

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LONG-TERM CARE COMMITTEE

Tuesday, May 20, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dick Dever, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dick Dever, Aaron Krauter, Judy Lee, Tim Mathern; Representatives Larry Bellew, Karen Karls, Gary Kreidt, Ralph Metcalf, Vonnie Pietsch, Louise Potter, Clara Sue Price, Gerry Uglem, Benjamin A. Vig, Alon Wieland

Members absent: Senator Joan Heckaman; Representative Jon Nelson

Others present: Jim W. Smith, Legislative Council, Bismarck

Representatives Merle Boucher and Shirley Meyer and Senator David O'Connell, members of the Legislative Council, were also in attendance.

See attached [appendix](#) for additional persons present.

It was moved by Senator Lee, seconded by Representative Price, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

LONG-TERM CARE STUDY

The assistant legislative budget analyst and auditor presented a memorandum entitled [National Trends in Long-Term Care Services](#). The assistant legislative budget analyst and auditor said nationally the percentage of older adults (aged 65 and older) in nursing homes declined from 4.2 percent in 1985 to 3.6 percent in 2004 and the greatest decline was among those aged 85 and older, falling from 21.1 percent in 1985 to 13.9 percent in 2004. She noted key factors contributing to the decline included:

- A healthier and wealthier older adult population.
- The continued development of alternatives to nursing homes.
- Increased availability of private long-term care insurance.
- Active efforts by states to reduce the number of Medicaid recipients in nursing homes by providing more home and community-based services.

The assistant legislative budget analyst and auditor said the total funds appropriations for North Dakota nursing home care increased from \$244.6 million in the 1997-99 biennium to \$343 million in the 2005-07 biennium, a 9 percent average biennial increase, while total federal Medicaid nursing home expenditures increased by an average of 9.9 percent per biennium. North Dakota home and

community-based care total funds appropriations increased from \$17.9 million in the 1997-99 biennium to \$37.7 million in the 2005-07 biennium, a 20.6 percent average biennial increase, while total federal Medicaid home and community-based care expenditures increased an average of 29 percent per biennium for this period. A copy of the report is on file in the Legislative Council office.

Ms. Barb Fischer, Assistant Director of Budget and Operations, Medical Services Division, Department of Human Services, presented information on the current status of long-term care services, the number of clients, spending, and projections for the remainder of the biennium. She said projected expenditures include actual expenditures through March 2008. She said expenditures for nursing homes for the 2007-09 biennium are projected to total \$361.9 million, approximately \$9.6 million less than the appropriated amount of \$371.5 million. Of the variance, she said, \$2 million is from the general fund. She said basic care costs are projected to be \$12.8 million, \$1.3 million less than the appropriation of \$14.1 million. She said the reduction in anticipated expenditures results from a decrease in utilization. She said nursing home beds are projected to be 3,453, 41 fewer than budgeted, and basic care beds, projected at 405, are 53 beds fewer than the 458 beds anticipated. She said home and community-based services expenditures are projected to total \$38.6 million, \$1.2 million less than the \$39.8 million appropriated. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Krauter, Ms. Fischer said, even though the number of home and community-based care recipients is more than anticipated, actual expenditures are less due to recipients accessing less expensive services.

In response to a question from Senator Mathern, Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, said the department is in the process of developing an "Aging 2020" plan. She anticipates the plan will be available in July 2008. Chairman Dever asked that the department present the plan to the committee at its next meeting.

Ms. Brenda Weisz, Chief Financial Officer, Department of Human Services, presented information on the preliminary 2010 federal medical assistance percentage (FMAP) and related fiscal effect on the general fund. Because the FMAP is adjusted each federal fiscal year (October 1 to

September 30), she said three separate FMAP rates apply to expenditures each biennium.

Ms. Weisz said the department originally estimated the weighted FMAP for the 2007-09 biennium at 63.96 percent, based on actual FMAP percentages for 2007 and 2008 and an estimate for 2009. She said the actual weighted FMAP for the 2007-09 biennium will be 63.58 percent, a decrease of .38 percent. She said the decrease in the weighted FMAP is due to the actual 2009 FMAP being 63.15 percent, a .93 percent decrease from the estimated FMAP of 64.08 percent.

Ms. Weisz said, based on current spending levels, a 1 percent change in the FMAP for a 12-month period equates to \$5.8 million to \$6 million. Therefore, she said, the .93 percent decrease in the 2009 FMAP from the estimate over a 10-month period will result in \$4.4 million of additional general fund costs.

Ms. Weisz said the department anticipates using a weighted FMAP of 63.15 percent for the 2009-11 biennium, a decrease of .81 percent from the estimated weighted FMAP rate of 63.96 percent used to budget the 2007-09 biennium, which will result in an increased general fund need of approximately \$9.7 million for the biennium. A copy of the report is on file in the Legislative Council office.

Ms. Wright presented an update on the status of the development of an aging and disability resource center. She said the Administration on Aging has provided grants to 43 states to establish aging and disability resource centers. She said funding has not yet been available for the remaining seven states, including North Dakota.

Ms. Wright said the department has submitted an "intent to apply" for a Real Choice Systems Change and Aging and Disability Resource Center grant. She said approximately 10 grants will be awarded to states, each of which will not exceed \$800,000, for developing and implementing a person-centered hospital discharge. She said additional grants will be provided to two or three states for developing a new aging and disability resource center in an amount not to exceed \$800,000. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Dever, Ms. Wright said the grant requires a 5 percent state match and, based on a preliminary review of the grant application, it appears the match could be "in-kind." She said the \$40,000 general fund appropriation included in 2007 Senate Bill No. 2070 would be adequate to meet the state match requirement if the "in-kind" match is not allowed.

Mr. Bruce Pritschet, Director, Division of Health Facilities, State Department of Health, presented information regarding the number of beds transferred between facilities and the conversion of beds from skilled care to basic care and from basic care to skilled care during the 2007-09 biennium to date. He reported an increase of 77 licensed basic care beds, from 1,515 at the beginning of the biennium to 1,592 as of May 15, 2008, and a decrease of 101 licensed

skilled nursing facility beds, from 6,380 at the beginning of the biennium to 6,279 as of May 15, 2008. He said changes in bed capacity have occurred through placement of beds into and out of the "bed bank," transfer of beds among facilities, and placement of the traumatic brain injury beds into operation.

Mr. Pritschet said that since the beginning of the biennium, 172 skilled nursing facility beds and 44 basic care facility beds have been transferred. He said currently 227 skilled nursing facility beds and 55 basic care beds are included in the "bed bank" and will be put into operation at some future date. He said since August 1, 2007, one facility has converted three skilled nursing facility beds to basic care facility beds and one facility has converted five basic care facility beds to skilled nursing facility beds. He said seven different facilities have converted skilled nursing facility beds to basic care facility beds and, currently, 54 basic care beds are eligible to convert back to skilled nursing beds if so desired by the facilities. He provided a chart with details of individual transfers. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Krauter, Mr. Pritschet said when a facility converts beds from skilled to basic care, the beds must stay in basic care for 12 months before they can be converted back to skilled care.

In response to a question from Senator Krauter, Ms. Darleen Bartz, Section Chief, Health Resources, State Department of Health, said the ability to convert a basic care bed back to skilled care would remain with the facility that converted it to basic care and a bed converted to basic care may not be sold and subsequently converted back to skilled care.

Representative Price requested information be presented at the next meeting providing information in the form of a map on current and projected demographics and services by location and areas of the state where future needs do not match current bed placement and services.

Mr. Rodger Wetzel, Director, Northland Healthcare Alliance, presented information regarding the program of all-inclusive care for the elderly (PACE). He said Northland Healthcare Alliance is the recipient of the PACE planning grant, a program that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. He said participants must be at least 55 years old, live in a PACE service area, and be certified as eligible for nursing home care by the appropriate state agency. He said an interdisciplinary team, consisting of professional and paraprofessional staff, assesses participants' needs, develops care plans, and delivers all services, including acute care services and, when necessary, nursing facility services. He said PACE providers receive monthly Medicare and Medicaid capitation payments for each eligible enrollee and assume full financial risk for participants' care without limits on amount, duration, or scope of services. He

said the first urban PACE program will be in Bismarck and the first rural program will be in Dickinson. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Mathern, Mr. Wetzel said the PACE program could provide services anywhere in North Dakota as long as the required services are available. He said the program must provide medical and nursing services, occupational therapy, physical therapy, and dietician services. He said use of telemedicine could allow services to be available in underserved areas. He asked to appear at the next committee meeting to discuss proposed legislation and statutory changes.

Senator Mathern requested additional information regarding the availability and cost of maintaining telemedicine connections be presented at the next meeting.

Senator Lee noted the North Dakota Health Information Technology Steering Committee involves many North Dakota stakeholders, including the Center for Rural Health. She said the task force could provide information to the committee regarding available technology and how it could be used to serve rural North Dakota.

In response to a question from Representative Meyer, Mr. Wetzel said the PACE program does not limit the number of participants. He estimates 5 percent of individuals over the age of 65 may meet eligibility requirements. He estimates 550 individuals are eligible in Burleigh and Morton Counties and 150 are eligible in Stark County, the first urban and rural programs. He anticipates serving approximately 25 percent of those eligible during the first two years to three years.

Ms. Ellen Owen, Director, Burleigh County Senior Adults Program and member of the North Dakota Senior Service Providers, presented information regarding provider services. She said the North Dakota Senior Service Providers represent the agencies that provide Older Americans Act services, such as home-delivered and congregate meals, health services, outreach, and legal assistance to persons aged 60 and older. She said according to the most recent data, the state program report for federal fiscal year October 2005 to September 2006, 22 providers statewide served 30,804 different older adults. During the same period, she said, 521,481 home-delivered meals were provided to 6,195 older adults. She said if the potential growth in services discussed at the March 2008 Long-Term Care Committee meeting materializes, the number of meals could increase up to 761,000. She said this type of growth would make it difficult to continue to provide the level of services now provided within the resources available. She said the North Dakota Senior Service Providers play an important role in the long-term care continuum of services. She suggested including these services in planning discussions for serving older North Dakotans in the future. A copy of the report is on file in the Legislative Council office.

Chairman Dever distributed copies of letters addressed to the committee from Ms. Barbara Walz and Dr. Timothy J. Bopp, Bismarck, regarding the limited availability of nursing home beds in metropolitan areas. Copies of the letters are on file in the Legislative Council office.

The committee discussed bill draft [\[90056.0100\]](#) to require at least a 30-day written advance notice of any transfer or discharge from a nursing home, swing-bed hospital, basic care, or assisted living facility that was presented by the Legislative Council staff at the committee's March 2008 meeting.

It was moved by Representative Kreidt, seconded by Representative Price, and carried on a roll call vote that the bill draft to require at least a 30-day written advance notice of any transfer or discharge from a nursing home, swing-bed hospital, basic care, or assisted living facility be approved and recommended to the Legislative Council. Senators Dever, Lee, and Mathern and Representatives Bellew, Karls, Kreidt, Metcalf, Pietsch, Potter, Price, Uglem, Vig, and Wieland voted "aye." No negative votes were cast.

DEMENTIA-RELATED SERVICES STUDY

Chairman Dever distributed copies of responses received from an open letter he submitted to the state's newspapers requesting input on the committee's dementia-related services study. Copies of these responses are on file in the Legislative Council office.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, presented information regarding dementia-related services available at North Dakota nursing and basic care facilities, including those with special care units. She said every nursing facility in North Dakota provides care and services to individuals with dementia and 25 of the 83 licensed nursing facilities have special care units for those who have a diagnosis of Alzheimer's or a related dementia. She said special care units are secured, meaning a specific area of the facility has a restricting device separating the residents in the unit from the residents in the remainder of the facility. She said as of May 2008 nursing facilities with special care units provided 456 beds and had a 94 percent occupancy rate from January 1, 2008, through April 30, 2008.

Ms. Peterson said 10 of the 59 licensed basic care facilities have special care units for individuals with Alzheimer's or a related dementia. She said as of May 2008 the basic care facilities with special care units provided 238 beds and had an 86 percent occupancy rate from January 1, 2008, through April 30, 2008. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Dever, Ms. Peterson said only a limited number of facilities offer adult day care or respite care.

Ms. Peterson said the association recommends extending the moratorium on nursing home beds for two more years. She said 260 additional beds will be

coming available in the four major cities within the next two years. A copy of the report is on file in the Legislative Council office.

Ms. Linda Johnson Wurtz, Associate State Director for Advocacy, American Association of Retired Persons North Dakota, provided information on dementia-related services and the availability of dementia-related services in North Dakota. She cited the following concerns on behalf of its members:

- The potential negative impact on quality of care for memory care residents resulting from the announced survey process.
- The need to implement a single point of entry to long-term care in North Dakota.
- The need to ensure elderly individuals have access to adequate nutrition, as many times low blood sugar, electrolyte imbalance, and diet deficiencies manifest as memory problems.
- The need for training of direct-care staff, family caregivers, quality service providers, feeding assistants, and volunteers.
- The need for additional support for family caregivers, such as adult family foster care, as they face multiple challenges--financial, emotional, and physical.

Ms. Johnson Wurtz also provided information on caregivers and the economic value of caregiving by state in 2006. She noted the total annual economic value of caregivers in North Dakota was estimated at \$550 million and nationally it was \$350 billion. A copy of the report is on file in the Legislative Council office.

Ms. Kristi Pfliger-Keller, Director, Western North Dakota Center, Alzheimer's Association Minnesota-North Dakota Chapter, presented information regarding dementia-related services and suggestions to improve these services in the state. She suggested the committee focus on:

- Developing a coordinated care planning system to assist individuals in accessing services. Ms. Pfliger-Keller said she and one other association director currently provide this service on a small scale, but it is difficult for two individuals to serve the entire state. She said a family's needs change as the disease progresses and there is a need to expand the current family caregiver program. She suggested that each individual that receives a diagnosis of dementia be able to access funding for coordinated care planning on an ongoing basis.
- Creating a statewide dementia coordinator position to develop and implement a coordinated care planning system. She said the coordinator could bring stakeholders together on a regular basis and gather information on the effects of the disease on the state's population.

Ms. Pfliger-Keller said several states are considering dementia-related legislation and some have developed state dementia plans.

In response to questions from Representative Meyer and Senator Dever, Ms. Judy Anderson, Burleigh County Social Services, said county social services are often unable to provide assistance to individuals with dementia who exceed certain income levels or are below certain age requirements. She said some individuals do not seek assistance because of the perceived stigma attached to the disease.

Ms. Gretchen Everson, Director, Eastern North Dakota Center, Alzheimer's Association Minnesota-North Dakota Chapter, said the total number of individuals in North Dakota with Alzheimer's disease and their primary caregivers, which is almost always a family member, would be equivalent to the population of Minot. She described her family's experience with Alzheimer's and said, of the top 10 leading causes of death among adults, 2 are on the rise. She said one of these is Alzheimer's.

Mr. Rodger Wetzel, Vice Chair of the Board of Directors, Alzheimer's Association Minnesota-North Dakota Chapter, expressed support for creating a statewide dementia coordinator position.

Mr. Bruce Murry, Public Policy Advocate, Protection and Advocacy Project, expressed support for extended care coordination for diseases such as Alzheimer's.

It was moved by Senator Mathern, seconded by Senator Lee, and carried on a voice vote that the Legislative Council staff prepare a bill draft for committee consideration at its next meeting as directed by the committee chairman in discussions with the Department of Human Services, the Alzheimer's Association, county social services, and other stakeholders regarding dementia-related services.

TRANSITION TO INDEPENDENCE PROGRAM STUDY

Ms. Wanda Bye, Field Services Director, Vocational Rehabilitation Division, Department of Human Services, presented information regarding the development of plans to improve the coordination and collaboration of children's transitional services in the state. She said an increasing focus on transition-age services is occurring at the federal, regional, and state level. She said the Vocational Rehabilitation Division has allocated funding for regional transition projects. She said additional transition projects will be implemented in North Dakota this summer, including projects at Minot (Dakota Boys and Girls Ranch), Devils Lake (Four Winds Community School), Fargo (school district), and Bismarck (HIT, Inc./school district). She said the division is also providing \$15,000 for a one-week transition camp at Camp Grassick in August. She said the projects were offered to all schools, including 34 special education districts and all 8 regional transition committees. The projects are to focus on students entering their senior year who were eligible for or referred to the Vocational

Rehabilitation Division. A copy of the report is on file in the Legislative Council office.

Ms. Sandra Leyland, Executive Director, Fraser, Ltd., said although North Dakota has high-quality services, improvements in transition services for 14- to 26-year-olds with mental health needs are necessary. She said through research, individual diagnoses can be identified, which will assist in developing transition to independence programs. She said a recent statistical sampling of three major counties in North Dakota conducted by University of Mary graduate students projected approximately 13,500 youth (aged 18 to 21) were involved with the judicial system in a one-year period. She said the sample currently provides no clear indication of diagnosis, the level of involvement with the courts, or if an individual is counted more than one time. She said a more indepth review of these statistics would provide information pertinent to service development and delivery. She asked the committee to consider a specific review of the individual diagnoses that constitute the at-risk population of transition-age youth currently in the justice system. A copy of the report is on file in the Legislative Council office.

Ms. Leyland presented the testimony of Ms. Paula Storm, parent of a child with a learning disability. Ms. Storm suggested:

- Hiring case managers to assist these youth with the transition to adulthood.
- Implementing a state health insurance plan to cover youth with disabilities after graduating from high school.
- Offering summer or weekend programs to assist these youth identify the types of jobs available to them and assist in skill development.
- Providing independent living training.
- Providing safe and affordable housing for youth with disabilities after graduating from high school.

A copy of the report is on file in the Legislative Council office.

Mr. Murry recommended improving services to transition-age youth who have been in foster care or the juvenile justice system, deprived, or those who have a serious mental illness or are at risk for suicide. He suggested adding transition-age youth to the wraparound services currently available through county social services.

LIFE SAFETY SURVEYS

Mr. Pritschet presented information regarding the State Department of Health's life safety survey demonstration project, the possibility of posting facility plan information on the department's website, and Knife River Care Center life safety survey compliance issues.

Mr. Pritschet said that since the committee's March 2008 meeting, the department has completed one additional demonstration project construction

survey at Hillsboro. He said it was the second construction visit for this facility and the response from both the surveyor and facility staff was positive. He said demonstration project costs to date are \$2,725 and revenue generated to date from the fee charged to the facilities for each visit is \$900. He said the project appears to be a benefit to the architects/contractors and the health care facility. He said the department will be collecting additional information from two facilities participating in the project and plans to present additional information to the committee at its last meeting.

Mr. Pritschet said the department researched the potential of posting facility plans on the department's website. He said preliminary conclusions with staff from the Attorney General's office indicate that there are restrictions in the open records law relating to proprietary information and protections given to a copyright owner under the federal copyright law that may restrict or prohibit the department from posting blueprints or floor plans on its website. Therefore, it appears facility plans and portions of copyrighted materials cannot be posted. He said the department is developing a list of findings resulting from the Life Safety Code construction and renovation surveys and the initial licensure surveys and believes that it can post a listing of survey findings on its website.

Mr. Pritschet provided the committee with a summary of the survey issues that were identified during the initial licensure survey of the new Knife River Care Center building. He said the initial survey was conducted the week of October 15, 2007, and identified 20 issues and at a followup visit on December 17, 2007, 13 issues remained. He said when the survey was completed on December 19, 2007, the facility had met the Life Safety Code requirements for occupation. He said the building was occupied on January 26, 2008. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Lee, Mr. Pritschet said the department will continue to work with the North Dakota Long Term Care Association to provide additional Life Safety Code training to architects and contractors across the state.

Ms. Peterson expressed support for continuing the services established by the life safety survey demonstration project. She said the North Dakota Long Term Care Association, at its recent convention, offered a short session on life safety that was well-attended by long-term care and building industry staff. A copy of the report is on file in the Legislative Council office.

Representative Kreidt suggested the committee consider a bill draft to make the life safety survey demonstration project a permanent service provided by the State Department of Health.

Mr. Pritschet presented information on the impact of implementation of the basic care survey process. He said all Life Safety Code surveys have been completed on an announced basis and half of the health surveys have been completed on an

unannounced basis. He said the announced and unannounced basic care survey process has not resulted in a significant change in the number of citations issued. He provided information summarizing the Tier I and Tier II findings and the process utilized by the survey team. He said since implementation of the two-tiered survey process for identification of noncompliance, the department has conducted five announced and four unannounced health surveys resulting in 37 Tier I findings and 21 Tier II findings. He said four Tier I findings were moved to Tier II because the facility was not found to be in compliance at the time of the revisit. He said response from the providers and the surveyors to the two-tiered survey process has been positive and the department does not anticipate recommending any legislative changes to the survey process. A copy of the report is on file in the Legislative Council office.

Ms. Peterson said she believes the new basic care survey process is working well for all involved, including families and residents. She said basic care

members of the association unanimously agreed that the process should continue as approved by the 2007 Legislative Assembly. A copy of the report is on file in the Legislative Council office.

Chairman Dever anticipates the last committee meeting to be in August or September 2008.

No further business appearing, Chairman Dever adjourned the meeting at 2:45 p.m.

Sheila M. Sandness
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:1