



# North Dakota Legislative Council

Prepared for the Acute Psychiatric Treatment Committee  
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## EXPANDED BEHAVIORAL HEALTH SERVICES - BACKGROUND MEMORANDUM

[Section 2 of Senate Bill No. 2161 \(2021\)](#) provides for a study during the 2021-22 interim regarding the implementation of expanded behavioral health services, including the implementation of the Medicaid Section 1915(i) state plan amendment, capacity and utilization of the State Hospital, a behavioral health bed management system, and implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the Human Services Research Institute (HSRI). The Legislative Management has assigned the responsibility for this study to the Acute Psychiatric Treatment Committee.

### SECTION 1915(i) PLAN AMENDMENT

Home- and community-based services (HCBS) first became available in 1983 when Congress added Section 1915(c) to the Social Security Act, giving states the option to receive a waiver of Medicaid rules governing institutional care. Created by the Deficit Reduction Act of 2005 and amended by the Patient Protection and Affordable Care Act, Section 1915(i) of the Social Security Act gives state Medicaid programs the flexibility to cover HCBS without the need to seek a federal waiver. Unlike Medicaid HCBS waivers under Social Security Act Section 1915(c):

- Section 1915(i) does not require states to show that HCBS reduces Medicaid's institutional care costs. As a result, nonelderly adults with mental health or substance use disorders can receive assistance, even though Medicaid does not typically cover their institutional care costs.
- Individuals can qualify for HCBS even if their conditions are not severe enough to require institutionalization, and states can target specific populations based on identified risk factors. Section 1915(i) can assist individuals to transition out of institutional long-term services and supports and help prevent institutionalization by serving patients at an earlier stage in the development of illness, focus institutional beds on the neediest cases, shorten the length of institutional stays, and provide uncapped funding for state compliance with legal requirements to place beneficiaries in home- and community-based settings.
- States cannot cap enrollment, and services must be offered statewide. If caseload growth exceeds projections, states can limit costs by adjusting clinical eligibility criteria for new enrollees.

A Section 1915(i) HCBS benefit may be provided under a state's Medicaid plan, allows the state to provide certain HCBS to individuals with incomes lower than 150 percent of the federal poverty level, and does not include a requirement for individuals to live in a facility to receive care.

A recommendation of the 2018 North Dakota behavioral health system study conducted by HSRI was to diversify and enhance funding for behavioral health, including pursuing a 1915(i) Medicaid state plan amendment. The 2019 Legislative Assembly appropriated ongoing funding of \$9,397,991, of which \$4,053,273 is from the general fund and \$5,344,718 is from other funds, to allow the Department of Human Services (DHS) to administer services to children and adults through a Medicaid Section 1915(i) plan amendment, including hiring 3 full-time equivalent (FTE) positions.

Section 43 of Senate Bill No. 2012 (2019) required DHS to implement and manage a 1915(i) Medicaid state plan amendment for children and adults with behavioral health conditions for fiscal year 2021. The section provided the requirements of North Dakota Century Code Chapter 54-44.4 do not apply to the addition of coverage consistent with the traditional Medicaid 1915(i) state plan to the managed care contract between DHS and the Medicaid Expansion managed care organization. The Department of Human Services and the Medicaid Expansion managed care organization were required to ensure the appropriate contract amendment was adopted for coverage beginning July 1, 2020.

In Section 56 of House Bill No. 1012 (2021), the Legislative Assembly provided legislative intent that funding appropriated from the general fund for supported employment in Section 1 of the bill be used to continue contracts with existing evidence-based supported employment providers during the 2021-23 biennium, and that any funding available through the federal Medicaid 1915(i) state plan amendment be utilized before funding appropriated from the general fund.

In January 2021, the Centers for Medicare and Medicaid Services approved a federal Medicaid 1915(i) state plan amendment from DHS to allow state HCBS programs to be eligible for Medicaid funding. It is anticipated state HCBS programs will begin receiving Medicaid funding during the 2021-23 biennium, reducing the need for general fund appropriations for these programs in future bienniums.

## STATE HOSPITAL

### Background

The State Hospital was first authorized in 1883, opened in May 1885, and is located on the south side of Jamestown. The State Hospital is referenced in Section 12 of Article IX of the Constitution of North Dakota. It provides psychiatric and chemical dependency treatment to residents of the state. Chapter 25-02 contains various provisions related to the hospital, including Section 25-02-01, which provides an institution for the care of the mentally ill must be maintained in Jamestown, the institution must be known as the State Hospital, and is to be administered and controlled by DHS.

Section 25-02-03 provides the State Hospital is an institution for mental diseases serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The State Hospital is one component of the North Dakota mental health delivery system and serves as a resource to community-based treatment programs. The State Hospital, pursuant to rules adopted by DHS, receives and cares for all persons with mental illness, including persons suffering from drug addiction or alcoholism, residing within the state, and is required to furnish to those persons all needed food, shelter, treatment, and support necessary to restore their mental health or to alleviate their illness or suffering.

### Services

The State Hospital provides short-term acute inpatient psychiatric and substance abuse treatment, intermediate psychosocial rehabilitation services, forensic services, and safety net services for adults. Clinical services include psychiatry, psychology, nursing, social work, addiction counseling, chaplaincy, education, occupational therapy, therapeutic reaction, and vocational rehabilitation services. Treatment is provided for individuals with serious mental illness or chemical dependency diagnoses. Inpatient evaluation and treatment services are provided for sexually dangerous individuals.

### Facilities

The following is a summary of buildings located at the State Hospital, including usage and square feet:

Building	Uses	Square Feet
Learning Resource Center	Administrative offices, education services, library	40,800
Administration	Vacant - Used for emergency sleeping rooms for staff	24,675
Central receiving	Receive and store supplies	27,100
16 West	Plumbing and electrical shops; portion of building is vacant	39,990
Superintendent's residence	Former residence of superintendent; rented for special occasions	5,552
Powerhouse	Heating plant to supply steam to facility	39,285
Engineering warehouse	Storage for plumbing, electrical, and carpentry supplies	23,414
Warehouse	General storage	6,020
Grounds warehouse	Storage for grounds department	2,755
Implement shed	Storage for large equipment	5,370
Vehicle maintenance shop	Vehicle maintenance operations	4,650
Employees building	Apartment building for rentals to staff of the hospital and James River Correctional Center	34,345
Cottage 77-1	Housing for medical students and emergency overnight housing for staff	2,857
Cottage 77-2	Housing for medical students and emergency overnight housing for staff	2,857
Cottage 77-3	Rented to Head Start program	2,857
Cottage 77-4	Rented to staff	3,020
Cottage 77-4 garage	Double garage	680
Cottage 77-5	Housing for transitional living patients	3,020
Cottage 77-5 garage	Double garage	676
Cottage 78	Housing for transitional living patients	3,900
Grounds maintenance	Shop and storage for small vehicles and equipment	3,200
Tompkins Building	Tompkins program for chemical dependency treatment for male patients	34,660

Building	Uses	Square Feet
GM Building	Sexual offender program	82,670
Water plant (mason)	Shop used for temporary or contracted masons	4,802
Sewage lift station	Connection to Jamestown city sewer system	800
Metal quonset	Storage for plant services department	3,130
Chapel	Vacant - Used for special occasions	13,140
Cottage 88	Staff rental	2,254
Cottage 88 garage	Single garage	308
Cottage 89	Transitional living for sexual offenders close to discharge	3,028
Swimming pool	Indoor pool for patient treatment	6,800
New Horizons Building	Tompkins program for chemical dependency treatment for women and treatment for psychiatric patients	75,485
LaHaug Building	Inpatient hospital for psychiatric patients and patients who have psychiatric and chemical dependency problems	135,495
Electrical distribution	Emergency generator	1,800
Pedestrian tunnels	Connects various campus buildings	24,832
<b>Total</b>		<b>666,227</b>

**Budget**

The following is a summary of the State Hospital budget for the 2019-21 and 2021-23 bienniums:

	General Fund	Other Funds	Total
2021-23 biennium	\$65,203,293	\$15,883,778	\$81,087,071
2019-21 biennium	48,936,041	19,865,448	68,801,489
Increase (decrease)	\$16,267,252	(\$3,981,670)	\$12,285,582

**BEHAVIORAL HEALTH BED MANAGEMENT SYSTEM**

Engrossed Senate Bill No. 2161 (2021) included the creation of a new section to Chapter 50-06 which would have required DHS to establish and maintain a behavioral health bed management system to improve utilization of behavioral health beds. Public and private providers of residential or inpatient behavioral health services would have been required to participate in and report daily to DHS the information and documentation necessary to participate in the behavioral health bed management system in the form and manner prescribed by DHS.

The fiscal note for the engrossed bill indicated the implementation of a behavioral health bed management system would cost approximately \$44,250 from the general fund for the 2021-23 biennium, of which \$29,250 would be a one-time cost and \$15,000 would be the annual cost for maintenance and operating of the system for the 2<sup>nd</sup> year of the biennium. Biennial ongoing costs would be \$30,000 in future bienniums. The bed management system section was not approved by the 2021 Legislative Assembly.

**PREVIOUS STUDIES**

**2018 North Dakota Behavioral Health System Study**

The 2017-18 interim Human Services Committee received information regarding DHS actions relating to behavioral health. The Department of Human Services contracted with HSRI for \$160,000 to conduct a review of the state's behavioral health system. The goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness, and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. The study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

The committee received the final HSRI report, which included 13 recommendations and 65 specific strategies to direct future behavioral health policy and services in the state, as follows:

Recommendation	Strategy
1. Develop a comprehensive implementation plan	1.1 Reconvene system stakeholders, including service users and their families 1.2 Form an oversight steering committee to coordinate with key stakeholder groups 1.3 Establish workgroups to address common themes identified in this report
2. Invest in prevention and early intervention	2.1 Prioritize and implement evidence-based social and emotional wellness initiatives

Recommendation	Strategy
	2.2 Expand existing substance use prevention efforts, restore funding for the Parents Listen, Educate, Ask, Discuss program 2.3 Build upon and expand current suicide prevention activities 2.4 Continue to address the needs of substance exposed newborns and their parents 2.5 Expand evidence-based services for first-episode psychosis
3. Ensure all North Dakotans have timely access to behavioral health services	3.1 Coordinate and streamline information on resources 3.2 Expand screening in social service systems and primary care 3.3 Ensure a continuum of timely and accessible crisis response services 3.4 Develop a strategy to remove barriers to services for persons with brain injury 3.5 Continue to invest in evidence-based harm-reduction approaches
4. Expand outpatient and community-based service array	4.1 Ensure access to needed coordination services 4.2 Continue to shift funding toward evidence-based and promising practices 4.3 Expand the continuum of substance use disorder treatment services for youth and adults 4.4 Support and coordinate efforts to enhance the availability of outpatient services in primary care 4.5 Address housing needs associated with behavioral health needs 4.6 Promote education and employment among behavioral health service users 4.7 Restore/enhance funding for recovery centers 4.8 Promote timely linkage to community-based services following a crisis 4.9 Examine community-based alternatives to behavioral health services currently provided in long-term care facilities
5. Enhance and streamline system of care for children and youth	5.1 Improve coordination between education, early childhood, and service systems 5.2 Expand targeted, proactive in-home supports for at-risk families 5.3 Develop a coordinated system to enhance treatment-related foster care capacity and cultural responsiveness 5.4 Prioritize residential treatment for those with significant/complex needs
6. Continue to implement and refine criminal justice strategy	6.1 Ensure collaboration and communication between systems 6.2 Promote behavioral health training among first responders and others 6.3 Review behavioral health treatment capacity in jails 6.4 Ensure Medicaid enrollment for individuals returning to the community
7. Engage in targeted efforts to recruit and retain competent behavioral health workforce	7.1 Establish a single entity for supporting workforce implementation 7.2 Develop a single database of statewide vacancies for behavioral health positions 7.3 Provide assistance for behavioral health students working in areas of need in the state 7.4 Raise awareness of student internships and rotations 7.5 Conduct comprehensive review of licensure requirements and reciprocity 7.6 Continue establishing training and credentialing program for peer services 7.7 Expand credentialing programs to prevention and rehabilitation practices 7.8 Support a robust peer workforce through training, professional development, and competitive wages

Recommendation	Strategy
8. Expand the use of telebehavioral health	8.1 Support providers to secure necessary equipment/staff 8.2 Expand the availability of services for substance use disorders, children and youth, and American Indian populations 8.3 Increase types of services available 8.4 Develop clear, standardized regulatory guidelines
9. Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	9.1 Promote shared decisionmaking 9.2 Promote mental health advance directives 9.3 Develop a statewide plan to enhance commitment to cultural competence 9.4 Identify cultural/language/service needs 9.5 Ensure effective communication with individuals with limited English proficiency 9.6 Implement additional training 9.7 Develop/promote safe spaces for LGBTQ individuals within the behavioral health system 9.8 Ensure a trauma-informed system 9.9 Promote organizational self-assessments
10. Encourage and support the efforts of communities to promote high-quality services	10.1 Establish a state-level leadership position representing persons with lived experience 10.2 Strengthen advocacy 10.3 Support the development of and partnerships with peer-run organizations 10.4 Support community efforts to reduce stigma, discrimination, and marginalization 10.5 Provide and require coordinated behavioral health training among related service systems
11. Partner with tribal nations to increase health equity	Collaboration within and among tribal nations, and with state and local human service agencies
12. Diversify and enhance funding for behavioral health	12.1 Develop an organized system for identifying/responding to funding opportunities 12.2 Pursue 1915(i) Medicaid state plan amendments 12.3 Pursue options for financing peer support and community health workers 12.4 Sustain/expand voucher funding and other flexible funds for recovery supports 12.5 Enroll eligible service users in Medicaid 12.6 Join in federal efforts to ensure behavioral and physical health parity
13. Conduct ongoing, system-side data-driven monitoring of needs and access	13.1 Enhance and integrate provider data systems 13.2 Develop system metrics to monitor progress on key goals 13.3 Identify and target services to those with highest service costs

The committee was informed DHS contracted with HSRI for \$178,000 to begin implementing the recommendations. The Department of Human Services estimated the implementation process would be completed in June 2019.

The committee recommended Senate Bill No. 2030 (2019) which included a general fund appropriation of \$408,000 and 1.5 FTE positions for the purpose of coordinating the implementation of recommendations of the study of the state's behavioral health system. The bill was not approved but Senate Bill No. 2012 (2019), which was approved by the Legislative Assembly, included an ongoing \$300,000 general fund appropriation for the implementation of study recommendations.

In House Bill No. 1012 (2021), the Legislative Assembly continued ongoing funding of \$300,000 from the general fund for DHS for the 2021-23 biennium.

### 2019-20 Interim - Human Services Committee

#### Implementation of Behavioral Health System Study Recommendations

The 2019-20 Human Services Committee studied the implementation of the recommendations of the HSRI study of North Dakota's behavioral health system. The committee received updates regarding the status of implementation of recommendations included in the HSRI study of the state's behavioral health system. The Behavioral Health Planning Council, in conjunction with behavioral health stakeholders, coordinated the development of a strategic plan to implement the recommendations. In December 2018, 570 individuals completed

a survey to prioritize the implementation of strategies included in the HSRI report. The top five strategies ranked in the survey were included in the 2019 behavioral health strategic plan.

The top five strategies are:

1. To implement training on trauma-informed approaches for criminal justice staff;
2. To expand in-home community supports;
3. To implement crisis intervention team training for law enforcement officers and emergency medical responders;
4. To review behavioral health treatment capacity in jails and develop a plan to address needs; and
5. To expand school-based mental health and substance use disorder treatment services for youth.

The strategic planning process identified an implementation plan with four phases:

1. Strategic planning.
2. Prioritization and refinement of goals and objectives.
3. Initiate the implementation of goals and objectives.
4. Monitor and sustain the implemented efforts.

As of October 2020, the state was in Phases 3 and 4 of the implementation plan. The committee was informed dashboards were being developed to allow the public to view the implementation progress and that the dashboards will be updated quarterly.

The committee did not make recommendations regarding the study of the implementation of recommendations included in the HSRI report on the state's behavioral health system.

**Acute Psychiatric and Residential Care Statewide Needs Plan**

Section 18 of Senate Bill No. 2012 (2019) (which was further amended by Section 30 of Senate Bill No. 2015 (2019)) required DHS to develop a statewide plan to address acute psychiatric and residential care needs. The plan was to address the following:

1. The size and use of the State Hospital;
2. The potential need for state-operated or private acute facilities in areas of the state outside the city of Jamestown;
3. The potential to expand private providers' offering of acute psychiatric care and residential care to fulfill the identified need, including how the implementation of services authorized by the 2019 Legislative Assembly affects the balance of inpatient, residential, and community-based services;
4. The impact of department efforts to adjust crisis services and other behavioral health services provided by the regional human service centers; and
5. The potential use of available Medicaid authorities, including waivers or plan amendments.

The Department of Human Services contracted with the HSRI for \$68,000 to conduct the study and to analyze the condition of State Hospital facilities and options to construct a new State Hospital facility. The study focused on the size and use of the State Hospital, the need for psychiatric facilities outside the city of Jamestown, the ability for private providers to offer additional psychiatric services, the effect of the DHS efforts to increase crisis and other behavioral health services at regional human service centers, and the potential use of available Medicaid waivers and state plan amendments.

The following are the recommendations that resulted from the HSRI study of the state's acute psychiatric and residential care statewide needs:

Study Area	Key Recommendations
Size and use of the State Hospital	<ol style="list-style-type: none"> <li>1. A new 75- to 85-bed facility should be constructed.</li> <li>2. Demand for the rehabilitation function of the State Hospital may be alleviated by expanding the availability of partial hospital programs.</li> <li>3. Problems with access to behavioral health services reported by critical access hospitals should be investigated.</li> </ol>
Need for state-operated or private acute facilities outside the city of Jamestown	Options should be explored to establish a small number of beds to serve a combination of adults and youth in the northwestern part of the state. Options to contract with an existing inpatient facility for the beds should be reviewed.

Study Area	Key Recommendations
Expansion of private providers offering of acute psychiatric and residential care needs	<ol style="list-style-type: none"> <li>1. Expansion efforts should focus on increased capacity for outpatient treatment that reduces the demand for inpatient treatment.</li> <li>2. Expansion of services should be accompanied by the goal of increased efficiency.</li> <li>3. Federally qualified health clinics and critical access hospitals may provide increased access in less populated areas.</li> <li>4. Assessment of geographic distribution is needed along with expansion.</li> </ol>
Effect of DHS efforts to expand crisis and other behavioral health services at regional human service centers	<ol style="list-style-type: none"> <li>1. Offering additional and enhanced behavioral health services should be accompanied by thorough data collection and monitoring to assess the impact on emergency department and hospital diversion.</li> <li>2. Consideration should be given to contracting for residential beds until the effects of service changes are known.</li> <li>3. Care criteria should be reviewed and utilization management processes enhanced to ensure appropriate level of care assignment.</li> <li>4. Community stability should be monitored when transferring individuals from residential programs to less intensive settings.</li> <li>5. Permanent housing supports should be maximized.</li> <li>6. Service utilization should be monitored across the entire behavioral health system.</li> <li>7. A comprehensive and integrated crisis response system could monitor individuals through care transitions and more efficiently identify available capacity.</li> </ol>
Potential use of Medicaid waivers and plan amendments	<p>A Medicaid Institution for Mental Disease waiver should not be sought by the state which may increase inpatient capacity and is counter to the report recommendations of increased community-based services.</p>

**2021-23 BIENNIUM EXECUTIVE RECOMMENDATIONS**

The 2021-23 biennium executive budget included the following recommendations related to the State Hospital:

- The Department of Human Services be authorized to expend funds for the payment of special assessments at the State Hospital and Life Skills and Transition Center. **The 2021 Legislative Assembly approved this recommendation.**
- The Department of Human Services be authorized to expend funds to demolish the chapel, employee building, and associated tunnels at the State Hospital. Notwithstanding Sections 54-16-04 and 54-27-12, the Director of the Office of Management and Budget be allowed to transfer appropriation authority between line items, as requested by DHS, for the department to expend funds on the demolition of the identified buildings and associated tunnels and for emergency capital projects. **The 2021 Legislative Assembly approved this recommendation and authorized DHS to spend up to \$5 million for emergency projects and may seek Emergency Commission approval to spend more than \$5 million.**
- The Department of Human Services be authorized to construct a new State Hospital on the property owned by the state in Stutsman County, near or on State Hospital's current campus. The recommendation provided the new State Hospital may include space for the operation of the regional human service center. The Department of Human Services would have been authorized to contract with a private operator to build, transfer, and operate the facility through a development agreement on leased property owned by the state of North Dakota, pursuant to Chapter 48-02.1. The continuing cost to support the new State Hospital through a development agreement must be included in the DHS 2023-25 biennium budget request submitted to the 68<sup>th</sup> Legislative Assembly. **The 2021 Legislative Assembly did not approve this recommendation.**
- Provide legislative intent DHS and the National Guard enter into an agreement to lease up to 20 acres of real property associated with the State Hospital for the National Guard to build a new training and storage center. **The 2021 Legislative Assembly approved this recommendation.**

**STUDY PLAN**

The following is a proposed study plan for the committee's consideration in its study regarding the implementation of expanded behavioral health services:

1. Receive and review information from representatives of DHS regarding:
  - a. The status of Section 1915(i) state plan amendment implementation;
  - b. Capacity and utilization of the State Hospital, including buildings currently occupied, buildings no longer in service, behavioral health services provided, and future needs of the State Hospital and patients; and
  - c. The cost, benefit, and need of implementing a behavioral health bed management system in the state.

2. Receive and review information from representatives of DHS regarding implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by HSRI, including:
  - a. A prioritization of recommendations based on need;
  - b. Recommendations implemented to date;
  - c. How the \$300,000 general fund 2019-21 biennium appropriation was spent to implement recommendations;
  - d. Recommendations scheduled for completion during the 2021-23 biennium;
  - e. How the \$300,000 general fund 2021-23 biennium appropriation is expected to be spent to implement recommendations;
  - f. Recommendations scheduled for completion in future bienniums;
  - g. Future funding needs for recommendation implementation; and
  - h. Any recommendations DHS does not anticipate implementing.
3. Receive and review information from interested persons regarding the committee's study of implementation of expanded behavioral health services.
4. Develop recommendations and any bill drafts necessary to implement the recommendations.
5. Prepare a final report for submission to the Legislative Management.