Sixty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2039

Introduced by
Legislative Management
(Human Services Committee)

A BILL for an Act to create and enact section 50-06-06.14 of the North Dakota Century Code, relating to the placement of children in the least restrictive environment; to amend and reenact subsection 5 of section 14-09-08.4, subsections 4 and 5 of section 50-01.2-03, sections 50-06-01, 50-06-01.4, 50-06-05.1, 50-06-05.2, 50-06-05.3, 50-06-05.4, 50-06-06.2, and 50-06-06.5, and subsection 1 of section 50-06-20 of the North Dakota Century Code, relating to the structure and duties of the department of human services with respect to behavioral health; to repeal chapter 25-10 and sections 25-02-02, 50-06-01.2, and 50-06-23 of the North Dakota Century Code, relating to mental health services, the additional location for a hospital for the mentally ill, and the assumption of duties by the department of human services; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 47.16 or 49.18 of section 50-06-05.1 or chapter 50-09 or 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

SECTION 2. AMENDMENT. Subsections 4 and 5 of section 50-01.2-03 of the North Dakota Century Code are amended and reenacted as follows:
4. Subject to subsection 4716 of section 50-06-05.1, administer the supplemental nutrition assistance program in the county under the direction and supervision of the department of human services in conformity with the Food Stamp Act of 1964, as amended, and enter into an agreement for administering the supplemental nutrition assistance program with the department of human services.

5. Subject to subsection 4918 of section 50-06-05.1, administer the energy assistance program in the county under the direction and supervision of the department of human services and to enter into an agreement for administering the energy assistance program with the department of human services.

SECTION 3. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01. Definition.
As used in this chapter, unless the context otherwise requires, "department" means the department of human services:

1. "Behavioral health" means the planning and implementation of preventive, consultative, diagnostic, treatment, crisis intervention, and rehabilitative services for individuals with mental, emotional, or substance use disorders, and psychiatric conditions.

2. "Behavioral health provider" means any licensed or accredited behavioral health provider in this state.

3. "Department" means the department of human services.

4. "Human services" means services provided to an individual or an individual's family in need of services to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.

SECTION 4. 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.

1. 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:

a. 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.

b. Administration of programs for individuals 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.

c. 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.

d. 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.

e. 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. Administration of behavioral health programs, including:

(1) A policy division responsible for reviewing and identifying service needs and activities in the state’s behavioral health system in an effort to ensure health
and safety, access to services, and quality of services; establishing quality
assurance standards for the licensure of substance use disorder program
services and facilities; and providing policy leadership in partnership with
public and private entities; and

(2) A service delivery division responsible for providing chronic disease
management, regional intervention services, and twenty-four-hour crisis
services for individuals with behavioral health disorders.

f-e. Administration of economic assistance programs, including temporary assistance
for needy families, the supplemental nutrition assistance program, fuel
assistance, child support enforcement, refugee assistance, work experience,
work incentive, and quality control.

g-f. Administration of medical service programs, including medical assistance for
needy persons, early and periodic screening, diagnosis and treatment, utilization
control, and claims processing.

2. The department of human services shall publish a quarterly report of all behavioral
health services provided by or supported by the department. The report must include
each type of behavioral health service, the number of clients served for each service,
and the amount of state and federal funds budgeted and spent for each service. Data
must be identified for behavioral health services by human service region and by
mental health services provided to children, mental health services provided to adults,
and substance abuse services.

2-3. 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 North Dakota vision
services - school for the blind to develop programs for individuals with developmental
disabilities; 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 5. AMENDMENT. Section 50-06-05.1 of the North Dakota Century Code is
amended and reenacted as follows:
50-06-05.1. Powers and duties of the department.

The department has the following powers and duties to be administered by the department through its state office or through regional human service centers or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.

2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.

3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.

4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.

5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.

6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.

7. To recommend appropriate social legislation to the legislative assembly.

8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.

9. To inform the public as to social conditions and ways of meeting social needs.

10. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.

11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by
law to the department including child care facilities, nonmedical adult care facilities
and maternity homes, and persons or organizations receiving and placing children,
and to require those facilities, persons, and organizations to submit reports and
information as the department may determine necessary.

12. To permit the making of any surveys of human service needs and activities if
determined to be necessary.

13. To issue subpoenas, administer oaths, and compel attendance of witnesses and
production of documents or papers whenever necessary in making the investigations
provided for herein or in the discharge of its other duties. A subpoena may not be
issued to compel the production of documents or papers relating to any private
child-caring or child-placing agency or maternity hospital or to compel the attendance
as a witness of any officer or employee of those facilities except upon the order of a
judge of the district court of the judicial district in which the facilities are located.

14. To provide insofar as staff resources permit appropriate human services, including
social histories, social or social-psychological evaluations, individual, group, family,
and marital counseling, and related consultation, when referred by self, parent,
guardian, county social service board, court, physician, or other individual or agency,
and when application is made by self (if an adult or emancipated youth), parent,
guardian, or agency having custody; also, on the same basis, to provide human
services to children and adults in relation to their placement in or return from the life-
skills and transition center, state hospital, or North Dakota youth correctional center.

15. To provide insofar as staff resources permit social services, including
social-psychological evaluations, predisposition reports, treatment, probation, and
aftercare services when requested by the judge of a juvenile court, all reports to be
kept confidential for the use of the judge except as may be disclosed by the judge.

16. To provide insofar as staff resources permit social services, including
social-psychological evaluations, predisposition reports, treatment, and probation and
parole services, when requested by the judge in a criminal case, all reports to be kept
confidential for use by the judge except as may be disclosed by the judge.

17. To act as the official agency of the state in the administration of the supplemental
nutrition assistance program and to direct and supervise county administration of that
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program. Provided, however, that the department with the consent of the budget
section of the legislative management may terminate the program if the rate of federal
financial participation in administrative costs provided under Public Law 93-347 is
decreased or limited, or if the state or counties become financially responsible for all or
a portion of the coupon bonus payments under the Food Stamp Act. Unless at least
seven years has elapsed since the most recent felony conviction that has as an
element the possession, use, or distribution of a controlled substance, the department
shall deny assistance under the supplemental nutrition assistance program to any
individual who has been convicted of a felony offense that has as an element the
possession, use, or distribution of a controlled substance as defined in section 102(6)
of the Controlled Substances Act [21 U.S.C. 802(6)].

48-17. To administer, allocate, and distribute any funds made available for the making of
direct cash assistance payments, housing assistance payments, and rental subsidies
under any rental assistance programs initiated by the federal government not
otherwise by law made the responsibility of another state agency possessing
statewide jurisdiction.

49-18. To act as the official agency of the state in the administration of the energy assistance
program; to direct and supervise county administration of that program; and to take
such actions, give such directions, and adopt such rules, subject to review in the
courts of this state, as may be necessary or desirable to carry out this subsection. For
purposes of the administration of the energy assistance program, funds are obligated
at the earlier of the time a written commitment is made to pay a vendor or contractor
for services or supplies delivered or to be delivered, or at the time payment is made to
a vendor or contractor for services or supplies delivered or to be delivered. The
provisions of this subsection concerning obligation of funds apply to payments and
commitments made on or after July 1, 1991. The department with the consent of the
budget section of the legislative management may terminate the program if the rate of
federal financial participation in administrative costs is decreased or limited to less
than fifty percent of total administrative costs, or if the state or counties become
financially responsible for all or a portion of the cost of energy assistance program
benefits.
To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.

To exercise and carry out any other powers and duties granted the department under state law.

To coordinate services for pregnant women.

To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:

a. "Transitional living facility" means a specific site, identified by a licensed child-placing agency and approved by the department, for the provision of transitional living services.

b. "Transitional living program" means a program that provides transitional living services and may include an identified program operations location approved by the department.

c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.

With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North
Dakota, to the federal government, or any public or private agency, organization, or
business enterprise, or any worthy undertaking, under the following provisions:

a. The department determines that the facility or property is not needed to serve
any present or reasonably foreseeable need of the life skills and transition center.
b. The transaction is exempt from the provisions of section 50-06-06.6.
c. The term of any lease may not exceed ninety-nine years.
d. All required legal documents, papers, and instruments in any transaction must be
reviewed and approved as to form and legality by the attorney general.
e. Any funds realized by any transaction must be deposited in the state's general
fund.

25. To act as a decedent's successor for purposes of collecting amounts due to the
department. Any affidavit submitted by the department under section 30.1-23-01 must
conform to the requirements of that section except that the affidavit may state that
twenty days have elapsed since the death of the decedent.

26. To provide those services necessary for the department and for county social service
boards to comply with the provisions of any law, rule, order, or regulation of the United
States or any federal agency or authority requiring civil service or merit standards or
classifications as a condition for providing funds administered by the department.

27. For purposes of administration of programs, and subject to legislative appropriation,
funds are obligated at the time a written commitment is made to pay a vendor or
contractor for services or supplies either delivered or to be delivered. This subsection
applies to payments and commitments made on or after January 1, 1997.

28. Notwithstanding section 50-01.2-00.1, to determine eligibility for medical assistance
and children's health insurance program benefits when the department receives a joint
application for these benefits.

SECTION 6. AMENDMENT. Section 50-06-05.2 of the North Dakota Century Code is
amended and reenacted as follows:

50-06-05.2. Regional human service centers - Licensure - Collocation with county
social service boards.

Human services must be delivered through regional human service centers in the areas
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provided by regional human service centers must include those services formerly provided by
mental health and retardation service units and area social service centers. The regional human
service centers must be accredited by a national accrediting body and are subject to licensing
by the department. The department shall adopt rules and standards for the licensing and for the
operation of the regional human service centers. No human service center may not operate
without a license issued hereunder in accordance with this section. Regional human service
centers are authorized to receive federal and other funds available to finance, in whole or in
part, the services and operations of the centers. Any county social service board collocating its
offices with a regional human service center must, within the limits of legislative appropriations,
be reimbursed up to fifty percent of the amount expended for space costs in excess of the
amount provided by the federal government.

SECTION 7. AMENDMENT. Section 50-06-05.3 of the North Dakota Century Code is
amended and reenacted as follows:

50-06-05.3. Regional human service centers - Powers - Duties - Human service
advisory groups.

1. Regional human service centers organized under this chapter are those centers
established to provide human services as authorized by law. The term "human-
service" means service provided to individuals or their families in need thereof to help
them achieve, maintain, or support the highest level of personal independence and-
economic self-sufficiency, including health, mental health, education, manpower,
social, food and nutrition, and housing service. Regional human service centers shall
function as regional administrative units established, within the multicounty areas
designated by the governor's executive order 1978-12 dated October 5, 1978, to
provide for the planning and delivery of human services.

2. Regional human service centers shall provide human services to all eligible individuals
and families to help them individuals and families achieve or maintain social,
emotional, and economic self-sufficiency; prevent; by providing human services to:

a. Prevent, reduce, or eliminate dependency; prevent

b. Prevent or remedy the neglect, abuse, or exploitation of children and of adults
unable to protect their own interests; aid

c. Aid in the preservation, rehabilitation, and reuniting of families; prevent
d. Prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure

e. Secure referral or admission for institutional care; provide

f. Provide outpatient diagnostic and treatment services; provide

g. Provide information concerning guardianship to people interested in becoming or who are guardians; and provide

h. Provide rehabilitation and crisis services for patients with mental or, emotional, or substance use disorders, an intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility.

2. Regional human service centers shall deliver services in the manner prescribed by the department.

3. The director shall appoint a human service advisory group for each human service center consisting of up to thirteen members. Each human service center shall have a human services advisory group consisting of the county social service and public health directors of the region served. The regional director shall appoint five additional members to the advisory group. Each group member must be a resident of the region the member is appointed to serve. The director shall appoint two current county commissioners and one current county social service board member to serve as members of a human service advisory group. The director may appoint an additional current commissioner to serve in lieu of the current county social service board member. The term of office must be for each appointed member is two years and arranged so that the term of one-half of the appointed members expires at the end of the first year and the term of the remaining three appointed members expires at the end of the second year, except for those first members appointed, two members shall serve a one-year term and three members shall serve a two-year term. The director shall select the appointed members of each human service advisory group on the basis of population of the counties in the region served by the human service center. Each county in the region must be represented by at least one member on the human service advisory group. To the extent possible, appointed membership of the advisory
group must reflect regional interests in the fields of developmental disabilities, social
services, mental health, and alcoholism and substance use disorders. The
director shall appoint a chairman for each advisory group from the membership of the
advisory group. The director shall fill a vacancy occurring within an advisory group for
other than the expiration of a term in the same manner as original appointments,
except that appointments must be made only for the unexpired term. The department
shall compensate appointed members of a human service advisory group at the rate
of forty-five dollars per day, not to exceed twenty-five days in any one year. The
department also shall pay members for mileage and actual expenses incurred in
attending meetings and in the performance of their official duties in the amounts
provided by law for other state officers.

SECTION 8. AMENDMENT. Section 50-06-05.4 of the North Dakota Century Code is
amended and reenacted as follows:

50-06-05.4. Duties of human service advisory groups.
Each human service advisory group of the regional human service centers shall perform the
following duties:

1. Provide information to the department relative to needs assessment and the planning
   and development of health and social resources for the effective and efficient delivery
   of high-quality human services fully accessible to all citizens.

2. Review services and programs provided by the regional human service centers and
   make periodic recommendations the advisory group may have for improvement in
   services, programs, or facilities.

3. Promote cooperation and working agreements with public agencies, including public
   health and corrections and private human service agencies.

4. Promote local and regional financing from public and private sources.

SECTION 9. AMENDMENT. Section 50-06-06.2 of the North Dakota Century Code is
amended and reenacted as follows:

50-06-06.2. Clinic services - Provider qualification - Utilization of federal funds.
Within the limits of legislative appropriation therefor and in accordance with rules
established by the department, the department may defray the costs of preventive diagnostic,
therapeutic, rehabilitative, or palliative items or services furnished medical assistance eligible
individuals by regional human service centers or designated behavioral health providers. Within the limits of legislative appropriations and to the extent permitted by state and federal law and regulations established thereunder, it is the intent of the legislative assembly that federal funds available under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] be utilized to defray the costs of identifiable mental health clinic services furnished eligible individuals in regional human service centers and that federal funds available under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] be utilized to defray the costs of identifiable social services furnished eligible individuals by county social service boards and regional human service centers.

SECTION 10. AMENDMENT. Section 50-06-06.5 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.5. Continuum of services for chronically mentally ill individuals with serious and persistent mental illness.

1. The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for chronically mentally ill individuals with serious and persistent mental illness. The continuum may consist of an array of services provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. To the extent feasible, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:

4. a. Programs, and appropriate related facilities, to provide socialization skills.

2. b. Programs, and appropriate related facilities, to provide basic living skills.

3. c. Appropriate residential facilities and other housing options.

4. d. Appropriate training, placement, and support to enhance potential for employment.

5. e. Appropriate delivery and control of necessary medication.

6. f. Appropriate economic assistance.

7. g. An inpatient facility with appropriate programs to respond to persons who require hospitalization.

 h. Peer and recovery support.
i. Crisis service that is available twenty-four hours a day seven days a week.

2. The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with county social service agencies and private providers in achieving the continuum of care.

SECTION 11. Section 50-06-06.14 of the North Dakota Century Code is created and enacted as follows:


The department and county social service boards shall explore the option of kinship care when a child is unable to return home due to safety concerns. Absent kinship options, the department and county social service boards shall provide permanency options that are in the least restrictive care and near the family's home as required by the federal Adoption and Safe Family Act of 1997 [Pub. L. 105-89; 111 Stat. 2115; 42 U.S.C. 671]. The department of human services shall issue a request for proposal for the provision of residential treatment services to meet the needs of youth with a history of sexual offenses within the state and explore options of therapeutic foster care for those youth who would benefit from this service level.

SECTION 12. AMENDMENT. Subsection 1 of section 50-06-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The state shall bear the cost, in excess of the amount provided by the federal government, of:

   a. As provided in section 50-24.1-14, medical assistance services provided under chapter 50-24.1;
   
   b. Energy assistance program benefits provided under subsection 4918 of section 50-06-05.1;
   
   c. Supplements provided under chapter 50-24.5 as basic care services;
   
   d. Services, programs, and costs listed in section 50-09-27;
   
   e. Welfare fraud detection programs; and
   
   f. Special projects approved by the department and agreed to by any affected county social service board.

SECTION 13. REPEAL. Chapter 25-10 and Sections 25-02-02, 50-06-01.2, and 50-06-23 of the North Dakota Century Code are repealed.
SECTION 14. TRANSITION. All unexpired terms of members of a human service advisory group under section 50-06-05.3 are deemed expired as of July 31, 2017. An individual who is a member of a human service advisory group as of July 31, 2017, who is otherwise qualified, may be reappointed to the human service advisory group on which the individual previously served.

SECTION 15. EFFECTIVE DATE. Section 6 of this Act becomes effective on August 1, 2021.