

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1012
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide a contingent appropriation; to provide for legislative council studies; to provide statements of legislative intent; to create and enact a new subsection to section 50-25.1-05 of the North Dakota Century Code, relating to the adoption of rules regarding the recording of interviews in child abuse or neglect cases; to amend and reenact sections 25-04-05, 50-24.1-02.6, 50-24.5-04, 50-29-04, and 50-30-02 of the North Dakota Century Code, relating to developmental center admission screenings, the personal needs allowance for individuals in basic care facilities, eligibility under the state children's health insurance program, and use of the health care trust fund; to repeal section 4 of chapter 422 of the 2007 Session Laws, relating to the effective date of the expansion of medical assistance benefits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Subdivision 1.

MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,512,358	\$2,520,060	\$14,032,418
Operating expenses	60,110,356	(13,567,566)	46,542,790
Capital assets	<u>285</u>	<u>(285)</u>	<u>0</u>
Total all funds	\$71,622,999	(\$11,047,791)	\$60,575,208
Less estimated income	<u>50,663,834</u>	<u>(16,290,983)</u>	<u>34,372,851</u>
Total general fund	\$20,959,165	\$5,243,192	\$26,202,357

Subdivision 2.

PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$25,411,041	\$16,090,648	\$41,501,689
Operating expenses	67,811,802	4,966,224	72,778,026
Capital assets	399	12,601	13,000
Grants	344,019,216	111,831,588	455,850,804
Grants - Medical assistance	1,117,187,821	171,985,015	1,289,172,836
State administrative child support	12,488,292	(12,488,292)	0
Total all funds	\$1,566,918,571	\$292,397,784	\$1,859,316,355
Less estimated income	<u>1,126,663,567</u>	<u>250,532,515</u>	<u>1,377,196,082</u>
Total general fund	\$440,255,004	\$41,865,269	\$482,120,273

Subdivision 3.

HUMAN SERVICE CENTERS AND INSTITUTIONS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northwest human service center	\$7,493,897	\$958,104	\$8,452,001
North central human service center	16,782,604	2,425,414	19,208,018
Lake region human service center	9,817,355	1,080,022	10,897,377
Northeast human service center	22,107,349	3,661,082	25,768,431
Southeast human service center	26,061,630	4,086,258	30,147,888
South central human service center	14,683,811	883,684	15,567,495
West central human service center	20,687,272	4,003,786	24,691,058
Badlands human service center	9,798,789	1,058,549	10,857,338
State hospital	57,391,944	11,226,902	68,618,846
Developmental center	46,793,933	7,019,985	53,813,918
Total all funds	\$231,618,584	\$36,403,786	\$268,022,370
Less estimated income	<u>112,757,229</u>	<u>15,503,656</u>	<u>128,260,885</u>
Total general fund	\$118,861,355	\$20,900,130	\$139,761,485

Subdivision 4.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$580,075,524	\$68,008,591	\$648,084,115
Grand total special funds	1,290,084,630	342,634,393	1,632,719,023
Grand total all funds	\$1,870,160,154	\$410,642,984	\$2,280,803,138
Full-time equivalent positions	2223.38	(6.50)	2216.88

SECTION 2. APPROPRIATION - FEDERAL FISCAL STIMULUS FUNDS - ADDITIONAL FUNDING APPROVAL. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from federal funds made available to the state under the federal American Recovery and Reinvestment Act of 2009, not otherwise appropriated, to the department of human services, for the period beginning with the effective date of this Act and ending June 30, 2011, as follows:

Federal medical assistance percentage	\$66,500,000
Elderly nutrition services	485,000
Child support incentive matching funds	3,200,000
Rehabilitation services and disability assistance and independent living	2,043,000
Individuals With Disabilities Education Act - Part C	2,140,000
Supplemental nutrition assistance program benefits and administration	9,874,747
Senior employment program	143,288
Older blind	3,170
Total federal funds	\$84,389,205

The department of human services may seek emergency commission and budget section approval under chapter 54-16 for authority to spend any additional federal funds received under the federal American Recovery and Reinvestment Act of 2009 in excess of the amounts appropriated in this section, for the period beginning with the effective date of this Act and ending June 30, 2011.

Any federal funds appropriated under this section, except for the funding of \$66,500,000 relating to the federal medical assistance percentage and funding of \$2,763,082 of child support incentive matching funds, are not a part of the agency's 2011-13 base budget. Any program expenditures made with these funds will not be replaced with state funds after the federal American Recovery and Reinvestment Act of 2009 funds are no longer available.

SECTION 3. GENERAL FUND TRANSFER TO BUDGET STABILIZATION FUND - EXCEPTION - USE OF GENERAL FUND AMOUNTS. Notwithstanding section 54-27.2-02, the state treasurer and the office of management and budget may not include in the amount used to determine general fund transfers to the budget stabilization fund at the end of the 2007-09 biennium under chapter 54-27.2 any general fund amounts resulting from the increased federal share of medical assistance payments resulting from federal medical assistance percentage changes under the federal American Recovery and Reinvestment Act of 2009. The state treasurer and the office of management and budget shall separately account for these amounts and 2009-11 biennium general fund amounts resulting from federal medical assistance percentage changes under the federal American Recovery and Reinvestment Act of 2009 and use these amounts to defray the expenses of continuing program costs of the department of human services from the general fund, for the biennium beginning July 1, 2009, and ending June 30, 2011, as follows:

Inflationary increases for human service providers	\$27,345,292
Rate increases for selected medicaid services due to rebasing	21,788,982
Rate increases for nursing homes due to property limit changes and other nursing home increases	7,788,572
Wage increases for employees of nursing homes, basic care, and developmental disabilities services providers and qualified service providers	16,229,317
Salary increases for department of human services employees	<u>14,293,872</u>
Total	\$87,446,035

SECTION 4. BANK OF NORTH DAKOTA LOAN AUTHORIZATION - BUDGET SECTION APPROVAL - CONTINGENT APPROPRIATION. If the caseload/utilization of medical services, long-term care, and developmental disabilities services is more than anticipated by the sixty-first legislative assembly, the department of human services, subject to budget section approval, may borrow the sum of \$8,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing the state matching share of additional medical assistance grants for medical services, long-term care, and developmental disabilities services, for the biennium beginning July 1, 2009, and ending June 30, 2011. The department of human services shall request funding from the sixty-second legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest.

SECTION 5. 2009-11 SPENDING LEVEL - AUTHORIZATION. If department of human services expenditures exceed funding levels, including loan proceeds appropriated in section 4 of this Act, approved by the sixty-first legislative assembly during the 2009-11 biennium due to caseload/utilization of programs exceeding the level anticipated by the legislative assembly, the department may continue to spend at the increased level and may seek a deficiency appropriation from the sixty-second legislative assembly.

SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SECOND LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixtieth legislative assembly for the 2007-09 biennium and the 2009-11 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2007-09</u>	<u>2009-11</u>
Medicaid management information system project (MMIS)	\$3,643,133	\$0
State hospital - Sex offender treatment addition project	3,100,000	0
State hospital - Capital improvements	3,062,757	0
State hospital - Extraordinary repairs	1,153,500	0
Developmental center - Capital improvements	300,000	0
Developmental center - Extraordinary repairs	547,092	0
Developmental center - Equipment	80,782	0
Supplemental payment	0	400,000
Extraordinary repairs	0	3,443,692

Equipment over \$5,000	0	352,606
Total general fund	\$11,887,264	\$4,196,298

The 2009-11 one-time funding amounts are not a part of the entity's base budget for the 2011-13 biennium. The department of human services shall report to the appropriations committees of the sixty-second legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 7. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION. 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, 2009, and ending June 30, 2011. 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, 2010, any transfers made in excess of \$50,000 and to the appropriations committees of the sixty-second legislative assembly regarding any transfers made pursuant to this section.

SECTION 8. ESTIMATED INCOME - LIMIT - HEALTH CARE TRUST FUND. The estimated income line item in subdivision 2 of section 1 of this Act includes \$4,124,506 from the health care trust fund for nursing facilities. The department of human services expenditures from this fund may not exceed this amount for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 9. LEGISLATIVE COUNCIL STUDY - CHILD SUPPORT ENFORCEMENT. During the 2009-10 interim, the legislative council shall consider studying the department of human services' child support enforcement program. The study should include the review of arrearages in terms of total owed and interest accrued and child support enforcement activities in other states. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

SECTION 10. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE. During the 2009-10 interim, the legislative council shall study long-term care services in the state. The study must include a review of the department of human services' payment system and a review of the state department of health's survey and inspection programs and processes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

SECTION 11. SUPPLEMENTAL PAYMENTS - BASIC CARE AND NURSING HOME FACILITY SALARY AND BENEFIT INCREASES. The funding appropriated in subdivision 2 of section 1 of this Act includes \$17,977,513, of which \$5,512,441 is from the general fund, \$800,000 is from the health care trust fund, and \$11,665,072 is from federal funds, for providing supplemental payments to basic care and skilled nursing care facilities to allow for a salary and benefit increase for employees beginning July 1, 2009. Basic care and skilled nursing care facilities may not use the money received under this section for providing salary and benefit enhancements to administrators or directors of nursing.

SECTION 12. SUPPLEMENTAL PAYMENTS - DEVELOPMENTAL DISABILITIES PROVIDER SALARY AND BENEFIT INCREASES. The funding appropriated in subdivision 2 of section 1 of this Act includes \$21,639,106, of which \$7,086,807 is from the general fund and \$14,552,299 is from federal funds, for providing supplemental payments to developmental disabilities providers to allow for a salary and benefit increase for employees beginning July 1, 2009. Developmental disabilities service providers may not use the money received under this section for providing salary and benefit enhancements to administrators.

SECTION 13. LEGISLATIVE INTENT - MEDICAID PROVIDER PAYMENTS. It is the intent of the legislative assembly that the department of human services establish a goal to set medicaid payments for hospitals, physicians, chiropractors, and ambulances at 100 percent of cost.

SECTION 14. SUPPLEMENTAL PAYMENT - CRITICAL ACCESS HOSPITALS. The grants - medical assistance line item in subdivision 2 of section 1 of this Act includes the sum of \$400,000 of one-time funding from the general fund that the department of human services shall use for providing a supplemental payment to eligible critical access hospitals. A critical access hospital is eligible for a payment under this section only if its percentage of medical payments exceeds 25 percent of its total annual revenue in its most recent audited financial statements and is located in a city with a population that does not exceed 1,450. The department shall seek federal medicaid funding to provide a portion of the \$400,000 supplemental payment. If federal medicaid funding is not available for a portion of the payment, the department may spend the \$400,000 from the general fund for making the supplemental payment only if the action will not result in a reduction in federal medicaid funding to the state.

SECTION 15. LEGISLATIVE INTENT - DEMENTIA CARE SERVICES. It is the intent of the sixty-first legislative assembly that the department of human services integrate the dementia care services program established in House Bill No. 1043, as approved by the sixty-first legislative assembly, with the home and community-based care services programs of the department.

SECTION 16. LEGISLATIVE COUNCIL STUDY - TRAUMATIC BRAIN INJURY. During the 2009-11 interim, the legislative council shall consider studying the impact of individuals with traumatic brain injury, including veterans who are returning from wars, on the state's human services system. The study must include an analysis of the estimated cost of providing human service-related services to the individuals with traumatic brain injury. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

SECTION 17. LEGISLATIVE INTENT - CHILDREN'S HEALTH INSURANCE PROGRAM OUTREACH. It is the intent of the sixty-first legislative assembly that the department of human services award a contract for outreach services for the state children's health insurance program to an entity other than an insurance company, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 18. UNSPENT 2007-09 BIENNIUM GENERAL FUND APPROPRIATIONS - EXCEPTION. The amount of \$270,000 of the \$3,100,000 for a sexual offender treatment addition at the state hospital appropriated in subdivision 3 of section 3 of 2007 Senate Bill No. 2012 is not subject to section 54-44.1-11 and may be spent during the 2009-11 biennium for completing roof repairs at the state hospital.

SECTION 19. AMENDMENT. Section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

25-04-05. Qualifications for admission to state facility - ~~Temporary~~ Screening required prior to admission or readmission - Educational or related services without charge for persons twenty-one years of age and under.

1. The superintendent may admit a person to the developmental center at westwood park, Grafton when all of the following conditions have been met:
 - a. Application for admission has been made on behalf of the person by a parent or guardian or the person or agency having legal custody, or by the person seeking admission, in accordance with procedures established by the department of human services.
 - b. A comprehensive evaluation of the person has been made within three months of the date of application, a report of which has been filed with the superintendent and which, together with such other information or reviews as the department of human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission to the developmental center at westwood park, Grafton.

- c. The person may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted by the department of human services.
2. ~~The superintendent~~ No person may admit be admitted or readmitted to the developmental center at westwood park, Grafton, temporarily for the purposes of observation, without commitment, unless that person has undergone a screening process at the developmental center to determine whether the admission or readmission is appropriate. Length of stay criteria may be established under rules as the department of human services may adopt; any. Any person who is suspected of being able to benefit from the services offered at the center; may be screened to ascertain whether or not that person is actually a proper case for care, treatment, and training in at the state facility developmental center. If in the opinion of the superintendent the person temporarily admitted to the developmental center at westwood park, Grafton screened under this subsection is a proper subject for institutional care, treatment, and training at the developmental center, that person may remain as a voluntary resident at such the center at the discretion of the superintendent if all other conditions for admission required by this section are met.
3. Notwithstanding any other provision of this chapter, no handicapped patient, twenty-one years of age or under, or the estate or the parent of such patient, may be charged for educational or related services provided at the developmental center at westwood park, Grafton. Except as provided in subsection 4, the department of human services has prior claim on all benefits accruing to such patients for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workforce safety and insurance, or medical care and disability programs. For purposes of this subsection, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services other than medical and medically related services must be paid by the developmental center at westwood park, Grafton, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department of human services, the school district of residence, and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each agency and political subdivision is liable. The department of public instruction may adopt rules necessary to implement this section.
4. Parents of a handicapped patient, twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of nonhandicapped children. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:
 - a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
 - b. An increase in premiums or the discontinuation of a policy.
 - c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the developmental center pays or waives the out-of-pocket expense.

SECTION 20. AMENDMENT. Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.6. (~~Contingent effective date — See note~~) Medical assistance benefits—
Eligibility criteria.**

1. ~~The department shall provide medical assistance benefits to otherwise eligible persons who are:~~
 - a. ~~Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and~~
 - b. ~~Minors who have countable income that does not exceed an amount determined under subsection 3.~~
2. ~~The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.~~
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, equal to one hundred 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.~~
4. ~~The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.~~

(Contingent effective date—See note) Medical assistance benefits - Eligibility criteria.

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
 - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
 - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
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 individuals from birth through age eighteen equal to one hundred thirty three percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined.~~
4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.

SECTION 21. AMENDMENT. Section 50-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-04. Services provided - Limit on cost. Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic care or adult family foster care facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~sixty~~ seventy-five dollars, less that person's total income.

SECTION 22. A new subsection to section 50-25.1-05 of the North Dakota Century Code is created and enacted as follows:

The department shall adopt guidelines for case referrals to a children's advocacy center. When cases are referred to a children's advocacy center, all interviews of the alleged abused or neglected child conducted at the children's advocacy center under this section shall be audio-recorded or video-recorded.

SECTION 23. 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. A net income eligibility limit of one hundred ~~forty~~ sixty 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 24. AMENDMENT. Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

50-30-02. North Dakota health care trust fund created - Uses - Continuing appropriation.

1. There is created in the state treasury a special fund known as the North Dakota health care trust fund. The fund consists of revenue received from government nursing facilities for remittance to the fund under former section 50-24.4-30. The department shall administer the fund. The state investment board shall invest moneys in the fund in accordance with chapter 21-10, and the income earned must be deposited in the North

Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department for:

- a. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
 - b. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.
 - c. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under former section 50-24.4-30.
2. The department shall continue to access the intergovernmental transfer program if permitted by the federal government and if use of the program is found to be beneficial.
 3. Moneys in the fund may not be included in draft appropriation acts under section 54-44.1-06.

SECTION 25. REPEAL. Section 4 of chapter 422 of the 2007 Session Laws is repealed.

SECTION 26. EMERGENCY. Sections 2 and 18 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1012 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 88 Nays 4 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 1 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State