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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2276

Introduced by

Senators Cleary, Dever, Lee

A BILL ~~for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to legally responsible individuals providing Medicaid waiver services.~~for an Act to create and enact a new section to chapter 50-06 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the establishment of a cross-disability advisory council and a family caregiver service pilot project; to provide an appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:~~

~~**Eligibility of legally responsible individuals.**~~

~~1. As used in this section:~~

~~a. "Extraordinary care" means care exceeding the range of activities a legally responsible individual would ordinarily perform in the household on behalf of an individual without extraordinary medical needs, and which is necessary to assure the health and welfare of the individual and avoid institutionalization.~~

~~b. "Legally responsible individual" includes a legal decisionmaker, guardian, or parent who is next-of-kin to an individual with extraordinary medical needs.~~

~~2. The department shall work with the centers for Medicare and Medicaid services to implement a service option that will allow payment to a legally responsible individual who provides extraordinary care to an eligible individual. This service option must be available for participants in the Medicaid 1915(c) waivers.~~

~~3. The department may utilize an annual assessment of an eligible individual under this section to determine the level of care authorized and to determine the best interests of the individual.~~

~~4. This section does not apply to the Medicaid 1915(c) waiver for home and community-based services, aged and disabled.~~

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Cross-disability advisory council - Appointment - Duties.

1. The cross-disability advisory council shall participate with and provide feedback to the department regarding the implementation, planning, and design of the cross-disability children's waiver, level of care reform for the comprehensive developmental disabilities Medicaid home and community-based waiver, and a service option that will allow payment to a legally responsible individual who provides extraordinary care to an eligible individual through the Medicaid 1915(c) waivers. This subsection does not apply to the Medicaid 1915(c) home and community-based services aged and disabled waivers.
2. The department shall contract with a qualified, independent third party to facilitate and provide support services to the council. The contracted facilitator shall appoint the cross-disability advisory council members in accordance with subsection 3 and establish the length of member terms and the structure of the cross-disability advisory council. A representative from the contracted facilitator shall serve as the presiding officer of the advisory council.
3. The cross-disability advisory council consists of up to fifteen voting members. A majority of the members of the council must be family members of individuals with a disability, or must be individuals with a disability, who receive Medicaid home and community-based services. The remaining members of the council must be appointed based on their professional subject matter expertise in or knowledge of the needs and interests of individuals with disabilities. The council's membership must represent different regions of the state and a broad range of disabilities that pertain to the Medicaid home and community-based services. Upon request of the department, state agency representatives shall participate with the cross-disability advisory council in a nonvoting role.
4. The cross-disability advisory council shall meet at least quarterly and may appoint subcommittees to address specific topics or disabilities, which may include autism

spectrum disorder, traumatic brain injury, and fetal alcohol spectrum disorder. A majority of the voting members of the council constitutes a quorum.

5. The cross-disability advisory council shall:

a. Discuss strategies to address gaps or needs regarding individuals with disabilities and Medicaid home and community-based services, including eligibility of legally responsible individuals;

b. Provide for the active participation of stakeholders, including consumers and providers; and

c. Receive information from the department and its consultants.

6. The cross-disability advisory council members, excluding the contracted facilitator, are entitled to reimbursement from the department for travel and lodging at the same rate as provided for state officers and employees.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Family caregiver service pilot project - Report.

1. The department shall establish the family caregiver service pilot project to assist in making payments to a legally responsible individual who provides extraordinary care to an eligible individual who is a participant in the Medicaid 1915(c) waivers, excluding the home and community-based services aged and disabled waiver.

2. The family caregiver service pilot project may include funding for extraordinary care, which means care:

a. Exceeding the range of activities a legally responsible individual would ordinarily perform in the household on behalf of an individual without extraordinary medical or behavioral needs; and

b. Is necessary to assure the health and welfare and avoid institutionalization of the individual in need of care.

3. The department may adopt rules addressing management of the family caregiver service pilot project and establish the eligibility requirements and exclusions for the family caregiver service pilot project. The department shall utilize an assessment of an eligible individual to determine the level of care authorized and to determine the best interests of the individual in need of care. The pilot project may not provide a payment

for any care that is otherwise compensated through a Medicaid 1915(c) waiver or the Medicaid state plan.

4. A decision on an application which is issued by the department under this section may be appealed as provided under chapter 28-32. An individual may not appeal a denial, a revocation, a reduction in payment, or the termination of the family caregiver service pilot project administered by the department due to the unavailability of funding received for the purpose of issuing payments as part of the family caregiver service pilot project for the biennium.

5. The department shall provide the legislative management with periodic reports on the impact, usage, and costs associated with the family caregiver service pilot project.

SECTION 3. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - ONE-TIME FUNDING - FAMILY CAREGIVER SERVICE PILOT PROJECT - PROJECT COORDINATOR. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $2,500,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of establishing and issuing payments as part of a family caregiver service pilot project, for the biennium beginning July 1, 2023, and ending June 30, 2025. Of this amount, the sum of $300,000, or so much of the sum as may be necessary, may be used by the department of health and human services for the purpose of hiring up to one full-time equivalent position to serve as the family caregiver service pilot project coordinator, who would be responsible for implementing the pilot project and for establishing a payment portal. Participation in this service pilot project is capped at 120 individuals. The department of health and human services is authorized one full-time equivalent position for this purpose.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective January 1, 2024.

SECTION 5. EXPIRATION DATE. Section 1 of this Act is effective through July 31, 2025, and after that date is ineffective; section 2 of this Act is effective until the date the commissioner of the department of health and human services certifies to the legislative council that an approximate or equivalent family caregiver services program is available through a Medicaid and Medicare-approved home and community-based services waiver.