and take any necessary action to entitle the state to receive aid from the federal government for services for children with special health care needs in conformity with title 5, part 2, of the federal Social Security Act and its amendments.
3. Take action, give directions, and adopt rules to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedures to ensure uniform and equitable treatment of all applicants for services for children with special health care needs.
4. Cooperate with the federal government in matters of mutual concern pertaining to services to children with special health care needs, including the adoption of methods of administration found necessary by the federal government for the efficient operation of the plan for assistance.
5. Provide necessary qualified employees and representatives.
6. Establish and enforce a merit system as may be required under 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.].
7. Make reports in the form and containing the information the federal government requires and comply with the provisions, rules, and regulations the federal government makes to assure the correctness and verification of a report.
8. Publish a biennial report and any interim reports necessary.
9. Provide medical food and low-protein modified food products to individuals with phenylketonuria or maple syrup urine disease under chapter 25-17.

10. Establish eligibility criteria for services under this chapter at one hundred eighty-five percent of the poverty line, except for criteria relating to Russell-Silver syndrome, phenylketonuria, or maple syrup urine disease treatment services for which income is not to be considered when determining eligibility. For purposes of this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

23-39-04. Birth report of child with special health care needs made to department. Within three days after the birth in this state of a child born with a visible congenital deformity, the licensed maternity hospital or home in which the child was born, or the legally qualified physician or other person in attendance at the birth of the child outside of a maternity hospital, shall furnish the department a report concerning the child with the information required by the department.

23-39-05. Birth report of child with special health care needs - Use - Confidential. The information contained in the report furnished to the department under section 23-39-04 concerning a child with a visible congenital deformity may be used by the department for the care and treatment of the child pursuant to this chapter. The report is confidential and is solely for the use of the department in the performance of its duties. The report is not open to public inspection nor considered a public record.

23-39-06. Duties of county agencies. A county agency shall:

1. Cooperate with the department in administering this chapter in its county subject to rules adopted by the department.
2. Make surveys and reports regarding children with special health care needs in the various counties to the department when the department directs and in the way the department directs.
3. Provide for the transportation of a child with special health care needs to a clinic for medical examination and to a hospital or a clinic for treatment.

23-39-07. Russell-Silver syndrome - Services - Definitions.

1. The department shall provide payment of a maximum of fifty thousand dollars per child per biennium for medical food and growth hormone treatment at no cost to individuals through age eighteen who have been diagnosed with Russell-Silver syndrome, regardless of income. If the department provides an individual with services under this section, the department may seek reimbursement from any

governmental program that provides coverage to that individual for the services provided. The parent of an individual receiving services under this section shall obtain any health insurance available to the parent on a group basis or through an employer or union, and that insurance must be the primary payer before payment under this program.

2. For purposes of this section:

a. "Growth hormone treatment" means a drug prescribed by a physician or other licensed practitioner for the long-term treatment of growth failure, the supplies necessary to administer the drug, one out-of-state physician visit per year to obtain expert consultation for the management of Russell-Silver syndrome, appropriate in-state physician visits, and the travel expenses associated with physician visits for the child and one parent.

b. "Medical food" means a formula that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician as well as any medical procedure and supplies necessary for assimilation of the formula.

SECTION 17. AMENDMENT. Section 25-17-02 of the North Dakota Century Code is amended and reenacted as follows:

25-17-02. Rulemaking requirement. The state health council ~~and the department of human services~~ shall adopt rules necessary to implement this chapter.

SECTION 18. AMENDMENT. Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

25-17-03. Treatment for positive diagnosis - Registry of cases.

~~1.~~ The state department of health shall:

~~a.~~ 1. Follow up with attending physicians cases with positive tests for metabolic diseases in order to determine the exact diagnosis.

~~b.~~ 2. Refer every diagnosed case of a metabolic disease to a qualified health care provider for necessary treatment of the metabolic disease.

~~c.~~ 3. Maintain a registry of cases of metabolic diseases.

~~2. The department of human services, as a program provided under chapter 50-10, shall:~~

~~a.~~ 4. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides coverage to that individual for the treatment services provided by the department.

~~b.~~ 5. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. These individuals are responsible for payment to the department for the cost of medical food.

~~c.~~ 6. Provide low-protein modified food produces, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

SECTION 19. AMENDMENT. Section 50-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.2. Department of human services - Creation. The ~~North Dakota~~ department of human services is ~~hereby~~ created to assume the functions, powers, and duties of the following governmental agencies:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, ~~50-10,~~ 50-11, 50-11.1, 50-12, 50-18, 50-19, 50-21, 50-24.1, and 50-25.1.
2. The mental health and retardation division of the state department of health as established by chapter 25-10, including the state hospital and any other institutions under the jurisdiction of the mental health and retardation division.
3. The division of alcoholism and drug abuse of the state department of health as established by chapter 54-38.
4. The state council on developmental disabilities as established by section 25-01-01.1.

SECTION 20. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department. The department includes the state hospital; the regional human service centers~~;~~, a vocational rehabilitation unit~~;~~, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. ~~Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.~~

~~6.~~ Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.

~~7.~~ 6. Administration of economic assistance programs, including temporary assistance for needy families, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.

~~8.~~ 7. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 21. AMENDMENT. Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

50-06-24. Guardianship services. The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system must include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, ~~the use of an emergency funding procedure to cover the costs of establishing needed guardianships,~~ and guidelines and training for guardians. ~~The department shall require that the contracting entity develop and maintain a system of volunteer guardians to serve the state.~~ The department shall adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

SECTION 22. AMENDMENT. Section 50-24.4-15 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-15. Property-related costs.

1. The department shall include in the ratesetting system for nursing homes a payment mechanism for the use of real and personal property which provides for depreciation and related interest costs. The property cost payment mechanism must:
   a. Recognize the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
      (1) Purchase price paid by the purchaser;
      (2) Fair market value at the time of sale; or
      (3) Seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation.
   b. Recognize depreciation on land improvements, buildings, and fixed equipment acquired, as an ongoing operation over the estimated useful remaining life of the asset as determined by a qualified appraiser.
   c. Recognize depreciation on movable equipment acquired as an ongoing operation after August 1, 1995, over a composite remaining useful life.
   d. Provide for an interest expense limitation determined by the department and established by rule.
   e. Establish a per bed property cost limitation considering single and double occupancy construction.
   f. Recognize increased lease costs of a nursing home operator to the extent the lessor has incurred increased costs related to the ownership of the facility, the increased costs are charged to the lessee, and the increased costs would be allowable had they been incurred directly by the lessee.
   g. Recognize any mandated costs, fees, or other moneys paid to the attorney general through transactions under sections 10-33-144 through 10-33-149.

2. For rate years beginning after December 31, 2003, the limitations of paragraph 3 of subdivision a of subsection 1 do not apply to the valuation basis of assets purchased between July 1, 1985, and July 1, 2000. The provisions of this subsection may not be applied retroactively to any rate year before July 1, 2005.

3. For rate years beginning after December 31, 2007, the limitations of subdivision e of subsection 1 do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

SECTION 23. REPEAL. Chapter 50-10 of the North Dakota Century Code is repealed.