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## HUMAN SERVICES COMMITTEE

Wednesday, August 12, 2020  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Karen M. Rohr, Chairman, called the meeting to order at 9:30 a.m.

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

**Members absent:** None

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

**It was moved by Senator Dever, seconded by Representative Meier, and carried on a voice vote that the minutes of the June 3, 2020, meeting be approved as distributed.**

### **STUDY OF THE IMPLEMENTATION OF THE HUMAN SERVICES RESEARCH INSTITUTE'S REPORT ON BEHAVIORAL HEALTH Update From Human Services Research Institute**

Dr. Bevin Croft, Research Associate, Human Services Research Institute, presented information ([Appendix B](#)) regarding the Human Services Research Institute's report on the state's behavioral health system. She said the report included 13 recommendations for improvement of the state's behavioral health system. She said the Behavioral Health Planning Council, in conjunction with behavioral health stakeholders, is coordinating the development of a strategic plan to implement the recommendations. She said the strategic planning process gathered public input to identify goals and objectives to ensure report recommendations are implemented.

Dr. Croft said the implementation plan includes the following four phases:

1. Strategic planning;
2. Prioritization and refinement of goals and objectives;
3. Initiate the implementation of goals and objectives; and
4. Monitor and sustain the implemented efforts.

Dr. Croft said the state is in Phases 3 and 4 of the implementation plan. She said dashboards are being developed to allow the public to view the progress of implementing the recommendations. She said the dashboards will be updated quarterly.

In response to a question from Senator Hogan, Dr. Croft said there have been delays in the implementation efforts due to the Coronavirus (COVID-19). However, she said, COVID-19 also has resulted in positive changes such as additional federal funding for suicide prevention and changes in Medicaid reimbursement for telehealth services.

In response to a question from Senator Mathern, Dr. Croft said the mental health of individuals has been affected by the COVID-19 pandemic. She said the economic downturn has affected access to the social determinants of health such as food and housing. She said new and innovative ways to address behavioral health, such as increased telehealth services, are being used to address behavioral health needs.

Senator Lee said Minot State University has received a \$750,000 grant to provide scholarships to individuals obtaining degrees in special education. She said this is an example of an innovative way to address needs of local school districts.

In response to a question from Senator Dever, Dr. Croft said the state has demonstrated a commitment to implementing the recommendations included in the report on the state's behavioral health system. She said behavioral health stakeholders have been engaged in the strategic planning and implementation processes.

In response to a question from Representative Tveit, Dr. Croft said the COVID-19 pandemic has resulted in some individuals feeling isolated and not able to access behavioral health services. She said information obtained during the pandemic can be used to assist in planning for the delivery of behavioral health services in future emergency situations.

In response to a question from Senator Hogan, Dr. Croft said the Behavioral Health Planning Council has been discussing legislative priorities for the 2021 legislative session. She said any recommended changes will be based on data received and reviewed.

In response to a question from Senator Hogan, Dr. Croft said some individuals have had difficulty using telehealth services. She said some states have provided protective gear to peer support specialists to allow the specialists to assist individuals in person. She said some behavioral health services are not as effective when provided through telehealth versus in person.

Senator Bakke said several report recommendations will be affected by efforts to reform the state's juvenile justice system.

### **Update on Behavioral Health Efforts in the State**

Ms. Pamela Sagness, Behavioral Health Division Director, Department of Human Services, presented information ([Appendix C](#)) regarding behavioral health efforts in the state. She said the Department of Human Services (DHS) has submitted an application for a federal Medicaid 1915(i) state plan amendment. She said the amendment proposes to provide home- and community-based services to individuals who have a mental illness, a brain injury, or a substance use disorder. She said some services included in the amendment are care coordination, community transitional services, and training for caregivers.

Ms. Sagness said the substance use disorder treatment voucher program began serving individuals in 2016. She said the program allows individuals to receive substance use disorder treatment services from participating private providers. She said the 2019-21 biennium appropriation for the program is \$7,997,294. However, she said, as of August 3, 2020, \$7,149,152 has been expended for the program. As a result, she said, new applications to participate in the program are not being accepted.

In response to a question from Senator Hogan, Ms. Sagness said representatives of DHS and the Department of Public Instruction met with representatives of regional education associations to review school behavioral health needs. She said a survey will be conducted to determine the specific behavioral health needs of schools.

Senator Lee said it is important to have psychologists in schools. However, she said, it may be more difficult for schools to find qualified psychologists due to a regional higher education institution discontinuing its psychology program.

In response to a question from Senator Hogan, Ms. Sagness said recent changes to administrative rules allow for the certification of peer support specialists. She said the rules also allow for the certification of peer support specialists supervisors. She said it is important for peer support specialists to be supervised by other peer support specialists.

In response to a question from Senator Hogan, Ms. Sagness said the state received a federal emergency grant of \$2 million to address mental health and substance use disorders. She said the funding was awarded in April 2020 and will be used to provide support for 16 months.

In response to a question from Representative Skroch, Ms. Sagness said DHS may not use federal Coronavirus relief funds for the substance use disorder voucher program.

In response to a question from Senator Mathern, Ms. Sagness said DHS implemented a new system to monitor spending of the substance use disorder voucher program. She said DHS did not anticipate the funding would be spent so quickly. She said individuals receiving services through the program will continue to receive services.

In response to a question from Representative Meier, Ms. Sagness said DHS does not have a way to determine the number of individuals interested in participating in the substance use disorder voucher program. She said the voucher allows an individual to receive services from a private provider. She said individuals still may utilize public behavioral health services such as human service centers.

### **Behavioral Health Services Provided by Hospitals**

Mr. Tim Blasl, President, North Dakota Hospital Association, provided comments ([Appendix D](#)) regarding the role of hospitals in providing behavioral health services. He said hospitals across the state play a critical role in providing mental health and substance use disorder services. He said hospital emergency departments often are the primary source of acute care services for people with mental illness and substance abuse issues. He said some hospitals have embedded behavioral health specialists within its primary care practice. He said many of the state's hospitals also are using telehealth to provide behavioral health services.

In response to a question from Senator Hogan, Mr. Blasl said a mental health facility in Grand Forks recently announced it is closing. He said the closure is due to financial considerations.

Ms. Missy Wetsch, Director, Archway Mental Health Services, CHI St. Alexius Health, presented information ([Appendix E](#)) regarding services offered by the hospital. She said the hospital has 25 beds to provide inpatient psychiatry care. She said a partial hospitalization program also is available. She said the program is managed by a psychiatrist and provides nursing care, counseling, occupational therapy, and addiction counseling. She said the lowest level of care provided is outpatient services offered in a clinic setting.

In response to a question from Senator Mathern, Ms. Wetsch said the recruitment of behavioral health specialists can be difficult. She said hospitals need to be able to respond to changes in the job market while complying with federal guidelines regarding the reimbursement of physicians.

In response to a question from Senator Lee, Ms. Wetsch said Medicare supplement health insurance policies may not cover behavioral health services.

In response to a question from Senator Hogan, Ms. Wetsch said she has been involved in a community partnership to expand mobile crisis services.

Mr. Ben Bucher, Chief Executive Officer, Towner County Medical Center, said rural areas generally have a lack of behavioral health specialists. He said many patients seek behavioral health care from their primary care provider. However, he said, primary care providers are limited in the behavioral health services that can be provided. He said his medical center partners with a company that provides telehealth services for behavioral health. He said the medical center also has a substance use disorder clinic that provides medication-assisted treatment for opioid use disorder.

In response to a question from Senator Mathern, Mr. Bucher said the Towner County Medical Center provides more behavioral health services than the average critical access hospital.

In response to a question from Senator Hogan, Mr. Bucher said the services of human service centers are utilized to provide assistance to individuals in the community.

Chairman Rohr announced written comments ([Appendix F](#)) were received from interested persons regarding behavioral health services.

## **STUDY OF THE OLMSTEAD COMMISSION**

### **Update on the Olmstead Commission**

Mr. Daniel Gulya, Protection and Advocacy Project, presented an update ([Appendix G](#)) regarding the Olmstead Commission. He said the commission has drafted and approved a set of bylaws and a mission statement. He said the commission is planning to revise the state's Olmstead plan and to receive stakeholder input regarding potential changes. However, he said, it has been difficult to receive stakeholder input due to COVID-19.

Mr. Gulya said the commission is reviewing the process for an individual to submit a complaint. He said when a complaint is received, commission staff will gather information and conduct an initial screening assessment. He said a commission subcommittee will determine if additional information is needed from individuals, providers, or others. He said after all information is gathered, the Olmstead Commission will meet and an appropriate resolution to the situation will be determined.

In response to a question from Representative Schneider, Mr. Gulya said a website is being developed to provide information regarding the Olmstead Commission and the process for submitting a complaint to the commission.

In response to a question from Senator Hogan, Mr. Gulya said there have not been any recent actions relating to a complaint filed with the United States Department of Justice regarding Medicaid recipients residing in a skilled-care facility rather than receiving services at home.

### **Home- and Community-Based Services**

Ms. Nancy Nikolas-Maier, Director, Aging Services Division, Department of Human Services, presented an update ([Appendix H](#)) regarding home- and community-based services. She said there are a range of home- and community-based services available to older adults and individuals with physical disabilities. She said services are available through the service payments for elderly and disabled (SPED) Program, expanded SPED program, federal Medicaid 1915(c) waiver, and Medicaid state plan for personal care services.

Ms. Nikolas-Maier said the 2019 Legislative Assembly provided for the expansion of the Aging and Disability Resource Link (ADRL) to include a centralized intake system. She said the ADRL is used to process and receive home- and community-based referrals and to determine if it is appropriate to assign a case manager to complete a home visit.

In response to a question from Senator Hogan, Ms. Nikolas-Maier said referrals can be submitted to the ADRL 24 hours a day. However, she said, staff will work normal business hours to process the referrals.

In response to a question from Senator Hogan, Ms. Nikolas-Maier said the state has 64 home- and community-based case managers. She said due to COVID-19, some individuals have requested case managers not visit in person. She said case managers and providers have received protective equipment to allow for in-person care for individuals.

Chairman Rohr announced written comments ([Appendix I](#)) were received from interested persons regarding home- and community-based services.

### **OTHER COMMITTEE DUTIES**

#### **Program of All-Inclusive Care for the Elderly**

Ms. Krista Fremming, Assistant Director, Medical Services Division, Department of Human Services, presented an overview ([Appendix J](#)) of the program of all-inclusive care for the elderly (PACE). She said PACE is a capitated benefit program that provides all needed preventive, primary, acute, and long-term care services to allow an individual to remain at home. She said DHS pays the PACE vendor between \$4,784 and \$5,683 per participant, per month, depending on the participant's age and location.

Ms. Fremming said PACE began operations in Bismarck and Dickinson in September 2008. She said a site was added in Minot in September 2015 and a site in Fargo is anticipated to be added in 2021. She said PACE has 107 participants in Bismarck, 36 participants in Dickinson, and 35 participants in Minot. She said the average participant age is 77.3 years old.

In response to a question from Senator Hogan, Ms. Fremming said involuntary disenrollments from the program are for situations in which the PACE program cannot effectively serve the participant at home.

In response to a question from Senator Hogan, Ms. Annette Fischer, Human Services Program Administrator, Department of Human Services, said four participants in the PACE program have tested positive for COVID-19. She said two participants were in residential facilities and two participants were in private homes.

In response to a question from Senator Dever, Ms. Fremming said the PACE program may serve a private pay individual. However, she said, there are very few private pay individuals enrolled in the program.

Senator Lee suggested the committee receive information regarding the expansion of the PACE program to the Fargo area.

#### **Children's Health Insurance Program**

Ms. Fremming presented an update ([Appendix K](#)) on the children's health insurance program (CHIP). She said the 2019-21 biennium appropriation for CHIP is \$12,821,689. Through June 2020, she said, the program has spent \$5,552,235, or 43 percent, of its budget. She said monthly enrollment in the program has increased from 2,071 in December 2019 to 2,398 in June 2020.

Ms. Fremming said Senate Bill No. 2106 (2019) allowed DHS to transfer CHIP from a managed care program to a fee-for-service arrangement. She said the transition date was January 1, 2020. She said the change to a fee-for-service arrangement is estimated to save the state \$6.1 million per biennium, of which \$1.9 million is from the general fund.

In response to a question from Senator Mathern, Ms. Fremming said DHS reduced 1 full-time equivalent position for the administration of the CHIP program by transferring the program to a fee-for-service arrangement. She said savings also were realized by not having to contract for actuarial services which were required under the managed care arrangement.

In response to a question from Senator Hogan, Ms. Fremming said DHS communicated with program participants to inform them of the transition to a fee-for-service arrangement. She said the transition went well and no negative feedback was received.

### **Medicaid Expansion Pharmacy Services**

Mr. Brenden Joyce, Administrator, Pharmacy Services, Department of Human Services, presented an update ([Appendix L](#)) regarding the administration of pharmacy services in the Medicaid Expansion program. He said Senate Bill No. 2012 (2019) authorized DHS to administer pharmacy services in the Medicaid Expansion program effective January 1, 2020. He said services provided through the federal Indian Health Service is now 100 percent federally funded rather than subject to the Medicaid Expansion federal medical assistance percentage matching rate. He said savings also are being realized through more effective claims edits and controls.

### **Autism Spectrum Disorder Task Force and Pilot Project**

Ms. Fremming presented an update ([Appendix M](#)) on the Autism Spectrum Disorder (ASD) Task Force and pilot project. She said the ASD Task Force was established in 2009 and meets quarterly to discuss various topics relating to ASD. She said the task force developed a state ASD plan and the task force updates the plan as needed.

Ms. Fremming said the state ASD plan goals for children from birth to age 18 are as follows:

- Assure individuals with suspected ASD receive an appropriate diagnosis as soon as possible;
- Review and provide recommendations on the centralized locations for information on ASD; and
- Establish a model identifying training and education opportunities available which address the needs of diverse stakeholders.

Ms. Fremming said the state ASD plan goals for adults over the age of 18 are as follows:

- Identify the needs and service gaps for adults with ASD;
- Strengthen supports for transitions from adolescent to adult services; and
- Develop more opportunities for adults with ASD to be valued, contributing members of their communities based on their unique strengths, differences, and challenges.

Ms. Fremming said the ASD voucher program was established in 2014 to assist with funding equipment, assistive technology, respite care, and other supports. She said during the 2017-19 biennium, approximately 30 percent of the program appropriation was expended. She said the 2019 Legislative Assembly authorized DHS to consider North Dakota Administrative Code changes that included adding a voucher solely for technology support, adding a voucher for in-home supports, adding case management or parent-to-parent support as an allowed service, and reducing the amount of time during which a household may use approved voucher funds. She said DHS consulted with the ASD Task Force on the proposed Administrative Code changes and the changes became effective April 1, 2020.

In response to a question from Representative Meier, Ms. Fremming said DHS notified families in June 2020 they may apply to participate in the voucher program for the program year which began July 1, 2020. She said it is too early in the program year to determine potential program spending and participation.

In response to a question from Representative Hoverson, Ms. Fremming said she will provide information regarding trends in the number of individuals in the state with autism.

Senator Lee said historical trends in the number of individuals with autism may be affected by changes in the definitions of autism in the *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association, (5<sup>th</sup> edition, text revision 2013).

**Services for Individuals With an Intellectual or Developmental Disability**

Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, and Ms. Susan Foerster, Superintendent, Life Skills and Transition Center, presented an overview ([Appendix N](#)) of services available for individuals with an intellectual or developmental disability. Ms. Bay said the regional human service centers provide services to approximately 5,800 individuals with an intellectual or developmental disability. She said individuals also may receive services through 38 providers currently licensed by DHS. She said the Life Skills and Transition Center provides intermediate care services and statewide crisis services.

Ms. Bay said the DHS Developmental Disabilities Division administers several programs to assist individuals with an intellectual or developmental disability. She said the programs include:

Service Area	Programs
Infants and toddlers	<ul style="list-style-type: none"> <li>• Birth review project</li> <li>• Right track program</li> <li>• Early intervention services</li> </ul>
Family support	<ul style="list-style-type: none"> <li>• In-home support</li> <li>• Self-directed services</li> <li>• Extended home health care</li> </ul>
Children and adult services	<ul style="list-style-type: none"> <li>• Residential</li> <li>• Employment</li> <li>• Day habilitation</li> <li>• Corporate guardianship</li> <li>• Intermediate care facilities</li> </ul>

Ms. Foerster said the Clinical Assistance, Resources, and Evaluation Service (CARES) provides resources across the state to allow individuals with disabilities to reside in their preferred community. She said the CARES program also provides crisis services statewide.

**Developmental Disabilities System Reimbursement Project**

Ms. Bay presented an update ([Appendix O](#)) on the developmental disabilities reimbursement project. She said Senate Bill No. 2043 (2011) required DHS to implement a prospective developmental disability payment system utilizing the support intensity scale. She said the payment system was implemented on April 1, 2018. She said DHS contracted with a vendor to review the new payment rate structure and methodology to determine the appropriateness of assumptions and to recommend potential adjustments to the system. She said key findings of the review include:

- Increase the program support component of medically fragile residential habilitation rates to represent the hours of nursing relative to the hours of direct support professionals for each acuity tier;
- Remove the 4 percent absences factor applied to every base residential rate and replace it with a 30-day personal assistance retainer policy;
- Add a 2 percent vacancy factor to the residential and intermediate care facility rate to account for vacancy costs; and
- Provide for systemwide changes in support intensity scales and overall rate changes to mitigate support intensity scales for day services, residential habilitation services, and intermediate care facility services.

**Basic Care Program**

Ms. LeeAnn Thiel, Medical Services Division, Department of Human Services, presented an overview ([Appendix P](#)) of the basic care program. She said the basic care program provides financial assistance to individuals to pay a portion of costs while residing at a licensed basic care facility. She said to be eligible for the program an individual must be impaired in one activity for daily living or three instrumental activities of daily living. She said individuals qualifying for basic care do not need a nursing facility level of care. She said a basic care facility is staffed 24 hours per day but may not have medical or nursing staff.

Ms. Thiel said there are 65 basic care facilities licensed by the State Department of Health. She said basic care payments consist of two components. She said the first component is for personal care paid through the Medicaid program. She said the state pays for the second component which is the room and board rate.

In response to a question from Senator Mathern, Ms. Thiel said there has been an increase in the number of facilities that offer both basic care and assisted living services.

In response to a question from Senator Bakke, Ms. Thiel said she anticipates a continued increase in the number of elderly individuals in the state.

In response to a question from Senator Lee, Ms. Thiel said the basic care program at the Veterans' Home is not enrolled in the Medicaid program.

In response to a question from Senator Hogan, Ms. Thiel said there have been previous discussions regarding combining basic care and assisted living licensing. She said there are differences in standards in each type of license.

In response to a question from Representative Hoverson, Ms. Thiel said basic care rates range from \$78 to \$186 per day. She said the cost of providing services to individuals in their homes likely would cost less than the cost of providing basic care services.

Senator Lee said North Dakota is the only state to offer a basic care program. She said there have been some difficulties with federal reporting due to being the only state with the program.

### **Revised Payment Methodology for Nursing Facility Services**

Ms. Caprice Knapp, Medical Services Division Director, Department of Human Services, presented an update ([Appendix Q](#)) regarding the study of the payment methodology for nursing facility services. She said Senate Bill No. 2012 (2019) requires DHS, with advice from representatives of the nursing facility industry, to develop an implementation plan for a revised payment methodology for nursing facility services. She said DHS is to report to the Legislative Management before October 1, 2020, regarding the plan and is to include any estimated costs relating to the new payment methodology in DHS's 2021-23 biennium budget request.

Ms. Knapp said the goals of the new payment methodology will be to reduce variation among facilities, reduce the increase in nursing home spending over time, and encourage efficiency. She said meetings have focused on developing an alternative pricing model for care which includes direct, indirect, and other care costs. She said using a price-based operating payment model would provide incentives to reduce costs and would provide predictable rates. She said even though a new model would be budget neutral, there may need to be a hold harmless provision to offset funding reductions for some facilities.

Ms. Knapp said meetings also have focused on developing an alternative property payment model. She said one system being reviewed is a fair rental value system. She said the system establishes a price for space regardless of actual accounting value.

In response to a question from Senator Mathern, Ms. Knapp said there have been discussions regarding the use of quality measures in the payment methodology.

In response to a question from Senator Lee, Ms. Knapp said the payment methodology will need to account for items such as debt service and facility age. She said COVID-19 also is causing nursing facilities to decrease the use of double-occupancy rooms which will affect the payment methodology.

In response to a question from Senator Hogan, Ms. Knapp said DHS is finalizing its report on the new payment methodology and will develop educational tools to allow individuals to understand the new methodology.

In response to a question from Senator Dever, Ms. Knapp said she will provide more detail regarding additional funding that may be needed for a new payment methodology, including the amount needed from the general fund.

In response to a question from Senator Dever, Ms. Thiel said statutory and administrative rule changes are needed if a new payment methodology is approved by the Legislative Assembly.

In response to a question from Chairman Rohr, Ms. Knapp said other states that have adopted a new nursing facility payment model have used different methods to phase in the model. She said some states have used a multiple year phase-in process to allow providers to make necessary operating adjustments.

In response to a question from Chairman Rohr, Ms. Knapp said the price-based payment model will be presented to long-term care providers and questions will be addressed.

Senator Hogan said nursing facility occupancy rates are declining due to COVID-19. She said it may not be the best time to transition to a new payment model.

Ms. Knapp said the working group has discussed the issue of occupancy rates and how it will affect the payment model.

### **OTHER BUSINESS**

**It was moved by Representative Meier, seconded by Senator Dever, and carried on a voice vote that the Chairman and Legislative Council staff be requested to prepare a report and to present the report to the Legislative Management.**

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

No further business appearing, Chairman Rohr adjourned the committee sine die at 3:25 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

ATTACH:17