

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON HUMAN SERVICES

Monday, July 9, 2001
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Amy Kliniske-Warnke, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Amy Kliniske-Warnke, Audrey B. Cleary, Jeff Delzer, Pat Galvin, Bob Hunsakor, Ralph Metcalf, Chet Pollert, Todd Porter, Clara Sue Price, Dale C. Severson, Ken Svedjan, Wayne W. Tieman; Senators Robert S. Erbele, Thomas Fischer, Judy Lee, Michael Polovitz

Member absent: Representative James Kerzman

Others present: Aaron Krauter, State Senator, Regent

See attached appendix for additional persons present

Mr. Jim W. Smith, Legislative Budget Analyst and Auditor, reviewed the Legislative Council supplementary rules of operation and procedure.

Chairman Kliniske-Warnke announced that Senator Fischer would serve as vice chairman of the committee.

LONG-TERM CARE STUDY

The Legislative Council staff presented a background memorandum entitled *Long-term Care Needs and Nursing Facility Payment System - Background Memorandum*, relating to the committee's study of the long-term care needs and nursing facility payment system. The Legislative Council staff said that as part of the study, the committee is to receive progress reports and a final report from the Department of Human Services on its statewide needs assessment and nursing facility payment system study for long-term care.

The Legislative Council staff reviewed previous committee studies of long-term care and the intergovernmental transfer program. The Legislative Council staff said that the 1999 Legislative Assembly approved Senate Bill No. 2168 authorizing the Department of Human Services to administer an intergovernmental transfer program. The program accesses additional federal funds through the Medicaid program as a result of the Department of Human Services

making government nursing facility funding pool payments to two government nursing facilities in the state--McVille and Dunseith. The payments are made based on the average amount Medicare rates exceed Medicaid rates for all nursing care facilities in the state multiplied by the total of all Medicaid resident days of all nursing homes. Federal Medicaid funds are available for these payments and require a state match. Payments are made to the two government nursing facilities and are subsequently returned to the state, less a transaction fee (\$10,000 during the 1999-2001 biennium and \$50,000 for the 2001-03 biennium) retained by each of the two government nursing facilities. Once returned to the state, the state's matching share is returned to its source (either the general fund or the Bank of North Dakota), and the federal funds are deposited in the health care trust fund. Interest earned on the balance in the fund is retained in the fund. In addition to the transaction fees noted above, the 2001 Legislative Assembly provided an additional \$400,000 transaction fee payment to each of the government nursing facilities for the 1999-2001 biennium.

For the 1999-2001 biennium, \$43.2 million of federal funds was deposited in the health care trust fund. The department estimates \$26.9 million of federal funds will be deposited during the 2001-03 biennium. Based on estimated revenues and expenditures, the balance in the fund on June 30, 2003, is projected to be \$35.6 million. The Legislative Council staff reviewed nursing facility grants and loans approved by the Department of Human Services. The Legislative Council staff said the department has approved grants of approximately \$900,000, loans of \$1,800,000, and has four pending construction loans for assisted living projects totaling \$3,900,000.

The Legislative Council staff reviewed 2001-03 biennium funding for long-term care and presented the following schedule comparing medical assistance funding for nursing facility costs:

	1997-99 Actual	1999-2001 Legislative Appropriation	1999-2001 Projected Expenditures ¹	2001-03 Legislative Appropriation
General fund	\$65,277,854	\$75,067,679	\$71,543,543	\$80,957,699
Health care trust fund				9,137,300

County funds	1,848,532			
Federal Medicaid funds	156,620,497	177,290,765	168,512,724	209,144,950
Total	\$223,746,883	\$252,358,444	\$240,056,267	\$299,239,949

¹ Based on actual expenditures through May 2001.

The Legislative Council staff presented the following schedule showing 2001-03 biennium funding

initiatives approved by the 2001 Legislative Assembly in House Bill No. 1196:

Description	Health Care Trust Fund	Federal Funds	Total
Nursing home bed reduction incentive - The department may pay incentives of up to: \$15,000 per bed if a facility eliminates its entire licensed bed capacity \$12,000 per bed if a facility reduces at least eight beds \$8,000 per bed if a facility reduces fewer than eight beds	\$4,000,000		\$4,000,000
Nursing facility employee salary and benefit enhancements	8,189,054	\$19,107,793	27,296,847
Nursing facility rate limit increase due to rebasing to 1999	681,846	1,590,974	2,272,820
Nursing facility personal care allowance increase by \$10 per month, from \$40 to \$50 per month	266,400	621,600	888,000
Basic care employee salary and benefit enhancements	202,080	471,520	673,600
Basic care personal care allowance increase by \$15 per month, from \$45 to \$60 per month	180,000		180,000
Long-term care nursing scholarship and loan repayment program ¹	489,500		489,500
Total	\$14,008,880	\$21,791,887	\$35,800,767

¹ A long-term care nursing scholarship and loan repayment program is created in the State Department of Health for providing grants of up to \$5,500 to each eligible nursing facility during the first year of the biennium for the facility to use for providing scholarships to nursing staff or others to obtain a nursing education or for assisting nurses employed by the facility to repay their nursing student loans. Each nursing facility must provide an equal amount as matching. If appropriation authority remains after the first year of the biennium, the State Health Council may provide additional matching grants to nursing facilities for the same purpose.

The Legislative Council staff reviewed the nursing facility payment system. The Legislative Council staff said North Dakota's nursing facility payment system requires equalized rates, which means nursing facilities may not charge private pay residents a higher rate than individuals whose care is paid for through the Medicaid program. Nursing facilities may, however, charge higher rates for private occupancy rooms.

The Legislative Council staff said that the North Dakota nursing facility payment system consists of 34 classifications. Classifications are based on the resident assessment instrument (MDS - minimum data set) required in all nursing facilities. The rates for each classification vary by facility based on each facility's historical costs. Residents in higher classifications pay more than residents in lower classifications at the same facility. Facility rates change annually on January 1 and may change throughout the year due to audits or special circumstances. Revenue received by a facility changes throughout the year based on the classifications of the residents receiving services. Each resident is reviewed within 14 days of admission or reentry from a hospital and every three months subsequently. A resident's classification may change only at the scheduled three-month interval or if hospitalization occurs. The facility is required to give 30-day notice to its residents

whenever the facility's rates change. If an individual's classification changes, no notice is required, and the rate is retroactive to the effective date of the classification.

The Legislative Council staff reviewed current legislation providing for a moratorium on the expansion of nursing facility or basic care bed capacity. The Legislative Council staff said the moratorium is continued through July 31, 2003; however, provisions were added allowing a nursing facility, not more than once in a 12-month period, to convert licensed nursing facility bed capacity to basic care bed capacity and a basic care facility to convert basic care bed capacity that was licensed after July 2001 to nursing facility bed capacity.

In addition, the legislation allows the Alzheimer's and related dementia pilot projects to be licensed as basic care and allows an applicant that demonstrates to the State Department of Health and Department of Human Services the need for additional basic care bed capacity to receive a license.

The Legislative Council staff presented the following proposed long-term care study plan:

1. Receive progress reports and the final report from the Department of Human Services on its statewide needs assessment and nursing facility payment system study for long-term care.

2. Receive status reports from the Department of Human Services regarding the level of spending for long-term care services under the medical assistance and basic care assistance programs.
3. Receive information from the State Department of Health regarding licensed bed capacity and any request for transfers of nursing facility bed capacity to basic care bed capacity or vice versa.
4. Receive testimony from interested persons, including the North Dakota Long Term Care Association, regarding long-term care needs and the reimbursement system in North Dakota.
5. Consider whether the moratorium on the expansion of nursing facility or basic care facility bed capacity should be continued.
6. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
7. Prepare a final report for submission to the Legislative Council.

Mr. David J. Zentner, Medical Services Director, Department of Human Services, presented the department's plan for conducting its long-term care needs assessment and nursing facility payment system study. Mr. Zentner said the department intends to use the \$241,006 appropriated to the department from the health care trust fund to contract with the University of North Dakota and North Dakota State University to assist with this assessment and study. He said the universities are developing a survey instrument to gather the information needed for the project. He said the University of North Dakota will prepare an elderly profile and a provider and facilities profile, and North Dakota State University will develop a service area model, an elderly demand model, and a labor demand model.

Mr. Zentner said that although it has not yet been determined which university will focus on the payment system study, this part of the study will include:

1. A review of rebasing methodology and possible changes to the payment process.
2. An examination of the impact on the 90 percent occupancy limit as a result of licensed bed capacity reduction.
3. A review of the current rate equalization law.
4. An examination of the current case mix system.

A copy of the report is on file in the Legislative Council office.

Representative Delzer asked whether the University of North Dakota and North Dakota State University will only be collecting data for the long-term care needs assessment and nursing facility payment system study. Mr. Zentner said the universities will also be making recommendations in these areas.

Representative Delzer asked whether the committee would have an opportunity to review the survey document in advance. Mr. Zentner said the department will provide the survey document to the committee members as soon as it is available.

Representative Svedjan suggested the universities be asked to evaluate the impact of the reduction of licensed bed capacity on nursing home payment limits, including direct, other direct, indirect, and property cost limits.

Representative Price expressed the need for information on family support services available in various areas of the state. She suggested the State Department of Health be asked to provide information to the consultants on the numbers and locations of hospital beds and emergency medical services across the state similar to the types of information that would be gathered by a survey.

Representative Svedjan suggested the nursing facility payment system study include a comparative analysis of the cost of long-term care services prior to and after implementation of the provisions of 2001 House Bill No. 1196. Mr. Zentner said it may not be possible to have this type of comparative information available by January 2003.

Representative Delzer suggested the universities be asked to address the appropriateness of available services for residents of the state and to address issues relating to the shifting of long-term care services from institutional-based to home and community-based.

Representative Delzer asked for the status of the bed reduction incentive program. Mr. Zentner said the first deadline was July 2, 2001, and while not yet finalized, it appears that between 230 and 240 nursing home beds will be considered for delicensure.

Chairman Kliniske-Warnke asked that representatives of the University of North Dakota and North Dakota State University provide information at the next committee meeting on the survey instruments and that the survey instruments be provided to committee members prior to the next committee meeting, tentatively scheduled for September 6, 2001.

Representative Price said the 2003 Legislative Assembly needs to receive information on the entire continuum of care for long-term care services. She suggested the survey include the types of support services that are available across the state, including meals on wheels, transportation, etc.

Representative Svedjan said the University System may not have adequate expertise to conduct the nursing facility payment system study and suggested the department may want to consider requesting proposals from private sector consultants for this portion of the study.

Representative Svedjan suggested that the North Dakota Long Term Care Association have input into the development of the survey instrument. He said the association may have some of the information

already available and, therefore, would not need to be included in the surveys done by the universities.

Mr. Thor Tangedahl, Bismarck, commented on the long-term care study. Mr. Tangedahl expressed concern that the state does not regulate the rates nursing facilities can charge for private rooms. He suggested the committee review rate equalization and the issue of private room rates.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, commented on the committee's long-term care study. Ms. Peterson suggested the committee include in its study:

1. The frequency of rebasing nursing facility payment limits.
2. A review of property cost limits.
3. The limitations on specific cost categories.
4. A review of the process involved in adjusting the limits and rates.
5. An evaluation of the reasons certain nursing facilities exceed limits and others operate below the limits.

A copy of the testimony is on file in the Legislative Council office.

Mr. Norm Stuhlmiller, AARP, Bismarck, commented on the long-term care study. Mr. Stuhlmiller suggested the committee review how nursing facilities use donations received from churches and other organizations.

Ms. Janis Cheney, State Director, AARP, Bismarck, commented on the long-term care study. Ms. Cheney said the AARP has opened a state office in North Dakota. She offered the association's assistance and its informational material to the committee as it conducts its study. A copy of her testimony is on file in the Legislative Council office.

Ms. Penni Weston, Edgewood Vista, Bismarck, commented on the long-term care study. Ms. Weston suggested the committee review the services that

allow the elderly to remain in their homes for a longer period. She said although a number of alternatives to nursing facility care exist, an expansion of these services would be beneficial.

Ms. Weston suggested the committee review inconsistencies in Medicaid payment guidelines between nursing facilities and basic care facilities. She said when a resident is hospitalized, nursing facilities continue to receive payment for the individual; however, basic care facilities do not.

SENIOR CITIZEN MILL LEVY MATCHING GRANT PROGRAM

The Legislative Council staff presented a background memorandum entitled *Senior Citizen Mill Levy Matching Grant Program - Background Memorandum*. The Legislative Council staff said the study is directed by Section 18 of 2001 House Bill No. 1012 and is to address the appropriateness of whether the program should match a percentage of the total mills levied by each county for senior citizen programs or match funds only on the first mill levied.

The Legislative Council staff reviewed the history of the program and said the 1971 Legislative Assembly authorized counties or cities to levy up to one mill to establish and maintain programs and activities for senior citizens. In 1979 the Legislative Assembly established the state matching program for senior citizen programs and activities. The 1999 Legislative Assembly approved legislation increasing the number of mills a county or city may levy for senior citizen programs from one to two mills.

The Legislative Council staff reviewed the statutory provisions relating to the senior citizen mill levy and provided the following schedule showing the history of funding for senior citizen matching programs:

SENIOR CITIZEN MILL LEVY MATCHING FUNDS					
Biennium	Mill Levy Matching	Title III Matching	Total	General Fund	Estimated Income
2001-03	\$1,662,945	\$720,000	\$2,382,945	\$2,132,945	\$250,000 ¹
1999-2001	\$1,262,945	\$720,000	\$1,982,945	\$1,982,945	
1997-99	\$1,050,000	\$720,000	\$1,770,000	\$1,770,000	
1995-97	\$900,000	\$720,000	\$1,620,000	\$1,620,000	
1993-95	\$900,000	\$720,000	\$1,620,000	\$1,332,000	\$288,000 ²
1991-93	\$900,000	\$720,000	\$1,620,000	\$720,000	\$900,000 ²
1989-91		\$720,000	\$720,000 ³	\$720,000 ³	
1987-89	\$1,646,400	⁴	\$1,646,400 ⁵	\$1,646,400 ⁵	
1985-87	\$1,680,000	⁴	\$1,680,000	\$1,680,000	
1983-85	\$1,350,000	⁴	\$1,350,000	\$1,350,000	
1981-83	\$1,200,000	⁴	\$1,200,000	\$1,200,000	
1979-81	\$1,000,000	⁴	\$1,000,000	\$1,000,000	

¹ Estimated income from the health care trust fund.
² Estimated income from the state aid distribution fund.
³ This legislative appropriation of \$1,680,000 was reduced by \$940,000 as a result of budget reductions relating to the tax referrals.
⁴ Title III matching funds were not identified separately from the mill levy matching program.
⁵ The legislative appropriation of \$1,680,000 was reduced by \$33,600 as a result of the Governor's 2 percent budget allotment.

The Legislative Council staff presented the following schedule showing the percentage state matching is of the funding collected from senior citizen mill levies since 1997:

Tax Year	Disbursements	State Matching Percentage of Local Mill Levy
2001 estimate	\$831,473	56.9% ¹
2000	\$631,473	43.2%
1999	\$631,473	46.3%
1998	\$525,000	40.9%
1997	\$525,000	42.6%

¹ Estimate based on county tax year 2000 assessed value and mill levies.

The Legislative Council staff presented the following proposed study plan:

1. Receive information from the Department of Human Services regarding the mill levy matching program, including federal Title III matching requirements.
2. Receive information from representatives of counties and cities regarding the senior citizen mill levy matching program.
3. Receive testimony from other interested persons regarding the senior citizen mill levy matching program.
4. Consider options for the state matching program, including limiting the match to the first mill levied by each city or county.
5. Develop committee recommendations and any legislation necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Council.

Representative Delzer suggested the committee limit the study only to the issue of whether or not the program should match only the first mill levied by a county or city.

Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, commented on the study of the mill levy matching program. Ms. Wright reviewed the administrative rules relating to the mill levy matching program. She said the department receives abstracts from auditors, determines resource allocation, and disburses funds to county or city auditors. A copy of the report is on file in the Legislative Council office.

Representative Delzer asked whether counties or cities are allowed to retain funds for senior citizen programs beyond the current year. Ms. Wright said generally a county may retain funds beyond the current year for a specific purpose if authorized by the board of county commissioners.

Mr. Brian Arett, Fargo Senior Commission, Inc., commented on the mill levy matching program study. Mr. Arett expressed support for the mill levy matching program and indicated its importance for helping the elderly to remain in their homes.

Representative Delzer asked that the committee receive information on the process a city or county uses to change the mill levy for senior citizen programs.

Representative Svedjan asked for information on the process involved when a county retains senior citizen funding beyond the current year.

Representative Porter asked for information on the amount of senior citizen-related funding that is being retained by counties across the state.

ALTERNATIVES TO ABORTION

The Legislative Council staff presented a background memorandum entitled *Alternatives-to-Abortion Services Program - Background Memorandum*. The Legislative Council staff said the study is to address the feasibility and desirability of an alternatives-to-abortion services program and include a review of how federal funds received under Title X are spent in the state, the continuum of care, and access to services.

The Legislative Council staff reviewed action by the 2001 Legislative Assembly relating to Senate Bill No. 2354 which, as introduced, would have required the Department of Human Services to contract with a nonprofit organization for an alternatives-to-abortion services program, similar to a program in Pennsylvania. The bill was subsequently amended to remove the program and provide for the Legislative Council study.

The Legislative Council staff reviewed federal family planning funds received by North Dakota. The Legislative Council staff said that Title X of the federal Public Health Service Act of 1970 provides for a family planning program. The program is administered by the United States Department of Health and Human Services, Office of Population Affairs. The program authorizes grants to assist in the establishment and operation of voluntary family planning projects offering a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The mission of the program is to provide individuals the information and means to exercise personal choice in determining the number and spacing of their children. None of the funds appropriated for this program are to be used in programs when abortion is a method of family planning. Funding received under the program does not require any state matching funds. The program offers pregnant women the opportunity to be provided information and counseling regarding:

1. Prenatal care and delivery.
2. Infant care, foster care, or adoption.
3. Pregnancy termination.

The Legislative Council staff said the State Department of Health anticipates receiving \$1.3 million of federal family planning funds during the 2001-03 biennium. Of this amount, \$228,000 is designated for

special projects--outreach services on each of the four Indian reservations. The department anticipates using the remaining funds to:

1. Provide statewide access to required medical, laboratory, and counseling services through contracts with district health units and nonprofit organizations.
2. Interpret and monitor state and federal regulations.

3. Plan and evaluate programs.
4. Provide consulting and technical assistance.
5. Provide information and training for clinic staff and allied health professionals.

The Legislative Council staff presented the following schedule showing abortion statistics in North Dakota and the United States since 1990:

	North Dakota			United States		
	Pregnancies	Abortions	Abortion Percentage	Pregnancies	Abortions	Abortion Percentage
1990	10,386	1,065	10.3%	6,778,000	1,609,000	23.7%
1991	9,924	986	9.9%	6,674,000	1,557,000	23.3%
1992	9,885	1,017	10.3%	6,596,000	1,529,000	23.2%
1993	9,655	910	9.4%	6,494,000	1,500,000	23.1%
1994	9,568	935	9.8%	6,373,000	1,431,000	22.5%
1995	9,474	928	9.8%	6,245,000	1,364,000	21.8%
1996	9,250	862	9.3%	6,240,000	1,366,000	21.9%
1997	9,226	826	9.0%			
1998	8,826	847	9.6%			
1999	8,557	883	10.3%			
2000	8,585 ¹	863 ¹	10.1% ¹			

¹ Not yet finalized.

The Legislative Council staff presented the following study plan:

1. Receive information from the State Department of Health regarding services provided under the family planning program across the state.
2. Review the State Department of Health's uses of federal Title X family planning program funds during the 2001-03 biennium.
3. Receive information from the Department of Human Services regarding options for providing an alternatives-to-abortion services program.
4. Receive information from the State Department of Health regarding options for providing alternatives-to-abortion services.
5. Receive information from other organizations regarding the feasibility and desirability of developing an alternatives-to-abortion services program in the state.
6. Consider funding alternatives for an alternatives-to-abortion services program.
7. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
8. Prepare a final report for submission to the Legislative Council.

Ms. Sandra Anseth, Maternal and Child Health Division Director, State Department of Health, commented on the committee's study of an alternatives-to-abortion services program. Ms. Anseth said the purpose of the Title X program is to lower the incidence of unintended pregnancy, to improve maternal health, and to prevent recourse to abortion. She said the program, operated through

nine delegate agencies, district health units, and nonprofit organizations, offers family planning services at 18 clinic sites in North Dakota. She said in calendar year 2000, 14,494 clients made 24,062 visits to the family planning agencies. Of these clients, 8,791 had incomes below 150 percent of the federal poverty level. She said clients pay for services based on the number of members of the household and the household income. She said clients with income at or below 100 percent of the poverty level receive services at no cost.

Ms. Anseth said the programs provide pregnancy testing, diagnosis, counseling, and referrals. She said the clinics are required to maintain referral lists, which must be made available to clients, of services for women with positive pregnancy test results. She said the programs must offer pregnant women the opportunity to be provided information and counseling regarding prenatal care and delivery, infant care, foster care, adoption, and pregnancy termination. A copy of the report is on file in the Legislative Council office.

Representative Porter asked for the number of individuals receiving services who are referred for an abortion. Ms. Deb Arnold, Program Administrator, State Department of Health, said that based on a survey conducted four years ago, approximately 4 percent of pregnant women seen at the clinics requested information on abortion services.

Chairman Kliniske-Warnke asked the department to provide information to the committee at its next meeting on the history of the language included in the federal guidelines requiring pregnancy termination to be offered to pregnant women under the program. She said it seems unlikely that the language would

have been included when the Act was passed in 1970 and abortions were illegal until 1973. Ms. Anseth said the department would provide the information for the committee.

Mr. Blaine Nordwall, Economic Assistance Policy Director, Department of Human Services, commented on the committee's study. Mr. Nordwall said if federal temporary assistance for needy families (TANF) funds are to be used for an alternatives-to-abortion program, he suggested that any proposed legislation indicate how the program will accomplish the purposes of federal TANF funding. He said under current federal law, the purpose of federal TANF funding is to:

1. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.
2. End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.
3. Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.
4. Encourage the formation and maintenance of two-parent families.

Mr. Nordwall indicated that because TANF funding is a block grant, any allocation made by the Legislative Assembly generally will be considered appropriate. However, he said, if not consistent with federal law, an allocation could be questioned by the State Auditor as the State Auditor's office conducts its single audit of the state on behalf of the federal government. A copy of the testimony is on file in the Legislative Council office.

Ms. Rachelle Sauvageau, Diocese of Fargo, presented testimony on behalf of Mr. Christopher Dodson, Executive Director, North Dakota Catholic Conference. The testimony indicated that the North Dakota Catholic Conference supports the establishment of an alternatives-to-abortion program. Ms. Sauvageau suggested the committee:

1. Receive testimony from women who have had abortions.
2. Receive testimony from women who considered abortions but received help to find an alternative.
3. Receive testimony from directors and counselors from crisis pregnancy centers and social services agencies.
4. Visit a crisis pregnancy center.
5. Examine research on why women choose abortions.
6. Examine research on the emotional and physical effects of having an abortion.
7. Receive testimony from state administrators and the private contractor of the alternatives-to-abortion services program in Pennsylvania.

A copy of the testimony is on file in the Legislative Council office.

Ms. Pauline Economon, Executive Director, AAA Pregnancy Clinic, Fargo, said the AAA Pregnancy Clinic is a nonprofit corporation serving individuals facing a crisis pregnancy and providing community outreach educational programs focusing on abstinence education. Ms. Economon said the program has operated in Fargo since 1984. She said the clinic provides free services to women facing unplanned pregnancies. She said the program does not refer or provide referrals for abortions but provides life-affirming education and support services to these women.

Services provided by the clinic include medical services, financial support, and material aid. Ms. Economon said the program receives donations from individuals, businesses, and churches. She said the clinic has counseled over 600 pregnant women. She said if the organization had a consistent source of base funding, it could expand its services. A copy of her testimony is on file in the Legislative Council office.

Representative Porter asked for information on the outcomes of the 600 clients the AAA Pregnancy Clinic has served. Ms. Economon said she would provide the information for the committee.

Representative Price asked that the State Department of Health provide information on the clients served under the Title X program, including information on alcohol-related pregnancies.

The committee recessed for lunch at 12:15 p.m. and reconvened at 1:15 p.m.

Ms. Linda Johnson Wurtz, Bismarck, expressed concern with developing an alternatives-to-abortion program. Ms. Johnson Wurtz said this type of program may violate privacy rights of women and suggested that fathers be included in discussions relating to this type of program.

Mr. Tim Lindgren, North Dakota Life League, Fargo, suggested the committee review the uses of Title X funding. Mr. Lindgren expressed concern regarding the development of an alternatives-to-abortion program. He said state involvement would reduce the private sector's motivation for developing programs that are now religiously based. He stressed the need for more pregnancy crisis centers, but he believes they should be financed by the private sector.

Representative Cleary suggested the committee consider including fathers in its discussions relating to the development of an alternatives-to-abortion program.

Representative Porter asked the State Department of Health to provide statistical information for each of the nine delegate agencies on the number of pregnant women who received counseling and the number that resulted in live births and abortions. Chairman Kliniske-Warnke said this would be arranged for the next committee meeting.

Representative Porter asked for information on the state of Pennsylvania's abortion percentage for the past 10 years.

Representative Price asked that information provided to the House Human Services Committee during the legislative session on the number of women who have had abortions regarding their race, age, etc., be provided to the committee.

Testimony from Ms. Stacey Pfliiger, Executive Director, North Dakota Right to Life Association, Bismarck, was distributed to the committee expressing support for an alternatives-to-abortion program. A copy of the testimony is on file in the Legislative Council office.

CHARITABLE CHOICE

The Legislative Council staff presented a background memorandum entitled *Charitable Choice - Background* Memorandum relating to the committee's study of the issues and concerns of implementing Charitable Choice, the privatization of federally funded welfare services through faith-based organizations. The Legislative Council staff said Charitable Choice provisions were first included in the federal welfare reform measure, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This law authorized states to administer and provide TANF services or benefits through contracts with nongovernmental entities or to provide TANF recipients with certificates or vouchers redeemable with private entities. The law allowed states to contract with religious organizations to provide federally funded services under specifically named programs on the same basis as any other nongovernmental provider without impairing the religious character of the organizations or the religious freedom of recipients. Charitable Choice does not contain new funding for faith-based organizations, and it only applies to programs designated by Congress. In addition to the TANF program, other federal programs authorizing Charitable Choice include the child care and development block grant which specifies that religious organizations are eligible to participate, programs available under the community services block grant enacted in 1998, and substance abuse treatment and prevention services programs under Titles 5 and 19 of the Public Health Services Act enacted in 2000.

The Legislative Council staff said that under Charitable Choice rules, the government may not discriminate against an organization that applies to provide services on the basis of its religious character and may not require it to remove religious art or other symbols as a condition of participation. In addition, Charitable Choice specifies that religious organizations retain control over the definition, development, practice, and expression of their religious beliefs. The rules contemplate that religious organizations will employ their faiths in publicly funded programs using their own resources. A religious organization's use of public funds is subject to audit, but if the federal funds

are segregated into separate accounts, only these accounts are subject to audit.

The Legislative Council staff said Charitable Choice rules also require that a religious organization cannot discriminate against a beneficiary or potential beneficiary on the basis of religion or religious belief, and if a recipient does object to the religious character of the provider, the government must provide an alternate and accessible provider.

The Legislative Council staff said a number of religiously affiliated or religiously sponsored organizations at the national, state, and local levels, including Catholic Family Services and Lutheran Social Services, have participated in publicly funded social services programs.

The Legislative Council staff said concerns of the Charitable Choice provisions relate to the interpretations and applications of the establishment of a religion clause of the First Amendment which has generally been interpreted by the Supreme Court to prohibit government from sponsoring or financing religious instruction or indoctrination. Generally, programs operated by religious organizations that receive public funding in the form of grants or contracts must essentially be secular in nature. Charitable Choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character.

The Legislative Council staff said President George W. Bush has recommended expanding Charitable Choice by further involving faith-based organizations in the provision of government-funded services. The President's proposal includes the following initiatives:

1. A commitment to fully implement the Charitable Choice measures that have been enacted into law.
2. The establishment of private programs incorporating Charitable Choice to assist children and families of prisoners, to improve inmate rehabilitation prior to release, to establish maternity group homes, and to provide after-school programs for low-income children.
3. The creation of an office of faith-based and community initiatives in the White House to enhance and promote government's partnership with faith-based and community organizations.
4. The establishment of a center for faith-based and community initiatives in each of five federal agencies--the Departments of Health and Human Services, Housing and Urban Development, Labor, Justice, and Education.
5. Encourage and assist states to create their own versions of the White House office of faith-based and community initiatives.
6. The expansion of incentives for private giving to religious and charitable organizations.

The Legislative Council staff said legislation has been introduced in the 107th Congress relating to Charitable Choice, including the Community Solutions Act in the House (H.R.7) and the Savings Opportunity and Charitable Giving Act of 2001 (S.592) in the Senate.

The Legislative Council staff presented the following proposed study plan:

1. Receive information from the Department of Human Services regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
2. Receive information from the State Department of Health regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
3. Receive information from the Department of Corrections and Rehabilitation regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.
4. Monitor federal legislation and the President's initiatives relating to Charitable Choice.
5. Review other states' Charitable Choice initiatives.
6. Receive testimony from representatives of faith-based organizations regarding their interest in providing services and the types of services that may be provided.
7. Receive testimony from other interested persons regarding Charitable Choice.
8. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Council.

Mr. Nordwall commented on the committee's study of Charitable Choice. He provided a copy of the federal law (42 U.S.C. 604a) included as part of the federal TANF legislation that reflects the belief that religious organizations have relevant services to offer beneficiaries of assistance and that the beneficiaries should not be discriminated against by a religious organization that provides services.

A copy of the testimony is on file in the Legislative Council office.

Representative Svedjan suggested that the Department of Human Services be asked to provide information on its contracts with faith-based organizations.

Representative Price asked for information on how the Department of Human Services evaluates and maintains accountability with its private contractors. Mr. Nordwall said the department would provide information to the committee at its next meeting.

Senator Lee suggested that the Department of Public Instruction be asked to provide information on

the extent to which faith-based organizations are used to provide early childhood services.

OTHER RESPONSIBILITIES

The Legislative Council staff presented a memorandum entitled *Budget Committee on Human Services - Other Responsibilities*, which lists other responsibilities assigned to the committee. The Legislative Council staff said the committee has been assigned the responsibility to consider any request from the Department of Human Services, pursuant to North Dakota Century Code Section 50-09-29, to change the TANF program if there is insufficient work or opportunity to participate in work activities due to increases in the unemployment rate or if the administration of the program causes otherwise eligible individuals to become a charge upon the counties.

The Legislative Council staff said the current TANF block grant program is effective through September 30, 2002. The program is expected to be reauthorized by Congress but changes may be made.

The Legislative Council staff presented the following study plan associated with this responsibility:

1. Consider any requests from the Department of Human Services to change the TANF program.
2. Receive reports from the Department of Human Services on the status of the reauthorization of the federal TANF program by Congress.

The Legislative Council staff said the other responsibility assigned to the committee is to receive quarterly reports from the Department of Human Services regarding the progress in preparing a joint recommendation with developmental disabilities services providers for a new statewide developmental disabilities services provider reimbursement system. The Legislative Council staff said this responsibility was directed in 2001 Senate Bill No. 2307.

The Legislative Council staff said the committee may wish to proceed with this responsibility by receiving reports from the Department of Human Services at each of the committee's meetings.

Mr. Mark Kolling, Assistant Director, Developmental Disabilities Unit, Department of Human Services, commented on the committee's responsibility to receive reports regarding the joint recommendation on the developmental disabilities services provider reimbursement system.

Mr. Kolling said the department and the developmental disabilities services providers have organized a work group to develop the recommendation. The work group is comprised of at least one provider representative from each of the eight human service regions, the regional director from the Southeast Human Service Center, the regional developmental disabilities program administrator from the West Central Human Service Center, the director of Protection and Advocacy, two legislators, and Department of

Human Services representatives from the executive office, medical assistance, developmental disabilities, and fiscal administration. A copy of the report is on file in the Legislative Council office.

Representative Price suggested the committee receive additional information regarding the TANF program during this interim, including the status of the 60-month deadline for assistance and its effect on individuals, work participation rates, and recommendations on new initiatives developed by the department.

COMMITTEE DISCUSSION

Chairman Kliniske-Warnke asked that the Legislative Council staff provide an excerpt of the committee minutes to the Department of Human Services relating to the long-term care study discussion for the department's use in planning the long-term care needs assessment and nursing facility payment system study.

It was moved by Representative Price, seconded by Senator Lee, and carried on a voice vote that the committee proceed with the responsibility to approve any change to the TANF program as follows:

1. **Consider any request from the Department of Human Services to change the TANF program.**
2. **Receive reports from the Department of Human Services on the status of the reauthorization of the federal TANF program by Congress.**
3. **Receive periodic reports from the Department of Human Services on the status of the current TANF program and any new initiatives.**

It was moved by Representative Metcalf, seconded by Representative Price, and carried on a voice vote that the committee proceed with the responsibility relating to the developmental disabilities services provider reimbursement system by receiving reports from the Department of Human Services at each meeting on the status of the development of a new developmental disabilities services provider reimbursement system.

It was moved by Senator Fischer, seconded by Representative Price, and carried on a voice vote that the study plan for the Charitable Choice study be amended to include the development of recommendations regarding policy, evaluation, and accountability of contracts dealing with faith-based organizations.

It was moved by Representative Porter, seconded by Representative Severson, and carried on a voice vote that the committee proceed with the Charitable Choice study as follows:

1. **Receive information from the Department of Human Services regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.**
2. **Receive information from the State Department of Health regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.**
3. **Receive information from the Department of Corrections and Rehabilitation regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.**
4. **Receive information from the Department of Public Instruction regarding contracts with faith-based organizations and the potential for further contracting with faith-based organizations for services.**
5. **Monitor federal legislation and the President's initiatives relating to Charitable Choice.**
6. **Review other states' Charitable Choice initiatives.**
7. **Receive testimony from representatives of faith-based organizations regarding their interest in providing services and the types of services that may be provided.**
8. **Receive testimony from other interested persons regarding Charitable Choice.**
9. **Develop recommendations regarding policy, evaluation, and accountability of contracts dealing with faith-based organizations.**
10. **Develop committee recommendations and prepare any legislation necessary to implement the recommendations.**
11. **Prepare a final report for submission to the Legislative Council.**

Chairman Kliniske-Warnke asked that the Legislative Council staff provide each committee member with a copy of the Title X regulations and that each of the delegate agency directors be asked to comment to the committee on services provided in their area under Title X.

Representative Porter suggested that the National Conference of State Legislatures be contacted for an interpretation of what is required under Title X for abortion counseling and referrals for abortion.

Representative Cleary suggested that individuals who have experienced a crisis pregnancy be invited to discuss with the committee their decisions.

It was moved by Representative Price, seconded by Representative Porter, and carried on a voice vote that the committee proceed with the alternatives-to-abortion study as follows:

1. Receive information from the State Department of Health regarding services provided under the family planning program across the state.
2. Review the State Department of Health's uses of federal Title X family planning program funds during the 2001-03 biennium.
3. Receive information from the Department of Human Services regarding options for providing an alternatives-to-abortion services program.
4. Receive information from the State Department of Health regarding options for providing alternatives-to-abortion services.
5. Receive information from other organizations regarding the feasibility and desirability of developing an alternatives-to-abortion services program in the state.
6. Consider funding alternatives for an alternatives-to-abortion services program.
7. Consider statewide access and cultural issues relating to an alternatives-to-abortion program.
8. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
9. Prepare a final report for submission to the Legislative Council.

It was moved by Representative Svedjan, seconded by Representative Severson, and carried on a voice vote that the committee proceed with the senior citizen mill levy matching study as follows:

1. Receive information from the Department of Human Services regarding the mill levy matching program, including federal Title III matching requirements.
2. Receive information from representatives of counties and cities regarding limiting the senior citizen mill levy matching grant to only the first mill levied.
3. Receive testimony from other interested persons regarding limiting the senior citizen mill levy matching grant to only the first mill levied.
4. Consider limiting the match to the first mill levied by each city or county.
5. Develop committee recommendations and any legislation necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Council.

Chairman Kliniske-Warnke asked that the Department of Human Services provide comparative information to the committee at its next meeting showing the effect of limiting the matching program to the first mill levied for each city or county.

It was moved by Senator Lee, seconded by Senator Fischer, and carried on a voice vote that the committee proceed with the long-term care study, subject to change at the next committee meeting, as follows:

1. Receive progress reports and the final report from the Department of Human Services on its statewide needs assessment and nursing facility payment system study for long-term care.
2. Receive status reports from the Department of Human Services regarding the level of spending for long-term care services under the medical assistance and basic care assistance programs.
3. Receive information from the State Department of Health regarding licensed bed capacity and any request for transfers of nursing facility bed capacity to basic care bed capacity or vice versa.
4. Receive reports from the University of North Dakota and North Dakota State University on proposed surveys relating to the needs assessment and payment system study.
5. Receive testimony from interested persons, including the North Dakota Long Term Care Association, regarding long-term care needs and the reimbursement system in North Dakota.
6. Consider whether the moratorium on the expansion of nursing facility or basic care facility bed capacity should be continued.
7. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
8. Prepare a final report for submission to the Legislative Council.

Representative Svedjan expressed his opposition to the approval of the proposed study plan.

Chairman Kliniske-Warnke announced that the next committee meeting would be Thursday, September 6, 2001, in Bismarck.

It was moved by Senator Fischer, seconded by Representative Cleary, and carried on a voice vote that the meeting be adjourned subject to the call of the chair. The meeting was adjourned at 3:45 p.m.

Allen H. Knudson
Assistant Legislative Budget Analyst and Auditor

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:1