

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1012

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 human services; to authorize the department of human services to convey land in Walsh
3 County; to amend and reenact section 50-24.1-37 of the North Dakota Century Code, relating to
4 Medicaid expansion; to repeal section 50-24.1-37 of the North Dakota Century Code, relating to
5 the Medicaid expansion program; to provide for exemptions; to provide statements of legislative
6 intent; to provide a report to the legislative management; to provide for a legislative
7 management study; to provide appropriations; to provide an expiration date; to provide a
8 contingent effective 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
11 funds 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 department of human services for the purpose of defraying the expenses
14 of its various divisions, for the biennium beginning July 1, 2017, and ending June 30, 2019, as
15 follows:

16 Subdivision 1.

17 MANAGEMENT

		Adjustments or		
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>	
18				
19				
20	Salaries and wages	\$28,049,386	(\$4,612,071)	\$23,437,315
21	Operating expenses	87,542,966	71,922,860	159,465,826
22	Capital assets	26,000	(26,000)	0
23	Grants	<u>0</u>	<u>204,000</u>	<u>204,000</u>
24	Total all funds	\$115,618,352	\$67,488,789	\$183,107,141

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1	Less estimated income	<u>71,324,758</u>	<u>56,767,760</u>	<u>128,092,518</u>
2	Total general fund	\$44,293,594	\$10,721,029	\$55,014,623
3	Subdivision 2.			

PROGRAM AND POLICY

4			Adjustments or	
5		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
6	Salaries and wages	\$58,102,898	\$2,884,535	\$60,987,433
7	Operating expenses	107,383,843	17,207,206	124,591,049
8	Capital assets	0	10,000	10,000
9	Grants	457,953,280	5,921,488	463,874,768
10	Grants - medical assistance	<u>2,384,560,568</u>	<u>(30,582,216)</u>	<u>2,353,978,352</u>
11	Total all funds	\$3,008,000,589	(\$4,558,987)	\$3,003,441,602
12	Less estimated income	<u>1,995,024,801</u>	<u>(90,849,740)</u>	<u>1,904,175,061</u>
13	Total general fund	\$1,012,975,788	\$86,290,753	\$1,099,266,541
14	Subdivision 3.			

FIELD SERVICES

16			Adjustments or	
17		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
18	Human service centers	\$198,888,443	(\$3,083,589)	\$195,804,854
19	Institutions	<u>139,587,498</u>	<u>258,930</u>	<u>139,846,428</u>
20	Total all funds	\$338,475,941	(\$2,824,659)	\$335,651,282
21	Less estimated income	<u>132,820,302</u>	<u>5,301,710</u>	<u>138,122,012</u>
22	Total general fund	\$205,655,639	(\$8,126,369)	\$197,529,270

23 Subdivision 4.

BILL TOTAL

25			Adjustments or	
26		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
27	Grand total general fund	\$1,262,925,021	\$88,885,413	\$1,351,810,434
28	Grand total special funds	<u>2,199,169,861</u>	<u>(28,780,270)</u>	<u>2,170,389,591</u>
29	Grand total all funds	\$3,462,094,882	\$60,105,143	\$3,522,200,025
30	Full-time equivalent positions	2,211.08	(74.85)	2,136.23

1 **SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act
2 includes the sum of \$6,376,445, of which \$5,350,004 is from the general fund, for increases in
3 employee health insurance premiums from \$1,130 to \$1,249 per month.

4 **SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**
5 **SIXTY-SIXTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding
6 items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium
7 and the 2017-19 biennium one-time funding items included in the appropriations in section 1 of
8 this Act:

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

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

30 **SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding
31 section 54-16-04, the department of human services may transfer appropriation authority

1 between line items within subdivisions 1, 2, and 3 of section 1 of this Act for the biennium
2 beginning July 1, 2017, and ending June 30, 2019. The department of human services shall
3 notify the office of management and budget and the legislative council of any transfer made
4 pursuant to this section. The department shall report to the budget section after June 30, 2018,
5 any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-sixth
6 legislative assembly regarding any transfers made pursuant to this section.

7 **SECTION 5. EXEMPTION.** The amount appropriated for the replacement of the Medicaid
8 management information system and related projects in chapter 50 of the 2007 Session Laws
9 and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11.
10 Any unexpended funds from these appropriations approved under section 54-44.1-11 for
11 continuation into the 2009-11 biennium and then the 2011-13 biennium and then the 2013-15
12 biennium and then the 2015-17 biennium are available for the completion of the Medicaid
13 management information system and related projects during the biennium beginning July 1,
14 2017, and ending June 30, 2019.

15 **SECTION 6. EXEMPTION.** The amount appropriated for the modification of the department
16 of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws
17 is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this
18 appropriation approved under section 54-44.1-11 for continuation into the 2013-15 biennium
19 and then the 2015-17 biennium are available for the completion of the modification of the
20 eligibility systems project during the biennium beginning July 1, 2017, and ending June 30,
21 2019.

22 **SECTION 7. EXEMPTION.** The amount appropriated for the development of the electronic
23 health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of
24 section 54-44.1-11. Any unexpended funds from this appropriation approved under section
25 54-44.1-11 for continuation into the 2015-17 biennium are available for the completion of the
26 electronic health records system during the biennium beginning July 1, 2017, and ending
27 June 30, 2019.

28 **SECTION 8. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,
29 \$16,000,000 is from the tobacco prevention and control trust fund for the purpose of defraying
30 expenses in the medical services division, for the biennium beginning July 1, 2017, and ending
31 June 30, 2019.

1 **SECTION 9. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,
2 \$686,191 is from the health care trust fund for the purpose of defraying expenses of long-term
3 care services programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

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

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

16 **SECTION 12. LEGISLATIVE INTENT - POLICY CHANGES AND CLARIFICATION**
17 **RELATED TO HOME HEALTH.** It is the intent of the sixty-fifth legislative assembly that the
18 department of human services adopt rules in accordance with the Medicaid program, face-
19 to-face requirements for home health services; policy changes and clarifications related to
20 home health final rule published by the centers for Medicare and Medicaid services on
21 February 2, 2016; title 42, Code of Federal Regulations, part 440. It is further the intent of the
22 legislative assembly that the department require certified home health agencies to ensure a
23 face-to-face visit occurred between a physician and Medicaid beneficiary before initiating home
24 health services, and to ensure a face-to-face visit between a physician or nonphysician provider
25 occurred before providing medical equipment, supplies, and appliances. It is further the intent of
26 the legislative assembly that the department adopt rules to define medical equipment, supplies,
27 and appliances and specify allowable time frames for the face-to-face visits.

28 **SECTION 13. LEGISLATIVE INTENT - TRAUMATIC BRAIN INJURY - 1915(i) STATE**
29 **PLAN AMENDMENT.** It is the intent of the sixty-fifth legislative assembly that the department of
30 human services apply for a 1915(i) state plan amendment for traumatic brain injury services.

1 The department may utilize an existing 0.5 full-time equivalent position and funding available in
2 the department's budget for this purpose.

3 **SECTION 14. LEGISLATIVE INTENT - GRAFTON JOB SERVICE NORTH DAKOTA**

4 **BUILDING PURCHASE.** It is the intent of the sixty-fifth legislative assembly that the department
5 of human services purchase the Grafton job service North Dakota building using donated funds
6 for the use of the life skills and transition center, but only if anticipated revenues generated from
7 use of the building will be sufficient to provide for the operating and maintenance costs of the
8 building.

9 **SECTION 15. CONVEYANCE OF LAND AUTHORIZED - LIFE SKILLS AND TRANSITION**

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

18 **SECTION 16. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES CASE**

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

26 **SECTION 17. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES -**

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

1 **SECTION 18. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - CONFLICT-**
2 **FREE CASE MANAGEMENT.** It is the intent of the sixty-fifth legislative assembly that the
3 department of human services request waivers or delays of implementation of conflict-free case
4 management rules and requirements for individuals with a developmental disability.

5 **SECTION 19. LEGISLATIVE MANAGEMENT STUDY - STATE MEDICAL ASSISTANCE**
6 **PROGRAMS.**

- 7 1. During the 2017-18 interim, the legislative management shall consider studying
8 options to operate the state medical assistance program and other related programs,
9 as managed care. The study must:
- 10 a. Identify and review populations to consider for managed care, including
11 individuals eligible under traditional medical assistance, Medicaid expansion, the
12 children's health insurance program, and individuals receiving services through
13 the long-term care and developmental disabilities programs.
 - 14 b. Consider the needs of individuals receiving services from managed care
15 programs in similar-sized states, and the alignment of benefit packages.
 - 16 c. Review populations covered by the program of all-inclusive care for the elderly in
17 other states.
 - 18 d. Consider options for including services under a managed care arrangement.
 - 19 e. Consider developing a proposed plan, cost estimates, and potential timeline for
20 implementing the managed care options identified.
 - 21 f. Consider preparing and distributing a request for information from managed care
22 organizations regarding the managed care options identified.
- 23 2. The legislative management shall report its findings and recommendations, together
24 with any legislation necessary to implement the recommendations, to the sixty-sixth
25 legislative assembly.

26 **SECTION 20. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **50-24.1-37. (Effective January 1, 2014, through July 31, 20172019) Medicaid**
29 **expansion - Legislative management report.**

- 30 1. The department of human services shall expand medical assistance coverage as
31 authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148],

- 1 as amended by the Health Care and Education Reconciliation Act of 2010 [Pub.
2 L. 111-152] to individuals under sixty-five years of age with income below one hundred
3 thirty-eight percent of the federal poverty level, based on modified adjusted gross
4 income.
- 5 2. The department of human services shall inform new enrollees in the medical
6 assistance program that benefits may be reduced or eliminated if federal participation
7 decreases or is eliminated.
- 8 3. Effective January 1, 2018, medical assistance expansion program applicants and
9 recipients who are at least nineteen but less than twenty-one years of age must
10 receive coverage through traditional medical assistance.
- 11 4. The department shall implement the expansion by bidding through private carriers or
12 utilizing the health insurance exchange.
- 13 5. The contract between the department and the private carrier must:
- 14 a. Provide a reimbursement methodology for all medications and dispensing fees
15 which identifies the minimum amount paid to pharmacy providers for each
16 medication. The reimbursement methodology, at a minimum, must:
- 17 (1) Be available on the department's website; and
18 (2) Encompass all types of pharmacy providers regardless of whether the
19 pharmacy benefits are being paid through the private carrier or contractor or
20 subcontractor of the private carrier under this section.
- 21 b. Provide full transparency of all costs and all rebates in aggregate.
- 22 c. Allow an individual to obtain medication from a pharmacy that provides mail order
23 service; however, the contract may not require mail order to be the sole method
24 of service.
- 25 d. Ensure that pharmacy services obtained in jurisdictions other than this state and
26 its three contiguous states are subject to prior authorization and reporting to the
27 department for eligibility verification.
- 28 e. Ensure the payments to pharmacy providers do not include a required payback
29 amount to the private carrier or one of the private carrier's contractors or
30 subcontractors which is not representative of the amounts allowed under the
31 reimbursement methodology provided in subdivision a.

1 f. Any

2 6. The contract between the department and the private carrier must provide the
3 department with full access to provider reimbursement rates. The department shall
4 consider provider reimbursement rate information in selecting a private carrier under
5 this section. Before August first of each even-numbered year, the department shall
6 submit a report to the legislative management regarding provider reimbursement rates
7 under the medical assistance expansion program. This report may provide cumulative
8 data and trend data but may not disclose identifiable provider reimbursement rates.

9 7. Provider reimbursement rate information received by the department under this
10 section and any information provided to the department of human services or any
11 audit firm by a pharmacy benefit manager under this section is confidential under
12 section 44-04-17.1, except the department may use the reimbursement rate
13 information to prepare the report to the legislative management as required under this
14 section.

15 **SECTION 21. REPEAL.** Section 50-24.1-37 of the North Dakota Century Code is repealed.

16 **SECTION 22. CONTINGENT EFFECTIVE DATE.** Section 21 of this Act becomes effective
17 if the executive director of the department of human services certifies to the secretary of state
18 and the legislative council the federal government ended the medical assistance expansion
19 program.

20 **SECTION 23. EMERGENCY.** Sections 10, 11, and 15 of this Act are declared to be an
21 emergency measure.