

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1012  
(Appropriations Committee)

AN ACT to provide appropriations for defraying the expenses of the department of human services; to authorize the department of human services to convey land in Walsh County; to amend and reenact subsection 1 of section 23-09.3-01.1, subsection 1 of section 23-16-01.1, section 50-24.1-37, and subsection 1 of section 54-27-25 of the North Dakota Century Code, relating to the moratorium on basic care, nursing facility bed capacity, Medicaid expansion, and tobacco settlement trust fund transfers; to repeal section 50-24.1-37 of the North Dakota Century Code, relating to the Medicaid expansion program; to provide for exemptions; to provide statements of legislative intent; to provide for reports to the legislative management; to provide for legislative management studies; to authorize transfers; to provide an expiration date; to provide a contingent effective date; 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, 2017, and ending June 30, 2019, as follows:

Subdivision 1.

MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$28,049,386	(\$1,769,247)	\$26,280,139
Operating expenses	87,542,966	72,572,860	160,115,826
Capital assets	26,000	(26,000)	0
Grants	<u>0</u>	<u>204,000</u>	<u>204,000</u>
Total all funds	\$115,618,352	\$70,981,613	\$186,599,965
Less estimated income	<u>71,324,758</u>	<u>58,154,800</u>	<u>129,479,558</u>
Total general fund	\$44,293,594	\$12,826,813	\$57,120,407

Subdivision 2.

PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$58,102,898	\$3,667,008	\$61,769,906
Operating expenses	107,383,843	17,338,098	124,721,941
Capital assets	0	10,000	10,000
Grants	457,953,280	(24,485,621)	433,467,659
Grants - medical assistance	<u>2,384,560,568</u>	<u>213,559,361</u>	<u>2,598,119,929</u>
Total all funds	\$3,008,000,589	\$210,088,846	\$3,218,089,435
Less estimated income	<u>1,995,024,801</u>	<u>165,841,615</u>	<u>2,160,866,416</u>
Total general fund	\$1,012,975,788	\$44,247,231	\$1,057,223,019

Subdivision 3.

FIELD SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Human service centers	\$198,888,443	(\$2,838,954)	\$196,049,489
Institutions	<u>139,587,498</u>	<u>833,726</u>	<u>140,421,224</u>
Total all funds	\$338,475,941	(\$2,005,228)	\$336,470,713
Less estimated income	<u>132,820,302</u>	<u>5,723,403</u>	<u>138,543,705</u>
Total general fund	\$205,655,639	(\$7,728,631)	\$197,927,008

Subdivision 4.

COUNTY SOCIAL SERVICE FINANCING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
County social service financing	\$0	\$26,000,000	\$26,000,000
Total all funds	\$0	\$26,000,000	\$26,000,000
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>
Total general fund	\$0	\$26,000,000	\$26,000,000

Subdivision 5.

BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,262,925,021	\$75,345,413	\$1,338,270,434
Grand total special funds	<u>2,199,169,861</u>	<u>229,719,818</u>	<u>2,428,889,679</u>
Grand total all funds	\$3,462,094,882	\$305,065,231	\$3,767,160,113
Full-time equivalent positions	2,211.08	(54.85)	2,156.23

**SECTION 2. HEALTH INSURANCE INCREASE.** The appropriation in section 1 of this Act includes the sum of \$5,914,453, of which \$4,962,381 is from the general fund, for increases in employee health insurance premiums from \$1,130 to \$1,241 per month.

**SECTION 3. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SIXTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-fourth legislative assembly as adjusted for the 2015-17 biennium and the 2017-19 biennium one-time funding items included in the appropriations in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2015-17</u>	<u>2017-19</u>
Developmental disabilities equipment	\$10,000	\$0
Heating plant repairs and upgrades - state hospital	1,156,000	0
Heating plant repairs and upgrades - life skills and transition center	75,000	0
Window replacement - life skills and transition center	44,000	0
Equipment over \$5,000 - state hospital	275,000	0
Equipment over \$5,000 - life skills and transition center	200,000	0
Extraordinary repairs - state hospital	1,000,000	0
Extraordinary repairs - life skills and transition center	1,250,000	0
Assistive technology services	80,000	0
Modification of eligibility systems	60,872,269	0
Medicaid expansion - fee schedule enhancement	0	226,000,000
County social services pilot program	0	26,000,000
Child care licensing and data system	0	3,000,000
Health information network/care coordination	<u>0</u>	<u>40,800,000</u>
Total all funds	\$64,962,269	\$295,800,000
Less estimated income	<u>46,870,102</u>	<u>269,800,000</u>
Total general fund	\$18,092,167	\$26,000,000

The 2017-19 biennium one-time funding amounts are not a part of the entity's base budget for the 2019-21 biennium. The department of human services shall report to the appropriations committees of the sixty-sixth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.** Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The department of human services shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2018, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-sixth legislative assembly regarding any transfers made pursuant to this section.

**SECTION 5. EXEMPTION.** The amount appropriated for the replacement of the Medicaid management information system and related projects in chapter 50 of the 2007 Session Laws and chapter 38 of the 2011 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from these appropriations approved under section 54-44.1-11 for continuation into the 2009-11 biennium and then the 2011-13 biennium and then the 2013-15 biennium and then the 2015-17 biennium are available for the completion of the Medicaid management information system and related projects during the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 6. EXEMPTION.** The amount appropriated for the modification of the department of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2013-15 biennium and then the 2015-17 biennium are available for the completion of the modification of the eligibility systems project during the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 7. EXEMPTION.** The amount appropriated for the development of the electronic health records system in chapter 12 of the 2013 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation approved under section 54-44.1-11 for continuation into the 2015-17 biennium are available for the completion of the electronic health records system during the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 8. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act, \$37,779,159 is from the tobacco prevention and control trust fund for the purpose of defraying expenses of the department of human services, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 9. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act, \$1,686,191 is from the health care trust fund for the purpose of defraying expenses of long-term care services programs, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 10. ESTIMATED INCOME.** Of funds appropriated in section 1 of this Act, \$18,000,000 is from the community health trust fund for the purpose of defraying expenses in the medical services division, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 11. APPROPRIATION - 2015-17 BIENNIUM.** There is appropriated out of special funds derived from federal funds, not otherwise appropriated, the sum of \$9,000,000, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying medical assistance grant costs, for the period beginning with the effective date of this Act and ending June 30, 2017.

**SECTION 12. APPROPRIATION - 2015-17 BIENNIUM - REBASING, OPERATING MARGINS, AND INCENTIVES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$417,010, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of \$417,010, or so much of the sum as may be necessary, to the department of human services for the purpose of adjusting long-

term care facility rates relating to rebasing, operating margins, and incentives, for the period beginning June 1, 2017, and ending June 30, 2017.

**SECTION 13. APPROPRIATION - 2015-17 BIENNIUM - SUBSTANCE USE DISORDER VOUCHER PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of the substance use disorder voucher program, for the period beginning with the effective date of this Act, and ending June 30, 2017.

**SECTION 14. LEGISLATIVE INTENT - SUBSTANCE USE DISORDER VOUCHER PROGRAM - MEDICATION ASSISTED TREATMENT.** It is the intent of the sixty-fifth legislative assembly that the department of human services include medication assisted treatment as an allowable service under the substance use disorder voucher program. It is also the intent that payments for medication dispensed as part of the treatment be established quarterly, based on the Medicaid allowed amount, plus a weekly dispensing and administration fee of no more than the dispensing fee established under the state's medical assistance program.

**SECTION 15. LEGISLATIVE INTENT - RESTORATION FUNDING FOR BASIC CARE.** It is the intent of the sixty-fifth legislative assembly that the funding appropriated to the department of human services for the restoration of basic care provider rates be prioritized in the following order:

1. Operating margin;
2. Medical leave days; and then
3. Increase to limits.

**SECTION 16. LEGISLATIVE INTENT - MEDICAID EXPANSION - FEE SCHEDULE.** It is the intent of the sixty-fifth legislative assembly that the one-time funding of \$226,000,000, of which \$13,300,000 is from the tobacco prevention and control trust fund, provided for defraying a portion of the expenses of the Medicaid expansion program be used for establishing the provider fee schedule at the maximum level possible without exceeding the current levels of reimbursement for the Medicaid expansion contracted providers.

**SECTION 17. LEGISLATIVE INTENT - POLICY CHANGES AND CLARIFICATION RELATED TO HOME HEALTH.** It is the intent of the sixty-fifth legislative assembly that the department of human services adopt rules in accordance with the Medicaid program, face-to-face requirements for home health services; policy changes and clarifications related to home health final rule published by the centers for Medicare and Medicaid services on February 2, 2016; title 42, Code of Federal Regulations, part 440. It is further the intent of the legislative assembly that the department require certified home health agencies to ensure a face-to-face visit occurred between a physician and Medicaid beneficiary before initiating home health services, and to ensure a face-to-face visit between a physician or nonphysician provider occurred before providing medical equipment, supplies, and appliances. It is further the intent of the legislative assembly that the department adopt rules to define medical equipment, supplies, and appliances and specify allowable time frames for the face-to-face visits.

**SECTION 18. LEGISLATIVE INTENT - CARE COORDINATION AGREEMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of human services establish requisite agreements with tribal health care organizations that will result in one hundred percent federal funding for eligible medical assistance provided to American Indians through care coordination agreements for the biennium beginning July 1, 2017, and ending July 30, 2019.

**SECTION 19. CARE COORDINATION AGREEMENTS - HEALTH CARE TRUST FUND DEPOSITS.** The department of human services shall deposit any federal funding received in excess of the state's regular federal medical assistance percentage resulting from the department establishing requisite agreements with tribal health care organizations in the health care trust fund for the biennium

beginning July 1, 2017, and ending June 30, 2019. The department shall maintain a separate account within the health care trust fund for this funding.

**SECTION 20. LEGISLATIVE INTENT - BRAIN INJURY - 1915(i) STATE PLAN AMENDMENT.** It is the intent of the sixty-fifth legislative assembly that the department of human services include services for individuals with a brain injury as part of the comprehensive assessment for a Medicaid 1915(i) state plan amendment. The department may utilize existing funding available in the department's budget for enhancing services through a Medicaid 1915(i) state plan amendment for individuals with a brain injury for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 21. LEGISLATIVE INTENT - GRAFTON JOB SERVICE NORTH DAKOTA BUILDING PURCHASE.** It is the intent of the sixty-fifth legislative assembly that the department of human services purchase the Grafton job service North Dakota building using donated funds for the use of the life skills and transition center, but only if anticipated revenues generated from use of the building will be sufficient to provide for the operating and maintenance costs of the building.

**SECTION 22. CONVEYANCE OF LAND AUTHORIZED - LIFE SKILLS AND TRANSITION CENTER.** The state of North Dakota by and through the department of human services may convey real property containing 3.46 acres, more or less, associated with the life skills and transition center in Grafton. The department may convey a parcel of land described as follows: the north fifty-eight feet of said north half of the southeast quarter of section twenty-five less the railroad right-of-way and the south forty feet of the north ninety-eight feet of the west one hundred twenty-three feet of said north half of the southeast quarter of section twenty-five less the railroad right-of-way on the terms and conditions determined appropriate by the department and the attorney general. Section 54-01-05.2 and 54-01-05.5 do not apply to this conveyance.

**SECTION 23. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES CASE MANAGEMENT.** It is the intent of the sixty-fifth legislative assembly that the department of human services provide case management services for individuals with a developmental disability within the ratio provided pursuant to North Dakota Administrative Code for the biennium beginning July 1, 2017, and ending June 30, 2019. If case management services for individuals with a developmental disability exceed the ratio requirement provided in the North Dakota Administrative Code, the department may hire temporary staff or the department may propose a change to North Dakota Administrative Code to meet the ratio requirement.

**SECTION 24. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - PROGRAMMATIC AND ADMINISTRATIVE REQUIREMENTS.** It is the intent of the sixty-fifth legislative assembly that the department of human services report all new programmatic and administrative requirements to the centers for Medicare and Medicaid services and seek waivers of the same unless the director finds immediate full compliance necessary for individuals with disabilities.

**SECTION 25. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - CONFLICT-FREE CASE MANAGEMENT.** It is the intent of the sixty-fifth legislative assembly that the department of human services request waivers or delays of implementation of conflict-free case management rules and requirements for individuals with a developmental disability.

**SECTION 26. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES - VARIANCE.** It is the intent of the sixty-fifth legislative assembly that during the 2017-19 biennium, the department of human services may authorize a treatment or care center's variance request relating to the treatment or care center's bedrooms or bathrooms, if the department determines the variance does not pose a health or safety risk. It is also the intent that the department of human services adopt rules to establish a variance process that allows the department to grant a variance if the variance will not pose a danger to the health or safety of an individual served by the treatment or care center.

**SECTION 27. LEGISLATIVE INTENT - PROCESS AND OUTCOME MEASURES.** It is the intent of the sixty-fifth legislative assembly that behavioral health service providers that receive funding from the

department of human services submit process and outcome measures to the department for programs and services supported by state funding.

**SECTION 28. LEGISLATIVE INTENT - TELEPHONE SUPPORT AND DIRECTORY SERVICES.** It is the intent of the sixty-fifth legislative assembly that the vendor of telephone and directory services, under contract with the department of human services, include private behavioral health service providers in the vendor's directory at no cost to the private behavioral health service providers.

**SECTION 29. REPORTING REQUIREMENTS - YOUTH ACCESS TO TOBACCO.** The operating expenses line item in subdivision 2 of section 1 of this Act includes \$75,000 from the tobacco prevention and control trust fund for costs of complying with youth access to tobacco reporting requirements under title 45, Code of Federal Regulations, part 96, section 130, for the biennium beginning July 1, 2017, and ending June 30, 2019. The state department of health and local public health units shall collect and disclose all required data reporting elements to the department of human services.

**SECTION 30. ROBINSON RECOVERY CENTER FUNDING.** Notwithstanding the designation of funding for the Robinson recovery center in the appropriation for the department of human services in section 1 of this Act, the department of human services may utilize other providers for substance use disorder treatment services if the current contractor is unable to provide the full capacity of services anticipated under the current contract for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 31. LEGISLATIVE INTENT - OPERATING EXPENSES.** It is the intent of the sixty-fifth legislative assembly that the department of human services analyze its budgetary needs and allocate up to \$650,000 from the general fund included in the operating expenses line item in subdivision 1 of section 1 of this Act to other line items in subdivisions 1, 2, and 3 within section 1 of this Act based on the department's priorities resulting from its analysis.

**SECTION 32. LEGISLATIVE MANAGEMENT STUDY - STATE MEDICAL ASSISTANCE PROGRAMS.**

1. During the 2017-18 interim, the legislative management shall consider studying options to operate the state medical assistance program and other related programs, as managed care. The study must:
  - a. Identify and review populations to consider for managed care, including individuals eligible under traditional medical assistance, Medicaid expansion, the children's health insurance program, and individuals receiving services through the long-term care and developmental disabilities programs.
  - b. Consider the needs of individuals receiving services from managed care programs in similar-sized states, and the alignment of benefit packages.
  - c. Review populations covered by the program of all-inclusive care for the elderly in other states.
  - d. Consider options for including services under a managed care arrangement.
  - e. Consider developing a proposed plan, cost estimates, and potential timeline for implementing the managed care options identified.
  - f. Consider preparing and distributing a request for information from managed care organizations regarding the managed care options identified.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-sixth legislative assembly.

**SECTION 33. LEGISLATIVE MANAGEMENT STUDY - BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES.** During the 2017-18 interim, the legislative management shall consider studying state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs.

1. The study must include a review of the following:
  - a. The state's services and delivery systems, including whether changes are necessary to maintain compliance with state and federal laws and regulations;
  - b. Efforts by other states to comply with the 1999 Olmstead v. L.C. case, including the planning and implementation process for any new programs;
  - c. Community- and non-community-based services, including the costs and effectiveness of services;
  - d. Noncompliance with state and federal laws and regulations, including a review of the fees and penalties for noncompliance;
  - e. A comparison of voluntary and involuntary compliance with state and federal laws and regulations, including a review of long-term costs and effectiveness;
  - f. The impact of implementation and expansion of selected programs that were added to address unmet needs, including the impact on costs and effectiveness of new programs;
  - g. Needed changes to address noncompliance and a timeline for completing changes;
  - h. Data on the number of individuals who would be impacted by voluntary compliance efforts, and data on the type of services that may need changing, including housing, peer counseling, outpatient treatment, crisis line access, and transportation services; and
  - i. An evaluation of the funding, mission, and caseload at the life skills and transition center, including the center's transition plan and number of clients eligible for community placement.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement those recommendations, to the sixty-sixth legislative assembly.

**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - DEPARTMENT OF HUMAN SERVICES DELIVERY SYSTEM.** During the 2017-18 interim, the legislative management shall consider conducting a comprehensive study of the department of human services.

1. The study must include:
  - a. A review of the continuum of services for each population served, the delivery methods for those services, and the efficiency and effectiveness of the services.
  - b. The involvement of federal, state, and local governments and for-profit and nonprofit entities in the provision and funding of services.
  - c. An analysis of the funding levels for the programs and services included in the delivery system.
  - d. Consideration of the appropriate role for each of the entities involved in the delivery system.
  - e. The development of a comprehensive master structure for the system.

2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

**SECTION 35. LEGISLATIVE MANAGEMENT STUDY - NURSING FACILITY RATES.** During the 2017-18 interim, the legislative management shall consider studying the nursing facility rate components to determine the adequacy of reimbursement and evaluate the efficiency of nursing facility operations. The study must identify and review potential quality measures relating to nursing facilities and consider the feasibility and desirability of using quality measures as a component of reimbursement. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

**SECTION 36. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019, except when:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
  - c. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile [80.47-kilometer] radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
  - d. The state department of health and the department of human services grant approval of new basic care beds to an entity. The approved entity shall license the beds within forty-eight months from the date of approval.

**SECTION 37. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period.

**SECTION 38. AMENDMENT.** Section 50-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-37. (Effective January 1, 2014, through July 31, ~~2017~~2019) Medicaid expansion - Legislative management report.**

1. The department of human services shall expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to individuals

under sixty-five years of age with income below one hundred thirty-eight percent of the federal poverty level, based on modified adjusted gross income.

2. The department of human services shall inform new enrollees in the medical assistance program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
3. The department shall implement the expansion by bidding through private carriers or utilizing the health insurance exchange.
4. The contract between the department and the private carrier must:
  - a. Provide a reimbursement methodology for all medications and dispensing fees which identifies the minimum amount paid to pharmacy providers for each medication. The reimbursement methodology, at a minimum, must:
    - (1) Be available on the department's website; and
    - (2) Encompass all types of pharmacy providers regardless of whether the pharmacy benefits are being paid through the private carrier or contractor or subcontractor of the private carrier under this section.
  - b. Provide full transparency of all costs and all rebates in aggregate.
  - c. Allow an individual to obtain medication from a pharmacy that provides mail order service; however, the contract may not require mail order to be the sole method of service and must allow for all contracted pharmacy providers to dispense any and all drugs included in the benefit plan and allowed under the pharmacy provider's license.
  - d. Ensure that pharmacy services obtained in jurisdictions other than this state and its three contiguous states are subject to prior authorization and reporting to the department for eligibility verification.
  - e. Ensure the payments to pharmacy providers do not include a required payback amount to the private carrier or one of the private carrier's contractors or subcontractors which is not representative of the amounts allowed under the reimbursement methodology provided in subdivision a.
  - f. Any
5. The contract between the department and the private carrier must provide the department with full access to provider reimbursement rates. The department shall consider provider reimbursement rate information in selecting a private carrier under this section. Before August first of each even-numbered year, the department shall submit a report to the legislative management regarding provider reimbursement rates under the medical assistance expansion program. This report may provide cumulative data and trend data but may not disclose identifiable provider reimbursement rates.
6. Provider reimbursement rate information received by the department under this section and any information provided to the department of human services or any audit firm by a pharmacy benefit manager under this section is confidential under section 44-04-17.1, except the department may use the reimbursement rate information to prepare the report to the legislative management as required under this section.

**SECTION 39. AMENDMENT.** Subsection 1 of section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under subsection IX(c)(1) of the master

settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778] in State of North Dakota, ex rel. Heidi Heitkamp v. Philip Morris, Inc. Except as provided in subsection 2, moneys received by the state under subsection IX(c)(1) must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund may be appropriated to the attorney general for the purpose of enforcing the master settlement agreement and any disputes with the agreement. All remaining principal and interest of the fund must be allocated as follows:

- a. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ~~ten~~<sup>fifty-five</sup> percent of total annual transfers from the tobacco settlement trust fund of which a minimum of eighty percent must be used for tobacco prevention and control.
- b. ~~Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.~~
- e. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

**SECTION 40. REPEAL.** Section 50-24.1-37 of the North Dakota Century Code is repealed.

**SECTION 41. CONTINGENT EFFECTIVE DATE.** Section 40 of this Act becomes effective if the executive director of the department of human services certifies to the secretary of state and the legislative council the federal government ended the medical assistance expansion program.

**SECTION 42. EXPIRATION DATE.** Section 39 of this Act is effective through June 30, 2019, and after that date is ineffective.

**SECTION 43. EMERGENCY.** Sections 11, 12, 13, and 22 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-fifth 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 75                      Nays 15                      Absent 4

\_\_\_\_\_  
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 44                      Nays 3                      Absent 0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State