

NORTH DAKOTA'S USE OF FEDERAL RELIEF FUNDS

The federal Jobs and Growth Tax Relief Reconciliation Act passed by Congress in May 2003 included \$20 billion for increased federal payments to states under the Medicaid program (\$10 billion) and for temporary fiscal assistance for states (\$10 billion). This memorandum addresses two issues relating to the federal payments. The first issue is whether Section 9 of 2003 Senate Bill No. 2012, which provides that the Department of Human Services is to establish service copayments or limits and make other programmatic changes within the medical services program to operate the program within the funding levels approved by the 58th Legislative Assembly for the 2003-05 biennium, affects the ability of the department to use the additional federal funds made available to the state under the federal Act. The second issue is whether the \$50 million in temporary state fiscal relief must be deposited in the general fund or whether the Emergency Commission or the Budget Section may direct the \$50 million be deposited in a special fund.

FEDERAL MEDICAL ASSISTANCE FUNDS

The federal Jobs and Growth Tax Relief Reconciliation Act provides \$10 billion for increased federal payments to states under the Medicaid program effective April 1, 2003, through June 30, 2004. The Department of Human Services has projected the state will receive \$19.6 million during the 2003-05 biennium in federal funds as a result of the federal Act. The issue to be addressed is how the language in Section 9 of 2003 Senate Bill No. 2012, the Department of Human Services appropriations bill, limits the authority of the department to spend any or a portion of the additional \$19.6 million made available to the state under the federal Act. Section 9 provides, in part, that:

The department of human services shall establish other service copayments or limits and make other programmatic changes within the medical services program to operate the program within the funding levels approved by the fifty-eighth legislative assembly for the biennium beginning July 1, 2003, and ending June 30, 2005.

Senate Bill No. 2012 appropriated \$410,984,899 to the Department of Human Services in general funds and \$1,097,596,346 in special funds for a total all funds appropriation of \$1,508,581,245. State law provides that an agency may not exceed the spending authority authorized for the biennium by the Legislative Assembly. North Dakota Century Code (NDCC) Section

54-16-03 provides that "[a] state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter." Thus, it would appear that in the absence of an expenditure authorization obtained under Chapter 54-16, the Department of Human Services spending authority is limited to the total amount appropriated in Senate Bill No. 2012.

The department, however, does have the authority to transfer appropriation authority within line items with each subdivision of Section 1 of the bill and between subdivisions within Section 1 of the bill. Section 7 of Senate Bill No. 2012 provides:

Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 1 of this Act, and between subdivisions within section 1 of this Act for the biennium beginning July 1, 2003, and ending June 30, 2003. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2004, any transfers made in excess of \$50,000 and to the appropriations committees of the fifty-ninth legislative assembly regarding any transfers made pursuant to this section.

North Dakota Century Code Section 54-16-04 authorizes the Emergency Commission to order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same institution. Because Section 7 of Senate Bill No. 2012 provides that this authority exists "[n]otwithstanding section 54-16-04," the department to make these transfers without seeking the authorization of the Emergency Commission under NDCC Section 54-16-04.

In conclusion, Section 9 of Senate Bill No. 2012 requires the Department of Human Services to make whatever programmatic changes necessary to operate the medical services program within the funding levels appropriated for the biennium; however, Section 7 of the bill authorizes the department, without Emergency Commission approval, to transfer appropriation authority between line items within each subdivision of the Act as well as between subdivisions of the Act. Thus, it would appear that the receipt of the

\$19.6 million of federal funds by the Department of Human Services for the medical services program may be received by the department to the extent the funds may be accommodated within the department's spending authority provided in the 2003-05 biennium appropriations bill for the department. In other words, the department may transfer appropriation authority between line items and between subdivisions; however, the department may not expend more than the total amount of the 2003-05 biennium appropriation without an expenditure authorization as provided for in NDCC Chapter 54-16.

TEMPORARY STATE FISCAL RELIEF FUNDS - DEPOSIT OF ALLOCATION

The federal Act provides \$5 billion for fiscal year 2003 and \$5 billion for fiscal year 2004 for state fiscal assistance. North Dakota's allocation amounts to \$25 million for each federal fiscal year. The issue to be addressed is whether the \$50 million in federal funds allocated to North Dakota must be deposited in the general fund or whether the Emergency Commission and the Budget Section may direct that funds be deposited in a special fund.

Article X, Section 12, of the Constitution of North Dakota provides, in part:

All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; . . .

The Attorney General, in an April 3, 1990, letter opinion, interpreted this section. The Attorney General concluded that "[u]nless otherwise specified by statute, the State Treasurer deposits all moneys received by the state in the general fund."

Generally, special funds are created by the Legislative Assembly for a specific purpose and the funds that may be deposited in those special funds must be derived from a specific source. For example, NDCC Section 15.1-03-03 provides that "[t]he superintendent

shall deposit all moneys collected from schools as payment for the instructional materials into a special fund in the state treasury known as the revolving printing fund. All moneys deposited into the revolving printing fund are hereby appropriated to the superintendent on a continuing basis for the development and printing of instructional materials."; Section 19-18-02.1 provides that "[t]he environment and rangeland protection fund is a special fund in the state treasury. The moneys in this fund may be used for rangeland improvement projects and to address issues relating to harmonization of crop protection product standards."; and Section 20.1-02-16.2 provides that "[t]here is hereby established in the state treasury a special fund known as the nongame wildlife fund. The fund may be expended subject to appropriation by the legislative assembly to the game and fish department and must be used only for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state." According to the Office of Management and Budget, there are nearly 250 special funds in the state treasury. Each of those funds is provided for in statute and was established for a specific purpose.

The Attorney General has also addressed the issue of whether the Emergency Commission, pursuant to the commission's authority under NDCC Section 54-16-04, may use its powers to create a new special fund. According to a July 30, 1996, letter opinion, the Attorney General, relying on *Backman v. Guy*, 126 N.W.2d 910, 914-916 (N.D. 1964) stated that "[a]lthough the [Emergency] Commission may transfer spending authority between funds or line items of an agency, may authorize use of the state contingencies appropriation or federal funds, or may draw money from the state treasury to meet an extreme situation until the Legislative Assembly can make an appropriation, N.D.C.C. § 54-16-04, it generally cannot use these powers to create a new fund or a new appropriation."

Thus, it would appear that in the absence of a specific legislative directive that the funds from the federal Jobs and Growth Tax Relief Reconciliation Act be deposited in a fund created specifically for this purpose, the federal funds to be received by the state under the federal Act must be deposited in the general fund.