

# PUBLIC WELFARE

## CHAPTER 414

### SENATE BILL NO. 2312

(Senators Krauter, Erbele, J. Lee)  
(Representatives Kerzman, Koppelman, Price)

## ALTERNATIVES-TO-ABORTION SERVICES AND REPORT

AN ACT to amend and reenact section 50-06-26 of the North Dakota Century Code, relating to the alternatives-to-abortion services program; to provide for reports to the legislative council; and to provide an appropriation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-06-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-26. (~~Effective through June 30, 2007~~) Alternatives-to-abortion services program.** ~~Before January 1, 2006, the~~ The department of human services shall establish and implement a procedure to facilitate funding disburse funds available through title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] to nongovernmental entities that provide alternatives-to-abortion services and expend funds to inform the public about this program. The services must be outcome-based with positive outcome-based results. For purposes of this section, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

**SECTION 2. REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the department of human services shall make annual reports to the legislative council regarding the status of the alternatives-to-abortion services program.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$400,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing the alternatives-to-abortion services program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 23, 2007  
Filed April 24, 2007

## CHAPTER 415

### SENATE BILL NO. 2070

(Human Services Committee)

(At the request of the Department of Human Services)

## AGING AND DISABILITY RESOURCE CENTER FUNDING

AN ACT to provide for application by the department of human services for federal funds for the implementation of an aging and disability resource center; to provide an appropriation; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Application for aging and disability resource center funding.** No later than December 31, 2007, the department of human services shall seek federal funds for the planning and implementation of an aging and disability resource center for the state. The resource center will be a single point of information program at the community level which will help people make informed decisions about the full range of long-term care service and support options, including both institutional and home and community-based care, and which will provide unbiased information and assistance to individuals needing either public or private resources, to professionals seeking assistance on behalf of their clients, and to individuals planning for their future long-term care needs. Upon receipt of federal funds, the department of human services may establish the aging and disability resource center or it may request bids and award a contract for the provision of this service. The duties of the aging and disability resource center must include all duties required to receive federal funds, including providing information about the full range of long-term care service and support options available in the state to assure that consumers may make informed decisions about their care. The resource center must be free from a conflict of interest which would inappropriately influence or bias the actions of a contractor, staff member, board member, or volunteer of the resource center to limit the information given to a consumer to steer the consumer to services that may also be provided by the resource center.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$800,000, or so much of the sum as may be necessary to the department of human services for the purpose of establishing or contracting for the provision of an aging and disability resource center, for the period beginning with the effective date of this Act and ending June 30, 2009. The department may use the funds appropriated from the general fund only if the department receives federal funds for an aging and disability resource center as described in section 1 of this Act. Any general fund amounts not used for the period beginning with the effective date of this Act and ending June 30, 2009, may not be spent.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 416****SENATE BILL NO. 2136**

(Judiciary Committee)

(At the request of the Department of Human Services)

**SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT AGREEMENT**

AN ACT to provide for an agreement between the department of human services and the department of corrections and rehabilitation; and to provide for the department of human services to report to the legislative council regarding individuals committed to the department's care.

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

**SECTION 1. Interagency agreement between the department of human services and the department of corrections and rehabilitation.** The executive director of the department of human services and the director of the department of corrections and rehabilitation shall enter an interagency agreement effective August 1, 2007. The agreement must provide that the department of corrections and rehabilitation shall train, consult, and assist the department of human services with the provision and enforcement of safety and security procedures at state-owned facilities for all individuals placed at those facilities for evaluation or civil commitment and treatment under chapter 25-03.3 and for all staff, visitors, and volunteers at those facilities. The interagency agreement must provide that the executive director of the department of human services shall continue to be responsible for the custody and care of the individuals placed at those facilities for evaluation or civil commitment and treatment under chapter 25-03.3, including responsibility for all assessments, evaluations, and treatment required under chapter 25-03.3, the provision of all necessary staffing, including maintenance staff, and the provision of all daily care and health care.

**SECTION 2. Report to legislative council - Individuals committed to state hospital.** Before March first of each even-numbered year, the department of human services shall report to the legislative council on services provided by the department of corrections and rehabilitation relating to individuals at the state hospital who have been committed to the care and custody of the executive director of the department of human services.

Approved April 9, 2007

Filed April 10, 2007

## CHAPTER 417

### SENATE BILL NO. 2205

(Senators Fischer, J. Lee, Mathern)  
(Representatives Hawken, Price, Weisz)

## CHILD SUPPORT ENFORCEMENT

AN ACT to create and enact a new section to chapter 50-09 and a new subdivision to subsection 3 of section 57-15-01.1 of the North Dakota Century Code, relating to employment of special assistant attorneys general and to property tax reductions; to amend and reenact sections 11-23-01, 14-09-09.10, and 35-34-01, subsection 3 of section 50-01.2-00.1, sections 50-03-10 and 50-09-01, subsection 16 of section 50-09-02, and sections 50-09-03, 50-09-08, 50-09-33, 50-24.1-03.1, and 50-24.1-03.2 of the North Dakota Century Code, relating to state administration of the child support enforcement program; to repeal section 50-09-34 of the North Dakota Century Code, relating to administration of child support enforcement activities; to provide for a transfer of employees and equipment; to provide for payment and transfer of unused leave; to provide for a transfer of budgeted funds and unexpended child support incentive funds; to provide for a legislative council study; to provide an appropriation; to provide a continuing appropriation; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-23-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **11-23-01. Officers required to furnish commissioners with departmental budget.**

1. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.
2. The departmental budget submitted by the county social service board in 2007 must identify the reduction in county funding derived from transfer of administration of the child support enforcement program from the county social service board to the department of human services on July 1, 2007. The amount reported must equal the full amount budgeted for administration of the child support enforcement program in the budget submitted by the county social service board and approved by the board of county commissioners in 2006. The budget must include a recommendation of how that reduction in county funding responsibility will be passed on to the property taxpayers of the county.

<sup>205</sup> **SECTION 2. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 50-09-02.7.
2. "Business day" means every day that is not a Saturday or legal holiday.
3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
4. "Child support agency" means the ~~county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards,~~ department of human services in execution of ~~the county social service board's~~ its duties under ~~subsection 5 of section 50-09-03 pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].~~
5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
6. "Disposable income" means gross income less deductions required by law for taxes and social security.
7. "Employer" means income payer.
8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.

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<sup>205</sup> Section 14-09-09.10 was also amended by section 6 of Senate Bill No. 2336, chapter 149.

10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
13. "Obligor" means any person owing a duty of support.
14. "Past-due support" means child support that is not paid by the earlier of:
  - a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
16. "~~Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].~~
17. "~~System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.~~

**SECTION 3. AMENDMENT.** Section 35-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-01. Definitions.** For purposes of this chapter:

1. "Account" has the meaning provided in section 50-09-01.
2. "Child support" has the meaning provided in section 14-09-09.10.
3. "Child support agency" has the meaning provided in section 14-09-09.10.
4. "Financial institution" has the meaning provided in section 50-09-01.
4. 5. "Obligee" has the meaning provided in section 14-09-09.10.

- ~~5-~~ 6. "Obligor" has the meaning provided in section 14-09-09.10.
- ~~6-~~ 7. "Past-due support" has the meaning provided in section 14-09-09.10.
- ~~7-~~ "~~Public authority~~" has the meaning provided in section ~~14-09-09.10~~.
8. "Vehicle" has the meaning provided in section 39-01-01.
9. "Vessel" has the meaning provided in section 20.1-01-02.

**SECTION 4. AMENDMENT.** Subsection 3 of section 50-01.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

3. "Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a county social service office and include:
  - a. Temporary assistance for needy families;
  - b. ~~Child support enforcement programs;~~
  - ~~e-~~ ~~Programs established under section 50-06-01.8;~~
  - ~~e-~~ Employment and training programs;
  - ~~e-~~ c. Child care assistance programs;
  - f. d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - ~~g-~~ e. Food stamp programs, including employment and training programs;
  - ~~h-~~ f. Refugee assistance programs;
  - ~~i-~~ g. Basic care services;
  - ~~j-~~ h. Energy assistance programs; and
  - ~~k-~~ i. Information and referral.

**SECTION 5. AMENDMENT.** Section 50-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-03-10. County commissions to make recommendations.** Before August first of each year, the boards of county commissioners of the counties shall make a collective recommendation to the department concerning the distribution between counties, of the social service block grant funds and the general fund equivalents of social service block grant funds available to the department for distribution to county social service boards. The department shall consider the recommendation of the county commissioners in determining the distribution to the county social service boards, in the following calendar year, of the social service block grant funds and the general fund equivalents of social service block grant funds available to the department for that purpose. ~~The department shall distribute child support incentive funds according to a formula that promotes performance and consistency in child support enforcement activities throughout the state.~~



**SECTION 6. AMENDMENT.** Section 50-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.
2. "Assistance" means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. "Child support" has the meaning provided in section 14-09-09.10.
4. ~~"Child support agency" has the meaning provided in section 14-09-09.10.~~
5. "County agency" means the county social service board in each of the counties of the state.
6. 5. "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A.
7. 6. "Financial institution" means:
  - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)];
  - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. 1813(u)];
  - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752], including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)]; and
  - d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.
8. 7. "Obligor" has the meaning provided in section 14-09-09.10.
9. 8. "Past-due support" has the meaning provided in section 14-09-09.10.
10. 9. "Secretary" means the secretary of the United States department of health and human services.

44. 10. "Securities account" has the meaning provided in section 41-08-41.
42. 11. "Securities intermediary" has the meaning provided in section 41-08-02, but does not include a clearing corporation.
43. 12. "State agency" means the North Dakota department of human services.
44. 13. "Title IV-A" means title IV-A of the Social Security Act, as adopted by title I of Pub. L. 104-193 [110 Stat. 2110 et seq.; 42 U.S.C. 601 et seq.].
45. 14. "Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended.
46. 15. "Title IV-D" means title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
47. 16. "Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501; 42 U.S.C. 670 et seq.], as amended.
48. 17. "Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

**SECTION 7. AMENDMENT.** Subsection 16 of section 50-09-02 of the North Dakota Century Code is amended and reenacted as follows:

16. Act as the official agency of the state in the administration of the child support enforcement program and medical support enforcement program in conformity with title IV-D ~~and to direct and supervise county administration of that program.~~ In administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.

**SECTION 8. AMENDMENT.** Section 50-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-03. Duties of county agency.** In the administration of assistance under this chapter, a county agency shall:

1. Administer the temporary assistance for needy families program in its county, subject to the rules of the state agency.
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually to the board of county commissioners of each county a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. ~~Administer the child support enforcement program under the direction and supervision of the state agency in conformity with title IV-D. In administering the program, the county agency shall have the authority to~~

~~contract with any public or private agency or person to discharge their child support enforcement duties.~~

6. Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.
7. 6. Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

**SECTION 9. AMENDMENT.** Section 50-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08. Investigations - Power of county agencies, state agency, and employees.**

1. In the investigation of applications under the provisions of this chapter, the county agencies, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - 1- a. Conduct examinations;:
  - 2- b. Require the attendance of witnesses and the production of books, records, and papers;: and
  - 3- c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
4. 2. ~~Request~~ The state agency may request from other state, county, and local agencies information deemed necessary to carry out the child support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state ~~and county~~ agency in locating absent parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state ~~or county~~ agency with available information relative to the location, income, social security number, and property holdings of the absent parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
3. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

**SECTION 10. AMENDMENT.** Section 50-09-33 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-33. (Effective through June 30, 2007) Continuing appropriation - Cooperative agreements for child support enforcement services.** All federal funds and other income generated by the state agency under a cooperative

agreement with ~~one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services; is~~ are appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

**SECTION 11.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Employment of special assistant attorneys general.** The state agency may employ attorneys to carry out its duties in administering the child support enforcement and medical support enforcement programs. Any attorney who represents the state agency under this chapter must be a special assistant attorney general appointed by the attorney general under section 54-12-08. The salary and expenses of each special assistant attorney general must be paid by the state agency. An appointment under this section is revocable at the pleasure of the attorney general.

**SECTION 12. AMENDMENT.** Section 50-24.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.1. Duties of county agency.** In the administration of the medical assistance program, a county agency shall:

- 1- ~~Administer the medical support enforcement program under the direction and supervision of the department of human services. In administering the program the county agency shall have the authority to contract with any public or private agency or person to discharge their medical support enforcement duties.~~
- 2- ~~Make an investigation~~ investigate and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and ~~shall~~ obtain such other information as may be required by the rules and regulations of the department of human services.

**SECTION 13. AMENDMENT.** Section 50-24.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.2. Investigations - Power of county agencies, department, and employees.**

- 1- In the investigation of applications under the provisions of this chapter, the county agencies, the department of human services, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - 1- a. Conduct examinations;:
  - 2- b. Require the attendance of witnesses and the production of books, records, and papers; and
  - 3- c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.

4. 2. ~~Request~~ The department of human services may request from other state, county, and local agencies information deemed necessary to carry out the medical support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the department of human services ~~and the county agency~~ in locating absent spouses or parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the department ~~or the county agency~~ with available information relative to the location, income, social security number, and property holdings of the absent spouse or parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the department of human services who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the medical support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
3. The officers and employees designated by the county agencies or the department of human services may administer oaths and affirmations.

**SECTION 14.** A new subdivision to subsection 3 of section 57-15-01.1 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount in dollars levied by a county in the base year for administration of the child support enforcement program by the county social service board and increased by section 17 of this Act.

**SECTION 15. REPEAL.** Section 50-09-34 of the North Dakota Century Code is repealed.

**SECTION 16. TRANSFER OF EMPLOYEES AND EQUIPMENT - HEALTH INSURANCE COVERAGE.** On the effective date of this Act, all existing employees of a regional child support enforcement agency become employees of the department of human services. Any employee who becomes a state employee under this section is entitled to receive a salary in an amount not less than the salary received as an employee of the regional child support enforcement agency, plus any increase for all state employees that is provided on July 1, 2007, and any other increase that was scheduled and budgeted to occur between July 1, 2007, and December 31, 2007, if the employee had remained an employee of a regional child support enforcement agency. Each year of county employment of an employee who is transferred under this section will be considered a year of state employment for purposes of section 54-06-14. Any equipment, including technology-related equipment, furnishings, and supplies in the control and custody of a regional child support enforcement agency on the effective date of this Act, must be transferred to the control and custody of the department of human services. Prior to the transfer of budgeted funds under section 19 of this Act, a regional child support agency shall pay the employer's share of any premium that is necessary to continue any existing health insurance coverage for an employee who is transferred under this section for one month after the effective date of this Act.

**SECTION 17. PAYMENT AND TRANSFER OF UNUSED LEAVE.** On the effective date of this Act, each employee who is transferred under this Act may elect to transfer some or all of the employee's unused annual and sick leave balances to the state. Any compensation to the employee for leave that is not transferred is the responsibility of the counties served by the regional child support enforcement

agency from which the employee was transferred. The current value of any leave that is transferred under this section must be deposited in the state general fund by the counties served by the regional child support enforcement agency from which the employee was transferred. As used in this section, "current value" of transferred annual leave is determined by multiplying each employee's hourly salary by the number of transferred hours of unused annual leave. The "current value" of transferred sick leave is determined by multiplying each employee's hourly salary by the number of transferred hours of unused sick leave, and then by multiplying the total for each employee by twenty percent plus one percent for every year of continuous service, not to exceed a total of thirty percent for those with ten years of continuous service or more. Any amounts owed to the state or an employee under this section are due on February 1, 2008, and may not be deducted from the amounts transferred under section 19 of this Act. Any leave that is transferred under this section becomes a responsibility of the state at the payment rate in effect for all state employees.

**SECTION 18. LEGISLATIVE COUNCIL STUDY - LOCALLY ADMINISTERED ECONOMIC ASSISTANCE PROGRAMS.** The legislative council shall consider studying, during the 2007-08 interim, the success and effects of the laws enacted by the fifty-fifth legislative assembly in House Bill No. 1041 and Senate Bill No. 2052, referred to in testimony as the "swap proposal", which required counties to pay the entire cost of the local administration of medicaid, energy assistance, basic care assistance, child care assistance, and temporary assistance for needy families in exchange for the state's assumption of the full responsibility for paying the grant costs associated with those programs. If conducted, the study should include a review of sections 50-01.2-00.1, 50-01.2-03.1, 50-01.2-03.2, 50-01.2-06, 50-03-00.1, 50-03-08, 50-03-09, and 50-03-10, subsection 28 of section 50-06-05.1, and sections 50-06-20, 50-24.1-14, and 50-24.5-08 to determine if those provisions have created a more understandable and sustainable division of responsibility between the state and counties in the delivery and financing of these economic assistance programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 19. TRANSFER OF BUDGETED FUNDS AND UNEXPENDED CHILD SUPPORT INCENTIVE FUNDS - APPROPRIATION.** On the effective date of this Act, the remaining balance of budgeted funds for each regional child support enforcement agency for calendar year 2007 and the balance of all unexpended child support incentive funds shall be transferred to the department of human services and are appropriated to the department of human services for the purpose of operating the eight regional child support enforcement agencies for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 20. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$6,873,169, or so much of the sum as may be necessary, and from special funds, derived from federal funds and other income, the sum of \$5,615,123, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of regional child support enforcement unit operations, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 21. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES.** The legislative council may correct references to county, local, or regional child support agencies, to the state child support agency, and to the public authority as they pertain to the provision of child support enforcement or medical

support enforcement services, or any variation of these terms as appropriate, in the North Dakota Century Code and in any measure enacted by the sixtieth legislative assembly.

**SECTION 22. EXPIRATION DATE.** Section 1 of this Act is effective through December 31, 2007, and after that date is ineffective and section 14 of this Act is effective through December 31, 2009, and after that date is ineffective.

Approved April 20, 2007

Filed April 24, 2007

## CHAPTER 418

### SENATE BILL NO. 2186

(Senators Wardner, Krebsbach, Mathern)  
(Representatives Gulleason, Hawken, Martinson)

## EARLY CHILDHOOD WORKFORCE DEVELOPMENT

AN ACT to create and enact a new section to chapter 50-09 and a new section to chapter 50-11.1 of the North Dakota Century Code, relating to transition assistance for child care and early childhood workforce development; to provide for a report to the legislative council; to provide for legislative council studies; and to provide an appropriation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Transition assistance for child care. The state agency shall establish a program of transition assistance to pay a portion of the cost of child care for families that lose eligibility, and remain ineligible, for benefits under section 50-09-29 due to earnings from employment. This program must:

1. Provide benefits for up to the six months following the loss of benefits under section 50-09-29;
2. Be paid directly to recipients using a debit card; and
3. Meet all requirements to be considered "assistance" for purposes of title 45, Code of Federal Regulations, part 260, section 31, or any substantially similar federal regulation that may replace title 45, Code of Federal Regulations, part 260, section 31.

**SECTION 2.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Workforce development. The department may establish a statewide system to build systematic early childhood workforce voluntary training which may include distance learning formats, a professional registry, certificates, and specializations.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.** The legislative council shall consider studying, during the 2007-08 interim, the temporary assistance for needy families program administered by the department of human services. The study may include review of the sustainability of current services and programs being funded by temporary assistance for needy families funds, review of the potential programs and services that could be funded by use of temporary assistance for needy families funds, and review of the need for increased assistance to recipients of temporary assistance for needy families who are attending a postsecondary institution of learning. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.



**SECTION 4. LEGISLATIVE COUNCIL STUDY - CHILD CARE RESOURCE AND REFERRAL SYSTEM.** The legislative council shall consider studying, during the 2007-08 interim, the state's child care resource and referral system, including consideration of the purposes and goals of the system and whether the current system is furthering these purposes and goals and consideration of the most appropriate funding source of the system. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 5. REPORT TO LEGISLATIVE COUNCIL - DEPARTMENT OF HUMAN SERVICES.** During the 2007-08 interim, the department of human services shall report to the legislative council regarding the transition assistance for the child care program implemented pursuant to section 1 of this Act.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program the sum of \$1,491,210, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income transferred from the temporary assistance for needy families program the sum of \$500,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing section 2 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009. The department may transfer the funds provided for under this section to the child care development block grant.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$166,221, or so much of the sum as may be necessary, to the department of human services for the purpose of replacing the reduction in child care development fund grants, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 419****HOUSE BILL NO. 1390**

(Representatives Kerzman, Wald)  
(Senator Krauter)

**FOSTER CHILDREN DAMAGE LIABILITY COVERAGE**

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to liability coverage for damage caused by foster children.

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

**SECTION 1.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

**Department to provide liability coverage.**

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
  - a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
  - b. Is secondary to any other coverage.
  - c. May not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
3. The department may provide for exclusions from liability coverage provided under this section.

Approved April 18, 2007  
Filed April 19, 2007

## CHAPTER 420

### SENATE BILL NO. 2359

(Senators Tallackson, J. Lee)  
(Representatives Damschen, Herbel)

### MATERNITY HOMES

AN ACT to amend and reenact sections 50-19-01, 50-19-02, 50-19-03, 50-19-03.1, 50-19-04, 50-19-05, 50-19-06, 50-19-07, 50-19-10, 50-19-11, 50-19-12, 50-19-13, and 50-19-14 of the North Dakota Century Code, relating to maternity homes; and to repeal sections 50-19-08 and 50-19-09 of the North Dakota Century Code, relating to births at maternity homes.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-19-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Maternity home ~~for unmarried mothers~~" means any ~~hospital, home,~~ or other premises, operating especially to provide social services ~~and, maternity care, and child care to unmarried pregnant or recently delivered mothers~~ and their infants, which receives more than one ~~unmarried woman during any period of six months for any length of time for shelter, or care, or treatment during pregnancy, or delivery, or within sixty one hundred twenty days after delivery.~~ It does not include any ~~hospital, home,~~ or other premises owned or operated by state or federal governments.

**SECTION 2. AMENDMENT.** Section 50-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-02. License required.** Any person, partnership, voluntary association, corporation, or limited liability company which operates a maternity home ~~for unmarried mothers~~ shall secure ~~annually~~ from the department a license at least once every two years as required in this chapter.

**SECTION 3. AMENDMENT.** Section 50-19-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-03. Requirements for license.** A license for the operation of a maternity home ~~for unmarried mothers~~ must be issued by the department to a reputable and responsible person, partnership, voluntary association, corporation, or limited liability company, upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care and treatment;

2. The persons in active charge of the home and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The home is to be conducted for the public good and in accordance with sound social policy; and
4. The health and well-being of the infants ~~born therein and the health, morality, and well-being of the parties treated therein~~ who receive services will be properly safeguarded.

**SECTION 4. AMENDMENT.** Section 50-19-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-03.1. Conviction not bar to licensure - Exceptions.** Conviction of an offense does not disqualify a person from licensure under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or operator of a maternity home ~~for unmarried mothers~~, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 5. AMENDMENT.** Section 50-19-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-04. Inspection and report by state department of health and state fire marshal.** The department shall give notice to the state department of health and state fire marshal of all applications each application for a license to operate a maternity home for unmarried mothers. Upon receipt of ~~such~~ the notice, the state department of health and the fire marshal shall inspect the facilities and premises of the applicant to determine sanitary conditions and the adequacy of medical and nursing services compliance with health and fire safety standards and shall report ~~its~~ their findings to the department.

**SECTION 6. AMENDMENT.** Section 50-19-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-05. Contents of license.** The license to operate a maternity home ~~for unmarried mothers~~ issued under the provisions of this chapter must set forth:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of patients who may be received in such premises at any one time.
4. The date of expiration of the license.

**SECTION 7. AMENDMENT.** Section 50-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-06. Regulation by department.** The department may prescribe forms for the registration and record of ~~persons cared for~~ any individual who receives services in maternity homes ~~for unmarried mothers~~ and may adopt reasonable rules for the conduct of such homes as are necessary to carry out the purposes of this

chapter. The department shall require reports from the licensee which must include a statement of plans made for the ~~unmarried~~ mother and her child.

**SECTION 8. AMENDMENT.** Section 50-19-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-07. Inspection of maternity home for ~~unmarried mothers~~ and the records thereof.** The department and its authorized agents may inspect any maternity home ~~for unmarried mothers~~ licensed under this chapter at any time. The department and its agents shall have free access to every part of such home and to the records thereof, and they may see and interview ~~the patients therein~~ any individual who receives services from the maternity home.

**SECTION 9. AMENDMENT.** Section 50-19-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-10. Records of maternity home confidential.** Except as otherwise authorized by law, no agent of the state department of health, ~~the state fire marshal,~~ or the department, or the licensee, under this chapter, may disclose the contents of the records of a maternity home ~~for unmarried mothers~~ nor of the reports received from them, except:

1. In a judicial or administrative proceeding in response to an order of a court or administrative tribunal; or
2. For a law enforcement purpose to a law enforcement official or a health oversight agency for oversight activities authorized by law.

**SECTION 10. AMENDMENT.** Section 50-19-11 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-11. Offer or advertise to ~~dispose of infants~~ place a child for adoption prohibited.** No maternity home ~~for unmarried mothers~~ licensed under the ~~provisions of~~ this chapter may in any way offer to ~~dispose of any~~ place a child, or advertise that it will give children for adoption, or hold itself out, directly or indirectly, as being able to ~~dispose of~~ place children for adoption, but may inform ~~an unmarried~~ a mother of licensed child-placing agencies.

**SECTION 11. AMENDMENT.** Section 50-19-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-12. Revocation of license.** The department may revoke a license of any maternity home ~~for unmarried mothers~~ upon a proper showing of any of the following:

1. Any of the conditions set forth in section 50-19-03 as requirements for the issuance of the license no longer exists.
2. The license was issued upon fraudulent or untrue representations.
3. The owner or operator has violated any of the rules of the department.
4. The owner or operator of the maternity home has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the department determines, following the owner's or operator's conviction of

any other offense, that the owner or operator is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 12. AMENDMENT.** Section 50-19-13 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-13. Hearing on denial or revocation of license.** Before any application for a license to conduct a maternity home ~~for unmarried mothers~~ is denied or before the revocation of any such license by the department, written charges as to the reasons therefor must be served upon the applicant or licensee, who has the right to a hearing before the department, if a hearing is requested within ten days after service of the written charges.

**SECTION 13. AMENDMENT.** Section 50-19-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-14. Cooperation of interested persons and agencies.** The licensee of a maternity home ~~for unmarried mothers, the physician, or other responsible person in attendance at birth,~~ the state department of health and its agents, the state fire marshal and the fire marshal's designees, and the department and its agents shall cooperate in all measures and services for improving and safeguarding the health and social well-being of ~~maternity patients~~ mothers and their infants  ~~cared for who receive services~~ in a maternity home ~~for unmarried mothers~~.

**SECTION 14. REPEAL.** Sections 50-19-08 and 50-19-09 of the North Dakota Century Code are repealed.

Approved March 9, 2007

Filed March 12, 2007

## CHAPTER 421

### SENATE BILL NO. 2124

(Human Services Committee)

(At the request of the Department of Human Services)

### MEDICAL ASSISTANCE PROVISION IMPLEMENTATION

AN ACT to amend and reenact sections 50-24.1-02.5 and 50-24.1-07 of the North Dakota Century Code, relating to implementing federal medical assistance provisions; to repeal sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code, relating to long-term care insurance and medical assistance waiver provisions inconsistent with federal law; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased after July 31, 2003, the insurance coverage under this section must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage. The coverage required under this subsection must include a daily benefit equal to at least one and fifty-seven hundredths times the average daily cost of nursing care for the year in which the policy was issued and an aggregate benefit equal to at least one thousand ninety-five times that daily benefit.
3. This section applies only to policies purchased before the effective date of an approved amendment to the state plan for medical assistance that provides for a qualified state long-term care insurance partnership under section 1917(b) of the Social Security Act [42 U.S.C. 1396p].
4. The department of human services shall certify to the legislative council the effective date described in subsection 3.

<sup>206</sup> **SECTION 2. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of last illness;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5; ~~and~~
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
  - g. Claims made under subsection 4.
2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
4. a. The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.

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<sup>206</sup> Section 50-24.1-07 was also amended by section 1 of House Bill No. 1351, chapter 424.



- b. In each calendar year following determination of an amount under subdivision a, the claims of the department of human services made against the decedent's estate of a recipient of medical assistance, or against the decedent's estate of the spouse of a deceased recipient of medical assistance, must include a claim for amount equal to the amount determined under subdivision a multiplied times the number of full or partial months during which the deceased recipient received medical assistance under this chapter.
5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of human services has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
7. For purposes of this section:
  - a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and
  - b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

**SECTION 3. REPEAL.** Sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code are repealed.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007

## CHAPTER 422

### HOUSE BILL NO. 1463

(Representatives Porter, Price, Weisz)  
(Senators Fischer, J. Lee)

## CHILDREN'S HEALTH INSURANCE PROGRAM ELIGIBILITY

AN ACT to amend and reenact subsection 3 of section 50-24.1-02.6 and section 50-29-04 of the North Dakota Century Code, relating to medical assistance eligibility for minors and eligibility under the state children's health insurance program; to provide a contingent appropriation; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all ~~minors born before September 30, 1983,~~ individuals from birth through age eighteen equal to one hundred ~~thirty-three~~ thirty-three percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined ~~and that do not exceed legislative appropriations for that purpose.~~

**SECTION 2. AMENDMENT.** Section 50-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-04. Plan requirements.** The plan:

1. Must be provided through private contracts with insurance carriers;
2. Must allow conversion to another health insurance policy;
3. Must be based on an actuarial equivalent of a benchmark plan;
4. Must incorporate every state-required waiver approved by the federal government;
5. Must include community-based eligibility outreach services; and
6. Must provide:
  - a. ~~An A net~~ A net income eligibility limit of one hundred ~~forty fifty~~ forty fifty percent of the poverty line;
  - b. A copayment requirement for each pharmaceutical prescription and for each emergency room visit;

- c. A deductible for each inpatient hospital visit;
- d. Coverage for:
  - (1) Inpatient hospital, medical, and surgical services;
  - (2) Outpatient hospital and medical services;
  - (3) Psychiatric and substance abuse services;
  - (4) Prescription medications;
  - (5) Preventive screening services;
  - (6) Preventive dental and vision services; and
  - (7) Prenatal services; and
- e. A coverage effective date that is the first day of the month, following the date of application and determination of eligibility.

**SECTION 3. CONTINGENT APPROPRIATION.** If section 1 of this Act does not become effective and section 2 of this Act does become effective, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$144,067 and from special funds derived from federal funds and other income \$2,196,987 to the department of human services for the purpose of defraying the expenses of implementing the expansion of the state children's health insurance program as described in section 2 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act becomes effective on the date the department of human services certifies to the legislative council that the department has received approval to claim federal financial participation to expand medical assistance benefits to children as described in section 1 of this Act.

**SECTION 5. EFFECTIVE DATE.** Section 2 of this Act becomes effective on the date the department of human services certifies to the legislative council that the federal reauthorization of the state children's health insurance program resulted in an allotment to the state in an amount that is sufficient to fund the increase identified in section 2 of this Act.

Approved April 24, 2007  
Filed April 25, 2007

## CHAPTER 423

### SENATE BILL NO. 2071

(Human Services Committee)

(At the request of the Department of Human Services)

### ANNUITY TRANSFERS

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to medical assistance and transfers involving annuities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.1-02.8. Transfers involving annuities.**

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future. ~~Except for purposes of subsections 3 and 5, the term does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half.~~
2. ~~The purchase of an An annuity purchased before August 1, 2005, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 4 is considered an available asset and its purchase is~~ an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:
  - a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.
  - c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.
  - d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the life expectancy tables published by the centers for medicare and medicaid services.

- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5.
3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.
  4. An annuity, ~~an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 4,~~ purchased after July 31, 2005, and before February 8, 2006, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:
    - a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
    - b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
    - c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;
    - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year;
    - e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and
    - f. The annuity does not include any provision that limits the effect of subsection 5.
  5. ~~Except as provided in subsection 2, before~~ Before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty-five years of age or older, the department of human services, or the

successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty-five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant ~~which complies with subsection 4.~~

6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration on or after February 8, 2006, of a payment option for an annuity purchased at any time, is a disqualifying transfer of an asset for purposes of this chapter unless:
  - a. The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the state is named in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value;
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year; and
  - e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration.
7. An annuity purchased on or after February 8, 2006, or a payment option selected or altered on or after February 8, 2006, with respect to an annuity purchased at any time is an asset for purposes of this chapter unless:

- a. The annuity meets all of the requirements of subsection 6;
  - b. The monthly payments from all annuities owned by the purchaser that comply with this subsection do not exceed the minimum monthly maintenance needs allowance for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5 and, at the time of application for benefits under this chapter, the total combined income from all sources of the purchaser and the purchaser's spouse, or the annuitant and the annuitant's spouse, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5; and
  - c. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services.
8. Except for the provision in subdivision a of subsection 6, this section does not apply to:
- a. An annuity described in subsection b or q of section 408 of the Internal Revenue Code of 1986;
  - b. An annuity purchased with proceeds from an account or trust described in subsection a, c, or p of section 408 of the Internal Revenue Code of 1986;
  - c. A simplified employee pension within the meaning of subsection k of section 408 of the Internal Revenue Code of 1986; or
  - d. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

Approved May 1, 2007  
Filed May 2, 2007

## CHAPTER 424

### HOUSE BILL NO. 1351

(Representatives Kreidt, Pietsch, Pollert)  
(Senator Dever)

## MEDICAL ASSISTANCE RECIPIENT ESTATE CLAIMS

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to claims against medical assistance recipients' estates.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>207</sup> **SECTION 1. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of the last illness, other than those incurred by medical assistance;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5; and
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital.

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<sup>207</sup> Section 50-24.1-07 was also amended by section 2 of Senate Bill No. 2124, chapter 421.



2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

Approved April 17, 2007

Filed April 18, 2007

**CHAPTER 425****SENATE BILL NO. 2133**

(Human Services Committee)

(At the request of the Department of Human Services)

**MEDICAL ASSISTANCE CONSUMER-DIRECTED CARE**

AN ACT to amend and reenact section 50-24.1-18.1 of the North Dakota Century Code, relating to consumer-directed care for medical assistance recipients.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-18.1. Personal care Consumer-directed health maintenance services - Residing at home.** Subject to the requirements under title 42, Code of Federal Regulations, part 440, section 467, the The department of human services shall provide a personal care services program for eligible medical assistance recipients who are residing in their own homes. The department shall seek a waiver of federal law provide an attendant care program to permit disabled and elderly individuals to direct their own care and to permit personal care health maintenance services authorized under this section to be provided by nonlicensed personal care service providers. Health maintenance services means care that enables an individual to live at home, and which is based upon the determination of a physician which concludes that the individual is medically stable and is competent to direct the care provided by a nonlicensed care provider. Health maintenance services includes assistance with the activities of daily living such as getting in and out of bed, wheelchair, or motor vehicle; assistance with routine bodily functions such as bathing and personal hygiene, dressing, and grooming; and feeding, including preparation and cleanup. Health maintenance services also include any other medical, nursing, or home health care services that will maintain the health and well-being of the individual and will allow the individual to remain in the community and which are services that an individual without a functional disability would customarily and personally perform without the assistance of a licensed health care provider, such as catheter irrigation, administration of medications, or wound care.

Approved March 2, 2007

Filed March 2, 2007

## CHAPTER 426

### SENATE BILL NO. 2131

(Industry, Business and Labor Committee)  
(At the request of the Department of Human Services)

### HEALTH INSURER INFORMATION

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to information provided by health insurers to the department of human services; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

#### Insurers to provide certain information to the department of human services.

1. For purposes of this section:
  - a. "Department" means the department of human services or its agent.
  - b. "Health insurer" includes self-insured plans, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that legally are responsible by statute, contract, or agreement for payment of a claim for a health care item or service.
  - c. "Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
2. As a condition of doing business in this state, health insurers shall provide to the department upon its request and in a manner prescribed by the department information about individuals who are eligible for medical assistance so the department may determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage provided by the health insurer, including the name, address, and identifying number of the plan. Notwithstanding any other provision of law, every health insurer, not more frequently than twelve times in a year, shall provide to the department upon its request information, including automated data matches conducted under the direction of the department, as necessary, to:
  - a. Identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance;
  - b. Determine the period during which the individual or the individual's spouse or the individual's dependents may be or may have been covered by the health benefit plan; and

- c. Determine the nature of the coverage.

The insurer must provide the information required in this subsection to the department at no cost if the information is in a readily available structure or format. If the department requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information.

3. To facilitate the department in obtaining the information required by this section, a health insurer shall:
  - a. Cooperate with the department to determine whether a medical assistance recipient may be covered under the insurer's health benefit plan and is eligible to receive benefits under the health benefit plan for services provided under the medical assistance program.
  - b. Respond to the request for information within ninety days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.
  - c. Accept the department's right of recovery and the assignment to the department of any right of an individual or other entity to payment from a liable third party for an item or service for which payment has been made under the state medical assistance plan.
  - d. Respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of the health care item or service.
  - e. Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:
    - (1) The claim is submitted by the department within the three-year period beginning on the date on which the item or service was furnished; and
    - (2) Any action by the department to enforce its rights with respect to such claim is commenced within six years of the department's submission of the claim.
4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance.
5. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 7, 2007

Filed March 8, 2007

## CHAPTER 427

### SENATE BILL NO. 2132

(Human Services Committee)

(At the request of the Department of Human Services)

## MEDICAL ASSISTANCE THIRD-PARTY PAYMENTS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to responsibilities of third parties liable for payments on behalf of medical assistance recipients.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

#### **Third-party liability recovery.**

1. For purposes of this section:
  - a. "Department" means the department of human services.
  - b. "Third party" means an individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under this chapter.
2. The department shall seek recovery of reimbursement from a third party up to the full amount of medical assistance paid.
3. A medical assistance recipient shall inform the department of any rights the recipient has to third-party benefits and shall inform the department of the name and address of any individual, entity, or program that is or may be liable to provide third-party benefits.
4. A release or satisfaction of a cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement is not valid or effectual as against a claim created under this chapter unless the department joins in the release or satisfaction or executes a release of its claim.
5. The department shall recover the full amount of all medical assistance provided on behalf of a recipient to the full extent of third-party benefits received by the recipient or the department for medical expenses. The department shall recover the third-party benefits directly from any third party or from the recipient or legal representative, if the recipient or legal representative has received third-party benefits, up to the amount of medical assistance provided to the recipient.
6. An applicant for or recipient of medical assistance shall cooperate in the recovery of third-party benefits.

7. To enforce its rights to third party benefits, the department may institute, intervene in, or join any legal or administrative proceeding in its own name.
  - a. If either the recipient or the department brings an action against a third party, the recipient or the department must provide to the other within thirty days after commencing the action written notice by personal delivery or registered mail of the action, the name of the court in which the case is brought, the case number of such action, and a copy of the pleadings. If either the department or the recipient brings an action, the other may become a party to or may consolidate an action brought independently with the other.
  - b. A judgment, award, or settlement of a claim in an action by a recipient to recover damages for injuries or other third-party benefits in which the department has an interest may not be satisfied or released without first giving the department notice and a reasonable opportunity to file and satisfy its claim or proceed with any action as otherwise permitted by law.
8. Any transfer or encumbrance of any right, title, or interest to which the department has a right with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided to a recipient is void and of no effect against the claim of the department.
9. A recipient who has notice or who has actual knowledge of the department's rights to third-party benefits who receives any third-party benefit or proceeds for a covered illness or injury is either required to pay the department within sixty days after receipt of settlement proceeds the full amount of the third-party benefits up to the total medical assistance provided or to place a sum equal to the full amount of the total medical assistance provided in a trust account pending judicial or administrative determination of the department's right to the third-party benefits.
10. Notwithstanding any provision in this section to the contrary, the department is not required to seek reimbursement from, or may reduce or compromise a claim against, a liable third party on claims for which the amount it reasonably expects to recover will be less than the cost of recovery or for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on the following:
  - a. Actual and legal issues of liability as may exist between the recipient and the liable party;
  - b. Total funds available for settlement; and
  - c. An estimate of the cost to the department of pursuing its claim.

**CHAPTER 428****SENATE BILL NO. 2326**

(Senators Mathern, Fischer, J. Lee)

(Representatives Price, Schneider)

**MEDICAL ASSISTANCE FOR FAMILIES OF DISABLED CHILDREN**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance and other health coverage for families of children with disabilities; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Optional medical assistance for families of children with disabilities.**

The department of human services shall establish and implement a buy-in program under the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L. 109-171; 120 Stat. 4; 42 U.S.C 1396] to provide medical assistance and other health coverage options to families of children with disabilities and whose net income does not exceed two hundred percent of the federal poverty line.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,059,932, or so much of the sum as may be necessary, and the sum of \$1,673,835, not otherwise appropriated, or so much of the sum as may be necessary, from special funds derived from federal funds and other income, to the department of human services for the purpose of establishing and implementing a buy-in program to provide medical assistance and other health coverage options to families of children with disabilities and for implementing the waiver described in North Dakota Century Code section 50-24.1-26 to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care, for the biennium beginning July 1, 2007, and ending June 30, 2009. The department of human services is authorized one full-time equivalent position for implementing the programs described in this Act.

Approved April 17, 2007

Filed April 17, 2007



## CHAPTER 429

### SENATE BILL NO. 2068

(Human Services Committee)

(At the request of the Department of Human Services)

### GEROPSYCHIATRIC FACILITIES

AN ACT to amend and reenact section 50-24.4-29 of the North Dakota Century Code, relating to establishment of a geropsychiatric unit within a nursing home; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.4-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-29. Limits on geropsychiatric facilities.** ~~The number of units within nursing homes which exclusively provide geropsychiatric services may not exceed one, and admission to a nursing home which exclusively provides geropsychiatric services may only be granted after the state hospital has performed an evaluation of the individual being admitted. Only two nursing homes within the state may have a unit that exclusively provides geropsychiatric services and no more than one geropsychiatric unit may be located in any one nursing home. Admission to one of the nursing homes that exclusively provides geropsychiatric services for the purpose of receiving geropsychiatric services may be granted only after the state hospital has performed an evaluation of the individual being admitted which indicates the individual is in need of nursing home geropsychiatric services. If at any time the number of approved geropsychiatric units in the state is below two, the department may select a geropsychiatric unit based on the experience, qualification, and capacity of the nursing homes that propose to provide geropsychiatric services. After a the geropsychiatric unit has units have been established within a the nursing home homes, the state hospital may not offer geropsychiatric services through a separate any other geropsychiatric unit.~~

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007

Filed March 2, 2007

## CHAPTER 430

### HOUSE BILL NO. 1422

(Representatives Weisz, Pollert, Price)  
(Senators Hacker, Nething, Robinson)

## DRUG PRIOR AUTHORIZATION PROGRAM

AN ACT to amend and reenact section 50-24.6-04 of the North Dakota Century Code, relating to the prior authorization program; to provide for review by the drug utilization review board; to provide for a report to the legislative council; to provide an effective date; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-04. (Effective through July 31, ~~2007~~ 2009) Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
3. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses,

such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:

- a. Acquired immune deficiency syndrome or human immunodeficiency virus; and
  - b. Cancer.
4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
  5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
    - a. Establish policies and procedures necessary to implement the prior authorization program.
    - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
    - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

**(Effective after July 31, ~~2007~~ 2009) Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.

3. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
4. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
  - a. Establish policies and procedures necessary to implement the prior authorization program.
  - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
  - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

**SECTION 2. DRUG UTILIZATION REVIEW BOARD REVIEW - REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the drug utilization review board shall review the utilization, cost, and effectiveness of the drugs identified in subsection 3 of section 50-24.6-04 and make recommendations for managing the utilization of the identified drugs or of any other drugs for the conditions identified in that subsection. The drug utilization review board shall make semiannual reports of its progress and a final report, due by October 1, 2008, of its findings and recommendations for legislative changes to a committee of the legislative council, including any legislation necessary to make the suggested changes. The legislative council shall receive the board's report and report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 12, 2007

Filed April 13, 2007

## CHAPTER 431

### SENATE BILL NO. 2100

(Judiciary Committee)

(At the request of the Department of Human Services)

## CHILD ABUSE REPORTS AND INVESTIGATIONS

AN ACT to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04.4, and 50-25.1-05 and subsection 4 of section 50-25.1-11 of the North Dakota Century Code, relating to definitions, persons required and permitted to report child abuse, persons allowed access to child fatality review panel records, who may investigate reports of child abuse or neglect when the accused is not a person responsible for the child's health or welfare, information available for use in assessments, and information that may be provided to a person who is the subject of a report alleging child abuse or neglect.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "A person responsible for the child's welfare" means a person who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or a person responsible for the child's welfare in a residential setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current diagnostic and statistical manual published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse as defined in subdivision a of subsection 1 of section 14-09-22 caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.
4. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are

required to provide for the protection and treatment of an abused or neglected child.

5. "Authorized agent" means the county social service board, unless another entity is designated by the department.
6. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.
7. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
8. "Department" means the department of human services or its designee.
9. "~~Harm~~" means ~~negative changes in a child's health which occur when a person responsible for the child's welfare:~~
  - a. ~~Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or~~
  - b. ~~Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 42-1-20.~~
- ~~40-~~ 10. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the ~~person~~ institution responsible for the child's welfare is ~~an employee of~~ a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- ~~44-~~ 10. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.
- ~~42-~~ 11. "Neglected child" means a deprived child as defined in chapter 27-20.

- 43- 12. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- 44- 13. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- 45- 14. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible, of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

**SECTION 2. AMENDMENT.** Section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-03. Persons required and permitted to report - To whom reported.**

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, ~~day child care center or any other child care worker, foster parent,~~ police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department.

**SECTION 3. AMENDMENT.** Section 50-25.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-03.1. Photographs - X-rays - Medical tests.** Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who ~~is the subject of a report~~ the person or official has knowledge or reasonable cause to suspect is an abused or neglected child and, if indicated by medical consultation, cause to be performed imaging studies, laboratory tests, colposcopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter. Photographs and visual images, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible. Imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request.

**SECTION 4. AMENDMENT.** Section 50-25.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-04.4. Child fatality review panel - Access to records.** Upon the request of a coroner or the presiding officer of a child fatality review panel, any hospital, physician, medical professional, medical facility, mental health professional, ~~or mental health facility, school counselor, or division of juvenile services employee~~ shall disclose all records of that entity with respect to any child who has or is eligible to receive a certificate of live birth and who has died. The person submitting the request shall reimburse the disclosing entity for the actual costs of assembling and disclosing the information.

**SECTION 5. AMENDMENT.** Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05. Assessment.**

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may ~~refer~~:
  - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services. ~~The department or appropriate law enforcement agency may interview~~
  - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the



person responsible for the child's welfare or the alleged perpetrator. ~~The department or law enforcement agency may conduct~~

- c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.

**SECTION 6. AMENDMENT.** Subsection 4 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Any person who is the subject of a report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected.

Approved April 26, 2007  
Filed April 27, 2007

## CHAPTER 432

### SENATE BILL NO. 2069

(Human Services Committee)

(At the request of the Department of Human Services)

### CHIP ELIGIBILITY

AN ACT to amend and reenact subsection 1 of section 50-29-02 of the North Dakota Century Code, relating to determination of self-employment income for eligibility for the children's health insurance program.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 50-29-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare, submit, and implement the plan that includes eligibility determinations for self-employed applicants, where adjusted gross income or loss means the adjusted gross income or loss as computed for an individual for federal income tax purposes under the Internal Revenue Code, based on the lower of either:
  - a. The previous one year of adjusted gross income or loss from the business, or if the previous year's federal income tax return has not been filed, from the year prior to that year, less any earned or unearned income on the tax return, plus any current earned or unearned income; or
  - b. The average of the previous three years of adjusted gross income or loss from the business, or if the previous year's federal income tax return has not been filed or the business has been in existence for fewer than three years, from the federal income tax returns from the previous three years that have been filed for the business, less the average of earned or unearned income for each of the ~~previous three~~ years for which federal income tax returns have been filed, plus any current earned or unearned income;

If the most recently available federal income tax return does not accurately predict income because the business has been recently established, has been terminated, has been subjected to a severe change such as an uninsured loss or a decrease or increase in the size of the operation, income statements or any other reliable information may be used to compute self-employment income;

Approved March 2, 2007

Filed March 2, 2007

**CHAPTER 433****SENATE BILL NO. 2167**  
(Senators Lyson, Dever, Grindberg)  
(Representative Carlisle)**ASSISTED LIVING FACILITY LICENSURE**

AN ACT to amend and reenact section 50-32-02.1 of the North Dakota Century Code, relating to licensure requirements of assisted living facilities; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-32-02.1. Continuation of existing licenses.**

1. An assisted living facility that possessed a valid license issued by the department of human services before August 1, 2005, may not be subsequently denied a license by the department of human services merely due to failure to meet the requirements of sections 23-09-01, 50-32-01, and 50-32-02 provided that the assisted living facility meets all other licensing requirements.
2. If there is a change in ownership of an assisted living facility that possessed a valid license issued before August 1, 2005, the department of human services shall allow a continuance of the exception to the licensure requirements under subsection 1 for the new owner. The continuance provided under this subsection applies to the first change in ownership after July 31, 2005, and does not apply to any subsequent change in ownership.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007