

**SECOND ENGROSSMENT
with House Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2086

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; and to provide an effective date.

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

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

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

- 12 1. "Department" means the department of human services.
- 13 2. "Fee for service" means a prospective rate based on allowable historical costs
14 established by the department for payment of services provided to individuals with
15 developmental disabilities by a treatment or care center.
- 16 3. "Historical operating costs" means the allowable costs of operating a treatment or
17 care center during the reporting year in compliance with licensing standards
18 prescribed by the department but does not include an annual return on investment
19 in fixed assets related to client care.
- 20 4. "Treatment or care center" means an entity providing services to individuals with
21 developmental disabilities and licensed by the department as an intermediate care
22 facility for the mentally retarded as defined in the section 1905(d) of the Social
23 Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports,
24 supported living arrangement, extended services, or infant development services.

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

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

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

23 **Limitation on owner compensation for services provided.** In establishing the fee to
24 be paid for a service, the amount of total annual compensation allowed for an owner acting in
25 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
46+	\$50,000

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

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

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

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

30 **Federal requirements - Supremacy.** If any provision of this chapter is determined by
31 the United States government to be in conflict with existing or future requirements of the United

1 States government so as to limit or preclude federal financial participation in medical
2 assistance, the department shall comply with the federal requirements to the extent necessary
3 to obtain federal financial participation and shall not comply with the provisions of this chapter if
4 necessary to avoid a loss of federal financial participation.

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

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

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

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

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

19 **SECTION 4. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1,
20 2005.

21 **SECTION 5. EFFECTIVE DATE.** By October 1, 2004, the department shall certify to
22 the legislative council whether the department and the service providers reached an agreement
23 on a new fee-for-service system.