

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

### Minutes of the

## ADMINISTRATIVE RULES COMMITTEE

Monday and Tuesday, March 12-13, 2018

Roughrider Room, State Capitol

Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Kim Koppelman, Scott Louser, Brandy Pyle, Mary Schneider, Jay Seibel, Nathan Toman, Robin Weisz; Senators Howard C. Anderson, Jr., Kelly M. Armstrong, Joan Heckaman, Ralph Kilzer, Jerry Klein, Scott Meyer, Nicole Poolman, David S. Rust

**Others present:** John Bjornson, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Senator Klein, seconded by Representative Seibel, and carried on a voice vote that the minutes of the December 5, 2017, meeting be approved as distributed.**

### NORTH DAKOTA MEDICAL IMAGING AND RADIATION THERAPY BOARD

Chairman Devlin called on Ms. Shirley Porter, President, North Dakota Medical Imaging and Radiation Therapy Board, for testimony ([Appendix B](#)) regarding April 2018 rules adopted by the board.

In response to a question from Representative Koppelman, Ms. Porter said per diem for board members is authorized by statute. She said the board elected to use the statutory limits for expense reimbursement.

### STATE BOARD OF ACCOUNTANCY

Chairman Devlin called on Mr. Michael Schmitz, President, State Board of Accountancy, for testimony regarding April 2018 rules adopted by the board. Mr. Schmitz said the majority of the changes are clerical. He said the board's rules have not been changed since 2008. He said the rule changes require private certified public accountants to have the same number of continuing education credits as public certified public accountants. He said the other substantive change is a requirement of 6 hours of ethics over a 3-year period. He said the ethics credits are included in the 120-hour requirement. He said the rules also increase the allowable range of fees.

In response to a question from Senator Armstrong, Mr. Schmitz said all continuing education credits can be done online.

In response to a question from Representative Pyle, Mr. Schmitz said the changes will not affect local government employees who are not required to be licensed.

In response to a question from Senator Klein, Mr. Schmitz said the licensing exam is done electronically. He said applicants can take the exam by sections throughout the year. He said the board is allowed to grant extensions.

### STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Carl Ness, State Department of Health, for testimony ([Appendix C](#)) regarding April 2018 rules adopted by the department, which relate to underground storage tanks.

In response to a question from Senator Anderson, Mr. Ness said an underground tank may not be abandoned for more than 12 months. He said a grant program is available to provide funding to remove abandoned underground tanks. He said if the property that contains the abandoned underground tank becomes the property of the city, the city can submit a request for assistance to department.

In response to a question from Senator Klein, Mr. Ness said the new rules provide for additional periodic testing of certain underground storage tank system features.

Chairman Devlin called on Mr. Jason Wahl, Director, Medical Marijuana Division, State Department of Health, for testimony ([Appendix D](#)) regarding April 2018 rules adopted by the department, which relate to medical marijuana.

In response to a question from Senator Heckaman, Mr. Wahl said the cost of developing and adopting the rules, which was \$13,430, included the cost of services from the Attorney General's office.

In response to a question from Representative Koppelman, Mr. Wahl said there are federal guidelines for implementing medical marijuana. He said a document known as the "Cole Memo," which was a directive of the United States Department of Justice limiting federal interference in state cannabis programs, has been rescinded. He said the federal government is monitoring the North Dakota program very closely. He said to help reduce the risk of federal government shutting down the state's medical marijuana program, it is important to have a well-regulated program.

In response to a question from Representative Boehning, Mr. Wahl said the state and local restrictions on smoking in public places and places of employment also apply to medical marijuana. He said a health care provider specifically must authorize the use of dried leaves and flowers. He said minors may not be prescribed dried leaves and flowers. He said the legislation addressed the use of medical marijuana in long-term care and medical facilities. He said the legislation specifically prohibited medical marijuana possession or use in schools, school-sanctioned events, and school vehicles.

In response to a question from Senator Klein, Mr. Wahl said the department has requested an Attorney General opinion on the effect of the medical marijuana program on the state's corporate farming laws.

Representative Weisz said the medical marijuana legislation included language that growing medical marijuana is not an agricultural operation.

Mr. Wahl said there are several issues that will require clarification. He said the corporate farming exemption in the 2017 bill related to tax provisions.

Representative Weisz said the legislation stated medical marijuana is not farming. He said that should be sufficient to address the corporate farming issue.

In response to a question from Representative Weisz, Mr. Wahl said the rules provide for separate legal entities for recordkeeping and monitoring.

In response to a question from Senator Armstrong, Mr. Wahl said the department will review its compliance process to identify issues and concerns. He said manufacturing facilities and dispensaries not in compliance risk suspension or revocation. He said a plan for correction will be offered before suspension or revocation occurs.

In response to a question from Representative Weisz, Mr. Wahl said because of the possibility of an interaction of a drug with the medical marijuana, data will be provided to the prescription drug monitoring program.

In response to a question from Representative Schneider, Mr. Wahl said without administrative rules, the program cannot move forward. He said the rules regarding manufacturers and dispensaries are especially important. He said medical marijuana is expected to be available by the end of 2018. He said the application process will open later this week. He said manufacturers must get registered. He said an information technology vendor to adequately monitor the program has been procured. He said the process is underway to procure a laboratory for testing. He said there is a good plan in place to get the program implemented.

In response to a question from Representative Pyle, Mr. Wahl said there have been discussions with the Bureau of Criminal Investigation and State Radio to identify law enforcement concerns, including the ability of law enforcement to verify a person possessing medical marijuana is a registered person. He said the program puts an additional burden on law enforcement.

In response to a question from Senator Klein, Mr. Wahl said he expects the medical marijuana program to be within budget. He said the revenue projections are expected to be in line as well.

In response to a question from Senator Rust, Mr. Wahl said the program has done considerable research and review of programs in the other 29 states with medical marijuana laws. However, he said, no other state has exactly the same program as North Dakota. He said the laws and rules vary from state to state. He said the included medical conditions also vary from state to state. He said he continues to learn from other states, especially from those states currently going through the implementation process.

Senator Anderson thanked the State Department of Health for its work in implementing the program.

Chairman Devlin called on Mr. Dustin Peyer for comments. Mr. Peyer said because of his grandmother's medical issues, he has been personally affected by the need for medical marijuana. He said the medical marijuana program may want to consider the impact of the legalization of recreational marijuana on the medical marijuana program.

Chairman Devlin said the State Department of Health only has the authority to deal with laws that have passed.

Chairman Devlin called on Mr. Paul Aughinbaugh, Fargo, for comments. Mr. Aughinbaugh said he is a potential dispensary applicant. He said if recreational marijuana is legalized, he is concerned about what would happen to a dispensary that has paid over \$90,000 for certification.

Mr. Wahl said the department's only duty is to implement the medical marijuana program. He said the program is being implemented based upon the law passed by the Legislative Assembly in 2017. He said the department will implement the medical marijuana program as timely as possible. Regarding dispensaries located in cities, he said to ensure access to as many people as possible with as little travel as possible, an eight-region map has been created. He said the map is on the department's website. He said one dispensary in each of those eight regions is expected. He said dispensaries are permitted to offer home delivery.

In response to a question from Senator Heckaman, Mr. Wahl said local zoning officials will be provided a form to sign to confirm the dispensary facility complies with local zoning requirements.

In response to a question from Senator Klein, Mr. Wahl said the dispensary fee is set in state law. He said the law does not include a provision for a refund if the recreational marijuana measure passes.

In response to a question from Senator Heckaman, Mr. Wahl said the program's registration and application fees will be deposited in the Bank of North Dakota in the same way as any other state program.

### **NORTH DAKOTA BOARD OF MEDICINE**

Chairman Devlin called on Ms. Bonnie Storbakken, Executive Director, North Dakota Board of Medicine, for testimony ([Appendix E](#)) regarding rules relating to telemedicine carried over from the December 5, 2017, meeting.

In response to a question from Chairman Devlin, Ms. Storbakken said Teladoc was not invited to sit down with the board to discuss the face-to-face consultation requirement.

Chairman Devlin called on Dr. Brenda Miller, North Dakota Board of Medicine, for testimony ([Appendix F](#)) regarding the telemedicine rule.

In response to a question from Representative Pyle, Dr. Miller said a physician should not give advice without establishing a relationship.

Chairman Devlin called on Mr. John Ward for testimony ([Appendix G](#)) regarding the telemedicine rules. Mr. Ward said he represents Teladoc. He said interactive audio is used in every state. He said the physician has the ability to request high-resolution photos. He said interactive audio is an acceptable telemedicine tool used across the country. He said the North Dakota Board of Medicine conducted open meetings regarding the carried over telemedicine rules but did not give the public an opportunity to speak. He said telemedicine consultations are done by physicians who are licensed by the board. He said Teladoc has not experienced malpractice claims as a result of its practices. He said Arkansas is the only other state with a face-to-face consultation requirement. He said the Minnesota standard of care for telemedicine is the same as for inpatient care.

In response to a question from Representative Koppelman, Mr. Ward said if a physician who uses interactive audio is unable to diagnose a patient using that method, the physician is expected to advise the patient to make an appointment for an in-person visit with the patient's health care provider.

Chairman Devlin called on Mr. Jack McDonald for testimony regarding the telemedicine rule. Mr. McDonald distributed a letter ([Appendix H](#)) from America's Health Insurance Plans (AHIP) regarding concerns about the changes being proposed by the North Dakota Board of Medicine. He said AHIP believes the rules fail to consider the evolving nature of telemedicine technology and limit a patient's options when deciding on the best course of action to obtain health care.

Representative Koppelman said he understands the board's obligation to protect the public. He said telemedicine is defined in North Dakota Century Code (NDCC). He said the board has indicated it will not change its position on the face-to-face requirement. He said it is important to stay current with technology. He said the

board followed the committee's directive regarding the prescribing of opioids for medication-assisted treatment situations.

**It was moved by Representative Koppelman, seconded by Senator Kilzer, and carried on a roll call vote to:**

- 1. Adopt the changes to the opioid restriction as proposed by the North Dakota Board of Medicine;**
- 2. Retain the definitions contained in North Dakota Administrative Code (NDAC) Section 50-02-15-01 on page 215 of Supplement 368; and**
- 3. Void NDAC Sections 50-02-15-02 and 50-02-15-03 on the finding that, under NDCC Section 28-32-18 (1) (c)(d)(e), the rules failed to comply with express legislative intent; are in conflict with state law; and are arbitrary and capricious.**

Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Pyle, Schneider, Seibel, Toman, and Weisz and Senators Anderson, Armstrong, Heckaman, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." No negative votes were cast.

Representative Koppelman said the North Dakota Board of Medicine should start over on the telemedicine rules.

Senator Kilzer said telemedicine is needed now more than ever. He said the hands-on medicine is being done more and more by nonphysicians such as physician's assistants and nurse practitioners. He said the requirements for telemedicine are a policy decision for the Legislative Assembly. He said third-party coverage is an issue insurance companies continue to face without resolution. He said another issue is the crossing of state boundaries when providing medical consultations. He said a study of telemedicine is needed.

### **BOARD OF EXAMINERS ON AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

Chairman Devlin called on Ms. Kelli Ellenbaum, Chairperson, Board of Examiners on Audiology and Speech-Language Pathology, for testimony ([Appendix I](#)) regarding April 2018 rules adopted by the board.

Senator Poolman said she appreciated the efforts of the board to increase the number of licensees in the workforce.

In response to a question from Representative Pyle, Ms. Ellenbaum said the University of North Dakota has space for 22 students in its program. She said many of the licensees practicing in the state have degrees from Minot State University and Minnesota State University - Moorhead. She said the University of Mary is in the process of establishing a graduate program in audiology and speech-language pathology.

In response to a question from Representative Schneider, Ms. Ellenbaum said the board is prepared for the extra workload that will result from the increasing number of graduates in the state. She said there are 400 to 600 open positions in the state. She said the shortage creates heavy caseloads for licensees.

In response to a question from Representative Weisz, Ms. Ellenbaum said Blue Cross Blue Shield covers the services of speech-language pathology assistants but most third-party payers require a licensed speech-language pathologist to sign off if the work is done by licensed assistants.

In response to a question from Senator Kilzer, Ms. Ellenbaum said fully trained speech-language pathologists and assistants are in high demand.

In response to a question from Representative Boehning, Ms. Ellenbaum said increasing the number of program slots at the colleges in the state is not enough to meet the demand. She said the colleges that offer the degree are experiencing a shortage of professors to teach the required courses.

Senator Anderson said it is difficult to get the North Dakota University System to increase faculty without increased funding.

### **INDUSTRIAL COMMISSION**

Chairman Devlin called on Mr. Bruce Hicks, Assistant Director, Oil and Gas Division, Industrial Commission, for testimony ([Appendix J](#)) regarding April 2018 rules adopted by the Industrial Commission.

In response to a question from Senator Rust, Mr. Hicks said the delayed effective date of July 1, 2019, for the rules will give the industry time to make necessary software updates. He said the date also gives the Legislative Assembly the opportunity to make changes during the 2019 legislative session, if necessary.

Mr. Hicks also requested the committee repeal NDAC Chapter 43-02-09. He said the rules provide for a workover certification to the Tax Commissioner. He said as a result of 2017 legislation that eliminated the extraction tax reduction for a workover well and the need for a workover certification, the chapter is obsolete.

**It was moved by Senator Armstrong, seconded by Representative Koppelman, and carried on a roll call vote that NDAC Chapter 43-02-09 be repealed.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Pyle, Schneider, Seibel, Toman, and Weisz and Senators Anderson, Armstrong, Heckaman, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." No negative votes were cast.

### **BOARD OF MASSAGE THERAPY**

Chairman Devlin called on Ms. Lynnette Fox, President, Board of Massage Therapy, for testimony ([Appendix K](#)) regarding April 2018 rules adopted by the board.

In response to a question from Senator Boehning, Ms. Fox said board members conduct the inspections required by the rules. She said the board plans to hire an inspector. She said county and state health departments do not conduct inspections.

### **EDUCATION STANDARDS AND PRACTICES BOARD**

Chairman Devlin called on Ms. Rebecca Pitkin, Executive Director, Education Standards and Practices Board, for testimony ([Appendix L](#)) regarding April 2018 rules adopted by the board.

In response to a question from Representative Schneider, Ms. Pitkin said the change in terminology from "highly qualified" to "qualified" is not a lessening of standards. She said this change was made to adopt the language of the federal Every Student Succeeds Act. She said other states have made this change as well.

In response to a question from Senator Rust, Ms. Pitkin said the rules remove the requirement that a substitute teacher must have a letter of authorization from a school administrator.

In response to a question from Representative Pyle, Ms. Pitkin said the fee for licensing out-of-state applicants is higher because the transcript review is more complex.

In response to a question from Representative Koppelman, Ms. Pitkin said the rules changes make reciprocity less cumbersome. She said North Dakota's reciprocity policy is more flexible than many states. She said the reference to the Praxis test, which is the name of the vendor, was changed to "state approved test." She said the board approves the test with the input of teachers, superintendents, and other educators. She said the changes give the board the flexibility to change vendors, if necessary.

Senator Heckaman said this board has made good workforce changes and is willing to allow more decisionmaking at the local level.

### **NORTH DAKOTA RACING COMMISSION**

Chairman Devlin called on Mr. Gunner laCour, Director, North Dakota Racing Commission, for testimony ([Appendix M](#)) regarding April 2018 rules adopted by the North Dakota Racing Commission.

In response to a question from Representative Boehning, Mr. laCour said the rules require account wagering players to go through the verification process if the amount wagered is more than \$100.

The committee recessed at 3:45 p.m. and reconvened at 8:30 a.m. on Tuesday, March 13, 2018.

### **DEPARTMENT OF TRUST LANDS**

Chairman Devlin called on Ms. Jodi A. Smith, Commissioner, Department of Trust Lands, for testimony ([Appendix N](#)) regarding an extension for the adoption of rules by the department. Ms. Smith said the department has completed rules for five of its six divisions. She said due to the complexity of the rules regarding minerals management and revenue compliance, the department is requesting an additional 5 months to complete these rules.

**It was moved by Senator Armstrong, seconded by Representative Seibel, and carried on a roll call vote that the Department of Trust Lands be granted a 5-month extension for the completion of administrative rules regarding minerals management and revenue compliance.** Representatives Devlin, Boehning, Koppelman, Louser, Pyle, Schneider, Seibel, and Toman and Senators Anderson, Armstrong, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." No negative votes were cast.

### STATE SUPERVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS STUDY

Chairman Devlin called on Ms. Sandra DePountis, Assistant Attorney General, Attorney General's office, for testimony ([Appendix Q](#)) regarding the authority of occupational and professional licensing boards over unlicensed practice.

In response to a question from Representative Koppelman, Ms. DePountis said if a board does not have statutory authority to deal with the unlicensed practice, the board can seek the assistance of a state's attorney for enforcement.

In response to a question from Representative Seibel, Ms. DePountis said the decision whether to pursue legal action is within the discretion of the state's attorney.

In response to a question from Senator Armstrong, Ms. DePountis said the Attorney General's office may be able to intervene in the licensing dispute if the case involves consumer protection issues.

In response to a question from Representative Weisz, Ms. DePountis said in the North Carolina Dental case, if the North Carolina State Board of Dental Examiners had used proper channels, including clarifying a dentist's scope of practice, the case would not have happened.

In response to a question from Representative Koppelman, Ms. DePountis said the North Carolina case raised more questions than it answered. She said monitoring a board's authority and scope of practice is key.

Chairman Devlin said Mr. Rod St. Aubyn submitted written testimony ([Appendix P](#)). Chairman Devlin said Mr. St. Aubyn plans to attend the next meeting of the Administrative Rules Committee to discuss his concerns.

### STATE WATER COMMISSION

Chairman Devlin called on Mr. Patrick Fridgen, Director, Planning and Education Division, State Water Commission, for testimony ([Appendix Q](#)) regarding April 2018 rules adopted by the commission.

In response to a question from Senator Armstrong, Mr. Fridgen said the drought monitor review is issued each week. He said the priority is counties impacted most severely. He said even if only a small part of a county is in extreme drought, the entire county is considered to be eligible for assistance.

In response to a question from Senator Kilzer, Mr. Fridgen said since June 2017, the commission has approved funding and the amount allocated to projects. He said projects also get approved pending additional funding. He said \$430,000 remains available this biennium for approved projects. He said the commission also can use general water management money for approved projects. He said to date, all approved projects have been funded.

Chairman Devlin called on Mr. James Nicolai, Attorney General's office, for testimony ([Appendix R](#)) regarding the word "must" that was changed by the Legislative Council to "shall" in NDAC Section 89-11-01-04. Mr. Nicolai said the commission does not use the term "shall" in drafting rules because the term is ambiguous.

In response to a question from Chairman Devlin, Mr. Nicolai said the use of the term "shall" instead of "must" is a concern of the commission and the Attorney General.

In response to a question from Senator Poolman, Mr. Nicolai said the North Dakota Supreme Court cases listed in his testimony indicate the word "shall" can be construed as permissive and equivalent to "may."

Senator Armstrong said the cases cited by Mr. Nicolai focused on the legislative intent and not whether the proper word is "shall" or "must."

In response to a question from Senator Armstrong, Mr. Nicolai said a litigant could raise the issue that the change from "must" to "shall" in this section is substantive. He said a litigant may claim if "must" was changed to "shall" in this instance, the changed verbiage must mean something different. He said the use of the word "must" leaves no ambiguity as to legislative intent; the word "shall" does.

In response to a question from Representative Boehning, Mr. Nicolai said the Legislative Council made the change after the hearing. He said the change raises the concern as to whether the commission is obligated to provide these funds under this section.

Representative Koppelman said "shall" is mandatory language. He said the change was made to comply with the legislative drafting style. He said if the committee changed the "shall" back to "must", the committee would be agreeing the change is more than stylistic. He said we have a whole body of laws and rules which use "shall" as imposing a duty.

Senator Anderson said the NDCC section that authorizes the creation of the rule in question uses "shall." He said the rule is a repetition of the law. He said if the statute uses "shall", the rule should be consistent.

Mr. Nicolai said the word "must" is used consistently throughout NDAC Article 89-11.

Chairman Devlin said the Legislative Assembly supports the use of "shall" when imposing a duty upon an individual or body. He said if NDAC Article 89-11 is inconsistent with other laws and rules, perhaps the entire article should be corrected.

Chairman Devlin called on Mr. John Bjornson, Legal Division Director, Legislative Council. Mr. Bjornson said "must" may be used when appropriate, but "shall" is the appropriate word in this instance. He said the North Dakota Supreme Court has relied on the *North Dakota Legislative Assembly Drafting Manual* to determine the intent of word usage.

Mr. Nicolai said he did not intend for this to become a contentious issue.

### DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Legal Counsel, Department of Human Services, for testimony ([Appendix S](#)) regarding April 2018 rules adopted by the department.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-01-03, relating to appeals and hearings.

In response to a question from Senator Anderson, Mr. Alm said the change to the definition of "authorized representative" in NDAC Section 75-01-03-15 does not change the process.

In response to a question from Senator Poolman, Mr. Alm said although a right to appeal exists, because the changes apply equally programwide, there is not a right to a fair hearing.

In response to a question from Representative Schneider, Mr. Alm said the rules regarding appeal have not been updated since 1995. He said the rules are intended to make the rules consistent with current practice and case law.

In response to a question from Senator Poolman, Mr. Alm said a letter that clarifies the appeals process will be sent to providers. He said the letter will advise of the right to appeal but because the change is being made programwide, the appeal will not result in any change.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-02-02, relating to medical services.

In response to a question from Representative Schneider, Mr. Alm said the rules do not contain any additional limitations on psychiatric services.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-02-02.1, relating to eligibility for Medicaid.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-02-05, relating to provider integrity for the children's health insurance program and Medicaid.

In response to a question from Representative Boschee, Ms. Dawn Mock, Administrator, Medicaid Integrity, Department of Human Services, said good cause is required for an appeal.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-02-06, relating to ratesetting for nursing home care.

Mr. Alm presented testimony regarding rule changes to NDAC Chapter 75-02-07.1, relating to ratesetting for basic care facilities.

In response to a question from Representative Koppelman, Ms. LeeAnn Thiel, Medical Services, Department of Human Services, said the changes to NDAC Section 75-02-07.1-14 were made to apply to a basic care facility in Grand Forks. She said the change allows the facility to use the higher compensation limit for top management personnel.

Mr. Alm presented testimony regarding rule changes to NDAC Article 75-03, relating to licensing of early childhood services.

In response to a question from Senator Anderson, Ms. Amy Olsen, Administrator, Early Childhood Services, Department of Human Services, said the rules are intended to make the departmental approval process consistent for all early childhood services programs.

Mr. Alm presented testimony regarding rule changes to NDAC Chapters 75-03-38 and 75-03-39, relating to the autism spectrum disorder voucher program and autism services waiver.

In response to a question from Representative Pyle, Mr. Alm said these chapters apply to children who are age 3 and over. He said the department has another program for autism services up to age 3.

Mr. Alm presented testimony regarding rule changes to NDAC Article 75-04, relating to developmental disabilities. He said the department previously had withdrawn rules because the department had not received federal approval. He said that approval has been received.

In response to a question from Representative Koppelman, Mr. Alm said a provider may be denied because of a rule violation. However, he said, the department will work with providers to address minor issues to prevent denials.

In response to a question from Senator Poolman, Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, said the outlier policy has a specific set of criteria. She said a program must submit requests for additional staff. She said if the criteria is met, the department will authorize additional staff. She said the medically fragile category is paid at a separate rate. She said the changes for both medically fragile and outliers are programwide. Because of that change, she said, there is no appeal. She said the right to appeal depends on what issue is being appealed. She said, for example, a disagreement regarding an assessment may be appealed.

Mr. Alm said issues, such as the payment structure, which is a programwide change, may not be appealed. He said NDAC Chapter 75-01-03.3 provides for the appeal process that will become effective April 1, 2018.

In response to a question from Representative Schneider, Ms. Bay said the changes to the payment system are significant. She said providers became comfortable with the current payment system. She said there are misunderstandings about the allocation of staff and hours. She said there is support for going forward with this new payment system. She said the steering committee will continue to work through the issues and make changes as appropriate.

In response to a question from Senator Poolman, Ms. Bay said making exceptions would require a restructuring of all rates for all providers.

Mr. Alm presented testimony regarding rule changes to NDAC Articles 75-09.1 and 75-09.2, relating to substance abuse and alcohol abuse.

No further business appearing, Chairman Devlin adjourned the meeting at 11:15 a.m.

---

Vonette J. Richter  
Code Revisor

ATTACH:19