

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HUMAN SERVICES COMMITTEE

Tuesday, April 17, 2012
Harvest Room, State Capitol
Bismarck, North Dakota

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

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

Members absent: Representatives Kathy Hogan, Chet Pollert; Senator Joe Miller

Others present: See [Appendix A](#)

It was moved by Senator Dever, seconded by Representative Hofstad, and carried on a voice vote that the minutes of the January 17, 2012, meeting be approved as distributed.

STUDY OF GUARDIANSHIP SERVICES

Mr. Winsor C. Schmidt, faculty member, University of Louisville School of Medicine, provided a preliminary final report ([Appendix B](#)) for the study of guardianship services. He said North Dakota Century Code Chapters 30.1-26 and 30.1-28 govern guardianship services, and Chapter 11-21 governs public administrator services. He said Section 30.1-28-11(1) provides that a guardian may be any competent person or a designated person from a suitable institution, agency, or nonprofit group home. He said a guardian is court-appointed after a hearing for an incapacitated person, which is defined as any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety. He said a public administrator is an individual, corporation, or limited liability company appointed by the presiding judge as ex officio guardian and conservator for the county.

Mr. Schmidt provided the following summary of the report's findings and recommendations by major study area:

The need for guardianship services in the state - Review the number of guardians appointed by the courts and identify the unmet need for guardianship services in the state.

Observations and Findings

- There were 2,038 guardianship and conservatorship cases in North Dakota in 2010. There were 323 new filings in 2010 and an average of 311 new appointments per year from 2008-10.
- Based on published national research on the extent of need for guardianship services, North Dakota's projected total population-based need for guardianship services is 751 individuals. The Department of Human Services has entered a contract with Catholic Charities North Dakota to serve 414 individuals in the 2011-13 biennium, and the department's Aging Services Division also has been provided funding to assist with the establishment of 32 guardianships for the 2011-13 biennium. Considering this, the total population-based unmet need for guardianship services in North Dakota is 305 individuals.
- The Council on Accreditation has developed adult guardianship accreditation standards. One of the standards provides that guardianship caseload sizes should support regular contact with individuals and the achievement of desired outcomes. Studies of guardianship programs recommend a 1-to-20 ratio to eliminate situations where there is little to no service being provided.
- One of North Dakota's principal corporate guardianship programs reports a guardianship staff-to-client ratio of 1 to 36-39.
- One of the several public administrators serving as guardian reports a part-time guardian caseload ranging from 22 to 29 with wards housed 210 miles apart.
- The *North Dakota Guardianship: Standards of Practice for Adults* publication provides that a guardian is to limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.

- The National Academy of Elder Law Attorneys, the National Guardianship Association, and the National College of Probate Judges convened a Wingspan Implementation Session in 2004 to identify implementation steps relating to guardian certification. Steps include enacting a statutory framework to require education and certification of guardians and establishing a statewide registration of guardians.
- Some of the North Dakota guardianship stakeholders expressed concerns relating to oversight and monitoring of guardians and guardian annual reports and lack of requirements, such as criminal background and credit checks.

Recommendations

- North Dakota should enact a statutory framework to require education and certification of guardians as well as continuing education with the appointment process to ensure that all guardians meet core competencies.
- North Dakota should adopt minimum standards of practice for guardians using the National Guardianship Association Standards of Practice as a model.

The establishment of guardianships - Review the services available for assistance with the establishment of guardianships and the process for the establishment of guardianships and recommend proposed changes.

Observations and Findings

- Chapter 30.1-28 provides the judicial process for the establishment of guardianships. Any interested person may petition for the appointment of a guardian for an allegedly incapacitated person. No filing fee may be required for a petition by a member of the individual treatment plan team or by any state employee. The court is to set a hearing date, appoint an attorney to act as guardian ad litem, appoint a physician or clinical psychologist to examine the proposed ward, and appoint a visitor to interview the proposed guardian and proposed ward. If the attorney appointed as guardian ad litem or other attorney is retained by the proposed ward to act as an advocate, the court may determine whether the guardian ad litem should be discharged. The proposed ward must be present at the hearing in person unless good cause is shown for the absence. If the court approves a visitor, lawyer, physician, guardian, or temporary guardian, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being. The court may appoint a guardian only after finding in the hearing record based on clear and convincing evidence that:

The proposed ward is an incapacitated person.

There is no available alternate resource plan which could be used instead of guardianship.

The guardianship is the best means of providing care, supervision, or habilitation.

The powers and duties given the guardian are the least restrictive form of intervention consistent with the ability of the ward for self-care.

- Section 30.1-28-10 authorizes the court to exercise the power of a guardian pending notice and hearing or, with or without notice, appoint a temporary guardian for a specified period of time, not to exceed 90 days, if:

An alleged incapacitated person has no guardian and an emergency exists; or

An appointed guardian is not effectively performing the guardian's duties, and the court finds that the welfare of the ward requires immediate action.

- Some of the North Dakota guardianship stakeholders expressed concerns with the judicial process for the establishment of guardianships, including filing fees not waivable for indigents, limited legal assistance from state's attorneys or assistant attorneys general for petitioners in indigent cases, no right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel, some proposed wards reportedly not present at hearings, and appointment of emergency guardians for up to 90 days without notice and a hearing.

Recommendations

None

Petitioning and other costs - Identify petitioning and other costs associated with providing guardianship and public administrator services and financial assistance available.

Observations and Findings

Petitioning and Other Costs Associated With Guardianship Services	
North Dakota - Department of Human Services Aging Services Division	Average petitioning cost was \$1,474 for the 2009-11 biennium. Funds available to provide a \$500 annual payment to 16 guardians in the first year of the 2011-13 biennium and 32 guardians in the second year of the biennium.
North Dakota - Department of Human Services Developmental Disabilities Division	Funding of \$51,720 available for petitioning costs for the 2011-13 biennium. Funding available for a daily rate for corporate guardian services of \$6.52 per ward in the first year of the 2011-13 biennium (\$2,380 per client annually) and \$6.71 per ward in the second year of the biennium (\$2,449 per client annually).
Florida	Annual public guardian cost per client was \$2,857 in 1983 and \$2,648 in 2007.
Virginia	Annual public guardian cost per client was \$2,662 in 1997 and \$2,955 in 2002.
Washington	Average annual cost per public guardian for the period 2008-11 was \$3,163.

- Another area of review related to costs is the extent to which guardianship is cost-effective as well as the extent to which not having sufficient guardianship services costs more than providing sufficient guardianship services. Catholic Charities North Dakota reports residential placement moves from a more restrictive and expensive setting to a less restrictive setting for 22 guardianship clients in 2011, including 7 clients moving from the State Hospital, 2 clients moving from the Developmental Center at Westwood Park, 2 clients moving from a nursing home to an individualized supported living arrangement, and 1 client moving from a hospital to a nursing home.

Recommendations

None

The entities responsible for guardianship and public administrator costs - Identify the entities currently responsible for guardianship and public administrator costs.

Observations and Findings

- The North Dakota Legislative Assembly has provided appropriations to the Department of Human Services for providing corporate guardianship services and for petitioning costs and guardianship fee for individuals who have been diagnosed with a mental illness or traumatic brain injury or elderly individuals 60 years of age and over.
- Some counties in North Dakota have provided funding for several public administrators in the state.

Recommendations

None

The interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services - Review the duties and responsibilities of these entities and the cooperation/collaboration and interaction between and among the entities associated with guardianship and public administrator services and recommend proposed changes.

Observations and Findings

- Based on interviews with North Dakota guardianship stakeholders, the interaction between the courts, counties, state agencies, and guardianship organization regarding guardianship and public administrator services seems generally good. There is some tension with the counties regarding funding of public administrators appointed by presiding district judges.
- The following are alternative structures for state public guardianship programs:
 - Court model - This model establishes the public guardianship office as part of the court that has jurisdiction over guardianship and conservatorship.

Independent agency model - This model establishes a public guardianship office in an executive branch agency that does not provide direct services for a ward or potential wards.

Social service agency model - This model provides for placement of the public guardianship function in an agency providing direct services to wards. Several studies conclude this model is a clear conflict of interest.

County agency model - This model provides for the public guardianship function at the county level.

- North Dakota is currently a hybrid of the social service agency model and the county model.
- Guardianship stakeholders expressed concerns about lack of uniformity and statewide coverage of guardianship services.

Recommendations

None

The efficacy of statutes governing guardianship and public administrator services - Review the statutes governing guardianship and public administrator services, evaluate the effectiveness of the statutes, and recommend proposed changes.

Observations and Findings

- North Dakota has an "implicit" statutory scheme for public guardianship. Implicit schemes often name a state agency or employee as guardian of last resort when there are no willing and responsible family members or friends to serve. Explicit schemes generally provide for an office and the ability to hire staff and contract for services.
- North Dakota provides general fund appropriations to the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services and to individuals diagnosed with a mental illness, traumatic brain injury, or elderly individuals 60 years of age and over. North Dakota statutory provisions authorize judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator in specified cases. This segregation may result in vulnerable individuals with dual or multiple diagnoses and eligibilities not receiving appropriate public guardian services.
- North Dakota provides that any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. A question to the effectiveness of public guardianship is whether public and private guardianship agencies may

petition for appointment of themselves as guardian. This is a potential conflict of interest.

- The following are concerns regarding adult protective services and guardianship in North Dakota:

There is no mandatory reporting of vulnerable adult abuse and neglect.

There is perception of less review or investigation of vulnerable adult abuse and neglect in some cases.

Inconsistent adult protection services statewide and lack of state funding to provide them.

North Dakota is one of only two states without mandatory reporting of vulnerable adult abuse and neglect.

- Almost all of North Dakota's provisions for notice are comparable to the Uniform Guardianship and Adult Protective Proceedings Act. The most significant exception is the absence of provisions for informing the proposed ward or ward of rights at the hearing and of the nature, purpose, and consequences of appointment of a guardian.
- Almost all of North Dakota's provisions for hearing are comparable to the Uniform Guardianship and Adult Protective Proceedings Act.
- Some of the North Dakota guardianship stakeholders expressed concerns with no right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel.
- Thirty-six states, including North Dakota, require "clear and convincing evidence" as the standard of proof in guardianship proceedings. The Model Public Guardianship Act recommends "clear, unequivocal and convincing evidence" as the standard of proof.
- Several North Dakota guardianship stakeholders report difficulties with insufficient physician specialists for clinical evaluations in guardianship proceedings.
- Twenty-seven states, not including North Dakota, have specific guardian background requirements like a credit check or disqualify felons from serving as guardian.
- At least 44 states specify a particular agency to serve as public guardian. North Dakota authorizes any appropriate government agency to serve a guardian as eighth priority except that no institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. North Dakota also authorizes judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator without application to court or special appointment in specified cases.

- Most state statutes provide that the public guardian has the same duties and general probate powers as any other guardian. Many state statutes also list additional duties and powers for the public guardian, such as requiring the public guardianship entity to maintain professional staff, contract with local or regional providers, and provide public information about guardianship and alternatives.
- Some of the North Dakota guardianship stakeholders expressed concerns about oversight and monitoring of guardians and guardian annual reports. Unlike a number of states, North Dakota does not have statutory provision for active court review of annual reports.
- Several of the North Dakota guardianship stakeholders expressed concerns with the temporary guardian statute. Compared with the emergency guardianship statutes in other states, North Dakota lacks required petition details, notice requirements, specific language about the right to a hearing representative and post order, right to counsel at the hearing, presence of the proposed ward at the hearing, limited duration, and specific language about the standard of proof.

Recommendations

- North Dakota should adopt an explicit statutory scheme for public guardianship.
- North Dakota should provide for public guardian services for all eligible incapacitated persons similarly, and not particular public guardian services for particular diagnoses or categories.
- North Dakota should adopt a prohibition against the public guardian petitioning for appointment of itself.
- North Dakota should change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect.
- North Dakota should adopt a version of the Uniform Guardianship and Adult Protective Proceedings Act notice provisions regarding rights at the hearing and the nature, purpose, and consequences of appointment of a guardian.
- North Dakota should adopt the recommendations of the Model Public Guardianship Act regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing.
- North Dakota should adopt a right to trial by jury in guardianship proceedings.
- North Dakota should consider changing the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."
- North Dakota should consider adopting the Model Public Guardianship Act provision

regarding evaluation in guardianship. The provision provides that the alleged incapacitated person has the right to secure an independent medical or psychological examination relevant to the issues involved in the hearing at the expense of the state if the person is unable to afford such examination and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

- North Dakota should require information in the petition for appointment of a guardian and in the visitor's report about the qualifications of the proposed guardian to include the results of fingerprint, criminal history, and credit background checks before appointment of a guardian.
- North Dakota should specify one public guardian agency to serve as public guardian.
- North Dakota should make the office of public guardian independent from all service providers.
- North Dakota should list additional duties and powers for the public guardian modeled after those in the Model Public Guardianship Act.
- North Dakota should establish a system for active monitoring of guardianship annual reports, including filing and review of annual reports and plans.

North Dakota should adopt Section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardians.

Methods for the timely and effective delivery of guardianship and public administrator responsibilities and services - Determine the appropriate duties and responsibilities for entities involved in guardianship services, financial responsibilities, and the appropriate role for public administrators in providing guardianship services. Provide estimated costs for guardianship services for the 2013-15 biennium by recommended entity responsible for these costs.

Observations and findings

- North Dakota has statutory provisions for guardianship of incapacitated persons and for county public administrators. Twenty-eight of North Dakota's 53 counties do not have a public administrator. The 2010 census population of the 28 counties is 151,026, which is 22.5 percent of North Dakota's population.
- One nonprofit corporation with offices in Bismarck is reportedly the public administrator for 12 counties. These 12 counties have a 2010 census population of 147,799 (21.9 percent of the state's population) and cover an area of 16,031 square miles.
- The lack of an adequate number of public administrators in North Dakota's counties suggests that delivery of public administrator

responsibilities and services is currently untimely and ineffective.

Recommendations

- North Dakota should select one of the four models for public guardianship based on the strengths and weaknesses of each model and the particular needs of North Dakota.

In response to a question from Senator Mathern, Mr. Schmidt said he believes the court model would be the best fit for North Dakota's needs. He said there are some individuals in the state's judicial branch that are uncomfortable with that model due to the potential for conflict of interest; however, he said protections could be built into the model.

OTHER

Ms. Karen Tescher, Assistant Director of the Long-Term Care Continuum, Medical Services Division, Department of Human Services, provided information ([Appendix C](#)) regarding the department's adult foster care program. She said Section 50-11-00.1 defines an adult family foster home as an occupied private residence in which adult family foster care is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation. She said adult family foster care typically provides assistance with activities of daily living, instrumental activities of daily living, and supportive services. She said the services are identified on the monthly rate worksheet by the county home and community-based services case manager, and a rate is determined according to the number of activities that have been identified. She said the minimum daily rate for services is \$29.13, and the maximum daily rate for services is \$72.17. In addition, she said, adult family foster care providers receive up to \$525 per month for room and board. She said adult family foster care providers that care for public pay clients have access to respite care of up to \$899 per month with additional amounts available for providers with multiple public pay clients.

In response to a question from Representative Hofstad, Ms. Tescher said adult family foster care services are available under the service payments for elderly and disabled (SPED) program, expanded SPED program, and the home and community-based services waiver.

In response to a question from Senator Mathern, Ms. Tescher said adult family foster care providers cannot charge more for room and board for a public pay client than a private pay client.

STUDY OF AUTISM SPECTRUM DISORDER

Ms. JoAnne Hoesel, Director, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided an annual status report ([Appendix D](#)) relating to the autism spectrum disorder plan and any related recommendations from the

Autism Spectrum Disorder Task Force. She said Section 50-06-32 establishes an Autism Spectrum Disorder Task Force to examine early intervention services, family support services, transition programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder. She said the task force's observations and considerations are:

- Appropriate services delivery is inconsistent and dependent on the specific person and provider.
- There is no guarantee that appropriate services will be delivered.
- Numerous people and agencies are moving forward in different directions.
- There is a need for an infrastructure to unite all the programs and services.
- The current state resources and efforts are limited and disconnected.

Ms. Hoesel provided the following summary of needs identified by the task force relating to autism spectrum disorder services:

Infrastructure	Consistent early identification and screening Accessible information Accessible family support services Accountability within services provision Consensus on service delivery standards Coordinated services across the lifespan Recruitment and incentives to pursue careers with autism spectrum disorder focus Access to outreach and service delivery
Treatment	Delivery of appropriate and effective treatment practices Coordinated services across the lifespan Appropriate treatment available through outreach and service delivery
Training	Training in methods of early identification and screening for autism spectrum disorder Training in appropriate and effective practices Qualified and appropriately trained providers Family support Coordinated services across the lifespan Outreach and service delivery Continuing educational offerings
Funding	Funding for training in methods for early identification and screening Funding to build access to autism spectrum disorder information Funding to ensure coordinated services across the lifespan Funding for training in screening and testing of autism spectrum disorder conditions Recruitment and incentives for more people to pursue careers with autism spectrum disorder focus Funding to increase outreach and delivery of autism spectrum disorder services Funding to increase the knowledge and skills of providers

Ms. Hoesel said the task force reviewed the infrastructure in Washington and Kansas for autism spectrum disorder services. She said both states have implemented regional hubs that operate under a state-level entity with a statewide coordinator.

In response to a question from Senator Mathern, Ms. Hoesel said North Dakota does not monitor the number of individuals with an autism spectrum disorder or families impacted by an autism spectrum disorder who are not currently served.

Chairman Wieland requested the Autism Spectrum Disorder Task Force to provide the committee with prioritized recommendations for each of the needs areas identified, including the estimated cost to implement each of the recommendations.

Ms. Hoesel provided information ([Appendix E](#)) regarding the cost of implementing autism spectrum disorder services as a core service of the Department of Human Services and the potential of implementing a sliding fee scale for payment of services. According to the Centers for Disease Control and Prevention, she said, there is no single best treatment for individuals with autism spectrum disorder. She said the following are service options for individuals with autism spectrum disorder:

- Screening.
- Diagnostic assessment.
- Functional assessment.
- Information and referrals.
- Early intervention.
- Behavioral support.
- Applied behavior analysis.
- In-home care.
- Skill training and acquisition.
- Parent training and education.
- Respite care.
- Case management.
- Service coordinator.
- Supportive housing.
- Supported employment.
- Self-directed services.

Ms. Hoesel said services can be provided in many forms and delivered using various methods and intensities. She said the department would not be able to provide a cost estimate for providing autism spectrum disorder services as a core service of the department until decisions are made and direction is provided as to the scope, intensity, and focus of the services. She said a sliding fee scale is used at the department's regional human service centers and could serve as an approach to apply to autism spectrum disorder services.

Ms. Gerry Teevens, Assistant Director of Special Education, Department of Public Instruction, provided information ([Appendix F](#)) regarding special education programs and services provided to individuals with autism spectrum disorder and the funding source for providing those services. She said the Department of Public Instruction is responsible for the general supervision of the Individuals with Disabilities

Education Act (IDEA), which is the federal law for special education. She said the Department of Human Services is responsible for the IDEA services for infants and toddlers and their families, and the Department of Public Instruction is responsible for the IDEA special education services for children and youth with disabilities aged 3 through 21.

Ms. Teevens said each year the Department of Public Instruction identifies the number of eligible students with disabilities aged 3 through 21 who are receiving special education and related services in North Dakota public schools. She said the most recent statewide count was completed on December 1, 2011, and at that time, there were 13,123 such students. Of the 13,123 students, she said, 718 students were reported as having a primary disability of autism.

Ms. Teevens said the federal Office of Special Education Programs provides IDEA Part B formula grants to states to assist them in providing a free appropriate public education in the least restrictive environment for children with disabilities aged 3 through 21. She said annually the Department of Public Instruction distributes the IDEA Part B funds to local special education units. She said these funds may be used for locally identified special education services and activities. She said special education units may also apply for discretionary grants from the department to support locally identified initiatives which may include training needs.

Ms. Mari Bell, Director of Special Education, West Fargo School District, provided information ([Appendix G](#)) regarding special education programs and services provided to individuals with autism spectrum disorder. She said the West Fargo School District currently provides special education services to over 80 students with a primary disability of autism. She said regional autism centers have the potential to provide a multidisciplinary team to assist with assessments and diagnostics and to serve as a training center with teams to work with families, educators, and care providers. She said funding for early intervention is critical for serving young children on the autism spectrum.

Mr. Jesse Krieger, Codirector of Special Education and School Psychologist, Oliver and Mercer Special Education Unit, provided information ([Appendix H](#)) regarding special education programs and services provided to individuals with autism spectrum disorder and the funding source for providing those services. He said the Oliver and Mercer Special Education Unit is currently able to meet the needs of the students with a primary disability of autism. However, he said, Oliver and Mercer Counties lack other family support services.

In response to a question from Senator Erbele, Mr. Krieger said a student's individualized education plan will detail the programs and services needed for the student, including the use of paraeducators.

Ms. Teevens distributed written testimony ([Appendix I](#)) from Ms. Mary Stammen, Special

Education Director, Griggs, Steele, and Traill Special Education Unit.

The committee recessed for lunch at 11:45 a.m. and reconvened at 12:45 p.m.

Mr. Darrin Albert, Fargo, provided comments ([Appendix J](#)) regarding the committee's study of the autism spectrum disorder. He said he is an adult with Asperger's Syndrome, and he is currently working as a job coach and peer support coordinator for individuals with disabilities. He said people with Asperger's Syndrome have a right to life, liberty, and the pursuit of happiness.

Mr. Colin Vieweg, Fargo, provided comments ([Appendix K](#)) regarding the committee's study of the autism spectrum disorder. He said he is 13 years old and has been diagnosed with Asperger's Syndrome. He said it is difficult for him to focus on one task especially if there are distractions. He said individuals with Asperger's Syndrome are different from everyone else, but at the same time they are the same. He said each person has characteristics that make that person unique.

Ms. Joanne Vieweg, Fargo, provided comments ([Appendix L](#)) regarding the committee's study of the autism spectrum disorder. She said she is Colin Vieweg's grandmother, and she is worried about Colin's future, including how he will get a job, work with other people, and take direction from his boss. She believes he will be a great contributor to society and possibly invent the next form of robotic machinery or prosthetic limb.

In response to a question from Senator Mathern, Ms. Vieweg said more teacher education and training regarding the needs of individuals with Asperger's Syndrome is needed. She expressed the need for additional services in schools for individuals diagnosed with an autism spectrum disorder.

Mr. Isaac Gregoire, West Fargo, provided comments ([Appendix M](#)) regarding the committee's study of the autism spectrum disorder. He said he was diagnosed with Asperger's Syndrome at 16 years old. He said the diagnosis has led to a dramatic change in him being more comfortable with himself and his family being more aware of his disability. He said if he had been diagnosed at an earlier age, he would have received additional assistance in school and would have benefited from a better self-esteem.

Ms. LuAnn Gregoire, West Fargo, provided comments ([Appendix N](#)) regarding the committee's study of the autism spectrum disorder. She said it is important to educate professionals, such as doctors, educators, administrators, and businesses, regarding Asperger's Syndrome.

Dr. William Dow Rieder, Fargo, provided comments ([Appendix O](#)) regarding the committee's study of the autism spectrum disorder. He said he is 47 years old and has been diagnosed with Asperger's Syndrome. He said he has worked in industry as a software engineer and consultant and as an instructor in mathematics at the University of Pittsburgh and North Dakota State University. Since his diagnosis,

he said, he has worked with a support group of parents and caregivers of children with autism spectrum disorders. He said he wants to use his strengths to contribute to society.

STUDY OF QUALIFIED SERVICE PROVIDER SYSTEM

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix P](#)) regarding the number of individuals in the state served by qualified service providers (QSPs) and cost estimates for increasing QSP rates by a \$1 per hour and providing reimbursement for mileage. She said there are currently 2,614 individuals in the state being served by 1,696 QSPs. Of the 1,696 QSPs, she said, 140 are agency QSPs and 1,556 are individual QSPs.

Ms. Anderson provided the following summary of the estimated cost of increasing QSP rates by \$1 per hour for the 2013-15 biennium:

	General Fund	Federal Funds	County Funds	Total
Developmental disabilities	\$74,828	\$75,399		\$150,227
SPED	1,843,636		\$97,034	1,940,670
Expanded SPED	94,232			94,232
Medicaid waivers	480,673	484,340		965,013
Medicaid state plan personal care services	755,133	760,894		1,516,027
Total	\$3,248,502	\$1,320,633	\$97,034	\$4,666,169

Ms. Anderson provided the following summary of the estimated cost of implementing a QSP rate differential to provide for reimbursement for mileage for any round trip over 20 miles for the 2013-15 biennium:

	General Fund	Federal Funds	County Funds	Total
Agency QSPs	\$2,704,957	\$790,447	\$90,453	\$3,585,857
Individual QSPs	844,946	246,913	28,256	1,120,115
Contract service for review and compliance	77,957	22,043		100,000
Total	\$3,627,860	\$1,059,403	\$118,709	\$4,805,972

Ms. Anderson said increases to QSP rates would require approval from the Centers for Medicare and Medicaid Services.

In response to a question from Representative Wieland, Ms. Anderson said she is not aware of any federal Medicaid regulations that would not allow for direct reimbursement for travel expenses to QSPs. She said there may be an Internal Revenue Service restriction because QSPs are considered independent contractors.

Chairman Wieland asked the Legislative Council staff to research potential federal restrictions relating

to direct reimbursement for travel expenses to QSPs and to present this information at a future committee meeting.

Mr. Bruce Murry, lobbyist, North Dakota Association for Home Care, provided comments ([Appendix Q](#)) regarding the committee's study of the QSP system. He said the average cost to a QSP to deliver one hour of service is approximately \$31, and the QSP rate for 2011 is \$5.80 per 15-minute unit or \$23 per hour of service which results in a significant loss to home health agencies providing the service. He said the North Dakota Association for Home Care suggests the committee consider recommending a QSP rate differential to provide for travel reimbursement.

Mr. Doug Wegh, County Social Service Director, Golden Valley, Billings, and Hettinger Counties, provided comments regarding the committee's study of the QSP system. He said counties will be providing revised information to the Department of Human Services regarding QSP mileage.

In response to a question from Representative Wieland, Ms. Brenda Weisz, Chief Financial Officer, Department of Human Services, said the department anticipates requesting a deficiency appropriation of \$21.2 million relating to the federal medical assistance percentage (FMAP) decreasing from the estimate of 55.56 percent to the actual percentage of 52.27 percent for federal fiscal year 2013. She said the estimated FMAP for fiscal year 2014 is 50 percent resulting in an estimated additional general fund need of \$91.5 million for the 2013-15 biennium.

OTHER COMMITTEE RESPONSIBILITIES

Mr. Erik Elkins, Assistant Director, Medical Services Division, Department of Human Services, provided an annual report ([Appendix R](#)) describing enrollment statistics and costs associated with the children's health insurance program state plan. He said Healthy Steps--North Dakota's children's health insurance plan--provides health coverage to uninsured children in qualifying families. To be eligible for the program, he said, the family's net income may not exceed 160 percent of the federal poverty level. He said 3,858 children were enrolled in the program as of February 2012. He said the appropriated monthly premium for the program for the 2011-13 biennium is \$272.67 per child. He provided the following summary regarding the status of the program's legislative appropriation for the 2011-13 biennium:

2011-13 Legislative Appropriation	2011-13 Expenditures Through February 2012	Percentage of 2011-13 Legislative Appropriation Used
\$27,524,402 ¹	\$7,369,995	26.78% ²

¹Of this amount, \$8,517,391 is from the general fund, and \$19,007,011 is from federal funds.

²Seven months or 29.17 percent of the 2011-13 biennium has expired.

In response to a question from Senator Dever, Mr. Elkins said the FMAP for the Healthy Steps program is approximately 72 percent.

**COMMITTEE DISCUSSION
AND STAFF DIRECTIVES**

Chairman Wieland said the committee's next meeting will be on Wednesday, May 30, 2012, in Bismarck.

No further business appearing, Chairman Wieland adjourned the meeting at 2:14 p.m.

Roxanne Woeste
Assistant Legislative Budget Analyst and Auditor

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:18