



# North Dakota Legislative Council

Prepared for the Human Services Committee  
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## OTHER DUTIES OF THE HUMAN SERVICES COMMITTEE - BACKGROUND MEMORANDUM

In addition to the study responsibilities assigned to the Human Services Committee for the 2023-24 interim, the committee has also been assigned to:

- Receive a report from Department of Health and Human Services (DHHS) and the steering committee for the developmental disabilities system reimbursement project on development activities and status information for the project (North Dakota Century Code Section 50-06-37 ([Appendix A](#))).
- Receive a report from DHHS before August 1 of each even-numbered year regarding provider reimbursement rates under the medical assistance expansion program (Section 50-24.1-37 ([Appendix B](#))).
- Receive a biennial report before August of each even-numbered year from DHHS on the tribal health care coordination fund and tribal government use of money distributed from the fund (Section 50-24.1-40(4) ([Appendix C](#))).
- Receive annual reports from DHHS describing enrollment statistics and costs associated with the children's health insurance program state plan (Section 50-29-02 ([Appendix D](#))).
- Receive an annual report from DHHS regarding the progress of the pay for success program developed by the department to improve educational, social, or emotional achievements of at-risk children, improve the health of children, and increase participation in the workforce by individuals who qualify for governmental assistance (Section 1 of [House Bill No. 1480 \(2023\)](#)).
- Receive a report from DHHS regarding the status of early childhood program managed by the department (Section 4 of [House Bill No. 1540 \(2023\)](#) and Section 56 of [Senate Bill No. 2012 \(2023\)](#)).
- Receive a report from DHHS before January 1, 2024, and every 6 months thereafter on the findings and recommendations regarding the foster care and adoption child welfare redesign (Section 7 of [Senate Bill No. 2080 \(2023\)](#)).
- Receive reports from DHHS on the impact, usage, and costs associated with the family caregiver service pilot project (Section 2 of [Senate Bill No. 2276 \(2023\)](#)).
- Receive an annual report from the Children's Cabinet regarding the activities and findings of the cabinet (Section 1 of [Senate Bill No. 2034 \(2023\)](#)).

### DEVELOPMENTAL DISABILITIES SYSTEM REIMBURSEMENT PROJECT

Section 50-06-37, as enacted by Senate Bill No. 2043 (2011), required DHHS, in conjunction with developmental disabilities providers, to develop a prospective developmental disabilities payment system based on the support intensity scale. A steering committee was created to guide DHHS on the development of the new payment system. The new payment system was implemented on April 1, 2018. The new system is based on a needs assessment for each individual served and rates that are standardized across all providers.

Section 50-06-37 was amended by Senate Bill No. 2247 (2019) to provide DHHS maintain the payment system based on a state-approved assessment. A steering committee of no more than 18 individuals is to be used to provide guidance for the system. The steering committee must include no more than two clients, no more than one family member of a client, a representative of DHHS, and a representative of the Protection and Advocacy Project. The steering committee is to analyze appropriate data and recommend to DHHS any rate adjustments, resource allocation modifications, or process assumptions. The department and the steering committee are to report developmental activities and state information to the Legislative Management.

## **MEDICAID EXPANSION PROVIDER REIMBURSEMENT RATES**

Section 32 of House Bill No. 1012 (2021) continues the Medicaid Expansion program by removing the sunset clause on Section 50-24.1-37. The section provides for the contract between DHHS and the insurance carrier to include a provision for the carrier to provide DHHS with provider reimbursement rate information when selecting a carrier. The section also requires DHHS to provide the Legislative Management a report before August 1 of each even-numbered year regarding provider reimbursement rates under the medical assistance expansion program.

## **TRIBAL HEALTH CARE COORDINATION FUND**

Section 50-24.1-40, as enacted in House Bill No. 1194 (2019), provides for DHHS to facilitate care coordination agreements between health care providers and tribal health care organizations that will result in 100 percent federal funding for eligible medical assistance provided to an American Indian. The section, as originally enacted, created a tribal health care coordination fund and provided that any funding received in excess of the state's regular share of federal medical assistance funding due to a care coordination agreement was to be deposited 60 percent in the tribal health care coordination fund and 40 percent in the general fund. House Bill No. 1407 (2021) amended the section to provide that any funding received in excess of the state's regular share of federal medical assistance funding due to a care coordination agreement is to be deposited 80 percent in the tribal health care coordination fund and 20 percent in the general fund. Money in the tribal health care coordination fund is appropriated on a continuing basis for distribution to tribal government in accordance with agreements between DHHS and the tribal governments. The agreements must require the tribal governments to use funding distributed from the tribal health care coordination fund for the 10 essential services of public health identified by the federal Centers for Disease Control and Prevention and the development or enhancement of community health representative programs or services. Through June 30, 2025, no more than 50 percent, and after that 35 percent, may be used for capital construction. The agreements between DHHS and tribal governments must also require tribal governments to submit annual reports to DHHS regarding the use of money distributed from the tribal health care coordination fund. Tribal governments must also submit to DHHS every 2 years an audit report regarding the use of funding distributed from the tribal health care coordination fund.

The Department of Health and Human Services is to provide a report to the Legislative Management before August 1 of each even-numbered year regarding the tribal health care coordination fund including how participating tribal governments used funding distributed from the fund.

## **CHILDREN'S HEALTH INSURANCE PROGRAM**

Section 50-29-02 provides DHHS is to prepare, submit, and implement a children's health insurance program state plan and report annually to the Legislative Management. The report must include enrollment statistics and costs associated with the plan.

Healthy Steps--North Dakota's children's health insurance plan--provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for full Medicaid coverage but not enough to afford private insurance. To be eligible for the program, the family's net income may not exceed 175 percent of the federal poverty level.

## **PAY FOR SUCCESS PROGRAM**

House Bill No. 1480 (2023) requires DHHS to provide a report to the Legislative Management regarding the progress of the pay for success program developed by the department. The department shall develop the program with outcomes focused on improving educational, social, or emotional achievement of at-risk children, improving the health of children, and increasing participation in the workforce by individuals who qualify for government assistance.

The pay for success program may include a performance-based grant, contract, or other agreement for initiatives to improve outcomes that result in increased public value and social benefits, including improved outcomes, cost-savings, increased public revenue, or minimal administrative requirements. The pay for success program must include the following:

1. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement to expand capacity for a proposed initiative;
2. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement only after a 20 percent cost reduction has been achieved;
3. A provision that a bonus payment may not exceed half of the cost reduction; and
4. A formal evaluation to determine whether the program has met its proposed outcomes.

The Legislative Assembly approved a transfer, during the 2023-25 biennium, of \$2.5 million from the strategic investment and improvements fund to the pay for success fund for the program.

### **EARLY CHILDHOOD PROGRAMS**

Section 4 of House Bill No. 1540 (2023) and Section 56 of Senate Bill No. 2012 (2023) require DHHS to provide a report to the Legislative Management regarding the status of early childhood programs managed by the department, including four-year old program approvals, the North Dakota early childhood council, and the early childhood grant for best in class four-year old experiences. The 68<sup>th</sup> Legislative Assembly appropriated \$65.6 million from the general fund for the 2023-25 biennium for child care assistance programs, of which \$3 million is for state employee child care benefits.

House Bill No. 1416 (2021) transferred early childhood education duties from the Department of Public Instruction to the Department of Human Services (DHS). The bill allows local school districts to establish four-year old programs and provides for DHS to approve the programs. The Legislative Assembly transferred 3 full-time equivalent (FTE) positions and \$700,000, of which \$300,000 is from the general fund, from the Department of Public Instruction to DHS.

House Bill No. 1466 (2021) created the best in class four-year old program grant. Four-year old programs are approved child care programs operated by a public or private educational entity or an early childhood program designed to serve 4-year olds. A four-year old program may apply for a grant of up to \$120,000 per group size and must provide \$20,000 of matching funds. Grant recipients must follow guidelines regarding the admission of children into the program and educational content provided. The grant program is effective through June 30, 2025. The Legislative Assembly appropriated 3.7 FTE positions and \$5,458,910 of which \$1,500,000 is from the general fund for the program for the 2021-23 biennium. In June 2021, the Emergency Commission and Budget Section authorized DHS to receive and expend an additional \$1,700,000 of federal COVID-19 relief funding received by the Department of Public Instruction for the grant program.

### **FOSTER CARE AND ADOPTION CHILD WELFARE REDESIGN**

Section 7 of Senate Bill No. 2080 (2023) requires DHHS to conduct a foster care and adoption child welfare redesign. The redesign must include a review of methods to streamline adoptions by licensed, certified, or approved family foster home for children providers and identify a fit and willing relative interested in adoption earlier in the process. The department shall report its findings and recommendations to the Legislative Management by January 1, 2024, and every 6 months after the initial report during the 2023-25 biennium.

### **FAMILY CAREGIVER SERVICE PILOT PROJECT**

Section 2 of Senate Bill No. 2276 (2023) requires DHHS to provide periodic reports on the impact, usage, and costs associated with the family caregiver service pilot project. 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. The family caregiver service pilot project may include funding for extraordinary care, which means care:

1. 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
2. Is necessary to assure the health and welfare and avoid institutionalization of the individual in need of care.

The Department of Health and Human Services 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.

The Legislative Assembly, in Senate Bill No. 2276, appropriated \$2.5 million from the general fund to establish and issue payments as part of a family caregiver service pilot project. Of this amount, \$300,000 may be used by the department for the purpose of hiring up to 1 FTE 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.

## **CHILDREN'S CABINET**

Section 1 of Senate Bill No. 2034 (2023) requires DHHS to provide an annual report to the Legislative Management regarding the activities and findings of the Children's Cabinet. The cabinet was created by the 2019 Legislative Assembly to assess, guide, and coordinate the care for children across the state's branches of government and the tribal nations.

The Legislative Assembly amended Section 50-06-43.1 to change the membership and duties of the cabinet. The Chairman of Legislative Management shall appoint one of the legislative members to serve as the presiding officer of the cabinet. The Children's Cabinet shall select one of its members to serve as the vice-presiding officer.

The Children's Cabinet consists of the following members:

1. The Governor, or the Governor's designee;
2. The Chief Justice of the Supreme Court, or the Chief Justice's designee;
3. A member of the House of Representatives from an even-numbered legislative district and a member of the House of Representatives from an odd-numbered legislative district appointed by the Majority Leader of the House of Representatives to serve 2-year terms;
4. A member of the Senate from an even-numbered legislative district and a member of the Senate from an odd-numbered legislative district appointed by the Majority Leader of the Senate to serve 2-year terms;
5. The Superintendent of Public Instruction, or the Superintendent's designee;
6. The Director of the Committee on Protection and Advocacy, or the Director's designee;
7. The Commissioner of the department, or the Commissioner's designee;
8. A representative of the tribal nations in the state, who is appointed by the Governor; and
9. Four individuals representing parents, private service providers, or other community interests, who are appointed by the Governor to serve a term of 2 years, at the pleasure of the Governor, and who are entitled to reimbursement from the department for travel and lodging at the same rate as provided for state officers and employees.

The Children's Cabinet shall perform the following duties:

1. Coordinate broad-based leadership across programs, agencies, branches of government, and tribal nations to meet the needs of children;
2. Develop strategies to address gaps or needs regarding early care and education, medical and behavioral health, community, child welfare, and juvenile justice;
3. Develop strategies to provide for the full continuum of care in the delivery of services, including promotion, prevention, early identification and intervention, service delivery, and recovery;
4. Seek to engage cooperation across public and private service providers;
5. Provide a comprehensive vision for how and where children are best served, attending to children in a respectful and relevant manner;
6. Seek strategies to provide services to children without consideration of prior engagement with juvenile services;
7. Provide for the active participation of consumers and providers statewide on advisory committees;
8. Receive information and recommendations from DHHS, Department of Corrections and Rehabilitation, and other state agencies; and
9. Provide an annual report to the Legislative Management and Governor regarding the activities and findings of the cabinet.

The Department of Health and Human Services shall provide the Children's Cabinet with staffing and administrative services. The cabinet shall meet at least quarterly. Additional meetings may be held at the discretion of the presiding officer.

ATTACH:4

**50-06-37. Developmental disabilities system reimbursement project.**

The department, in conjunction with developmental disabilities community providers, shall maintain a prospective payment system based on a state-approved assessment.

1. The department shall maintain a steering committee consisting of no more than eighteen representatives from all interested providers which must include no more than two clients, no more than one family member of a client, a representative of the department, and a representative of the North Dakota protection and advocacy project.
2. The department may contract with a consultant to continuously improve, in collaboration with the steering committee, the payment system and the resource allocation model tying funding to the state-approved assessment.
3. The department shall conduct the standardized assessment of eligible individuals residing at the life skills and transition center.
4. Data must be analyzed by the steering committee, and the steering committee shall recommend to the department any rate adjustments, resource allocation modifications, or process assumptions, including the state-approved assessment.
5. The department and the steering committee shall report development activities and status information to an interim legislative committee.



**50-24.1-37. Medicaid expansion - Legislative management report. (Contingent repeal - [See note](#))**

1. The department 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 line published by the federal office of management and budget applicable to the household size.
2. The department shall inform new enrollees in the medical assistance expansion program that benefits may be reduced or eliminated if federal participation decreases or is eliminated.
3. Except for pharmacy services and coverages for individuals ages nineteen and twenty, 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 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.
5. Provider and managed care organization reimbursement rate information received or held by the department under this section is an open record.





**50-24.1-40. Medical assistance - Tribal health care coordination agreements - Continuing appropriation - Report to legislative management.**

1. As used in this section:
  - a. "Care coordination agreement" means an agreement between a health care provider and tribal health care organization which will result in one hundred percent federal funding for eligible medical assistance provided to an American Indian.
  - b. "Tribal health care organization" means Indian health services or a tribal entity providing health care under the federal Indian Self-Determination and Education Assistance Act of 1975 [Pub. L. 93-638; 88 Stat. 2203; 25 U.S.C. 5301 et seq.].
2. The department shall facilitate care coordination agreements. Of any federal funding received in excess of the state's regular share of federal medical assistance funding which results from care coordination agreements, the department shall deposit eighty percent in the tribal health care coordination fund and twenty percent in the general fund.
3. There is created in the state treasury a tribal health care coordination fund.
  - a. Moneys in the fund are appropriated to the department on a continuing basis for distribution to a tribal government in accordance with an agreement between the department and a tribal government. The agreement between the department and a tribal government must require the tribe to:
    - (1) Use the money distributed under this section for purposes related to the ten essential services of public health identified by the federal centers for disease control and prevention and the development or enhancement of community health representative programs or services; however, through June 30, 2025, no more than fifty percent, and thereafter, no more than thirty-five percent, may be used for capital construction.
    - (2) Submit to the department annual reports detailing the use of the money distributed under this section.
    - (3) Submit to the department every two years an audit report, conducted by an independent licensed certified public accountant, of the tribal government use of the money distributed under this section. A tribal government may use money distributed under this section to pay for this audit report. At the discretion of a tribal government, an audit may be conducted more often than every two years.
  - b. The distribution of moneys from the fund to a tribal government must be in proportion to the federal funding received from care coordination agreement requests for services originating from within that tribal nation.
  - c. At least annually, upon completion of any auditing and verification actions of the department, the department shall distribute moneys from the fund to the tribal government.
  - d. If a tribal government fails to file with the department a timely annual report or audit report, the department shall withhold distribution of moneys from the fund to the tribal government until the report is filed.
  - e. If an audit report or the department's review of the annual report finds a tribal government used moneys distributed from the fund for a purpose inconsistent with this section, the department shall withhold future distributions to that tribal government in an amount equal to the money used improperly. The department shall distribute money withheld from a tribal government under this subdivision if a future audit report indicates moneys distributed from the fund are used for purposes consistent with this section.
4. Before August of each even-numbered year, the department shall compile and summarize the annual reports and audit reports from the participating tribal governments data and provide the legislative management with a biennial report on the fund. Each participating tribe shall compile data and provide the legislative management with a biennial report on the tribe's use of money distributed from the fund.



**50-29-02. Duties of the department.**

1. The department shall:
  - a. Prepare, submit, and implement the plan that includes determinations of eligibility, based on modified adjusted gross income methodologies as required in section 1396a(e)(14) of the United States Code;
  - b. Supervise the administration of the children's health insurance program;
  - c. Adopt rules and regulations as necessary to qualify for any federal funds available under this chapter;
  - d. Report to the legislative management, as requested, regarding enrollment statistics, program costs, and any operational updates; and
  - e. Administer funds appropriated or made available to the department for the purpose of carrying out the provisions of this chapter.
2. Within the limits of legislative appropriation, the department may submit state plans and may seek appropriate waivers of the requirements of the federal statutes or regulations as authorized by federal law.