

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2012

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 create and enact two new sections to chapter 50-06 of the North Dakota
3 Century Code, relating to peer support specialist certification and the establishment of a
4 community behavioral health program; to amend and reenact section 50-24.1-37 of the North
5 Dakota Century Code, relating to the Medicaid expansion program; to provide for transfers; to
6 provide for a legislative management report; to provide for a legislative management study; to
7 provide an exemption; and to declare an emergency.

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

9 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
10 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
11 treasury, not otherwise appropriated, and from special funds derived from federal funds and
12 other income, to the department of human services for the purpose of defraying the expenses
13 of its various divisions, for the biennium beginning July 1, 2019, and ending June 30, 2021, as
14 follows:

15 Subdivision 1.

	MANAGEMENT		
		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
19 Salaries and wages	\$26,280,139	(\$6,136,338)	\$20,143,801
20 Operating expenses	116,315,826	31,908,694	148,224,520
21 Capital assets	0	50,000	50,000
22 Grants	<u>204,000</u>	<u>(204,000)</u>	<u>0</u>
23 Total all funds	\$142,799,965	\$25,618,356	\$168,418,321

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1	Less estimated income	<u>85,679,558</u>	<u>18,100,469</u>	<u>103,780,027</u>
2	Total general fund	\$57,120,407	\$7,517,887	\$64,638,294
3	Subdivision 2.			

PROGRAM AND POLICY

4			Adjustments or	
5		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
6	Salaries and wages	\$62,782,944	\$5,121,667	\$67,904,611
7	Operating expenses	125,299,436	22,965,990	148,265,426
8	Capital assets	10,000	0	10,000
9	Grants	441,420,827	7,455,348	448,876,175
10	Grants - medical assistance	<u>2,373,678,247</u>	<u>408,656,430</u>	<u>2,782,334,677</u>
11	Total all funds	\$3,003,191,454	\$444,199,435	\$3,447,390,889
12	Less estimated income	<u>1,945,157,519</u>	<u>246,336,098</u>	<u>2,191,493,617</u>
13	Total general fund	\$1,058,033,935	\$197,863,337	\$1,255,897,272
14	Subdivision 3.			

FIELD SERVICES

16			Adjustments or	
17		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
18	Human service centers	\$196,049,489	\$7,294,632	\$203,344,121
19	Institutions	<u>140,421,224</u>	<u>7,278,926</u>	<u>147,700,150</u>
20	Total all funds	\$336,470,713	\$14,573,558	\$351,044,271
21	Less estimated income	<u>138,543,705</u>	<u>(6,392,183)</u>	<u>132,151,522</u>
22	Total general fund	\$197,927,008	\$20,965,741	\$218,892,749

Subdivision 4.

COUNTY SOCIAL SERVICE FINANCING

25			Adjustments or	
26		<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
27	County social services	<u>\$0</u>	<u>\$182,300,000</u>	<u>\$182,300,000</u>
28	Total special funds	\$0	\$182,300,000	\$182,300,000

Subdivision 5.

BILL TOTAL

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
1			
2			
3	Grand total general fund	\$1,313,081,350	\$226,346,965 \$1,539,428,315
4	Grand total special funds	<u>2,169,380,782</u>	<u>440,344,384</u> <u>2,609,725,166</u>
5	Grand total all funds	\$3,482,462,132	\$666,691,349 \$4,149,153,481
6	Full-time equivalent positions	2,162.23	145.00 2,307.23

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-

SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in section 1 of this Act:

	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
11			
12	Medicaid expansion - fee schedule enhancement	\$226,000,000	\$0
13	County social service pilot program	160,700,000	0
14	Child care licensing and data system	3,000,000	0
15	Health information network and care coordination	40,800,000	0
16	Children's behavioral health services pilot project	150,000	0
17	Technology projects	0	13,785,658
18	Capital projects - life skills and transition center	0	4,277,165
19	Capital projects - state hospital	0	2,493,500
20	Medically complex children provider funding adjustment	0	977,603
21	State hospital study	<u>0</u>	<u>200,000</u>
22	Total all funds	\$430,650,000	\$21,733,926
23	Less estimated income	<u>404,500,000</u>	<u>20,556,323</u>
24	Total general fund	\$26,150,000	\$1,177,603

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of human services shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

1 **Peer support certification.**

2 The behavioral health division shall establish and implement a program for the certification
3 of peer support specialists. In developing the program, the division shall:

- 4 1. Define a peer support specialist;
- 5 2. Establish eligibility requirements for certification;
- 6 3. Establish application procedures and standards for the approval or disapproval of
7 applications for certification;
- 8 4. Enter reciprocity agreements with other states as deemed appropriate to certify
9 nonresident applicants registered under the laws of other states having requirements
10 for peer support specialists; and
- 11 5. Establish continuing education and certification renewal requirements.

12 **SECTION 4.** A new section to chapter 50-06 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Community behavioral health program.**

- 15 1. The department of human services shall establish and implement a community
16 behavioral health program to provide comprehensive community-based services for
17 individuals who have serious behavioral health conditions.
- 18 2. In developing the program, the department shall:
 - 19 a. Establish a referral and evaluation process for access to the program.
 - 20 b. Establish eligibility criteria that includes consideration of behavioral health
21 condition severity.
 - 22 c. Establish discharge criteria and processes.
 - 23 d. Develop program oversight and evaluation processes that include outcome and
24 provider reporting metrics.
 - 25 e. Establish a system through which the department:
 - 26 (1) Contracts with and pays behavioral health service providers.
 - 27 (2) Supervises, supports, and monitors referral caseloads and the provision of
28 services by contract behavioral health service providers.
 - 29 (3) Requires contract behavioral health service providers to accept eligible
30 referrals and to provide individualized care delivered through integrated
31 multidisciplinary care teams.

- 1 (4) Provides payments to contract behavioral health service providers on a
2 per-month per-referral basis based on a pay-for-performance model that
3 includes consideration of identified outcomes and the level of services
4 required.

5 **SECTION 5. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-24.1-37. Medicaid expansion - Legislative management report. (Effective-**
8 **January 1, 2014, through July 31, 2019 - Contingent repeal - See note)**

- 9 1. The department of human services shall expand medical assistance coverage as
10 authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148],
11 as amended by the Health Care and Education Reconciliation Act of 2010 [Pub.
12 L. 111-152] to individuals under sixty-five years of age with income below one hundred
13 thirty-eight percent of the federal poverty level, ~~based on modified adjusted gross~~
14 ~~incomeline published by the federal office of management and budget applicable to~~
15 the household size.
- 16 2. The department of ~~human services~~ shall inform new enrollees in the medical
17 assistance expansion program that benefits may be reduced or eliminated if federal
18 participation decreases or is eliminated.
- 19 3. The department shall implement the expansion by bidding through private carriers or
20 utilizing the health insurance exchange.
- 21 4. The contract between the department and the private carrier must:
- 22 a. Provide a reimbursement methodology for all medications and dispensing fees
23 which identifies the minimum amount paid to pharmacy providers for each
24 medication. The reimbursement methodology, at a minimum, must:
- 25 (1) Be available on the department's website; and
26 (2) Encompass all types of pharmacy providers regardless of whether the
27 pharmacy benefits are being paid through the private carrier or contractor or
28 subcontractor of the private carrier under this section.
- 29 b. Provide full transparency of all costs and all rebates in aggregate.
- 30 c. Allow an individual to obtain medication from a pharmacy that provides mail order
31 service; however, the contract may not require mail order to be the sole method

1 of service and must allow for all contracted pharmacy providers to dispense any
2 and all drugs included in the benefit plan and allowed under the pharmacy
3 provider's license.

4 d. Ensure that pharmacy services obtained in jurisdictions other than this state and
5 its three contiguous states are subject to prior authorization and reporting to the
6 department for eligibility verification.

7 e. Ensure the payments to pharmacy providers do not include a required payback
8 amount to the private carrier or one of the private carrier's contractors or
9 subcontractors which is not representative of the amounts allowed under the
10 reimbursement methodology provided in subdivision a.

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

18 6. Provider reimbursement rate information received by the department under this
19 section and any information provided to the department of human services or any
20 audit firm by a pharmacy benefit manager under this section is confidential, except the
21 department may use the reimbursement rate information to prepare the report to the
22 legislative management as required under this section.

23 **SECTION 6. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding
24 section 54-16-04, the director of the office of management and budget shall transfer
25 appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act
26 for the biennium beginning July 1, 2019, and ending June 30, 2021, as requested by the
27 department of human services. The department of human services shall notify the legislative
28 council of any transfer made pursuant to this section. The department shall report to the budget
29 section after June 30, 2020, any transfer made in excess of \$50,000 and to the appropriations
30 committees of the sixty-seventh legislative assembly regarding any transfers made pursuant to
31 this section.

1 **SECTION 7. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding
2 section 54-16-04, the director of the office of management and budget shall transfer
3 appropriation authority from line items within subdivisions 1, 2, and 3 of section 1 of this Act to
4 subdivision 4 of section 1 of this Act for the biennium beginning July 1, 2019, and ending
5 June 30, 2021, as requested by the department of human services. The department of human
6 services shall notify the legislative council of any transfer made pursuant to this section. The
7 department shall report to the budget section after June 30, 2020, any transfer made in excess
8 of \$50,000 and to the appropriations committees of the sixty-seventh legislative assembly
9 regarding any transfers made pursuant to this section.

10 **SECTION 8. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS**
11 **FUND.** The estimated income line items in subdivisions 1 and 3 of section 1 of this Act include
12 the sum of \$11,490,695 from the strategic investment and improvements fund for information
13 technology and capital projects.

14 **SECTION 9. ESTIMATED INCOME - HUMAN SERVICE FINANCE FUND.** The estimated
15 income line item in subdivision 4 of section 1 of this Act includes the sum of \$182,300,000 from
16 the human service finance fund for state-paid economic assistance and a social service
17 redesign project.

18 **SECTION 10. ESTIMATED INCOME - TOBACCO PREVENTION AND CONTROL TRUST**
19 **FUND.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum
20 of \$6,000,000 from the tobacco prevention and control trust fund for defraying expenses in the
21 medical services division.

22 **SECTION 11. PLACEMENT OF INDIVIDUALS IN INSTITUTIONS FOR MENTAL**
23 **DISEASE - REPORT TO LEGISLATIVE MANAGEMENT.** During the biennium beginning
24 July 1, 2019, and ending June 30, 2021, the department of human services shall develop and
25 implement a statewide plan to address acute psychiatric and residential care needs. The
26 statewide plan must address the following:

- 27 1. The size and use of the state hospital;
- 28 2. The use of state-operated or private acute facilities in areas of the state outside the
29 city of Jamestown;
- 30 3. The potential to expand private providers' offering of acute psychiatric care and
31 residential care to fulfill the identified need, including how the implementation of

1 services authorized by the sixty-sixth legislative assembly affects the balance of
2 inpatient, residential, and community-based services; and

3 4. The impact of department efforts to adjust crisis services and other behavioral health
4 services provided by the regional human service centers.

5 If necessary to implement the plan's provisions, the department shall submit applicable state
6 Medicaid plan amendments and apply for applicable state Medicaid plan waivers, including the
7 Medicaid demonstration waiver. Prior to October 1, 2020, the department shall report to the
8 legislative management on the statewide plan, along with any legislation required to implement
9 the plan.

10 **SECTION 12. MENTAL HEALTH VOUCHER PROGRAM - LEGISLATIVE MANAGEMENT**

11 **REPORT.** Subdivision 2 of section 1 of this Act includes the sum of \$1,050,000 for the
12 department to establish and administer a voucher program by July 1, 2020, to address gaps in
13 the state's unified mental health delivery system pursuant to section 50-06-01.7 and to assist in
14 the payment of mental health services provided by mental health providers, excluding human
15 service centers. The department may spend up to \$300,000 of the amount identified in this
16 section for administering the voucher system. Clinical services eligible for the voucher program
17 include only those for mental disorders recognized by the "Diagnostic and Statistical Manual of
18 Mental Disorders", American psychiatric association, fifth edition, text revision (2017). The
19 department of human services shall ensure that a provider accepting vouchers under this Act
20 collects and reports process and outcome measures. The department of human services shall
21 ensure vouchers under this Act are only used for individuals who are between seventeen and
22 twenty-five years of age with serious emotional disturbance or serious mental illness. The
23 department of human services shall develop requirements and provide training and technical
24 assistance to a private provider accepting vouchers under this Act. A private mental health
25 provider accepting vouchers under this Act shall provide evidence-based services. Before
26 July 1, 2020, the department of human services shall provide a report to the legislative
27 management regarding the rules adopted to establish and administer the voucher system to
28 assist in the payment for mental health services provided by mental health providers.

29 **SECTION 13. SCHOOL BEHAVIORAL HEALTH PROGRAM.** Subdivision 2 of section 1 of
30 this Act includes the sum of \$300,000 for a school behavioral health program. The department

1 of human services shall use a portion of this funding for behavioral health pilot projects in a rural
2 school and a tribal school.

3 **SECTION 14. EXEMPTION.** The amount appropriated for the replacement of the Medicaid
4 management information system and related projects in chapter 50 of the 2007 Session Laws
5 and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11.
6 Any unexpended funds from these appropriations approved under section 54-44.1-11 for
7 continuation into the 2009-11 biennium, then the 2011-13 biennium, then the 2013-15 biennium,
8 then the 2015-17 biennium, and then the 2017-19 biennium are available for the completion of
9 the Medicaid management information system and related projects during the biennium
10 beginning July 1, 2019, and ending June 30, 2021.

11 **SECTION 15. EXEMPTION.** The amount appropriated for the modification of the
12 department of human services' eligibility systems in chapter 578 of the 2011 Special Session
13 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from
14 this appropriation approved under section 54-44.1-11 for continuation into the 2013-15
15 biennium, then the 2015-17 biennium, and then the 2017-19 biennium are available for the
16 completion of the modification of the eligibility systems project during the biennium beginning
17 July 1, 2019, and ending June 30, 2021.

18 **SECTION 16. EXEMPTION.** The amount appropriated for the development of the electronic
19 health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of
20 section 54-44.1-11. Any unexpended funds from this appropriation approved under section
21 54-44.1-11 for continuation into the 2015-17 biennium and then the 2017-19 biennium are
22 available for the completion of the electronic health records system during the biennium
23 beginning July 1, 2019, and ending June 30, 2021.

24 **SECTION 17. EXEMPTION.** The sum of \$3,000,000 of federal funds appropriated for the
25 development of the child care licensing and data system in chapter 11 of the 2017 Session
26 Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this
27 appropriation are available for the completion of the child care licensing and data system during
28 the biennium beginning July 1, 2019, and ending June 30, 2021.

29 **SECTION 18. EXEMPTION.** The sum of \$40,800,000 of federal and other funds
30 appropriated for the development of the health information network and care coordination
31 project in chapter 11 of the 2017 Session Laws is not subject to the provisions of section

1 54-44.1-11. Any unexpended funds from this appropriation are available for the completion of
2 the health information network and care coordination project during the biennium beginning
3 July 1, 2019, and ending June 30, 2021.

4 **SECTION 19. EXEMPTION.** The amount appropriated for the development of the electronic
5 visit verification project in chapter 11 of the 2017 Session Laws is not subject to the provisions
6 of section 54-44.1-11. Any unexpended funds from this appropriation are available for the
7 completion of the electronic visit verification project during the biennium beginning July 1, 2019,
8 and ending June 30, 2021.

9 **SECTION 20. CONVEYANCE OF LAND AUTHORIZED - STATE HOSPITAL -**
10 **EXEMPTION.** The state of North Dakota by and through the department of human services may
11 convey real property associated with the state hospital in Stutsman County to the department of
12 corrections and rehabilitation. The department of human services may convey building 2404,
13 formerly known as the nursing residence building and Tompkins building, and surrounding
14 property on the terms and conditions determined appropriate by the department of human
15 services and the attorney general. Sections 54-01-05.2 and 54-01-05.5 do not apply to this
16 conveyance.

17 **SECTION 21. CAPITAL PROJECTS AND PAYMENTS.** During the period beginning with
18 the effective date of this Act, and ending June 30, 2021, the department of human services is
19 authorized to expend funds for the following capital projects and payments:

- 20 1. The construction of a heating system and plant building at the state hospital;
- 21 2. The renovation of the cedar grove and maplewood buildings at the life skills and
22 transition center, including the construction of a structure to connect the buildings;
- 23 3. The demolition of the refectory and pleasant view buildings at the life skills and
24 transition center; and
- 25 4. The payment of special assessments at the state hospital.

26 **SECTION 22. DEVELOPMENTAL DISABILITIES CASE MANAGEMENT.** The department
27 of human services shall provide case management services for individuals with a
28 developmental disability within the ratio provided pursuant to North Dakota Administrative Code
29 for the biennium beginning July 1, 2019, and ending June 30, 2021. If case management
30 services for individuals with a developmental disability exceed the ratio requirement provided in
31 the North Dakota Administrative Code, the department of human services may hire temporary

1 staff or the department of human services may propose a change to North Dakota
2 Administrative Code to meet the ratio requirement.

3 **SECTION 23. BEHAVIORAL HEALTH PROVIDER PROCESS AND OUTCOME**

4 **MEASURES.** Behavioral health service providers that receive funding from the department of
5 human services shall submit process and outcome measures to the department of human
6 services for programs and services supported by state funding during the biennium beginning
7 July 1, 2019, and ending June 30, 2021.

8 **SECTION 24. TELEPHONE SUPPORT AND DIRECTORY SERVICES.** The vendor of
9 telephone and directory services, under contract with the department of human services, shall
10 include private behavioral health service providers in the vendor's directory at no cost to the
11 private behavioral health service providers during the biennium beginning July 1, 2019, and
12 ending June 30, 2021.

13 **SECTION 25. ADULT COMPANION SERVICES.** The department of human services shall
14 include adult companion services as an allowable service under the home and community-
15 based services Medicaid waiver, effective for dates of service on or after January 1, 2020.

16 **SECTION 26. ADULT RESIDENTIAL RATES - REBASING.** The department of human
17 services shall rebase adult residential rates, effective for dates of service on or after January 1,
18 2020. The department of human services shall request cost information from adult residential
19 providers who are enrolled as Medicaid home and community-based waiver providers and
20 serve clients who receive memory care services or have a traumatic brain injury.

21 **SECTION 27. TARGETED CASE MANAGEMENT - SERIOUS EMOTIONAL**

22 **DISTURBANCE.** The department of human services shall expand the types of providers
23 recognized as Medicaid providers of targeted case management for individuals with a serious
24 emotional disturbance beginning on or after October 1, 2019. If this expansion results in
25 expenditures that exceed the amount appropriated to the department of human services for this
26 service, the department shall request a deficiency appropriation from the sixty-seventh
27 legislative assembly for any shortfall.

28 **SECTION 28. TARGETED CASE MANAGEMENT - SERIOUS MENTAL ILLNESS.** The
29 department of human services shall expand the types of providers recognized as Medicaid
30 providers of targeted case management for individuals with a serious mental illness beginning
31 on or after October 1, 2019. If this expansion results in expenditures that exceed the amount

1 appropriated to the department of human services for this service, the department shall request
2 a deficiency appropriation from the sixty-seventh legislative assembly for any shortfall.

3 **SECTION 29. WITHDRAWAL MANAGEMENT.** The department of human services shall
4 include withdrawal management as a covered service in the Medicaid state plan during the
5 biennium beginning July 1, 2019, and ending June 30, 2021.

6 **SECTION 30. IMPLEMENTATION OF BEHAVIORAL HEALTH STUDY**

7 **RECOMMENDATIONS - REPORT TO LEGISLATIVE MANAGEMENT.** Before August 1, 2020,
8 the department of human services shall provide a report to the legislative management
9 regarding the implementation of the human services research institute report recommendations.

10 **SECTION 31. LEGISLATIVE MANAGEMENT STUDY - HEALTH CARE DELIVERY**

11 **SYSTEM.** During the 2019-20 interim, the legislative management shall consider studying the
12 delivery of health care in the state. The study must review the needs and future challenges of
13 the North Dakota health care delivery system, including rural access to primary health care, the
14 use of emergency medical services, strategies to better serve residents, and the role of health
15 care services in the future development of the state. The legislative management shall report its
16 findings and recommendations, together with any legislation required to implement the
17 recommendations, to the sixty-seventh legislative assembly.

18 **SECTION 32. EMERGENCY.** The sum of \$6,770,665 in subdivision 3 of section 1 of this
19 Act for capital projects at the state hospital and life skills and transition center and section 21 of
20 this Act are declared to be an emergency measure.