



# North Dakota Legislative Council

Prepared for the Human Services Committee  
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## STUDY OF DEVELOPMENTAL DISABILITIES SERVICES AND AUTISM SPECTRUM DISORDER PROGRAMS - BACKGROUND MEMORANDUM

Section 1 of [Senate Bill No. 2256](#) provides for a Legislative Management study of state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities and individuals with autism spectrum disorder.

1. The study must include a review of the following:
  - a. The state's existing programs to identify potential pathways for individuals who have a developmental disability and individuals who have an autism spectrum disorder but do not meet the eligibility criteria for existing programs;
  - b. Gap identification with programmatic recommendations identifying potential strategies to address the gaps, and potential federal and state funding sources, including the federal Medicaid 1915(i) state plan amendment;
  - c. Efforts and services offered by other states, including the planning and implementation process for any new or modified programs;
  - d. The impact of implementation and expanding of programs to address service gaps, including the number of individuals impacted, cost, and timeline for implementation; and
  - e. The elimination of the Autism Spectrum Disorder Task Force, including contracting with a private, nonprofit entity that does not provide autism spectrum disorder services to facilitate and provide support services to the Autism Spectrum Disorder Task Force.
2. In conducting the study, the Legislative Management shall contract with a third party.
3. The Legislative Management shall report its findings and recommendations, together with any legislation necessary to implement those recommendations, to the 68<sup>th</sup> Legislative Assembly.

### PREVIOUS LEGISLATIVE STUDIES

#### 2017-18 Interim Health Services Committee - Study of Developmental Disabilities and Behavioral Health Needs

The 2017-18 interim Health Services Committee conducted a study of state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs. The committee reviewed statutory references to developmental disabilities and behavioral health and reviewed the United States Supreme Court *Olmstead v L.C.* 527 U.S. 581 (1999) (*Olmstead*) case. The committee also reviewed behavioral health and developmental disability services provided through Department of Human Services (DHS).

The committee recommended a bill to provide an appropriation to DHS to establish and administer a mental health voucher system to address underserved areas and gaps in the state's unified mental health system.

### BACKGROUND INFORMATION

The background information includes an overview of key statutes, an overview of services within DHS, an overview of the *Olmstead* case, and an overview of autism spectrum disorder programs.

#### Overview of Key Statutes Regarding Developmental Disabilities

North Dakota Century Code Section 25-01.2-01 defines "developmental disability" as a severe, chronic disability of an individual which:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments, including down syndrome;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas of major life activity:
  - Self-care;
  - Receptive and expressive language;
  - Learning;
  - Mobility;
  - Self-direction;
  - Capacity for independent living; and
  - Economic sufficiency; and
- Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Section 25-04-01 provides for DHS to administer and control the Life Skills and Transition Center in Grafton for individuals with developmental disabilities. Section 25-04-02 provides the purpose of the center is to:

- Maintain the relief, instruction, care, and custody of individuals with developmental disabilities or other individuals who may benefit from the services offered at the center; and
- Provide onsite and offsite additional services and effectuate its powers and duties to best serve individuals with developmental disabilities and other individuals who may benefit from those activities.

Section 50-06-01.4 provides for the structure of DHS to include the State Hospital, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the Executive Director determines necessary. Furthermore, DHS must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of functions not otherwise by law made the responsibility of another state agency, including among others:

- Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.

## **Overview of Services Within the Department of Human Services**

### **Developmental Disabilities Division**

- Administers the delivery of services for eligible individuals with an intellectual or developmental disability.
- Services include residential and day supports, employment, family support, self-directed, corporate guardianship, infant development, and personal care services.
- Collaborates with regional human service centers, the Life Skills and Transition Center, federal agency representatives, school system personnel, university representatives, consumer advocates, families, and public and private organizations within the delivery system and monitoring of services.

### **Regional Human Service Centers**

- Provides developmental disabilities services, including case management, day supports, and extended services.

### **Life Skills and Transition Center**

- Provides residential, vocational, and outreach services for individuals with developmental and intellectual disabilities. Residential services include 24-hour comprehensive medical and clinical programming services and supports, including services for individuals requiring skilled nursing and behavioral health services and youth transitioning from the facility to a community setting. Vocational services include the Work Activity

Program, which provides services for individuals at vocational worksites on campus and in the community. Outreach services include independent supported living arrangements, clinical assistance resources and evaluation services (CARES), CARES clinical services, and developmental disabilities behavioral health services.

### **Overview of the United States Supreme Court *Olmstead v. L.C.* Case**

*Olmstead* is a United States Supreme Court case regarding discrimination against people with mental disabilities. In *Olmstead*, the Court found mental illness is a form of disability and unjustified isolation of a person with a disability is a form of discrimination under Title II of the federal Americans with Disabilities Act (ADA). The Court held community placement is required and appropriate only if "[a] the State's treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Since this 1999 decision, there has been litigation in each of the 12 United States Circuit Courts of Appeal. In addition to enforcement of the *Olmstead* decision through the court system or through agreements, the United States Attorney General published regulations for implementing the requirements of the ADA, including requirements from *Olmstead*, such as Title II, regarding state and local government services, and Title III, regarding public accommodations and commercial facilities.

### **Autism Spectrum Disorder Task Force**

Senate Bill No. 2174 (2009), codified as Section 50-06-32, established an Autism Spectrum Disorder Task Force consisting of the State Health Officer, the Executive Director of the Department of Human Services, the Superintendent of Public Instruction, the Executive Director of the Protection and Advocacy Project, and the following members appointed by the Governor:

- A pediatrician with expertise in the area of autism spectrum disorder;
- A psychologist with expertise in the area of autism spectrum disorder;
- A college of education faculty member with expertise in the area of autism spectrum disorder;
- A behavioral specialist;
- A licensed teacher with expertise in the area of autism spectrum disorder;
- An occupational therapist;
- A representative of a health insurance company doing business in the state;
- A representative of a licensed residential care facility for individuals with autism spectrum disorder;
- An enrolled member of a federally recognized Indian tribe;
- An adult advocate with autism spectrum disorder;
- A parent of a child with autism spectrum disorder;
- A family member of an adult with autism spectrum disorder; and
- A member of the Legislative Assembly.

The task force is to examine early intervention and family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.

The task force is to develop a state autism spectrum disorder plan and continue to review and periodically update or amend the plan to serve the needs of individuals with autism spectrum disorder. The task force is to provide an annual report to the Governor and the Legislative Council regarding the status of the state autism spectrum disorder plan.

### **Autism Spectrum Disorder Voucher Program Pilot Project**

House Bill No. 1038 (2013), codified as Section 50-06-32.1, required DHS to establish a voucher program pilot project beginning July 1, 2014, to assist in funding equipment and general educational needs related to autism spectrum disorder for individuals below 200 percent of the federal poverty level from age 3 to under age 18 who

have been diagnosed with autism spectrum disorder. In addition, the department is required to adopt rules addressing management of the voucher program pilot project and to establish eligibility requirements and exclusions for the voucher program pilot project. The section further provides the department is to report to the Legislative Management regarding the pilot project. When enacted, the section included a sunset clause for the section to expire on June 30, 2015. However, Section 13 of Senate Bill No. 2012 (2015) provided for the continuation of Section 50-06-32.1 without a sunset clause.

Section 3 of Senate Bill No. 2089 (2021) provides legislative intent that DHS adopt rules to seek additional flexibility for the administration of the autism spectrum disorder voucher program to ensure families can be served within available appropriations for the program. The administrative code changes should consider changes that include reducing the amount of approved voucher funds available to each household and the amount of time during which a household may use approved voucher funds.

### **Medicaid Autism Spectrum Disorder Waiver**

The Medicaid autism spectrum disorder waiver is used to help families care for children with autism spectrum disorder at home instead of placing the child in a facility to receive care. To be eligible to receive the waiver, a child must be under the age of 14, be eligible to receive care in an intermediate care facility, be diagnosed with autism spectrum disorder, live in their parents or legal guardian's home, and meet financial eligibility requirements. Services provided through the waiver program include service management, respite care, and assistive technology.

### **Funding**

The Legislative Assembly appropriated \$716.3 million, of which \$331.3 million is from the general fund, for the Developmental Disabilities division for the 2021-23 biennium. In addition, the Legislative Assembly appropriated \$49.4 million, of which \$22.3 million is from the general fund, for the Life Skills and Transition Center, and appropriated \$2,255,530, of which \$1,050,204 is from the general fund, for autism services for the 2021-23 biennium.

## **PROPOSED STUDY PLAN**

The following is a proposed study plan for the committee's consideration:

1. Issue a request for proposal to obtain consulting services to facilitate the study of developmental disability programs and autism services;
2. Receive information regarding the state's developmental disability services and delivery systems, including whether changes are necessary to maintain compliance with state and federal laws and regulations;
3. Receive information regarding eligibility criteria to receive developmental disability services and the screening process for developmental disabilities;
4. Receive testimony from stakeholders and others regarding gaps in developmental disability services and options to address the gaps;
5. Receive information regarding the duties and membership of the Autism Spectrum Disorder Task Force and whether a private entity should be utilized to provide staff services to the task force;
6. Receive information regarding the autism spectrum disorder voucher and waiver programs, including eligibility criteria, the number of individuals served, the amount of funding utilized, and program waitlists;
7. Receive comments by interested persons regarding the study of developmental disability services and autism programs;
8. Develop recommendations and any bill drafts necessary to implement the recommendations; and
9. Prepare a final report for submission to the Legislative Management.