

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

4           **Fee-for-service system - Fee determination.** By July 1, 2005, the department shall  
5 implement a fee-for-service system of payment for services provided to individuals with  
6 developmental disabilities by treatment or care centers. Fees for services must be based on  
7 allowable historical operating costs of licensed treatment or care centers operating in this state.  
8 The department shall establish procedures for determining interim fees for new providers or  
9 new services. In order to receive payment from the department, a treatment or care center  
10 shall file with the department a claim for service rendered to an individual with a developmental  
11 disability. The fee-for-service system implemented by the department must require that a  
12 treatment or care center be responsible for its own operating costs and that the fee paid for  
13 service represents payment in full to the treatment or care center for services rendered.

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

17	Number of clients served:	Compensation limit:
18	1 - 15	\$25,000
19	16 - 30	\$35,000
20	31 - 45	\$45,000
21	46+	\$50,000

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

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

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

15           **Transition to establishment of fees.** For payment of services furnished by treatment  
16 or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it  
17 presently exists or in any fashion that may be permitted by law. Prior to July 1, 2005, the  
18 department may direct that treatment or care centers engage in any activity that will be  
19 reasonably necessary to permit an orderly transition to the establishment of fees under this  
20 chapter.

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

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

29           **Rulemaking authority of the department.** The department shall establish, by rule,  
30 procedures for determining the fees to be paid for services provided by a treatment or care  
31 center and for implementing the other provisions of this chapter. Rules adopted under this

1 chapter may be adopted as interim final rules without the approval of the governor and without  
2 a finding that emergency rulemaking is necessary. Any interim final rules so adopted may take  
3 effect on a date no earlier than the date of first filing with the legislative council of the notice of  
4 proposed adoption of a rule.

5 **Reporting to legislative council.** During the 2003-2005 interim, the department shall  
6 report quarterly to the legislative council regarding its progress in developing a fee-for-service  
7 payment system for treatment or care centers.

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

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

12 **SECTION 4. EFFECTIVE DATE.** Section 3 of this Act is effective July 1, 2005.