

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### LONG-TERM CARE COMMITTEE

Wednesday, July 14, 2010  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Gary Kreidt, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Gary Kreidt, Tom Conklin, Richard Holman, Robert Kilichowski, Joyce M. Kingsbury, Vonnie Pietsch, Chet Pollert, Gerry Uglen, Robin Weisz, Alon C. Wieland; Senators JoNell A. Bakke, Dick Dever, Tom Fiebiger, Joan Heckaman, Terryl L. Jacobs, Judy Lee, Jim Pomeroy

**Member absent:** Representative Louise Potter

**Others present:** See [Appendix A](#)

**It was moved by Senator Dever, seconded by Representative Pollert, and carried on a voice vote that the minutes of the May 6, 2010, meeting be approved as distributed.**

#### STUDY OF LONG-TERM CARE SERVICES

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix B](#)) regarding long-term care expenditures for the 2007-09 and 2009-11 bienniums. She said long-term care expenditures for the 2009-11 biennium are projected to total \$489.5 million, an increase of approximately \$86.6 million from actual long-term care expenditures for the 2007-09 biennium of \$402.9 million.

In response to a question from Senator Lee, Ms. Anderson said the increase in expenditures for the aged and disabled waiver from the 2007-09 biennium to the 2009-11 biennium is primarily due to the implementation of a waiver for children's hospice services during the second year of the 2009-11 biennium.

In response to a question from Senator Fiebiger, Ms. Anderson said the program of all-inclusive care for the elderly is a comprehensive service delivery system which includes all needed preventive, primary, acute, and long-term care services so that individuals can continue living in the community. She said the program began during the 2007-09 biennium and is currently only available in the Bismarck and Dickinson areas.

In response to a question from Senator Dever, Ms. Anderson said the department does not anticipate an increase in long-term care expenditures due to the expansion of Medicaid eligibility authorized by the federal health care reform.

Ms. Anderson provided information ([Appendix C](#)) regarding the estimated cost to continue the increase in nursing facility property limits in the formula for

nursing facility payments. She said the 2009 Legislative Assembly increased the nursing facility property limits as follows:

	Single Occupancy	Double Occupancy
Rate effective July 1, 2008	\$138,907	\$92,604
Rate effective July 1, 2009	\$169,098	\$112,732

Ms. Anderson said the estimated cost to continue the increase in nursing facility property limits for the 2011-13 biennium is \$2,206,293, of which \$915,705 relates to Medicaid residents and \$1,290,588 to private pay residents.

In response to a question from Representative Pollert, Ms. Anderson said nursing facility property limits are adjusted annually on July 1 by the increase in the consumer price index for all urban consumers for the 12-month period ending May 31. She said the increase in property limits is authorized in the North Dakota Administrative Code.

In response to a question from Representative Pollert, Ms. Anderson said \$915,705 of Medicaid cost increases represents total funds, including funding from the general fund and federal funds.

Ms. Kristin Lunneborg, Chief Financial Officer, Veterans' Home, Lisbon, provided information ([Appendix D](#)) regarding the status of the Veterans' Home 2009-11 legislative appropriation. She said the Veterans' Home anticipates actual revenue collections for the 2009-11 biennium to be approximately \$300,000 to \$350,000 less than projections. She said the shortfall is due to the delay in the completion of the new Veterans' Home facility. She said current change orders have moved the completion date for the new facility from October 2010 to December 2010. She said the contractors are trying to extend the completion date to April 2011. She said the construction project experienced flooding in October 2009, and excessive water in trenches on the construction site damaged equipment. She said the mechanical contractor who incurred losses as a result of the water is requesting a settlement. She said the Veterans' Home maintains it is not responsible for the additional expenses.

Ms. Lunneborg said the Veterans' Home 2009-11 legislative appropriation includes \$3.1 million of federal fiscal stimulus funds for a thermal imager, electronic health records system, Bobcat utility vehicle, and geothermal heating system. Based on

discussions with the Department of Commerce and the Office of Management and Budget, she said, the Veterans' Home is not eligible for any of the federal fiscal stimulus funds. She said the Veterans' Home will utilize contingent general fund appropriations for the purchase of the thermal imager, electronic health records system, and geothermal heating system. She said an alternative funding source has not yet been identified for the Bobcat utility vehicle.

In response to a question from Representative Wieland, Ms. Lunneborg said the Veterans' Home may use excess special fund revenue collections from the 2007-09 biennium to cover the anticipated special fund revenue shortfall in the 2009-11 biennium.

In response to a question from Representative Weisz, Ms. Lunneborg said the geothermal heating system did not qualify for federal fiscal stimulus funds because the system's payback period was too long. She said the Veterans' Home was not provided information regarding the reasons it did not qualify for funding for the other purchases.

Chairman Kreidt said the Department of Human Services has indicated at previous committee meetings that the department believes the nursing facility private pay appeals process is not an appropriate function to be administered by the department. He said the Office of Administrative Hearings has indicated to the committee that the agency could conduct the nursing facility private pay appeals but the agency has several concerns. He said the North Dakota Long Term Care Association supports maintaining the current appeals process for nursing facility residents.

Senator Lee suggested the committee refrain from recommending changes in the responsibility for the private pay appeals process until after the implementation of the new resident classification system--minimum data set 3.0--in October 2010.

Chairman Kreidt said it appears the consensus of the committee is that the Department of Human Services continue the current appeals process for nursing facility residents.

Chairman Kreidt said the Department of Human Services had suggested the committee review the appropriateness of the Department of Human Services being responsible for the licensing of assisted living facilities. He said assisted living facilities have expressed support for maintaining licensure with the department. In addition, he said, there is support for maintaining separate definitions for assisted living and basic care.

Chairman Kreidt called on Ms. Shelly Peterson, President, North Dakota Long Term Care Association, to provide comments regarding separate definitions for assisted living and basic care. Ms. Peterson said there is support for maintaining separate definitions for assisted living and basic care. She distributed a copy of a letter ([Appendix E](#)) from Insurance Commissioner Earl Pomeroy to insurance companies dated April 1991. She said the letter states that North Dakota law prohibits the denial of long-term care

insurance claims solely on the basis of the type of facility.

The Legislative Council staff presented a bill draft [\[10093.0100\]](#) regarding the extension of the nursing care and basic care bed moratorium. The bill draft amends North Dakota Century Code Sections 23-09.3-01.1(1) and 23-16-01.1(1) to extend the moratorium on expansion of basic care bed capacity and the moratorium on expansion of long-term care bed capacity.

**It was moved by Senator Lee, seconded by Representative Kilichowski, and carried on a roll call vote that the proposed bill draft be amended to extend the nursing care and basic care bed moratorium for four years until July 31, 2015.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Uglen, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." Representative Weisz voted "nay."

**It was moved by Representative Kilichowski, seconded by Senator Lee, and carried on a roll call vote that the bill draft, as amended, extending the nursing care and basic care bed moratorium be approved and recommended to the Legislative Management.** Representatives Kreidt, Conklin, Holman, Kilichowski, Kingsbury, Pietsch, Pollert, Uglen, and Wieland and Senators Bakke, Dever, Fiebiger, Heckaman, Jacobs, Lee, and Pomeroy voted "aye." Representative Weisz voted "nay."

Mr. Peter D. Welte, State's Attorney, Grand Forks County, Grand Forks, provided information ([Appendix F](#)) regarding delinquency of nursing facility resident accounts. He said the Grand Forks County State's Attorney's office has been involved in the Later in Life Project, a coordinated multidisciplinary effort involving the state's attorney's office, the Community Violence Intervention Center, local law enforcement, and local adult protective services. He said the project involves:

- Training law enforcement to identify and investigate all aspects of elder abuse, including financial exploitation.
- Community education.
- Education of justice partners that these types of cases are no longer viewed as only civil matters.

In response to a question from Senator Bakke, Mr. Welte said the Grand Forks County State's Attorney's office has been successful in prosecuting approximately five elder abuse cases.

In response to a question from Senator Bakke, Mr. Welte said Grand Forks County is the only North Dakota county currently involved in the Later in Life Project.

In response to a question from Representative Kreidt, Ms. Peterson said the North Dakota Long Term Care Association is in the process of surveying long-term care facilities regarding bad debt expenses. She said the information will be provided to the 2011 Legislative Assembly.

### STUDY OF THE IMPACT OF INDIVIDUALS WITH TRAUMATIC BRAIN INJURY

Ms. Susan Wagner, Human Service Program Administrator, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided information ([Appendix G](#)) regarding the number of individuals with traumatic brain injury (TBI) served and the types of services received under department programs. She said North Dakota does not have a TBI registry or surveillance program; therefore, accurate information is not available on the total number of individuals with TBI in North Dakota. She said information gathered to date from county home and community-based services case managers indicates that 32 individuals with TBI are receiving home and community-based services. She said types of services received include TBI transitional living, TBI case management, TBI residential care, emergency response situation - lifeline, transportation, homemaker services, respite care, personal care, nurse education care, adult day care, and family home care. She said data gathered from the regional office automated project system indicates that 229 individuals with possible TBI received services at the regional human service centers in state fiscal year 2009. Of the 229 individuals, she said, 26 received specific developmental disabilities services. She said data gathered for state fiscal year 2010 to date indicates that 201 individuals with possible TBI received services at the regional human service centers.

In response to a question from Senator Fiebiger, Ms. Wagner said a majority of other states have established a TBI registry. She said North Dakota had a TBI registry at the State Department of Health in 1987 as the result of receiving a grant from the Centers for Disease Control and Prevention. She said the registry ceased to exist in 1994 when the federal grant ended.

In response to a question from Senator Bakke, Ms. Wagner said a TBI registry would provide an accurate number of individuals with TBI in the state and would serve as a point of referral for individuals with TBI.

Ms. Gerry Teevens, Special Education Regional Coordinator, Department of Public Instruction, provided information ([Appendix H](#)) regarding services provided in schools to children with TBI. She said there were 50 students in the state identified during the 2009-10 school year as having a TBI. Within the disability classification of TBI, she said, there is a wide range of diversity with regard to the severity of deficits, types of skills and problem areas, and intellectual functioning among students. She said students with TBI also differ from students with other disabilities in the onset of the disability, the complexity, and the recovery process. She said students with TBI often demonstrate inconsistent patterns of performance.

### STUDY OF THE REGISTRATION OF HEALTH CARE PROFESSIONALS

The Legislative Council staff presented a bill draft [[10094.0100](#)] that incorporates the statutory changes recommended by the State Department of Health's long-term care professionals workgroup. The bill draft creates a new chapter to Title 23 relating to a nurse aide registry and amends sections of Chapter 43-12.1 relating to individuals exempt from regulation by the State Board of Nursing and delegation of medication administration.

Dr. Darleen Bartz, Section Chief, Health Resources Section, State Department of Health, provided comments ([Appendix I](#)) regarding the proposed bill draft. She said the bill draft is similar to the language proposed by the workgroup with the addition of wording indicating that the department may document the reason for termination of a nurse aide on the registry. She said this language was discussed at the committee's previous meeting.

Dr. Bartz presented the following estimated biennial costs relating to the proposed changes:

Salaries and wages (1.5 full-time equivalent (FTE) positions)		
Salaries	\$128,668	
Benefits	52,896	
Total - Salaries and wages		\$181,564
Operating expenses		
Travel	\$9,600	
Information technology software and supplies	4,000	
Supplies	4,000	
Postage	800	
Telephone/communications	5,000	
Training	2,000	
Legal	4,000	
Information technology equipment under \$5,000	1,500	
Total - Operating expenses		\$30,900
Total		\$212,464
Additional startup expenses		
Rulemaking	\$5,000	
Information technology changes - Proposal 1	47,114	
Total - Additional startup expenses		\$52,114
Total estimated costs		\$264,578

In response to a question from Representative Wieland, Dr. Bartz said the proposed bill draft would result in approximately 4,000 new registrations per year, resulting in the need for 1.5 new FTE positions.

In response to a question from Representative Pollert, Dr. Bartz said transferring the regulation and registry of nurse aides, home health aides, and medication assistants I and II will result in efficiencies for the private sector.

In response to a question from Senator Fiebiger, Dr. Bartz said the information on the registry would be publicly accessible.

Dr. Constance Kalanek, Executive Director, State Board of Nursing, provided comments ([Appendix J](#)) regarding the proposed bill draft. She said the intent of 2009 House Bill No. 1269 was to lessen the discipline of unlicensed assistive persons who failed to register with the State Board of Nursing and to assess the need for duplication of registries. She believes the proposed bill draft makes more changes than the 2009 Legislative Assembly intended.

In response to a question from Representative Weisz, Dr. Kalanek said medication assistants III and technicians would continue to be registered with the State Board of Nursing under the proposed legislation. She said there are approximately 300 to 400 of these individuals in the state.

In response to questions from Representative Kreidt and Senator Lee, Dr. Kalanek said the discussions of the State Department of Health's workgroup were limited to transitioning the registry to the department.

In response to a question from Senator Heckaman, Dr. Kalanek said the State Board of Nursing spends approximately \$138,000 per year on its unlicensed assistive persons registration and receives approximately \$100,000 in income from unlicensed assistive persons registration fees.

In response to a question from Senator Dever, Dr. Kalanek said Section 5 of the proposed bill draft relating to an exemption for supervision and delegation of nursing intervention is not appropriate.

Mr. Buzz Benson, board member, State Board of Nursing, provided comments regarding the proposed bill draft. He said the board will be discussing the bill draft at its meeting on July 15-16, 2010.

Ms. Peterson provided comments regarding the proposed bill draft. She said the North Dakota Long Term Care Association supports the workgroup's recommendations and the proposed bill draft.

Chairman Kreidt suggested the State Department of Health convene a meeting of the department's long-term care professionals workgroup to review the proposed bill draft, develop a consensus among workgroup members, and provide the committee with any recommended changes to the bill draft.

The committee recessed for lunch at 12:18 p.m. and reconvened at 1:00 p.m.

**OTHER RESPONSIBILITIES**

Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, provided a report ([Appendix K](#)) regarding the outcomes of the dementia care services program pursuant to Section 2 of 2009 House Bill No. 1043. She said the department has entered a contract with the Alzheimer's Association Minnesota-North Dakota Chapter for provision of a dementia care services program in each area of the state served by a regional human service center as provided for in 2009 House Bill No. 1043. She said the association has hired five regional care consultants to provide services in the state. She said the consultants have been fully

trained and have been networking with other agencies and organizations to coordinate efforts, develop referral processes, and assure that services are not duplicated. She said the association has trained 648 individuals and provided information to 1,222 individuals about the dementia care services program through June 30, 2010. She said 274 individuals who have Alzheimer's or related dementia have been assessed by the program.

Ms. JoAnne Hoesel, Cabinet Lead for Program and Policy, Department of Human Services, provided a status report ([Appendix L](#)) on the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home and community-based service providers pursuant to Section 1 of 2009 House Bill No. 1556. She said the department contracted with Burns and Associates, Inc., to complete the study directed by House Bill No. 1556. She said the department received an interim report from Burns and Associates, Inc., on July 7, 2010. She said the interim report will be revised by Burns and Associates, Inc., based on feedback received by August 5, 2010.

Ms. Hoesel provided the following summary of findings included in the report:

Assessment findings	Discontinue use of the Oregon behavioral assessment for both children and adults  The Oregon medical assessment does have predictive value for children, but it is no better than the currently used progress assessment review to predict costs for adults.  The progress assessment review is a powerful tool and predicts 43.1 percent of the current developmental disabilities expenditures.
Reimbursement systems findings	North Dakota's current system is seen by providers to adequately pay in total for services and supports, but the dollars are not always distributed to the individuals who are medically fragile or behaviorally challenged.  Other states that base payment on the needs of individuals do not use cost-based reimbursement systems.  North Dakota's reimbursement system is slow and very resource-intensive.

Ms. Hoesel said Burns and Associates, Inc., has offered four options for consideration by the state of North Dakota--two options for adults and two options for children. She said one of the options for children and one of the options for adults retain the current cost-based reimbursement system. She said the others involve moving to a prospective reimbursement process. The following is a summary of the four options:

Adults	Option A - Revise and shorten the progress assessment review and continue the cost-based, retrospective reimbursement process
Children	Option B - Adopt a new assessment tool and move to a prospective reimbursement process. The Supports Intensity Scale is recommended. Option C - Pilot the Child Supports Intensity Scale and move to a prospective reimbursement process Option D - Continue the Oregon medical tool and add the Child and Adolescent Level of Care Utilization System or other similar tools and continue the cost-based, retrospective reimbursement process

Ms. Hoesel said replacing the progress assessment review with the Supports Intensity Scale would be more costly initially both in terms of time and dollars as it requires new assessments to be performed on all consumers and the results of those assessments to subsequently be used to develop a resource allocation model and prospective rates. She said this process would take approximately two years.

In response to a question from Senator Bakke, Ms. Hoesel said each developmental disabilities provider submits an annual budget based on allowable, reasonable, and client-rated costs to the department's Developmental Disabilities Division, and an interim rate is established. She said the interim rate assumes that a facility is 95 percent occupied.

In response to a question from Senator Dever, Ms. Hoesel said implementation of the recommendations may require legislative changes.

Mr. John Bole, Director, Developmental Disabilities Division, Department of Human Services, provided a status report ([Appendix M](#)) of the department's review of the audit and reimbursement process and the review and reconsideration of the 95 percent occupancy rule directed by 2009 Senate Bill No. 2423. He said the department established a workgroup comprised of members from developmental disabilities providers, the department, and the North Dakota Association of Community Providers. He said the workgroup recommended a request for information be issued to gain an understanding of the available services that could address the timing of the audits and the costs associated with an independent audit firm completing the audits of the cost reports rather than provider audit. He said the department

issued a request for information as recommended by the workgroup on June 11, 2010, and responses were due July 12, 2010. He said responses will be shared with the workgroup on August 12, 2010. He said the workgroup has also addressed adult and children intermediate care facilities, the 95 percent occupancy rule, and variables that factor into absences. He said the recommendations of the workgroup will be finalized in October 2010.

Mr. Eric Monson, CEO, Anne Carlsen Center, Jamestown, provided information ([Appendix N](#)) regarding the services provided by the center. He said the Anne Carlsen Center is one of the state's facilities that serves as an intermediate care facility for the mentally retarded. He said the center began operations in 1941. He said the center focuses on:

- Providing institutional care for the state's most medically fragile and behaviorally challenged children from birth through young adulthood.
- Providing home and community-based services to those that may not need care at the center in Jamestown but who still need life skills services.
- Offering comprehensive training and education.
- Providing elementary and secondary education instruction.

In response to a question from Representative Pollert, Mr. Monson said the Anne Carlsen Center has offices in Jamestown, Fargo, and Grand Forks.

**It was moved by Representative Pollert, seconded by Representative Wieland, and carried on a voice vote that the Long-Term Care Committee meeting be adjourned subject to the call of the chair.**

Chairman Kreidt adjourned the meeting at 2:30 p.m.

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Roxanne Woeste  
Assistant Legislative Budget Analyst and Auditor

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:14