

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1115

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-10.2 and two new sections to
2 chapter 50-24.1 of the North Dakota Century Code, relating to furnishing financial information to
3 a facility, definitions for medical assistance for needy persons, and medical assistance claims
4 processing; to amend and reenact subsection 6 of section 50-06-01.9 and sections
5 50-24.1-01.1, 50-24.1-01.3, 50-24.1-02, 50-24.1-02.1, 50-24.1-02.2, 50-24.1-02.3, 50-24.1-02.5,
6 50-24.1-02.6, 50-24.1-02.7, 50-24.1-02.8, 50-24.1-02.10, 50-24.1-03.1, 50-24.1-03.2,
7 50-24.1-03.3, 50-24.1-04, 50-24.1-07, 50-24.1-12, 50-24.1-14, 50-24.1-16, 50-24.1-17,
8 50-24.1-18, 50-24.1-18.1, 50-24.1-20, 50-24.1-24, 50-24.1-26, 50-24.1-28, 50-24.1-29,
9 50-24.1-30, 50-24.1-31, 50-24.1-33, 50-24.1-34, 50-24.1-35, 50-24.1-36, and 50-24.1-39 of the
10 North Dakota Century Code, relating to criminal history record checks on Medicaid services
11 applicants, providers, and staff members and medical assistance for needy persons; to repeal
12 sections 50-24.1-01.2, 50-24.1-10, 50-24.1-11, 50-24.1-13, 50-24.1-19, 50-24.1-22, 50-24.1-25,
13 and 50-24.1-27 of the North Dakota Century Code, relating to medical assistance for needy
14 persons; and to provide an effective date.

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

16 **SECTION 1. AMENDMENT.** Subsection 6 of section 50-06-01.9 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 6. Medicaid services applicant providers, Medicaid services providers, ~~staff members of~~
19 ~~the applicant provider or provider,~~ or an individual with a five percent or more direct or
20 indirect ownership interest in the applicant provider or provider under chapter 50-24.1.

21 **SECTION 2.** A new section to chapter 50-10.2 of the North Dakota Century Code is created
22 and enacted as follows:

1 **Furnishing financial information.**

2 A facility may request that an applicant for admission, a resident of the facility, or the
3 applicant's or resident's legal representative furnish financial information regarding income and
4 assets, including information regarding any transfers or assignments of income or assets. A
5 facility may deny admission to an applicant for admission who is unable to verify a viable
6 payment source.

7 **SECTION 3.** A new section to chapter 50-24.1 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Definition.**

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

- 11 1. "Department" means the department of human services.
- 12 2. "Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of the
13 Social Security Act [42 U.S.C. 1396 et seq.].
- 14 3. "Third party" means an individual, entity, or program that is or may be liable to pay all
15 or part of the expenditures for medical assistance furnished under this chapter.

16 **SECTION 4.** A new section to chapter 50-24.1 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Medicaid and Medicare eligible individuals.**

19 The department may not require prior authorization, additional documentation not required
20 by Medicare, or additional prescription requirements of durable medical equipment and supplies
21 in order to process a claim for Medicaid-eligible individuals who are also eligible for Medicare if
22 an item has been paid by Medicare, unless the item is not covered by Medicaid.

23 **SECTION 5. AMENDMENT.** Section 50-24.1-01.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **50-24.1-01.1. Department to submit plans and seek waivers.**

26 ~~The department of human services may submit state plans in forms that are consistent with~~
27 ~~and which meet requirements for such plans which are or may be imposed under the Medicare-~~
28 ~~Catastrophic Coverage Act of 1988 [Pub. L. 100-360; 102 Stat. 729; 42 U.S.C. 1396a et seq.,~~
29 ~~as amended]. The department and may take such actions as are reasonably necessary to~~
30 ~~conform the administration of administer programs under its supervision and direction to the~~
31 ~~requirements of the Medicare Catastrophic Coverage Act of 1988 and the state plans submitted~~

1 thereunder, including the issuance of policy manuals, forms, and program directives. The
2 department may publish dashboards that demonstrate program utilization and provider care
3 trends. Within the limits of legislative appropriation, the department may seek appropriate
4 waivers of the requirements of the federal statutes or regulations as authorized by federal law.

5 **SECTION 6. AMENDMENT.** Section 50-24.1-01.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-24.1-01.3. Department to comply with federal requirements - Interagency**
8 **cooperation - Civil money penalty fund.**

- 9 1. The department of ~~human services~~ shall take any action necessary to comply with the
10 requirements of section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)],
11 including establishing a process to enforce compliance by nursing facilities with
12 requirements for participation in the medical assistance program that conforms to any
13 federal regulations implementing that section.
- 14 2. The state department of health and the department of ~~human services~~ shall cooperate
15 to achieve prompt and effective implementation of subsection 1.
- 16 3. The state treasurer shall establish a fund for the receipt of any civil money penalties
17 imposed under subsection 1. Any civil money penalty paid to the department of ~~human~~
18 ~~services~~ under subsection 1 must be deposited in that fund and, subject to the limits of
19 legislative appropriation, may be expended for the ~~sole purpose of the protection of~~
20 ~~the health or property of residents of nursing facilities that the state or~~allowed by the
21 federal government ~~finds deficient~~.
- 22 4. This section may not be construed to create any right or authorize any activity not
23 provided for in section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)]
24 or its implementing federal regulations.
- 25 5. Before the establishment and assessment of civil money penalties permitted by
26 section 1919(h) of the federal Social Security Act [42 U.S.C. 1396r(h)], the department
27 of ~~human services~~ is encouraged to submit a plan of alternative remedies in
28 accordance with section 1919(h)(2)(B)(ii) of that Act.

29 **SECTION 7. AMENDMENT.** Section 50-24.1-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **50-24.1-02. Eligibility.**

2 Within the limits of legislative appropriations, medical assistance may be paid for any
3 person who either has income and resources insufficient to meet the costs of necessary
4 medical care and services or is eligible for or receiving financial assistance under chapter 50-09
5 or title XVI of the Social Security Act, as amended, and:

- 6 1. Has not at any time before or after making application for medical assistance made an
7 assignment or transfer of property for the purpose of rendering that person eligible for
8 assistance under this chapter. For the purposes of making any determination or
9 redetermination of eligibility, the phrase "assignment or transfer" includes actions or
10 failures to act which effect a renunciation or disclaimer of any interest which the
11 applicant or recipient might otherwise assert or have asserted, or which serve to
12 reduce the amounts which an applicant or recipient might otherwise claim from a
13 decedent's estate, a trust or similar device, or a person obligated by law to furnish
14 support to the applicant or recipient.
- 15 2. Has applied or agrees to apply all proceeds received or receivable by that person or
16 that person's eligible spouse from ~~automobile accident medical benefits coverage and~~
17 ~~private health care~~third-party medical coverage, including health care coverage,
18 accident insurance, and automobile insurance, to the costs of medical care for that
19 person and that person's eligible spouse and children. The department of ~~human~~
20 ~~services~~ may require from any applicant or recipient of medical assistance the
21 assignment of any rights accruing under ~~automobile medical benefits coverage or~~
22 ~~private health care~~third-party medical coverage. Any rights or amounts so assigned
23 must be applied against the cost of medical care paid on behalf of the recipient under
24 this chapter. The assignment is not effective as to any carrier before the receipt of
25 notice of assignment by such carrier.
- 26 3. Is eligible under rules and regulations established by the department of ~~human~~
27 ~~services~~.

28 **SECTION 8. AMENDMENT.** Section 50-24.1-02.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **50-24.1-02.1. Assignment of claim.**

- 2 1. Each applicant or recipient of benefits under this chapter must be deemed to have
3 assigned, to the department of ~~human services~~, any right of recovery the applicant or
4 recipient may have for medical costs incurred under this chapter not exceeding the
5 amount of funds expended by the department for the care and treatment of the
6 applicant or recipient. The applicant or recipient, or other person empowered by law to
7 act in the applicant's or recipient's behalf, shall execute and deliver an assignment of
8 claim, assignment of rights, or other authorizations as necessary to secure fully the
9 right of recovery of the department. The assignment:
- 10 a. Is effective as to both current and accrued medical support recovery obligations.
11 b. Takes effect upon a determination that an applicant is eligible for assistance
12 under this chapter.
- 13 2. The department of ~~human services~~ may compromise claims arising out of
14 assignments made under this section on such terms as it may deem just and
15 appropriate. The department of ~~human services~~ may not be compelled to compromise
16 any claim.

17 **SECTION 9. AMENDMENT.** Section 50-24.1-02.2 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **50-24.1-02.2. Community spouse resource allowance.**

20 In determining eligibility for medical assistance applicants and recipients, the department of
21 ~~human services~~ shall establish a community spouse resource allowance ~~equal to~~ to the
22 maximum community spouse resource allowance as provided by 42 U.S.C. 1396r-5(f)(2). This
23 section applies to a community spouse of an institutionalized spouse. For purposes of this
24 section, "institutionalized spouse" includes an individual who is described in 42 U.S.C. 1396a(a)
25 (10)(A)(ii)(VI).

26 **SECTION 10. AMENDMENT.** Section 50-24.1-02.3 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or**
29 **deposits not to be considered in eligibility determination.**

30 In determining eligibility for medical assistance, the department of ~~human services~~ may not
31 consider as an available resource any pre-need funeral service contracts, prepayments, or

1 deposits to a fund which total six thousand dollars or less designated by the applicant or
2 recipient as set-aside to pay for the applicant's or recipient's funeral. An applicant or recipient
3 designates a prepayment or deposit for that applicant's or recipient's burial by providing funds
4 that are to be used for the funeral or burial expenses of the applicant or recipient. If an
5 applicant's or recipient's burial is funded by an insurance policy, the amount considered
6 set-aside for burial is the lesser of the cost basis or the face value of the insurance policy. In
7 addition, the applicant or recipient may designate all or a portion of the three thousand dollar
8 asset limitation for funeral pre-need contracts, prepayments, or deposits. Interest or earnings
9 retained in a funeral fund also may not be considered as an available resource. A pre-need
10 funeral service contract, prepayment, or deposit designated under this section is not a
11 multiple-party account for purposes of chapter 30.1-31. Any amount in a pre-need funeral
12 service contract, prepayment, or deposit designated under this section which is not used for
13 funeral or burial expenses must be returned to the estate of the medical assistance recipient
14 and is subject to recovery by the department from the medical assistance recipient's estate. No
15 claim for payment of funeral expenses may be made against the estate of a deceased medical
16 assistance recipient except to the extent that funds maintained in accordance with this section
17 total less than six thousand dollars.

18 **SECTION 11. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

- 21 1. An individual who secures and maintains insurance that covers the cost of
22 substantially all necessary medical care, including necessary care in a nursing home
23 and necessary care for an individual who qualifies for admission to a nursing home but
24 receives care elsewhere, for at least thirty-six months after the date an asset is
25 disposed of, may demonstrate that the asset was disposed of exclusively for a
26 purpose other than to qualify for medical assistance by providing proof of that
27 insurance.
- 28 2. If purchased after July 31, 2003, the insurance coverage under this section must
29 include home health care coverage, assisted living coverage, basic care coverage,
30 and skilled nursing facility coverage. The coverage required under this subsection
31 must include a daily benefit equal to at least one and fifty-seven hundredths times the

1 average daily cost of nursing care for the year in which the policy was issued and an
2 aggregate benefit equal to at least one thousand ninety-five times that daily benefit.

3 3. This section applies only to policies purchased before the effective date of an
4 approved amendment to the state plan for medical assistance that provides for a
5 qualified state long-term care insurance partnership under section 1917(b) of the
6 Social Security Act [42 U.S.C. 1396p].

7 ~~4. The department of human services shall certify to the legislative council the effective~~
8 ~~date described in subsection 3.~~

9 **SECTION 12. AMENDMENT.** Section 50-24.1-02.6 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **50-24.1-02.6. Medical assistance benefits - Eligibility criteria.**

12 1. The department shall provide medical assistance benefits to otherwise eligible
13 persons who are:

14 a. ~~Medically~~ medically needy persons who have countable income that does not
15 exceed an amount determined under subsection 2; ~~and~~

16 b. ~~Minors who have countable income that does not exceed an amount determined~~
17 ~~under subsection 3.~~

18 2. ~~The department of human services shall establish an income level for medically needy~~
19 ~~persons at an amount, no less than required by federal law, that, consistent with the~~
20 ~~requirements of subsection 3, is the greatest income level achievable without~~
21 ~~exceeding legislative appropriations for that purpose.~~

22 3. ~~The department of human services shall establish income levels for minors, based on~~
23 ~~the age of the minors, at amounts, no less than required by federal law.~~

24 4. ~~The department of human services shall provide medical assistance benefits to~~
25 ~~children and families coverage groups and pregnant women without consideration of~~
26 ~~assets.~~

27 4. The department may require, as a condition of eligibility, individuals eligible for
28 Medicare part A, B, or D to apply for such coverage.

29 **SECTION 13. AMENDMENT.** Section 50-24.1-02.7 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **50-24.1-02.7. Workers with disabilities coverage.**

2 The department of human services shall establish and implement a buyin program to
3 provide medical assistance to an individual who, except for substantial gainful activity, meets
4 the definition of disabled under the supplemental security income program under title XVI of the
5 federal Social Security Act, who is at least sixteen but less than sixty-five years of age, and who
6 is gainfully employed. The program must:

- 7 1. Be made available to an individual with a disability who is a member of a ~~family-~~
8 ~~the household with a~~ net income of which is less than two hundred twenty-five percent
9 of the most recently revised official poverty line published by the federal office of
10 management and budget for the family applicable to the household size;
- 11 2. Allow up to an additional ten thousand dollars in assets;
- 12 3. Require the payment of a premium that is based upon a sliding scale which may not
13 be less than two and one-half percent nor more than seven and one-half percent of
14 the individual's gross countable income;
- 15 4. Include a one-time program enrollment fee of one hundred dollars; and
- 16 5. Provide that the failure of an enrolled individual to pay premiums for three months may
17 result in the termination of enrollment in the program.

18 **SECTION 14. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **50-24.1-02.8. Transfers involving annuities.**

- 21 1. For purposes of this section, "annuity" means a policy, certificate, contract, or other
22 arrangement between two or more parties under which one party pays money or other
23 valuable consideration to the other party in return for the right to receive payments in
24 the future.
- 25 2. ~~An annuity purchased before August 1, 2005, is an available asset and its purchase is-~~
26 ~~an uncompensated assignment or transfer of assets under section 50-24.1-02,-~~
27 ~~resulting in a penalty under the applicable rules established by the department of~~
28 ~~human services unless the following criteria are met:~~
 - 29 a. ~~The annuity is a single premium immediate annuity or an annuity in which a~~
30 ~~settlement option has been selected, is irrevocable, and cannot be assigned to~~
31 ~~another person.~~

- 1 b. ~~The annuity is purchased from an insurance company or other commercial~~
2 ~~company that sells annuities as part of the normal course of business.~~
- 3 e. ~~The annuity provides substantially equal monthly payments of principal and~~
4 ~~interest and does not have a balloon or deferred payment of principal or interest.~~
5 ~~Payments will be considered substantially equal if the total annual payment in~~
6 ~~any year varies by five percent or less from the payment in the previous year.~~
- 7 d. ~~The annuity will return the full principal and interest within the purchaser's life~~
8 ~~expectancy as determined by the life expectancy tables published by the centers~~
9 ~~for Medicare and Medicaid services.~~
- 10 e. ~~The monthly payments from the annuity, unless specifically ordered otherwise by~~
11 ~~a court of competent jurisdiction, do not exceed the maximum monthly income~~
12 ~~amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5.~~
- 13 3. ~~Unless done in compliance with subsection 4, a provision in an annuity that purports to~~
14 ~~preclude assignment or transfer of any interest in the annuity is void as against public~~
15 ~~policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the~~
16 ~~annuitant's spouse for benefits under this chapter. This subsection applies only to an~~
17 ~~annuity for which a payment option has been irrevocably selected after July 31, 2005.~~
- 18 4. ~~An annuity, purchased after July 31, 2005, and before February 8, 2006, is not an~~
19 ~~available asset and the expenditure of funds to purchase such an annuity, instrument,~~
20 ~~or other arrangement may not be considered to be a disqualifying transfer of an asset~~
21 ~~for purposes of this chapter if:~~
- 22 a. ~~The annuity is purchased from an insurance company or other commercial~~
23 ~~company that sells annuities as part of the normal course of business;~~
- 24 b. ~~The annuity is irrevocable and neither the annuity nor payments due under the~~
25 ~~annuity may be assigned or transferred;~~
- 26 e. ~~The monthly payments from all annuities owned by the purchaser that comply~~
27 ~~with this subsection may not exceed the minimum monthly maintenance needs~~
28 ~~allowance for a community spouse as determined by the department pursuant to~~
29 ~~42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly~~
30 ~~income, at the time of application of the purchaser, the purchaser's spouse, the~~
31 ~~annuitant, or the annuitant's spouse, for benefits under this chapter, do not~~

1 ~~exceed one hundred fifty percent of the minimum monthly maintenance needs-~~
2 ~~allowance allowed for a community spouse as determined by the department~~
3 ~~pursuant to 42 U.S.C. 1396r-5;~~

4 ~~d. The annuity provides substantially equal monthly payments of principal and~~
5 ~~interest and does not have a balloon or deferred payment of principal or interest.~~
6 ~~Payments will be considered substantially equal if the total annual payment in~~
7 ~~any year varies by five percent or less from the payment in the previous year;~~

8 ~~e. The annuity will return the full principal and has a guaranteed period that is equal~~
9 ~~to at least eighty five percent of the purchaser's life expectancy as determined by~~
10 ~~the life expectancy tables used by the department of human services; and~~

11 ~~f. The annuity does not include any provision that limits the effect of subsection 5.~~

12 ~~5. Before benefits under this chapter may be provided to an otherwise eligible applicant~~
13 ~~who is fifty five years of age or older, the department of human services, or the~~
14 ~~successor of that department, must be irrevocably named on each annuity owned by~~
15 ~~that applicant, or by the spouse of that applicant, that complies with subsection 4, as~~
16 ~~primary beneficiary for payment of amounts due following the death of the applicant~~
17 ~~and the applicant's spouse, if any, not to exceed the amount of benefits paid under this~~
18 ~~chapter on behalf of that applicant after age fifty five, plus interest on that amount at~~
19 ~~the legal rate from six months after the applicant's death. If the department receives~~
20 ~~notice within ninety days of the death of the applicant or the applicant's spouse that~~
21 ~~reliably demonstrates that the applicant is survived by a minor child who resided and~~
22 ~~was supported financially by the deceased or by a permanently and totally disabled~~
23 ~~child, the department shall remit any payments made to the department under this~~
24 ~~section to those survivors in equal shares. When the obligations to the minor child or~~
25 ~~children who resided and were supported financially by the deceased or the~~
26 ~~permanently and totally disabled child or children and the department are fulfilled, the~~
27 ~~department shall remit any future payments made to the department under this section~~
28 ~~to the contingent beneficiaries selected by the annuitant regarding each annuity~~
29 ~~owned by the applicant or by the spouse of the applicant.~~

- 1 6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration
2 on or after February 8, 2006, of a payment option for an annuity purchased at any
3 time, is a disqualifying transfer of an asset for purposes of this chapter unless:
- 4 a. The state is named as the remainder beneficiary in the first position for at least
5 the total amount of medical assistance paid on behalf of the annuitant or the state
6 is named in the second position after the community spouse or minor or disabled
7 child and is named in the first position if the community spouse or a
8 representative of the minor or disabled child disposes of any remainder for less
9 than fair market value;
- 10 b. The annuity is purchased from an insurance company or other commercial
11 company that sells annuities as part of the normal course of business;
- 12 c. The annuity is irrevocable and neither the annuity nor payments due under the
13 annuity may be assigned or transferred;
- 14 d. The annuity provides substantially equal monthly payments of principal and
15 interest and does not have a balloon or deferred payment of principal or interest.
16 Payments will be considered substantially equal if the total annual payment in
17 any year varies by five percent or less from the payment in the previous year;
18 and
- 19 e. The annuity will return the full principal and interest within the purchaser's life
20 expectancy as determined in accordance with actuarial publications of the office
21 of the chief actuary of the social security administration.
- 22 ~~7. An annuity purchased on or after February 8, 2006, or a payment option selected or~~
23 ~~altered on or after February 8, 2006, with respect to an annuity purchased at any time~~
24 ~~is an asset for purposes of this chapter unless:~~
- 25 ~~a. The annuity meets all of the requirements of subsection 6;~~
- 26 ~~b. The monthly payments from all annuities owned by the purchaser that comply~~
27 ~~with this subsection do not exceed the minimum monthly maintenance needs~~
28 ~~allowance for a community spouse of the maximum amount allowed pursuant to~~
29 ~~42 U.S.C. 1396r-5 and, at the time of application for benefits under this chapter,~~
30 ~~the total combined income from all sources of the purchaser and the purchaser's~~
31 ~~spouse, or the annuitant and the annuitant's spouse, does not exceed one~~

1 hundred fifty percent of the minimum monthly maintenance needs allowance
2 allowed for a community spouse of the maximum amount allowed pursuant to 42-
3 U.S.C. 1396r-5; and
4 e. The annuity will return the full principal and has a guaranteed period that is equal
5 to at least eighty-five percent of the purchaser's life expectancy as determined by
6 the life expectancy tables used by the department of human services.

7 ~~8-3.~~ Except for the provision in subdivision a of subsection ~~6~~2, this section does not apply
8 to:

9 a. An annuity described in subsection b or q of section 408 of the Internal Revenue
10 Code of 1986; or

11 b. An annuity purchased with proceeds from an:

12 (1) An account or trust described in subsection a, c, or p of section 408 of the
13 Internal Revenue Code of 1986;

14 e. (2) A simplified employee pension within the meaning of subsection k of
15 section 408 of the Internal Revenue Code of 1986; or

16 ~~e.~~ (3) A Roth IRA described in section 408A of the Internal Revenue Code of
17 1986.

18 **SECTION 15. AMENDMENT.** Section 50-24.1-02.10 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **50-24.1-02.10. Real estate taxes on rental property as deduction from rental income.**

21 For purposes of determining the treatment of income and the application of income to the
22 cost of care for medical assistance eligibility for an individual screened as requiring nursing care
23 services, and who is receiving home and community-based services or nursing care services,
24 the department of human services shall allow as a deduction from countable gross rental
25 income the real estate taxes for rental property if the individual is responsible for paying the real
26 estate taxes for that property.

27 **SECTION 16. AMENDMENT.** Section 50-24.1-03.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **50-24.1-03.1. Duties of county agency.**

30 In the administration of the medical assistance program, a county agency shall investigate
31 and record the circumstances of each applicant or recipient of assistance, in order to ascertain

1 the facts supporting the application, or the granting of assistance, and obtain such other
2 information as may be required by the rules and regulations of the department of human-
3 services.

4 **SECTION 17. AMENDMENT.** Section 50-24.1-03.2 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-24.1-03.2. Investigations - Power of county agencies, department, and employees.**

- 7 1. In the investigation of applications under the provisions of this chapter, the county
8 agencies, the department of human services, and the officials and employees of such
9 agencies charged with the administration and enforcement of this chapter may:
- 10 a. Conduct examinations;
 - 11 b. Require the attendance of witnesses and the production of books, records, and
12 papers; and
 - 13 c. Make application to the district court of the county to compel the attendance of
14 witnesses and the production of books, records, and papers.
- 15 2. The department of human services may request from other state, county, and local
16 agencies information deemed necessary to carry out the medical support enforcement
17 program. All officers and employees of state, county, and local agencies shall
18 cooperate with the department of human services in locating absent spouses or
19 parents of children to whom an obligation of support is owed or on whose behalf
20 assistance is being provided and, on request, shall supply the department with
21 available information relative to the location, income, social security number, and
22 property holdings of the absent spouse or parent, notwithstanding any provision of law
23 making that information confidential. Any person acting under the authority of the
24 department of human services who pursuant to this subsection obtains information
25 from the office of the state tax commissioner, the confidentiality of which is protected
26 by law, may not divulge such information except to the extent necessary for the
27 administration of the medical support enforcement program or when otherwise
28 directed by judicial order or when otherwise provided by law.
- 29 3. The officers and employees designated by the county agencies or the department of
30 human services may administer oaths and affirmations.

1 **SECTION 18. AMENDMENT.** Section 50-24.1-03.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-24.1-03.3. Criminal background investigation - Fingerprinting required.**

- 4 1. When the department determines a criminal history record check is appropriate, a
5 provider applicant, a provider, ~~staff members of the applicant provider or provider,~~ or
6 an individual with a five percent or more direct or indirect ownership interest in the
7 provider applicant or provider shall secure, from ~~a law enforcement agency or any~~
8 ~~other~~ agency authorized to take fingerprints, two sets of fingerprints and shall provide
9 all other information necessary to secure state criminal history record information and
10 a nationwide background check under federal law.
- 11 2. The applicant provider or provider shall assure the information obtained under
12 subsection 1 is provided to the department within thirty days of the notice date.
- 13 3. The department shall submit the information and fingerprints to the bureau of criminal
14 investigation to determine if there is any criminal history record information regarding
15 the applicant provider, provider, ~~staff members of the applicant provider or provider,~~ or
16 an individual with a five percent or more direct or indirect ownership interest in the
17 provider applicant or provider in accordance with section 12-60-24.
- 18 4. The bureau of criminal investigation shall request a nationwide background check from
19 the federal bureau of investigation and, upon receipt of response, provide the
20 response of the federal bureau of investigation to the department. The bureau also
21 shall provide any criminal history record information that lawfully may be made
22 available under chapter 12-60 to the department.
- 23 5. The results of the investigations must be forwarded to the department.
- 24 6. Upon request by the applicant provider, provider, ~~staff members of the applicant~~
25 ~~provider or provider,~~ or an individual with a five percent or more direct or indirect
26 ownership interest in the provider applicant or provider, a law enforcement agency
27 shall take fingerprints of individuals described in this section if the request is made for
28 purposes of this section.
- 29 7. The applicant provider, provider, ~~staff members of the applicant provider or provider,~~ or
30 an individual with a five percent or more direct or indirect ownership interest in the
31 provider applicant or provider shall pay the cost of securing fingerprints, any criminal

1 history record information made available under chapter 12-60, and a nationwide
2 background check.

3 8. The department may charge a fee not to exceed the actual cost for the purpose of
4 processing the background investigations.

5 9. An agency that takes fingerprints as provided under this section may charge a
6 reasonable fee to offset the cost of the fingerprinting.

7 10. The department may use the background information findings to determine approval of
8 Medicaid services provider application or termination of enrollment as a Medicaid
9 services provider. An individual denied or terminated as a Medicaid service provider as
10 a result of the background investigation may not be qualified to enroll as a provider,
11 have five percent or greater ownership or control interest in a Medicaid services
12 provider, or submit claims for reimbursement through the department's Medicaid
13 management information system.

14 **SECTION 19. AMENDMENT.** Section 50-24.1-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **50-24.1-04. Authority of department.**

17 The department of human services is authorized to promulgate such may adopt rules and
18 regulations as are necessary to qualify for any federal funds available under this chapter.

19 **SECTION 20. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **50-24.1-07. Recovery from estate of medical assistance recipient.**

22 1. On the death of any recipient of medical assistance who was a resident of a nursing
23 facility, intermediate care facility for individuals with intellectual disabilities, or other
24 medical institution and with respect to whom the department of human services
25 determined that resident reasonably was not expected to be discharged from the
26 medical institution and to return home, or who was fifty-five years of age or older when
27 the recipient received the assistance, and on the death of the spouse of the deceased
28 recipient, the total amount of medical assistance paid on behalf of the recipient
29 following the institutionalization of the recipient who cannot reasonably be expected to
30 be discharged from the medical institution, or following the recipient's fifty-fifth birthday,

- 1 as the case may be, must be allowed as a preferred claim against the decedent's
2 estate after payment, in the following order, of:
- 3 a. Recipient liability expense applicable to the month of death for nursing home or
4 basic care services;
 - 5 b. Funeral expenses not in excess of three thousand dollars;
 - 6 c. Expenses of the last illness, other than those incurred by medical assistance;
 - 7 d. Expenses of administering the estate, including attorney's fees approved by the
8 court;
 - 9 e. Claims made under chapter 50-01;
 - 10 f. Claims made under chapter 50-24.5;
 - 11 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
 - 12 h. Claims made under subsection 4.
- 13 2. a. A claim may not be required to be paid nor may interest begin to accrue during
14 the lifetime of the decedent's surviving spouse, if any, nor while there is a
15 surviving child who is under the age of twenty-one years or is blind or
16 permanently and totally disabled, but no timely filed claim may be disallowed
17 because of the provisions of this section.
- 18 b. The department may not file a claim against an estate to recover payments made
19 on behalf of a recipient who was eligible for Medicaid under section 50-24.1-37
20 and who received coverage through a private carrier.
- 21 3. Every personal representative, upon the granting of letters of administration or
22 testamentary shall forward to the department of ~~human services~~ a copy of the petition
23 or application commencing probate, heirship proceedings, or joint tenancy tax
24 clearance proceedings in the respective district court, together with a list of the names
25 of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless
26 a properly filed claim of the department of ~~human services~~ is paid in full, the personal
27 representative shall provide to the department a statement of assets and
28 disbursements in the estate.
- 29 4. A claim of the department of ~~human services~~ made against the decedent's estate of a
30 recipient of medical assistance who was a full-benefit dual-eligible recipient, or against
31 the decedent's estate of the spouse of a deceased recipient of medical assistance

1 who was a full-benefit dual-eligible recipient, must include a claim for an amount equal
2 to the amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a
3 substantially similar federal law, which reasonably may be attributable to benefits paid
4 on behalf of the deceased recipient in a month during which the deceased recipient
5 received medical assistance under this chapter and was eligible for Medicare.

6 5. All assets in the decedent's estate of the spouse of a deceased medical assistance
7 recipient are presumed to be assets in which that recipient had an interest at the time
8 of the recipient's death.

9 6. To the extent a claim for repayment of medical assistance arises for services provided
10 in months during which the department of human services has in effect an approved
11 state plan amendment that provides for the disregard of assets in an amount equal to
12 the insurance benefit payments that are made to or on behalf of an individual who is a
13 beneficiary of an insurance policy under a qualified state long-term care insurance
14 partnership, the department's claim need not be paid out of assets of the decedent's
15 estate of a recipient of medical assistance, or assets of the decedent's estate of the
16 spouse of such a recipient, of a value equal to an amount the estate demonstrates
17 was paid for long-term care provided to the recipient of medical assistance during
18 those months by that insurance policy.

19 7. For purposes of this section:

20 a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and

21 b. "Qualified state long-term care insurance partnership" has the meaning provided
22 in 42 U.S.C. 1396p(b).

23 **SECTION 21. AMENDMENT.** Section 50-24.1-12 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **50-24.1-12. Medical assistance - Services provided by psychologists.**

26 Within the limits of legislative appropriations, the department of human services shall
27 provide medical assistance to eligible recipients for services provided by psychologists licensed
28 under chapter 43-32.

29 **SECTION 22. AMENDMENT.** Section 50-24.1-14 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **50-24.1-14. Responsibility for expenditures.**

2 ~~Expenditures~~Notwithstanding section 50-24.1-34, expenditures required under this chapter
3 are the responsibility of the federal government or the state of North Dakota.

4 **SECTION 23. AMENDMENT.** Section 50-24.1-16 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-24.1-16. Reimbursement of ambulance services.**

- 7 1. Medical assistance coverage must include reimbursement of ambulance services for
8 responding to calls to assist covered individuals which do not result in transport. ~~The~~
9 ~~reimbursement must be at a rate negotiated by the department and the ambulance-~~
10 ~~service.~~
- 11 2. For purposes of classifying ambulance services under this section:
- 12 a. An emergency response is one that at the time the ambulance is called the
13 ambulance responds immediately. An immediate response is one in which the
14 ambulance begins as quickly as possible to take the steps necessary to respond
15 to the call.
- 16 b. An advanced life support assessment is an assessment performed by an
17 advanced life support crew as part of an emergency response that was
18 necessary because the patient's reported condition at the time of the dispatch
19 was such that only an advanced life support crew was qualified to perform the
20 assessment. An advanced life support assessment does not necessarily result in
21 a determination that the patient requires an advanced life support level of service.

22 **SECTION 24. AMENDMENT.** Section 50-24.1-17 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **50-24.1-17. Medical assistance for breast or cervical cancer.**

25 The department of human services may provide medical assistance for ~~women~~individuals
26 screened and found to have breast or cervical cancer in accordance with the federal Breast and
27 Cervical Cancer Prevention and Treatment Act of 2000 [Pub. L. 106-354; 114 Stat. 1381;
28 42 U.S.C. 1396a et seq.]. The department shall establish an income eligibility limit that may not
29 exceed two hundred percent of the most recently revised poverty line ~~for payments made under~~
30 ~~this section. For purposes of this section, poverty line means the official income poverty line as~~
31 ~~defined by the United States~~published by the federal office of management and budget and

1 ~~revised annually in accordance with 42 U.S.C. 9902(2), applicable to a family of the household~~
2 ~~size involved.~~

3 **SECTION 25. AMENDMENT.** Section 50-24.1-18 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **50-24.1-18. Personal care option ~~-Basic care facilities.~~**

6 ~~The department of human services may~~shall implement a personal care option benefit
7 ~~program. Personal care option benefits may only be made available to qualifying individuals~~
8 ~~who reside in basic care facilities. As used in this section, "basic care facility" has the meaning~~
9 ~~provided in section 23-09.3-01~~services.

10 **SECTION 26. AMENDMENT.** Section 50-24.1-18.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **50-24.1-18.1. Consumer-directed health maintenance services - Residing at home.**

13 ~~The department of human services shall provide a personal care services program for~~
14 ~~eligible medical assistance recipients. The department shall provide an attendant care program~~
15 ~~to permit health maintenance services authorized under this section to be provided by~~
16 ~~nonlicensed care providers. Health maintenance services means care that enables an individual~~
17 ~~to live at home, and which is based upon the determination of a physician which concludes that~~
18 ~~the individual is medically stable and is competent to direct the care provided by a nonlicensed~~
19 ~~care provider. Health maintenance services include assistance with the activities of daily living~~
20 ~~such as getting in and out of bed, wheelchair, or motor vehicle; assistance with routine bodily~~
21 ~~functions such as bathing and personal hygiene, dressing, and grooming; and feeding, including~~
22 ~~preparation and cleanup. Health maintenance services also include any other medical, nursing,~~
23 ~~or home health care services that will maintain the health and well-being of the individual and~~
24 ~~will allow the individual to remain in the community and which are services that an individual~~
25 ~~without a functional disability would customarily and personally perform without the assistance~~
26 ~~of a licensed health care provider, such as catheter irrigation, administration of medications, or~~
27 ~~wound care.~~

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

1 **50-24.1-20. Home and community-based living - Choice of options.**

2 Any aged or disabled individual who is eligible for home and community-based living must
3 be allowed to choose, from among all service options available, the type of service that best
4 meets that individual's needs. To the extent permitted by any applicable waiver, the individual's
5 medical assistance funds must follow the individual for whichever service option the individual
6 selects, not to exceed the cost of the service. ~~The department of human services shall apply for~~
7 ~~the waivers and grants necessary to implement this section under existing or future federal~~
8 ~~legislation.~~

9 **SECTION 28. AMENDMENT.** Section 50-24.1-24 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **50-24.1-24. Provider appeals - Definitions.**

12 1. For purposes of this section:

13 a. "Denial of payment" means that the department has denied payment for a
14 medical assistance claim or reduced the level of service payment for a service
15 provided to an individual who was an eligible medical assistance recipient at the
16 time the service was provided or the recoupment or adjustment of a claim, or part
17 of a claim, following an audit or review.

18 b. "Department" ~~means the department of human services.~~

19 e. "Provider" means an individual, entity, or facility that furnishes medical or
20 remedial services or supplies pursuant to a provider agreement with the
21 department or a third-party billing agency of the provider.

22 2. A provider may request a review of denial of payment under this section by filing a
23 written request for review with the department within thirty days of the date of the
24 department's denial of ~~the claim apayment.~~ The written notice with the department
25 which includes request for review must include the remittance advice or the notice of
26 recoupment or adjustment and a statement of each disputed item and with the reason
27 or basis for the dispute. A provider may not request review under this section of the
28 rate paid for a particular service or for a full or partial denial, recoupment, or
29 adjustment of a claim due to required federal or state changes, payment system
30 defects, or improper claims submission.

- 1 3. Within thirty days after requesting a review, a provider shall provide to the department
2 all documents, written statements, exhibits, and other written information that support
3 the provider's request for review, together with a computation and the dollar amount
4 that reflects the provider's claim as to the correct computation and dollar amount for
5 each disputed item.
- 6 4. The department shall assign to a provider's request for review someone other than
7 any individual who was involved in the initial denial of the claim. A provider who has
8 requested review may contact the department for an informal conference regarding
9 the review anytime before the department has issued its final decision.
- 10 5. The department shall make and issue ~~its~~a final decision within seventy-five days of
11 receipt of the notice for review, if the department has denied payment for a medical
12 assistance claim or reduced the level of service payment for a service~~and within~~. The
13 department shall make and issue a decision within seventy-five days, or as soon
14 thereafter as possible, of receipt of the notice of request for review, if the department
15 has recouped or adjusted a claim, or part of a claim, following an audit. The
16 department's final decision must conform to the requirements of section 28-32-39. A
17 provider may appeal the final decision of the department to the district court in the
18 manner provided in section 28-32-42, and the district court shall review the
19 department's final decision in the manner provided in section 28-32-46. The judgment
20 of the district court in an appeal from a request for review may be reviewed in the
21 supreme court on appeal by any party in the same manner as provided in section
22 28-32-49.
- 23 6. Upon receipt of notice that the provider has appealed its final decision to the district
24 court, the department shall make a record of all documents, written statements,
25 exhibits, and other written information submitted by the provider or the department in
26 connection with the request for review and the department's final decision on review,
27 which constitutes the entire record. Within thirty days after an appeal has been taken
28 to district court as provided in this section, the department shall prepare and file in the
29 office of the clerk of the district court in which the appeal is pending the original and a
30 certified copy of the entire record, and that record must be treated as the record on
31 appeal for purposes of section 28-32-44.

1 **SECTION 29. AMENDMENT.** Section 50-24.1-26 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-24.1-26. Medicaid ~~waiver~~waivers - In-home services.**

4 The department shall ~~apply for aadminister~~ Medicaid ~~waiver~~waivers to provide in-home
5 services to children with extraordinary medical needs and to children up to the age of fourteen
6 diagnosed with an autism spectrum disorder who would otherwise require hospitalization or
7 nursing facility~~meet institutional level of care~~. The department ~~may limit the waiver to fifteen~~
8 ~~participants and may prioritize applicants~~ for the waiver for children with extraordinary medical
9 needs by degree of need.

10 **SECTION 30. AMENDMENT.** Section 50-24.1-28 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **50-24.1-28. Medical assistance and Medicare prescription drug management**
13 **program.**

14 ~~The department of human services, with respect to the state medical assistance program,~~
15 ~~shall develop a plan for the implementation of the Medicare Prescription Drug, Improvement,~~
16 ~~and Modernization Act of 2003 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1]. The~~
17 ~~department may purchase the services of an outside consultant to assist in the development of~~
18 ~~the plan. The requirements of chapter 54-44.4 do not apply to the purchase of the consultant~~
19 ~~services. The department may not pay for:~~

- 20 1. A prescription drug that is within a class of drugs covered under the Medicare
21 Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108-173;
22 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed to a medical assistance
23 recipient who is also a Medicare beneficiary.
- 24 2. A prescription drug that is not covered and for which no drug in its class is covered
25 under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003
26 [Pub. L. 108-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1] and which is prescribed for an
27 individual who is a medical assistance recipient and a Medicare beneficiary unless
28 federal medical assistance matching funds are available at no less than the federal
29 medical assistance percentage and the department determines that the drug is
30 medically necessary for the individual.

- 1 3. ~~A prescription drug for which federal medical assistance matching funds are not~~
2 ~~available except that until February 15, 2006, the department may pay for the drug in~~
3 ~~an emergency to ensure that a medical assistance recipient who is also a Medicare~~
4 ~~beneficiary may continue to receive appropriate medications after implementation of~~
5 ~~the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L.~~
6 ~~408-173; 117 Stat. 2066; 42 U.S.C. 1396kk-1].~~

7 **SECTION 31. AMENDMENT.** Section 50-24.1-29 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **50-24.1-29. Insurers to provide certain information to the department of human**
10 **services.**

- 11 1. For purposes of this section:
- 12 a. "Department" means the department of human services or its agent.
- 13 b. "Health insurer" includes self-insured plans, group health plans as defined in
14 section 607(1) of the Employee Retirement Income Security Act of 1974
15 [29 U.S.C. 1167(1)], service benefit plans, managed care organizations,
16 pharmacy benefit managers, or other parties that legally are responsible by
17 statute, contract, or agreement for payment of a claim for a health care item or
18 service.
- 19 ~~e. "Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of~~
20 ~~the Social Security Act [42 U.S.C. 1396 et seq.].~~
- 21 2. As a condition of doing business in this state, health insurers shall provide to the
22 department upon its request and in a manner prescribed by the department
23 information about individuals who are eligible for medical assistance so the
24 department may determine during what period the individual or the individual's spouse
25 or dependents may be or may have been covered by a health insurer and the nature
26 of the coverage provided by the health insurer, including the name, address, and
27 identifying number of the plan. Notwithstanding any other provision of law, every
28 health insurer, not more frequently than twelve times in a year, shall provide to the
29 department upon its request information, including automated data matches
30 conducted under the direction of the department, as necessary, to:

- 1 a. Identify individuals covered under the insurer's health benefit plans who are also
- 2 recipients of medical assistance;
- 3 b. Determine the period during which the individual or the individual's spouse or the
- 4 individual's dependents may be or may have been covered by the health benefit
- 5 plan; and
- 6 c. Determine the nature of the coverage.

7 The insurer must provide the information required in this subsection to the department
8 at no cost if the information is in a readily available structure or format. If the
9 department requests the information in a structure or format that is not readily
10 available, the insurer may charge a reasonable fee for providing the information, not to
11 exceed the actual cost of providing the information.

- 12 3. To facilitate the department in obtaining the information required by this section, a
13 health insurer shall:

- 14 a. Cooperate with the department to determine whether a medical assistance
15 recipient may be covered under the insurer's health benefit plan and is eligible to
16 receive benefits under the health benefit plan for services provided under the
17 medical assistance program.
- 18 b. Respond to the request for information within ninety days after receipt of written
19 proof of loss or claim for payment for health care services provided to a recipient
20 of medical assistance who is covered by the insurer's health benefit plan.
- 21 c. Accept the department's right of recovery and the assignment to the department
22 of any right of an individual or other entity to payment from a liable third party for
23 an item or service for which payment has been made under the state medical
24 assistance plan.
- 25 d. Respond to any inquiry by the department regarding a claim for payment for any
26 health care item or service that is submitted no later than three years after the
27 date of the provision of the health care item or service.
- 28 e. Agree not to deny a claim submitted by the department solely on the basis of the
29 date of submission of the claim, the type of format of the claim form, or a failure
30 to present proper documentation at the point of sale that is the basis of the claim
31 if:

- 1 (1) The claim is submitted by the department within the three-year period
2 beginning on the date on which the item or service was furnished; and
3 (2) Any action by the department to enforce its rights with respect to such claim
4 is commenced within six years of the department's submission of the claim.
- 5 4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf,
6 from taking into account that the individual is eligible for or is provided medical
7 assistance.
- 8 5. The department may not use or disclose any information provided by the insurer other
9 than as permitted or required by law. The insurer may not be held liable for the release
10 of insurance information to the department or a department agent if the release is
11 authorized under this section.

12 **SECTION 32. AMENDMENT.** Section 50-24.1-30 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **50-24.1-30. Third-party liability recovery.**

15 1. ~~For purposes of this section:~~

16 a. ~~"Department" means the department of human services.~~

17 b. ~~"Third party" means an individual, entity, or program that is or may be liable to~~
18 ~~pay all or part of the expenditures for medical assistance furnished under this~~
19 ~~chapter.~~

20 2. The department shall seek recovery of reimbursement from a third party up to the full
21 amount of medical assistance paid.

22 ~~3.2.~~ A medical assistance recipient shall inform the department of any rights the recipient
23 has to third-party benefits and shall inform the department of the name and address of
24 any individual, entity, or program that is or may be liable to provide third-party benefits.

25 ~~4.3.~~ A release or satisfaction of a cause of action, suit, claim, counterclaim, demand,
26 judgment, settlement, or settlement agreement is not valid or effectual as against a
27 claim created under this chapter unless the department joins in the release or
28 satisfaction or executes a release of its claim.

29 ~~5.4.~~ The department shall recover the full amount of all medical assistance provided on
30 behalf of a recipient to the full extent of third-party benefits received by the recipient or
31 the department for medical expenses. The department shall recover the third-party

1 benefits directly from any third party or from the recipient or legal representative, if the
2 recipient or legal representative has received third-party benefits, up to the amount of
3 medical assistance provided to the recipient.

4 6-5. An applicant for or recipient of medical assistance shall cooperate in the recovery of
5 third-party benefits.

6 7-6. To enforce its rights to third-party benefits, the department may institute, intervene in,
7 or join any legal or administrative proceeding in its own name.

8 a. If either the recipient or the department brings an action against a third party, the
9 recipient or the department must provide to the other within thirty days after
10 commencing the action written notice by personal delivery or registered mail of
11 the action, the name of the court in which the case is brought, the case number
12 of such action, and a copy of the pleadings. If either the department or the
13 recipient brings an action, the other may become a party to or may consolidate
14 an action brought independently with the other.

15 b. A judgment, award, or settlement of a claim in an action by a recipient to recover
16 damages for injuries or other third-party benefits in which the department has an
17 interest may not be satisfied or released without first giving the department notice
18 and a reasonable opportunity to file and satisfy its claim or proceed with any
19 action as otherwise permitted by law.

20 8-7. Any transfer or encumbrance of any right, title, or interest to which the department has
21 a right with the intent, likelihood, or practical effect of defeating, hindering, or reducing
22 recovery by the department for reimbursement of medical assistance provided to a
23 recipient is void and of no effect against the claim of the department.

24 9-8. A recipient who has notice or who has actual knowledge of the department's rights to
25 third-party benefits who receives any third-party benefit or proceeds for a covered
26 illness or injury is either required to pay the department within sixty days after receipt
27 of settlement proceeds the full amount of the third-party benefits up to the total
28 medical assistance provided or to place a sum equal to the full amount of the total
29 medical assistance provided in a trust account pending judicial or administrative
30 determination of the department's right to the third-party benefits.

- 1 ~~40-9.~~ Notwithstanding any provision in this section to the contrary, the department is not
2 required to seek reimbursement from, or may reduce or compromise a claim against, a
3 liable third party on claims for which the amount it reasonably expects to recover will
4 be less than the cost of recovery or for which recovery efforts will not be cost-effective.
5 Cost-effectiveness is determined based on the following:
- 6 a. Actual and legal issues of liability as may exist between the recipient and the
 - 7 liable party;
 - 8 b. Total funds available for settlement; and
 - 9 c. An estimate of the cost to the department of pursuing its claim.

10 **SECTION 33. AMENDMENT.** Section 50-24.1-31 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **50-24.1-31. Optional medical assistance for families of children with disabilities.**

13 The department of human services shall establish and implement a buyin program under
14 the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L.
15 109-171; 120 Stat. 4; 42 U.S.C. 1396] to provide medical assistance and other health coverage
16 options to families of children with disabilities and whose net income does not exceed two
17 hundred percent of the federal poverty line published by the federal office of management and
18 budget applicable to the household size.

19 **SECTION 34. AMENDMENT.** Section 50-24.1-33 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 ~~**50-24.1-33. Brain injury - Home and community-based services - Outreach activities --**~~
22 **Quality control.**

- 23 1. As part of the personal care services program for eligible medical assistance
24 recipients and as part of the department's services for eligible disabled and elderly
25 individuals, the department shall provide home and community-based services to
26 individuals who have moderate or severe impairments as a result of a brain injury and
27 meet the functional eligibility criteria for receipt of services. ~~The department shall give~~
28 ~~priority under this section to individuals whose impairments are less severe or similar~~
29 ~~to those of individuals who are eligible for Medicaid waivers.~~

1 2. ~~The department shall conduct outreach and public awareness activities regarding the~~
2 ~~availability of home and community-based services to individuals who have moderate-~~
3 ~~or severe impairments as a result of a brain injury.~~

4 3. The department shall conduct quality control activities and make training available to
5 case managers and other persons providing services to individuals under this section.

6 **SECTION 35. AMENDMENT.** Section 50-24.1-34 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **50-24.1-34. Processing of claims submitted on behalf of inmates.**

9 The department of human services shall process claims submitted by enrolled medical
10 providers on behalf of inmates at county jails. Each county shall pay the department for the paid
11 amount for the claims processed and also a processing fee for each claim submission. The
12 department ~~shall~~may establish a processing fee that may not exceed ~~thirty~~fifty dollars and shall
13 update the fee annually on July first. The processing fee must be based on the ~~annual~~actual
14 costs to the department of the claims processing operations divided by the annual volume of
15 claims submitted. The department shall invoice each county for payment of the processing fee.
16 ~~Beginning July 1, 2011, the department of human services shall increase the claims processing~~
17 ~~fee to recover the cost of the Medicaid claims system changes. The department shall deposit~~
18 ~~the portion of the fee associated with recovering the costs of the Medicaid claims system~~
19 ~~changes in the general fund.~~

20 **SECTION 36. AMENDMENT.** Section 50-24.1-35 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **50-24.1-35. Department to expand Medicaid coverage. (~~Contingent effective date~~**
23 **See note**)

24 ~~After implementation of the Medicaid management information system, the~~The department
25 ~~of human services shall expand~~ensure Medicaid coverage ~~to include~~includes Medicaid-covered
26 services provided to an inmate of the ~~state penitentiary~~department of corrections and
27 rehabilitation or a county jail who would be eligible for Medicaid if the inmate were not
28 incarcerated and who is admitted to an inpatient ~~hospital~~ setting.

29 **SECTION 37. AMENDMENT.** Section 50-24.1-36 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **50-24.1-36. Civil sanction - Costs recoverable - Interest - Appeals.**

2 1. For purposes of this section:

3 a. "Affiliate" means a person having an overt or covert relationship each with
4 another person in a manner that one person directly or indirectly controls or has
5 the power to control another.

6 b. ~~"Department" means the department of human services.~~

7 e. "Provider" means any individual or entity furnishing Medicaid services under a
8 provider agreement with the department of human services.

9 2. A provider, an affiliate of a provider, or any combination of provider and affiliates, is
10 liable to the department for up to twenty-five percent of the amount the department
11 was induced to pay as a result of each act of fraud or abuse. This sanction is in
12 addition to the applicable rules established by the department.

13 3. A provider, an affiliate of a provider, or any combination of provider and affiliates, is
14 liable to the department for up to five thousand dollars on each act of fraud or abuse
15 which did not induce the department to make an erroneous payment. This sanction is
16 in addition to the applicable rules established by the department.

17 4. A provider, an affiliate of a provider, or any combination of provider and affiliates, that
18 is assessed a civil sanction by the department also shall reimburse the department
19 investigation fees, costs, and expenses for any investigation and action brought under
20 this section.

21 5. Unless otherwise provided in a judgment entered against a provider or against an
22 affiliate of the provider, overpayments and sanctions accrue interest at the legal rate
23 beginning thirty days after the department provides written notice to the provider or the
24 affiliate of the provider.

25 6. a. A provider or an affiliate of a provider who is assessed a sanction may request a
26 review of the sanction by filing within thirty days of the date of the department's
27 notice of sanction a written notice with the department which includes a
28 statement of each disputed item and the reason or basis for the dispute.

29 b. A provider or an affiliate of a provider may not request review under this section if
30 the sanction imposed is termination or suspension and the notice of sanction
31 states that the basis for the sanction is either:

- 1 (1) The provider's or affiliate's failure to meet standards of licensure,
2 certification, or registration where those standards are imposed by state or
3 federal law as a condition to participation in the Medicaid program; or
4 (2) The provider or affiliate has been similarly sanctioned by the Medicare
5 program or by another state's Medicaid program.
- 6 c. Within thirty days after requesting a review, a provider or affiliate shall provide to
7 the department all documents, written statements, exhibits, and other written
8 information that supports the request for review.
- 9 d. The department shall assign a provider's or affiliate's request for review to
10 someone other than an individual who was involved in imposing the sanction. A
11 provider or affiliate who has requested review may contact the department for an
12 informal conference regarding the review any time before the department has
13 issued its final decision.
- 14 e. The department shall make and issue its final decision within seventy-five days of
15 receipt of the notice of request for review. The department's final decision must
16 conform to the requirements of section 28-32-39. A provider or affiliate may
17 appeal the final decision of the department to the district court in the manner
18 provided in section 28-32-42, and the district court shall review the department's
19 final decision in the manner provided in section 28-32-46. The judgment of the
20 district court in an appeal from a request for review may be reviewed in the
21 supreme court on appeal by any party in the same manner as provided in section
22 28-32-49.
- 23 f. Upon receipt of notice that the provider or affiliate has appealed its final decision
24 to the district court, the department shall make a record of all documents, written
25 statements, exhibits, and other written information submitted by the provider,
26 affiliate, or the department in connection with the request for review and the
27 department's final decision on review, which constitutes the entire record. Within
28 thirty days after an appeal has been taken to district court as provided in this
29 section, the department shall prepare and file in the office of the clerk of the
30 district court in which the appeal is pending the original and a certified copy of the

1 entire record, and that record must be treated as the record on appeal for
2 purposes of section 28-32-44.

3 7. Determinations of medical necessity may not lead to imposition of remedies, duties,
4 prohibitions, and sanctions under this section.

5 8. The remedies, duties, prohibitions, and sanctions of this section are not exclusive and
6 are in addition to all other causes of action, remedies, penalties, and sanctions
7 otherwise provided by law or by provider agreement.

8 9. The state's share of all civil sanctions, investigation fees, costs, expenses, and interest
9 received by the department under this section must be deposited into the general
10 fund.

11 **SECTION 38. AMENDMENT.** Section 50-24.1-39 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **50-24.1-39. Behavioral health services - Licensed marriage and family therapists.**

14 Beginning January 1, 2016, the department of ~~human services~~ shall allow licensed marriage
15 and family therapists to enroll and be eligible for payment for behavioral health services
16 provided to recipients of medical assistance, subject to limitations and exclusions the
17 department determines necessary.

18 **SECTION 39. REPEAL.** Sections 50-24.1-01.2, 50-24.1-10, 50-24.1-11, 50-24.1-13,
19 50-24.1-19, 50-24.1-22, 50-24.1-25, and 50-24.1-27 of the North Dakota Century Code are
20 repealed.

21 **SECTION 40. EFFECTIVE DATE.** Section 4 of this Act becomes effective on January 1,
22 2020.