

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2276

Introduced by

Senators Cleary, Dever, Lee

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

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

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

10 ~~Eligibility of legally responsible individuals.~~

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

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

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

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

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

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

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

5 **Cross-disability advisory council - Appointment - Duties.**

6 1. The cross-disability advisory council shall participate with and provide feedback to the
7 department regarding the implementation, planning, and design of the cross-disability
8 children's waiver, level of care reform for the comprehensive developmental disabilities
9 Medicaid home and community-based waiver, and a service option that will allow
10 payment to a legally responsible individual who provides extraordinary care to an
11 eligible individual through the Medicaid 1915(c) waivers. This subsection does not
12 apply to the Medicaid 1915(c) home and community-based services aged and
13 disabled waivers.

14 2. The department shall contract with a qualified, independent third party to facilitate and
15 provide support services to the council. The contracted facilitator shall appoint the
16 cross-disability advisory council members in accordance with subsection 3 and
17 establish the length of member terms and the structure of the cross-disability advisory
18 council. A representative from the contracted facilitator shall serve as the presiding
19 officer of the advisory council.

20 3. The cross-disability advisory council consists of up to fifteen voting members. A
21 majority of the members of the council must be family members of individuals with a
22 disability, or must be individuals with a disability, who receive Medicaid home and
23 community-based services. The remaining members of the council must be appointed
24 based on their professional subject matter expertise in or knowledge of the needs and
25 interests of individuals with disabilities. The council's membership must represent
26 different regions of the state and a broad range of disabilities that pertain to the
27 Medicaid home and community-based services. Upon request of the department, state
28 agency representatives shall participate with the cross-disability advisory council in a
29 nonvoting role.

30 4. The cross-disability advisory council shall meet at least quarterly and may appoint
31 subcommittees to address specific topics or disabilities, which may include autism

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

3 5. The cross-disability advisory council shall:

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

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

9 c. Receive information from the department and its consultants.

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

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

15 **Family caregiver service pilot project - Report.**

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

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

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

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

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

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

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

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

11 **SECTION 3. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
12 **ONE-TIME FUNDING - FAMILY CAREGIVER SERVICE PILOT PROJECT - PROJECT**

13 **COORDINATOR.** There is appropriated out of any moneys in the general fund in the state
14 treasury, not otherwise appropriated, the sum of \$2,500,000, or so much of the sum as may be
15 necessary, to the department of health and human services for the purpose of establishing and
16 issuing payments as part of a family caregiver service pilot project, for the biennium beginning
17 July 1, 2023, and ending June 30, 2025. Of this amount, the sum of \$300,000, or so much of
18 the sum as may be necessary, may be used by the department of health and human services
19 for the purpose of hiring up to one full-time equivalent position to serve as the family caregiver
20 service pilot project coordinator, who would be responsible for implementing the pilot project
21 and for establishing a payment portal. Participation in this service pilot project is capped at
22 120 individuals. The department of health and human services is authorized one full-time
23 equivalent position for this purpose.

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

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