

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### LONG-TERM CARE COMMITTEE

Thursday, May 6, 2010  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Gary Kreidt, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Gary Kreidt, Tom Conklin, Richard Holman, Robert Kilichowski, Joyce M. Kingsbury, Vonnie Pietsch, Chet Pollert, Louise Potter, Gerry Uglem, Robin Weisz, Alon C. Wieland; Senators JoNell A. Bakke, Dick Dever, Tom Fiebiger, Joan Heckaman, Terryl L. Jacobs, Judy Lee, Jim Pomeroy

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

**It was moved by Senator Lee, seconded by Representative Pollert, and carried on a voice vote that the minutes of the March 10, 2010, meeting be approved as distributed.**

#### STUDY OF LONG-TERM CARE SERVICES

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information regarding a comparison of budget to actual long-term care expenditures by program for the 2009-11 biennium and the average annual cost per client for various long-term care programs ([Appendix B](#)). She said long-term care expenditures totaled \$149.9 million for the period July 2009 through March 2010. She said the average annual cost per client varies by program from \$1,452 for targeted case management to \$112,980 for the technology dependent waiver.

In response to a question from Representative Kreidt, Ms. Anderson said for the period July 2009 through March 2010, the monthly average number of people receiving basic care services was 480, an increase of 34 from the budgeted monthly average of 446. She said for that same time period the monthly average cost per person was \$1,731, an increase of \$126 from the budgeted monthly average cost per person of \$1,605.

In response to a question from Senator Lee, Ms. Anderson said for the period July 2009 through March 2010, the actual monthly average number of people receiving expanded service payments for elderly and disabled and traumatic brain injury (TBI) waiver services was less than budgeted; however, the actual monthly average cost per person was more than budgeted.

Representative Pollert suggested the Department of Human Services provide information regarding long-term care expenditures for the 2007-09 and 2009-11 bienniums at the committee's next meeting.

Chairman Kreidt said the department will be asked to provide this information to the committee at its next meeting.

Mr. Mark B. Johnson, Administrator, Veterans' Home, Lisbon, provided information regarding current occupancy rates and projected occupancy rates for the new facility ([Appendix C](#)). He said the Veterans' Home current skilled care unit occupancy is 38 residents with a waiting list of over 30 individuals. He said the Veterans' Home current basic care unit occupancy is 65 residents with 4 new residents expected in the next 10 days. Due to medical necessity, he said, several of the facility's double rooms have been converted to private rooms limiting the number of residents. He said the new Veterans' Home facility has 142 private rooms and 4 double rooms. He said the new facility is expected to be at full capacity within six months to nine months after opening.

At the present time, Mr. Johnson said, the new Veterans' Home facility is approximately six months behind schedule. He said the agency was notified recently that the new facility is scheduled to open in April 2011 rather than October 2010.

In response to a question from Representative Wieland, Mr. Johnson said the Veterans' Home has several individuals with multiple diagnoses resulting in the need for additional staffing.

Representative Pollert suggested the Veterans' Home provide information regarding the status of its 2009-11 legislative appropriation at the committee's next meeting. Chairman Kreidt said the Veterans' Home will be asked to provide this information at the committee's next meeting.

In response to a question from Senator Dever, Mr. Johnson said the Veterans' Home receives a per diem payment from the United States Department of Veterans' Affairs for all eligible veterans in the basic care and skilled care units.

Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, provided information regarding the potential transfer of the responsibility for conducting nursing facility private pay appeals from the Department of Human Services to the Office of Administrative Hearings ([Appendix D](#)). He said the Office of Administrative Hearings could conduct nursing facility private pay appeals, but he expressed the following concerns regarding the Office of Administrative Hearings conducting nursing facility private pay appeals:

- The agency has no personnel with any expertise or experience in nursing facility resident payment classifications.
- The agency has no personnel with any expertise or experience in the methodology for assigning nursing facility residents to appropriate classifications.
- Appeal determinations require onsite reviews, and administrative law judges are not qualified to conduct onsite reviews.
- Funding for the agency to conduct the appeals. The agency currently does not receive general fund support. The agency's funding is generated from billing client agencies and local entities that use the hearing officer services.

Mr. Hoberg suggested that if the responsibility for the appeals is removed from the Department of Human Services, the committee consider the use of a peer review within the nursing facility industry for conducting the private pay appeals process. He said if a further appeal is desirable after a peer review, an appeal for an administrative hearing conducted by the agency could be required.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, provided information regarding changes in the administration of the nursing facility private pay appeals process ([Appendix E](#)). She said the association urges the committee to maintain the current appeals process for nursing facility residents. She said the association believes the Department of Human Services is the best entity to conduct appeals and believes the department should retain the responsibility.

Senator Lee said improved communication between nursing facilities and residents' family members may lessen the number of appeals.

In response to a question from Representative Pollert, Ms. Anderson said the Department of Human Services believes the private pay appeals process is not an appropriate function to be administered by the department.

In response to a question from Representative Uglem, Ms. Anderson said the Department of Human Services also believes that the private pay appeals could be managed through a peer review process.

In response to a question from Senator Lee, Ms. S. Peterson said the North Dakota Long Term Care Association is opposed to the managing of the private pay appeals process through a peer review process.

Senator Lee suggested the committee refrain from recommending changes in the responsibility for the private pay appeals process until after the implementation of the new minimum data set 3.0 in October 2010.

Ms. LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Department of Human Services, provided information regarding the number of licensed assisted living facilities in the state, including information on the number of assisted living facilities that are a part of a nursing facility

([Appendix F](#)). She said there are 69 licensed assisted living facilities in the state of which 33 facilities are owned or operated by a nursing facility corporation.

Ms. S. Peterson provided comments regarding the responsibility for licensure of assisted living facilities ([Appendix G](#)). She said assisted living facilities support maintaining licensure with the Department of Human Services.

In response to a question from Senator Lee, Ms. S. Peterson said there is strong support for maintaining separate definitions for assisted living and basic care.

In response to a question from Senator Bakke, Ms. S. Peterson said assisted living facility complaints are referred to the long-term care ombudsman representative in the area.

Chairman Kreidt said the committee will continue discussion of the responsibility for licensure of assisted living facilities at the committee's next meeting.

Mr. Paul Bakkum, President, Golden Manor, Inc., provided information regarding the status of the facility remodeling project provided for in 2009 House Bill No. 1327 ([Appendix H](#)). He said initial cost estimates to renovate the facility for 10 assisted living and 10 basic care residents were in excess of Golden Manor's resources. He said the current plan is to renovate one wing into five assisted living units and complete limited improvements to the rooms in the other two wings which will be the locations for the basic care rooms. He said Golden Manor has hired Ms. Muriel Peterson as a consultant to assist with the project.

Ms. M. Peterson, consultant, provided information regarding the status of the assisted living facility rent subsidy pilot project provided for in 2009 House Bill No. 1327 ([Appendix I](#)). She said the Department of Human Services by contract with Golden Manor has determined the specifics regarding the assisted living facility rent subsidy pilot project. She said the pilot project may not be possible because of the contract requirements.

## **STUDY OF THE IMPACT OF INDIVIDUALS WITH TRAUMATIC BRAIN INJURY**

Ms. Susan Wagner, Human Service Program Administrator, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided information regarding services available to children with TBI ([Appendix J](#)). She said the department does not provide specific TBI services to children. She said children may access services from other department programs or the private sector.

Mr. Johnson provided information regarding services provided to individuals with TBI at the Veterans' Home ([Appendix K](#)). At the present time, he said, the Veterans' Home is caring for three individuals with TBI in the skilled nursing unit and four individuals in the basic care unit. He said the Veterans' Home transports the veterans to the federal

Department of Veterans' Affairs Medical Center in Fargo for TBI services.

Ms. Rebecca Quinn, TBI Program Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, Grand Forks, provided comments regarding the committee's study of the impact of individuals with TBI on the state's human services system ([Appendix L](#)) and distributed a letter from a parent of a child with TBI ([Appendix M](#)). She said brain injuries are often misunderstood by society and do not fit well into any one particular system. She said care and treatment often involves the need to access multiple public and private systems, as well as overlapping use of both the medical community and the human services field.

Ms. Quinn said schools are the single largest provider of services to children with brain injuries. She said it is estimated that of the more than 500,000 children impacted by TBI each year only 2 percent will be referred for special education services. In 2002 in North Dakota, she said, only 35 students were receiving services through the Department of Public Instruction for TBI.

Mr. Bruce Murry, Head Injury Association of North Dakota, provided comments regarding the committee's study of the impact of individuals with TBI on the state's human services system ([Appendix N](#)). He said Mr. Richard Ott has been hired as the executive director of the Head Injury Association of North Dakota.

Ms. Elaine Grasl, Bismarck, provided comments regarding the committee's study of the impact of individuals with TBI on the state's human services system ([Appendix O](#)). She said the state should increase public awareness regarding services available for individuals with TBI and should provide appropriate funding for those services.

The committee recessed for lunch at 12:03 p.m. and reconvened at 12:45 p.m.

## STUDY OF THE REGISTRATION OF HEALTH CARE PROFESSIONALS

Dr. Darleen Bartz, Section Chief, Health Resources Section, State Department of Health, provided information regarding activities of the department's long-term care professionals workgroup, including information on the workgroup's discussions and recommendations ([Appendix P](#)). She said the department has established a long-term care professionals workgroup consisting of members representing the State Department of Health, the State Board of Nursing, the North Dakota Healthcare Association, the North Dakota Long Term Care Association, the Department of Human Services, developmental disabilities, and home health care. She said the workgroup recommends the following:

- Transfer regulation and registry of nurse aides, home health aides, and medication assistants I and II from the State Board of Nursing to the State Department of Health.

- Do not charge registration fees to individuals in the State Department of Health registry to be consistent with the certified nurse assistants registry.
- Provide funding for the cost of regulation and registration of the nurse aides, home health aides, and medication assistants in the State Department of Health's registry from the general fund since federal funds may not be used for this.

Dr. Bartz said the workgroup recommends the following corresponding statutory changes:

- Transfer the regulation and registry of the nurse aides, home health aides, and medication assistants from the State Board of Nursing to the State Department of Health. The categories of medication assistants I and II would be defined in regulation.
- Provide the State Department of Health with rulemaking authority to implement the necessary changes.
- Allow nurses to continue to provide oversight and delegate to individuals on the State Department of Health registry.
- Require that fees not be charged for registration or renewal consistent with the federal prohibition of charging fees for registration and renewal of certified nurse assistants.

Dr. Bartz said the workgroup obtained the following two proposals from the Information Technology Department relating to the cost and timeframe for updating the State Department of Health's registry to accommodate the proposed changes:

- Proposal 1 - Migrate unlicensed assistive persons registry data to the State Department of Health's Access/SQL database. This proposal would take two months and cost \$11,501 plus an additional cost of \$35,613 for registry online access changes and data migration for a total cost of \$47,114. This option would have an ongoing server application monthly cost of \$125.
- Proposal 2 - Develop a web-based application, including registry data rewrite and data migration. This proposal would take approximately four months and would cost \$58,647 plus an additional cost of \$335,613 for registry online access changes and data migration for a total cost of \$94,260. This option would have a monthly ongoing cost of \$665 per month.

Dr. Bartz said the workgroup recommends Proposal 1 from the Information Technology Department for the immediate future to migrate the proposed categories from the State Board of Nursing in the most expedient and cost-effective manner. She said the second proposal is highly recommended by the Information Technology Department and most likely is an option that would need to be pursued in the future as technology continues to evolve.

Dr. Bartz presented the following biennial budget relating to the proposed changes:

Salaries and wages (1.5 full-time equivalent positions)		
Salaries	\$128,668	
Benefits	52,896	
Total - Salaries and wages		\$181,564
Operating expenses		
Travel	\$9,600	
Information technology software and supplies	4,000	
Supplies	4,000	
Postage	800	
Telephone/communications	5,000	
Training	2,000	
Legal	4,000	
Information technology equipment under \$5,000	1,500	
Total - Operating expenses		\$30,900
Total		\$212,464
Additional startup expenses		
Rulemaking	\$5,000	
Information technology changes - Proposal 1	47,114	
Total - Additional startup expenses		\$52,114
Total budget		\$264,578

Dr. Bartz said the workgroup recognized and discussed the fact that criminal history checks currently are not required by the federal government for the certified nurse assistants registry and therefore not required prior to placement on the State Department of Health's registry. She said the workgroup decided not to include criminal history checks at this time to provide consistency. She said additional statutory changes, staffing, and funding would be necessary if this is added to the review completed by the department.

In response to a question from Senator Bakke, Dr. Bartz said the workgroup recommended Proposal 1 from the Information Technology Department because the workgroup believed the first proposal is the most cost-effective. She said federal funds may be available in the future to pay for a portion of the cost for the development for a web-based application as provided for in Proposal 2.

In response to a question from Senator Fiebiger, Dr. Bartz said transferring the regulation and registry of nurse aides, home health aides, and medication assistants I and II will result in efficiencies for the private sector.

Ms. S. Peterson provided comments regarding the committee's study of the registration of health care professionals. She said the North Dakota Long Term Care Association supports the workgroup's recommendations.

In response to a question from Senator Bakke, Ms. S. Peterson said nursing facilities do not complete federal criminal history record checks but do complete comprehensive background checks on potential new employees.

Mr. Buzz Benson, board member, State Board of Nursing, provided comments regarding the

committee's study of the registration of health care professionals ([Appendix Q](#)). He said board members and staff have worked with the workgroup to complete the provisions of the study. He said the board commends the State Department of Health on its diligence and persistence in completing the charge of the workgroup.

In response to a question from Senator Heckaman, Mr. Benson said the State Board of Nursing is meeting on May 20, 2010, to review the potential effect of the workgroup's recommendations on the board's staffing levels and budget.

In response to a question from Senator Lee, Dr. Bartz said if the workgroup's recommendations are implemented, entry level personnel would be on the State Department of Health's registry and more advanced personnel would be on the State Board of Nursing's registry. She said the workgroup has estimated that approximately 60 to 70 individuals may have to register on both registries.

Senator Dever suggested the Legislative Council staff prepare a bill draft to incorporate the statutory changes recommended by the State Department of Health's workgroup.

Senator Lee suggested the bill draft provide the State Department of Health with rulemaking authority to compile information regarding the reason for dismissal of long-term care professionals.

Chairman Kreidt requested the Legislative Council staff prepare a bill draft to incorporate the statutory changes recommended by the workgroup and other committee concerns.

**OTHER RESPONSIBILITIES**

Ms. JoAnne Hoesel, Cabinet Lead for Program and Policy, Department of Human Services, provided information regarding the developmental disabilities ratesetting process, including information regarding the number of developmental disabilities providers exceeding allowable cost limits ([Appendix R](#)). She said North Dakota's current reimbursement process for the developmental disabilities program is a mix of a cost-based retrospective ratesetting system with additional compensation provided for individuals who are medically fragile or behaviorally challenging. She said the following is a summary of the ratesetting and reimbursement process:

1. Submission of a provider budget - Each developmental disabilities provider submits an annual budget based on allowable, reasonable, and client-rated costs to the department's Developmental Disabilities Division and an interim rate is established.
2. Establishment of a provider budget limitation - Provider budget limitations are used to implement available appropriations and apply appropriation increases or decreases. Payments are made in the current year based on this interim rate.
3. Application of targeted appropriations - After the budget limitation and interim rate is set,

targeted appropriations tied to six specific categories of adults and children who are medically fragile or behaviorally challenging are applied. These targeted appropriations are based on two assessment tools. Payments for these targeted groups are totaled by provider, and each provider is paid their allotment on a quarterly basis.

4. Submission of cost reports - At the end of the provider's fiscal year, a cost report is submitted to the department's Developmental Disabilities Division. Providers are allowed three months with a potential of a one-month extension to submit their cost reports.
5. Audits and cost settlement - The department conducts an annual compliance audit of reported costs for each provider, and the audited, allowable costs are compared to the reimbursements received through the interim rate. Final payments are cost-settled after completion of an audit. Actual revenue received by a provider is limited to the lesser of the budget limitation or cost, whichever is less. The audit and cost settlement is a lengthy process. Some audits and cost settlements are completed approximately 20 months after the end of the fiscal year.

In response to a question from Senator Lee, Ms. Hoesel said 2009 Senate Bill No. 2423 provides that with respect to private providers for individuals with developmental disabilities, the Department of Human Services is to conduct a review of the audit and reimbursement process and a review and reconsideration of the 95 percent occupancy rule. She said the department is to provide a report to the 2011 Legislative Assembly which includes recommendations or proposed legislation relating to audits and reimbursements of private providers for individuals with developmental disabilities.

Senator Lee suggested the Department of Human Services provide information regarding its review of

the audit and reimbursement process at the committee's next meeting. Chairman Kreidt said the department will be asked to provide this information to the committee at its next meeting.

In response to a question from Senator Heckaman, Ms. Hoesel said nonallowable costs are identified in North Dakota Administrative Code Section 75-04-05-13. She said nonallowable costs include concession and vending machine costs; donations or memberships in sports, health, fraternal, or social clubs or organizations; entertainment costs; and meals and food service in day service programs.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Chairman Kreidt asked the Legislative Council staff to prepare a bill draft for the committee's consideration regarding the extension of the nursing care and basic care bed moratorium.

Chairman Kreidt announced the next committee meeting may be held on Wednesday, July 14, 2010.

**It was moved by Representative Wieland, seconded by Senator Dever, and carried on a voice vote that the Long-Term Care Committee meeting be adjourned subject to the call of the chair.**

Chairman Kreidt adjourned the meeting at 1:54 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:18