

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1003

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the attorney general;
2 to provide a contingent appropriation; to provide exemptions; ~~and~~ to provide a report to the
3 office of management and budget and the legislative council; to authorize transfers; to authorize
4 fees; to create and enact chapter 54-12.1 of the North Dakota Century Code, relating to the
5 creation of a Medicaid fraud control unit; to amend and reenact section 27-01-10 of the North
6 Dakota Century Code, relating to fee assessments for funding crime victim and witness
7 programs; to provide a penalty; to provide legislative intent; to provide a contingent effective
8 date; and to declare an emergency.

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

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

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
17 Salaries and wages	\$40,503,865	(\$236,581)	\$40,267,284
18 Operating expenses	24,672,585	(8,527,581)	16,145,004
19 <u>Salaries and wages</u>	<u>\$40,503,865</u>	<u>\$740,901</u>	<u>\$41,244,766</u>
20 <u>Operating expenses</u>	<u>24,672,585</u>	<u>(8,115,027)</u>	<u>16,557,558</u>
21 Capital assets	2,339,187	403,185	2,742,372
22 Grants	1,762,659	677,341	2,440,000
23 Litigation fees	50,000	100,000	150,000
24 Intellectual property attorney	418,323	8,808	427,131

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1	<u>Intellectual property attorney</u>	<u>418,323</u>	<u>8,601</u>	<u>426,924</u>
2	Abortion litigation fees	400,000	(400,000)	0
3	Medical examinations	660,000	0	660,000
4	North Dakota lottery	5,282,778	55,989	5,338,767
5	<u>North Dakota lottery</u>	<u>5,282,778</u>	<u>54,019</u>	<u>5,336,797</u>
6	Arrest and return of fugitives	10,000	0	10,000
7	Gaming commission	7,490	0	7,490
8	Criminal justice information sharing	4,151,701	(764,019)	3,387,682
9	Law enforcement	3,455,725	(550,907)	2,904,818
10	Total all funds	\$83,714,313	(\$9,233,765)	\$74,480,548
11	Less estimated income	35,247,452	(4,766,904)	30,480,548
12	Total general fund	\$48,466,861	(\$4,466,861)	\$44,000,000
13	Full-time equivalent positions	250.00	(19.00)	231.00
14	<u>Criminal justice information sharing</u>	<u>4,151,701</u>	<u>(765,056)</u>	<u>3,386,645</u>
15	<u>Law enforcement</u>	<u>3,455,725</u>	<u>(554,117)</u>	<u>2,901,608</u>
16	<u>SAVIN cost share program</u>	<u>0</u>	<u>315,000</u>	<u>315,000</u>
17	<u>Total all funds</u>	<u>\$83,714,313</u>	<u>(\$7,535,153)</u>	<u>\$76,179,160</u>
18	<u>Less estimated income</u>	<u>35,247,452</u>	<u>(4,456,132)</u>	<u>30,791,320</u>
19	<u>Total general fund</u>	<u>\$48,466,861</u>	<u>(\$3,079,021)</u>	<u>\$45,387,840</u>
20	<u>Full-time equivalent positions</u>	<u>250.00</u>	<u>(13.00)</u>	<u>237.00</u>

21 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
 22 includes the sum of ~~\$695,462~~\$645,074, of which ~~\$637,105~~\$590,945 is from the general fund,
 23 for increases in employee health insurance premiums from \$1,130 to ~~\$1,249~~\$1,241 per month.

24 **SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE**
 25 **SIXTY-SIXTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding
 26 items approved by the sixty-fourth legislative assembly adjusted for the 2015-17 biennium and
 27 the 2017-19 biennium one-time funding items included in the appropriation in section 1 of this
 28 Act:

29	<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
30	Bureau of criminal investigation vehicles	\$332,000	\$0
31	Grants	500,000	0

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1	Higher education legal services	600,000	0
2	Criminal justice information sharing	957,856	0
3	Targeted equity - bureau of criminal investigation	1,276,301	0
4	Targeted equity - gaming	270,000	0
5	Total all funds	\$3,936,157	\$0
6	Total special funds	653,333	0
7	Total general fund	\$3,282,824	\$0
8	Targeted equity - gaming	270,000	0
9	SAVIN cost share program	0	315,000
10	Uniform crime reporting rewrite	0	280,000
11	DOS based deposit system rewrite	0	100,000
12	Total all funds	\$3,936,157	\$695,000
13	Total special funds	653,333	315,000
14	Total general fund	\$3,282,824	\$380,000

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

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

24 **SECTION 5. TOBACCO SETTLEMENT TRUST FUND - USE.** The estimated income line
 25 item in section 1 of this Act includes \$200,000 from the tobacco settlement trust fund which the
 26 attorney general may use for the purpose of enforcing the master settlement agreement and
 27 any disputes with the agreement, during the biennium beginning July 1, 2017, and ending
 28 June 30, 2019.

29 **SECTION 6. INDUSTRIAL COMMISSION LITIGATION FUNDS - GRANT TO ATTORNEY**
 30 **GENERAL.** As requested by the attorney general, the industrial commission shall provide a
 31 grant from funds appropriated to the industrial commission for litigation expenses to the attorney

1 general for litigation-related expenses incurred by the attorney general as a result of the
2 protests and related activities associated with the Dakota access pipeline project for the
3 biennium beginning July 1, 2017, and ending June 30, 2019.

4 **SECTION 7. ADDITIONAL INCOME - APPROPRIATION - REPORT.** In addition to the
5 amounts appropriated to the attorney general in section 1 of this Act, there is appropriated from
6 federal or other funds, the sum of \$250,000, or so much of the sum as may be necessary, to the
7 attorney general for the purposes of defraying the expenses of the office, for the biennium
8 beginning July 1, 2017, and ending June 30, 2019. The attorney general shall notify the office of
9 management and budget and the legislative council of any funding made available pursuant to
10 this section.

11 **SECTION 8. CONTINGENT APPROPRIATION - FUNDING FOR STATEWIDE**
12 **AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM ENHANCEMENTS.**

13 Of the funds appropriated in section 1 of this Act for rent expense, the attorney general shall
14 use up to \$500,000 made available from rent savings as a result of the attorney general
15 relocating a portion of its operations to the job service North Dakota central office building, for
16 the purpose of enhancing the statewide automated victim information and notification program,
17 as defined in section 12.1-34-01, to provide the notifications necessary to comply with
18 section 25 of article I of the Constitution of North Dakota, for the biennium beginning July 1,
19 2017, and ending June 30, 2019. If the attorney general does not relocate a portion of its
20 operations to the job service North Dakota central office building and does not realize rent
21 savings, there is appropriated out of any moneys in the oil and gas impact grant fund in the
22 state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may
23 be necessary, to the attorney general for the purpose of defraying the expenses of enhancing
24 the statewide automated victim information and notification program, as defined in section
25 12.1-34-01, to provide the notifications necessary to comply with section 25 of article I of the
26 Constitution of North Dakota, for the period beginning with the effective date of this Act, and
27 ending June 30, 2019.

28 **SECTION 9. STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION**
29 **PROGRAM ENHANCEMENTS - COST-SHARING PROGRAM - ESTIMATED INCOME.** The
30 attorney general, in consultation with the North Dakota association of counties and the North
31 Dakota league of cities, shall establish a cost sharing program to defray the expenses related to

1 the enhancement of the statewide automated victim information and notification program, in
2 addition to the amounts appropriated in section 8 of this Act. The cost-sharing program must
3 apportion the sum of \$315,000 among the political subdivisions of the state for each political
4 subdivision's share of the cost of the statewide automated victim information and notification
5 program and the political subdivision shall contribute funds to the attorney general as set forth
6 in the cost-sharing program. The estimated income line item in section 1 of this Act includes
7 \$315,000 of funding received as payments from political subdivisions for the cost-sharing
8 program for the purpose of enhancing the statewide automated victim information and
9 notification program, as defined in section 12.1-34-01, to provide the notifications necessary to
10 comply with section 25 of article I of the Constitution of North Dakota, for the period beginning
11 with the effective date of this Act, and ending June 30, 2019.

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

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

19 **27-01-10. Fee assessments for funding crime victim and witness programs.**

- 20 1. The governing body of a county ~~may~~must, by resolution, authorize the district judges
21 serving that county to assess a fee under subsection 3 of not more than twenty-five
22 dollars as part of a sentence imposed on a defendant who pleads guilty to or is
23 convicted of a criminal offense or of violating a municipal ordinance for which the
24 maximum penalty that may be imposed by law for the offense or violation includes
25 imprisonment.
- 26 2. The governing body of a city ~~may~~must, by ordinance, authorize a municipal judge to
27 assess a fee under subsection 3 of not more than twenty-five dollars as part of a
28 sentence imposed on a defendant who pleads guilty to or is convicted of violating a
29 municipal ordinance for which the maximum penalty that may be imposed under the
30 ordinance for the violation includes imprisonment.

1 3. The governing body of the county or city ~~may~~must determine the amount of the fee to
2 be assessed in all cases or it may authorize the district or municipal judge to
3 determine the amount of the fee to be assessed in each case. The fee assessed
4 under this section is in addition to any fine, penalty, costs, or administrative fee
5 prescribed by law. The district or municipal judge ~~may~~must assess the fee when
6 sentence is imposed or when sentence is suspended or imposition of sentence is
7 deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a
8 district or municipal court under this section must be deposited monthly in the county
9 or city treasury for allocation by the governing body of the county or city to one or
10 more of the following programs as determined by the governing body or by agreement
11 of the attorney general, the North Dakota league of cities, and the North Dakota
12 association of counties:

- 13 a. A private, nonprofit domestic violence or sexual assault program.
14 b. A victim and witness advocacy program of which the primary function is to
15 provide direct services to victims of and witnesses to crime.
16 c. The statewide automated victim information and notification system, as provided
17 for under chapter 12.1-34.

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

20 **54-12.1-01. Definitions.**

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

- 22 1. "Abuse" means conduct by a provider, or other person involving disregard of and an
23 unreasonable failure to conform with the laws and rules governing the Medicaid
24 program if the disregard or failure results or may result in payment by a Medicaid
25 agency of medical assistance payments or benefits to which the person knows the
26 person is not entitled.
- 27 2. "Benefit" means the provision of anything of pecuniary value to or on behalf of a
28 recipient under the Medicaid program.
- 29 3. a. "Claim" means a request or demand, whether under a contract or otherwise, for
30 money or property under the Medicaid program and regardless of whether the
31 state has title to the money or property:

- 1 (1) Presented to an officer, employee, or agent of the state; or
- 2 (2) Made to a contractor, grantee, or other recipient, if the money or property is
- 3 to be spent or used on the state's behalf or to advance a state program or
- 4 interest, and if the state:
- 5 (a) Provides or has provided any portion of the money or property
- 6 requested or demanded; or
- 7 (b) Will reimburse the contractor, grantee, or other recipient for any
- 8 portion of the money or property requested or demanded.
- 9 b. The term does not include requests or demands for money or property the state
- 10 has paid to an individual as compensation for state employment or as an income
- 11 subsidy with no restrictions on that individual's use of the money or property.
- 12 4. "Department" means the department of human services.
- 13 5. "Document" means an application, claim, form, report, record, writing, or
- 14 correspondence, whether in written, electronic, magnetic, or other form.
- 15 6. "Fraud" means conduct or activity prohibited by law or rule involving knowing conduct
- 16 or omission to perform a duty that may result or has resulted in Medicaid payments or
- 17 benefits to which the recipient is not entitled.
- 18 7. "Knowingly" or "knowing" requires no proof of specific intent to defraud and means a
- 19 person has actual knowledge of the information and acts in deliberate ignorance of the
- 20 truth or falsity of the information or acts in reckless disregard of the truth or falsity of
- 21 the information.
- 22 8. "Material" means having a natural tendency to influence or be capable of influencing
- 23 the payment or receipt of money or property.
- 24 9. "Medicaid agency" means an agency or entity of state, county, or local government
- 25 which administers any part of the Medicaid program, whether under direct statutory
- 26 authority or under contract with an authorized agency of the state or federal
- 27 government.
- 28 10. "Misappropriation of patient property" means exploitation, deliberate misplacement, or
- 29 wrongful use or taking of a patient's property, whether temporary or permanent,
- 30 without authorization by the patient or the patient's designated representative. The

1 term includes conduct with respect to a patient's property which would constitute a
2 criminal offense under chapter 12.1-23.

3 11. "Obligation" means an established duty arising from an express or implied contractual,
4 grantor-grantee, or licensor-licensee relationship, from a fee-based or similar
5 relationship, from statute or regulation, or from the retention of any overpayment.

6 12. "Original source" means an individual who either prior to a public disclosure has
7 voluntarily disclosed to the state the information on which allegations or transactions in
8 a claim are based or who has knowledge independent of and which materially adds to
9 the publicly disclosed allegations or transactions, and who has voluntarily provided the
10 information to the state before filing an action under this chapter.

11 13. "Patient abuse" means the willful infliction of physical or mental injury of a patient or
12 unreasonable confinement, intimidation, or punishment that results in pain, physical or
13 mental harm, or mental anguish of a patient. The term includes conduct with respect to
14 a patient which would constitute a criminal offense under chapter 12.1-16, 12.1-17,
15 12.1-18, 12.1-20, or 12.1-22.

16 14. "Patient neglect" means the failure, through inattentiveness, carelessness, or other
17 omission, to provide to a patient goods or services necessary to avoid physical harm,
18 mental anguish, or mental illness if the omission is not caused by factors beyond the
19 person's control or by good-faith errors in judgment. The term includes conduct with
20 respect to a patient which would constitute a criminal offense under section
21 12.1-17-03.

22 15. "Proceeds" means civil penalties and damages and excludes attorney's fees and
23 costs.

24 16. "Provider" means a person that furnishes items or services for which payment is
25 claimed under Medicaid.

26 17. "Record" means medical, professional, business, or financial information and
27 documents, whether in written, electronic, magnetic, microfilm, or other form:

28 a. Pertaining to the provision of treatment, care, services, or items to a recipient;

29 b. Pertaining to the income and expenses of the provider; or

30 c. Otherwise relating to or pertaining to a determination of entitlement to payment or
31 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

1 c. At the time the person furnished the attorney general with information about the
2 act, a criminal prosecution, civil action, or administrative action had not been
3 commenced with respect to the act and the person did not have actual
4 knowledge of the existence of an investigation into the act.

5 3. A person that violates this section also is liable to the state for the expenses, costs,
6 and attorney's fees of the civil action brought to recover the penalty or damages.

7 4. Liability under this section is joint and several for any act committed by two or more
8 persons.

9 **54-12.1-03. Filing prohibited.**

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

15 **54-12.1-04. Limitation of actions.**

16 1. Unless otherwise specified, a civil action filed under this chapter must be brought by
17 the later of:

18 a. Six years after the date on which the violation was committed; or

19 b. Three years after the date facts material to the right of action are known or
20 reasonably should have been known by the official of the state charged with
21 responsibility to act in the circumstances.

22 2. An action may not be brought under subdivision b of subsection 1 more than ten years
23 after the date on which the violation was committed.

24 **54-12.1-05. Investigation and action by attorney general.**

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

27 **54-12.1-06. Complaint by person - Civil action.**

28 1. A person may bring a civil action for a violation of this chapter on behalf of the person
29 and the state. The action must be brought in the name of the state. If the court and the
30 attorney general give written consent to the dismissal and provide the reasons for
31 consenting to the dismissal, the action may be dismissed.

- 1 2. A copy of the complaint and written disclosure of substantially all material evidence
- 2 and information the person possesses must be served on the attorney general
- 3 pursuant to rule 5 of the North Dakota Rules of Civil Procedure. The complaint must
- 4 be filed under seal and must remain under seal for at least sixty days. The complaint
- 5 may not be served upon the defendant until the court orders the complaint be served.
- 6 3. Within sixty days after receiving the complaint and the material evidence and
- 7 information, the attorney general may elect to intervene and proceed with the action or
- 8 to notify the court the attorney general declines to take over the action. If the attorney
- 9 general declines to intervene or take over the action, the person bringing the action
- 10 may conduct the action. For good cause shown, the attorney general may move the
- 11 court for extensions of the time during which the complaint remains under seal.
- 12 4. The defendant may not be required to respond to a complaint until twenty days after
- 13 the complaint is unsealed and served upon the defendant pursuant to rule 5 of the
- 14 North Dakota Rules of Civil Procedure.
- 15 5. If the attorney general proceeds with the action, the attorney general has the primary
- 16 responsibility for prosecuting the action and is not bound by any act of the person
- 17 bringing the action. The person bringing the action may continue as a party to the
- 18 action subject to the limitations set forth in this chapter.
- 19 6. If the attorney general elects not to proceed with the action and the person that
- 20 initiated the action conducts the action:
- 21 a. Upon the attorney general's request, the person that initiated the action shall
- 22 serve the attorney general with copies of all pleadings filed in the action and shall
- 23 supply the attorney general with copies of all deposition transcripts at the
- 24 attorney general's expense; or
- 25 b. The court, without limiting the status and rights of the person initiating the action,
- 26 may permit the attorney general to intervene at a later date upon a showing of
- 27 good cause.
- 28 7. If a person files a civil action under this section, a person other than the attorney
- 29 general may not intervene or bring a related action based on the facts underlying the
- 30 pending action.

1 8. Upon a showing by the attorney general unrestricted participation during the course of
2 the litigation by the person initiating the action would interfere with or unduly delay the
3 attorney general's prosecution of the case or would be repetitious, irrelevant, or for
4 purposes of harassment, the court may impose limitations on the person's
5 participation, including:

6 a. Limiting the number of witnesses the person may call;

7 b. Limiting the length of testimony of witnesses called by the person;

8 c. Limiting the person's cross-examination of witnesses; and

9 d. Otherwise limiting the participation of the person in the litigation.

10 9. Whether the attorney general proceeds with the action, upon an in-camera showing by
11 the attorney general that actions of discovery by the person initiating the action would
12 interfere with the attorney general's investigation or prosecution of a criminal or civil
13 matter arising out of the same facts, the court may stay the discovery for not more
14 than sixty days. The court may extend the sixty-day period upon a further in-camera
15 showing that the attorney general has pursued the criminal or civil investigation with
16 reasonable diligence and any discovery in the civil action will interfere with the ongoing
17 investigation or proceedings.

18 10. The attorney general may elect to pursue the claim through any alternate remedy
19 available including administrative proceedings to determine a civil penalty. If an
20 alternate remedy is pursued, the person initiating the action has the same rights in the
21 proceeding as the person would in proceeding under this section. A finding of fact or
22 conclusion of law made in the other proceeding that has become final is conclusive on
23 all parties to an action under this section. A finding or conclusion is final if the finding or
24 conclusion has been determined on appeal to the appropriate court, if time for filing an
25 appeal has expired, or if the finding or conclusion is not subject to judicial review.

26 11. If the attorney general elects to intervene and proceed with an action, the attorney
27 general may file a complaint or amend the complaint of any person that brought an
28 action to clarify or add detail to the claim in which the attorney general is intervening or
29 to add additional claims. For statute of limitations purposes, any such pleading relates
30 back to the filing date of the complaint of the person that originally brought the action.

1 to the extent the attorney general's claim arises out of the conduct, transactions, or
2 occurrences set forth or attempted to be set forth in the prior complaint of that person.

3 **54-12.1-07. Dismissal of civil action.**

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

8 **54-12.1-08. Burden of proof.**

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

11 **54-12.1-09. Distribution of damages and civil penalty.**

12 1. Except as provided in subsection 2, if the attorney general proceeds with an action
13 brought by a person under section 54-12.1-06, the person is entitled to receive at least
14 fifteen percent, but not more than twenty-five percent, of the proceeds recovered and
15 collected in the action or in settlement of the claim, depending on the extent to which
16 the person substantially contributed to the prosecution of the action.

17 2. The court may award an amount the court considers appropriate, but in no case more
18 than ten percent of the proceeds in an action the court finds to be based primarily on
19 disclosures of specific information, other than information provided by the person
20 bringing the action, relating to allegations or transactions disclosed through a criminal,
21 civil, or administrative hearing; a legislative, administrative, or auditor report, hearing,
22 audit, or investigation; or the news media. In determining the award, the court shall
23 take into account the significance of the information and the role of the person bringing
24 the action in advancing the case to litigation.

25 3. A payment to a person bringing an action under this section may be made only from
26 the proceeds recovered and collected in the action or in settlement of the claim. In
27 addition, the person is entitled to receive an amount for reasonable expenses the court
28 finds to have been necessarily incurred and reasonable attorney's fees and costs. The
29 expenses, fees, and costs must be awarded against the defendant.

30 4. If the attorney general does not proceed with an action under section 54-12.1-06, the
31 person bringing the action or settling the claim is entitled to receive an amount the

1 court decides is reasonable for collecting the civil penalty and damages on behalf of
2 the attorney general. The amount may not be less than twenty-five percent nor more
3 than thirty percent of the proceeds recovered and collected in the action or settlement
4 of the claim and must be paid out of the proceeds. In addition, the person is entitled to
5 receive an amount for reasonable expenses the court finds were necessarily incurred,
6 plus reasonable attorney's fees and costs. All expenses, fees, and costs must be
7 awarded against the defendant.

8 5. Whether the attorney general proceeds with the action, if the court finds the action was
9 brought by a person that planned or initiated the violation of this chapter, the court may
10 reduce or eliminate the share of the proceeds the person would otherwise receive
11 under subsections 1, 2, 3, and 4, taking into account the role of the person in
12 advancing the case to litigation and any relevant circumstances pertaining to the
13 violation. If the person bringing the action is convicted of criminal conduct arising from
14 the person's role in the violation of this section, the person must be dismissed from the
15 civil action and may not receive any share of the proceeds of the action. The dismissal
16 does not prejudice the right of the attorney general to continue the action.

17 6. The attorney general is entitled to any damages and civil penalties not awarded to the
18 person bringing the action, and the damages and civil penalties must be deposited in
19 the state general fund.

20 7. Unless otherwise provided, the remedies or penalties provided by this chapter are
21 cumulative to each other and to the remedies or penalties available under all other
22 laws of the state.

23 **54-12.1-10. Effect of criminal conviction.**

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

28 **54-12.1-11. Costs and attorney's fees.**

29 When the state favorably settles or prevails in a civil action in which the attorney general
30 has intervened or filed, the state is entitled to be awarded reasonable expenses, consultant and
31 expert witness fees, costs, and attorney's fees. In an action in which outside counsel is engaged

1 by the attorney general, the costs and attorney's fees awarded to that counsel must equal the
2 outside counsel's charges reasonably incurred for costs and attorney's fees in prosecuting the
3 action. A plaintiff is entitled to an amount for reasonable expenses the court finds to have been
4 necessarily incurred, plus reasonable costs and attorney's fees, if the action is settled favorably
5 for the state or the state prevails in the action. The expenses, fees, and costs must be awarded
6 against the defendant. A defendant in a civil action brought under this chapter which prevails in
7 an action that is not settled and which the court finds was clearly frivolous or brought solely for
8 harassment purposes is entitled to reasonable costs and attorney's fees, which must be
9 equitably apportioned against the person that brought the action and the state if a person and
10 the state were coplaintiffs.

11 **54-12.1-12. Relief from retaliatory actions.**

12 1. An employee, contractor, or agent is entitled to all relief necessary to make that
13 employee, contractor, or agent whole, if that employee, contractor, or agent is
14 discharged, demoted, suspended, threatened, harassed, or in any other manner
15 discriminated against in the terms and conditions of employment because of lawful
16 acts done by the employee, contractor, agent, or associated others in furtherance of an
17 action under this chapter or other efforts to stop one or more violations of this chapter.

18 2. Relief under subsection 1 includes reinstatement with the same seniority status the
19 employee, contractor, or agent would have had but for the discrimination, twice the
20 amount of backpay, interest on the backpay, and compensation for any special
21 damages sustained as a result of the discrimination, including litigation costs and
22 reasonable attorney's fees. An action under this section may be brought in the
23 appropriate district court for the relief provided in this subsection.

24 3. A civil action under this section may not be brought more than three years after the
25 date when the retaliation occurred.

26 **54-12.1-13. Settlement by attorney general.**

27 The attorney general may settle the case with a defendant notwithstanding the objections of
28 any person that initiated the action if the court determines, after a hearing, the settlement is fair,
29 adequate, and reasonable under the circumstances. Upon a showing of good cause, the
30 hearing may be held in camera. A hearing is not otherwise required for the court to approve a
31 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

1 penalties under Medicaid, Medicare, or other state or federal benefit or
2 assistance programs; and

3 f. Recommend to state agencies appropriate or necessary adoption or revision of
4 laws, rules, policies, and procedures to prevent fraud, abuse, and other improper
5 activities under the Medicaid program and to aid in the investigation and
6 prosecution of fraud, abuse, and other improper activities under the Medicaid
7 program.

8 2. The Medicaid fraud control unit may:

9 a. Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any
10 court of competent jurisdiction in the state;

11 b. Upon request, obtain information and records from applicants, recipients, and
12 providers;

13 c. Subject to applicable federal confidentiality laws and rules and for purposes
14 related to any investigation or prosecution under subsection 1, obtain from the
15 department, local offices of public assistance, and other local, county, or state
16 government departments or agencies records and other information, including
17 applicant and recipient applications, provider enrollment forms, claims and
18 reports, individual or entity tax returns, or other information provided to or in the
19 possession of the tax commissioner or the state auditor;

20 d. Refer appropriate cases to other federal, state, or local agencies for investigation,
21 prosecution, or imposition of penalties, restrictions, or sanctions; and

22 e. Enter agreements with the department and other federal, state, and local
23 agencies in furtherance of the unit's mission.

24 **54-12.1-16. Investigative demand procedure.**

25 1. When there is reason to believe a person may be in possession, custody, or control of
26 documentary material or information relevant to a potential medical assistance
27 investigation, the attorney general may, before commencing a proceeding under this
28 chapter, issue in writing and cause to be served upon the person, on forms the
29 attorney general prescribes, an investigative demand requiring the person to:

30 a. Produce the documentary material for inspection and copying;

- 1 b. Answer in writing written interrogatories with respect to the documentary material
- 2 or information;
- 3 c. Be examined under oath concerning the documentary material or information;
- 4 and
- 5 d. Furnish any combination of the material, answers, or testimony.
- 6 2. Each investigative demand must state the nature of the conduct constituting the
- 7 alleged violation of law under investigation and the applicable provision of law alleged
- 8 to be violated.
- 9 3. An investigative demand may be served by an agent or as otherwise provided by the
- 10 North Dakota Rules of Civil Procedure. A verified return by the individual serving an
- 11 investigative demand setting forth the manner of the service is proof of service. In the
- 12 case of service by registered or certified mail, the return must be accompanied by the
- 13 return post office receipt of delivery of the demand.
- 14 4. If the demand is for the production of documentary material, the demand must:
- 15 a Describe each class of documentary material to be produced with such
- 16 definiteness and certainty as to permit the material to be fairly identified; and
- 17 b. Prescribe a return date for each such class which provides a reasonable period
- 18 of time within which the material demanded may be assembled and made
- 19 available for inspection and copying.
- 20 5. The production of documentary material in response to an investigative demand
- 21 served under this section must be made under a sworn certificate stating all of the
- 22 documentary material required by the demand and in the possession, custody, or
- 23 control of the person to which the demand is directed has been produced and made
- 24 available to the agent identified in the demand, by:
- 25 a. In the case of an individual, the individual to whom the demand is directed; or
- 26 b. In the case of a person other than an individual, a person having knowledge of
- 27 the facts and circumstances relating to the production and authorized to act on
- 28 behalf of that person.
- 29 6. A person upon which any investigative demand for the production of documentary
- 30 material has been served under this section shall make the material available for
- 31 inspection and copying to the agent identified in the demand at the principal place of

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

6 7. If the demand is for answers to written interrogatories, the demand shall:

7 a. Set forth with specificity the written interrogatories to be answered; and

8 b. Prescribe dates at which time answers to written interrogatories must be
9 submitted.

10 8. Each interrogatory in an investigative demand served under this section must be
11 answered separately and fully in writing under oath and must be submitted under a
12 sworn certificate, in the form designated by the demand by:

13 a. In the case of an individual, the individual to whom the demand is directed; or

14 b. In the case of a person other than an individual, the person responsible for
15 answering each interrogatory.

16 9. If any interrogatory is objected to, the reasons for the objection must be stated in the
17 certificate instead of an answer. The certificate must state that all information required
18 by the demand and in the possession, custody, control, or knowledge of the person to
19 which the demand is directed has been submitted. To the extent any information is not
20 furnished, the information must be identified and reasons set forth with particularity
21 explaining why the information was not furnished.

22 10. a. If the demand is for the giving of oral testimony, the demand must:

23 (1) Prescribe a date, time, and place at which oral testimony must be
24 commenced;

25 (2) Specify that attendance and testimony are necessary to the conduct of the
26 investigation;

27 (3) Notify the individual receiving the demand of the right to be accompanied by
28 an attorney; and

29 (4) Describe the general purpose for which the demand is being issued and the
30 general nature of the testimony, including the primary areas of inquiry, which
31 will be taken pursuant to the demand.

1 b. The examination of an individual pursuant to an investigative demand for oral
2 testimony served under this section must be taken under oath or affirmation of
3 this state or of the place where the examination is held. The oath may be in
4 writing and the agent shall record the testimony of the witness.

5 11. An investigative demand issued under this chapter may not require the production of a
6 documentary material, the submission of answers to written interrogatories, or the
7 giving of oral testimony if the material, answers, or testimony would be protected from
8 disclosure under any applicable law or court order.

9 12. If a person fails or refuses to file any statement or report, appear or cooperate with an
10 examination under oath or obey any subpoena issued by the attorney general, the
11 attorney general may, after notice, petition a district court and, after hearing, request
12 an order requiring compliance. If the attorney general prevails in a proceeding under
13 this section, the court may assess the nonprevailing person for all hearing costs,
14 including reasonable attorney's fees.

15 **54-12.1-17. Medicaid fraud - Criminal penalty.**

16 1. A person commits a criminal offense under this section if the person knowingly:

17 a. Presents for allowance, for payment, or for the purpose of concealing, avoiding,
18 or decreasing an obligation to pay a false or fraudulent medical assistance claim,
19 bill, account, voucher, or writing to a public agency, public servant, or contractor
20 authorized to allow or pay medical assistance claims presented to a public
21 agency;

22 b. Solicits, accepts, offers, or provides any remuneration, including a kickback,
23 bribe, or rebate, other than an amount legally payable under the medical
24 assistance program, for furnishing services or items for which payment may be
25 made under the Medicaid program or in return for purchasing, leasing, ordering,
26 arranging for, or recommending the purchasing, leasing, or ordering of any
27 services or items from a provider for which payment may be made under the
28 Medicaid program;

29 c. Makes, offers, or accepts any remuneration, rebate of a fee, or charge for
30 referring a recipient to another provider for the furnishing of services or items for
31 which payment may be made under the Medicaid program; or

1 d. Fails or refuses to provide covered medically necessary services to eligible
2 recipients as required with respect to a managed care contract, health
3 maintenance organization contract, or similar contract or subcontract under the
4 Medicaid program.

5 2. Any conduct or activity that does not violate or that is protected under this chapter or
6 federal regulations [42 U.S.C. 1395nn; 42 U.S.C. 1320a-7b(b)] is not considered an
7 offense under subdivision b of subsection 1, and the conduct or activity must be
8 accorded the same protections allowed under federal laws and regulations.

9 3. In a prosecution for a violation of this section, it is a defense if the person acted in
10 reliance upon the written authorization or advice of the department.

11 4. A person convicted of this offense involving payments, benefits, kickbacks, bribes,
12 rebates, remuneration, services, or claims not exceeding one thousand dollars in
13 value is guilty of a class A misdemeanor.

14 5. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes,
15 rebates, remuneration, services, or claims of the Medicaid fraud were part of a
16 common scheme and exceed one thousand dollars in value, a violation of this chapter
17 is a class C felony.

18 6. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes,
19 rebates, remuneration, services, or claims of the Medicaid fraud were part of a
20 common scheme and exceed ten thousand dollars in value but do not exceed fifty
21 thousand dollars, a violation of this chapter is a class B felony.

22 7. Notwithstanding subsection 4, if the value of the payments, benefits, kickbacks, bribes,
23 rebates, remuneration, services, or claims of the Medicaid fraud were part of a
24 common scheme and exceed fifty thousand dollars in value, a violation of this chapter
25 is a class A felony.

26 8. For purposes of imposing a sentence for a conviction under this chapter, the value of
27 payments, benefits, kickbacks, bribes, rebates, remuneration, or services involved is
28 the greater of the value of Medicaid payments or benefits received as a result of the
29 illegal conduct or activity or the value of the payments, benefits, kickbacks, bribes,
30 rebates, remuneration, services, or charge involved.

1 9. Amounts involved in Medicaid fraud committed under a common scheme or the same
2 transaction may be aggregated in determining the value involved.

3 10. A person convicted of the offense of Medicaid fraud must be suspended from
4 participation in the Medicaid program:

5 a. For not less than one year for a first offense, or the person may be permanently
6 terminated from participation in the medical assistance program;

7 b. For not less than three years for a second offense, or the person may be
8 permanently terminated from participation in the medical assistance program; or

9 c. Permanently for a third offense.

10 11. In addition to any other penalty provided by law, a person convicted of Medicaid fraud
11 is not entitled to bill or collect from the recipient, the Medicaid program, or any other
12 third-party payer for the services or items involved and shall repay to the Medicaid
13 program any payments or benefits obtained by any person for the services or items
14 involved.

15 **54-12.1-18. Cooperation of governmental agencies with Medicaid fraud control unit.**

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

18 **SECTION 13. APPROPRIATION - MEDICAID FRAUD CONTROL UNIT.** There is
19 appropriated out of any moneys in the general fund in the state treasury, not otherwise
20 appropriated, the sum of \$156,160, or so much of the sum as may be necessary, and
21 \$1,405,444 from special funds derived from federal funds, to the attorney general for the
22 purpose of establishing a Medicaid fraud control unit, for the biennium beginning with the
23 effective date of this Act and ending June 30, 2019. For the Medicaid fraud control unit, the
24 attorney general is authorized two full-time equivalent assistant attorney general positions, two
25 full-time equivalent investigator positions, one full-time equivalent auditor position, and one full-
26 time equivalent administrative assistant position. The attorney general may not spend any funds
27 designated for these positions for purposes other than the salaries and wages and operating
28 expenses of the Medicaid fraud control unit.

29 **SECTION 14. CRIMINAL HISTORY RECORD CHECKS - FEES.** Any person or entity
30 requesting a criminal history record check from the bureau of criminal investigation, as a result
31 of legislation enacted by the sixty-fifth legislative assembly, shall pay a reasonable fee

1 established by the attorney general to the attorney general to be deposited in the state's general
2 fund for the biennium beginning July 1, 2017, and ending June 30, 2019.

3 **SECTION 15. EXEMPTION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.**

4 The amount appropriated to the attorney general from the strategic investment and
5 improvements fund for awarding grants to law enforcement agencies, for crime-related needs of
6 the attorney general's office, and for development of a uniform law enforcement and custody
7 manual, as contained in section 11 of chapter 471 of the 2013 Session Laws and as continued
8 in section 5 of chapter 37 of the 2015 Session Laws, is not subject to the provisions of section
9 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general
10 for crime-related needs of the attorney general's office, during the biennium beginning July 1,
11 2017, and ending June 30, 2019.

12 **SECTION 16. EXEMPTION - ATTORNEY GENERAL REFUND FUND.** Notwithstanding
13 section 54-12-18, the attorney general may retain the balance in the attorney general refund
14 fund that would otherwise be transferred to the general fund on June 30, 2017.

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

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

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