

**LETTER OPINION
2001-L-20**

June 12, 2001

Ms. Yvonne Smith
Deputy Director
Department of Human Services
600 East Boulevard Ave Department 325
Bismarck, ND 58505-0250

Dear Ms. Smith:

Thank you for your letter asking for my opinion regarding a "Statement of Purpose of Amendment" for 2001 House Bill 1012 (HB 1012), the appropriations bill for the Department of Human Services for the 2001-2003 biennium.

During the 2001 legislative session, the House Appropriations Committee, particularly its Human Resources Subcommittee, was asked to consider increasing the Department of Human Services' appropriation for medical assistance grants to allow for a \$0.45 per hour increase in wages for employees of organizations providing services to individuals with developmental disabilities (DD providers). The version of HB 1012 passed by the House included an increase in the line item for Medical Assistance grants of roughly \$500,000 in general funds and \$1 million in estimated income. The "Statement of Purpose of Amendment" describes the House increase as follows: "Increase DD grants funding to increase the average wage for community provider direct care workers by 10 cents per hour." Proposed Amendments to House Bill 1012 2001 N.D. Leg. (Feb. 21) (Legislative Council Doc. #18012.0110 at p. 8) (emphasis added). Although the statement of purpose is limited to "direct care workers," I understand the amount of additional funds in the amendment was determined as a fraction of the cost of giving a \$0.45 increase to all employees of DD providers, rather than just the direct care workers.

The Senate Appropriations Committee added funds to the same line item. The Senate "Statement of Purpose of Amendment" indicates some of the additional funds were "to increase the average wage for community provider direct care workers by an additional 20 cents per hour. The House provided funding to increase the average wage for these workers by 10 cents per hour." Proposed Amendments to Engrossed House Bill 1012

2001 N.D. Leg. (Apr. 4) (Legislative Council Doc. #18012.0216 at p. 5). Other funds were added to that line item by the Senate "to increase the fringe benefit percentage allowed for community providers by 3 percent" Id.

The amendments prepared by the conference committee on HB 1012 provided the same amount of additional funds as the Senate, but removed the statement of purpose requiring the Department to use the additional Senate funds on salaries and fringe benefits for employees of DD providers. See Proposed Amendments to Engrossed House Bill 1012 2001 N.D. Leg. (Apr. 24) (Legislative Council Doc. #18012.0221 at p. 7). The minutes and audiotape of the conference committee meeting confirm the committee's intent to remove restrictions on the use of the additional Senate funds, but I understand the additional funds are not the subject of your opinion request. The legislative history of the conference committee's amendments, including the recording of the conference committee meeting on HB 1012, is limited to the additional Senate funds and does not reflect any intent to alter the House's statement of purpose on the original \$0.10 increase.

The plain language of the House's statement of purpose limits the increase to "direct care workers." The motion approved by the House Appropriations Committee - Human Resources Subcommittee was described by the subcommittee chairman as follows: "You've heard the motion – the effect is to allow ten cents per hour for DD providers for direct care workers." Hearing on H.B. 1012 Before the House Appropriations Comm., Human Resources Division 2001 N.D. Leg. (Feb. 20) (recorded remarks of Representative Svedjan) (emphasis added). The limitation of the House increase to "direct care workers" is further supported by descriptions of the increase provided to the Senate Appropriations Committee by the Department and a DD provider. A Department representative expressed the Department's understanding that the House increase "goes to direct contact staff." Hearing on H.B. 1012 Before the Senate Appropriations Comm. 2001 N.D. Leg. (Mar. 1) (recorded verbal testimony of Gene Hysjulien). Written testimony by a DD provider stated "[t]he House amended HB1012 to increase wages by \$0.10 an hour for direct service staff." Id. (written testimony of Jon Larson). Testimony on behalf of The Arc of North Dakota suggested a distinction between direct care workers and other employees of DD providers: "[o]ur number one priority is to increase the average wage for Community Provider Direct Care Workers by 90 cents per hour. . . . These are the people in the trenches." Id. (written testimony of Jack McDonald).

To the extent there is any ambiguity between the House's statement of purpose, which is limited to "direct care workers," and the fact the amount of additional funds provided by the House was based on the amount necessary to give raises to all employees of DD providers, the ambiguity is resolved by the legislative history of the House increase. The statements of purpose of amendment provided by the House and Senate appropriations committee and by the conference committee show the legislative purpose in providing the

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funds in question. The Legislature intends that the statements of purpose of amendment in appropriations bills be applied in interpreting legislative intent. See N.D.C.C. § 54-44.1-12(3)(b). It is my opinion the House's statement of purpose regarding the \$0.10 increase is limited to "direct care workers" and does not apply to all employees of DD providers.

Sincerely,

Wayne Stenehjem
Attorney General

jcf/vkk