

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### LONG-TERM CARE COMMITTEE

Wednesday, July 25, 2007  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Dick Dever, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Dick Dever, Joan Heckaman, Aaron Krauter, Judy Lee, Tim Mathern; Representatives Larry Bellew, Karen Karls, Gary Kreidt, Ralph Metcalf, Vonnie Pietsch, Louise Potter, Clara Sue Price, Gerry Uglen, Benjamin A. Vig, Alon Wieland

**Member absent:** Representative Jon Nelson

**Others present:** See attached [appendix](#)

Senator Larry J. Robinson, member of the Legislative Council, was also in attendance.

Mr. Jim W. Smith, Legislative Budget Analyst and Auditor, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

Chairman Dever commented on the committee's studies and announced that Representative Kreidt would serve as vice chairman of the committee.

#### LONG-TERM CARE STUDY

The Legislative Council staff presented a background memorandum entitled [Long-Term Care System - Background Memorandum](#). The Legislative Council staff said the 2007 Legislative Assembly approved Senate Bill No. 2109. Section 3 of the bill provides for a Legislative Council study of the long-term care system in North Dakota, including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state needing additional nursing home beds, access, workforce, reimbursement, and payment incentives.

The Legislative Council staff reviewed previous studies relating to long-term care, including studies by the 2001-02 Budget Committee on Human Services relating to the long-term care needs and nursing facility payment system in North Dakota; the 1999-2000 Budget Committee on Health Care relating to the possibility of creating an incentive package to assist rural communities and nursing facilities significantly reduce bed capacity and provide alternative long-term care services; the 1997-98 Budget Committee on Long-Term Care relating to a wide range of long-term care issues, including basic care rate equalization, Alzheimer's and related dementia population projects, American Indian long-term care needs, long-term care financing issues, and home and community-based services availability; and

the 1995-96 Budget Committee on Home and Community Care relating to the use of the state's resources and services in addressing the needs of elderly residents.

The Legislative Council staff said in September 2004 the Department of Human Services received a three-year \$315,000 federal Real Choice systems change grant to provide a single point of access to long-term support and care services for the elderly and individuals with disabilities. The Department of Human Services contracted with the North Dakota Center for Persons with Disabilities at Minot State University to conduct the project. The project, known as the Real Choice Systems Change Grant - Rebalancing Initiative, was to develop a plan for rebalancing funds between long-term care services and those services provided in home or community settings. The project is also involved in the development of a new system for providing a single point of entry for services for the elderly and individuals with disabilities who are considering long-term care and home and community-based services. The project has brought together representatives from public and private organizations involved in assuring that the North Dakota elderly and individuals with disabilities have options and access to the continuum of long-term care services in the state. The grant will end in September 2007.

The Legislative Council staff provided information on the health care trust fund which was established by the 1999 Legislative Assembly (Senate Bill No. 2168) for providing nursing alternative loans or grants. House Bill No. 1196 (2001) provided that money in the fund may be transferred to the long-term care facility loan fund for nursing facility renovation projects and for other programs as authorized by the Legislative Assembly. Money was generated for the health care trust fund as a result of the Department of Human Services making government nursing facility funding pool payments to two government nursing facilities--McVillie and Dunseith. Payments were made based on the average amount Medicare rates exceeded Medicaid rates for all nursing care facilities in the state multiplied by the total of all Medicaid resident days of all nursing homes. Federal Medicaid funds were available for these payments and required a state match. Payments were made to the two government nursing facilities and were subsequently returned to the state, less a \$50,000 transaction fee retained by each of the two government nursing

facilities. Once returned to the state, the state's matching share was returned to its source, and the federal funds were deposited in the health care trust fund. Money in the fund is invested by the State Investment Board and any investment earnings are retained in the fund. The federal government subsequently eliminated this intergovernmental transfer program. As a result, North Dakota's final intergovernmental transfer payment was received in July 2004.

North Dakota received a total of \$98.2 million under this program from 2000 to 2004. Of the total, \$11.3 million was used for long-term care facility loans and the remainder for other programs and purposes. The fund has a projected June 30, 2009, fund balance of \$2,019,842.

Under North Dakota Century Code (NDCC) Chapter 50-30, subject to legislative appropriations, money may be transferred from the health care trust

fund to the long-term care facility loan fund for the purpose of making loans as approved by the Department of Human Services for renovation projects. Each loan is limited to \$1 million or 90 percent of the project cost, whichever is less. Under the program, 22 loans have been approved totaling \$11.3 million. As of June 2007, \$9.7 million of outstanding loans remain. Of the approved loans, 1 was for an assisted living facility, 13 for nursing home facilities, 1 for a basic care facility, and 7 for combination nursing, assisted living, and basic care facilities.

The Legislative Council staff presented the following schedule of the 2007-09 legislative appropriations for long-term care-related services and the average number of clients that are anticipated to be served during the biennium based on the appropriations.

Program/Service	Budgeted Numbers to Be Served	General Fund	Federal Funds	Other Funds	Total
Nursing facilities	3,494 beds	\$133,318,915	\$237,630,703	\$525,597 <sup>1</sup>	\$371,475,215
Basic care facilities	458 beds	6,097,305	5,701,454	2,284,362 <sup>2</sup>	14,083,121
Traumatic brain-injured (TBI) waiver	27 recipients	651,999	1,157,522		1,809,521
Aged and disabled waiver	170 recipients	1,479,575	2,420,804		3,900,379
Personal care option	678 recipients	6,886,688	12,227,357		19,114,045
Targeted case management	340 recipients	332,692	590,633		923,325
Service payments for elderly and disabled (SPED)	1,345 recipients	11,347,860		597,256 <sup>3</sup>	11,945,116
Expanded SPED	141 recipients	763,149			763,149
<b>Total</b>		<b>\$160,878,183</b>	<b>\$259,728,473</b>	<b>\$3,407,215</b>	<b>\$424,013,871</b>

<sup>1</sup>Health care trust fund.  
<sup>2</sup>Department "retained" funds.  
<sup>3</sup>County funds.

The 2007 Legislative Assembly provided funding to:

- Allow a 4 percent inflationary increase for the first year of the biennium and a 5 percent increase for the second year for all department service providers.
- Rebase nursing home rates effective January 1, 2009.
- Pay qualified service providers using a fee-for-service method based on 15-minute units of service.

The Legislative Council staff provided the following summary of the programs that comprise North Dakota's continuum of care for the elderly:

Nursing home care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require 24-hour medical or nursing services and personal and social services.

Basic care - Provides facility-based residential care to individuals who, because of impaired capacity for independent living, require health, social, or personal care services but not 24-hour medical or nursing services.

Medicaid waiver for the aged and disabled - Provides in-home and community-based care to individuals who otherwise would require nursing home care and who are Medicaid-eligible. Services available include:

- Adult day care.
- Adult foster care.
- Adult/traumatic brain-injured residential.
- Chore services.
- Emergency response system.
- Environmental modification.
- Case management.
- Homemaker.
- Transportation (nonmedical).
- Respite.
- Specialized equipment/supplies.
- Supported employment.
- Transitional care.
- Nurse management.
- Attendant care service.

Service payments for elderly and disabled - Provides in-home and community-based care to individuals who are impaired in at least four activities of daily living (examples include toileting, transferring, eating, etc.) or at least five instrumental activities of daily living (examples include meal preparation, housework, laundry, medication assistance, etc.). Services available include:

- Adult day care.
- Adult foster care.
- Chore services.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker services.
- Respite care.
- Personal care.

Personal care services - Provides in-home care to individuals who are impaired in at least one activity of daily living (examples include toileting, transferring, eating, etc.) or in at least three of the four following instrumental activities of daily living--meal preparation, housework, laundry, and medication assistance. The individual must be Medicaid-eligible to receive personal care services. These services include assistance with bathing, dressing, toileting, transferring, eating, mobility, and incontinence care and also assistance with meal preparation, housework, laundry, and medication assistance.

Expanded SPED - Provides in-home and community-based care to individuals who are not severely impaired in activities of daily living (examples include toileting, transferring, eating, etc.) but who are impaired in at least three of the four following activities of daily living--meal preparation, housework, laundry, and medication assistance, or who have health, welfare, or safety needs, including requiring supervision or a structured environment. This program is an alternative to basic care. The individual must be Medicaid-eligible to receive services under this program. Services include:

- Adult day care.
- Adult foster care.
- Chore services.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker.
- Respite care.

The Legislative Council staff said North Dakota's nursing facility payment system has been in place since 1990 and requires equalized rates, which means nursing facilities may not charge private pay residents a higher rate than individuals whose care is paid for through the Medicaid program. Nursing facilities may, however, charge higher rates for private occupancy rooms.

The North Dakota nursing facility payment system consists of 34 classifications. Classifications are based on the resident assessment instrument (minimum data set) required in all nursing facilities. The rates for each classification vary by facility based on each facility's historical costs. Residents in higher classifications pay more than residents in lower classifications at the same facility.

Facility rates change annually on January 1 and may change throughout the year due to audits or special circumstances. Revenue received by a facility changes throughout the year based on the classifications of the residents receiving services. Each resident is reviewed within 14 days of admission or reentry from a hospital and every three months subsequently. A resident's classification may change only at the scheduled three-month interval or if hospitalization occurs. The facility is required to give 30-day notice to its residents whenever the facility's rates change. If an individual's classification changes, no notice is required and the rate is retroactive to the effective date of the classification.

The Legislative Council staff said Senate Bill No. 2109 (2007) continues, through July 31, 2009, the moratorium on the expansion of nursing facility bed capacity above the state's gross licensed capacity of 6,383 beds. The provisions allow, not more than once in a 12-month period, a nursing facility to convert licensed nursing facility bed capacity to basic care bed capacity and a basic care facility to convert basic care bed capacity back to nursing facility bed capacity. The 2007 Legislative Assembly provided an exception to the moratorium on expansion of long-term care bed capacity and allowed the Veterans Home to convert 14 basic care beds to skilled care beds. The new Veterans Home facility will be authorized 52 skilled care beds and 98 basic care beds. Senate Bill No. 2109 also continues through July 31, 2009, the moratorium on basic care bed capacity. The bill provides that except for a nursing facility that is converting nursing facility bed capacity to basic care or unless the applicant demonstrates to the State Department of Health and the Department of Human Services that a need for additional basic care bed capacity exists, the department may not issue a license for additional basic care bed capacity above the state's gross licensed capacity of 1,527 beds.

North Dakota Century Code Section 23-16-01.1 allows nursing facilities to transfer beds from one facility to another, and Section 23-09.3-01.1 allows basic care facilities to transfer beds from one facility to another. Under both these sections, the facility receiving the beds has 48 months in which to license the beds. As of June 2007, 177 nursing home beds have been transferred and are awaiting licensure and 40 basic care beds have been transferred and are awaiting licensure. These amounts are in addition to the licensed bed capacity referred to above.

The Legislative Council staff said Senate Bill No. 2070, approved by the 2007 Legislative Assembly, appropriates \$40,000 from the general

fund to match \$800,000 of federal funds which if approved by the federal government will allow the Department of Human Services to establish or contract for an Aging and Disability Resource Center to provide a single point of entry to North Dakota's continuum of care services for the elderly and disabled.

The Legislative Council staff reviewed information prepared by the North Dakota State Census Data Center relating to North Dakota's aging population and demographic projections to 2020. The projections indicate a significant increase in North Dakota's elderly population by 2020.

The Legislative Council staff proposed the following study plan:

1. Receive information from the Department of Human Services on North Dakota's long-term care system.
2. Receive information from representatives involved in the Real Choice Systems Change Grant - Rebalancing Initiative regarding findings and results of the initiative.
3. Receive information on the Olmstead Commission regarding outcomes of long-term care-related pilot projects and other activities and findings and recommendations of the commission.
4. Gather and review information on long-term care and home and community-based care services available and waiting lists for services by geographic areas of the state, including a comparison of the elderly population to the number of nursing home and basic care beds available by region of the state.
5. Compare projected elderly population in North Dakota by location to the capacity of services available in these locations.
6. Receive status reports from the Department of Human Services regarding the level of spending, utilization, and cost of long-term care services and programs for the 2005-07 and 2007-09 bienniums.
7. Receive information from the State Department of Health regarding licensed bed capacity and any request for transfers of nursing facility bed capacity to basic care bed capacity or vice versa.
8. Receive testimony from interested persons, including the North Dakota Long Term Care Association, regarding the long-term care system in North Dakota.
9. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
10. Prepare a final report for submission to the Legislative Council.

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, commented on the committee's study. Ms. Anderson provided an updated schedule showing the various services available within North Dakota's long-term care

continuum, including information on eligibility criteria and service limits.

As of May 2007 Ms. Anderson said 1,411 individuals were being served in the SPED program, 114 in expanded SPED, 249 in the home and community-based waiver, and 594 under the Medicaid personal care option. Ms. Anderson said there are currently 53 licensed basic care facilities with 1,511 beds and 83 licensed nursing facilities with 6,379 beds.

In May 2007 Ms. Anderson said the department learned it has been awarded a federal grant for a money-follows-the-client demonstration project. She said the grant will assist 110 individuals, including 80 currently in nursing homes and 30 in developmental disability placements, to transition from an institutional setting to a home or community-based setting. She said the grant totals \$8.9 million and is available through September 2011.

Ms. Anderson said in May 2007 the department began serving individuals who are technology-dependent through a home and community-based waiver. She said the individuals are ventilator-dependent 20 or more hours per day and require attendant care and other supports to remain in their homes or communities.

In June 2007 Ms. Anderson said the department received notice that it had been approved for a federal grant for the state's long-term care insurance partnership program. She said the program is effective for qualifying long-term care insurance policies sold on or after January 1, 2007.

Ms. Anderson said during the 2007 legislative session, four new services were added to the home and community-based waiver. She said these include family home care for spouses, home-delivered meals, nurse management, and adult foster care. These services, she said, will be added beginning January 2008. A copy of the report is on file in the Legislative Council office.

Ms. Shelly Peterson, Executive Director, North Dakota Long Term Care Association, commented on the committee's study. Ms. Peterson distributed information regarding the number of nursing and basic care beds across North Dakota.

Ms. Peterson said North Dakota currently has an average of 65.3 nursing facility beds per 1,000 elderly individuals in the state compared to the national average of approximately 49 nursing facility beds per 1,000 elderly individuals. She said North Dakota's goal is 60 nursing facility beds per 1,000 elderly individuals. She said North Dakota's nursing facility beds have been reduced significantly from 89 beds per 1,000 elderly individuals in 1996.

Regarding basic care beds, Ms. Peterson said North Dakota has an average of 17.25 basic care beds per 1,000 elderly individuals in the state. She said the statewide goal is 15 beds per 1,000 elderly individuals.

Ms. Peterson said concern was expressed during the 2007 legislative session that the Bismarck area

has too few nursing facility beds available. She said nursing facilities are allowed to transfer or sell beds to other facilities. She said a redistribution of beds from rural to urban facilities will occur over time. A copy of the report is on file in the Legislative Council office.

Ms. Peggy Shireley, Program Coordinator, Interagency Program for Assistive Technology (IPAT), commented on the committee's study. Ms. Shireley said IPAT provides assistive technology devices to assist state residents to continue living at home. Ms. Shireley provided examples of residents that have continued living at home as a result of using assistive technology devices. She said the program would assist the committee in its study.

Senator Lee suggested the committee receive information on the impact of nursing facility reclassifications on private pay residents.

Senator Lee suggested that, if possible, the demographic information be further detailed by more elderly age classifications.

Representative Price suggested the committee receive information on policies and procedures nursing facilities follow when hospitalizations occur and on notification requirements when families are asked to move the resident to more restrictive care.

Representative Kreidt suggested the committee ask the Department of Human Services to review federal rules and regulations relating to intergovernmental transfer payments, identify other states that are still participating in the intergovernmental transfer program, and provide the committee with options available to North Dakota for participation. Chairman Dever said the department will be asked to provide this information at a future meeting.

Senator Mathern asked the Department of Human Services to provide information at a future meeting on the number of basic care and nursing facility beds in the state compared to the entire population and how that percentage compares to other states. Senator Lee said a similar comparison of the number of beds to the state's population over age 65 would also be useful. Ms. Anderson said this information is sometimes difficult to obtain from other states but the department would attempt to gather this information to the extent it is available.

Senator Krauter suggested the committee receive information on the number of individuals receiving the various types of long-term care services by age category in five-year increments, including those receiving home and community-based services. Ms. Anderson said the department would attempt to gather this information to the extent it is available.

Senator Lee suggested the committee consider the possibility of changing the definition of basic care to residential care to be consistent with other states' definitions.

Representative Price suggested the committee receive information from the Insurance Department on the number of long-term care insurance policies approved and on the status of the long-term care

insurance partnerships program authorized under 2007 Senate Bill No. 2124.

Senator Lee suggested the committee review the TBI services available across the state and compare the projected need for services to the services available.

Senator Krauter suggested the committee receive information from qualified service providers on the new payment method approved by the Legislative Assembly and on the usage and availability of services across the state.

Senator Krauter also suggested the committee receive status reports from the Department of Human Services on the establishment of an aging and disability resource center to provide a single point of entry to North Dakota's continuum of care services.

**It was moved by Senator Lee, seconded by Representative Price, and carried on a roll call vote that the committee proceed with this study as follows:**

- 1. Receive information from the Department of Human Services on North Dakota's long-term care system, including information on the intergovernmental transfer program, basic care and nursing home beds compared to population, nursing home resident reclassifications, nursing home and basic care facility notification requirements, individuals receiving services by age category, and on the establishment of an aging and disability resource center.**
- 2. Receive information from the Insurance Department regarding the long-term care insurance partnerships program, including the number of approved policies and sales.**
- 3. Receive information from representatives involved in the Real Choice Systems Change Grant - Rebalancing Initiative regarding findings and results of the initiative.**
- 4. Receive information on the Olmstead Commission regarding outcomes of long-term care-related pilot projects and other activities and findings and recommendations of the commission.**
- 5. Gather and review information on long-term care and home and community-based care services available and waiting lists for services by geographic areas of the state, including a comparison of the elderly population to the number of nursing home basic care beds available by region in the state.**
- 6. Compare projected elderly population in North Dakota by location to capacity of services available in these locations.**
- 7. Receive status reports from the Department of Human Services relating to the level of spending, utilization, and cost**

of long-term care services and programs for the 2005-07 and 2007-09 bienniums.

8. Receive information from the State Department of Health regarding licensed bed capacity and any request for transfers of nursing facility bed capacity to basic care bed capacity or vice versa.
9. Receive testimony from interested persons, including the North Dakota Long Term Care Association, qualified service providers, and consumers regarding the long-term care system in North Dakota and payment methods.
10. Develop committee recommendations in preparing legislation necessary to implement the recommendations.
11. Prepare a final report for submission to the Legislative Council.

Senators Dever, Heckaman, Krauter, Lee, and Mathern and Representatives Karls, Kreidt, Metcalf, Pietsch, Potter, Price, Uglem, Vig, and Wieland voted "aye." No negative votes were cast.

### **DEMENTIA-RELATED SERVICES STUDY**

The Legislative Council staff presented a background memorandum entitled [\*Dementia-Related Services - Background Memorandum\*](#). The Legislative Council staff said the 2007 Legislative Assembly approved House Concurrent Resolution No. 3022 providing for a Legislative Council study of the availability of and future need for dementia-related services and funding for programs for individuals with dementias. The Legislative Council staff reviewed previous related studies. The Legislative Council staff said the 1995-96 Budget Committee on Home and Community Care studied the continuum of care for North Dakotans with Alzheimer's and related dementias and the needs of caregivers and families of patients with Alzheimer's and related dementias. The committee recommended House Bill No. 1037 which required the Department of Human Services to establish pilot projects to meet the service needs of the Alzheimer's and related dementia population.

The 1997-98 Budget Committee on Long-Term Care monitored the implementation of the Alzheimer's and related dementia population projects. Due to delays in the startup of the pilot projects, it was not possible to fully evaluate the effectiveness of the pilot projects during the 1997-99 biennium. The committee recommended Senate Bill No. 2034 which authorized the Department of Human Services to continue the approved Alzheimer's and related dementia population pilot projects into the 1999-2001 biennium and required the department to monitor and report on the progress of the pilot projects.

The 1999-2000 interim Budget Committee on Institutional Services received the final report from the Department of Human Services on the progress of the Alzheimer's and related dementia pilot projects. The

committee learned that based on the department's review of the Baptist Home in Kenmare and with the approval of three additional units, the Alzheimer's and related dementia pilot project accomplished the goal set forth in the original legislation. The report indicates the facility in Kenmare provided appropriate and adequate care to its residents with Alzheimer's and related dementia. The payment rate was \$15.05 per day less than the services of a similar nature in a nursing facility.

The Legislative Council staff said in 2004 the Department of Human Services received a three-year federal Alzheimer's disease demonstration grant to expand the availability of diagnostic and support services for persons with Alzheimer's disease, their families, and caregivers as well as to improve the responsiveness of the home and community-based care system for persons with dementia. The program focuses on serving hard-to-reach and underserved individuals with Alzheimer's disease or related dementia. The grant award was \$261,150 for each year of the three-year grant. Since not all the funds were spent, the department requested and received a one-year extension of the grant through June 30, 2008. The North Dakota program focuses on building an alliance between the medical community, community services network, and the North Dakota family caregiver support program to increase early dementia identification, treatment options, and caregiver respite. The grant requires a 25 percent nonfederal match the first year, 35 percent the second year, and 45 percent the third year. The Dakota Medical Foundation has provided a portion of the match for each of the three years of the project with the remainder being provided by the contractors who are providing the services funded by the grant.

The Legislative Council staff said in September 2004 the Department of Human Services received a three-year \$315,000 Real Choice systems change grant to provide a single point of access to long-term support and care services for the elderly and individuals with disabilities. The Department of Human Services contracted with the North Dakota Center for Persons with Disabilities at Minot State University to conduct the project. The project, known as the Real Choice Systems Change Grant - Rebalancing Initiative, is working to develop a plan for rebalancing funds between long-term care services and those services provided in home or community settings. The project is also involved in the development of a new system for providing a single point of entry for services for the elderly and individuals with disabilities who are considering long-term care and home and community-based services. The project has brought together representatives from public and private organizations involved in assuring that the North Dakota elderly and individuals with disabilities have options and access to the continuum of long-term care services in the state.

The Legislative Council staff proposed the following study plan:

1. Gather and review information on Alzheimer's and dementia-related services available in the state, including in-home and residential services, the cost of these services, and funding available to assist in paying for these services.
2. Receive information from interested persons, including the North Dakota Long Term Care Association and Alzheimer's Association, regarding the availability of dementia-related services in this state and the need for and projected need for additional services and funding for individuals with dementia.
3. Receive information from the Department of Human Services and the North Dakota Association of Counties regarding programs and services for individuals with dementia and related funding.
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
5. Prepare a final report for submission to the Legislative Council.

Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, commented on the committee's study. Ms. Wright said the department is contracting with Alzheimer's Association Minnesota-North Dakota, Minneapolis; MeritCare Medical Group, Fargo; and St. Alexius Medical Center, Bismarck; to conduct the Alzheimer's disease demonstration grant. She said the Alzheimer's Association provides community education, dementia awareness training, family caregiver training, educational workshops, sessions at major state conferences, and public information. She said St. Alexius Medical Center conducts memory loss screening clinics and training and presentations for medical staff in western North Dakota. She said MeritCare Medical Group conducts training for medical professionals on Alzheimer's disease and related dementias in eastern North Dakota. She said the medical group also conducts focus groups for caregivers and a symposium on dementia and management. In addition, she said, Lake Region State College developed an informational manual for training for family caregivers who are caring for someone with Alzheimer's disease or related dementias.

Ms. Wright said through the National Family Caregiver Support Program, the department estimates approximately 200 caregivers in this program are caring for someone with Alzheimer's disease or related dementia.

Ms. Wright said other services provided through the department include case management, personal care, home-delivered meals, homemaker services, outreach, and respite care. A copy of the report is on file in the Legislative Council office.

Ms. Shireley commented on the committee's study. Ms. Shireley said IPAT provides assistive technology devices to assist individuals with Alzheimer's and related dementia to remain in their homes longer, be safer, and reduce the burden of caregiving. She said examples of devices available for individuals experiencing the early stages of dementia include wandering alerts, automated medication dispensers, Alert One telephone services, car battery interrupters, walkie-talkies, and invisible cabinet locks. A copy of the testimony is on file in the Legislative Council office.

Senator Mathern suggested the committee receive testimony from caregivers and others involved in Alzheimer's and related dementia services and from representatives of AARP.

Senator Mathern suggested the committee receive testimony from representatives of the National Family Caregivers Association. Ms. Wright said she would try to arrange this for a future committee meeting.

Representative Kreidt asked for the status of the establishment of an aging and disability resource center. Ms. Wright said the department plans to submit its grant application in August 2007.

Representative Potter suggested the committee receive additional information on the National Family Caregiver Support Program.

Ms. Carole Watrel, AARP, commented on the committee's study. Ms. Watrel said she is on the board of the North Dakota-Western Alzheimer's Association and said the association is willing to assist the committee as it conducts its study.

Senator Krauter suggested the committee consider touring an Alzheimer's facility as part of its study plan.

Senator Mathern suggested the committee receive information from individuals involved in conducting Alzheimer's screenings.

**It was moved by Senator Krauter, seconded by Senator Heckaman, and carried on a roll call vote that the committee proceed with the study as follows:**

- 1. Gather and review information on Alzheimer's and dementia-related services available in the state, including enrollment in residential services, the cost of these services, and funding available to assist in paying for these services.**
- 2. Receive information from interested persons, including the North Dakota Long Term Care Association, Alzheimer's Association, AARP, National Family Caregivers Association, individuals involved in screening for Alzheimer's and related dementia, and others involved in these services regarding the availability of services in this state and the need for and projected need for additional services and funding for individuals with dementia.**
- 3. Receive information from the Department of Human Services and the North Dakota Association of Counties regarding**

**programs and services for individuals with dementia and related funding.**

4. **Receive information on the National Family Caregiver Support Program.**
5. **Consider touring an Alzheimer's facility.**
6. **Develop committee recommendations and prepare legislation necessary to implement the committee recommendations.**
7. **Prepare a final report for submission to the Legislative Council.**

Senators Dever, Heckaman, Krauter, Lee, and Mathern and Representatives Bellew, Karls, Kreidt, Metcalf, Pietsch, Potter, Price, Uglem, Vig, and Wieland voted "aye." No negative votes were cast.

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

## **TRANSITION TO INDEPENDENCE PROGRAM STUDY**

The Legislative Council staff presented a background memorandum entitled [Transition to Independence Programs - Background Memorandum](#).

The Legislative Council staff said the 2007 Legislative Assembly approved Senate Concurrent Resolution No. 4005 providing for a Legislative Council study of the feasibility and desirability of establishing a transition to independence program for young adults with mental illness.

The Legislative Council staff said the Department of Human Services, under the Children and Family Services Division, administers an independent living program for youth transitioning out of foster care. The program is the Chafee foster care independent living program. The program's purpose is to ensure that all youth aging out of the foster care system have the necessary support and services available to them to assist in making the transition from foster care to adulthood. The goal of the program is for all foster youth to reach the following outcomes by age 21:

1. Access to physical and mental health services.
2. Sufficient economic resources.
3. Safe and stable living arrangement.
4. Academic/educational/vocational goal attainment.
5. Connections to persons and community.
6. Avoidance of illegal or high-risk behaviors.
7. Postponement of parenthood.

The program serves foster care youth age 16 and older who have been identified as likely to age out of foster care as well as former foster care youth up to

age 23 who have aged out of foster care. The independent living program served 284 youth during the last federal fiscal year.

The program receives \$500,000 per year in federal Chafee grant funds requiring a 20 percent state match that is provided from the state general fund and eligible in-kind matching.

The funding is used for regional independent living coordinator positions; direct financial assistance to youth for rent, utilities, food, clothes, etc.; youth groups; teen conferences; and program-related materials, equipment, supplies, etc.

The department also administers the federal Chafee education and training voucher program. This program provides funding to pay for tuition, books, and room and board expenses of foster care youth to attend higher education institutions. This program receives \$115,000 per year in federal funds requiring a 20 percent state match. Approximately 31 foster care youth are served by this program each year.

The Legislative Council staff said severe emotional disturbances (SED) is the term used to identify children under age 18 who have been diagnosed with a severe behavioral, emotional, or mental health disorder that has been a major impairment in a child's level of functioning at home, school, or community for at least one year.

The Department of Human Services' Mental Health and Substance Abuse Services Division provides therapeutic and support services to children with SED and their families. Examples of these services include individual, family, and group therapy; psychiatric services; psychological evaluations; care coordination; case aides; medication management; and residential and crisis services. The department contracts with private providers for some of these services while others are provided directly at the human service centers.

Information available from the Department of Human Services indicates that in 2004 approximately 5,700 (4 percent) of North Dakota's 139,000 children under age 18 had SED. In 2005, 1,692 children with SED were served at the human service centers while in 2006, 1,538 were served.

The Legislative Council staff presented the following schedule of mental health services funding in the Department of Human Services' central office and human service centers since the 1999-2001 biennium (the schedule does not include mental health funding at the State Hospital):

	1999-2001 Adjusted Appropriations	2001-03 Adjusted Appropriations	2003-05 Adjusted Appropriations	2005-07 Adjusted Appropriations	2007-09 Preliminary Appropriation <sup>1</sup>
<b>Department of Human Services</b>					
Central office - Mental health	\$3,608,211	\$2,311,363	\$2,702,553	\$2,493,459	\$2,260,499
Human service centers - Mental health	32,333,850	30,025,003	27,994,663	28,244,485	32,119,642
Total	\$35,942,061	\$32,336,366	\$30,697,216	\$30,737,944	\$34,380,141
Less estimated income	22,210,636	18,334,225	17,930,549	16,710,321	15,184,336
General fund	\$13,731,425	\$14,002,141	\$12,766,667	\$14,027,623	\$19,195,805

<sup>1</sup>The 2007-09 appropriation amounts are preliminary and subject to change as the department is still in the process of allocating legislative changes to specific programs (i.e., inflationary increases, salary adjustments, etc.). The amounts shown do not include funding for the new community treatment program for sex offenders administered by the Mental Health and Substance Abuse Services Division.

The Legislative Council staff proposed the following study plan:

1. Receive information from the Department of Human Services on programs and services provided to young adults with mental illness and options for establishing a transition to independence program for these young adults.
2. Receive information on the number of young adults with mental illness that transition out of other state-sponsored programs and the number that may not be receiving services.
3. Receive testimony from interested persons regarding the feasibility and desirability of establishing a transition to independence for young adults with mental illness.
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
5. Prepare a final report for submission to the Legislative Council.

Ms. JoAnne Hoesel, Director, Mental Health and Substance Abuse Services Division, Department of Human Services, commented on the committee's study. Ms. Hoesel said youth and young adults with emotional and behavioral difficulties often find their transition from adolescence through young adulthood challenging. She said it is common to find youth with mental illness in the foster care or juvenile justice systems.

In fiscal year 2006, Ms. Hoesel said the public mental health system provided services to 1,538 children and adolescents with serious emotional disturbances and 1,527 children and adolescents with emotional disturbances.

Ms. Hoesel said a number of initiatives are in place, including the partnerships program delivered through the eight human service centers; vocational rehabilitation transition task forces; the foster care independent living program; the Olmstead new freedom funding plan which includes a youth transition component; and the wraparound process used by child welfare, the Division of Juvenile Services, and the regional human service centers.

Ms. Hoesel said the department has a state review team to address situations with extreme challenges to use the collective expertise and resources of multiple divisions and agencies to solve service challenges. She said often the barriers are funding and levels of care. Most youth considered by this team are involved in the foster care or juvenile justice systems, have developmental disabilities, or are cognitively lower functioning and have mental health or substance abuse issues.

Ms. Hoesel said the state does not have a multiagency transition program specifically for youth with mental illness, and the department is interested in assisting the committee with this study and possibly developing a pilot initiative. She said transition services would create opportunities for youth with mental illness to make decisions, try out problem-solving, and continue evaluating the impact of their choices and actions. A copy of the testimony is on file in the Legislative Council office.

In response to a question from Senator Lee, Ms. Hoesel said the level of services available to youth should not be affected when the person graduates from high school.

Representative Potter asked for additional information on funding and levels of care barriers. Ms. Hoesel said services are available for individuals with developmental disabilities or if the youth are in the foster care system; however, for youth that are not in these programs services are very limited.

In response to a question from Representative Potter, Ms. Hoesel said the department has difficulty recruiting and retaining advanced clinical specialists, psychologists, and child psychiatrists.

Ms. Carlotta McCleary, Executive Director, North Dakota Federation of Families for Children's Mental Health, commented on the committee's study.

For many youth and their families, Ms. McCleary said transition planning is primarily discussed in schools. She said currently these planning meetings provide very limited options for these youth. She suggested transition planning be a coordinated effort with the agencies currently serving the youth and agencies that will be providing services in the future.

Ms. McCleary said more education about transition needs to occur. She suggested agencies do a better job of coordinating efforts and more importantly, youth and their families should be involved in developing the policy regarding transition services. A copy of her testimony is on file in the Legislative Council office.

Ms. Sandra Leyland, Executive Director, Fraser Limited, commented on the committee's study. Ms. Leyland said Fraser Limited provides support services to children with special needs from six weeks to age 12, children from age 12 to 21 with emotional and mental health issues, and adults with developmental disabilities.

Ms. Leyland suggested the committee include the following as part of its study:

1. Identify the youth and young adults who are at risk of homelessness, incarceration, substance abuse, suicide, dropping out of school, etc.
2. Consider the need for a continuum of service plan specifically for transitioning youth with mental illness that addresses their medical condition and its relationship to their educational focus.
3. Consider the need for a transition to independence program which will serve youth prior to crisis or after hospitalization before returning to the family home, avoiding costly inpatient services.

Ms. Leyland said North Dakota provides quality services in many areas but there is confusion and lack of awareness primarily in the three areas listed above, especially for young adults between ages 18 and 21.

Ms. Leyland said Dr. David MacDonald, Professor, University of Mary, has involved students in reviewing information on youth involved in the judicial system to assist in identifying youth at risk. She said by identifying youth involved in the judicial system, who also have a mental health diagnosis, services can better be structured. Ms. Leyland said Dr. MacDonald and the University of Mary students have identified approximately 13,000 youth in 2005 and 2006 that have been involved in the judicial system; however, she said, more detailed information on these youth has not been collected due to lack of funding and access to additional information on these individuals.

Ms. Leyland provided examples of entities working on areas of importance for transitioning youth but indicated that additional services and coordination are needed to provide a continuum of care for these youth.

Ms. Leyland said the committee may wish to consider national and state models available to provide a service continuum to assist youth in transitioning to independence. She said PATH has recently submitted a grant to assist with costs to develop a program to support mentally ill transition-age youth in the area of community living. She said the West Fargo School District has a transition academy which supports youth from their special education program in transitioning to skills

building programs. She said PRIDE in Bismarck has a peer mentoring program for youth with mental health needs and Fraser Limited provides an 11-week summer program to link kids during the summer months with peers.

Ms. Leyland said collecting data available at the state level will assist in identifying:

1. Those youth at risk of not receiving services.
2. Where service continuums are not adequate.
3. What existing programs could be enhanced.
4. What additional transition services or programs are necessary.

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

Dr. MacDonald discussed the research conducted at the University of Mary to identify youth who may need transitional services. He said the project identified 13,500 youth aged 18 to 21 who in 2005 and 2006 came into contact with the judicial system. He said additional information is needed from county courts and from social services to continue the research project. He said the University of Mary cannot access the information on these youth because of the cost of county court fees that would be charged to gather the information and other information that may not be available to them.

Senator Lee suggested the committee receive information from the Supreme Court, which has a committee on transitional issues of children, which may also be reviewing similar information.

Senator Lee suggested receiving information on in-home counseling provided by The Village.

Senator Dever suggested the committee receive information from the Department of Human Services, in a flow chart form, identifying the current process for identifying youth needing services and how the services are coordinated and provided. Ms. Hoesel said the department would prepare the information for a future meeting.

Senator Dever said youth being released from the Youth Correctional Center may also be in need of transitional services.

In response to a question from Representative Potter, Ms. Hoesel said the department would provide information at a future meeting on other states' transitional services programs for youth with mental illness.

Senator Mathern suggested the committee receive information from the Department of Public Instruction, the Department of Career and Technical Education, and the University System regarding services provided to youth with severe emotional disturbances and programs available in vocational education and the University System to address transitional issues.

Senator Heckaman suggested that the Vocational Rehabilitation Division also provide information to the committee on services provided and how it determines whether youth are eligible for services.

Representative Potter suggested that Ms. Leyland's suggestions be included in the study plan.

Senator Mathern suggested the National Conference of State Legislatures or the Council of State Governments may be a useful resource to provide the committee with information on other states' programs.

**It was moved by Senator Mathern, seconded by Representative Potter, and carried on a roll call vote that the committee proceed with the study as follows:**

1. **Receive information from the Department of Human Services on programs and services provided to young adults with mental illness and options for establishing a transition to independence program for these young adults.**
2. **Receive information on the number of young adults with mental illness that transition out of other state-sponsored programs and the number that may not be receiving services.**
3. **Assist in identifying youth at risk of needing transitional services, determine the adequacy of current services, identify existing programs that could be enhanced, and identify additional transitional services or programs that are necessary for these youth.**
4. **Receive information on the in-home counseling programs provided by The Village.**
5. **Receive information from the Department of Human Services in the form of a flow chart showing the process involved in identifying a child needing services and how services are coordinated and provided.**
6. **Receive information from the Youth Correctional Center on transitional services provided to youth being released from the center.**
7. **Receive information from the Department of Human Services on other states' programs providing transitional services for youth with mental illness.**
8. **Receive information from the Department of Public Instruction, Department of Career and Technical Education, University System, and Vocational Rehabilitation Division on services provided to children with severe emotional disturbances.**

Senators Dever, Heckaman, Krauter, Lee, and Mathern and Representatives Bellew, Karls, Kreidt, Metcalf, Pietsch, Potter, Price, Uglem, Vig, and Wieland voted "aye." No negative votes were cast.

## **OTHER COMMITTEE RESPONSIBILITIES**

The Legislative Council staff presented a background memorandum entitled [Other Responsibilities of the Long-Term Care Committee - Background Memorandum](#). The Legislative Council staff said in addition to the various study responsibilities assigned to the Long-Term Care Committee for the 2007-08 interim, the committee has also been assigned the following responsibilities:

1. Receive a report from the State Department of Health before August 1, 2008, regarding the status of the department's demonstration project involving life safety surveys for basic care facilities and long-term care facilities during and at the conclusion of construction or renovation projects that cost more than \$3 million and whether the program should be made permanent (House Bill No. 1004).
2. Receive a report from the State Department of Health before August 1, 2008, regarding the impact of the implementation of the survey process for basic care facilities to identify and correct deficiencies (House Bill No. 1488).

### **Life Safety Survey Demonstration Project Report**

The Legislative Council staff said Sections 12 and 13 of House Bill No. 1004, approved by the 2007 Legislative Assembly, provide that during the 2007-09 biennium the State Department of Health design and implement a demonstration project to provide a life safety survey process for basic care and long-term care facilities to assess, voluntarily, a construction project, a renovation project, or a construction and renovation project costing more than \$3 million.

The department may charge a reasonable fee for the survey, the revenue of which is deposited into the State Department of Health's operating fund, to defray the food, lodging, and transportation expenses of the survey process. Subdivision 4 of this section requires the department to report to the Legislative Council before August 1, 2008, regarding the status of the project, including the feasibility and desirability in making the program permanent and whether the department will be recommending any legislation to make the program permanent. The Long-Term Care Committee has been assigned responsibility to receive this report.

The State Department of Health currently does not conduct voluntary life safety surveys. Life safety surveys are conducted as part of the facility's certification process.

### **Basic Care Survey Process**

The Legislative Council staff said House Bill No. 1488, approved by the 2007 Legislative Assembly, amends NDCC Section 23-09.3-04 relating to licensure and inspection of basic care facilities. The section requires the State Department of Health

to implement a survey process for basic care facilities which provides that:

1. For the life safety portion of the survey, all surveys must be announced.
2. For the health portion of the survey, half of the surveys must be announced and half unannounced.
3. For complaints relating to health and life safety, all surveys must be unannounced.

The department is also to develop, in consultation with basic care facilities, a two-tiered system identifying areas of noncompliance with the health portions of the survey.

Section 2 of the bill requires the State Department of Health before August 1, 2008, to report to the Legislative Council regarding the impact of implementation of this new survey process, including whether the department will be recommending any legislative changes to the basic care survey process. The Long-Term Care Committee has been assigned responsibility to receive this report.

The 2005-06 interim Budget Committee on Health Care received a report from the State Department of Health regarding its evaluation of a pilot project, conducted pursuant to Section 26 of 2005 Senate Bill No. 2004, of an announced survey process for basic care facilities. Previously all basic care surveys were unannounced. The pilot project began with half of the state's licensed basic care providers surveyed receiving an unannounced survey. Pursuant to NDCC Section 23-09.3-04, the State Department of Health is responsible for establishing standards and rules for basic care facilities. The department is required to inspect all facilities and grant annual licenses to facilities that conform to the standards established and to the rules prescribed. The licenses are issued by the State Department of Health and are valid for not more than one year. Any license may be revoked by the department for violations of standards and rules adopted by the department. The pilot project was conducted from July 1, 2005, through May 31, 2006. The State Department of Health's findings included:

1. Both providers and surveyors indicated that information is more readily available in most cases when the survey is announced.
2. Both providers and surveyors reported some improvement in communications with announced surveys.
3. Surveyors reported no increase in communication or contact initiated by family, residents, or staff resulting from announcing the surveys.
4. Providers indicated that in their opinion the results of the announced surveys are the same as if the surveys were unannounced.
5. Review of deficiency statements reveals approximately twice as many deficiencies result in unannounced surveys.

The following chart provides the information from the pilot project:

Number of Surveys Completed	Average Number of Citations
13 announced program surveys	4.4 citations
10 unannounced program surveys	9.1 citations
11 announced Life Safety Code surveys	3.8 citations
11 unannounced Life Safety Code surveys	5.8 citations

The State Department of Health's recommendation to the Budget Committee on Health Care was that basic care surveys continue to be unannounced. The reasons supporting the unannounced surveys include:

1. The national standard is for surveys to be conducted unannounced to get a true picture of day-to-day care and services provided to residents.
2. Announcing surveys allows facilities to make changes that have the potential to alter survey findings.
3. The greater number of findings with unannounced surveys indicates that facilities are possibly fixing problems for the announced survey visits rather than developing a system to ensure continued compliance.
4. Citation of a deficient practice and the resulting plan of correction have a more significant impact on a facility's ability to deliver services in an improved manner over a longer period of time.
5. During announced surveys certain deficiencies can be missed; for example, the absence of staff in a facility would be missed if the survey were announced.

The North Dakota Long Term Care Association surveyed basic care facilities regarding their experience with the announced basic care pilot project. The survey findings indicated that all facilities that experienced the announced survey process encouraged its continuation because:

1. Residents and families have an opportunity for more meaningful involvement.
2. Essential staff will be present and available for announced surveys.
3. Paperwork was efficiently delivered to surveyors for announced surveys.
4. Facility staff was more comfortable and better able to perform routine work during announced surveys.
5. Review of past payroll records could identify attempts to manipulate staffing during announced surveys.
6. Various methods of gathering data make it difficult to cover up a long-time or short-time facility practice.

The Budget Committee on Health Care made no recommendation regarding the pilot project to test the announced basic care survey process.

Ms. Peterson commented on the development of a two-tiered system for identifying noncompliance with the health portions of basic care surveys. Ms. Peterson said the State Department of Health

involved consumers, facilities, and stakeholders in the development of this new system.

Mr. Bruce Murry, Counsel, Protection and Advocacy Project, commented on the other responsibilities of the Long-Term Care Committee.

Mr. Murry suggested the committee consider discontinuing the announced survey process for basic care facilities since during the previous interim the pilot project results indicate that announced surveys resulted in fewer citations.

Senator Lee suggested that as information is presented to the committee regarding survey findings, deficiencies found should be categorized as either serious deficiencies or minor deficiencies.

Senator Dever announced the next committee meeting will possibly be held in conjunction with the

Human Services Committee in late October or early November 2007.

The committee adjourned subject to the call of the chair at 2:20 p.m.

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Allen H. Knudson  
Assistant Legislative Budget Analyst and Auditor

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Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:1