

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON HEALTH CARE

Tuesday and Wednesday, January 20-21, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Judy Lee, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Judy Lee, Robert S. Erbele, Tom Fischer, Ralph L. Kilzer, Tim Mathern, Russell T. Thane; Representatives David Drovdal, Joyce Kingsbury, Gary Kreidt, Ralph Metcalf, Todd Porter, Sally M. Sandvig, Gerald Uglen, Don Vigesaa

Members absent: Representatives Carol A. Niemeier, Vonnie Pietsch

Others present: Aaron Krauter, State Senator, Regent

John O. Syverson, State Senator, Fargo

See attached appendix for additional persons present.

It was moved by Representative Porter, seconded by Senator Fischer, and carried on a voice vote that the minutes of the October 13, 2003, meeting be approved as distributed.

Chairman Lee expressed sadness over the sudden death of Representative Dale C. Severson. She welcomed Representative Don Vigesaa, Cooperstown, to the committee as a new member and said Representative Gary Kreidt has agreed to serve as vice chairman of the committee.

MEDICAID PROGRAM STUDY

Chairman Lee called on Mr. David Zentner, Director, Medical Services, Department of Human Services, who presented an overview of North Dakota's Medicaid program and services provided. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said Medicaid is a joint state/federal program created in 1965 and designed to pay for the health care of certain low-income citizens. He said the program is voluntary; however, states that decide to participate must abide by federal laws and regulations. He said participating states are required to maintain a state plan that describes the groups covered, types of services provided, the method of payment used for each type of service, and other administrative aspects of the program.

Mr. Zentner said the federal government shares in the cost of providing services to recipients based on the federal medical assistance percentage for each state. He said the federal medical assistance percentage is a complicated formula that uses a

three-year average of per capita income in each state compared to the national average. He said North Dakota's current federal medical assistance percentage is 71.31 percent; however, the percentage is scheduled to decrease to 68.31 percent on July 1, 2004.

Mr. Zentner said the 2003-05 Department of Human Services appropriation for medical assistance services is \$370 million, of which \$95.7 million is from the general fund. He said the 2003-05 appropriation for long-term care services is \$358 million, of which \$122.4 million is from the general fund. He said the monthly average number of unduplicated Medicaid recipients during the year ended June 30, 2003, was 38,324.

Mr. Zentner said states are required to provide Medicaid services to certain categorically eligible recipients, including:

- Children and adult caretakers where deprivation exists because of parental absence, incapacity, unemployment, or underemployment.
- Individuals eligible for supplemental security income because they are either aged, blind, or disabled.
- Children eligible for foster care or subsidized adoption.
- Poverty level children and pregnant women.

Mr. Zentner said for the most part, access to needed medical services is available to North Dakota's Medicaid program recipients. He said most dentists in the state participate in the Medicaid program, but many will not see new patients or will limit new recipients to a small number. He said despite the access issue, payments to dentists are anticipated to exceed \$12 million in the 2003-05 biennium.

Mr. Zentner said states are required to utilize a certified Medicaid management information system to process claims, monitor utilization, and produce reports. He said the current system, which was implemented in 1978, is difficult to maintain and requires "hard coding" for even the most elementary changes. He said unpaid claims to service providers have accumulated since the department implemented the first phase of the Health Insurance Portability and Accountability Act (HIPAA) in April 2003.

In response to a question from Senator Krauter, Mr. Zentner said the claims pending in the Medicaid management information system cannot be processed until the system is fixed. He said there are approximately 5,000 claims that are over 90 days old. He said the Department of Human Services has made payments to providers who are experiencing financial difficulty because of the delay in reimbursement.

In response to a question from Senator Lee, Mr. Zentner said changes made to optional benefits provided under the state Medicaid plan require certain procedures, including proper notice, Medical Care Advisory Committee approval, and possible rules changes.

In response to a question from Representative Porter, Mr. Zentner said earned income limitations are based on net income for all Medicaid programs except the Women's Way program which is based on gross income and transitional Medicaid which is based on gross income less child care costs.

In response to a question from Senator Krauter, Mr. Zentner said approximately \$114,000 was appropriated to the Department of Human Services from the community health trust fund for breast and cervical cancer assistance.

In response to a question from Representative Porter, Mr. Zentner said there are approximately 3,500 to 3,700 Medicaid recipients in skilled nursing facilities and 450 to 490 recipients in basic care facilities.

In response to a question from Senator Mathern, Mr. Zentner said Medicaid "buyin" coverage will be available on June 1, 2004, for workers with disabilities whose income does not exceed 225 percent of the federal poverty level. He said the program requires a premium payment which in some cases may be less than the recipient liability charged to current Medicaid-eligible recipients.

In response to a question from Representative Erbele, Mr. Zentner said aged, blind, and disabled Medicaid recipients are subject to an asset test based on state rules. Mr. Curtis Volesky, Director, Medicaid Eligibility, Department of Human Services, said the asset test allows recipients to maintain \$3,000 in assets and \$3,000 for burial costs per eligible individual for total allowable assets of \$6,000. He said the asset and burial cost limits are based on state rules and could be increased.

In response to a question from Representative Porter, Mr. Volesky said for Medicaid purposes the assets of a deceased spouse are considered "available" to the surviving spouse residing in a nursing home. He said for Medicaid purposes the state maintains a claim on the assets of a deceased nursing home resident without a surviving spouse. Mr. Zentner said spousal financial responsibilities under the Medicaid program apply only to currently married individuals.

In response to a question from Representative Metcalf, Mr. Volesky said if an individual has nursing home coverage for a period of three years, a transfer of assets is permissible under Medicaid rules. He said, however, the 2003 Legislative Assembly provided for an increase in required nursing home insurance coverage to a minimum five-year period, subject to approval of a federal waiver.

In response to a question from Senator Fischer, Mr. Zentner said the Department of Human Services reinstated the 100-hour rule as of January 1, 2003. He said the rule provides that without taking into consideration earned income, adults in intact families who work more than 100 hours a month are no longer eligible for Medicaid after that date.

In response to a question from Senator Lee, Mr. Zentner said 53 refugees are covered under the state refugee program. He said under the refugee program assistance is provided for an eight-month period to those refugees who do not otherwise qualify for other Medicaid programs. In response to a question from Senator Thane, Mr. Zentner said North Dakota receives a 100 percent federal match for services provided under refugee coverage.

In response to a question from Representative Kreidt, Mr. Zentner said the Medicaid reimbursement rate for dentists is 65 percent of normal fees for children and less than 60 percent for adults. Senator Lee said the cost of materials used by the dentist often exceeds the Medicaid reimbursement rate received for the service.

In response to a question from Senator Mathern, Mr. Zentner said in order to fund Medicaid programs with available funding, the department prioritizes the optional programs based on the importance of the services provided among those programs. He said the Department of Human Services proposed to the 2003 Legislative Assembly eliminating dental services to adults based on the amount of funding required for the program and the program's importance to recipients in comparison to other optional programs. He said if the program is to be provided, it is important that access be made available to all eligible recipients.

In response to a question from Representative Metcalf, Mr. Zentner said the utilization rate for nursing homes has decreased since 2002. He said the decrease is primarily due to the state program to "buy back" nursing facility beds, an increase in the number of individuals receiving services at home through waivers, and fewer elderly people residing in rural areas.

In response to a question from Representative Kreidt, Mr. Zentner said North Dakota nursing homes occupancy rate is approximately 93 percent. He said urban nursing homes tend to have a higher occupancy rate. Senator Lee said the population of people 85 years of age and older is anticipated to significantly increase by the year 2020.

In response to a question from Senator Krauter, Mr. Zentner said with the \$8 million of additional federal money received from the enhanced Medicaid reimbursement rate, the Department of Human Services anticipates it will be able to operate the Medicaid program within the 2003-05 biennium budget, as adjusted.

In response to a question from Senator Thane, Mr. Zentner said the Department of Human Services must assure transportation to medical services is available to Medicaid recipients. He said the Medicaid program will reimburse volunteer drivers 25 cents per mile for transporting recipients or pay the cost of a scheduled bus or taxi service if other free transportation options are not available.

In response to a question from Senator Mathern, Mr. Zentner said the counties' share of federal administrative reimbursement for the Medicaid program is provided to the state as part of an agreement in which the state pays the entire nonfederal share of the Medicaid grant costs.

In response to a question from Representative Sandvig, Mr. Zentner said the Department of Human Services has not spent all of its allocated federal funding for the state children's health insurance program (CHIP). He said the federal government allows states to retain one-half of the unused funds. He said the Legislative Assembly could appropriate the available CHIP funding for program expansion.

In response to a question from Senator Lee, Mr. Zentner said North Dakota provides for monthly reverification of eligibility for Medicaid.

Chairman Lee asked the Department of Human Services to provide a copy of the information presented summarizing North Dakota's Medicaid program to all members of the Legislative Assembly.

Chairman Lee called on Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, who presented a status report on plans to address changes to service payments for elderly and disabled (SPED) eligibility formulas pursuant to the Attorney General's letter opinion. A copy of the information presented is on file in the Legislative Council office. She said the Department of Human Services has adjusted its fee schedules to conform to the Attorney General's opinion providing that the use of estimated prescription drug costs in determining income levels for the SPED program was not the intent of the 2003 Legislative Assembly. She said the department has begun the process of reviewing each client's income and actual prescription drug costs for retroactive adjustments needed to conform with the Attorney General's opinion. She said approximately 225 people will have a service fee reduction based on the revised sliding fee scales.

Chairman Lee called on Ms. Penni Weston, Administrator, Edgewood Vista, Bismarck, who commented on the Medicaid payment system. A copy of the information presented is on file in the

Legislative Council office. Ms. Weston said Edgewood Vista is considering dropping its basic care licensure because of the costly reporting process necessary to determine the basic care assistance program reimbursement rates and the time and financial resources required for the survey process. She said other options may provide more "flexibility" in the Medicaid payment system.

CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

Mr. Zentner presented information regarding enrollment statistics and cost for the Healthy Steps program (children's health insurance program), pursuant to North Dakota Century Code (NDCC) Section 50-29-02. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said 2,306 children were enrolled in Healthy Steps in January 2004. He said during the federal fiscal year ended September 30, 2003, the Department of Human Services spent \$3,455,539 for premium payments to Noridian Mutual Insurance Company, of which \$765,403 was general fund money. He said the administrative costs for the Healthy Steps program during the same period was \$79,677, of which \$17,648 was from the general fund.

Mr. Zentner said Phase III of the Healthy Steps program, which provides coverage to those children who were previously ineligible for Medicaid because of excess income, was implemented in January 2002. He said the total expenditures incurred during the federal fiscal year ended September 30, 2003, for Phase III of the program was \$3,016,734, of which \$668,205 was general fund money.

In response to a question from Senator Lee, Mr. Zentner said 25 percent of the total children participating in the Healthy Steps program reside in Region 7, which consists of the Bismarck area. He said the large percentage of participation in Region 7 may be due to economics or awareness of the program.

In response to a question from Senator Kilzer, Mr. Rod St. Aubyn, Director of Government Relations, Blue Cross Blue Shield of North Dakota, Fargo, said the administrative costs incurred for the Healthy Steps program are less than other state programs administered by Noridian Mutual Insurance Company. He said Noridian has a good working relationship with the Department of Human Services.

In response to a question from Senator Thane, Mr. Zentner said the federal share of the Healthy Steps program is based on a percentage of the federal medical assistance percentage. He said because North Dakota's federal medical assistance percentage is anticipated to decrease, the state's share of Healthy Steps program costs will increase.

In response to a question from Representative Porter, Mr. Zentner said the Healthy Steps program was originally authorized in 1997 for a 10-year period.

He said because of the carryover of unused funds, the Department of Human Services will have funding available until 2009; however, it is anticipated Congress will reauthorize the program in 2006.

In response to a question from Representative Porter, Mr. Zentner said he would provide the committee with information regarding the number of individuals participating in the Healthy Steps program per county.

The committee recessed for lunch from 11:50 a.m. to 1:00 p.m.

PHARMACEUTICAL ASSISTANCE PROGRAMS STUDY

Chairman Lee called on Dr. Brendan Joyce, Administrator, Pharmacy Services, Department of Human Services, who presented a status report on the prior authorization program. A copy of the information presented is on file in the Legislative Council office. Dr. Joyce said the newly reformulated Drug Use Review Board has met three times, during which the board finalized prior authorization criteria for two classes of drugs--antihistamines and proton pump inhibitors. He said the savings per pill realized from the preapproved medications as compared to the medications that require prior authorization are \$1.70 for the antihistamines and \$3.58 for the proton pump inhibitors. He said the Medicaid program currently pays for more than one million doses per year in each of these two classes of drugs.

Dr. Joyce said there have been different interpretations of the "grandfather clause" for the prior authorization program. He said the Department of Human Services believes that the "grandfather clause" allows a patient to remain on a medication until their current prescription expires. He said some individuals believe the "grandfather clause" is to apply for the life of the patient. He said the Drug Use Review Board has spent considerable time discussing the issue and much research has been done to determine if the lifetime exemption could be programmed into the prior authorization system.

Chairman Lee called on Ms. Pat Churchill, Drug Use Review Board member, Mandan, who commented on the prior authorization program and the Drug Use Review Board. Ms. Churchill said it is the interpretation of the board that the "grandfather clause" should last only for the life of the prescription rather than the life of the patient.

Mr. Zentner presented information on the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, including the impact on the state Medicaid program. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said Phase 1 of the federal program, which will be in place from June 2004 to December 2005, provides for the issuance of a drug card and an annual \$600 drug credit to certain low-income Medicare beneficiaries. He said Phase 1 of the program

will have only minor implications for the Medicaid program because dual-eligible Medicaid and Medicare recipients are not eligible for the discount card or the \$600 credit.

Mr. Zentner said Phase 2 of the federal program, which is scheduled to start in January 2006, implements Part D of Medicare, establishing a drug payment program for Medicare recipients. He said Phase 2 provides subsidies to pay for all or part of monthly insurance premiums, deductibles, cost-sharing, and coverage limits based on an individual's income and assets. He said the Medicare program will be required to pay for dual-eligible recipients enrolled in Medicare Part D; however, the law also requires states to pay a calculated amount of Medicaid savings back to the federal government each quarter. He said the "clawback" provision requires states to pay 90 percent of the estimated nonfederal cost that would have been incurred if this program had not been enacted based on each state's Medicaid costs for the 2003 federal fiscal year trended forward. He said the 90 percent "clawback" is gradually reduced through 2014 when it becomes permanent at 75 percent.

PRESCRIPTION CONNECTION FOR NORTH DAKOTA PROGRAM

Chairman Lee called on Mr. Jim Poolman, Insurance Commissioner, who presented information regarding the status of the implementation and effectiveness of the Prescription Connection for North Dakota program, pursuant to NDCC Section 26.1-01-11. A copy of the information presented is on file in the Legislative Council office. Mr. Poolman said Prescription Connection for North Dakota is a program that connects qualified, low-income people with discount prescription drugs direct from the pharmaceutical manufacturer. He said the goal of the program is to provide as much access to information on pharmaceutical assistance programs as possible to residents but also provide one on one assistance if necessary. He said there are over 150 volunteers statewide providing program assistance to individuals. He said the web site address for the program is www.rxconnectnd.org. He said there have been over 15,000 "hits" to the web site since the program was introduced in December 2003.

He said the volunteers for the Prescription Connection for North Dakota program are also trained to provide residents information on the senior health insurance counseling program offered by the Insurance Commissioner's office. He said the senior health insurance counseling program offers free and confidential assistance with Medicare and other health insurance to seniors and the disabled.

In response to a question from Representative Sandvig, Mr. Poolman said the Insurance Commissioner's office will accumulate data on the Prescription Connection for North Dakota program, including

the number of North Dakota participants and the total savings realized by North Dakota residents.

Chairman Lee called on Ms. Sharon St. Aubin, Program Coordinator, Prescription Connection for North Dakota, Insurance Commissioner's office, who commented on the Prescription Connection for North Dakota program. She said the Insurance Commissioner's office is working with other agencies and organizations to assist individuals and provide information on the program.

In response to a question from Senator Thane, Ms. St. Aubin said information about the Prescription Connection for North Dakota program has been provided to senior citizen centers.

In response to a question from Senator Krauter, Mr. Poolman said PHARMA provides the technical resources regarding the pharmaceutical manufacturers' assistance and discount programs to the Insurance Commissioner's office.

Representative Metcalf said there is an individual in Valley City who has personally been assisting over 400 individuals with obtaining access to pharmaceutical manufacturers' assistance programs.

Chairman Lee called on Mr. Galen Jordre, Executive Vice President, North Dakota Pharmaceutical Association, who commented on the Prescription Connection for North Dakota program. Mr. Jordre said pharmacists are not concerned about the economic impact to pharmacists of the program primarily because the people who qualify for the program would otherwise be unable to purchase the drugs from a pharmacist. He said there is a concern about the process of directly sending medications to individuals without a method for checking for proper labeling or recording of the transaction.

In response to a question from Senator Mathern, Mr. Jordre said each pharmaceutical manufacturer established standards for its program regarding income requirements and the amount of medication available.

MANDATED HEALTH INSURANCE COVERAGE ANALYSIS

Chairman Lee called on Mr. Poolman who presented recommendations regarding the committee's responsibility to recommend to the Legislative Council a private entity to be contracted with for conducting cost-benefit analyses of future legislative measures mandating health insurance coverage, pursuant to NDCC Section 54-03-28. A copy of the information presented is on file in the Legislative Council office. Mr. Poolman said during the 2003 legislative session a total of \$24,316 was paid to Milliman USA for conducting cost-benefit analyses relating to three separate bills. The 2003 Legislative Assembly authorized \$55,000 from the insurance regulatory trust fund, the same as the 2001-03 biennium appropriation, for payment of cost-benefit

analyses of the 2005 Legislative Assembly measures mandating health insurance coverage.

Mr. Poolman said Milliman USA is recognized as one of the leading experts in the cost of mandated health benefits. He said because the Milliman USA work has been timely and thorough in the past, it is his recommendation that Milliman USA be retained for future health mandate cost analyses.

In response to a question from Senator Lee, Mr. Poolman said he believes the process for requesting and receiving cost-benefit analyses relating to mandated employee benefits has worked satisfactorily.

Chairman Lee called on Ms. Deborah Knuth, American Cancer Society, who commented on mandated health insurance coverage. She presented a report entitled the *Short-Term Cost-Impact Analysis of Colorectal Cancer Screening* which was prepared for the American Cancer Society. A copy of the information presented is on file in the Legislative Council office. She said there is scientific evidence that early detection of colorectal cancer and adenomatous polyps through screening has the potential to reduce severity, incidence, and mortality from colorectal cancer.

In response to a question from Senator Lee, Ms. Knuth said she would provide to the committee a summary of the report, including information on whether insured individuals are being denied coverage for colorectal screenings.

NURSING HOME SURVEY PROCESS STUDY

Chairman Lee called on Mr. Monte Engel, Building Standards/Life Safety Code Manager, State Department of Health, who presented information regarding the nursing home survey process. A copy of the information presented is on file in the Legislative Council office. Mr. Engel said state licensing rules for nursing facilities require the State Department of Health to review and approve plans and specifications for all construction, modifications, and alterations. He said the rules do not require construction inspections prior to completion or occupancy. He said the State Department of Health does not have the staff, resources, or funding to conduct inspections during the construction process.

Mr. Engel said the State Department of Health is the only entity in North Dakota which conducts Life Safety Code compliance surveys in health care facilities. He said the State Fire Marshal's office previously conducted Life Safety Code surveys under contract with the State Department of Health until 1995.

In response to a question from Senator Lee, Mr. Engel said the State Fire Marshal ended the contract with the State Department of Health because of workload concerns preventing them from meeting the conditions of the contract. He said health care

facilities are required to have a survey conducted by a federally qualified surveyor for Medicare and Medicaid certification. He said local fire inspectors enforce a different fire code. He said health care facilities are required to meet the most stringent design requirements of the local or Life Safety Code regulations.

In response to a question from Representative Kreidt, Mr. Engel said there are on average six health care facility construction projects, primarily renovations or additions, in North Dakota at any time. He said the State Department of Health had asked to add one full-time equivalent position and funding in the budget for the 2003-05 biennium for the purpose of checking for Life Safety Code violations during the construction process; however, the position and funding were not approved as part of the budget. He said the State Department of Health employs two Life Safety Code surveyors who conduct approximately 200 onsite surveys per year.

In response to a question from Representative Drovdal, Mr. Engel said Life Safety Code violations could be missed during the planning review; however, violations are usually a result of facilities not being constructed as outlined in the approved plans.

Senator Lee said there needs to be a single set of instructions for health care facilities to follow that outline both the State Department of Health Life Safety Code regulations and State Fire Marshal regulations.

Chairman Lee called on Ms. Shelly Peterson, President, North Dakota Long Term Care Association, who presented information on the nursing home survey process. A copy of the information presented is on file in the Legislative Council office. Ms. Peterson said the North Dakota Long Term Care Association recently surveyed its members to gather information regarding general liability insurance carrier and premium costs. She said most members reported in excess of a 100 percent increase in insurance premiums in 2002. She said one method used to control premium costs is to increase the size of deductibles. She said two major nursing facility providers have formed their own "captives." She said a "captive" is an insurance company formed to insure the risks of its parent entity, essentially a form of self-insurance. She said in addition to those providers covered through "captives," North Dakota long-term care providers obtain general liability coverage through the following companies (number of facilities):

1. Guide One (49).
2. C.N.A. Health Pro (6).
3. Accord/Arch Specialty Insurance (4).
4. Lexington Insurance (2).
5. Church Mutual (2).
6. Philadelphia Insurance Company (1).
7. Catholic Mutual Relief Society of America (1).

Ms. Peterson said based on a survey of state long-term care associations, five states--Delaware, Florida, Indiana, North Carolina, and Michigan--reported

legislation approved within their state impacting the nursing home survey process. She said the laws approved by the states relate to a variety of issues, including:

- Requiring surveyors to consider the diagnosis and treatment provisions of the resident's attending physician.
- Disqualifying former employees of a nursing facility from participating for five years in any manner in any survey of that facility (federal law has a two-year limit).
- Providing the right to a hearing on deficiencies and remedies for noncompliance.
- Providing for consultation or training visits in addition to the survey and evaluation process.
- Creating a voluntary independent informal resolution pilot program.
- Requiring newly hired nursing home surveyors to be assigned full time to a licensed nursing facility for a period to observe actual operations outside the survey process before the trainee can begin oversight responsibilities.

In response to a question from Senator Krauter, Ms. Peterson said the 2001 Legislative Assembly approved "rebasings" nursing facility rates based on 1999 costs. She said an independent consultant determined that "rebasings" should be completed every four years and more frequently if there are major increases in the cost of operations. She said 67 percent of nursing facilities are currently exceeding the rate cost limits.

In response to a question from Representative Kreidt, Ms. Peterson said the Department of Human Services has said its long-term care budget is based upon legislative appropriation, which did not include "rebasings."

Senator Lee called on Ms. Nancy Farnham, Administrator, Maryhill Manor, Enderlin, who commented on the survey process. A copy of the information presented is on file in the Legislative Council office. Ms. Farnham said the employees of Maryhill Manor are very dedicated and committed to making residents feel comfortable, respected, and cared for. She said the annual survey is an adversarial relationship instead of a relationship with a team of professionals who have the same common goal. She said the system is very punitive in nature and staff take it personally when they are the one that "caused" the deficiency. She said the nursing home survey process sometimes generates unnecessary costs to the facility. She said the process would be improved if surveyors not only looked for problems but provided suggestions and ideas for improvements in care.

Senator Lee called on Mr. Lyle W. Erickson, Administrator, Aneta Parkview Health Center, Aneta, who commented on the survey process. He said in July 2003 Aneta Parkview received nine deficiencies, three of which were rated G (noncompliance that

results in a negative outcome that has compromised the resident's ability to achieve his or her highest functional status, based on an isolated occurrence). He said Aneta Parkview was required to complete inservice training and banned from admitting new residents for almost seven weeks. He said Aneta Parkview chose not to participate in an informal dispute resolution because peers from other facilities indicated the process did not work very well. He said it seems sometimes that regulations are overwhelming. He said he believes the survey process does not determine the quality of care provided.

In response to a question from Senator Lee, Mr. Erickson said surveyors can arrive unannounced at a nursing facility at any time, including the middle of the night or during weekends.

In response to a question from Senator Mathern, Mr. Erickson said nursing home surveyors are provided full access to information on the residents.

In response to a question from Representative Kreidt, Mr. Erickson said the ban on new admissions was not removed until a plan of correction was approved. He said Aneta Parkview's insurance premium has increased from \$9,000 to \$34,000 per year over the most recent two-year period.

In response to a question from Senator Mathern, Mr. Erickson said Aneta Parkview is required to conduct interventions to preclude a resident from getting upset and make threatening comments and properly document intervention action taken.

In response to a question from Representative Kreidt, Mr. Erickson said he believes health care facilities would have a better chance of resolving issues if the informal dispute resolution process was administered by an independent entity rather than the State Department of Health.

Senator Thane said he is a member of the board of directors of a nursing home and many of the deficiencies received by the home have lacked "common sense."

Ms. Weston said surveyors spent three days at Edgewood Vista which has only 28 basic care beds. She said the State Department of Health has met with representatives of Edgewood Vista to resolve issues and concerns regarding the survey process.

Chairman Lee called on Mr. Bruce Pritschet, Director, Health Facilities Division, State Department of Health, who commented on the nursing home survey process. Mr. Pritschet said the State Department of Health is required to follow federal regulations when conducting surveys of nursing home facilities. He said approximately 98 or 99 percent of deficiency citations are related to federal requirements. He said recent surveys have resulted in the issuance of fewer Level G deficiencies than in the past. He said North Dakota is close to the national average for deficiencies issued. He said the Centers for Medicare and Medicaid Services is the agency responsible for posting deficiencies on the Internet, not the State

Department of Health. He said remedies for deficiencies are imposed by the regional office of the Centers for Medicare and Medicaid Services. He said the regional office that oversees North Dakota is located in Denver, Colorado. He said the State Department of Health is subject to an annual review by the regional office.

Mr. Pritschet said the informal dispute resolution process is a part of the state operations manual which is a federal publication that must be followed in order for the State Department of Health to be certified for the survey process. He said the manual defines the requirements for the informal dispute resolution process. He said even if the informal dispute resolution process went to a third party, the State Department of Health survey agency is responsible for the final decision. He said the State Department of Health can receive a suggestion from a third party, but if it is determined that the decision is incorrect, the state is responsible to "override" the decision.

In response to a question from Senator Lee, Mr. Pritschet said it is not a federally acceptable practice for surveyors to make recommendations to health care facilities during the survey process. He said the surveyors may provide a list of options; however, the health care facility remains responsible for the procedures implemented.

In response to a question from Senator Erbele, Mr. Pritschet said the State Department of Health employs 26 individuals who conduct surveys. He said a majority of the surveyors are registered nurses, with the remaining staff consisting of social workers, dietitians, and life safety professionals.

In response to a question from Senator Lee, Mr. Pritschet said the Centers for Medicare and Medicaid Services pay for newspaper ads identifying health care facility deficiencies.

In response to a question from Representative Kreidt, Mr. Pritschet said the State Department of Health is mandated to impose a Category 2 remedy, which is a ban on admissions, for any health care facility that has received a Level G deficiency for two consecutive years. He said a single occurrence of a Level G deficiency will not result in a ban on admissions. He said the State Department of Health contacts the facility's administrator to provide notice that a ban on admissions is pending and that there is a 15-day period prior to implementation of the ban in which the facility may fill resident vacancies. He said in addition, if the deficiencies can be corrected during the 15-day period the ban may be rescinded.

In response to a question from Representative Kingsbury, Mr. Pritschet said the regional Centers for Medicare and Medicaid Services office annually reviews five surveys for compliance with federal regulations. He said as part of the review process federal surveyors either observe the state surveyors conducting a survey or resurvey the facility within a 30-day period after completion of the state survey.

In response to a question from Senator Fischer, Mr. Pritschet said if the state surveyors did not follow federal regulations regarding the survey process, the state would receive a low score and possibly result in the withholding of federal funds. He said it is also possible the Centers for Medicare and Medicaid Services could take over the survey process from the State Department of Health.

In response to a question from Senator Fischer, Ms. Darlene Bartz, Chief, Health Resource Section, State Department of Health, said a state hearing process is required to update state rules to new federal Life Safety Code regulations; however, the state rules process does not delay the implementation of the federal regulations.

In response to a question from Senator Lee, Mr. Pritschet said Minnesota surveyors are overseen by the Centers for Medicare and Medicaid Services regional office in Chicago and North Dakota is overseen by the Denver regional office which may impact facility reviews in the Fargo-Moorhead area.

Chairman Lee requested the committee receive additional information regarding other state laws directing nursing home surveyors to consider the diagnosis and treatment provisions of the resident's attending physician, recommendations to enhance the informal dispute resolution process, and possible collaboration between the State Department of Health and the State Fire Marshal regarding life safety and fire codes for health care facilities.

Senator Mathern said the committee could propose a resolution to Congress requesting that states with a history of following federal regulations and providing quality care to residents of health care facilities be allowed a greater role in licensing activities.

Senator Fischer asked that the committee review the responsibility of the State Department of Health when Life Safety Code violations are "overlooked" by the department during the process of reviewing construction plans and which later results in added costs for the health care facility.

The committee recessed at 4:35 p.m., Tuesday, January 20, 2004, and reconvened at 9:00 a.m., Wednesday, January 21, 2004.

BOARD OF NURSING REPORT

Chairman Lee called on Ms. Constance Kalanek, Executive Director, Board of Nursing, who presented information regarding the status of the North Dakota nursing needs study, pursuant to NDCC Section 43-12.1-08.2. A copy of the information presented is on file in the Legislative Council office. Ms. Kalanek said in March 2002 the Board of Nursing contracted with the University of North Dakota's Center for Rural Health to conduct a study of nursing workforce in the state, including collecting data on nurse supply and demand. She said based on reports from nursing education programs, the number of nursing students

have remained stable or increased. She said results of the study have been disseminated through various methods, including press conferences and releases, fact sheets, and presentations throughout North Dakota. She said the Center for Rural Health continues to conduct research on the nursing shortage and related issues, including conducting surveys of public health agencies, nursing students, licensed nurses, public health agencies, hospitals, and other health care facilities.

In response to a question from Senator Lee, Ms. Kalanek said the Board of Nursing is currently in the rules promulgation process relating to nursing education requirements. She said it is possible that when the board meets next week, the rules will be approved and submitted to the Attorney General's office for review.

In response to a question from Senator Mathern, Ms. Kalanek said there are approximately 11,000 licensed nurses in North Dakota. She said there could be a large number of retirements among the nursing profession in the next few years.

In response to a question from Representative Metcalf, Ms. Kalanek said approximately one-half of the North Dakota licensed nurses work full time.

In response to a question from Senator Thane, Ms. Kalanek said the greatest shortage of nurses is in rural areas. She said 63 percent of the nurses are located in eight counties. She said the nurses are located in the more populated areas.

In response to a question from Senator Kilzer, Ms. Kalanek said state nursing programs have made efforts to increase enrollment but are limited by the number of faculty and clinical supervision resources. She said most of the nursing programs are filled; however, waiting lists have decreased.

Senator Fischer said because of waiting lists for the University of North Dakota and North Dakota State University nursing programs, many potential nursing students in the Fargo area have made other education choices resulting in many students leaving the state.

In response to a question from Senator Lee, Ms. Kalanek said based on a public hearing which was held in November 2003, North Dakota nurses do not support the creation of a professional and technical registered nurse status. She said the board will take into consideration the testimony received from nurses when approving the nursing education requirements. Senator Lee said legislators do not support the creation of a dual-nursing status. She said legislators are eager for timely implementation of a two-year registered nurse and one-year certified nurse assistant program.

In response to a question from Senator Lee, Ms. Kalanek said the board has encouraged the creation of a standard application for state nursing programs; however, it is the responsibility of the North Dakota University System.

In response to a question from Senator Lee, Ms. Kalanek said she does not believe that the proposed rules provide that supervisory responsibility may be only given to nurses with baccalaureate degrees. Senator Lee said supervisory responsibility should be determined by the facilities, not by the Board of Nursing.

In response to a question from Representative Kreidt, Ms. Kalanek said North Dakota has one of the highest nurse per patient ratios in the United States. She said the Board of Nursing is working hard to implement educational requirement rules as directed by the Legislative Assembly. She said according to the Attorney General's office, the Governor's office, and the board's counsel, the Nurse Practices Act does not qualify for emergency rules implementation.

In response to a question from Representative Kreidt, Ms. Kalanek said she believes the rules providing that an individual does not have to be a certified nursing assistant to provide feeding assistance in a nursing home became effective on December 1, 2003. Ms. Peterson said the rules are being implemented statewide.

Senator Fischer said he hopes the rules approved by the Board of Nursing precisely follow legislative intent.

COMMUNITY HEALTH GRANT PROGRAM REPORT

Chairman Lee called on Ms. Kathleen Mangskau, Tobacco Prevention and Control Program Administrator, State Department of Health, who presented a report regarding the implementation of the community health grant program, pursuant to NDCC Section 23-38-02. A copy of the information presented is on file in the Legislative Council office. Ms. Mangskau said the State Department of Health has worked with the North Dakota Public Employees Association to design the state employee cessation program. She said Blue Cross Blue Shield is administering the program which was implemented in January 2004.

Ms. Mangskau said the request for proposal for the tobacco quit line vendor has been prepared and the anticipated startup date for the quit line is in early spring 2004.

Ms. Mangskau said typically it takes many years for a tobacco program to achieve reductions in the number of people using tobacco or reduction in illness and death from tobacco use; however, North Dakota is realizing some very encouraging trends. She said based on the 2003 youth risk behavior survey for grades 9 through 12, the percentage of students who are current smokers decreased to 30 percent, as compared to 35 percent in 2001 and 41 percent in 1999. She said the percentage of students who currently use smokeless tobacco has decreased to 10 percent, as compared to 13 percent in 2001 and 15 percent in 1999. She said the percentage of students who were younger than 13 when they

smoked their first cigarette has decreased to 37 percent, as compared to 44 percent in 2001.

In response to a question from Senator Mathern, Ms. Mangskau said the State Department of Health does support policy measures that reduce tobacco use, including those policies that promote smoke-free environments.

In response to a question from Representative Kingsbury, Ms. Mangskau said it takes a comprehensive approach, including local ordinances and state laws, to create smoke-free environments.

In response to a question from Representative Porter, Ms. Mangskau said the State Department of Health will "track" outcomes of the city, county, and state employees in tobacco cessation programs for 3, 6, 9, and 12 months after participation in the program. She said research indicates that a high percentage of individuals who have quit smoking for more than one year tend not to start smoking again.

In response to a question from Senator Thane, Ms. Mangskau said the percentage of male and female smokers in North Dakota is fairly equal. She said some of the smoking cessation program facilitators are ex-smokers.

In response to a question from Senator Kilzer, Ms. Mangskau said school smoking policies cannot be enforced when students leave school property. She said when a student under age 18 smokes on public property outside a high school it becomes a law enforcement issue. She said school administrators often oppose smoke-free grounds because it would prevent staff members who smoke from smoking on school property.

In response to a question from Senator Lee, Ms. Mangskau said tobacco companies have started to "target" advertising to individuals ages 18 to 24.

In response to a question from Representative Sandvig, Ms. Mangskau said the State Department of Health has used smoking prevention advertising produced by other states in order to save on expensive production costs. She said North Dakota has the 36th lowest tax rate on tobacco. She said North Dakota's tobacco prevention efforts are compared to efforts of other states based on a number of factors, including the state's clean indoor air laws, youth access laws, and the amount of tobacco settlement dollars being used for tobacco prevention.

Senator Lee said there are several state programs providing addiction services in addition to tobacco settlement money. The legislative budget analyst and auditor said a summary of risk-behavior programs provided by state agencies was updated and presented to the interim Budget Committee on Government Services. He said a copy of that report can be presented to the committee during the next meeting.

In response to a question from Representative Porter, Ms. Mangskau said the national average of youth in grades 9 through 12 who smoke is

28 percent, based on a survey conducted two years ago as compared to North Dakota's current usage rate of 30 percent. She said the national average has probably decreased in the last two years. Representative Porter said the federal government established the Centers for Disease Control and Prevention "best practices," while at the same time subsidizes tobacco growers.

Senator Krauter said the United States Department of Agriculture funding provided to tobacco growers is money that was paid to the federal government by tobacco growers and is used to assist tobacco growers with the transition to other types of crops. He said there should not be a legislator smoking room in the Capitol.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Senator Kilzer asked that the committee receive an update on the status of planning for a new Medicaid management information system from a representative of the Department of Human Services or the Information Technology Department during the next meeting. Representative Porter said the report should include information on the possibility the Department of Human Services could share a system with Workforce Safety and Insurance.

Senator Fischer asked the Legislative Council staff to identify states that have a stand-alone Board of

Nursing and those states where the Board of Nursing is consolidated with other state medical boards.

Senator Mathern asked that the committee receive a status report on a pilot project implemented several years ago in Grand Forks which allows Medicaid recipients to "opt in" to the health maintenance organization at the local hospital.

Chairman Lee said the tentative date or dates for the next meeting will be May 11-12, 2004. She said the committee will tentatively plan for a budget tour of Fort Abercrombie and the Veterans Home in July 2004.

The committee adjourned subject to the call of the chair at 10:30 a.m.

Donald J. Wolf
Senior Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:1