

2023 HOUSE HUMAN SERVICES

HB 1044

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1044
1/16/2023

Relating to the medical assistance primary care provider program; and to provide an effective date.

Chairman Weisz called the meeting to order at 11:08 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Primary Care Case Management program
- Patient/primary care provider relationship

Jodi Hulm, Director of Managed Care and Children's Services- Introduced HB 1044 with supportive testimony. (#13513)

Chairman Weisz adjourned the meeting at 11:13 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1044
1/16/2023

Relating to the medical assistance primary care provider program; and to provide an effective date.

Chairman Weisz called the meeting to order at 11:24 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee Action

Vice Chairman Ruby moved a do pass on HB 1044.

Seconded by Rep. Holle.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	N
Representative Karen M. Rohr	Y

Motion carries 13-1-0.

Carried by Rep. Anderson.

Chairman Weisz adjourned the meeting at 11:26 AM.

Phillip Jacobs, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1044: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1044 was placed on the Eleventh order on the calendar.

2023 SENATE HUMAN SERVICES

HB 1044

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1044
2/20/2023

Regarding to the medical assistance primary care provider program; and to provide an effective date.
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11:02 AM **Madam Chair Lee** called the hearing to order. Senators Lee, Cleary, Clemens, K. Roers, Weston, Hogan were present.

Discussion Topics:

- Assign primary provider
- New model
- Repeal with amendment

11:03 AM **Krista Fremming, Interim Director of Medical Services, North Dakota Department of Health and Human Services**, introduced HB 1044 and testified in favor. #21127, 21160

11:11 AM **Jonathon Alm, Attorney, ND Department Human Health Services**, provided proposed amendment 50-24.1-32 #21161

11:15 AM **Courtney Keobebe, ND Academy of Physician Assistants**, in support as amended and verbally testified in favor.

11:16 AM **Pam Sharp, Nurse Practitioners Association**, in favor as amended and verbally testified.

Additional written testimony:

Jay Metzger, Legislative Committee Chair, North Dakota Academy of Physical Assistants, in opposition #21111.

11:17 AM **Madam Chair Lee** closed the hearing.

Senator K. Roers moved to ADOPT AMENDMENT LC 23.8043.01001.

Senator Weston seconded.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator K. Roers moved DO PASS as AMENDED

Senator Weston seconded.

Roll call vote.

Senators	Vote
Senator Judy Lee	Y
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

Motion passed 6-0-0.

Senator Cleary will carry HB 1044.

11:19 AM **Madam Chair Lee** adjourned the hearing.

Patricia Lahr, Committee Clerk

February 20, 2023

AG
2-20-23
(1-1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1044

Page 1, line 1, replace "repeal" with "amend and reenact"

Page 1, replace line 4 with:

"**SECTION 1. AMENDMENT.** Section 50-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-32. Medical assistance - Services provided by physician assistants and advanced practice registered nurses - Primary care provider case management program.

1. The medical assistance program must recognize physician assistants and advanced practice registered nurses with the roles of nurse practitioner or certified nurse midwife as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the physician assistant or advanced practice registered nurse with the roles of nurse practitioner or certified nurse midwife as a primary care provider under the medical assistance program must be within the scope of the physician assistant's or advanced practice registered nurse's respective license.
2. The department shall eliminate the primary care provider case management program."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1044: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1044 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, replace "repeal" with "amend and reenact"

Page 1, replace line 4 with:

"SECTION 1. AMENDMENT. Section 50-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-32. Medical assistance - Services provided by physician assistants and advanced practice registered nurses - Primary care provider case management program.

1. The medical assistance program must recognize physician assistants and advanced practice registered nurses with the roles of nurse practitioner or certified nurse midwife as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the physician assistant or advanced practice registered nurse with the roles of nurse practitioner or certified nurse midwife as a primary care provider under the medical assistance program must be within the scope of the physician assistant's or advanced practice registered nurse's respective license.
2. The department shall eliminate the primary care provider case management program."

Renumber accordingly

TESTIMONY

HB 1044



Testimony
House Bill No. 1044
House Human Services Committee
Representative Weisz, Chairman
January 16, 2023

Chairman Weisz, and members of the House Human Services Committee, I am Jodi Hulm, Director of Managed Care and Children's Services with the Department of Health and Human Services (Department). I appear before you in support of House Bill No. 1044, which was introduced at the request of the Department.

The proposed changes in Section 1 of this Bill would repeal Section 50-24.1-32 of the North Dakota Century Code, which governs the Primary Care Case Management (PCCM) program. Over the years the Department has received feedback from Medicaid members and providers, in which they have voiced frustration with the PCCM program. We are not proposing to end this program without an alternative, and we anticipate greater satisfaction amongst both members and providers under the new model.

The PCCM program requires that members select or be assigned a primary care provider (PCP) to handle most of their care. The concept of a patient/PCP relationship is an important one, and one that the Department will continue through a new model based on the work that has been done over the past year with the prospective payment system (PPS) health systems across the state.

The main reason to eliminate PCCM is because members will be attributed to a primary care provider in the new value-based payment program, and

it would be confusing for both members and providers to have two different attribution models. In the value-based payment program, primary care providers who are affiliated with a PPS health system, will have members attributed to them and be held accountable for certain quality measures related to preventive screenings, primary care provider visits and utilization of emergency departments. The Department believes this is a better way to move forward for member and primary care provider relationships than would be achieved under PCCM.

Administrative burdens would be reduced for everyone. Members would no longer need to call to change their PCP if they wanted to choose a different PCP. Human Service Zone offices would no longer have to enter, update, or change PCP member selections in the Medicaid Management Information System (MMIS). Providers would no longer have to verify PCP information for members and obtain referrals for visits.

Section 2 of this Bill is requesting that the repeal of section 50-24.1-32 of the North Dakota Century Code is effective on January 1, 2024.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

SENATE HUMAN SERVICES COMMITTEE**HB 1044****Testimony of Jay Metzger, PA-C****North Dakota Academy of Physician Assistants****February 20, 2023**

Chairman Lee, Senate Human Services Committee members, the North Dakota Academy of PAs is asking for a DO NOT PASS recommendation on HB 1044.

HB 1044, submitted by the ND Department of Health and Human Services (NDDHHS), will remove section 50-24.1-32 of the NDCC, a law that explicitly codifies that PAs and NPs are recognized as primary care providers in the Medicaid program. NDDHHS testimony to the House Human Services committee conveyed that PAs and NPs were aware of the bill and issues surrounding the intent, but we were not. Our opposition is not simply because we were not informed; it is because this law ensures that PAs and NPs are recognized as primary care providers for our Medicaid patients.

In discussions with the NDDHHS following the House HSC hearing, the intent as to why this piece of the NDCC needs to be removed does not make sense to us. The NDDHHS desires to discontinue the Primary Care Case Management program (PCCM), and to do so, they feel that removing this section from the NDCC is the only way. Title 75-02-02-29 of the ND Admin Code, which has section 50-24.1-32

as a law implemented, covers many other providers and aspects of care for Medicaid patients, not just PAs and NPs (see excerpt from Title 75 below). The authority for Title 75-02-02-29 comes from NDCC 50-24.1-04, which gives the NDDHHS the authority to adopt rules and regulations as necessary to qualify for any federal funds available to the Medicaid program.

The NDAPA opposes HB 1044 because there is no reason why this section of the NDCC must be removed to achieve the end goal that the NDDHHS and those that want to end the PCCM program desire. The NDDHHS has the authority to change through the Admin Code process, and the NDAPA believes that is how this it should be done. Removing the law that recognizes PAs and NPs as primary care providers for Medicaid patients puts our members at risk of being denied that ability in the future without going through the legislative process.

Chairman Lee and members of the Senate Human Services Committee, the members of the NDAPA ask for a DO NOT PASS on HB 1044.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Jay R. Metzger', with a stylized flourish at the end.

Jay R. Metzger, PA-C
North Dakota Academy of Physician Assistants
NDAPABoard@gmail.com

advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication.

5. Drug use review board meeting procedures.
 - a. Any interested party may address the drug use review board at its regular meetings if the presentation is directly related to an agenda item.
 - b. The drug use review board may establish time limits for presentations.
 - c. The department shall post on its web site the proposed date, time, location, and agenda of any meeting of the drug use review board at least thirty days before the meeting.
6. Within thirty days of the date the drug use review board's recommendation is received by the department, the department shall review the recommendations and make the final determination as to whether a drug requires prior authorization and, if so, when the requirement for prior authorization will begin. If the department's final determination is different from the recommendation of the drug use review board, the department shall present, in writing, to the drug use review board at its next meeting the basis for the final determination.
7. The department shall post on its web site the list of drugs subject to prior authorization and the date on which each drug became subject to prior authorization.
8. A recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon application of this section as authorized under North Dakota Century Code chapter 28-32.

History: Effective September 1, 2003; amended effective October 1, 2012; April 1, 2020.

General Authority: NDCC 50-24.6-10

Law Implemented: NDCC 50-24.6; 42 USC 1396r-8

75-02-02-29. Primary care provider.

1. Payment may not be made for services that require a referral from a recipient's primary care provider for recipients, with the exception of recipients who are notified by the department and are required within fourteen days from the date of that notice, but who have not yet selected, or have not yet been auto-assigned a primary care provider.
2. A primary care provider must be selected by or on behalf of the members in the following Medicaid units:
 - a. The parents or caretaker relatives and their spouses of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, up to fifty-four percent of the federal poverty level.
 - b. For up to twelve months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relatives and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretakers lose coverage under the parents and caretaker relatives and their spouses category due to increased earned income or hours of employment.
 - c. For up to four months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relative and their spouses category in at least three of the six months

- immediately preceding the month in which the parents or caretaker relatives lose coverage under the parents and caretaker relatives and their spouses category due to increased alimony or spousal support.
- d. A pregnant woman up to one hundred fifty-seven percent of the federal poverty level.
 - e. An eligible woman who applied for and was eligible for Medicaid during pregnancy continues to be eligible for sixty days, beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls.
 - f. A child born to an eligible pregnant woman who applied for and was found eligible for Medicaid on or before the day of the child's birth, for twelve months, beginning on the day of the child's birth and for the remaining days of the month in which the twelfth month falls.
 - g. A child, not including a child in foster care, from birth through five years of age up to one hundred forty-seven percent of the federal poverty level.
 - h. A child, not including a child in foster care, from six through eighteen years of age, up to one hundred thirty-three percent of the federal poverty level.
 - i. A child, not including a child in foster care, from six through eighteen years of age who becomes Medicaid eligible due to an increase in the Medicaid income levels used to determine eligibility.
 - j. An individual who is not otherwise eligible for Medicaid and who was in title IV-E funded, state-funded, or tribal foster care in this state under in the month the individual reaches eighteen years of age, through the month in which the individual reaches twenty-six years of age.
 - k. A pregnant woman who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred fifty-seven percent of the federal poverty level.
 - l. A child less than nineteen years of age who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1- 41.1 and whose income is above one hundred seventy percent of the federal poverty level.
 - m. The parents and caretaker relatives and their spouses of a deprived child who require medical services and qualify for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred thirty-three percent of the federal poverty level.
 - n. A child, not including a child in foster care, less than nineteen years of age with income up to one hundred seventy percent of the federal poverty level.
 - o. An individual age nineteen or twenty eligible under Medicaid expansion, as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], and implementing regulations.
3. A physician, advanced practice registered nurse with the role of nurse practitioner, physician assistant, or certified nurse midwife practicing in the following specialties or the following entities may be selected as a primary care provider:
- a. Family practice;

- b. Internal medicine;
 - c. Obstetrics;
 - d. Pediatrics;
 - e. General practice;
 - f. Adult health;
 - g. A rural health clinic;
 - h. A federally qualified health center; or
 - i. An Indian health services clinic or tribal health facility clinic.
4. A recipient need not select, or have selected on the recipient's behalf, a primary care provider if:
- a. The recipient is aged, blind, or disabled;
 - b. The period for which benefits are sought is prior to the date of application;
 - c. The recipient is receiving foster care or subsidized adoption benefits;
 - d. The recipient is receiving home and community-based services; or
 - e. The recipient has been determined medically frail under section 75-02-02.1-14.1.
5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:
- a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;
 - b. Family planning services;
 - c. Certified nurse midwife services;
 - d. Optometric services;
 - e. Chiropractic services;
 - f. Dental services;
 - g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;
 - h. Services provided by an intermediate care facility for individuals with intellectual disabilities;
 - i. Emergency services;
 - j. Transportation services;
 - k. Targeted case management services;
 - l. Home and community-based services;
 - m. Nursing facility services;

- n. Prescribed drugs except as otherwise specified in section 75-02-02-27;
 - o. Psychiatric services;
 - p. Ophthalmic services;
 - q. Obstetrical services;
 - r. Behavioral health services;
 - s. Services for treatment of addiction;
 - t. Partial hospitalization for psychiatric services;
 - u. Ambulance services;
 - v. Immunizations;
 - w. Independent laboratory and radiology services;
 - x. Public health unit services; and
 - y. Personal care services.
6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.
7. The department may not limit a recipient's disenrollment from a primary care provider. A primary care provider may be changed at any time upon request by the recipient.

History: Effective October 1, 2012; amended effective July 1, 2014; April 1, 2016; January 1, 2017; April 1, 2018; April 1, 2020; January 1, 2022.

General Authority: NDCC 50-24.1-04, 50-24.1-41

Law Implemented: [NDCC 50-24.1-32](#), 50-24.1-41; 42 USC 1396u-2

**Testimony
House Bill No. 1044
Senate Human Services Committee
Senator Lee, Chairman
February 20, 2023**

Chairman Lee, and members of the Senate Human Services Committee, I am Krista Fremming, Interim Director of Medical Services with the Department of Health and Human Services (Department). I appear before you in support of House Bill No. 1044, which was introduced at the request of the Department.

The proposed changes in Section 1 of this Bill would repeal Section 50-24.1-32 of the North Dakota Century Code, which governs the Primary Care Case Management (PCCM) program. Over the years the Department has received feedback from Medicaid members and providers, in which they have voiced frustration with the PCCM program. We are not proposing to end this program without an alternative, and we anticipate greater satisfaction amongst both members and providers under the new model.

The PCCM program requires that members select or be assigned a primary care provider (PCP) to handle most of their care. The concept of a patient/PCP relationship is an important one, and one that the Department will continue through a new model based on the work that has been done over the past year with the prospective payment system (PPS) health systems across the state.

By eliminating the PCCM program, the Department is not changing who

can be selected by a member as their PCP. It also doesn't eliminate any provider that is currently being reimbursed by North Dakota Medicaid.

The main reason to eliminate PCCM is because members will be attributed to a PCP in the new value-based payment program, and it would be confusing for both members and providers to have two different attribution models. In the value-based payment program, PCPs who are affiliated with a PPS health system, will have members attributed to them and be held accountable for certain quality measures related to preventative screenings, PCP visits and utilization of emergency departments. Members will also be attributed to PCPs outside of PPS health systems, however at this point, providers outside PPS health systems will not be held financially accountable for quality measures. The Department believes this is a better way to move forward for member and primary care provider relationships than would be achieved under PCCM.

Administrative burdens will be reduced for everyone. Members will no longer need to call to change their PCP if they wanted to choose a different PCP. Human Service Zone offices would no longer have to enter, update, or change PCP member selections in the Medicaid Management Information System (MMIS). Providers would no longer have to verify PCP information for members and obtain referrals for visits.

Section 2 of this Bill is requesting that the repeal of section 50-24.1-32 of the North Dakota Century Code is effective on January 1, 2024.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

- brings an action, the other may become a party to or may consolidate an action brought independently with the other.
- b. A judgment, award, or settlement of a claim in an action by a recipient to recover damages for injuries or other third-party benefits in which the department has an interest may not be satisfied or released without first giving the department notice and a reasonable opportunity to file and satisfy its claim or proceed with any action as otherwise permitted by law.
7. Any transfer or encumbrance of any right, title, or interest to which the department has a right with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided to a recipient is void and of no effect against the claim of the department.
 8. A recipient who has notice or who has actual knowledge of the department's rights to third-party benefits who receives any third-party benefit or proceeds for a covered illness or injury is either required to pay the department within sixty days after receipt of settlement proceeds the full amount of the third-party benefits up to the total medical assistance provided or to place a sum equal to the full amount of the total medical assistance provided in a trust account pending judicial or administrative determination of the department's right to the third-party benefits.
 9. Notwithstanding any provision in this section to the contrary, the department is not required to seek reimbursement from, or may reduce or compromise a claim against, a liable third party on claims for which the amount it reasonably expects to recover will be less than the cost of recovery or for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on the following:
 - a. Actual and legal issues of liability as may exist between the recipient and the liable party;
 - b. Total funds available for settlement; and
 - c. An estimate of the cost to the department of pursuing its claim.

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

1. The department shall establish and implement a buyin program under the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L. 109-171; 120 Stat. 4; 42 U.S.C. 1396] to provide medical assistance and other health coverage options to families of children with disabilities and whose net income does not exceed two hundred fifty percent of the federal poverty line published by the federal office of management and budget applicable to the household size.
2. The department may not require the payment of a premium or disenroll an individual for failure to pay a premium for families of children with disabilities coverage during a federally declared emergency if collection of the premium may impact the receipt of federal funds.

50-24.1-32. Medical assistance - Services provided by physician assistants and advanced practice registered nurses.

The medical assistance program must recognize physician assistants and advanced practice registered nurses with the roles of nurse practitioner or certified nurse midwife as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the physician assistant or advanced practice registered nurse with the roles of nurse practitioner or certified nurse midwife as a primary care provider under the medical assistance program must be within the scope of the physician assistant's or advanced practice registered nurse's respective license.

50-24.1-33. Brain injury - Home and community-based services - Quality control.

1. As part of the personal care services program for eligible medical assistance recipients and as part of the department's services for eligible disabled and elderly individuals, the department shall provide home and community-based services to individuals who have a brain injury and meet the functional eligibility criteria for receipt of services.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1044

Page 1, line 1, replace “repeal” with “amend”

Page 1, line 4, replace “REPEAL” with “AMENDMENT”

Page 1, line 4, replace “repealed” with “amended and reenacted as follows:

50-24.1-32. Medical assistance - Services provided by physician assistants and advanced practice registered nurses – Primary care provider case management program.

1. The medical assistance program must recognize physician assistants and advanced practice registered nurses with the roles of nurse practitioner or certified nurse midwife as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the physician assistant or advanced practice registered nurse with the roles of nurse practitioner or certified nurse midwife as a primary care provider under the medical assistance program must be within the scope of the physician assistant's or advanced practice registered nurse's respective license.
2. The department shall eliminate the primary care provider case management program.”

Renumber accordingly