

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HUMAN SERVICES COMMITTEE**

Thursday, November 7, 2019  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Karen M. Rohr, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Karen M. Rohr, Jeff A. Hoverson, Lisa Meier, Matthew Ruby, Mary Schneider, Kathy Skroch, Bill Tveit; Senators JoNell A. Bakke, Dick Dever, Judy Lee, Tim Mathern

**Members absent:** Representatives Dwight Kiefert, Greg Westlind; Senators Kathy Hogan, Jessica Unruh

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

**It was moved by Senator Mathern, seconded by Representative Ruby, and carried on a voice vote that the minutes of the September 12, 2019, meeting be approved as distributed.**

**STUDY OF THE IMPLEMENTATION OF THE HUMAN SERVICES  
RESEARCH INSTITUTE'S REPORT ON BEHAVIORAL HEALTH  
Department of Human Services Behavioral Health Information**

Ms. Pamela Sagness, Director, Behavioral Health Division, Department of Human Services, presented information ([Appendix B](#)) on the state's behavioral health system. She said behavioral health is a state of mental being and choices that affect wellness. She said individuals with a behavioral health disorder die on average approximately 5 years earlier than individuals without a disorder. She said individuals with serious mental illness die approximately 25 years earlier than the general population.

Ms. Sagness said alcohol use by high school students in the state has decreased from 60.5 percent in 1999 to 29.1 percent in 2017. She said individuals who drink alcohol before age 15 are four times more likely to have an alcohol use disorder than those who begin drinking alcohol at the age of 21.

Ms. Sagness said the Department of Human Services (DHS) contracted with the Human Services Research Institute (HSRI) to review the state's behavioral health system and to provide recommendations to improve the system. She said the institute released a report in April 2018 that included more than 65 recommendations in 13 categories.

In response to a question from Senator Lee, Ms. Sagness said there are a limited number of providers that may use methadone for medication assisted treatment. She said other providers can use alternate medications to treat substance use disorders.

In response to a question from Senator Lee, Ms. Sagness said traumatic events experienced by a child may lead to behavioral health issues. She said there are many instances when a traumatic event may be prevented.

Senator Lee said student behavioral health issues and teacher safety have recently been discussed in local school districts. She said when evaluating a student consideration needs to be given to the student's behavioral health and whether the student has the appropriate intellectual capability for the student's grade level.

In response to a question from Representative Ruby, Ms. Sagness said there are several reasons why an individual may not seek behavioral health services. She said an individual may not have access to transportation to obtain services. She also said nationally there is a stigma and shame regarding the use of mental health services.

In response to a question from Representative Ruby, Ms. Sagness said some rules and policies may have a punitive effect for individuals seeking services. She said DHS is reviewing rules and policies to ensure individuals can seek services without concern for a punitive response.

In response to a question from Representative Schneider, Ms. Sagness said several changes have been made to behavioral health programs and DHS needs time to implement the changes before outcomes can be measured. She said some changes affect only individuals in the Medicaid program. She said a review of options to expand services to all individuals should be considered.

In response to a question from Senator Mathern, Ms. Sagness said several strategies are used to discourage underage drinking. She said many strategies, such as beverage server training, are implemented at the local level.

In response to a question from Senator Bakke, Ms. Sagness said the suicide prevention program was recently transferred from the State Department of Health to DHS. She said DHS is developing various program strategies to decrease the state's suicide rate.

In response to a question from Chairman Rohr, Ms. Sagness said the youth alcohol use rate is declining due to multiple reasons, including changes in youth culture and the implementation of enforcement and communications strategies. She said the Parents LEAD program has helped parents communicate with their children regarding the use of alcohol.

Dr. Rosalie Etherington, Superintendent, State Hospital, presented information ([Appendix C](#)) regarding behavioral health services offered by the department. She said DHS operates the State Hospital which has 100 psychiatric beds, 46 substance use disorder beds, 45 treatment beds for sexually dangerous individuals, and 16 transitional living beds for individuals with serious mental illness. She said DHS also operates 8 human service center locations and four satellite locations. She said DHS provides services to approximately 20,000 individuals per year.

Dr. Etherington said DHS offers behavioral health services to adults and children through various programs. She said many of the programs allow individuals to receive services in their community. She said the use of telehealth is increasing the number of services that can be accessed locally. She said crisis support services are also being expanded to provide additional services to individuals.

In response to a question from Representative Hoversen, Dr. Etherington said an example of a crisis intervention would be a suicidal individual or a domestic disturbance.

In response to a question from Representative Tveit, Dr. Etherington said DHS provides services, such as intensive family services therapy, based on an assessment of an individual. However, she said, it may not be known if certain services are needed if an individual does not disclose certain information.

In response to a question from Senator Dever, Dr. Etherington said social detoxification services will be provided as part of the expansion of crisis services. However, she said DHS may not be able to serve all individuals in need and the department is working with local entities to ensure coverage for everyone.

In response to a question from Senator Mathern, Dr. Etherington said transitional living facilities are located in six of the eight human service regions in the state. She said the need for transitional living facilities can be decreased by providing proper support to allow individuals to remain in their own homes.

In response to a question from Senator Bakke, Dr. Etherington said DHS provides services to all individuals in the state, including veterans. She said when an individual is screened, the needs of the individual are identified and services are provided by either the department or a private provider.

In response to a question from Senator Lee, Dr. Etherington said mobile crisis workers that respond to an incident in person have a bachelor's degree level of education. She said the mobile workers will attempt to resolve the crisis and will use telehealth to receive assistance from specialists if needed.

In response to a question from Representative Schneider, Dr. Etherington said workforce recruitment and retention challenges exist in certain regions of the state. She said telehealth is used to provide services to areas of the state that lack behavioral health providers.

In response to a question from Senator Bakke, Dr. Etherington said the involuntary commitment laws in the state have been working well. She said most individuals committed to the State Hospital are under an emergency commitment.

Ms. Sagness presented information ([Appendix D](#)) regarding the DHS behavioral health division. She said the division administers several federal and state behavioral health programs. She said the division also licenses substance use disorder program services and facilities.

Ms. Sagness said the free through recovery program began in February 2018 and provides community behavioral health services to individuals in the correctional system. She said the program has served 1,845 individuals since the program began. She said the 2019 Legislative Assembly appropriated funding to expand the program to serve individuals outside of the correctional system.

In response to a question from Chairman Rohr, Ms. Sagness said free through recovery program providers may receive performance pay if participants under their supervision meet at least three of four outcome metrics. She said approximately 67 percent of participants meet at least three of the metrics.

Mr. Tom Eide, Director, Field Services Division, Department of Human Services, presented information ([Appendix E](#)) regarding funding for behavioral health services included in the department's budget. He said the 2019-21 biennium budget includes approximately \$417 million for behavioral health programs and behavioral health services provided at DHS facilities.

### Comments By Stakeholders

Ms. Donelle Preskey, Government Relations Specialist, North Dakota Association of Counties, provided comments ([Appendix F](#)) regarding behavioral health. She said the association supports the continued development of local behavioral health treatment programs. She said county social services and correctional programs are affected by the lack of local behavioral health services.

Mr. Mark Kemmet, Behavioral Health Specialist, Burleigh/Morton County Detention Center, provided comments to the committee. He said inmates are screened for substance use and mental health issues when entering the facility. He said upon completion of the assessment, a specialist visits with the inmate about services needed and referrals are made to the appropriate entities.

In response to a question from Senator Mathern, Mr. Kemmet said there are many reasons why an individual does not seek behavioral health services. He said one issue that has been identified is a lack of transportation services.

Representative Skroch said it is important to provide mental health services to individuals as soon as possible to avoid the need for acute care and to avoid situations that may result in incarceration.

In response to a question from Senator Bakke, Mr. Kemmet said the severity of an individual's mental health is the main factor in determining how and where an individual receives treatment.

In response to a question from Chairman Rohr, Mr. Kemmet said behavioral health screenings generally are not conducted at correctional facilities in rural areas.

Ms. Kim Osadchuk, Social Services Director, Burleigh County, provided comments ([Appendix G](#)) regarding behavioral health. She said efforts should be focused on identifying behavioral health needs in children and providing services as soon as possible. She said addressing behavioral health needs in children will help reduce the need for providing services through other areas, such as the correctional system.

In response to a question from Senator Dever, Ms. Osadchuk said county social service agencies generally do not employ trained clinicians. She said individuals will generally receive clinical services at a regional human service center or a private provider.

In response to a question from Senator Bakke, Mr. Christopher D. Jones, Executive Director, Department of Human Services, said workforce shortages are affecting the ability to offer services in rural areas. He said other issues, such as transportation to receive services, are also affecting the ability of individuals to services.

Representative Tveit said it may be more efficient to utilize private providers rather than increasing DHS staffing levels.

Senator Lee said some programs, such as the substance use disorder voucher program, allow individuals to receive services from private providers in their local community rather than traveling to another community to receive services.

Ms. Theresa Will, Administrator, City-County Health District, Valley City, provided comments ([Appendix H](#)) regarding behavioral health. She said in 2012 City-County Health District (CCHD) convened a group of local stakeholders to address gaps in behavioral health services. She said the group has identified several key areas for improvement and CCHD has worked to address the needs.

In response to a question from Representative Skroch, Ms. Will said CCHD does not currently have the ability to monitor the success of changes made to behavioral health services.

Ms. Mona Thompson, EMS Director, Kidder County Ambulance, Steele, provided comments ([Appendix I](#)) to the committee. She said 85 percent of first responders have experienced mental health symptoms. She suggested the state develop a program to address the mental health needs of first responders.

In response to a question from Senator Lee, Ms. Thompson said some states allow an individual who has behavioral health needs relating to work experiences to receive services without their employer knowing.

Ms. Courtney Koebele, Executive Director, North Dakota Medical Association, introduced Dr. Gabriela Balf, President, North Dakota Psychiatric Society, who provided comments ([Appendix J](#)) to the committee. Dr. Balf said she supports the recommendation in the HSRI's report on the state's behavioral health system to expand outpatient and community-based services. She said the report recommendation to ensure all citizens have timely access to behavioral health services, including crisis response services, is an important part of the behavioral health system.

Mr. Tim Blasl, President, North Dakota Hospital Association, introduced Mr. Jeff Herman, Chief Executive Officer, Prairie St. John's Hospital, Fargo, who provided comments ([Appendix K](#)) to the committee. Mr. Herman said there is a lack of services for persons suffering from mental illness or substance abuse disorders. He said adopting the Medicaid 1915(i) plan amendment will provide additional home- and community-based services to individuals. However, he said, the Medicaid institution for mental disease (IMD) exclusion is limiting the availability of services for certain individuals.

In response to a question from Senator Mathern, Mr. Herman said an IMD is a community hospital or nursing facility with more than 16 beds that primarily provides treatment for mental illness. He said the IMD exclusion prohibits Medicaid reimbursement for patients between the ages of 21 to 64 who receive services at an IMD.

Mr. Carl Young, Bismarck, provided comments ([Appendix L](#)) to the committee. He said his son has a developmental disability. He said gaps in the availability of services have prevented his son from receiving the proper services for his disability.

In response to a question from Representative Skroch, Mr. Young said his son has resided in seven different care facilities in two different states. He said the design of the current system of care for disabilities is not working.

Senator Bakke said fetal alcohol syndrome may need to be viewed as a mental illness rather than a disability.

Senator Dever said it is important to recognize the efforts of parents that adopt children with disabilities.

## **STUDY OF THE OLMSTEAD COMMISSION**

Ms. Teresa Larsen, Executive Director, Protection and Advocacy Project, presented information ([Appendix M](#)) regarding the Olmstead Commission. She said the Olmstead Commission met on October 30, 2019, and reviewed issues relating to the Olmstead decision. She said committees were developed to address form, function, and existing services in the state.

Ms. Larsen said the Protection and Advocacy Project was authorized 1 full-time equivalent position to provide services to the Olmstead Commission. She said the position has been filled.

Senator Lee said DHS previously provided administrative services to the Olmstead Commission. She said the administrative services are now provided by the Protection and Advocacy Project to avoid a potential conflict of interest due to DHS providing services to individuals affected by the Olmstead decision.

## **OTHER COMMITTEE DUTIES**

### **Placement of Individuals in Institutions for Mental Disease**

Mr. Eide presented an update ([Appendix N](#)) on the DHS study of the placement of individuals in institutions for mental disease as required by Section 18 of Senate Bill No. 2012 (2019). He said DHS is identifying the current available beds by care level and demographics of individuals receiving care. He said DHS is also identifying the need for beds using statistical analysis, stakeholder research, and the estimated effect of new programs being implemented such as the 1915(i) Medicaid state waiver.

Mr. Eide said the study will include strategies to address needs which includes the use of state and private providers. He said the study will also review potential use of other Medicaid options, such as the Medicaid 1115 demonstration waiver.

Senator Dever said the Constitution requires a state hospital to be located in Jamestown. He said the requirement reflects the previous approach of providing services in a centralized location.

In response to a question from Chairman Rohr, Mr. Eide said the study includes conducting site visits to various facilities in the state.

Senator Mathern suggested the Legislative Council staff review constitutional provisions relating to the State Hospital to determine if constitutional requirements would be met if the State Hospital provides services to only individuals in the correctional system.

### **Medical Marijuana Update**

Mr. Jason Wahl, Director, Medical Marijuana Division, State Department of Health, provided an update ([Appendix O](#)) on the medical marijuana program. He said program participants must obtain written certification from their health care provider that the individual has a qualified debilitating medical condition. He said a qualified program participant is then issued a registry identification card that allows the individual to purchase medical marijuana items from a dispensary. He said as of October 31, 2019, there were 1,637 active patient cards. He said there are seven dispensaries operating in the state and one additional dispensary will be opening in the future.

In response to a question from Representative Skroch, Mr. Wahl said the supply of medical marijuana in the state is currently meeting the demand from program participants. He said a recent legislative change increased the maximum amount of marijuana plants allowed at a manufacturing facility.

In response to a question from Representative Ruby, Mr. Wahl said the two medical marijuana manufacturing facilities in the state increased the number of plants on site due to the legislative change.

In response to a question from Senator Mathern, Mr. Wahl said the medical marijuana produced at a manufacturing facility is tested to determine the safety and potency of the product.

In response to a question from Senator Mathern, Mr. Wahl said state law does not allow children to use smokeable marijuana products.

In response to a question from Senator Dever, Mr. Wahl said the State Department of Health is responsible to regulate the medical marijuana program and to ensure compliance with applicable laws. He said the department does not study whether medical marijuana is an effective treatment method.

In response to a question from Senator Lee, Mr. Wahl said edible products are not allowed under the medical marijuana program. He said tinctures for minors is limited to a maximum of 6 percent of tetrahydrocannabinol (THC) per serving.

Mr. Steven Peterson, Committee for Compassionate Care, provided comments to the committee and distributed written testimony from other individuals ([Appendix P](#)). He expressed concern regarding the shortage of tinctures at dispensaries.

Mr. Wahl said the price of a tincture normally will vary based on its THC level. He said the State Department of Health does not regulate product prices. He said dispensaries are required to have a program available to assist individuals that have a financial need.

In response to a question from Senator Mathern, Mr. Wahl said product pricing is fairly consistent among dispensaries. He said most dispensaries post their product prices on their website.

In response to a question from Senator Mathern, Mr. Wahl said the list of health care professionals who have provided certification for individuals participating in the program is confidential.

Mr. Chris Nolden provided comments to the committee. He expressed concern regarding shortages of specific products at dispensaries.

In response to a question from Senator Dever, Mr. Nolden said dispensaries are not aware of the reason for the shortages.

Mr. Wahl said product shortages may be due to ordering and inventory management at the dispensaries. He said there was also a short period of time when the transportation of product was limited due to the implementation of a new compliance testing system.

**OTHER BUSINESS**

Senator Bakke suggested the committee receive information regarding behavioral health services provided to veterans.

Senator Mathern suggested the committee receive a report from representatives of HSRI regarding the state's behavioral health system.

No further business appearing, Chairman Rohr adjourned the meeting at 4:15 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

ATTACH:16