

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1072

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act providing an appropriation for defraying the expenses of the department of
2 human services; to amend and reenact sections 50-24.1-37 and 50-30-02 of the North Dakota
3 Century Code, relating to the expiration date on medicaid expansion, medicaid expansion
4 contracting language, and the health care trust fund; to provide for exemptions; to provide
5 statements of legislative intent; to provide an appropriation; to provide an effective date; and to
6 declare an emergency.

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

8 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
9 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
10 treasury, not otherwise appropriated, and from special funds derived from federal funds and
11 other income, to the department of human services for the purpose of defraying the expenses
12 of its various divisions, for the biennium beginning July 1, 2017, and ending June 30, 2019, as
13 follows:

14 Subdivision 1.

| 15 MANAGEMENT | | | |
|---------------|-----------------------|----------------------|--------------------------------------|
| | | 16 Adjustments or | |
| | | 17 <u>Base Level</u> | 17 <u>Enhancements</u> |
| | | | 17 <u>Appropriation</u> |
| 18 | Salaries and wages | \$28,049,386 | \$4,818,934 \$32,868,320 |
| 19 | Operating expenses | 87,542,966 | 72,222,219 159,765,185 |
| 20 | Capital assets | 26,000 | (26,000) 0 |
| 21 | Grants | <u>0</u> | <u>204,000</u> <u>204,000</u> |
| 22 | Total all funds | \$115,618,352 | \$77,219,153 \$192,837,505 |
| 23 | Less estimated income | <u>71,375,084</u> | <u>61,020,139</u> <u>132,395,223</u> |
| 24 | Total general fund | \$44,243,268 | \$16,199,014 \$60,442,282 |

1 Subdivision 2.

PROGRAM AND POLICY

| | | | | |
|----|-----------------------------|----------------------|---------------------|----------------------|
| 2 | | | Adjustments or | |
| 3 | | <u>Base Level</u> | <u>Enhancements</u> | <u>Appropriation</u> |
| 4 | Salaries and wages | \$58,102,898 | \$4,989,149 | \$63,092,047 |
| 5 | Operating expenses | 107,383,843 | 16,729,508 | 124,113,351 |
| 6 | Capital assets | 0 | 10,000 | 10,000 |
| 7 | Grants | 457,953,280 | (23,744,137) | 434,209,143 |
| 8 | Grants - medical assistance | <u>2,384,560,568</u> | <u>27,731,088</u> | <u>2,412,291,656</u> |
| 9 | Total all funds | \$3,008,000,589 | \$25,715,608 | \$3,033,716,197 |
| 10 | Less estimated income | <u>1,995,017,976</u> | <u>(29,206,802)</u> | <u>1,965,811,174</u> |
| 11 | Total general fund | \$1,012,982,613 | \$54,922,410 | \$1,067,905,023 |

12 Subdivision 3.

FIELD SERVICES

| | | | | |
|----|-----------------------|--------------------|---------------------|----------------------|
| 14 | | | Adjustments or | |
| 15 | | <u>Base Level</u> | <u>Enhancements</u> | <u>Appropriation</u> |
| 16 | Human service centers | \$197,619,611 | \$745,212 | \$198,364,823 |
| 17 | Institutions | <u>140,856,330</u> | <u>1,580,408</u> | <u>142,436,738</u> |
| 18 | Total all funds | \$338,475,941 | \$2,325,620 | \$340,801,561 |
| 19 | Less estimated income | <u>132,776,801</u> | <u>6,455,753</u> | <u>139,232,554</u> |
| 20 | Total general fund | \$205,699,140 | (\$4,130,133) | \$201,569,007 |

21 Subdivision 4.

COUNTY SOCIAL SERVICE FINANCING

| | | | | |
|----|---------------------------------|-------------------|----------------------|----------------------|
| 23 | | | Adjustments or | |
| 24 | | <u>Base Level</u> | <u>Enhancements</u> | <u>Appropriation</u> |
| 25 | County social service financing | <u>\$0</u> | <u>\$275,000,000</u> | <u>\$275,000,000</u> |
| 26 | Total all funds | \$0 | \$275,000,000 | \$275,000,000 |
| 27 | Less estimated income | <u>0</u> | <u>275,000,000</u> | <u>275,000,000</u> |
| 28 | Total general fund | \$0 | \$0 | \$0 |

29 Subdivision 5.

30 BILL TOTAL

| | | Adjustments or | |
|---|--------------------------------|----------------------|---|
| | <u>Base Level</u> | <u>Enhancements</u> | <u>Appropriation</u> |
| 1 | | | |
| 2 | | | |
| 3 | Grand total general fund | \$1,262,925,021 | \$66,991,291 \$1,329,916,312 |
| 4 | Grand total special funds | <u>2,199,169,861</u> | <u>313,269,090</u> <u>2,512,438,951</u> |
| 5 | Grand total all funds | \$3,462,094,882 | \$380,260,381 \$3,842,355,263 |
| 6 | Full-time equivalent positions | 2,211.08 | (6.85) 2,204.23 |

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-

SIXTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly for the 2015-17 biennium and the 2017-19 one-time funding items included in the appropriation in section 1 of this Act:

| | <u>One-Time Funding Description</u> | <u>2015-17</u> | <u>2017-19</u> |
|----|--|----------------|-------------------|
| 11 | | | |
| 12 | Developmental disabilities equipment | \$10,000 | \$0 |
| 13 | Heating plant repairs and upgrades - state hospital | 1,156,000 | 0 |
| 14 | Heating plant repairs and upgrades - life skills and | 75,000 | 0 |
| 15 | transition center | | |
| 16 | Window replacement - life skills and transition center | 44,000 | 0 |
| 17 | Equipment over \$5,000 - state hospital | 275,000 | 0 |
| 18 | Equipment over \$5,000 - life skills and transition center | 200,000 | 0 |
| 19 | Extraordinary repairs - state hospital | 1,000,000 | 0 |
| 20 | Extraordinary repairs - life skills and transition center | 1,250,000 | 0 |
| 21 | Assistive technology services | 160,000 | 0 |
| 22 | Child care licensing and data system | 0 | 3,000,000 |
| 23 | Health information network/care coordination | <u>0</u> | <u>40,800,000</u> |
| 24 | Total all funds | \$4,170,000 | \$43,800,000 |
| 25 | Less estimated income | <u>10,000</u> | <u>43,800,000</u> |
| 26 | Total general fund | \$4,160,000 | \$0 |

The 2017-19 one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of human services shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

1 **SECTION 3. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,
2 \$275,000,000 is from the county social service financing fund for the purpose of providing
3 funding for subsection 4 of section 1 of this Act, for January 1, 2018 through June 30, 2019.

4 **SECTION 4. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,
5 \$42,675,160 is from the nursing home provider assessment fund for the purpose of defraying
6 expenses in the long-term care division, for the biennium beginning July 1, 2017, and ending
7 June 30, 2019.

8 **SECTION 5. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act,
9 \$16,799,077 is from the tobacco prevention and control trust fund for the purpose of defraying
10 expenses in the medical services division, for the biennium beginning July 1, 2017, and ending
11 June 30, 2019.

12 **SECTION 6. APPROPRIATION - 2015-17 BIENNIUM.** There is appropriated out of special
13 funds derived from federal funds, not otherwise appropriated, the sum of \$9,000,000, or so
14 much of the sum as may be necessary, to the department of human services for the purpose of
15 defraying medical assistance grant costs, for the period beginning with the effective date of this
16 Act and ending June 30, 2017.

17 **SECTION 7. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding
18 section 54-16-04, the department of human services may transfer appropriation authority
19 between line items within subdivisions 1, 2, and 3 of section 1 of this Act and between
20 subdivisions 1, 2, and 3 within section 1 of this Act for the biennium beginning July 1, 2017,
21 and ending June 30, 2019. The department of human services shall notify the office of
22 management and budget and the legislative council of any transfer made pursuant to this
23 section.

24 **SECTION 8. EXEMPTION.** The amount appropriated for the replacement of the medicaid
25 management information system and related projects in chapter 50 of the 2007 Session Laws
26 and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11.
27 Any unexpended funds from these appropriations approved under section 54-44.1-11 for
28 continuation into the 2009-11 biennium and then the 2011-13 biennium and then the 2013-15
29 biennium and then the 2015-17 biennium are available for the completion of the medicaid
30 management information system and related projects during the biennium beginning July 1,
31 2017, and ending June 30, 2019.

1 **SECTION 9. EXEMPTION.** The amount appropriated for the modification of the department
2 of human services' eligibility systems in chapter 578 of the 2011 Special Session Laws is not
3 subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation
4 approved under section 54-44.1-11 for continuation into the 2013-15 biennium and then the
5 2015-17 biennium are available for the completion of the modification of the eligibility systems
6 project during the biennium beginning July 1, 2017, and ending June 30, 2019.

7 **SECTION 10. EXEMPTION.** The amount appropriated for the development of the electronic
8 health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of
9 section 54-44.1-11. Any unexpended funds from this appropriation approved under section
10 54-44.1-11 for continuation into the 2015-17 biennium are available for the completion of the
11 electronic health records system during the biennium beginning July 1, 2017, and ending
12 June 30, 2019.

13 **SECTION 11. LEGISLATIVE INTENT - POLICY CHANGES AND CLARIFICATION**

14 **RELATED TO HOME HEALTH.** It is the intent of the sixty-fifth legislative assembly that the
15 department of human services adopts rules in accordance with the medicaid program, face-to-
16 face requirements for home health services; policy changes and clarifications related to home
17 health final rule published by the centers for medicare and medicaid services on February 2,
18 2016; title 42, Code of Federal Regulations, part 440. The department shall require certified
19 home health agencies to ensure a face-to-face visit occurred between a physician and medicaid
20 beneficiary before initiating home health services, and to ensure a face-to-face visit between a
21 physician or nonphysician provider occurred before providing medical equipment, supplies, and
22 appliances. The department of human services may adopt rules to define medical equipment,
23 supplies, and appliances and specify allowable time frames for the face-to-face visits.

24 **SECTION 12. LEGISLATIVE INTENT - GRAFTON JOB SERVICE NORTH DAKOTA**

25 **BUILDING PURCHASE.** It is the intent of the sixty-fifth legislative assembly that the department
26 of human services purchase the Grafton job service North Dakota building, using donated
27 funds, for the use of the life skills and transition center.

28 **SECTION 13. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is
29 amended and reenacted as follows:

50-24.1-37. (~~Effective January 1, 2014, through July 31, 2017~~) Medicaid expansion.

1. The department of human services shall expand medical assistance coverage 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] to individuals under sixty-five years of age with income below one hundred thirty-eight percent of the federal poverty level, based on modified adjusted gross income.
2. The department of human services shall inform new enrollees in the medical assistance program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
3. The department shall implement the expansion by bidding through private carriers or utilizing the health insurance exchange. The contract between the department and the private carrier must:
 - a. Provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication. The reimbursement methodology, at a minimum, must:
 - (1) Be available on the department's website; and
 - (2) Encompass all types of pharmacy providers regardless of whether the pharmacy benefits are being paid through the private carrier or contractor or subcontractor of the private carrier under this section.
 - b. Provide full transparency of all costs and all rebates in aggregate.
 - c. Allow an individual to obtain medication from a pharmacy that provides mail order service; however, the contract may not require mail order to be the sole method of service.
 - d. Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.
 - e. Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.

- 1 f. Any information provided to the department of human services or any audit firm
2 by a pharmacy benefit manager under this section is confidential under section
3 44-04-17.1.

4 **SECTION 14. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-24.1-37. Medicaid expansion.**

- 7 1. The department of human services shall expand medical assistance coverage as
8 authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148],
9 as amended by the Health Care and Education Reconciliation Act of 2010 [Pub.
10 L. 111-152] to individuals under sixty-five years of age with income below one hundred
11 thirty-eight percent of the federal poverty level, based on modified adjusted gross
12 income.
- 13 2. The department of human services shall inform new enrollees in the medical
14 assistance program that benefits may be reduced or eliminated if federal participation
15 decreases or is eliminated.
- 16 ~~3. The department shall implement the expansion by bidding through private carriers or~~
17 ~~utilizing the health insurance exchange. The contract between the department and the~~
18 ~~private carrier must:~~
- 19 ~~a. Provide a reimbursement methodology for all medications and dispensing fees~~
20 ~~which identifies the minimum amount paid to pharmacy providers for each~~
21 ~~medication. The reimbursement methodology, at a minimum, must:~~
- 22 ~~(1) Be available on the department's website; and~~
23 ~~(2) Encompass all types of pharmacy providers regardless of whether the~~
24 ~~pharmacy benefits are being paid through the private carrier or contractor or~~
25 ~~subcontractor of the private carrier under this section.~~
- 26 ~~b. Provide full transparency of all costs and all rebates in aggregate.~~
- 27 ~~c. Allow an individual to obtain medication from a pharmacy that provides mail order~~
28 ~~service; however, the contract may not require mail order to be the sole method~~
29 ~~of service.~~

- d. ~~Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.~~
- e. ~~Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.~~
- f. ~~Any information provided to the department of human services or any audit firm by a pharmacy benefit manager under this section is confidential under section 44-04-17.1.~~

SECTION 15. AMENDMENT. Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.

- 1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund. The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:
 - a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
 - b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
 - c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
 - d. Operation and maintenance of the nurse aide registry.

1 2. The department shall continue to access the intergovernmental transfer program if
2 permitted by the federal government and if use of the program is found to be
3 beneficial.

4 ~~3. Moneys in the fund may not be included in draft appropriation acts under section~~
5 ~~54-44.1-06, except for the operation and maintenance of the nurse aide registry as~~
6 ~~provided for in this section.~~

7 **SECTION 16. EFFECTIVE DATE.** Section 14 of this Act becomes effective on January 1,
8 2018.

9 **SECTION 17. EMERGENCY.** Section 6 of this Act is declared to be an emergency
10 measure.