

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### HUMAN SERVICES COMMITTEE

Thursday, August 30, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Alon Wieland, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Alon Wieland, Dick Anderson, Roger Brabandt, Donald L. Clark, Tom Conklin, Richard Holman, Robert Kilichowski, Vonnie Pietsch, Chet Pollert, Jim Schmidt; Senators Dick Dever, Robert Erbele, Tim Mathern, Gerald Uglem

**Members absent:** Representatives Curt Hofstad, Kathy Hogan; Senator Joe Miller

**Others present:** See [Appendix A](#)

**It was moved by Senator Dever, seconded by Senator Mathern, and carried on a voice vote that the minutes of the July 31, 2012, meeting be approved as distributed.**

#### STUDY OF GUARDIANSHIP SERVICES

The Legislative Council staff distributed a memorandum entitled [Study of Guardianship Services - Final Report Recommendations](#). The memorandum provides a summary of recommendations included in the final report for the study of guardianship services completed by Mr. Winsor C. Schmidt, faculty member, University of Louisville School of Medicine. The recommendations are categorized by those relating to general guardianship provisions and those relating to delivery of guardianship services and include final report page references.

The Legislative Council staff presented a bill draft [\[13.0138.0100\]](#) relating to guardianship services procedural safeguards. The bill draft:

- Amends North Dakota Century Code Section 30.1-28-09 relating to notices in guardianship proceedings to provide that the notice or petition for guardianship must inform the ward or proposed ward of the ward's or proposed ward's rights at the hearing and must include a description of the nature, purpose, and consequences of an appointment of a guardian.
- Creates a new section relating to emergency guardians to provide that the court may appoint an emergency guardian whose authority may not exceed 60 days and who may exercise only the powers specified in the order. An emergency guardian may be appointed without notice to the alleged incapacitated individual and the alleged incapacitated individual's attorney only if the court finds from affidavit or

other sworn testimony that the alleged incapacitated individual will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual must be given notice of the appointment within 48 hours after the appointment. The court may remove an emergency guardian at any time. An emergency guardian is to make any report the court requires.

- Repeals Section 30.1-28-10 relating to temporary guardians.

Ms. Robin Huseby, Director, Commission on Legal Counsel for Indigents, Valley City, provided comments regarding the committee's study of guardianship services. She said the Commission on Legal Counsel for Indigents was created by the Legislative Assembly in 2005 to provide constitutionally adequate services to criminal defendants and respondents in the state who financially qualify for indigent services in accordance with eligibility requirements. She said the commission has an administrative office in Valley City and public defender offices located in Bismarck, Minot, Fargo, Williston, Dickinson, and Grand Forks. She said the commission does not provide services in civil or noncriminal proceedings.

In response to a question from Senator Mathern regarding guardianship services, Ms. Huseby said if the commission was required to provide guardianship services, she anticipates the commission would contract with the private sector for the provision of the services.

Chairman Wieland requested the Commission on Legal Counsel for Indigents provide the committee with a cost estimate for the 2013-15 biennium for providing guardianship services to individuals not currently being served.

Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, provided comments ([Appendix B](#)) regarding the committee's study of guardianship services. He suggested the Legislative Assembly consider providing an appropriation to the judicial branch to establish a central "clearinghouse" to oversee guardians, provide training and assistance to guardians, and pay for private guardianship services in situations where an individual has no other resources. He said the appropriation would result in

private service providers no longer seeking funding from counties for guardianship or public administrator services.

In response to a question from Senator Mathern, Mr. Birst said the North Dakota Association of Counties' preliminary estimate for establishing the central "clearinghouse" for guardianship services is \$1.2 million for the 2013-15 biennium.

In response to a question from Representative Pollert, Mr. Birst said there are four to five private guardianship service providers operating in the state.

In response to a question from Senator Mathern, Mr. Birst said the \$1.2 million state appropriation would be used for the guardianship and public administrator services currently being paid by counties.

Ms. Judy Vetter, Administrator, Guardian and Protective Services, Inc., provided comments ([Appendix C](#)) regarding the committee's study of guardianship services. She said Guardian and Protective Services, Inc., supports the recommendations included in the final report for the study of guardianship services. She said the current system of providing guardianship services to individuals with developmental disabilities is functioning effectively and should remain unchanged. She said it is imperative that the unique differences in the guardianship service needs of the traumatic brain injured, severely mentally ill, and the elderly be considered when decisions are being made in establishing a guardianship service delivery system for these individuals. She said Guardian and Protective Services, Inc., is willing to coordinate the establishment of a committee with representatives of guardianship providers, the State Court Administrator, District Court, the North Dakota Association of Counties, and other entities involved in guardianships to evaluate the proposed guardianship services models and provide a recommendation to the committee.

Ms. Sally A. Holewa, State Court Administrator, North Dakota Supreme Court, provided comments regarding the committee's study of guardianship services. She said the Supreme Court may support the North Dakota Association of Counties' proposal to establish a central "clearinghouse" for guardianship services if the proposal receives adequate funding.

Senator Mathern asked which of the guardianship service delivery models identified in the consultant's final report the judicial branch believes would be the most effective. Ms. Holewa said the judicial branch believes the recommendation to establish a new state agency modeled after the Commission on Legal Counsel for Indigents to provide guardianship services would be the preferred delivery model.

The Legislative Council staff distributed a proposal ([Appendix D](#)) from Representative Hogan regarding the committee's study of guardianship services. The following is a summary of the proposal:

Description	Total Estimated Biennial Cost of Proposal	Current 2011-13 Biennium Funding	Estimated Additional Funding Needed
<b>Adult protection</b> - Increase the number of full-time equivalent (FTE) positions responsible for assessing the needs of vulnerable individuals, identifying alternatives to guardianship, and gathering information regarding family and local guardianship resources. Currently, these responsibilities are primarily being completed by Department of Human Services' adult protective services staff. For the 2011-13 biennium, the Legislative Assembly provided funding for four adult protective services FTE positions located at the human service centers. In the Southeast Human Service Center region, the counties provide funding for two additional adult protective services FTE positions. The proposal recommends providing funding for 12 new adult protective services FTE positions.	\$1,647,002	\$360,587	\$1,286,415
<b>Petition filing</b> - Expand the guardianship services offered through the Department of Human Services Aging Services Division to assist low-income individuals with serious mental health issues or a disability	250,000	104,000	146,000
<b>Guardianship services</b> - Provide funding to contract with private entities to provide guardianship services to individuals not currently being served	517,000	0	517,000
<b>Court monitoring</b> - Provide funding for one new FTE position in the judicial branch to provide training and technical assistance to all court personnel on guardianship related issues and to monitor and investigate complaints against guardians	314,495	0	314,495
<b>Total</b>	<b>\$2,728,497</b>	<b>\$464,587</b>	<b>\$2,263,910</b>

Ms. Kristen Hasbargen, Director, Richland County Social Services, provided comments ([Appendix E](#)) regarding the committee's study of guardianship services. She said guardianships and adult protective services are intertwined. In a recent statewide survey, she said, 65 percent of counties reported an increase in adult protective services referrals. She said current

adult protective services are not sufficient to meet the demand.

Senator Mathern suggested the committee consider asking the Legislative Council staff to prepare bill drafts relating to the proposal by the North Dakota Association of Counties, the proposal by Representative Hogan, and the remaining recommendations included in the final report for the study of guardianship services.

Chairman Wieland asked the Legislative Council staff to prepare bill drafts for the committee's consideration relating to the proposal by the North Dakota Association of Counties and the proposal by Representative Hogan.

Chairman Wieland said a representative of Guardian and Protective Services, Inc., will be asked to present information to the Human Services Committee at its next meeting regarding efforts to establish a group to evaluate the proposed guardianship services models and to present to the Human Services Committee the group's findings and recommendations.

## STUDY OF THE AUTISM SPECTRUM DISORDER

The Legislative Council staff presented a memorandum entitled [Autism Spectrum Disorder Recommendations](#). The memorandum provides a summary of the recommendations submitted for consideration by the committee regarding its study of the autism spectrum disorder.

Ms. Kristen Wallman, President, Autism Society of North Dakota, Fargo, provided comments ([Appendix F](#)) regarding the committee's study of the autism spectrum disorder. She said the Autism Society of North Dakota has identified the following three revised priority initiatives relating to autism spectrum disorder program and services in North Dakota:

1. Autism spectrum disorder registry - Mandate the development of an autism spectrum disorder registry to be maintained within the State Department of Health. The estimated biennial cost is being calculated by the State Department of Health.
2. Voucher system for services and support - Establish a voucher system to be used for autism spectrum disorder program and services. The estimated biennial cost for 150 individuals is \$4.5 million.
3. Educational training and support - Provide training and support to classroom teachers and other staff to implement evidence-based practices for educating and providing services for students with an autism spectrum disorder. The estimated biennial cost is \$198,000.

Ms. Vicki Peterson, Bismarck, provided comments ([Appendix G](#)) regarding the committee's study of the autism spectrum disorder. She said she supports the

recommendations of the Autism Spectrum Disorder Task Force.

In response to a question from Representative Wieland, Ms. Peterson said there are three primary organizations in the state assisting parents and families affected by the autism spectrum disorder--Pathfinder Parent Center, North Dakota Federation of Families for Children's Mental Health, and Family Voices of North Dakota.

In response to a question from Representative Wieland, Ms. Peterson said the Department of Human Services' children's autism spectrum disorder Medicaid waiver should be expanded to serve children over the age of 5.

In response to a question from Representative Wieland, Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, said the department's autism spectrum disorder Medicaid waiver was approved by the Centers for Medicare and Medicaid Services for a period of three years (November 1, 2010, through October 31, 2013). She said the waiver has the capacity to annually serve 30 children ages birth through four years who have a confirmed autism spectrum disorder diagnosis. She said there are currently 19 children receiving services through the waiver. She said the department's 2011-13 biennium budget for the waiver totals \$1,860,324. She said actual expenditures to date total \$124,651. She said the department is gathering stakeholder input regarding suggested changes to the waiver, including changes to the eligible age group and changes to covered services. She said the department will consider the suggested changes in its application for renewal of the waiver.

In response to a question from Representative Pollert, Ms. JoAnne Hoesel, Cabinet Lead, Program and Policy, Department of Human Services, said utilization of the department's autism spectrum disorder Medicaid waiver is less than budgeted due in part to the age restrictions and service limitations. She said some individuals with an autism spectrum disorder diagnosis are being served under the department's Developmental Disabilities waiver.

Chairman Wieland asked the Legislative Council staff to prepare a bill draft for the committee's consideration relating to the autism spectrum disorder registry and educational training and support recommendations and a bill draft relating to the voucher system for services and support recommendation.

The committee recessed for lunch at 12:00 noon and reconvened at 12:50 p.m.

## STUDY OF THE QUALIFIED SERVICE PROVIDER SYSTEM

The Legislative Council staff distributed a memorandum entitled [Status of the Study of the Qualified Service Provider System](#). The memorandum provides information regarding the

status of the committee's study of the state's qualified service provider (QSP) system.

Ms. Chris Burd, Ph.D., R.N., home and community-based services consultant, Standing Rock Sioux Tribe, provided comments ([Appendix H](#)) regarding the committee's study of the QSP system. She said the QSP system needs improvements to be effective in the future as a better option to assist the elderly and individuals with disabilities. She said the committee should consider eliminating fragmentation and improving coordination of home and community-based services programs.

Mr. John Eagle Shield, Tribal Community Health Representative, Standing Rock Sioux Tribe, provided comments regarding the committee's study of the QSP system. He said tribal community health representatives should be allowed to provide targeted case management to individuals on the reservation, and tribes should be allowed to enroll as an agency QSP provider.

Ms. Elaine Keepseagle, Tribal Community Health Representative, Standing Rock Sioux Tribe, provided comments regarding the study of the QSP system. She suggested the Standing Rock Sioux Tribe and the state collaborate to provide access to home and community-based care services to individuals on the reservation.

Ms. Margaret Gates, Tribal Health Director, Standing Rock Sioux Tribe, provided comments regarding the committee's study of the QSP system. She suggested the Standing Rock Sioux Tribe and the state collaborate and coordinate the provision of home and community-based care services.

Ms. Vicki Troffgruben, North Dakota Center for Persons with Disabilities, Minot, provided comments regarding the committee's study of the QSP system. She said there are areas in the state where QSP services are not available. She suggested the committee consider financial incentives to encourage individuals to become QSPs.

Mr. Doug Wegh, County Social Service Director, Golden Valley, Billings, and Hettinger Counties, provided comments regarding the committee's study of the QSP system. He suggested county case managers be allowed to provide additional funding to QSPs willing to work in underserved areas.

Mr. Chuck Stebbins, North Dakota Center for Persons with Disabilities, distributed a summary ([Appendix I](#)) of comments from a meeting of QSP providers in August 2011. He said priority items identified by QSPs included a new billing structure with no 15-minute billing unit, payment provided twice a month, and mileage reimbursement.

Ms. Peggy Cavanaugh, Tribal Health Director, Spirit Lake Tribe, provided comments regarding the committee's study of the QSP system. She suggested streamlining the process involved in submitting bills for QSP services so the process is not a barrier to providing services.

In response to a question from Senator Mathern, Ms. Maggie Anderson, interim Executive Director,

Department of Human Services, said the department is in the process of preparing its budget request for the 2013-15 biennium. She said the department has not determined whether the budget request will include a funding increase for QSPs.

**It was moved by Senator Mathern, seconded by Representative Holman, and carried on a roll call vote that the Human Services Committee recommend the Legislative Assembly and the Department of Human Services to establish a QSP rate structure that provides additional funding for mileage.** Representatives Wieland, Anderson, Brabandt, Conklin, Holman, Kilichowski, Pietsch, and Schmidt and Senators Uglem, Dever, Erbele, and Mathern voted "aye." Representative Pollert voted "nay."

### STUDY OF THE DEPARTMENT OF HUMAN SERVICES' CASELOADS AND PROGRAM UTILIZATION

The Legislative Council staff presented a memorandum entitled [Status of the Study of the Department of Human Services' Caseloads and Program Utilization](#). The memorandum provides information regarding the status of the committee's study of the Department of Human Services' caseloads and program utilization.

Representative Pollert suggested the committee receive information on the status of the department's 2011-13 legislative appropriation. Chairman Wieland said the committee would request the information for the next meeting.

### OTHER COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Wieland announced that the next meeting is tentatively scheduled for Thursday, October 4, 2012.

**It was moved by Senator Mathern, seconded by Senator Dever, and carried on a voice vote that the Human Services Committee meeting be adjourned subject to the call of the chair.**

Chairman Wieland adjourned the meeting at 2:22 p.m.

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Roxanne Woeste  
Assistant Legislative Budget Analyst and Auditor

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:9