

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 chapter to title 25 of the North Dakota Century
2 Code, relating to implementation of a fee for service ratesetting system for payment to
3 treatment or care centers for individuals with developmental disabilities; to repeal sections
4 25-16-10, 25-16-10.1, 25-16-15, 25-16-16, and 50-06-18 of the North Dakota Century Code,
5 relating to the purchase of services provided to individuals with developmental disabilities and
6 allowing providers of services to individuals with developmental disabilities to transfer funds
7 between budget categories and line items; to provide an appropriation; and to provide an
8 effective date.

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

10 **SECTION 1.** A new chapter to title 25 of the North Dakota Century Code is created and
11 enacted as follows:

12 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

- 13 1. "Department" means the department of human services.
- 14 2. "Fee for service" means a prospective rate based on allowable historical costs
15 established by the department for payment of services provided to individuals with
16 developmental disabilities by a treatment or care center.
- 17 3. "Historical operating costs" means the allowable costs of operating a treatment or
18 care center during the reporting year in compliance with licensing standards
19 prescribed by the department but does not include an annual return on investment
20 in fixed assets related to client care.
- 21 4. "Treatment or care center" means an entity providing services to individuals with
22 developmental disabilities and licensed by the department as an intermediate care
23 facility for the mentally retarded as defined in the section 1905(d) of the Social

Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

Workgroup - Membership - Facilitator. A workgroup composed of one voting member appointed by the governor, three voting members from the department who are selected by the department, and three voting members from the North Dakota association of community facilities who are selected by the association is created. All meetings of the workgroup are open to the public. Subject to legislative appropriations, the workgroup shall hire a facilitator to lead the discussions relative to a new fee-for-service payment system for treatment or care centers and a consultant to perform the financial modeling and evaluation of the current and future payment system. If the workgroup does not receive funding from the legislative assembly for a facilitator, the workgroup shall select one member from the department and one member from the association to serve as cochairmen of the workgroup.

Purchase of services. The department may purchase, from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for individuals with developmental disabilities from any treatment or care center licensed in this state.

Fee-for-service system - Fee determination. By July 1, 2005, the department shall implement a fee-for-service system of payment for services provided to individuals with developmental disabilities by treatment or care centers. The workgroup shall establish procedures for determining interim fees for new providers or new services. In order to receive payment from the department, a treatment or care center shall file with the department a claim for service rendered to an individual with a developmental disability. The fee-for-service system implemented by the department must require that a treatment or care center be responsible for its own operating costs and that the fee paid for service represents payment in full to the treatment or care center for services rendered.

Limitation on owner compensation for services provided. In establishing the fee to be paid for a service, the amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000

1 46+ \$50,000

2 The limits in this section are intended to be the total compensation allowed by this state
3 in any one year regardless of the number of owners performing work for the treatment or care
4 center. A proration of the total compensation for owners who perform services in this state and
5 who perform services in other states must be made on the basis of individual time distribution
6 records. For family members working in direct care, housekeeping, maintenance, dietary, or
7 clerical positions, wages are limited to the wage paid to any nonrelated employee, with the
8 same qualifications and experience, working in a similar job function for that organization. The
9 allowable compensation limit is inclusive of all salaries and related fringe benefits and may not
10 be construed to be an addition or enhancement to the fee payable to a treatment or care
11 center.

12 **Extraordinary client needs - Effect on fee.** The workgroup shall develop criteria
13 identifying extraordinary needs of individuals with developmental disabilities so severe as to
14 make it difficult for the affected individuals to secure necessary services from a treatment or
15 care center at the ordinary fee. Notwithstanding any other provision of this chapter, the
16 department may determine specific fees for services provided by a treatment or care center to
17 an individual with extraordinary needs.

18 **Trust fund.** Effective July 1, 2005, there is in the state treasury a special fund known
19 as the developmental disabilities fee enhancement fund. The fund shall be established with not
20 more than two-tenths of one percent of the total general fund moneys appropriated to the
21 department for the biennium beginning July 1, 2005, for payment of the fees established under
22 this chapter. Trust funds may be expended for reasonably unforeseeable costs experienced by
23 treatment or care centers, one-time improvements made by a treatment or care center in order
24 to comply with life safety code requirements, or the additional costs associated with providing
25 services to individuals with extraordinary needs.

26 **Transition to establishment of fees.** For payment of services furnished by treatment
27 or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it
28 presently exists. The workgroup shall establish new protocols and methodologies for
29 transitioning to a new payment system to permit an orderly transition to the establishment of
30 fees under this chapter.

1 **Federal requirements - Supremacy.** If any provision of this chapter is determined by
2 the United States government to be in conflict with existing or future requirements of the United
3 States government so as to limit or preclude federal financial participation in medical
4 assistance, the department shall comply with the federal requirements to the extent necessary
5 to obtain federal financial participation and shall not comply with the provisions of this chapter if
6 necessary to avoid a loss of federal financial participation.

7 **Exclusion of state-owned or state-operated treatment or care centers.** This
8 chapter does not apply to state-owned or state-operated treatment or care centers.

9 **Rulemaking authority of the department.** The department shall establish, by rule, the
10 procedures, as determined by the workgroup, for determining the fees to be paid for services
11 provided by a treatment or care center and for implementing the other provisions of this
12 chapter. Rules adopted under this chapter may be adopted through the emergency rulemaking
13 process, if necessary.

14 **Reporting to legislative council.** During the 2003-04 interim, the department shall
15 report to the legislative council regarding its progress in developing a fee-for-service payment
16 system for treatment or care centers.

17 **SECTION 2. REPEAL.** Sections 25-16-10 and 25-16-15 of the North Dakota Century
18 Code are repealed.

19 **SECTION 3. REPEAL.** Sections 25-16-10.1, 25-16-16, and 50-06-18 of the North
20 Dakota Century Code are repealed.

21 **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the
22 general fund in the state treasury, not otherwise appropriated, the sum of \$21,000, or so much
23 of the sum as may be necessary, and \$21,000 of special funds derived from federal funds to
24 the department of human services for the purpose of hiring a facilitator to lead the discussions
25 relative to a new fee-for-service payment system for treatment or care centers and for hiring a
26 consultant to perform the financial modeling and evaluation of the current and future payment
27 system, for the biennium beginning July 1, 2003, and ending June 30, 2005.

28 **SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1,
29 2005.

- 1 **SECTION 6. EFFECTIVE DATE.** By October 1, 2004, the department shall certify to
- 2 the legislative council whether the department and the service providers reached an agreement
- 3 on a new fee-for-service system.