

## DEVELOPMENTAL DISABILITIES SERVICES PAYMENT SYSTEM

Senate Bill No. 2086 (attached as an appendix) provides that the Department of Human Services report to the Legislative Council during the 2003-04 interim regarding its progress in developing a fee-for-service payment system for treatment or care centers, and that by October 1, 2004, the department certify to the Legislative Council whether the department and developmental disabilities services providers have reached an agreement on a new fee-for-service payment system. The Budget Committee on Human Services has been assigned this responsibility.

### BACKGROUND

The 2001 Legislative Assembly approved Senate Bill No. 2307, which provided that the Department of Human Services, in cooperation with developmental disabilities services providers prepare a joint recommendation for consideration by the 2003 Legislative Assembly regarding a new statewide developmental disabilities services provider reimbursement system. The 2001-02 interim Budget Committee on Human Services received quarterly reports from the Department of Human Services regarding the progress of the workgroup organized to develop the recommendation. The workgroup consisted of representatives of the Department of Human Services, developmental disabilities services providers, and legislators. The committee learned that although a consensus of all developmental disabilities services providers was not reached, a strong majority expressed support that the department, in cooperation with the developmental disabilities services industry, develop a bill to implement a prospective fee-for-service payment system in lieu of the current retrospective payment system. The prospective fee-for-service model would be based on allowable costs and be provider-specific. The prospective system would establish the reimbursement rate prior to the provision of services. Each provider's rate would be unique based on each provider's historic costs. The initial rate would be adjusted each year by inflationary increases until periodically rebased as determined by the Legislative Assembly. The targeted implementation date of the new payment system would be July 1, 2005, and the payment system would be budget-neutral as compared to the current system.

The Department of Human Services introduced 2003 Senate Bill No. 2086 to implement a fee-for-service ratesetting system effective July 1, 2005. As passed by the 2003 Legislative Assembly, the bill creates a workgroup consisting of one voting member appointed by the Governor, three voting members from the Department of Human Services, and three

voting members from the North Dakota Association of Community Facilities. The bill:

1. Provides that the department implement a fee-for-service payment system by July 1, 2005. The fee-for-service system must require each developmental disabilities services provider to be responsible for its own operating costs and that the fee paid represents payment in full for the services provided.
2. Establishes a trust fund with up to two-tenths of 1 percent of the general fund appropriation provided for developmental disabilities grants for the 2003-05 biennium to be used for:
  - a. Reasonably unforeseeable costs experienced by developmental disabilities providers.
  - b. One-time improvements needed to comply with life safety codes.
  - c. Additional costs associated with providing services to individuals with extraordinary needs.
3. Requires the department to report to an interim Legislative Council committee regarding its progress in developing a fee-for-service payment system and to certify to the Legislative Council by October 1, 2004, whether the department and developmental disabilities providers reached an agreement on the new payment system.

### FUNDING AND CLIENTS

The 2003 Legislative Assembly appropriated a total of \$190.6 million for developmental disabilities services grants for the 2003-05 biennium, of which \$61.9 million is from the general fund and \$128.7 million from federal funds. In total, the funding provided for developmental disabilities services grants is an increase of \$17.1 million compared to the 2001-03 biennium appropriation of \$164.2 million. The Legislative Assembly provided funding for increasing the average wage for employees of developmental disabilities services providers by 87 cents per hour and for increasing the allowable fringe benefits percentage from 30 to 33 percent of salary.

The 2003-05 biennium budget anticipates serving an average of 2,189 developmental disabilities clients in day and residential services for each year of the 2003-05 biennium and 1,337 clients in family support programs for each year of the 2003-05 biennium.

### STUDY PLAN

The committee may wish to proceed with this responsibility as follows:

1. Receive reports from the Department of Human Services and developmental disabilities providers as requested by the committee on the status of the development of a new developmental disabilities services provider payment system.
2. Receive the Department of Human Services certification by October 1, 2004, regarding whether the department and providers have reached an agreement on a new payment system.
3. Determine whether the provisions of Senate Bill No. 2086 should become effective on July 1, 2005, or whether the provisions should be amended or repealed.
4. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
5. Prepare a final report for submission to the Legislative Council.

ATTACH:1

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2086  
(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to implementation of a fee for service ratesetting system for payment to treatment or care centers for individuals with developmental disabilities; to repeal sections 25-16-10, 25-16-10.1, 25-16-15, 25-16-16, and 50-06-18 of the North Dakota Century Code, relating to the purchase of services provided to individuals with developmental disabilities and allowing providers of services to individuals with developmental disabilities to transfer funds between budget categories and line items; and to provide an effective date.

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

**SECTION 1.** A new chapter to title 25 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Fee for service" means a prospective rate based on allowable historical costs established by the department for payment of services provided to individuals with developmental disabilities by a treatment or care center.
3. "Historical operating costs" means the allowable costs of operating a treatment or care center during the reporting year in compliance with licensing standards prescribed by the department but does not include an annual return on investment in fixed assets related to client care.
4. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for the mentally retarded as defined in the section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

**Workgroup - Membership - Facilitator.** A workgroup composed of one voting member appointed by the governor, three voting members from the department who are selected by the department, and three voting members from the North Dakota association of community facilities who are selected by the association is created. All meetings of the workgroup are open to the public. Subject to legislative appropriations, the workgroup shall hire a facilitator to lead the discussions relative to a new fee-for-service payment system for treatment or care centers and a consultant to perform the financial modeling and evaluation of the current and future payment system. If the workgroup does not receive funding from the legislative assembly for a facilitator, the workgroup shall select one member from the department and one member from the association to serve as cochairmen of the workgroup.

**Purchase of services.** The department may purchase, from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for individuals with developmental disabilities from any treatment or care center licensed in this state.

**Fee-for-service system - Fee determination.** By July 1, 2005, the department shall implement a fee-for-service system of payment for services provided to individuals with developmental

disabilities by treatment or care centers. The workgroup shall establish procedures for determining interim fees for new providers or new services. In order to receive payment from the department, a treatment or care center shall file with the department a claim for service rendered to an individual with a developmental disability. The fee-for-service system implemented by the department must require that a treatment or care center be responsible for its own operating costs and that the fee paid for service represents payment in full to the treatment or care center for services rendered.

**Limitation on owner compensation for services provided.** In establishing the fee to be paid for a service, the amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46+	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the treatment or care center. A proration of the total compensation for owners who perform services in this state and who perform services in other states must be made on the basis of individual time distribution records. For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that organization. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition or enhancement to the fee payable to a treatment or care center.

**Extraordinary client needs - Effect on fee.** The workgroup shall develop criteria identifying extraordinary needs of individuals with developmental disabilities so severe as to make it difficult for the affected individuals to secure necessary services from a treatment or care center at the ordinary fee. Notwithstanding any other provision of this chapter, the department may determine specific fees for services provided by a treatment or care center to an individual with extraordinary needs.

**Trust fund.** Effective July 1, 2005, there is in the state treasury a special fund known as the developmental disabilities fee enhancement fund. The fund shall be established with not more than two-tenths of one percent of the total general fund moneys appropriated to the department for the biennium beginning July 1, 2005, for payment of the fees established under this chapter. Trust funds may be expended for reasonably unforeseeable costs experienced by treatment or care centers, one-time improvements made by a treatment or care center in order to comply with life safety code requirements, or the additional costs associated with providing services to individuals with extraordinary needs.

**Transition to establishment of fees.** For payment of services furnished by treatment or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it presently exists. The workgroup shall establish new protocols and methodologies for transitioning to a new payment system to permit an orderly transition to the establishment of fees under this chapter.

**Federal requirements - Supremacy.** If any provision of this chapter is determined by the United States government to be in conflict with existing or future requirements of the United States government so as to limit or preclude federal financial participation in medical assistance, the department shall comply with the federal requirements to the extent necessary to obtain federal financial participation and shall not comply with the provisions of this chapter if necessary to avoid a loss of federal financial participation.

**Exclusion of state-owned or state-operated treatment or care centers.** This chapter does not apply to state-owned or state-operated treatment or care centers.

**Rulemaking authority of the department.** The department shall establish, by rule, the procedures, as determined by the workgroup, for determining the fees to be paid for services provided by a treatment or care center and for implementing the other provisions of this chapter. Rules adopted under this chapter may be adopted through the emergency rulemaking process, if necessary.

**Reporting to legislative council.** During the 2003-04 interim, the department shall report to the legislative council regarding its progress in developing a fee-for-service payment system for treatment or care centers.

**SECTION 2. REPEAL.** Sections 25-16-10 and 25-16-15 of the North Dakota Century Code are repealed.

**SECTION 3. REPEAL.** Sections 25-16-10.1, 25-16-16, and 50-06-18 of the North Dakota Century Code are repealed.

**SECTION 4. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1, 2005.

**SECTION 5. EFFECTIVE DATE.** By October 1, 2004, the department shall certify to the legislative council whether the department and the service providers reached an agreement on a new fee-for-service system.