

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON HUMAN SERVICES

Tuesday, October 22, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Amy Warnke, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Amy Warnke, Audrey B. Cleary, Jeff Delzer, Pat Galvin, Bob Hunskor, James Kerzman, 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: Senator Kenneth Kroepflin

Others present: See attached appendix

It was moved by Representative Porter, seconded by Representative Tieman, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

LONG-TERM CARE NEEDS STUDY

Mr. David Zentner, Medical Services Director, Department of Human Services, presented information on the department's long-term care needs assessment and nursing facility payment system study.

Mr. Zentner said the nursing facility payment system study completed by Myers and Stauffer, L.C., is complete; however, the long-term care needs assessment being conducted by the University of North Dakota and North Dakota State University is not anticipated to be completed until the end of November 2002.

Mr. Zentner reviewed the recommendations included in the nursing facility payment system study and the department's response to each recommendation. Mr. Zentner said the nursing facility payment system study involved:

1. An evaluation of the 90 percent occupancy incentive.
2. An evaluation of rebasing frequency.
3. An evaluation of equalized rate policy.
4. A review of the case mix payment system.

Mr. Zentner reviewed the consultant's evaluation of the 90 percent occupancy incentive. He said the consultant recommended continuing the minimum occupancy percentage at 90 percent and the department concurs.

Mr. Zentner reviewed the consultant's evaluation of rebasing frequency. He said the consultant recommended no major changes to North Dakota's method

of rebasing nursing facility limits. He said the consultant's recommendations include:

1. Establishing a maximum number of years between rebasing. Mr. Zentner said the department believes this is a policymaking decision to be made by the Legislative Assembly.
2. Monitoring and evaluating facility spending patterns during periods between rebasing. This should identify:
 - a. Significant changes in cost in excess of that estimated by the inflation index.
 - b. Changes in the allocation of costs between direct, other direct, and indirect cost categories.
 - c. Changes in a facility's resident acuity.Mr. Zentner said the department believes additional analysis may be useful in establishing benchmarks to be used by the Legislative Assembly in determining if more frequent rebasing is necessary.
3. Changing the method of calculating limits from the percentile method to a "median plus" method. The consultant's report indicates that the percentile method currently used precludes a certain percentage of providers from receiving payments to cover costs. The "median plus" method potentially allows all facilities to operate at a level below the limit and provides encouragement and incentives to all providers to attain this goal. Mr. Zentner said the department concurs with the recommendation and recommends the process be changed the next time limits are rebased.
4. Setting limits for direct, other direct, and indirect costs at the "median plus" 20 percent, 20 percent, and 10 percent, respectively, or in proportion with these recommendations in order to achieve the greatest cost coverage for the Medicaid funding available. The consultant estimates implementation of this recommendation would cost an additional \$136,694 per year, of which approximately \$41,000 would be from the general fund.

Mr. Zentner reviewed the consultant's evaluation of North Dakota's equalized rate policy. Mr. Zentner

said the consultant does not recommend changing the current rate equalization policy of limiting rates for private pay individuals and other nongovernmental payers in semiprivate rooms to the comparable Medicaid rate. He said the consultant made the following recommendations:

1. Limit the additional amount nursing facilities may charge for a private room to \$10 per day. Mr. Zentner said the department believes the decision to limit a nursing facility's ability to charge additional amounts for private rooms is a policy decision that should be made by the Legislative Assembly. Mr. Zentner said this recommendation would not affect the payments made under the state Medicaid program.
2. Change the current Medicaid property cost calculation to reflect the growing number of private rooms. The rate calculation should consider the square footage separately for private rooms and semiprivate rooms on a per resident basis. The consultant estimates that implementation of this recommendation will reduce Medicaid program costs by \$635,555 per year, of which approximately \$191,000 would be from the general fund. Mr. Zentner said the department is reluctant to implement this recommendation because it would create a rate differential based on the type of accommodation that was not anticipated when equalized rates were implemented and would shift Medicaid savings to private pay residents who occupy a private room. In addition, he said this change would add administrative complexities by requiring the department and providers to maintain 68 rather than 34 rates.

Mr. Zentner reviewed the consultant's evaluation of North Dakota's case mix payment system. Mr. Zentner said the consultant recommended:

1. The Department of Human Services implement a minimum data set (MDS) accuracy audit program and where errors are found, change payment rates and recoup overpayments. The consultant estimates annual Medicaid overpayments could be \$91,000 per year and this amount would provide funding for an additional staff person to administer the program. Mr. Zentner said the department agrees with the recommendation. He said the department has begun a review process to visit nursing facilities to review the accuracy of the classification process, provide technical assistance, and recoup funds where indicated. However, he said staff resources are limited and the department is able to visit only a few facilities each quarter. He said if the reviews indicate major problems, the department will attempt, within

the resources available, to increase the number of reviews.

2. The Department of Human Services consider adopting the next version of the minimum data set when it becomes available from the federal government in 2004. Mr. Zentner said the department will consider adopting the new version when it is available and will consult with the nursing facility industry and the Legislative Assembly before making any major changes in the current classification process.

Mr. Zentner reviewed a preliminary document provided by the University of North Dakota regarding the long-term care needs assessment. Mr. Zentner said the report indicates that:

1. North Dakota's general population over age 55 reports higher levels of health status than the nation.
2. North Dakota's reservation populations report health status that is much lower than the nation and lower than the state's general population.
3. Chronic disease rates are lower than national norms for North Dakota's general population but higher among the reservation's elders.
4. Sixty-nine percent of North Dakotans age 50 and over do not anticipate relocating in the next 10 years.
5. North Dakotans living in rural frontier counties are the most committed to staying in their present homes and communities.
6. The presence of functional limitations does not relate to plans to move--even those with emerging disabilities plan to stay in local communities and homes.
7. The number of services people report as available declines from urban to rural to rural frontier.
8. Availability of services is a major issue.
9. Transportation to services is a major issue.
10. Nursing home insurance has been purchased by 25.9 percent of North Dakotans over age 50.
11. Affordable assisted living services are needed, especially in the rural and reservation communities.
12. Health promotion and wellness activities designed to prevent functional limitations are needed to allow individuals to remain independent.
13. Family and informal caregiving should be developed and integrated into a broad plan for long-term care.
14. Networking formal and informal caregivers into regional alliances to provide a full range of services would be useful.
15. Rural development in North Dakota should include service sector jobs.

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

Representative Kerzman suggested the state consider rebasing nursing facility rates every two years rather than four years as recommended by the consultant.

In response to a question from Representative Delzer, Mr. Zentner said private pay individuals generally use their own resources to pay for nursing facility care for an average of one and one-half years before becoming eligible for Medicaid.

It was moved by Senator Fischer, seconded by Representative Severson, and carried on a voice vote that the committee recommend the Department of Human Services present the final report of the long-term care needs assessment and nursing facility payment system study to the House and Senate Human Services and Appropriations Committees during the 2003 legislative session.

Mr. Zentner presented information on the status of long-term care expenditures for the medical assistance and basic care assistance programs and payments made under the nursing facility bed reduction incentive program for the 2001-03 biennium and related budget requests for the 2003-05 biennium.

Mr. Zentner said the department projects 2001-03 general fund expenditures to exceed budgeted amounts for nursing facility care by \$1.9 million primarily due to the 1.51 percent reduction in the federal Medicaid matching rate and the \$850,000 general fund reduction resulting from the Governor's budget allotment.

Mr. Zentner said general fund basic care assistance expenditures are anticipated to exceed the budgeted amount by \$300,000 due to the 1.51 percent reduction in the federal Medicaid matching rate and expenditures for room and board being more than anticipated.

Regarding the nursing facility bed reduction incentive program, Mr. Zentner said the department purchased 270 beds at a cost of \$3.2 million. He said the department did not receive any new offers to purchase beds during the quarter ending September 30, 2002.

Regarding the department's budget request for the 2003-05 biennium, Mr. Zentner said the department submitted a 95 percent budget to the Office of Management and Budget on October 10, 2002, and Governor Hoeven will present the executive budget to the Legislative Assembly on December 4, 2002.

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

Mr. Norm Stuhlmiller, Bismarck, commented on the long-term care needs study. He expressed concern that some long-term care facilities are charging private pay residents much more for a private room than is being paid by Medicaid residents. He reviewed a private pay rate schedule prepared in

May 2000. He said the charges to private pay individuals for private rooms varies from no additional cost to a nominal fee of \$2 to \$5 per day or more. In some instances, he said, the private pay, private room rate is reported to be as high as \$150 per day over the cost of care. He said at an additional charge of \$10 per day, a private pay individual would pay an additional \$3,650 per year for care. A copy of the testimony is on file in the Legislative Council office.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, commented on the long-term care needs study. She said if the state accepts the consultant's recommendation to rebase nursing facility limits every four years, the 2003 Legislative Assembly would need to provide an appropriation to update the limits in the rate year beginning January 1, 2004. She said the current limits are based on 1999 costs adjusted for inflation and following the four-year recommendation the next rebase year would be 2003.

Ms. Peterson expressed concern that Medicare rates were reduced by 10 percent on October 1, 2002, resulting in an average loss of \$26.75 per resident per day for every Medicare resident in North Dakota nursing facilities.

Ms. Peterson said because nursing facilities are operating under 1999 cost limits, nursing facilities are not being adequately reimbursed. She said general liability insurance premiums have tripled in the last two years.

Ms. Peterson said the association does not support the consultant's recommendation to limit the amounts nursing facilities may charge private pay residents for private rooms. She said the private room fee is the only flexibility nursing facilities have to increase revenues when needed.

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

Mr. Duane Houdek, Governor's office, commented on the status of Olmstead Commission activities. He said the commission has been awarded a \$900,000 real choice systems change grant to develop the following five pilot projects:

1. Person-centered care - Designed to broaden the local continuum of care provided by long-term care facilities. He said this project will involve two rural and two urban nursing homes providing a more client-driven model of care, including less-restrictive alternatives and/or home care when appropriate.
2. Financial pooling - Designed to allow funding to follow the client. He said all public and private funds available for a client will be pooled and the client given the ability to purchase services as necessary. The provider must include a health system or long-term care facility.
3. Living in place - Designed to allow individuals to live in their homes and receive necessary

personal services, modifications, and assistive technology.

4. Cultural model - Designed to build capacity for home care among American Indians by utilizing existing training available at the United Tribes Technical College enhanced with the necessary components to enable students to provide in-home care to people with disabilities on the reservations.
5. Informational access to services - Designed to coordinate existing resources such as the senior information line, Children's Services Coordinating Committee directories, and other resources to ensure that available services throughout the state are identified and may be accessed from one contact.

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

Representative Porter asked whether room and board services under basic care assistance could be covered by Medicaid. Mr. Zentner said the department could submit a waiver to the federal Centers for Medicare and Medicaid Services; however, he does not believe it would be approved because room and board is not considered a medical service.

Representative Delzer asked when the department anticipates the long-term care needs assessment to be available to the Legislative Assembly. Mr. Zentner said the contract provides for a completion date of December 15, 2002; however, the University of North Dakota and North Dakota State University anticipate having the report available by the end of November. Representative Delzer suggested the department present the report to the Legislative Assembly during the organizational session in December.

SENIOR CITIZEN MILL LEVY STUDY

Ms. Linda Wright, Director, Aging Services, Department of Human Services, provided information on the number of individuals served as a result of the funding provided by the senior citizen mill levy matching grant program. She distributed a schedule showing the number of individuals served from funding made available from senior citizen mill levies and senior citizen mill levy matching grant funds as reported by counties and cities. The report indicates a total of 62,468 individuals were served in 2001 as a result of funds generated from senior citizen mill levies and matching grants.

In response to a question from Representative Warnke, Ms. Wright said the numbers reported might not be comparable between counties due to varying uses of the mill levy and matching grant funds. She said some counties may use the mill levy and matching grant funds to match federal Title III funding while others may not.

Mr. Brian Arett, Executive Director, Fargo Senior Commission, said the numbers reported by Cass County of 13,099 include all the individuals served by

the Fargo Senior Commission programs because the funding provided from the senior citizen mill levy and matching grant programs are used as matching funds for federal Title III Older Americans Act funds.

Mr. Arett commented on the senior citizen mill levy study. He stressed the importance of mill levy funding for providing a continuum of care for the elderly living in their homes and local communities.

Mr. John Hougen, Public Assistance TANF Director, Department of Human Services, provided information on the status of the reauthorization of the federal temporary assistance for needy families (TANF) program by Congress, on the status of the TANF appropriation for the 2001-03 biennium, and on timeframes involved in referring TANF recipients to services. He said Congress has passed a continuing resolution continuing the TANF program under current rules and funding through December 31, 2002. He said Congress is now in recess and will not reconvene until after the November election.

Mr. Hougen reported the department anticipates spending \$28.2 million for TANF benefits during this biennium and anticipates \$7.2 million of carryover TANF block grant funding will be available for the 2003-05 biennium.

Mr. Hougen said under the TANF program referrals to child support and the job opportunities and basic skills (JOBS) program are mandatory and done immediately when a family is determined eligible for the TANF program. Other referrals are based on needs which at times, he said, can be difficult to identify.

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

Ms. Kathy Hogan, Director, Cass County Social Services, commented on the TANF program. She said service availability is not a concern; however, acceptance of services by the TANF recipients is sometimes difficult if the individual does not believe services, such as substance abuse services, are needed.

Later in the day, the committee received comments from Ms. Ronda Hoff, Individual Account Coordinator, Fargo, regarding the TANF program and the benefits of using TANF funds for establishing individual development accounts. She provided information on options for state support of individual development accounts through TANF funding. She said "saving our cents" is a partnership between three community action agencies in North Dakota--the Southeastern North Dakota Community Action Agency in Fargo, the Red River Valley Community Action Agency in Grand Forks, and Community Action and Development Program in Dickinson. She said these agencies are encouraging TANF-eligible families to begin saving money for the future by establishing individual development accounts.

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

The committee recessed for lunch at 11:50 a.m. and reconvened at 1:00 p.m.

ALTERNATIVES-TO-ABORTION SERVICES STUDY

The Legislative Council staff presented a memorandum entitled *Federal Title X Guidelines and Funding*. The Legislative Council staff said program guidelines for the federal Title X program provide that the grants may be provided to either public or nonprofit private entities. In North Dakota the State Department of Health receives the federal Title X grants and administers the family planning services through contracts with nine delegate agencies across the state. The family planning grants are awarded competitively every five years. The next competitive grant award in North Dakota will be in 2005. Among states in this region, the family planning projects under Title X in North Dakota, South Dakota, Colorado, and Montana are administered by each respective state; however, in Minnesota, Utah, and Wyoming, the federal Title X funds are provided to a nonprofit organization which operates the family planning projects in those states.

The Legislative Council staff said the State Department of Health received base funding under federal Title X of \$547,000 in federal fiscal year 2002 as well as \$174,000 for special initiatives. The department anticipates receiving base funding of \$807,000 as well as \$118,000 of funding for special initiatives in federal fiscal year 2003 and base funding of approximately \$800,000 and possibly \$100,000 for special initiatives in federal fiscal year 2004.

Mr. Tim Wiedrich, Director, Bioterrorism Preparedness and Response Division, State Department of Health, testified regarding options for providing a toll-free telephone number for alternatives-to-abortion services referrals. He said the State Department of Health is considering developing a statewide public health information line. The information line would provide a toll-free telephone number for the public to gain health information, advice, and referrals. Nurses who are trained to assist the public using nationally recognized protocols and procedures would staff the line. The purpose of the line would be to detect bioterrorism, improve health, and increase efficiency. Regarding the option of expanding the use of the line to include referrals for alternatives-to-abortion services, he said "ask-a-nurse" type programs routinely receive a wide variety of requests for health-related information, including questions about unexpected pregnancies. He said the public information line would provide the spectrum of all legal options in response to these questions, including alternatives-to-abortion and abortion services.

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

In response to a question from Representative Delzer, Mr. Wiedrich said the preliminary cost

estimate for the information line is \$1.2 million per year.

CHARITABLE CHOICE STUDY

The Legislative Council staff said two bills are being considered by Congress relating to Charitable Choice--House Resolution 7, the Community Solutions Act, which has passed the House of Representatives and Senate Bill No. 1924, the Care Act, which has not been reported out of committee in the Senate. The Legislative Council staff said Congress has now recessed until after the November elections; therefore, the final outcome of these bills will not be known until November at the earliest.

DEVELOPMENTAL DISABILITIES SERVICES REIMBURSEMENT SYSTEM

Mr. Zentner testified on the development of a new reimbursement system for developmental disabilities services providers. He said the work group that has been developing the new system held its final meeting on October 21, 2002. He said although consensus of all developmental disabilities providers was not reached, a strong majority expressed a desire that the department, in cooperation with the developmental disabilities industry, recommend a bill to develop and implement a prospective fee for service payment system rather than continuing the retrospective system. He said the prospective fee for service model would be based on allowable costs and be provider-specific. He said the Department of Human Services supports the recommendation with a targeted implementation date of July 1, 2005, with the understanding that the proposal will be budget neutral. A copy of the report is on file in the Legislative Council office.

Mr. Tom Newberger, Director, Red River Human Services Foundation, Fargo and Wahpeton, commented on the recommendation for a new reimbursement system for developmental disabilities services providers. He discussed the history of the reimbursement system for developmental disabilities services providers, the purpose of 2001 Senate Bill No. 2307 that provided for the development of a new reimbursement system, and the discussions occurring during the interim by the work group responsible for recommending the new system. He said the North Dakota Association of Community Facilities which represents 26 developmental disabilities services providers in the state supports the proposal recommended by the work group. A copy of the testimony is on file in the Legislative Council office.

Mr. Jon Larson, Director, Enable, Inc., provided testimony on the development of a new reimbursement system for developmental disabilities services providers. He said he supports the work group recommendation providing for the development of a fee-for-service payment system for developmental disabilities services providers. He said although

many details are yet to be determined regarding the payment system, in general, the new system will establish a developmental disabilities services provider reimbursement rate prior to the provision of services. He said each provider's rate will be unique based on the respective provider's historic costs. He said the initial rate would be inflated each year until rebased as determined by the Legislative Assembly. A copy of the testimony is on file in the Legislative Council office.

Representative Galvin said he is concerned with a system that would base rates on a provider's historical costs. He said this could result in efficient providers being reimbursed at a lower rate than a provider that does not operate efficiently.

It was moved by Representative Delzer, seconded by Senator Fischer, and carried on a voice vote that the chairman and the Legislative

Council staff be requested to prepare a report and to present the report to the Legislative Council.

It was moved by Representative Svedjan, seconded by Representative Price, and carried on a voice vote that the committee adjourn sine die.

The committee adjourned sine die at 2:15 p.m.

Allen H. Knudson
Assistant Legislative Budget Analyst and Auditor

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:1