

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON HEALTH CARE

Monday, June 12, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Aaron Krauter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Aaron Krauter, Richard L. Brown, Ralph L. Kilzer; Representatives William R. Devlin, Gary Kreidt, Vonnie Pietsch, Todd Porter, Louise Potter, Clara Sue Price, Robin Weisz, Alon C. Wieland

Members absent: Senators John M. Andrist, Judy Lee, Tim Mathern, Carolyn Nelson, Russell T. Thane; Representatives Lee Kaldor, Shirley Meyer

Others present: See attached appendix

It was moved by Representative Porter, seconded by Representative Wieland, and carried on a voice vote that the minutes of the March 2, 2006, meeting be approved as distributed.

LICENSURE AND REGULATION OF ACUPUNCTURISTS STUDY

Chairman Krauter called on Ms. Jennifer S. N. Clark, Counsel, Legislative Council, who presented a memorandum entitled [Regulation of Acupuncture - Options](#). Ms. Clark said the memorandum is in response to a request from the committee for information regarding what options exist for regulating acupuncturists who practice in North Dakota. Currently, she said, North Dakota does not regulate the practice of acupuncture as a profession. She said options for regulation of acupuncture include:

- **Registration** - The least restrictive form of state regulation, usually consisting of requiring individuals to file their name, address, and qualifications with a government agency before practicing the profession.
- **Certification** - Title protection is granted to persons who have met the predetermined qualifications. Those without the title may perform the services of the profession or occupation but may not use the title.
- **Licensure** - The most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting the standards imposed by the state. It is illegal for unlicensed individuals to perform acts within the statutorily defined scope of practice.

Ms. Clark said using these definitions and considering the options of certification, licensure, and registration, licensure is the only method that provides for a system under which professional standards are set and an individual is prohibited from practicing

unless those standards are met. She said licensure of a profession in North Dakota is typically conducted by a legislatively created board; however, there are examples of executive state agencies performing this function. She said the degree of expertise required of an agency charged with regulating a profession would in large part depend on the standards required.

Senator Kilzer said acupuncture is interchangeably referred to as both a profession and a procedure. He said there are several professions that regulate acupuncture as a procedure.

Chairman Krauter called on Ms. Darlene Bartz, Section Chief, Health Resources Section, State Department of Health, who presented information regarding the development of registration or licensing requirements and regulations for acupuncturists practicing in North Dakota. A copy of the information presented is on file in the Legislative Council office. She said the State Department of Health is aware of only three individuals in North Dakota practicing traditional acupuncture services who are not medical doctors or chiropractors.

Ms. Bartz said according to the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), 44 of 50 states license acupuncturists. She said 97 percent of these states require completion of the NCCAOM test as part of their licensure process for acupuncturists and approximately one-half of these states require NCCAOM certification for licensure. She said NCCAOM certification requires successful completion of an accredited education program and the NCCAOM test and the individual must agree to follow "clean needle techniques" and the NCCAOM code of ethics and disciplinary process.

Ms. Bartz said recognition of acupuncturists in North Dakota could be addressed through registration or licensure. She said national certification by NCCAOM can be one of the standards that individuals are required to meet to be licensed in North Dakota. She said licensure would require the development and enforcement of standards of practice for acupuncturists in North Dakota. She said the department's one-time startup costs for development and implementation of a licensure program would be approximately \$18,000 to \$20,000. She said ongoing costs would be minimal but could include complaint investigations and the costs related to the hearing process, if needed. She said the department does not have qualified staff to conduct onsite investigations of

complaints related to the quality of care of services provided by acupuncturists. She said the licensure fees generated by three acupuncturists would not be sufficient to cover these costs nor can federal funds be used for this purpose.

In response to a question from Representative Price, Ms. Bartz said tattooing and body piercing is regulated in North Dakota at the city and county government level.

Senator Kilzer said there are no individuals in North Dakota with the expertise to monitor the quality of acupuncture services being provided. He said the committee should be "cautious" in supporting the regulation of acupuncture.

Senator Brown said licensure of acupuncturists could potentially cause conflict with licensed chiropractors who provide acupuncture services. He said the committee may want to consider registration options for acupuncturists.

In response to a question from Representative Price, Ms. Bartz said she was not aware if the three identified acupuncturists in North Dakota are certified by NCCAOM.

It was moved by Representative Price, seconded by Senator Brown, and carried on a voice vote that the Legislative Council prepare a bill draft requiring any individual practicing acupuncture in North Dakota to be registered with the State Department of Health and that the registration list identify those individuals certified by the National Certification Commission for Acupuncture and Oriental Medicine.

Representative Potter asked that the committee receive information at a future meeting from the State Board of Chiropractic Examiners and the State Board of Medical Examiners regarding the number of their licensees who provide acupuncture services and the related requirements and regulations.

Senator Kilzer said requiring all individuals who provide acupuncture services to register could potentially cause a conflict of interest with the State Board of Medical Examiners and the State Board of Chiropractic Examiners. Representative Kreidt said it is not necessary to require chiropractors and medical doctors who provide acupuncture services to register.

Representative Devlin said there are only three individuals providing traditional acupuncture services in the state and he is not aware of any complaints from the general public regarding the services provided. He said it is not necessary at this time to take any action regarding regulating acupuncturists.

It was moved by Representative Devlin, seconded by Representative Price, and carried on a voice vote that the committee reconsider the motion that the Legislative Council prepare a bill draft requiring any individual practicing acupuncture in North Dakota to register with the State Department of Health and that the registration list identify those individuals certified by the National Certification Commission for Acupuncture and Oriental Medicine.

In response to a question from Representative Price, Ms. Clark said the bill draft could exempt certain licensed professions, such as medical doctors or chiropractors, from registration requirements or require all individuals providing acupuncture services to register but be drafted in a manner that "minimizes" the risk of registration requirements infringing on other professional requirements.

Chairman Krauter called on Mr. Dave Peske, North Dakota Medical Association, Bismarck, who commented on the licensure and regulation of acupuncture study. He said he was not aware of any North Dakota physicians providing acupuncture services but would have "concerns" about requiring physicians to register. He said chiropractors are to complete required training in order to provide acupuncture services. He said the committee may want to receive additional information from these professions regarding the requirements.

Chairman Krauter called on Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, Fargo, who commented on the licensure and regulation of acupuncture study. He said because acupuncture services are not licensed in North Dakota, insurers cannot provide coverage for the service.

It was moved by Senator Brown, seconded by Representative Potter, and carried on a voice vote that the Legislative Council prepare two bill drafts, one bill draft requiring any individual practicing acupuncture in North Dakota to register with the State Department of Health and that the registration list identify those individuals certified by the National Certification Commission for Acupuncture and Oriental Medicine and the second bill draft requiring only those individuals providing acupuncture services outside the scope of a licensed North Dakota profession to register with the State Department of Health and that the registration list identify those individuals certified by the National Certification Commission for Acupuncture and Oriental Medicine.

ANNOUNCED BASIC CARE SURVEY PILOT PROJECT

Chairman Krauter called on Ms. Bartz who presented information regarding the department's announced basic care survey pilot project and a recommendation regarding the continuation of the unannounced survey process for basic care facilities, pursuant to Section 26 of 2005 Senate Bill No. 2004. A copy of the information presented is on file in the Legislative Council office. She said a workgroup was formed to develop this pilot project consisting of representation of the North Dakota Long Term Care Association, basic care providers, AARP, Protection and Advocacy, the Department of Human Services, including Medicaid and the ombudsman program, and the State Department of Health. She said before initiation of the pilot project, a basic care survey pilot project plan was developed by the State Department of Health and reviewed and agreed upon by the workgroup.

Ms. Bartz said for the period July 1, 2005, when the pilot project started, until May 31, 2006, the study results were:

Number of Surveys Completed	Average Number of Citations
13 announced program surveys	4.4
10 unannounced program surveys	9.1
11 announced Life Safety Code surveys	3.8
11 unannounced Life Safety Code surveys	5.8

- Both providers and surveyors indicated that information is more readily available in most cases when the survey is announced.
- Both providers and surveyors reported some improvement in communications with announced surveys.
- Surveyors reported no increase in communication or contact initiated by family, residents, or staff resulting from announcing the survey.
- Providers indicated that, in their opinion, the results of the announced survey are the same as if the survey were unannounced.
- Review of deficiency statements reveals that approximately twice as many deficiencies result from unannounced surveys as from announced surveys.

Ms. Bartz said the mission of the State Department of Health is to protect and enhance the health and safety of all North Dakotans and the environment in which we live. She said the objective of the Division of Health Facilities is to improve access and assure delivery of quality health care to people of North Dakota, many of whom reside in basic care facilities. She said the State Department of Health recommends that basic care surveys continue to be unannounced. She said the reasons for supporting unannounced surveys include:

- The national standard is for surveys to be conducted unannounced to get a true picture of the day-to-day care and services provided to residents.
- Announcing surveys allows facilities to make changes which has the potential to alter survey findings.
- The greater number of findings with unannounced surveys indicates that facilities are possibly fixing problems for the survey visit rather than developing a system to ensure continued compliance.
- Citation of a deficient practice and the resulting plan of correction have a more significant impact on the facility's ability to deliver services in an improved manner over a longer period of time.
- During announced surveys certain deficiencies can be missed. For example, the absence of staff in a facility would be missed if the survey were announced.

In response to a question from Representative Kreidt, Ms. Bartz said the department's policy is to send a fax to the basic care facility one week prior to the announced survey which is then followed up with a telephone call to make sure the facility received the message. She said in most cases the department conducts an onsite followup survey on the basic care facility but it depends on the types of findings discovered during the initial survey.

Ms. Maggie Anderson, Director, Medical Services, Department of Human Services, presented information regarding the impact of additional federal health care facility regulations on the Department of Human Services and the Medicaid budget. A copy of the information presented is on file in the Legislative Council office. She said effective July 1, 2006, the Centers for Medicare and Medicaid Services (CMS) is requiring psychiatric residential treatment facilities to be subject to surveys conducted by the State Department of Health. She said the exact cost for this additional requirement cannot be determined due to several uncertainties, including the requirements for frequency and staffing of the reviews.

Ms. Anderson said it is expected that CMS may require criminal background checks to be completed on certified nursing assistants (CNAs). She said the costs for the background checks and the staff to manage the registry would be passed along to the Department of Human Services through survey fees paid to the State Department of Health.

Ms. Anderson said it is expected that an upgraded version of the minimum data set, which is a federally mandated tool used to clinically assess nursing facility residents and used by Medical Services to establish rates for the nursing facility payment system, will be released within the next two years. She said when the new version is released, there will be expenses incurred by the State Department of Health for staff training as well as training and coordination with long-term care providers. She said these expenses will be passed along to the Department of Human Services through the survey and certification rate.

Ms. Anderson said other potential changes that would impact the Department of Human Services and the Medicaid budget include:

- Changes by CMS to the Life Safety Code and quality improvement survey process.
- The transition of individuals out of the Developmental Center and into the community may result in an increase in the number of intermediate care facility/medical review locations.
- As known sex offenders experience a need for skilled nursing facility care, problems may arise relating to the certification process and the sex offender's rights.

In response to a question from Senator Kilzer, Ms. Anderson said she was not aware of any individuals being transferred from the Developmental Center into the community since the start of the 2005-07 biennium.

In response to a question from Representative Kreidt, Ms. Anderson said she does not believe there have been any problems with the current minimum data set version; however, it is a federally mandated tool.

In response to a question from Representative Price, Ms. Anderson said there are currently 11,549 individuals included on the CNA registry.

Chairman Krauter called on Ms. Shelly Peterson, President, North Dakota Long Term Care Association, Bismarck, who provided information regarding the announced basic care survey pilot project. A copy of the information presented is on file in the Legislative Council office. Ms. Peterson said the North Dakota Long Term Care Association is in the process of collecting information from basic care facilities regarding their experience with the announced basic care pilot project. She said preliminary findings regarding announced surveys include:

- Residents and family have an opportunity for more meaningful involvement.
- Assures essential staff will be present and available.
- Paperwork was efficiently delivered to surveyors.
- Facility staff was more comfortable and better able to perform their routine work.
- Review of past payroll records would identify attempts to manipulate staffing during the survey.
- Various methods of gathering data makes it difficult to cover up a long- or short-time facility practice.

Ms. Peterson said all facilities that have experienced the announced survey process encourage its continuation. She said the announced survey process is valid, comprehensive, efficiently uses resources, and assures regulatory compliance.

Ms. Marilyn Goldade, Director, Haaland Home, Rugby, presented information regarding the announced basic care survey pilot project. A copy of the information presented is on file in the Legislative Council office. Ms. Goldade said the Haaland Home received an announced survey on April 24, 2006. She said the goals and objectives of the survey process are met with announced surveys. She said the announced survey process provides the State Department of Health the opportunity to use its resources more efficiently.

Ms. Linda Johnson Wurtz, Associate State Director for Advocacy, AARP North Dakota, Bismarck, presented information regarding the announced basic care survey pilot project. A copy of the information presented is on file in the Legislative Council office. Ms. Johnson Wurtz said the ease of performing inspections of basic care facilities should be secondary to the consideration of residents' safety.

Chairman Krauter called on Mr. Bruce Murry, staff attorney, Protection and Advocacy Project, who commented on the announced basic care survey pilot project. Mr. Murry said he supports the

recommendation of the State Department of Health not to continue with announced basic care surveys.

MANDATED HEALTH INSURANCE COVERAGE ANALYSES

Chairman Krauter called on Mr. Chuck Johnson, General Counsel, Insurance Department, who presented recommendations regarding the committee's responsibility to recommend to the Legislative Council a private entity to contract with for conducting cost-benefit analyses of future measures mandating health insurance coverage, pursuant to North Dakota Century Code (NDCC) Section 54-03-28. A copy of the information presented is on file in the Legislative Council office. Mr. Johnson said during the 2005 legislative session, a total of \$13,929 was paid to Milliman and Associates for conducting cost-benefit analyses relating to two bills--House Bill No. 1381 (\$6,598) and Senate Bill No. 2169 (\$1,725)--and for general project work (\$5,606). The 2005 Legislative Assembly authorized \$55,000 from the insurance regulatory trust fund, the same as the 2003-05 biennium appropriation, for payment of cost-benefit analyses of the 2007 Legislative Assembly measures mandating health insurance coverage. The cost-benefit analyses must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of insureds.
4. The impact of the proposed mandate on the total cost of health care.

Mr. Johnson said Milliman and Associates work has been timely and thorough in the past. He said as an alternative to automatically selecting Milliman and Associates to provide services for the 2007 legislative session, a request for proposal inviting other companies to bid for the services could be issued.

In response to a question from Senator Krauter, Mr. Johnson said a request for proposal was not issued prior to the 2003 and 2005 legislative sessions. He said both times Milliman and Associates was chosen to provide cost-benefit analysis services as a followup to its broad review of mandated services costs. He said a contract for the services is completed in advance of each session.

In response to a question from Representative Porter, Mr. Johnson said he is not aware of any North Dakota companies that provide cost-benefit analysis for insurance mandates. He said Milliman and Associates fee schedule is based on various hourly rates depending on the qualifications of the individuals working on the request.

In response to a question from Senator Kilzer, Mr. Johnson said additional costs incurred from health insurance coverage mandates would be realized by

insurance companies and result in higher insurance premium rates.

Mr. St. Aubyn said by law health insurance coverage mandates must first apply only to the Public Employees Retirement System group health insurance program for a period of two years. He said during this two-year period, the Public Employees Retirement System is to evaluate the mandate's actual costs and benefits and prepare a report for the next Legislative Assembly to be used in consideration of whether to extend the mandated coverage.

Chairman Krauter asked that in subsequent interims the Insurance Commissioner's office present additional information to the committee when providing its recommendation for an entity to conduct a cost-benefit analysis. He said the information should indicate the status of bills requiring health insurance mandates and cost-benefit data, including the supporting documentation provided by Milliman and Associates. Representative Potter said it would also be beneficial to receive information regarding other companies that could provide health insurance mandate analyses.

Representative Price said it would be beneficial if the Legislative Management Committee would consider requiring bills providing health insurance mandates to be introduced by the first Monday of the legislative session in order to provide sufficient time to receive the cost-benefit analyses.

It was moved by Representative Porter, seconded by Senator Brown, and carried on a roll call vote that pursuant to North Dakota Century Code Section 54-03-28, the committee accept the Insurance Commissioner's recommendation of Milliman and Associates as the entity to be contracted with by the Legislative Council for cost-benefit analyses of future legislative measures. Senators Krauter, Brown, and Kilzer and Representatives Devlin, Kreidt, Pietsch, Porter, Potter, Price, Weisz, and Wieland voted "aye." No negative votes were cast.

CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

Ms. Anderson presented information regarding enrollment statistics and costs for the Healthy Steps program (children's health insurance program), pursuant to NDCC Section 50-29-02. A copy of the information presented is on file in the Legislative Council office. Ms. Anderson said the Legislative Assembly provided funding of \$12.1 million, of which \$2.9 million is from the general fund and \$9.2 million is federal funds for Healthy Steps for the 2005-07 biennium. Compared to the 2003-05 legislative appropriation, the funding provided is a \$2.6 million increase, \$768,000 of which is from the general fund and \$1.8 million is federal funds. The Legislative Assembly continued eligibility requirements for the program at 140 percent of poverty level and anticipated an insurance premium rate of \$181.87 per child per month, an increase of 17.5 percent compared to the 2003-05 premium rate of \$154.78.

The Legislative Assembly provided funding to serve an average of 2,971 children per month.

Ms. Anderson said due primarily to outreach efforts conducted by the Dakota Medical Foundation, the current enrollment in Healthy Steps is 3,547 children, which is an increase of 1,127 children since July 1, 2005, and 576 more children than the 2,971 used to calculate the 2005-07 biennium appropriation. She said the current premium is \$181.71 per non-Native American child and \$183.35 per Native American child. She said based on the current enrollment and premium, the total estimated expenditures for Healthy Steps will be \$14.9 million. She said the total estimated expenditures are \$2.8 million more than the total appropriation, including \$700,000 from the general fund.

In response to a question from Representative Weisz, Ms. Anderson said for the 12-month period ending April 2006, the number of children from birth to age 18 on Medicaid has decreased by 200. She said the children on Medicaid with a high recipient liability have been referred to the Healthy Steps program.

In response to a question from Representative Porter, Ms. Anderson said she anticipates federal funding for the Healthy Steps program to continue.

In response to a question from Senator Krauter, Ms. Anderson said the \$700,000 general fund deficit for the Healthy Steps program will be covered within the department's total appropriation authority.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Krauter said the next Budget Committee on Health Care meeting is tentatively scheduled for Wednesday, July 26, 2006. He said the committee will conduct budget tours of the International Peace Garden and the State Fair. He said a meeting is also tentatively planned for September 12 in Bismarck.

Representative Porter asked that the committee further review, at a future meeting, the bill draft providing for the establishment of an allied health professions board for boards with a small number of members.

The committee adjourned subject to the call of the chair at 11:50 a.m.

Donald J. Wolf
Senior Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

[ATTACH:1](#)