

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2012

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 human services; to provide statements of legislative intent; to provide for a legislative council
3 report; to provide for a legislative council study; to provide for transfers; to create and enact a
4 new section to chapter 23-01 and chapter 23-39 of the North Dakota Century Code, relating to
5 programs for children with special health care needs; to amend and reenact sections 25-17-02,
6 25-17-03, 26.1-45-13, 50-06-01.2, and 50-06-01.4, subsection 6 of section 50-06.2-02,
7 subsection 5 of section 50-06.2-03, subsection 3 of section 50-06.2-04, sections 50-06.2-06
8 and 50-24.4-15, subsection 4 of section 50-24.5-02, and subsection 2 of section 50-24.5-03 of
9 the North Dakota Century Code, relating to rulemaking and to the provision of medical food for
10 individuals with metabolic disorders, the structure of the department of human services,
11 qualified service providers, and to nursing home property-related costs; to repeal chapter 50-10
12 of the North Dakota Century Code, relating to aid to crippled children; and to provide an
13 effective date.

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

15 **SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this
16 section represent the base level funding component appropriated to the department of human
17 services in section 3 of this Act as follows:

18 Subdivision 1.

19	MANAGEMENT	
20	Salaries and wages	\$10,708,738
21	Operating expenses	60,968,708
22	Capital assets	<u>2,756</u>
23	Total all funds - Base level	\$71,680,202

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1	Less estimated income	<u>1,127,268,003</u>
2	Total general fund	\$445,344,027
3	Subdivision 3.	
4	HUMAN SERVICE CENTERS AND INSTITUTIONS	
5	Northwest human service center	\$7,545,956
6	North central human service center	16,888,313
7	Lake region human service center	9,883,098
8	Northeast human service center	22,230,466
9	Southeast human service center	26,206,795
10	South central human service center	14,781,265
11	West central human service center	20,813,941
12	Badlands human service center	9,863,050
13	State hospital	65,126,604
14	Developmental center	<u>48,456,612</u>
15	Total all funds - Subdivision 3	\$241,796,100
16	Less estimated income - Subdivision 3	<u>112,810,933</u>
17	Total general fund - Subdivision 3	\$128,985,167
18	Grand total general fund appropriation - S.B. 2012	\$595,342,219
19	Grand total special funds appropriation - S.B. 2012	\$1,263,164,101
20	Grand total all funds appropriation - S.B. 2012	\$1,858,506,320

21 **SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.**

22 Notwithstanding section 54-16-04, the department of human services may transfer
23 appropriation authority between line items within each subdivision of section 3 of this Act and
24 between subdivisions within section 3 of this Act for the biennium beginning July 1, 2007, and
25 ending June 30, 2009. As determined necessary by the director of the department of human
26 services, the director may hire full-time equivalent positions, in addition to those authorized by
27 the legislative assembly within the limits of the appropriation contained in subdivision 3 of
28 section 3 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009. The
29 department shall notify the office of management and budget of any transfer made pursuant to
30 this section. The department shall report to the budget section after June 30, 2008, any

1 transfers made in excess of \$50,000 and to the appropriations committees of the sixty-first
2 legislative assembly regarding any transfers made pursuant to this section.

3 **SECTION 5. CONTINUOUS MEDICAID ELIGIBILITY FOR CHILDREN - REPORT TO**
4 **LEGISLATIVE COUNCIL - LIMIT ON USE OF UNSPENT GENERAL FUND**

5 **APPROPRIATIONS.** The department of human services shall monitor expenditures relating to
6 allowing continuous medicaid eligibility for children under nineteen years of age for the
7 biennium beginning July 1, 2007, and ending June 30, 2009. The department shall provide
8 periodic reports on the status of these expenditures to the legislative council. The department
9 may not spend any unused general fund appropriation authority resulting from these
10 expenditures being less than appropriated for other purposes.

11 **SECTION 6. LEGISLATIVE INTENT - ESTIMATED COST OF REBASING MEDICAID**

12 **INPATIENT HOSPITAL PAYMENT RATES.** It is the intent of the sixtieth legislative assembly
13 that the department of human services, during the 2007-08 interim, determine the estimated
14 cost of rebasing medicaid inpatient hospital payment rates for the 2009-11 biennium and
15 present the information to the appropriations committees of the sixty-first legislative assembly.

16 **SECTION 7. METHAMPHETAMINE TREATMENT SERVICES.** The department of
17 human services shall use the \$700,000 from the general fund included in the operating
18 expenses line item in subdivision 2 of section 3 of this Act for increasing the number of
19 individuals receiving treatment services under contract with the Robinson recovery center for
20 the biennium beginning July 1, 2007, and ending June 30, 2009.

21 **SECTION 8. ESTIMATED INCOME - LIMIT - HEALTH CARE TRUST FUND.** The
22 estimated income line item in subdivision 2 of section 3 of this Act includes \$170,500 from the
23 health care trust fund. The department of human services expenditures from this fund may not
24 exceed this amount for the biennium beginning July 1, 2007, and ending June 30, 2009.

25 **SECTION 9. LEGISLATIVE INTENT - STATE CHILDREN'S HEALTH INSURANCE**

26 **PROGRAM.** The funding appropriated in subdivision 2 of section 3 of this Act includes
27 \$453,000 for a state children's health insurance program outreach program. It is the intent of
28 the sixtieth legislative assembly that the department of human services provide this funding to
29 an entity that focuses on statewide community health care initiatives and issues.

30 **SECTION 10. LEGISLATIVE COUNCIL STUDY - USE OF PROPERTY TAX**

31 **REVENUE FOR COUNTY HUMAN SERVICES PROGRAMS.** The legislative council shall

1 consider studying, during the 2007-08 interim, the use of local property tax revenue to finance
2 the delivery of human services on an individual county basis. The legislative council shall
3 report its findings and recommendations, together with any legislation required to implement
4 the recommendations, to the sixty-first legislative assembly.

5 **SECTION 11.** A new section to chapter 23-01 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Children with special health care needs - Program administration.** The state
8 department of health shall administer programs for children with special health care needs as
9 may be necessary to conform to title 5, part 2, of the federal Social Security Act, as amended
10 through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.], including providing
11 services and assistance to children with special health care needs and their families and
12 developing and operating clinics for the identification, screening, referral, and treatment of
13 children with special health care needs.

14 **SECTION 12.** Chapter 23-39 of the North Dakota Century Code is created and enacted
15 as follows:

16 **23-39-01. Definitions.** In this chapter unless the context or subject matter otherwise
17 requires:

- 18 1. "County agency" means the county social service boards in this state.
- 19 2. "Department" means the state department of health.

20 **23-39-02. Administration of services for children with special health care needs.**
21 Services for children with special health care needs must be administered by the department in
22 conformity with title 5, part 2, of the federal Social Security Act, as amended through July 1,
23 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.].

24 **23-39-03. Duties of the department.** The department, in administering this chapter,
25 shall:

- 26 1. Cooperate with the federal government in the development of plans and policies
27 for services for children with special health care needs.
- 28 2. Adopt rules and take any necessary action to entitle the state to receive aid from
29 the federal government for services for children with special health care needs in
30 conformity with title 5, part 2, of the federal Social Security Act and its
31 amendments.

- 1 3. Take action, give directions, and adopt rules to carry out the provisions of this
2 chapter, including the adoption and application of suitable standards and
3 procedures to ensure uniform and equitable treatment of all applicants for services
4 for children with special health care needs.
- 5 4. Cooperate with the federal government in matters of mutual concern pertaining to
6 services to children with special health care needs, including the adoption of
7 methods of administration found necessary by the federal government for the
8 efficient operation of the plan for assistance.
- 9 5. Provide necessary qualified employees and representatives.
- 10 6. Establish and enforce a merit system as may be required under the federal Social
11 Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620;
12 42 U.S.C. 701 et seq.].
- 13 7. Make reports in the form and containing the information the federal government
14 requires and comply with the provisions, rules, and regulations the federal
15 government makes to assure the correctness and verification of a report.
- 16 8. Publish a biennial report and any interim reports necessary.
- 17 9. Provide medical food and low-protein modified food products to individuals with
18 phenylketonuria or maple syrup urine disease under chapter 25-17.
- 19 10. Establish eligibility criteria for services under this chapter at one hundred
20 eighty-five percent of the poverty line, except for criteria relating to Russell-Silver
21 syndrome, phenylketonuria, or maple syrup urine disease treatment services for
22 which income is not to be considered when determining eligibility. For purposes of
23 this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

24 **23-39-04. Birth report of child with special health care needs made to**
25 **department.** Within three days after the birth in this state of a child born with a visible
26 congenital deformity, the licensed maternity hospital or home in which the child was born, or the
27 legally qualified physician or other person in attendance at the birth of the child outside of a
28 maternity hospital, shall furnish the department a report concerning the child with the
29 information required by the department.

30 **23-39-05. Birth report of child with special health care needs - Use - Confidential.**
31 The information contained in the report furnished to the department under section 23-39-04

1 concerning a child with a visible congenital deformity may be used by the department for the
2 care and treatment of the child pursuant to this chapter. The report is confidential and is solely
3 for the use of the department in the performance of its duties. The report is not open to public
4 inspection nor considered a public record.

5 **23-39-06. Duties of county agencies.** A county agency shall:

- 6 1. Cooperate with the department in administering this chapter in its county subject to
7 rules adopted by the department.
- 8 2. Make surveys and reports regarding children with special health care needs in the
9 various counties to the department when the department directs and in the way the
10 department directs.
- 11 3. Provide for the transportation of a child with special health care needs to a clinic
12 for medical examination and to a hospital or a clinic for treatment.

13 **23-39-07. Russell-Silver syndrome - Services - Definitions.**

- 14 1. The department shall provide payment of a maximum of fifty thousand dollars per
15 child per biennium for medical food and growth hormone treatment at no cost to
16 individuals through age eighteen who have been diagnosed with Russell-Silver
17 syndrome, regardless of income. If the department provides an individual with
18 services under this section, the department may seek reimbursement from any
19 governmental program that provides coverage to that individual for the services
20 provided. The parent of an individual receiving services under this section shall
21 obtain any health insurance available to the parent on a group basis or through an
22 employer or union, and that insurance must be the primary payer before payment
23 under this program.
- 24 2. For purposes of this section:
 - 25 a. "Growth hormone treatment" means a drug prescribed by a physician or other
26 licensed practitioner for the long-term treatment of growth failure, the supplies
27 necessary to administer the drug, one out-of-state physician visit per year to
28 obtain expert consultation for the management of Russell-Silver syndrome,
29 appropriate in-state physician visits, and the travel expenses associated with
30 physician visits for the child and one parent.

- 1 b. "Medical food" means a formula that is intended for the dietary treatment of a
2 disease or condition for which nutritional requirements are established by
3 medical evaluation and is formulated to be consumed or administered under
4 the direction of a physician as well as any medical procedure and supplies
5 necessary for assimilation of the formula.

6 **SECTION 13. AMENDMENT.** Section 25-17-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **25-17-02. Rulemaking requirement.** The state health council ~~and the department of~~
9 ~~human services~~ shall adopt rules necessary to implement this chapter.

10 **SECTION 14. AMENDMENT.** Section 25-17-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **25-17-03. Treatment for positive diagnosis - Registry of cases.**

13 ~~4.~~ The state department of health shall:

14 ~~a.~~ 1. Follow up with attending physicians cases with positive tests for metabolic
15 diseases in order to determine the exact diagnosis.

16 ~~b.~~ 2. Refer every diagnosed case of a metabolic disease to a qualified health care
17 provider for necessary treatment of the metabolic disease.

18 ~~c.~~ 3. Maintain a registry of cases of metabolic diseases.

19 ~~2.~~ ~~The department of human services, as a program provided under chapter 50-10,~~
20 ~~shall:~~

21 ~~a.~~ 4. Provide medical food at no cost to males under age twenty-two and females under
22 age forty-five who are diagnosed with phenylketonuria or maple syrup urine
23 disease, regardless of income. If treatment services under this subsection are
24 provided to an individual by the department, the department may seek
25 reimbursement from any government program that provides coverage to that
26 individual for the treatment services provided by the department.

27 ~~b.~~ 5. Offer for sale at cost medical food to females age forty-five and over and to males
28 age twenty-two and over who are diagnosed with phenylketonuria or maple syrup
29 urine disease, regardless of income. These individuals are responsible for
30 payment to the department for the cost of medical food.

- 1 e. 6. Provide low-protein modified food produces, if medically necessary as determined
2 by a qualified health care provider, to females under age forty-five and males
3 under age twenty-two who are receiving medical assistance and are diagnosed
4 with phenylketonuria or maple syrup urine disease.

5 **SECTION 15. AMENDMENT.** Section 26.1-45-13 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-45-13. Qualified Home service providers.** Any insurance company providing
8 long-term care coverage for home and community-based services shall pay a provider meeting
9 qualified home service provider standards a daily payment allowance as defined in the policy or
10 certificate. "Qualified Home service provider" means a county agency or independent
11 contractor that agrees to meet standards for personal attendant care service as established by
12 the department of human services.

13 **SECTION 16. AMENDMENT.** Section 50-06-01.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **50-06-01.2. Department of human services - Creation.** The ~~North Dakota~~
16 department of human services is hereby created to assume the functions, powers, and duties
17 of the following governmental agencies:

- 18 1. The social service board of North Dakota, including all of the statutory authority
19 and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, ~~50-10~~, 50-11,
20 50-11.1, 50-12, 50-18, 50-19, 50-21, 50-24.1, and 50-25.1.
21 2. The mental health and retardation division of the state department of health as
22 established by chapter 25-10, including the state hospital and any other institutions
23 under the jurisdiction of the mental health and retardation division.
24 3. The division of alcoholism and drug abuse of the state department of health as
25 established by chapter 54-38.
26 4. The state council on developmental disabilities as established by section
27 25-01-01.1.

28 **SECTION 17. AMENDMENT.** Section 50-06-01.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **50-06-01.4. Structure of the department.** The department includes the state hospital;
31 the regional human service centers; a vocational rehabilitation unit; and other units or offices

1 and administrative and fiscal support services as the executive director determines necessary.
2 The department must be structured to promote efficient and effective operations and,
3 consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the
4 state in the discharge of the following functions not otherwise by law made the responsibility of
5 another state agency:

- 6 1. Administration of programs for children and families, including adoption services
7 and the licensure of child-placing agencies, foster care services and the licensure
8 of foster care arrangements, child protection services, children's trust fund, state
9 youth authority, licensure of day care homes and facilities, services to unmarried
10 parents, refugee services, in-home community-based services, and administration
11 of the interstate compacts on the placement of children and juveniles.
- 12 2. Administration of programs for persons with developmental disabilities, including
13 licensure of facilities and services, and the design and implementation of a
14 community-based service system for persons in need of habilitation.
- 15 3. Administration of aging service programs, including nutrition, transportation,
16 advocacy, social, ombudsman, recreation, and related services funded under the
17 Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and
18 community-based services, licensure of adult family care homes, committee on
19 aging, and the fund matching program for city or county tax levies for senior citizen
20 activities and services.
- 21 4. Administration of mental health programs, including planning and implementing
22 preventive, consultative, diagnostic, treatment, and rehabilitative services for
23 persons with mental or emotional disorders and psychiatric conditions.
- 24 5. ~~Administration of programs for crippled children, including the provision of services~~
25 ~~and assistance to crippled children and their families, and the development and~~
26 ~~operation of clinics for the identification, screening, referral, and treatment of~~
27 ~~crippled children.~~
- 28 6- Administration of alcohol and drug abuse programs, including establishing quality
29 assurance standards for the licensure of programs, services, and facilities,
30 planning and coordinating a system of prevention, intervention, and treatment
31 services, providing policy leadership in cooperation with other public and private

1 agencies, and disseminating information to local service providers and the general
2 public.

3 ~~7.~~ 6. Administration of economic assistance programs, including temporary assistance
4 for needy families, food stamps, fuel assistance, child support enforcement,
5 refugee assistance, work experience, work incentive, and quality control.

6 ~~8.~~ 7. Administration of medical service programs, including medical assistance for
7 needy persons, early and periodic screening, diagnosis and treatment, utilization
8 control, and claims processing.

9 The executive director shall consult with and maintain a close working relationship with the
10 state department of health; with the department of corrections and rehabilitation and the
11 superintendents of the school for the deaf and the school for the blind to develop programs for
12 developmentally disabled persons; and with the superintendent of public instruction to
13 maximize the use of resource persons in regional human service centers in the provision of
14 special education services. The executive director shall also maintain a close liaison with
15 county social service agencies.

16 **SECTION 18. AMENDMENT.** Subsection 6 of section 50-06.2-02 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 6. "~~Qualified~~ Home service provider" means a county agency or independent
19 contractor which agrees to meet standards for service and operations established
20 by the state agency.

21 **SECTION 19. AMENDMENT.** Subsection 5 of section 50-06.2-03 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 5. Within the limits of legislative appropriations and at rates determined payable by
24 the state agency, to pay ~~qualified~~ home service providers, which meet standards
25 for services and operations, for the provision of the following services as defined in
26 the comprehensive human services plan which are provided to individuals who, on
27 the basis of functional assessments, income, and resources, are determined
28 eligible for the services in accordance with rules adopted by the state agency:

- 29 a. Homemaker services;
30 b. Chore services;
31 c. Respite care;

- 1 d. Home health aide services;
- 2 e. Case management;
- 3 f. Family home care;
- 4 g. Personal attendant care;
- 5 h. Adult family foster care; and
- 6 i. Such other services as the state agency determines to be essential and
- 7 appropriate to sustain individuals in their homes and in their communities and
- 8 to delay or prevent institutional care.

9 **SECTION 20. AMENDMENT.** Subsection 3 of section 50-06.2-04 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 3. To make available the human services detailed in the comprehensive human
- 12 services plan which the county agency has included in the approved county plan
- 13 and to provide such other human services as the county agency determines
- 14 essential in effectuating the purposes of this chapter within the county. To the
- 15 extent funding is available under section 50-06.2-03 and chapter 50-24.1, the
- 16 county plan must include the services enumerated in those sections. The county
- 17 agency shall make these services available to any individual requesting service
- 18 and determined eligible on the basis of functional assessment. The individual shall
- 19 pay for the services in accordance with a fee scale based on family size and
- 20 income. The county agency may contract with any qualified home service provider
- 21 in its provision of those enumerated services.

22 **SECTION 21. AMENDMENT.** Section 50-06.2-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

- 24 **50-06.2-06. Freedom of choice.** Each person eligible for services under this chapter,
- 25 or the person's representative, must be free to choose among available qualified home service
- 26 providers that offer competitively priced services. The county agency shall inform each eligible
- 27 applicant for services, provided under this chapter, of the identity of qualified home service
- 28 providers available to provide the service required by the applicant. The county agency shall
- 29 make and document reasonable efforts to inform potential service providers of the anticipated
- 30 need for services in the county.

1 **SECTION 22. AMENDMENT.** Section 50-24.4-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-24.4-15. Property-related costs.**

- 4 1. The department shall include in the ratesetting system for nursing homes a
5 payment mechanism for the use of real and personal property which provides for
6 depreciation and related interest costs. The property cost payment mechanism
7 must:
- 8 a. Recognize the valuation basis of assets acquired in a bona fide transaction as
9 an ongoing operation after July 1, 1985, limited to the lowest of:
 - 10 (1) Purchase price paid by the purchaser;
 - 11 (2) Fair market value at the time of sale; or
 - 12 (3) Seller's cost basis, increased by one-half of the increase in the
13 consumer price index for all urban consumers (United States city
14 average) from the date of acquisition by the seller to the date of
15 acquisition by the buyer, less accumulated depreciation.
 - 16 b. Recognize depreciation on land improvements, buildings, and fixed
17 equipment acquired, as an ongoing operation over the estimated useful
18 remaining life of the asset as determined by a qualified appraiser.
 - 19 c. Recognize depreciation on movable equipment acquired as an ongoing
20 operation after August 1, 1995, over a composite remaining useful life.
 - 21 d. Provide for an interest expense limitation determined by the department and
22 established by rule.
 - 23 e. Establish a per bed property cost limitation considering single and double
24 occupancy construction.
 - 25 f. Recognize increased lease costs of a nursing home operator to the extent the
26 lessor has incurred increased costs related to the ownership of the facility, the
27 increased costs are charged to the lessee, and the increased costs would be
28 allowable had they been incurred directly by the lessee.
 - 29 g. Recognize any mandated costs, fees, or other moneys paid to the attorney
30 general through transactions under sections 10-33-144 through 10-33-149.

- 1 2. For rate years beginning after December 31, 2003, the limitations of paragraph 3
2 of subdivision a of subsection 1 do not apply to the valuation basis of assets
3 purchased between July 1, 1985, and July 1, 2000. The provisions of this
4 subsection may not be applied retroactively to any rate year before July 1, 2005.
- 5 3. For rate years beginning after December 31, 2007, the limitations of subdivision e
6 of subsection 1 do not apply to the valuation basis of assets acquired as a result of
7 a natural disaster before December 31, 2006. The provisions of this subsection
8 may not be applied retroactively to any rate year before January 1, 2008.

9 **SECTION 23. AMENDMENT.** Subsection 4 of section 50-24.5-02 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 4. Pay ~~qualified~~ home service providers at rates determined by the department,
12 within the limits of legislative appropriation, for the provision of the following
13 services provided to an eligible beneficiary to the extent that the eligible beneficiary
14 lacks income sufficient to meet the cost of these services:
- 15 a. Homemaker services;
 - 16 b. Chore services;
 - 17 c. Respite care;
 - 18 d. Home health aide services;
 - 19 e. Case management;
 - 20 f. Family home care;
 - 21 g. Personal attendant care;
 - 22 h. Adult family foster care;
 - 23 i. Adaptive assessment; and
 - 24 j. Other services the department determines to be essential and appropriate to
25 sustain an individual in the individual's home and community and to delay or
26 prevent institutional care.

27 **SECTION 24. AMENDMENT.** Subsection 2 of section 50-24.5-03 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 2. Provide the services described in this chapter. The county agency may contract
30 with a ~~qualified~~ home service provider in the provision of those services.

31 **SECTION 25. REPEAL.** Chapter 50-10 of the North Dakota Century Code is repealed.

1 **SECTION 26. EFFECTIVE DATE.** Sections 15, 18, 19, 20, 21, 23, and 24 of this Act
2 become effective July 1, 2008.