

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### LONG-TERM CARE COMMITTEE

Tuesday, September 28, 2010  
Roughrider 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, Alon C. Wieland; Senators JoNell A. Bakke, Dick Dever, Tom Fiebiger, Joan Heckaman, Terryl L. Jacobs, Judy Lee, Jim Pomeroy

**Member absent:** Representative Robin Weisz

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

**It was moved by Representative Wieland, seconded by Representative Uglem, and carried on a voice vote that the minutes of the July 14, 2010, meeting be approved as distributed.**

#### OTHER RESPONSIBILITIES

Ms. JoAnne Hoesel, Cabinet Lead for Program and Policy, Department of Human Services, provided testimony ([Appendix B](#)) and distributed a copy of the final report ([Appendix C](#)) from the study of the methodology and calculations for the ratesetting structure for developmental disabilities and home and community-based service providers pursuant to 2009 House Bill No. 1556. She said the department contracted with Burns and Associates, Inc., to complete the study directed by House Bill No. 1556. She said Burns and Associates, Inc., has offered four options for consideration by the state--two options for adults and two options for children. She said one of the options for children and one of the options for adults retain the current cost-based, retrospective reimbursement system. She said the others involve the development of a prospective reimbursement process. The following is a summary of the four options:

Adults	Option A - Revise and shorten the progress assessment review and continue the cost-based, retrospective reimbursement process
	Option B - Adopt a new assessment tool and move to a prospective reimbursement process. The supports intensity scale is recommended.
Children	Option C - Pilot the child supports intensity scale and move to a prospective reimbursement process
	Option D - Continue the Oregon medical tool and add the child and adolescent level of care utilization system or other similar tools and continue the cost-based, retrospective reimbursement process

Ms. Hoesel said the department agrees with the recommendation to move to a prospective reimbursement process using an independent ratesetting model and a resource allocation for the entire developmental disability client base. She said the department recommends hiring a consultant to guide the ratesetting and assessment implementation process and to begin implementation with a pilot project.

Dr. Gretchen Engquist, CEO, Burns and Associates, Inc., Phoenix, Arizona, provided information regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for developmental disabilities and home and community-based service providers. She said replacing the progress assessment review with the supports intensity scale would be more costly initially both in terms of time and dollars as it requires new assessments to be performed on all clients and the results of those assessments to subsequently be used to develop a resource allocation model and prospective rates.

In response to a question from Representative Holman, Dr. Engquist said most providers support the development of a prospective reimbursement process.

In response to a question from Representative Pollert, Dr. Engquist said the estimated costs for the prospective reimbursement process are less in later years because audits are conducted once every five years instead of every year.

In response to a question from Representative Kreidt, Dr. Engquist said adults would need to be reassessed every three years and children reassessed every year under the prospective reimbursement process. She said procedures would need to be in place for emergency reassessments.

In response to a question from Senator Lee, Dr. Engquist said continuation of the 95 percent occupancy rule would be a policy decision.

Mr. Eric Monson, CEO, Anne Carlsen Center, Jamestown, provided comments ([Appendix D](#)) regarding the outcomes and recommendations from the study of the ratesetting structure for developmental disabilities and home and community-based service providers. He said a different assessment method should be implemented to determine the resources needed to adequately support an individual. He said a prospective

reimbursement process would be the most effective and efficient method for both the state and providers.

In response to a question from Senator Lee, Mr. Monson said the Anne Carlsen Center would support a pilot project.

Ms. Borgi Beeler, President and CEO, Minot Vocational Adjustment Workshop, Minot, provided comments ([Appendix E](#)) regarding the outcomes and recommendations from the study of the ratesetting structure for developmental disabilities and home and community-based service providers. She said the state needs to ensure that sufficient funding is available to provide quality services. If the reimbursement process is changed, she said, the incentives that affect providers' decisionmaking may also change. She said a new reimbursement system may require different safeguards.

In response to a question from Representative Kreidt, Ms. Beeler said the state should proceed cautiously as it considers implementation of a new reimbursement system.

In response to a question from Representative Pollert, Ms. Hoesel said the department believes additional staff would be needed if a prospective reimbursement process is to be implemented.

Ms. Hoesel provided information ([Appendix F](#)) regarding the review of the audit and reimbursement process and the review and reconsideration of the 95 percent occupancy rule directed by 2009 Senate Bill No. 2423. She said the department established a workgroup comprised of members from developmental disabilities providers, the department, and the North Dakota Association of Community Providers. She said the workgroup issued a request for information to gain an understanding of the available services that could address the timing of the audits and the costs associated with an independent audit firm completing the audits of the cost reports rather than provider audit. The following is a summary of cost information received through the request for information:

	Biennial Cost
Department of Human Services - Provider audit (1.5 full-time equivalent positions)	\$171,447
Public Consulting Group	\$298,020
Clifton Gunderson LLP	\$320,000
Myers and Stauffer, LC	\$471,600

Ms. Hoesel said the workgroup also reviewed the 95 percent occupancy rule, including potential changes relating to calculating the 95 percent rule. She said the department believes the only method that would allow the elimination of the 95 percent occupancy limitation would be to no longer use the retrospective reimbursement process.

In response to a question from Representative Kreidt, Ms. Hoesel said the 95 percent occupancy rule is a concern for a small number of providers.

**It was moved by Senator Heckaman, seconded by Representative Potter, and carried on a roll call**

**vote that the Legislative Council staff be requested to prepare a bill draft to require the Department of Human Services to implement a prospective reimbursement pilot project for developmental disabilities and home and community-based service providers during the 2011-13 biennium and that the bill draft be approved and recommended to the Legislative Management.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Potter, Uglen, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." No negative votes were cast.

**It was moved by Senator Lee, seconded by Senator Heckaman, and carried on a roll call vote that the committee recommend the Department of Human Services maintain the 95 percent occupancy rule while proceeding with the prospective reimbursement pilot project for developmental disabilities and home and community-based service providers.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Potter, Uglen, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." No negative votes were cast.

Mr. Brad Gibbens, Associate Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, Grand Forks, provided information ([Appendix G](#)) regarding the outcomes of the dementia care services program. He said implementation of the dementia care services program began in January 2010. He said preliminary outcomes include:

- The number of citizens completing intake into the program continues to grow each month.
- Services are being provided in all eight Department of Human Services regional service areas.
- Fifty-six percent of those living with Alzheimer's disease remain in their own home.
- Families caring for the family member in their own home are those needing the greatest assistance.

In response to a question from Senator Dever, Ms. Brenda Weisz, Chief Financial Officer, Department of Human Services, said the department will be requesting funding of \$1.2 million from the general fund for the dementia care services program in its 2011-13 biennium base budget request. She said this is the same level of funding as provided for the 2009-11 biennium.

**STUDY OF LONG-TERM CARE SERVICES**

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix H](#)) regarding long-term care expenditures for the 2009-11 biennium. She said actual long-term care expenditures for the 2009-11 biennium through June 30, 2010, total \$208,610,640.

She said long-term care expenditures for the 2009-11 biennium are projected to total \$487 million, an increase of approximately \$84 million from actual long-term care expenditures for the 2007-09 biennium of \$403 million.

Ms. Weisz provided information ([Appendix I](#)) regarding the estimated costs to continue programs in the 2011-13 biennium. The following is a summary of the estimated costs to continue:

Funding to replace federal fiscal stimulus funding relating to the enhanced federal medical assistance (FMAP) (\$66.5 million) and child support incentive matching funds (\$2.76 million)	\$69,260,000
Increased costs for grants resulting from an anticipated reduction in the FMAP	\$82,000,000 to \$83,000,000
Funding to replace health care trust fund money used for nursing facilities payments during the 2009-11 biennium	\$4,100,000
Funding to continue the 6 percent inflation provided to providers on July 1, 2010, for a full 24 months and to maintain the ending caseloads for the 2009-11 biennium for a full 24 months	\$31,000,000 to \$32,000,000

In response to a question from Representative Kreidt, Ms. Weisz said providers have requested a 3 percent per year inflation adjustment for the 2011-13 biennium.

Ms. LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Medical Services Division, Department of Human Services, provided information ([Appendix J](#)) regarding the status of the implementation of the new minimum data set for nursing facilities. She said the Centers for Medicare and Medicaid Services has mandated the minimum data set 3.0 replace the version 2.0 effective October 1, 2010. She said the department will begin using the minimum data set 3.0 as mandated.

Ms. Karen Tescher, Assistant Director, Long-Term Care Continuum, Medical Services Division, Department of Human Services, provided information ([Appendix K](#)) regarding the status of the assisted living facility rent subsidy pilot project provided for in 2009 House Bill No. 1327. She said the board of directors for Golden Manor, Inc., is in the process of converting a 50-bed skilled care facility to a 17-bed basic care facility and 5 assisted living units. Because of the board's emphasis on the basic care facility, she said, no rent subsidy payments have yet been made.

Mr. Paul Bakkum, President, Golden Manor, Inc., provided information ([Appendix L](#)) regarding the status of the facility remodeling project and the assisted living facility rent subsidy pilot project provided for in 2009 House Bill No. 1327. He said Golden Manor, Inc., has made progress toward the opening of Golden Manor, Inc., as a basic care and

assisted living facility. He said the renovation bid process has been completed, and the assisted living renovation will begin upon approval of the architectural plans by the State Department of Health. He said the basic care portion of the facility is scheduled to open in the fourth quarter of 2010, and the assisted living units are estimated to take six months to complete after receiving approval from the State Department of Health.

In response to a question from Senator Heckaman, Ms. Muriel Peterson, consultant, Golden Manor, Inc., said Golden Manor, Inc., may need an extension for the assisted living facility rent subsidy pilot project beyond the 2009-11 biennium.

The committee recessed for lunch at 12:00 noon and reconvened at 12:45 p.m.

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

Mr. Richard D. Ott, Executive Director, Head Injury Association of North Dakota, provided comments ([Appendix M](#)) regarding the committee's study of the impact of individuals with traumatic brain injury (TBI). He said the following are five goals which the association is working toward:

1. Awareness - Make the general public aware of head injuries and the resulting impact upon individual and family lives.
2. Information - Accumulate and disseminate information to the public.
3. Training - Recruit and train volunteers for assisting those suffering head injuries.
4. Support - Provide human contact and support for those suffering head injuries.
5. Prevention - Exercise the appropriate behavior, precaution, protection, and prevention.

Ms. Susan Wagner, Human Service Program Administrator, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided information ([Appendix N](#)) regarding the status of the implementation of 2009 Senate Bill No. 2198 relating to TBI services. She said the bill provides a \$330,000 general fund appropriation to the department for providing services to individuals with TBI. She provided the following summary regarding the implementation of Senate Bill No. 2198:

- The department entered a contract with the Head Injury Association of North Dakota for referral services, public awareness and education, peer mentoring services, and informal support services. The association has established a toll-free telephone number and website and is in the process of opening an office. To date, the association has had 64 consults or contacts with individuals and has assisted individuals with providing necessary information about services and resources, transportation, financial assistance, and other matters.



- The department's Division of Vocational Rehabilitation is providing extended employment support services to individuals who have sustained a TBI. For the period October 1, 2009, through September 27, 2010, the division has served 206 individuals with a primary or secondary disability of TBI. Of those 206 individuals, 17 have been employed.
- The department entered a contract with Community Options for Residential and Employment Services, Inc., to provide prevocational skills training and mentoring services to individuals who have sustained a TBI. The goal is to assess the individual needs related to employment, develop an individual plan, and prepare individuals to work with the Division of Vocational Rehabilitation.
- The department entered a contract with HIT, Inc., to provide social and recreational services to individuals who have sustained a TBI.
- Funds designated for quality assurance and training have been used to assist the Indigenous People's Brain Injury Association with its annual conference, participate in a statewide effort to distribute a book for children on TBI to all elementary schools and libraries, and to assist individuals providing mentoring services to attend a national conference on TBI.
- The department has held three joint meetings with representatives of the Adjutant General, Department of Veterans' Affairs, Superintendent of Public Instruction, and the State Department of Health to discuss ways to efficiently coordinate services to individuals with TBI while avoiding duplication.

In response to a question from Representative Wieland, Ms. Wagner said the department is implementing a TBI screening tool at the regional human service centers.

Ms. Lisa Anderson, Leeds, provided comments ([Appendix O](#)) regarding the committee's study of the impact of individuals with TBI. In 2007, she said, her daughter was in a car accident and sustained a TBI. She said although her daughter required substantial care, she was unable to receive services from the regional human service center because her intelligence test scores were too high.

Ms. Cheryl Hanson provided comments regarding the committee's study of the impact of individuals with TBI. She said she was in a car accident and sustained a TBI. She suggested the state establish a program specifically for individuals with TBI.

## STUDY OF THE REGISTRATION OF LONG-TERM CARE PROFESSIONALS

The Legislative Council staff presented a bill draft [\[10094.0200\]](#) incorporating the statutory changes recommended by the State Department of Health's long-term care professionals workgroup. The bill draft creates a new chapter to North Dakota Century Code

Title 23 relating to a nurse aide registry and amends sections of Chapter 43-12.1 relating to individuals exempt from regulation by the State Board of Nursing and delegation of medication administration.

Dr. Darleen Bartz, Section Chief, Health Resources Section, State Department of Health, provided comments ([Appendix P](#)) regarding the proposed bill draft. She said the department's long-term care professionals workgroup met on August 30, 2010, and reviewed the proposed bill draft and recommended changes to the bill draft. She said consensus was reached on all but a couple of recommended changes. She said the workgroup agreed to support the decision of the majority on the remaining changes.

In response to a question from Senator Lee, Dr. Bartz said individuals who administer medications in group homes, residential child care facilities, and adult foster care facilities are exempt from the provisions of the Nurse Practices Act.

In response to a question from Representative Wieland, Dr. Bartz said the estimated cost of implementing the proposed bill draft is \$264,578 from the general fund for the 2009-11 biennium.

In response to a question from Representative Wieland, Dr. Bartz said the proposed bill draft would result in approximately 4,000 new registrations per year, resulting in the need for 1.5 new full-time equivalent positions.

Mr. Buzz Benson, board member, State Board of Nursing, provided comments regarding the proposed bill draft. He said the State Board of Nursing supports the proposed bill draft.

In response to a question from Senator Lee, Mr. Benson said there are a few states besides North Dakota that have multiple registries for long-term care professionals.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, provided comments regarding the proposed bill draft. She said the association supports the workgroup's recommendations and the proposed bill draft.

**It was moved by Senator Lee, seconded by Representative Kingsbury, and carried on a roll call vote that the bill draft relating to the registration of long-term care professionals be approved and recommended to the Legislative Management.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Potter, Uglem, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." No negative votes were cast.

## OTHER RESPONSIBILITIES

Chairman Kreidt thanked the committee members and the Legislative Council staff for their work during the interim.

**It was moved by Representative Pollert, seconded by Representative Wieland, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare**

**a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Potter, Uglem, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." No negative votes were cast.

**It was moved by Representative Potter, seconded by Representative Holman, and carried on a voice vote that the committee be adjourned sine die.**

The meeting adjourned sine die at 2:17 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:16