

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### BUDGET COMMITTEE ON HEALTH CARE

Tuesday, May 11, 2004  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Judy Lee, Chairman, called the meeting to order at 9:05 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, Carol A. Niemeier, Todd Porter, Jo Ann Rodenbiker, Sally M. Sandvig, Gerald Uglem, Don Vigesaa

**Members absent:** Representatives Ralph Metcalf, Vonnie Pietsch

**Others present:** See attached appendix

**It was moved by Senator Fischer, seconded by Representative Drovdal, and carried on a voice vote that the minutes of the January 20-21, 2004, meeting be approved as distributed.**

Chairman Lee welcomed Representative Jo Ann Rodenbiker, Rock Lake, to the committee as a new member. Senator Kilzer asked committee members to keep former Senator Pete Naaden, who suffered a stroke on May 9, 2004, in their thoughts and prayers.

#### MEDICAID PROGRAM STUDY

Chairman Lee called on Mr. David J. Zentner, Director, Medical Services, Department of Human Services, who presented a status report on the Medicaid management information system (MMIS). A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said changes were made to MMIS in April 2003 relating to third-party payer requirements of the Health Insurance Portability and Accountability Act (HIPAA). He said the changes caused problems to the 25-year-old system and resulted in a large number of "suspended" claims. He said prior to April 2003 the "suspense" inventory averaged about 18,200 claims. He said beginning in April 2003 the number of claims increased dramatically and reached a peak of almost 62,000 in October 2003. He said the Medicaid claims processing staff has worked many hours of overtime to complete programming changes necessary to process the claims more efficiently. He said as of April 2004 the number of "suspended" claims has been reduced to 26,251.

Mr. Zentner said as of July 1, 2004, North Dakota's federal medical assistance percentage (FMAP) is scheduled to decrease by three percentage points to 68.31 percent. He said it is the goal of the Department of Human Services to further reduce the

average "suspended" claims file prior to the July 1, 2004, change in the FMAP to access federal funding at a higher matching level.

Mr. Zentner said the 2003 Legislative Assembly appropriated \$1.6 million, of which \$160,000 is from the general fund, for the Department of Human Services to complete the planning phase for replacing the Medicaid management information system. He said in January 2004 a request for proposal was issued to hire an outside contractor to assist in determining the cost of an MMIS replacement system, produce a cost-benefit analysis of replacement options, and document current and future needs of the system. He said Fox Systems, Inc., was selected as the contractor and is currently in the process of developing a project plan. He said final project reports are scheduled to be completed in fall 2004. He said Fox Systems, Inc., will conduct a cost-benefit analysis to determine if it is feasible to modify the Workforce Safety and Insurance system to meet the Department of Human Services MMIS certification standards.

In response to a question from Senator Mathern, Mr. Zentner said the project plan will include visiting other states--Oklahoma, Missouri, Nevada, and Minnesota--that have recently implemented a new Medicaid management information system. He said a majority of states contract with a private entity to operate their Medicaid management information systems; however, Minnesota's system is state-operated.

Mr. Zentner said the Department of Human Services Medicaid program has operated a managed care program in Grand Forks County since 1997. He said in January 2004 the program was expanded to include Walsh and Pembina Counties. He said adult caretakers and most children are eligible to enroll in the managed care program. He said federal regulations require that Medicaid recipients have a choice of enrolling in the managed care plan or opting for the primary care provider program.

Mr. Zentner said under the managed care program, monthly payments are provided to the managed care entity based on the age and gender of each recipient. Mr. Zentner said the managed care entity is responsible to pay for all necessary medical services outlined in the contract and is at risk if costs exceed payments. He said the objective of the managed care plan is to ensure that recipients receive preventive and other appropriate services.

Mr. Zentner said the Department of Human Services initially contracted with Altru Health Systems to provide health care services to the recipients enrolled in the managed care program. He said in 2001 Noridian Mutual Insurance Company assumed these managed care program responsibilities.

Mr. Zentner said the program does not cover the aged, blind, or disabled, which are considered high-risk groups. He said 818 individuals are currently enrolled in the program. He said based on current estimates the 2003-05 biennium program cost will be approximately \$2.9 million, of which \$900,000 is from the general fund. He said the Department of Human Services realizes an estimated 2 to 3 percent savings from the managed care program. He said the program has also been successful in providing recipients with appropriate services and consistent health outcomes.

In response to a question from Senator Mathern, Mr. Zentner said because providers are reluctant to assume additional risk, managed care programs have not been widely implemented in North Dakota.

In response to a question from Representative Niemeier, Mr. Zentner said by providing preventive care, managed care entities may realize savings from patients avoiding future, more serious illnesses.

### CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

Mr. Zentner presented an update on enrollment statistics and costs and the number of individuals per county participating in the Healthy Steps program. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said 2,412 children were enrolled in Healthy Steps in May 2004. He said the counties with the highest enrollment in the Healthy Steps program are Cass County--238 children and Burleigh County--178 children. He said Region 7, the Bismarck region, has 567 children enrolled in the program, which represents 23.51 percent of the total state enrollment. The May 2004 Healthy Steps program enrollment per region and percentage of total enrollment is:

Region	Enrollment	Percentage of Total Enrollment
Region 1 (Northwest Human Service Center)	208	8.63%
Region 2 (North Central Human Service Center)	310	12.85%
Region 3 (Lake Region Human Service Center)	249	10.32%
Region 4 (Northeast Human Service Center)	164	6.80%
Region 5 (Southeast Human Service Center)	323	13.39%
Region 6 (South Central Human Service Center)	295	12.23%
Region 7 (West Central Human Service Center)	567	23.51%
Region 8 (Badlands Human Service Center)	296	12.27%
Total	2,412	100.00%

In response to a question from Senator Lee, Mr. Zentner said he would provide the committee with

information on the total number of North Dakota children covered by either Medicaid or the Healthy Steps program.

In response to a question from Senator Lee, Mr. Zentner said the Department of Human Services has a uniform policy for processing program eligibility applications. He said some programs require people to apply in person, while other applications can be completed over the telephone or other methods. He said the department regularly monitors and provides periodic training to county eligibility workers to make sure policies are properly followed. He said new eligibility workers are trained in a group orientation session.

In response to a question from Representative Drovdal, Mr. Zentner said he would provide the committee with information on the percentage enrollments in the Healthy Steps program as compared to the total population per region. He said enrollment as a percentage of population is probably higher in western North Dakota primarily due to economic factors.

### 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 Drug Use Review Board has finalized prior authorization criteria for proton pump inhibitors, antihistamines, anti-inflammatory medications, and dispense-as-written medications (when the physician indicates that for medical reasons a brand name drug is necessary and should not be substituted with the generic equivalent).

Dr. Joyce said the Department of Human Services completed research on the legislative history and discussion on the "grandfather clause" for the prior authorization program. He said the research indicated that a patient may remain on a medication for prescriptions written prior to the effective date of prior authorization. However, he said, the "grandfather clause" provides that once the prescription expires, medications are subject to prior authorization criteria. He said it was determined that the "grandfather clause" does not apply for the life of the patient, as some had felt should be the case.

Dr. Joyce said as of January 2004, the average cost per prescription dispensed under the North Dakota Medicaid program was \$55. He said for the same period the average cost of a brand name drug prescription was \$95 and the average cost of a generic drug prescription was \$19. He said approximately \$4.8 million is paid to pharmacies each month for Medicaid prescription drugs. He said approximately 22,000 Medicaid recipients have at least one prescription filled each month. He said the average

number of prescriptions filled per recipient is approximately four per month.

In response to a question from Senator Lee, Dr. Joyce said the Department of Human Services may either accept or reject a recommendation relating to prior authorization from the Drug Use Review Board. He said after a recommendation is approved, notices are sent to physicians and pharmacies informing them of the criteria for prior authorization. He said criteria outlines the requirements for submitting requests to prescribe a drug that is not prior-authorized for a Medicaid recipient. He said if a request is received before 4:00 p.m. during a business day, the department is able to approve or deny the request in the same day. He said eventually when additional drug classes are approved for prior authorization, the department will have to contract with a private vendor to handle the requests.

In response to a question from Representative Porter, Dr. Joyce said the Drug Use Review Board is an advisory board to the Department of Human Services. He said he does not foresee a case where the department would reject a recommendation made by the Drug Use Review Board. He said the department tries to identify and review with the board potential conflicts of interest prior to the board making a decision. He said the Department of Human Services would not implement a policy that the Drug Use Review Board considers unnecessary.

In response to a question from Senator Lee, Dr. Joyce said comments received from pharmacists regarding the prior authorization program have been primarily positive. He said the department has received a few comments from physicians offering their opinion before criteria is determined.

Dr. Joyce said the Drug Use Review Board meetings are open to the public and he invited legislators to attend. He said the next meeting will be held on June 21, 2004.

Mr. Zentner presented information on the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003. A copy of the information presented is on file in the Legislative Council office. He said the first phase of the Medicare prescription drug program is scheduled to go into effect on June 1, 2004. He said eligible Medicare beneficiaries who do not have other drug coverage may receive one of several cards offered by various entities which provide discounts of up to 25 percent on prescription drugs. He said the discount cards vary as to the types of drugs covered in each class and may cost up to \$30. He said Medicaid recipients already receive drug coverage, thus will not be eligible for a discount card.

In response to a question from Representative Porter, Mr. Zentner said it is his understanding that those individuals who are required each month to meet a recipient liability in order to be Medicaid-eligible will be considered to be on the Medicaid program and not eligible for the discount card.

In response to a question from Senator Lee, Mr. Zentner said the standard eligibility requirements for Medicaid will not change. He said the names of those individuals eligible for Medicaid are required to be sent to the federal government each month.

Mr. Zentner said under Phase 1 of the program, an additional \$600 per year will be made available to low-income individuals to pay for the cost of drugs. He said the income limit is \$12,659 for singles and \$16,862 for married couples.

Mr. Zentner said Phase 2 of the Medicare prescription drug program--Medicare Part D--will be implemented in January 2006 and will include Medicaid recipients. He said Medicare Part D 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 there is speculation that states will be responsible for making income and asset determinations.

Mr. Zentner said the Medicare program will be required to pay for dual-eligible (Medicaid-Medicare) 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 month. 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.

In response to a question from Senator Mathern, Mr. Zentner said it has not been determined whether the state or county government will be responsible for making eligibility determinations for the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. He said the Insurance Commissioner's office, Medicare, North Dakota Pharmaceutical Association, and AARP have programs to assist individuals in making decisions regarding the discount drug cards.

Chairman Lee called on Mr. Rod St. Aubyn, Director of Government Relations, Blue Cross Blue Shield of North Dakota, who said the Medicare web site provides helpful information to assist individuals in determining which discount card best meets their needs. He said individuals should also consult with their pharmacist about discount card options.

Mr. Jim Poolman, Insurance Commissioner, said the Insurance Commissioner's office has received numerous calls related to discount cards. He said based on questions received, the Insurance Commissioner's office has been able to provide individuals with sources of information on discount cards.

Mr. Poolman said approximately 5,000 North Dakota residents have received assistance from the Prescription Connection for North Dakota program. He said the program connects qualified, low-income people with discount prescription drugs direct from the pharmaceutical manufacturer. He said to date the

program has provided a benefit of approximately \$2.5 million to North Dakota residents.

**MANDATED HEALTH INSURANCE COVERAGE ANALYSIS**

Chairman Lee called on Mr. Poolman who reviewed his recommendation to the Legislative Council for a private entity to be contracted with for conducting cost-benefit analyses of legislative measures mandating health insurance coverage. A copy of the information presented is on file in the Legislative Council office. Mr. Poolman said the Insurance Commissioner's office recommends Milliman USA be retained for future health insurance mandate cost analyses. He said Milliman USA is recognized as one of the leading experts in the cost of mandated health benefits.

In response to a question from Senator Mathern, Mr. Poolman said he believes the Public Employees Retirement System (PERS) does use a company other than Milliman USA for health insurance cost coverage analyses. However, he said, a different set of data is gathered for PERS and Milliman USA does not provide a duplication of services.

**It was moved by Senator Kilzer, seconded by Senator Erbele, and carried on a roll call vote that pursuant to North Dakota Century Code Section 54-03-28, the committee accept the Insurance Commissioner's recommendation of Milliman USA as the entity to be contracted with by the Legislative Council for cost-benefit analyses of future legislative measures.** Senators Lee, Erbele, Fischer, Kilzer, Mathern, and Thane and Representatives Drovdal, Kingsbury, Kreidt, Niemeier, Rodenbiker, Sandvig, Uglem, and Vigesaa voted "aye." Representative Porter voted "nay."

**COMMUNITY HEALTH GRANT PROGRAM REPORT**

Chairman Lee called on Ms. Sandra Anseth, Executive Administrator, Community Health Section, State Department of Health, who presented a report regarding the implementation of the community health grant program pursuant to North Dakota Century Code Section 23-38-02. A copy of the information presented is on file in the Legislative Council office. Ms. Anseth presented the following information relating to expenditures incurred as of April 29, 2004, for the community health grant program:

Program	2003-05 Biennium Appropriation	Total Expenditures Incurred As of April 29, 2004
Advisory committee (2003 SB 2297)	\$100,000	\$18,878
City/county cessation program (2003 SB 2297)	250,000	630
State employee cessation program (2003 SB 2297)	250,000	1,904
2001-03 biennium cessation program carryover (2003 HB 1004)	204,000	0
School health (2003 HB 1004)	1,880,000	535,001
Community health (2003 HB 1004)	1,880,000	583,860

State aid (2003 HB 1004)	940,000	470,000
Dental loan program (2003 HB 1004)	380,000	80,000
Tobacco quit line (2003 HB 1004)	680,000	0
<b>Total</b>	<b>\$6,564,000</b>	<b>\$1,690,273</b>

Ms. Anseth said the tobacco quit line is in the development stage. She said a quit line promotion vendor has been hired and has developed promotional materials. She said a request for proposal for the quit line was released in February 2004. She said nine proposals, including one from an in-state vendor, were received and are being evaluated.

She said based on recently released youth risk behavior survey data for grades 7 and 8, the percentage of students who are smokers remains at 10 percent, as compared to 2001.

In response to a question from Senator Lee, Ms. Anseth said she would provide the committee with information regarding smoke-free jails in North Dakota. Senator Kilzer said the State Penitentiary has been smoke-free for about three years. Senator Fischer said the Cass County jail is also smoke-free.

In response to a question from Representative Drovdal, Ms. Anseth said research is available that proves that secondhand cigarette smoke is harmful to individuals. Senator Mathern said a recent Attorney General's opinion cited studies on the dangers of secondhand smoke. Senator Kilzer said individuals who have filed workers' compensation claims for illnesses related to secondhand smoke often have spouses who smoke, which make claim determinations very difficult.

The Legislative Council staff distributed a memorandum entitled *Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Programs - Update*. The survey was completed for the Budget Committee on Government Services and related to programs available during the 2001-03 and 2003-05 bienniums. The Legislative Council staff said agencies were asked to provide information relating to their various risk-associated behavior programs, including sources of funding. The Legislative Council staff said the total 2003-05 biennium funding for risk-associated behavior programs is \$72 million, of which \$16 million is from the general fund and \$56 million is from federal and special funds.

Representative Kingsbury asked that the State Department of Health provide the committee members with available information on success rates of cessation programs in cities that have smoke-free public ordinances.

The committee recessed for lunch at 11:40 a.m. and reconvened at 1:00 p.m.

**NURSING HOME SURVEY PROCESS STUDY**

Chairman Lee called on Mr. Bruce Pritschet, Director, Division of Health Facilities, State Department of Health, who presented information regarding the nursing home survey process. A copy of the information is on file in the Legislative Council office. He

said the State Department of Health surveyed state nursing home survey agency directors in the other 49 states and the District of Columbia. He said of the 39 state survey agency directors that responded to the survey, 38 indicated their states had not passed any laws directing nursing home surveyors to consider the diagnosis and treatment provisions of the resident's attending physician. He said Michigan amended its public health codes to consider the physician's order for use of a side rail based upon a resident's fear of falling.

Mr. Pritschet said according to the Centers for Medicare and Medicaid Services, Minnesota passed a statute governing use of physical restraints in nursing homes effective April 22, 1999. He said the Minnesota law conflicted with the provisions of the Social Security Act that addresses the use of physical restraints. He said because federal law has supremacy unless state law is more stringent, the Centers for Medicare and Medicaid Services directed that additional monitoring take place in Minnesota to ensure that the state health department surveyed facilities in a manner that did not conflict with federal law.

Mr. Pritschet said 11 of the 39 survey responses received indicated their state has passed legislation to enhance the informal dispute resolution process. He said these enhancements include reviews conducted by professionals, allowances for various levels of reviews, use of an independent peer review organization, and review by Department of Human Services and/or Department of Health staff. He said the Centers for Medicare and Medicaid Services currently recognizes only the decision of the state survey agency. He said based on the Code of Federal Regulations, the Centers for Medicare and Medicaid Services has the authority to override the decision of the state when findings are related to facilities that participate in both the Medicare and Medicaid programs. He said the Centers for Medicare and Medicaid Services has issued directives to state survey agencies providing that the informal dispute resolution process may serve only as a recommendation to the state agency. He said the Centers for Medicare and Medicaid Services will not reimburse state agencies for costs associated with an outside review process.

Mr. Pritschet said the State Department of Health and the State Fire Marshal have collaborated on health care facility life safety and fire code inspections for several years. He said it has been the goal of the two agencies to require that only one agency conduct onsite inspections. He said federal Medicare certification requirements provide that state health departments are responsible for conducting Life Safety Code inspections of certified facilities.

Mr. Pritschet said the State Department of Health is required to review and approve nursing home construction plans for compliance with Life Safety Code regulations. He said the department reviews information submitted by the facility and relies on the facility and its architect to carry out the plans that

have been approved. He said the department does not currently have the staff or funding to conduct onsite inspections during the construction process.

In response to a question from Senator Lee, Mr. Pritschet said he does not believe North Dakota nursing home surveyors have been "unreasonable." He said the only time a surveyor would inspect a nursing home at night would be if there was a specific complaint regarding the night shift.

In response to a question from Senator Mathern, Mr. Pritschet said the State Department of Health does not have the statutory authority to accept payment for inspection of nursing homes during the construction process.

In response to a question from Senator Fischer, Mr. Pritschet said the State Department of Health has not identified any cases where a Life Safety Code violation was overlooked during the planning review. He said he was not able to answer if the department would be liable for damages for failure to identify a violation during the planning review. Ms. Darleen Bartz, Section Chief, Health Resources Section, State Department of Health, said quality assurance is the responsibility of the nursing facility's architect.

In response to a question from Representative Kreidt, Ms. Bartz said in certain circumstances a nursing facility may appeal an unfavorable informal dispute resolution process outcome. She said nursing homes can appeal cases involving substantive quality of care issues to the Centers for Medicare and Medicaid Services. She said the Centers for Medicare and Medicaid Services may also intervene and make a final decision at any time during the informal dispute resolution process.

In response to a question from Representative Niemeier, Ms. Bartz said architects should be familiar with Life Safety Code regulations. She said Life Safety Code violations made during the construction process are usually the result of cost-cutting measures taken by architects. She said the nursing home's architect could be responsible for costs incurred to correct Life Safety Code violations if such provisions are included in the contract.

In response to a question from Representative Porter, Mr. Monte Engel, Building Standards/Life Safety Code Manager, State Department of Health, said pursuant to the Administrative Code, an approval letter from the department is required prior to implementing change orders to a nursing home project. He said the State Department of Health, in an effort to notify nursing home administrators, would consider adding language to the planning review approval letter stating that approval is required for change orders.

## STATE NURSING BOARDS

The Legislative Council staff presented a memorandum entitled *State Nursing Board Structures*. The Legislative Council staff said state boards of nursing are responsible for establishing the standards for safe nursing care and issuing licenses to practice nursing.

The Legislative Council staff said the structure of state nursing boards within state government varies from board to board. According to a survey conducted by the National Council of State Boards of Nursing, Inc., the 50 state and District of Columbia boards of nursing are structured as follows:

- Nursing boards in 27 states are established as an independent state agency or entity.
- Nursing boards in 19 states and the District of Columbia operate under an "umbrella" state agency.
- Nursing boards in four states are semi-independent agencies or partially affiliated with a state agency.

Senator Lee said the 2003 Legislative Assembly approved House Bill No. 1245, which provides that a majority of the members of the Board of Nursing who represent nurses must be actively engaged in practice in a nurse-patient setting. She said the changes will become effective as current member terms expire.

Senator Lee said several schools and communities are eager to establish two-year registered nurse and one-year certified nurse assistant programs. She said she hopes these programs will be approved prior to the start of the 2004-05 school year.

In response to a question from Senator Mathern, Chairman Lee said the Board of Nursing would be invited to comment on the approval status of nursing education programs at the next meeting. Chairman Lee asked that the Board of Nursing also provide information on the \$15 registration fee required for unlicensed medication assistants.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Chairman Lee said the next Budget Committee on Health Care meeting is tentatively scheduled for June 23, 2004. She said a portion of the meeting may be conducted jointly with the Budget Committee on Human Services in order that both committees may receive information on methamphetamine treatment issues in North Dakota. She said this summer the

committee will conduct a budget tour of Fort Abercrombie and the Veterans Home in Lisbon. She said another meeting may be held after the budget tour but bill draft requests should be submitted at the next meeting. She said she would like to finish committee work by September.

Representative Niemeier asked if the committee could receive information relating to new requirements for radiological operators that become effective in March 2006. Chairman Lee said that is not within the committee's study responsibilities; however, she would discuss the matter with the North Dakota Healthcare Association.

Representative Porter asked that the Department of Human Services and members of the Drug Use Review Board provide information during the next meeting regarding statutory authority of the Drug Use Review Board and the authority of similar drug use review boards in other states.

Representative Sandvig asked that a representative of the North Dakota University System office be asked to comment during the next meeting on current waiting lists for students to be accepted into nursing colleges under the control of the University System. Senator Lee said North Dakota State University has a waiting list for its nursing program. She said other state nursing programs have openings to accept students; however, not all students are able to move to another city.

The committee adjourned subject to the call of the chair at 2:05 p.m.

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Donald J. Wolf  
Senior Fiscal Analyst

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Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:1