

June 2009

TITLE 50

Public Welfare

Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 50. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to public welfare may be classified in these subject areas: Department of Human Services programs, child support enforcement, child abuse and neglect, foster care, child care facilities, long-term care and related facilities, and miscellaneous.

DEPARTMENT OF HUMAN SERVICES PROGRAMS

House Bill No. 1012 relates to the medical assistance program. The bill removes the income level requirement for medical assistance for minors and provides that the Department of Human Services is required to establish the income levels for minors at amounts that are not less than is required by federal law.

House Bill No. 1044 requires the Department of Human Services to develop a program for services to transition-aged youth at risk. The bill provides that the program must include individualized assessments, coordinated services, self-advocacy training, vocational rehabilitation, in-home support, and independent living skills training. The bill provides for the use of a wraparound planning process.

House Bill No. 1144 provides that unless prohibited by federal law, individually identifiable information concerning an individual applying for or receiving assistance under a program administered by the Department of Human Services may be used and disclosed in accordance with the program's participation in the department's master client index data matching system.

House Bill No. 1157 relates to the medical assistance estate collections requirements as it relates to the "clawback" payment required by federal law through the implementation of Medicare Part D. A clawback payment is a state payment to the federal government for the state share of prescription drug benefits for those eligible for both Medicare and Medicaid. The bill makes changes intended to ensure that estate collections for the clawback payments are only secured for months in which a clawback payment was made.

House Bill No. 1385 increases the number of members on the Drug Use Review Board from 16 to 17. The bill provides that the member who is appointed to the new position on the board must be a pharmacist or physician who represents the generic pharmaceutical industry and who is appointed by the Generic Pharmaceutical Association. The bill also revises the list of drugs that the Department of Human Services may not authorize under the prior authorization program.

House Bill No. 1477 increases from \$5,000 to \$6,000 the exempt amount of designated pre-need funeral services contracts which is used in considering eligibility for medical assistance.

House Bill No. 1540 provides that the formula for the state reimbursement of locally administered economic assistance programs in counties in which the percentage of that county's average total supplemental nutrition assistance program caseload for the previous fiscal year which reside on federally recognized Indian reservation lands is 10 percent or more.

Senate Bill No. 2158 provides that the medical assistance program must recognize advanced registered nurse practitioners as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. The bill requires that any care provided by the advanced registered nurse practitioner as a primary care provider under the medical assistance program must be within the scope of the advanced registered nurse practitioner's license.

Senate Bill No. 2174 provides for the creation of an Autism Spectrum Disorder Task Force that consists of the State Health Officer, the director of the Department of Human Services, the director of special education, and the executive director of the Protection and Advocacy Project, and 10 members appointed by the Governor. Under the bill the task force is required to examine early intervention services, family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting,

programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder. The task force is required to develop a state autism spectrum disorder plan and present the plan to the Governor and the Legislative Council before July 1, 2010.

Senate Bill No. 2198 requires the Department of Human Services to provide outreach services and conduct public awareness efforts regarding the prevention and identification of traumatic brain injury. The bill also directs the department to contract with public or private entities for the provision of informal supports to individuals with traumatic brain injury, to provide for or contract for the provision of social and recreational services for individuals with traumatic brain injury, and to provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with traumatic brain injury.

Senate Bill No. 2231 directs the Department of Human Services to contract with a statewide charitable food recovery and distribution organization to develop and implement new methods of delivering charitable food assistance services in underserved counties; to expand the recovery of surplus food from the retail and wholesale food industry for distribution to charitable feeding programs; to provide training, technical assistance, and equipment grants to community food pantries and emergency meal programs; and to develop a cross-referral system between charitable feeding programs and government assistance programs that help clients achieve self-sufficiency.

Senate Bill No. 2260 requires the Department of Human Services, for the purpose of determining eligibility for temporary assistance for needy families (TANF), to exempt from assets and income the savings and proportionate matching funds in individual development accounts.

Senate Bill No. 2391 requires the Department of Human Services, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, to contract to inform the public about the alternatives-to-abortion program.

Senate Bill No. 2423 provides that, with respect to private providers for individuals with developmental disabilities, the Department of Human Services is required to conduct a review of the audit and reimbursement process and a review and reconsideration of the 95 percent occupancy rule.

CHILD SUPPORT ENFORCEMENT

House Bill No. 1038 authorizes the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours.

House Bill No. 1175 relates to child support enforcement. This bill amends existing law related to mandatory data sharing agreements with financial institutions, the authority to issue administrative subpoenas, and the right to access records of government entities and public utilities to be in compliance with federal mandates and to preserve funding for the TANF and child support enforcement programs. The bill also clarifies the Department of Human Services' authority to write off uncollectible child support arrears, including medical support arrears that stem from a medical assistance assignment.

CHILD ABUSE AND NEGLECT

Senate Bill No. 2097 amends provisions relating to the confidentiality of child abuse and neglect reports. The bill provides that a report made under Chapter 50-25.1 which is made available to a person who is the subject of the report must protect the identity of the persons reporting or supplying information until the information is needed for use in an administrative proceeding arising out of the report. The bill also provides that the Department of Human Services' institutional review board must approve the bona fide research purpose for which information under Chapter 50-25.1 may be released.

FOSTER CARE

House Bill No. 1015 increases from \$75 to \$85 the amount a basic care or adult family foster care facility may charge in addition to the rate charged for services at that facility.

House Bill No. 1043 directs the Department of Human Services to contract for a dementia care services program in each area of the state served by a regional human service center to provide personalized care consultation services, training, and education relating to dementia; provides a \$1.2 million general fund appropriation for the program; and provides for a report to the Legislative Council regarding the outcomes of the program.

House Bill No. 1094 relates to the placement of siblings in foster care. For purposes of Title 50, the bill amends the definition of family foster home for children to allow the Department of Human Services to make exceptions with respect to the placement of siblings in foster care homes.

House Bill No. 1095 authorizes the Department of Human Services to adopt rules regarding the denial or revocation of a foster care facility license if that facility houses or employs an individual who has a criminal record. The bill also authorizes the department to adopt rules to determine whether an individual or an individual's home is suitable for the adoption of any child through a child-placing agency. The bill also provides that the child-placing agency must require a criminal history record investigation on the owner and each employee of a child-placing agency who has direct contact with families or children.

CHILD CARE FACILITIES

House Bill No. 1090 includes the requirements of the child care assistance program. The bill provides that an individual who is in need of child care assistance may apply in writing to a county social services office. The bill also provides that the Department of Human Services is required to pay child care costs required as a result of participation in allowable activities by the eligible caretaker in a TANF household. The bill also provides that the department is required to pay a portion of child care costs required as a result of participation in allowable activities by the caretaker based on family size and countable income by applying a sliding fee schedule established by rules adopted by the department.

House Bill No. 1418 requires the Department of Human Services to provide voluntary, progressive training opportunities leading to credentials and supports for the early childhood care and education workforce. The bill requires the department to implement a voluntary quality improvement process for licensed early childhood facilities. The bill authorizes the department to provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility. The bill also authorizes the department to provide supports and incentives to build child care capacity, including technical assistance and support to individuals who want to establish a new program or expand existing capacity and to provide grants to programs with a viable business plan to support early childhood facility development and expansion in areas with a demonstrated need.

House Bill No. 1472 provides for the creation of an Early Childhood Services Advisory Board. The board, which is composed of seven members who represent a broad-based geographically distributed membership, is appointed by the director of the Department of Human Services. The bill provides that the duties of the board include advising the department as the department conducts a review of all early childhood services rules and, on an ongoing basis, make recommendations to the department regarding changes and revisions to the early childhood services rules. The bill became effective on April 22, 2009.

Senate Bill No. 2162 makes various changes to the statutory provisions regarding early childhood services and the procedures for early childhood services licensure. The bill authorizes the Department of Human Services to require criminal history record checks, as the department determines appropriate, for applicants for early childhood services licensure, nonlicensed holders of a self-declaration, in-home providers, new staff members of those applicants, providers of an applicant, and a provider if the provider is providing early childhood services within the provider's home. The bill also authorizes the department to require criminal history record checks for employees of the department upon hiring and providers licensed by the department as foster care homes. The bill also allows for a process of self-declaration. Under the bill, a self-declaration is a voluntary documentation of an individual who provides early childhood services in a private residence for up to three children below the age of 24 months or for no more than five children through age 11. The bill also repeals Section 50-11.1-03.1, which related to a care check registry.

LONG-TERM CARE AND RELATED FACILITIES

House Bill No. 1214 authorizes the state of North Dakota by and through the Department of Human Services to convey land that is part of the Developmental Center at Westwood Park, Grafton, to the Grafton Park Board.

House Bill No. 1263 requires each assisted living facility to have clear, concise, and understandable tenancy criteria that is fully disclosed to all tenants, in writing, before the tenancy agreement is signed. The bill requires each assisted living facility to require the administrator of the facility to complete 12 hours of continuing education each year. The bill also requires each assisted living facility to maintain a record for each tenant which must include an initial evaluation to meet tenancy criteria; the tenancy agreement; a medication administration record, if applicable; and an itemized list of services provided for the tenant.

House Bill No. 1303 contains the factors considered in determining nursing home rates. The bill provides that for determining rates the Department of Human Services is required to include allowable bad debt expenses in an

amount not to exceed 180 days of resident care per year or an aggregate of 360 days of resident care for any one individual and include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible.

House Bill No. 1307 relates to the nonallowable costs in nursing home ratesetting. The bill provides that education is a nonallowable expense unless the education was provided by an accredited academic or technical educational facility; the education expense was for materials, books, or tuition; the facility claims the education expenses in an amount not to exceed the lesser of one-half of the individual's education expenses or \$3,750; and the amount of education expense for an individual claimed does not exceed \$15,000. The bill also requires that an individual who receives educational assistance is required to commit to a minimum of 1,664 hours of employment after completion of the educational program for each year education assistance was provided by the facility.

House Bill No. 1327 requires the Department of Human Services to provide \$200,000 in grant funds for the remodeling of a nursing facility. The bill provides that to receive a grant, a facility must use at least \$50,000 of the grant to conduct a rent subsidy pilot project for at least four assisted living residents.

House Bill No. 1433 authorizes the Department of Human Services to provide for a special care rate to be paid to a nursing home that has a capacity of fewer than 31 licensed beds, was not previously a hospital with critical access designation after May 31, 2009, and is owned and operated by a nonstate governmental unit. The bill requires matching funds for the special care rate from municipal or county funds. The bill became effective on April 22, 2009.

House Bill No. 1556 requires the Department of Human Services to contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse public and private, licensed developmental disability and home and community-based services providers that serve medically fragile and behaviorally challenged individuals who meet certain criteria. The bill requires the Department of Human Services to report the outcomes and recommendations to the Legislative Council before September 1, 2010.

Senate Bill No. 2045 provides that there must be at least a 30-day written advance notice of any transfer or discharge of a resident from a nursing home, swing-bed hospital, or basic care or assisted living facility.

MISCELLANEOUS

House Bill No. 1436 changes the name of the Legislative Council to Legislative Management. The bill also distinguishes between the Legislative Management, which is the 17-member legislative body chosen biennially before the close of each regular legislative session, and the Legislative Council, which provides staff services to the Legislative Management.

Senate Bill No. 2363, which relates to activities of charitable organizations that solicit contributions, authorizes the Secretary of State or the Attorney General to request a copy of tax or information returns submitted by a charitable organization to the Internal Revenue Service for the period covered by the annual report that is submitted to the Secretary of State. The bill also updates the language with respect to registration requirements of the charitable organizations.