

April 4, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1003

Page 1, line 1, after "general" insert "; to provide a contingent appropriation"

Page 1, line 2, remove the first "and"

Page 1, line 3, after "council" insert "; to authorize transfers; to authorize fees; to create and enact chapter 54-12.1 of the North Dakota Century Code, relating to the creation of a Medicaid fraud control unit; to amend and reenact section 27-01-10 of the North Dakota Century Code, relating to fee assessments for funding crime victim and witness programs; to provide a penalty; to provide legislative intent; to provide a contingent effective date; and to declare an emergency"

Page 1, replace lines 12 and 13 with:

"Salaries and wages	\$40,503,865	\$740,901	\$41,244,766
Operating expenses	24,672,585	(8,115,027)	16,557,558"

Page 1, replace line 17 with:

"Intellectual property attorney	418,323	8,601	426,924"
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Page 1, replace line 20 with:

"North Dakota lottery	5,282,778	54,019	5,336,797"
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Page 1, remove lines 23 and 24

Page 2, replace lines 1 through 4 with:

"Criminal justice information sharing	4,151,701	(765,056)	3,386,645
Law enforcement	3,455,725	(554,117)	2,901,608
SAVIN cost share program	0	315,000	315,000
Total all funds	\$83,714,313	(\$7,535,153)	\$76,179,160
Less estimated income	35,247,452	(4,456,132)	30,791,320
Total general fund	\$48,466,861	(\$3,079,021)	\$45,387,840
Full-time equivalent positions	250.00	(13.00)	237.00"

Page 2, line 6, replace "\$695,462" with "\$645,074"

Page 2, line 6, replace "\$637,105" with "\$590,945"

Page 2, line 7, replace "\$1,249" with "\$1,241"

Page 2, line 8, after "**FUNDING**" insert "**- EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-SIXTH LEGISLATIVE ASSEMBLY**"

Page 2, line 9, after "biennium" insert "and the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 16 through 19 with:

"Targeted equity - gaming	270,000	0
SAVIN cost share program	0	315,000

Uniform crime reporting rewrite	0	280,000
DOS based deposit system rewrite	0	100,000
Total all funds	\$3,936,157	\$695,000
Total special funds	653,333	315,000
Total general fund	\$3,282,824	\$380,000

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

**SECTION 4. LINE ITEM TRANSFER AUTHORIZATION.** The attorney general may transfer appropriation authority between line items in section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The attorney general shall notify the office of management and budget and the legislative council of any transfers made pursuant to this section."

Page 2, after line 24, insert:

**"SECTION 6. INDUSTRIAL COMMISSION LITIGATION FUNDS - GRANT TO ATTORNEY GENERAL.** As requested by the attorney general, the industrial commission shall provide a grant from funds appropriated to the industrial commission for litigation expenses to the attorney general for litigation-related expenses incurred by the attorney general as a result of the protests and related activities associated with the Dakota access pipeline project for the biennium beginning July 1, 2017, and ending June 30, 2019."

Page 2, after line 31, insert:

**"SECTION 8. CONTINGENT APPROPRIATION - FUNDING FOR STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM ENHANCEMENTS.** Of the funds appropriated in section 1 of this Act for rent expense, the attorney general shall use up to \$500,000 made available from rent savings as a result of the attorney general relocating a portion of its operations to the job service North Dakota central office building, for the purpose of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the biennium beginning July 1, 2017, and ending June 30, 2019. If the attorney general does not relocate a portion of its operations to the job service North Dakota central office building and does not realize rent savings, there is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the expenses of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the period beginning with the effective date of this Act, and ending June 30, 2019.

**SECTION 9. STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM ENHANCEMENTS - COST-SHARING PROGRAM - ESTIMATED INCOME.** The attorney general, in consultation with the North Dakota association of counties and the North Dakota league of cities, shall establish a cost-sharing program to defray the expenses related to the enhancement of the statewide automated victim information and notification program, in addition to the amounts appropriated in section 8 of this Act. The cost-sharing program must apportion the sum

of \$315,000 among the political subdivisions of the state for each political subdivision's share of the cost of the statewide automated victim information and notification program and the political subdivision shall contribute funds to the attorney general as set forth in the cost-sharing program. The estimated income line item in section 1 of this Act includes \$315,000 of funding received as payments from political subdivisions for the cost-sharing program for the purpose of enhancing the statewide automated victim information and notification program, as defined in section 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the Constitution of North Dakota, for the period beginning with the effective date of this Act, and ending June 30, 2019.

**SECTION 10. LEGISLATIVE INTENT - COST-SHARING PROGRAM.** It is the intent of the sixty-fifth legislative assembly that the funding for the political subdivisions cost sharing program identified in section 9 of this Act, be provided from any additional income collected from the victim witness fee as required in section 11 of this Act, or a proportionate contribution from the counties and cities that utilize the odyssey system, or a combination of both.

**SECTION 11. AMENDMENT.** Section 27-01-10 of the North Dakota Century Code is amended and reenacted as follows:

**27-01-10. Fee assessments for funding crime victim and witness programs.**

1. The governing body of a county ~~may~~must, by resolution, authorize the district judges serving that county to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.
2. The governing body of a city ~~may~~must, by ordinance, authorize a municipal judge to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment.
3. The governing body of the county or city ~~may~~must determine the amount of the fee to be assessed in all cases or it may authorize the district or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The district or municipal judge ~~may~~must assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a district or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body or by agreement of the attorney general, the North Dakota league of cities, and the North Dakota association of counties:
  - a. A private, nonprofit domestic violence or sexual assault program.

- b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.
- c. The statewide automated victim information and notification system, as provided for under chapter 12.1-34.

**SECTION 12.** Chapter 54-12.1 of the North Dakota Century Code is created and enacted as follows:

**54-12.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Abuse" means conduct by a provider, or other person involving disregard of and an unreasonable failure to conform with the laws and rules governing the Medicaid program if the disregard or failure results or may result in payment by a Medicaid agency of medical assistance payments or benefits to which the person knows the person is not entitled.
2. "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the Medicaid program.
3.
  - a. "Claim" means a request or demand, whether under a contract or otherwise, for money or property under the Medicaid program and regardless of whether the state has title to the money or property:
    - (1) Presented to an officer, employee, or agent of the state; or
    - (2) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:
      - (a) Provides or has provided any portion of the money or property requested or demanded; or
      - (b) Will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.
  - b. The term does not include requests or demands for money or property the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.
4. "Department" means the department of human services.
5. "Document" means an application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, or other form.
6. "Fraud" means conduct or activity prohibited by law or rule involving knowing conduct or omission to perform a duty that may result or has resulted in Medicaid payments or benefits to which the recipient is not entitled.
7. "Knowingly" or "knowing" requires no proof of specific intent to defraud and means a person has actual knowledge of the information and acts in

deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information.

8. "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property.
9. "Medicaid agency" means an agency or entity of state, county, or local government which administers any part of the Medicaid program, whether under direct statutory authority or under contract with an authorized agency of the state or federal government.
10. "Misappropriation of patient property" means exploitation, deliberate misplacement, or wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by the patient or the patient's designated representative. The term includes conduct with respect to a patient's property which would constitute a criminal offense under chapter 12.1-23.
11. "Obligation" means an established duty arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
12. "Original source" means an individual who either prior to a public disclosure has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based or who has knowledge independent of and which materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this chapter.
13. "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. The term includes conduct with respect to a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, or 12.1-22.
14. "Patient neglect" means the failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods or services necessary to avoid physical harm, mental anguish, or mental illness if the omission is not caused by factors beyond the person's control or by good-faith errors in judgment. The term includes conduct with respect to a patient which would constitute a criminal offense under section 12.1-17-03.
15. "Proceeds" means civil penalties and damages and excludes attorney's fees and costs.
16. "Provider" means a person that furnishes items or services for which payment is claimed under Medicaid.
17. "Record" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

- a. Pertaining to the provision of treatment, care, services, or items to a recipient;
- b. Pertaining to the income and expenses of the provider; or
- c. Otherwise relating to or pertaining to a determination of entitlement to payment or reimbursement under the Medicaid program.

**54-12.1-02. Liability for certain acts - Civil penalty.**

- 1. Except as provided in subsection 2, a person is liable to the state for a civil penalty of no less than five thousand five hundred dollars and no more than eleven thousand dollars for each act specified in this section, three times the amount of damages the state sustains because of the person's act, and expenses, costs, and attorney's fees, if the person:
  - a. Knowingly presents or causes to be presented a false or fraudulent medical assistance claim for payment or approval;
  - b. Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent medical assistance claim;
  - c. Conspires to commit a violation of this subsection;
  - d. Has possession, custody, or control of public property or money used or to be used by the state to provide medical assistance and knowingly delivers or causes to be delivered less than all of that money or property;
  - e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, with the intent to defraud the state, makes or delivers a receipt without completely knowing the information on the receipt is true; or
  - f. Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.
- 2. If a person commits an act under subsection 1 and a court finds the factors in subdivisions a through c, the court may assess no less than twice the amount of damages that the state sustains because of the act of the person.
  - a. The person committing the act furnished the attorney general with all information known to that person about the act within thirty days after the date on which the person first obtained the information;
  - b. The person fully cooperated with the investigation of the act by the attorney general; and
  - c. At the time the person furnished the attorney general with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the

person did not have actual knowledge of the existence of an investigation into the act.

3. A person that violates this section also is liable to the state for the expenses, costs, and attorney's fees of the civil action brought to recover the penalty or damages.
4. Liability under this section is joint and several for any act committed by two or more persons.

#### **54-12.1-03. Filing prohibited.**

The court shall dismiss an action or claim brought under this chapter, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or its agent is a party; in a legislative, state auditor, or other state report, hearing, audit, or investigation; or from the news media.

#### **54-12.1-04. Limitation of actions.**

1. Unless otherwise specified, a civil action filed under this chapter must be brought by the later of:
  - a. Six years after the date on which the violation was committed; or
  - b. Three years after the date facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances.
2. An action may not be brought under subdivision b of subsection 1 more than ten years after the date on which the violation was committed.

#### **54-12.1-05. Investigation and action by attorney general.**

The attorney general shall investigate an alleged violation of this chapter and may file a civil action, a criminal action, or both against a person that violated or is violating this chapter.

#### **54-12.1-06. Complaint by person - Civil action.**

1. A person may bring a civil action for a violation of this chapter on behalf of the person and the state. The action must be brought in the name of the state. If the court and the attorney general give written consent to the dismissal and provide the reasons for consenting to the dismissal, the action may be dismissed.
2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the attorney general pursuant to rule 5 of the North Dakota Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least sixty days. The complaint may not be served upon the defendant until the court orders the complaint be served.
3. Within sixty days after receiving the complaint and the material evidence and information, the attorney general may elect to intervene and proceed with the action or to notify the court the attorney general declines to take

over the action. If the attorney general declines to intervene or take over the action, the person bringing the action may conduct the action. For good cause shown, the attorney general may move the court for extensions of the time during which the complaint remains under seal.

4. The defendant may not be required to respond to a complaint until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 5 of the North Dakota Rules of Civil Procedure.
5. If the attorney general proceeds with the action, the attorney general has the primary responsibility for prosecuting the action and is not bound by any act of the person bringing the action. The person bringing the action may continue as a party to the action subject to the limitations set forth in this chapter.
6. If the attorney general elects not to proceed with the action and the person that initiated the action conducts the action:
  - a. Upon the attorney general's request, the person that initiated the action shall serve the attorney general with copies of all pleadings filed in the action and shall supply the attorney general with copies of all deposition transcripts at the attorney general's expense; or
  - b. The court, without limiting the status and rights of the person initiating the action, may permit the attorney general to intervene at a later date upon a showing of good cause.
7. If a person files a civil action under this section, a person other than the attorney general may not intervene or bring a related action based on the facts underlying the pending action.
8. Upon a showing by the attorney general unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:
  - a. Limiting the number of witnesses the person may call;
  - b. Limiting the length of testimony of witnesses called by the person;
  - c. Limiting the person's cross-examination of witnesses; and
  - d. Otherwise limiting the participation of the person in the litigation.
9. Whether the attorney general proceeds with the action, upon an in-camera showing by the attorney general that actions of discovery by the person initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for not more than sixty days. The court may extend the sixty-day period upon a further in-camera showing that the attorney general has pursued the criminal or civil investigation with reasonable diligence and any discovery in the civil action will interfere with the ongoing investigation or proceedings.



10. The attorney general may elect to pursue the claim through any alternate remedy available including administrative proceedings to determine a civil penalty. If an alternate remedy is pursued, the person initiating the action has the same rights in the proceeding as the person would in proceeding under this section. A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this section. A finding or conclusion is final if the finding or conclusion has been determined on appeal to the appropriate court, if time for filing an appeal has expired, or if the finding or conclusion is not subject to judicial review.
11. If the attorney general elects to intervene and proceed with an action, the attorney general may file a complaint or amend the complaint of any person that brought an action to clarify or add detail to the claim in which the attorney general is intervening or to add additional claims. For statute of limitations purposes, any such pleading relates back to the filing date of the complaint of the person that originally brought the action to the extent the attorney general's claim arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth in the prior complaint of that person.

#### **54-12.1-07. Dismissal of civil action.**

On motion of the attorney general, the court may dismiss a civil action notwithstanding the objection of the person that initiated the action if the attorney general notified the person of the filing of the motion to dismiss and the court has given the person an opportunity to oppose the motion and present evidence at a hearing.

#### **54-12.1-08. Burden of proof.**

The standard of proof in a civil action brought under this chapter is the preponderance of the evidence.

#### **54-12.1-09. Distribution of damages and civil penalty.**

1. Except as provided in subsection 2, if the attorney general proceeds with an action brought by a person under section 54-12.1-06, the person is entitled to receive at least fifteen percent, but not more than twenty-five percent, of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.
2. The court may award an amount the court considers appropriate, but in no case more than ten percent of the proceeds in an action the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through a criminal, civil, or administrative hearing; a legislative, administrative, or auditor report, hearing, audit, or investigation; or the news media. In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

3. A payment to a person bringing an action under this section may be made only from the proceeds recovered and collected in the action or in settlement of the claim. In addition, the person is entitled to receive an amount for reasonable expenses the court finds to have been necessarily incurred and reasonable attorney's fees and costs. The expenses, fees, and costs must be awarded against the defendant.
4. If the attorney general does not proceed with an action under section 54-12.1-06, the person bringing the action or settling the claim is entitled to receive an amount the court decides is reasonable for collecting the civil penalty and damages on behalf of the attorney general. The amount may not be less than twenty-five percent nor more than thirty percent of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. In addition, the person is entitled to receive an amount for reasonable expenses the court finds were necessarily incurred, plus reasonable attorney's fees and costs. All expenses, fees, and costs must be awarded against the defendant.
5. Whether the attorney general proceeds with the action, if the court finds the action was brought by a person that planned or initiated the violation of this chapter, the court may reduce or eliminate the share of the proceeds the person would otherwise receive under subsections 1, 2, 3, and 4, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this section, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the attorney general to continue the action.
6. The attorney general is entitled to any damages and civil penalties not awarded to the person bringing the action, and the damages and civil penalties must be deposited in the state general fund.
7. Unless otherwise provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the state.

#### **54-12.1-10. Effect of criminal conviction.**

A defendant convicted in any criminal proceeding under this chapter is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any civil proceeding. For purposes of this section, a conviction may result from a verdict or plea.

#### **54-12.1-11. Costs and attorney's fees.**

When the state favorably settles or prevails in a civil action in which the attorney general has intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and expert witness fees, costs, and attorney's fees. In an action in which outside counsel is engaged by the attorney general, the costs and attorney's fees awarded to that counsel must equal the outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the action. A plaintiff is entitled to an amount for reasonable expenses the court finds to have been necessarily incurred.

plus reasonable costs and attorney's fees, if the action is settled favorably for the state or the state prevails in the action. The expenses, fees, and costs must be awarded against the defendant. A defendant in a civil action brought under this chapter which prevails in an action that is not settled and which the court finds was clearly frivolous or brought solely for harassment purposes is entitled to reasonable costs and attorney's fees, which must be equitably apportioned against the person that brought the action and the state if a person and the state were coplaintiffs.

**54-12.1-12. Relief from retaliatory actions.**

1. An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.
2. Relief under subsection 1 includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, twice the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action under this section may be brought in the appropriate district court for the relief provided in this subsection.
3. A civil action under this section may not be brought more than three years after the date when the retaliation occurred.

**54-12.1-13. Settlement by attorney general.**

The attorney general may settle the case with a defendant notwithstanding the objections of any person that initiated the action if the court determines, after a hearing, the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the hearing may be held in camera. A hearing is not otherwise required for the court to approve a settlement.

**54-12.1-14. Medicaid fraud control unit.**

The Medicaid fraud control unit is established as a division of the attorney general's office. The Medicaid fraud control unit, which is under the supervision and control of the attorney general, consists of the agents and employees the attorney general considers necessary and appropriate, including individuals qualified by education, training, experience, and high-professional competence in criminal and civil investigative procedures and high-professional competence to prosecute crimes. The Medicaid fraud control unit is a criminal justice agency within the meaning of section 12-60-16.1. Agents designated by the attorney general have peace officer status and authority, including the authority of search, seizure, and arrest. All recovered money must be forwarded to the designated state Medicaid agency for remittance to the general fund. The portion of state match appropriations for the Medicaid fraud control unit must be appropriated from the state general fund.

**54-12.1-15. Powers and duties of Medicaid fraud control unit.**

1. The Medicaid fraud control unit shall:

- a. Investigate and prosecute under applicable criminal or civil laws fraud and abuse by providers or any other person, including cases referred by the department;
  - b. Review a complaint of patient abuse, patient neglect, and misappropriation of patient property and, if appropriate, investigate and initiate criminal or civil proceedings or refer the complaint to another federal, state, or local agency for action;
  - c. Refer to the department for collection and, if appropriate, consideration and imposition of appropriate provider sanctions cases involving provider overpayments, fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying out the unit's activities;
  - d. Communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other federal, state, and local agencies involved in the investigation and prosecution of health care fraud, abuse, and other improper activities related to the Medicaid program;
  - e. Transmit to other state and federal agencies, in accordance with law, reports of convictions, copies of judgments and sentences imposed, and other information and documents for purposes of program exclusions or other sanctions or penalties under Medicaid, Medicare, or other state or federal benefit or assistance programs; and
  - f. Recommend to state agencies appropriate or necessary adoption or revision of laws, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the Medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the Medicaid program.
2. The Medicaid fraud control unit may:
- a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any court of competent jurisdiction in the state;
  - b. Upon request, obtain information and records from applicants, recipients, and providers;
  - c. Subject to applicable federal confidentiality laws and rules and for purposes related to any investigation or prosecution under subsection 1, obtain from the department, local offices of public assistance, and other local, county, or state government departments or agencies records and other information, including applicant and recipient applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the tax commissioner or the state auditor;
  - d. Refer appropriate cases to other federal, state, or local agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions; and
  - e. Enter agreements with the department and other federal, state, and local agencies in furtherance of the unit's mission.

#### **54-12.1-16. Investigative demand procedure.**

1. When there is reason to believe a person may be in possession, custody, or control of documentary material or information relevant to a potential medical assistance investigation, the attorney general may, before commencing a proceeding under this chapter, issue in writing and cause to be served upon the person, on forms the attorney general prescribes, an investigative demand requiring the person to:
  - a. Produce the documentary material for inspection and copying;
  - b. Answer in writing written interrogatories with respect to the documentary material or information;
  - c. Be examined under oath concerning the documentary material or information; and
  - d. Furnish any combination of the material, answers, or testimony.
2. Each investigative demand must state the nature of the conduct constituting the alleged violation of law under investigation and the applicable provision of law alleged to be violated.
3. An investigative demand may be served by an agent or as otherwise provided by the North Dakota Rules of Civil Procedure. A verified return by the individual serving an investigative demand setting forth the manner of the service is proof of service. In the case of service by registered or certified mail, the return must be accompanied by the return post office receipt of delivery of the demand.
4. If the demand is for the production of documentary material, the demand must:
  - a. Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified; and
  - b. Prescribe a return date for each such class which provides a reasonable period of time within which the material demanded may be assembled and made available for inspection and copying.
5. The production of documentary material in response to an investigative demand served under this section must be made under a sworn certificate stating all of the documentary material required by the demand and in the possession, custody, or control of the person to which the demand is directed has been produced and made available to the agent identified in the demand, by:
  - a. In the case of an individual, the individual to whom the demand is directed; or
  - b. In the case of a person other than an individual, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of that person.
6. A person upon which any investigative demand for the production of documentary material has been served under this section shall make the

material available for inspection and copying to the agent identified in the demand at the principal place of business of that person, or at such other place as the agent and the person agree and prescribe in writing. The material must be made available on the return date specified in the demand, or on a later date prescribed in writing by the agent. The person may, upon written agreement between the person and the agent, substitute copies for originals of all or any part of the material.

7. If the demand is for answers to written interrogatories, the demand shall:
  - a. Set forth with specificity the written interrogatories to be answered; and
  - b. Prescribe dates at which time answers to written interrogatories must be submitted.
8. Each interrogatory in an investigative demand served under this section must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in the form designated by the demand by:
  - a. In the case of an individual, the individual to whom the demand is directed; or
  - b. In the case of a person other than an individual, the person responsible for answering each interrogatory.
9. If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the demand and in the possession, custody, control, or knowledge of the person to which the demand is directed has been submitted. To the extent any information is not furnished, the information must be identified and reasons set forth with particularity explaining why the information was not furnished.
10. a. If the demand is for the giving of oral testimony, the demand must:
  - (1) Prescribe a date, time, and place at which oral testimony must be commenced;
  - (2) Specify that attendance and testimony are necessary to the conduct of the investigation;
  - (3) Notify the individual receiving the demand of the right to be accompanied by an attorney; and
  - (4) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.
  - b. The examination of an individual pursuant to an investigative demand for oral testimony served under this section must be taken under oath or affirmation of this state or of the place where the examination is held. The oath may be in writing and the agent shall record the testimony of the witness.

11. An investigative demand issued under this chapter may not require the production of a documentary material, the submission of answers to written interrogatories, or the giving of oral testimony if the material, answers, or testimony would be protected from disclosure under any applicable law or court order.
12. If a person fails or refuses to file any statement or report, appear or cooperate with an examination under oath or obey any subpoena issued by the attorney general, the attorney general may, after notice, petition a district court and, after hearing, request an order requiring compliance. If the attorney general prevails in a proceeding under this section, the court may assess the nonprevailing person for all hearing costs, including reasonable attorney's fees.

**54-12.1-17. Medicaid fraud - Criminal penalty.**

1. A person commits a criminal offense under this section if the person knowingly:
  - a. Presents for allowance, for payment, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent medical assistance claim, bill, account, voucher, or writing to a public agency, public servant, or contractor authorized to allow or pay medical assistance claims presented to a public agency;
  - b. Solicits, accepts, offers, or provides any remuneration, including a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the Medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program;
  - c. Makes, offers, or accepts any remuneration, rebate of a fee, or charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the Medicaid program; or
  - d. Fails or refuses to provide covered medically necessary services to eligible recipients as required with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the Medicaid program.
2. Any conduct or activity that does not violate or that is protected under this chapter or federal regulations [42 U.S.C. 1395nn; 42 U.S.C. 1320a-7b(b)] is not considered an offense under subdivision b of subsection 1, and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.
3. In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

4. A person convicted of this offense involving payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims not exceeding one thousand dollars in value is guilty of a class A misdemeanor.
5. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed one thousand dollars in value, a violation of this chapter is a class C felony.
6. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed ten thousand dollars in value but do not exceed fifty thousand dollars, a violation of this chapter is a class B felony.
7. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims of the Medicaid fraud were part of a common scheme and exceed fifty thousand dollars in value, a violation of this chapter is a class A felony.
8. For purposes of imposing a sentence for a conviction under this chapter, the value of payments, benefits, kickbacks, bribes, rebates, remuneration, or services involved is the greater of the value of Medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or charge involved.
9. Amounts involved in Medicaid fraud committed under a common scheme or the same transaction may be aggregated in determining the value involved.
10. A person convicted of the offense of Medicaid fraud must be suspended from participation in the Medicaid program:
  - a. For not less than one year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;
  - b. For not less than three years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or
  - c. Permanently for a third offense.
11. In addition to any other penalty provided by law, a person convicted of Medicaid fraud is not entitled to bill or collect from the recipient, the Medicaid program, or any other third-party payer for the services or items involved and shall repay to the Medicaid program any payments or benefits obtained by any person for the services or items involved.



**54-12.1-18. Cooperation of governmental agencies with Medicaid fraud control unit.**

All local, county, and state departments and agencies shall cooperate with the Medicaid fraud control unit and the unit's agents and employees to effectuate the purposes of the unit.

**SECTION 13. APPROPRIATION - MEDICAID FRAUD CONTROL UNIT.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$156,160, or so much of the sum as may be necessary, and \$1,405,444 from special funds derived from federal funds, to the attorney general for the purpose of establishing a Medicaid fraud control unit, for the biennium beginning with the effective date of this Act and ending June 30, 2019. For the Medicaid fraud control unit, the attorney general is authorized two full-time equivalent assistant attorney general positions, two full-time equivalent investigator positions, one full-time equivalent auditor position, and one full-time equivalent administrative assistant position. The attorney general may not spend any funds designated for these positions for purposes other than the salaries and wages and operating expenses of the Medicaid fraud control unit.

**SECTION 14. CRIMINAL HISTORY RECORD CHECKS - FEES.** Any person or entity requesting a criminal history record check from the bureau of criminal investigation, as a result of legislation enacted by the sixty-fifth legislative assembly, shall pay a reasonable fee established by the attorney general to the attorney general to be deposited in the state's general fund for the biennium beginning July 1, 2017, and ending June 30, 2019."

Page 3, after line 12, insert:

**"SECTION 17. EXEMPTION - ADDITIONAL FUNDING FOR LITIGATION FEES.** Of the funding appropriated to the attorney general in section 6 of chapter 3 of the 2015 Session Laws, up to \$100,000 is not subject to the provisions of section 54-44.1-11 and may be continued for defraying the cost of litigation fees for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 18. CONTINGENT EFFECTIVE DATE.** Sections 12 and 13 of this Act become effective on the date the executive director of the department of human services certifies to the legislative council and to the director of the office of management and budget that federal medical assistance funding available to the state will be reduced on a date certain prior to the convening of the sixty-sixth legislative assembly as a direct result of the state not being granted a waiver relating to a Medicaid fraud control unit.

**SECTION 19. EMERGENCY.** Sections 8 and 9 of this Act are declared to be an emergency measure."

Re-number accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1003 - Attorney General - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$40,503,865	\$40,267,284	\$977,482	\$41,244,766
Operating expenses	24,672,585	16,145,004	412,554	16,557,558
Capital assets	2,339,187	2,742,372		2,742,372

Grants	1,762,659	2,440,000		2,440,000
Litigation fees	50,000	150,000		150,000
Intellectual property attorney	418,323	427,131	(207)	426,924
Abortion litigation fees	400,000			
Medical examinations	660,000	660,000		660,000
North Dakota lottery	5,282,778	5,338,767	(1,970)	5,336,797
Arrest and return of fugitives	10,000	10,000		10,000
Gaming commission	7,490	7,490		7,490
Criminal justice information sharing	4,151,701	3,387,682	(1,037)	3,386,645
Law enforcement	3,455,725	2,904,818	(3,210)	2,901,608
Additional income appropriation		250,000		250,000
SAVIN cost share program			315,000	315,000
Contingent funding for the SAVIN program			500,000	500,000
Contingent Medicaid Fraud Control Unit			1,561,604	1,561,604
<b>Total all funds</b>	<b>\$83,714,313</b>	<b>\$74,730,548</b>	<b>\$3,760,216</b>	<b>\$78,490,764</b>
<b>Less estimated income</b>	<b>35,247,452</b>	<b>30,730,548</b>	<b>2,216,216</b>	<b>32,946,764</b>
<b>General fund</b>	<b>\$48,466,861</b>	<b>\$44,000,000</b>	<b>\$1,544,000</b>	<b>\$45,544,000</b>
<b>FTE</b>	<b>250.00</b>	<b>231.00</b>	<b>12.00</b>	<b>243.00</b>

**Department No. 125 - Attorney General - Detail of Senate Changes**

	<b>Adjusts Funding for Health Insurance Increases<sup>1</sup></b>	<b>Restores 5 FTE Positions<sup>2</sup></b>	<b>Adds 1 FTE Identification Technician Position<sup>3</sup></b>	<b>Adds One-Time Funding for Uniform Crime Reporting Rewrite<sup>4</sup></b>	<b>Adds One-Time Funding for Deposit System Rewrite<sup>5</sup></b>	<b>Adds One-Time Funding for the SAVIN Cost Share Program<sup>6</sup></b>
Salaries and wages	(\$43,964)	\$890,000	\$131,446			
Operating expenses			32,554	280,000	100,000	
Capital assets						
Grants						
Litigation fees						
Intellectual property attorney	(207)					
Abortion litigation fees						
Medical examinations						
North Dakota lottery	(1,970)					
Arrest and return of fugitives						
Gaming commission						
Criminal justice information sharing	(1,037)					
Law enforcement	(3,210)					
Additional income appropriation						
SAVIN cost share program						315,000
Contingent funding for the SAVIN program						
Contingent Medicaid Fraud Control Unit						
<b>Total all funds</b>	<b>(\$50,388)</b>	<b>\$890,000</b>	<b>\$164,000</b>	<b>\$280,000</b>	<b>\$100,000</b>	<b>\$315,000</b>
<b>Less estimated income</b>	<b>(4,228)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>315,000</b>
<b>General fund</b>	<b>(\$46,160)</b>	<b>\$890,000</b>	<b>\$164,000</b>	<b>\$280,000</b>	<b>\$100,000</b>	<b>\$0</b>
<b>FTE</b>	<b>0.00</b>	<b>5.00</b>	<b>1.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

	<b>Adds Contingent Funding for the SAVIN Cost Share Program<sup>7</sup></b>	<b>Contingent Medicaid Fraud Control Unit<sup>8</sup></b>	<b>Total Senate Changes</b>
Salaries and wages			\$977,482
Operating expenses			412,554
Capital assets			
Grants			
Litigation fees			
Intellectual property attorney			(207)
Abortion litigation fees			

Medical examinations			(1,970)
North Dakota lottery			
Arrest and return of fugitives			
Gaming commission			
Criminal justice information sharing			(1,037)
Law enforcement			(3,210)
Additional income appropriation			
SAVIN cost share program			315,000
Contingent funding for the SAVIN program	500,000		500,000
Contingent Medicaid Fraud Control Unit		1,561,604	1,561,604
<b>Total all funds</b>	<b>\$500,000</b>	<b>\$1,561,604</b>	<b>\$3,760,216</b>
<b>Less estimated income</b>	<b>500,000</b>	<b>1,405,444</b>	<b>2,216,216</b>
General fund	\$0	\$156,160	\$1,544,000
FTE	0.00	6.00	12.00

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<sup>1</sup> Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month.

<sup>2</sup> Restores the following 5 FTE positions and related funding from the general fund--4 FTE criminal investigator positions (\$720,000), 1 FTE forensic scientist position (\$170,000). The House removed 19 FTE positions with related funding and changed the funding source from the general fund to other funds for 8 FTE positions.

<sup>3</sup> Adds 1 FTE identification technician position (\$131,446) and related operating expenses (\$32,554).

<sup>4</sup> One-time funding of \$280,000 is added from the general fund for the rewrite of the uniform crime reporting system.

<sup>5</sup> One-time funding of \$100,000 from the general fund is added for a DOS based deposit system rewrite.

<sup>6</sup> One-time funding of \$315,000 is added from other funds for the statewide automated victim information and notification (SAVIN) program enhancement project. The other funds are from revenues generated through payments from political subdivisions share of the cost for the SAVIN program enhancement project. The enhancements will upgrade the SAVIN program so that it is able to provide the notifications necessary to comply with Section 25 of Article I of the Constitution of North Dakota also known as Marsy's Law.

<sup>7</sup> Contingent funding of \$500,000 from the oil and gas impact grant fund is added. The Attorney General plans to relocate employees into space available in the Job Service North Dakota central office building resulting in anticipated rent savings of \$500,000 that would be used for the costs of statewide automated victim information and notification program enhancements. If the move does not occur and the Attorney General does not recognize rent savings, \$500,000 from the oil and gas impact grant fund is appropriated to the Attorney General for the state's share of the SAVIN program enhancements.

<sup>8</sup> Contingent funding of \$1,561,604 is added from the general fund (\$156,160) and federal funds (\$1,405,444) and authorizes 6 FTE positions (2 FTE assistant attorneys general positions, 2 FTE investigators positions, 1 FTE administrative assistant position, and 1 FTE auditor position) for the creation of a Medicaid Fraud Control Unit. The creation of the unit is contingent upon the Department of Human Services certifying to the Legislative Council and the Office of Management and Budget that federal medical assistance funding available to the state will be reduced on a date certain prior to the convening of the 66th Legislative Assembly as a direct result of the state not having a Medicaid Fraud Control Unit.

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This amendment also:

- Adds a section authorizing the Attorney General to transfer appropriation authority between line items during the 2017-19 biennium.
- Adds a section directing the Industrial Commission to provide litigation funding to the Attorney General for litigation costs related to the Dakota Access Pipeline protest and other related activities for the 2017-19 biennium.
- Adds a section authorizing the Attorney General to use up to \$500,000 of rent savings as the result of an expected move of employees into space available in the Job Service North Dakota central office building for the SAVIN program enhancements. The section also provides a contingent appropriation of \$500,000 from the oil and gas impact grant fund if the move does not occur.
- Adds a section directing the Attorney General to consult with the North Dakota Association of Counties and the North Dakota League of Cities to establish a cost sharing program providing that political subdivisions share in the cost of the SAVIN program enhancement project. As a result of the completion of the SAVIN program enhancement project, the political subdivision's costs to comply with Marsy's Law are expected to be significantly reduced. The section authorizes the Attorney General to allocate \$315,000 of the cost among the political subdivisions of the state.
- Adds a section amending North Dakota Century Code Section 27-01-10 related to fee assessments for funding crime victim and witness programs and changes the assessment of a fee from optional to mandatory.
- Adds a section requiring any person or entity requesting a criminal history record check from the Bureau of Criminal Investigation, as a result of legislation enacted by the 65th Legislative Assembly, to pay a reasonable fee as set by the Attorney General for the 2017-19 biennium. The fee is to be deposited in general fund and is anticipated to generate an estimated \$164,000 of general fund revenue for the 2017-19 biennium.
- Adds a section exempting \$100,000 of funding appropriated to the Attorney General during the 2015 Legislative Assembly for contracted higher education legal fees and authorizes that funding to be used during the 2017-19 biennium in the Attorney General's litigation fees line.
- Adds three sections relating to the contingent creation of a Medicaid Fraud Control Unit. The sections provide for the creation of Chapter 54-12.1 and appropriates \$1,561,604 from the general fund (\$156,160) and federal funds (\$1,405,444), along with the authorization of 6 FTE positions, contingent upon the Department of Human Services certifying to the Legislative Council and the Office of Management and Budget that federal medical assistance funding available to the state will be reduced on a date certain prior to the convening of the 66th Legislative Assembly as a direct result of the state not having a Medicaid Fraud Control Unit.
- Adds an emergency clause regarding the SAVIN program enhancements.