

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2086

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new chapter to title 25 of the North Dakota Century
2 Code, relating to implementation of a fee for service ratesetting system for payment to
3 treatment or care centers for individuals with developmental disabilities; to repeal sections
4 25-16-10, 25-16-10.1, 25-16-15, 25-16-16, and 50-06-18 of the North Dakota Century Code,
5 relating to the purchase of services provided to individuals with developmental disabilities and
6 allowing providers of services to individuals with developmental disabilities to transfer funds
7 between budget categories and line items; to provide an appropriation; and to provide an
8 effective date.

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

10 **SECTION 1.** A new chapter to title 25 of the North Dakota Century Code is created and
11 enacted as follows:

12 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

- 13 1. "Department" means the department of human services.
- 14 2. "Fee for service" means a prospective rate based on allowable historical costs
15 established by the department for payment of services provided to individuals with
16 developmental disabilities by a treatment or care center.
- 17 3. "Historical operating costs" means the allowable costs of operating a treatment or
18 care center during the reporting year in compliance with licensing standards
19 prescribed by the department but does not include an annual return on investment
20 in fixed assets related to client care.
- 21 4. "Treatment or care center" means an entity providing services to individuals with
22 developmental disabilities and licensed by the department as an intermediate care
23 facility for the mentally retarded as defined in the section 1905(d) of the Social

1 Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports,
2 supported living arrangement, extended services, or infant development services.

3 **Workgroup - Membership - Facilitator.** A workgroup composed of three voting
4 members from the department who are selected by the department and three voting members
5 from the North Dakota association of community facilities who are selected by the association
6 is created. All meetings of the workgroup are open to the public. Subject to legislative
7 appropriations, the workgroup shall hire a facilitator to lead the discussions relative to a new
8 fee-for-service payment system for treatment or care centers and a consultant to perform the
9 financial modeling and evaluation of the current and future payment system. If the workgroup
10 does not receive funding from the legislative assembly for a facilitator, the workgroup shall
11 select one member from the department and one member from the association to serve as
12 cochairmen of the workgroup.

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

16 **Fee-for-service system - Fee determination.** By July 1, 2005, the department shall
17 implement a fee-for-service system of payment for services provided to individuals with
18 developmental disabilities by treatment or care centers. Fees for services must be based on
19 allowable historical operating costs of licensed treatment or care centers operating in this state.
20 The workgroup shall establish procedures for determining interim fees for new providers or new
21 services. In order to receive payment from the department, a treatment or care center shall file
22 with the department a claim for service rendered to an individual with a developmental
23 disability. The fee-for-service system implemented by the department must require that a
24 treatment or care center be responsible for its own operating costs and that the fee paid for
25 service represents payment in full to the treatment or care center for services rendered.

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

29 Number of clients served:	Compensation limit:
30 1 - 15	\$25,000
31 16 - 30	\$35,000

1	31 - 45	\$45,000
2	46+	\$50,000

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

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

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

27 **Transition to establishment of fees.** For payment of services furnished by treatment
28 or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it
29 presently exists. The workgroup shall establish new protocols and methodologies for
30 transitioning to a new payment system to permit an orderly transition to the establishment of
31 fees under this chapter.

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

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

9 **Rulemaking authority of the department.** The department shall establish, by rule, the
10 procedures, as determined by the workgroup, for determining the fees to be paid for services
11 provided by a treatment or care center and for implementing the other provisions of this
12 chapter. Rules adopted under this chapter may be adopted as interim final rules without the
13 approval of the governor and without a finding that emergency rulemaking is necessary. Any
14 interim final rules so adopted may take effect on a date no earlier than the date of first filing with
15 the legislative council of the notice of proposed adoption of a rule.

16 **Reporting to legislative council.** During the 2003-04 interim, the department shall
17 report quarterly to the legislative council regarding its progress in developing a fee-for-service
18 payment system for treatment or care centers.

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

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

23 **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the
24 general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much
25 of the sum as may be necessary, to the department of human services for the purpose of hiring
26 a facilitator to lead the discussions relative to a new fee-for-service payment system for
27 treatment or care centers and for hiring a consultant to perform the financial modeling and
28 evaluation of the current and future payment system, for the biennium beginning July 1, 2003,
29 and ending June 30, 2005.

30 **SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1,
31 2005.

1 **SECTION 6. EFFECTIVE DATE.** By March 1, 2005, the department shall certify to the
2 legislative council whether the department and the North Dakota association of community
3 facilities reached an agreement by January 1, 2005, on a new fee-for-service system and
4 whether section 50-06-18 is repealed. If the department and the association fail to reach
5 agreement on a new fee-for-service system by January 1, 2005, the system in effect on
6 June 30, 2003, remains in effect and section 50-06-18 is not repealed.