

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HUMAN SERVICES COMMITTEE

Tuesday, August 2, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Alon Wieland, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Alon Wieland, Dick Anderson, Roger Brabandt, Donald L. Clark, Tom Conklin, Curt Hofstad, Kathy Hogan, Richard Holman, Robert Kilichowski, Chet Pollert, Jim Schmidt; Senators Dick Dever, Robert Erbele, Tim Mathern, Joe Miller, Gerald Uglem

Member absent: Representative Vonnie Pietsch

Others present: Senator Joan Heckaman, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE

The Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

COMMENTS BY THE COMMITTEE CHAIRMAN

Chairman Wieland welcomed the members to the Human Services Committee. He said the committee has been assigned studies relating to the autism spectrum disorder, guardianship services, Department of Human Services' caseloads and program utilization, and the state's qualified service provider (QSP) system. He said the committee has also been assigned to receive reports relating to the children's health insurance program (CHIP), health information technology, the dementia care services program, the development of a new developmental disabilities reimbursement system, and a substance abuse services pilot voucher payment program.

OTHER INFORMATION

Chairman Wieland called on Ms. June Herman, Manager, American Heart Association, to provide comments regarding a new initiative. Ms. Herman said the American Heart Association has secured \$7 million of funding to implement a Mission Lifeline project, which will equip approximately 1,000 ambulances in North Dakota with a 12-lead electrocardiograph.

Ms. Shelley Stingley, Helmsley Charitable Trust, provided information ([Appendix B](#)) regarding the Mission Lifeline project. She said the Helmsley

Charitable Trust has committed approximately \$4.7 million to the Mission Lifeline project.

STUDY OF THE AUTISM SPECTRUM DISORDER

The Legislative Council staff presented a memorandum entitled [Study of the Autism Spectrum Disorder - Background Memorandum](#). The Legislative Council staff said the Human Services Committee has been assigned the following responsibilities relating to the diagnosis of, treatment of, care for, and education of individuals with autism spectrum disorder:

- A study of the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder as directed in Section 2 of 2011 Senate Bill No. 2268. The study must include a review of a sliding fee scale for payment of services and the value of services provided. The study must consider the recommendations of the Autism Spectrum Disorder Task Force and must seek input from stakeholders in the private and public sectors, including families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood service providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities.
- Receive an annual status report relating to the autism spectrum disorder plan from the Autism Spectrum Disorder Task Force (North Dakota Century Code Section 50-06-32).
- Receive a report from the Department of Human Services before September 30, 2012, regarding the department's preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program, and a report from the department before December 31, 2012, summarizing the status of the pilot program and any findings and recommendations (Section 1 of 2011 Senate Bill No. 2268).

The Legislative Council staff said an autism spectrum disorder is a developmental disorder that causes significant impairments in the areas of socialization, learning, communication, behavior, and play skills. The deficiencies can lead to serious behaviors and can interfere with daily living. The

spectrum includes autism, Asperger's syndrome, pervasive developmental disorder - not otherwise specified, Rett's syndrome, and childhood disintegrative disorder. Symptoms and levels of impairments vary widely.

The Legislative Council staff said 2009 Senate Bill No. 2174, codified as Section 50-06-32, established an Autism Spectrum Disorder Task Force. The task force examines early intervention services and family support services that enable an individual with autism spectrum disorder to remain in the least restrictive home-based or community setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder. The task force is to develop a state autism spectrum disorder plan and continue to review and periodically update or amend the plan to serve the needs of individuals with autism spectrum disorder.

The Legislative Council staff said during the 2009-10 interim, the Autism Spectrum Disorder Task Force met several times; reviewed legislation, other states' autism spectrum disorder information, plans, and funding mechanisms; developed, disseminated, and summarized a statewide autism spectrum disorder needs assessment survey; and established an initial state plan.

The Legislative Council staff said the Legislative Assembly in 2009 provided funding of \$1.2 million, of which \$450,000 was from the general fund, for implementing a home and community-based care waiver to provide intensive support for young children who have a diagnosis of autism spectrum disorder. The department received approval for the waiver from the Centers for Medicare and Medicaid Services in November 2010. The waiver builds on existing services available to children and their families and provides services such as training, service coordination, and access to in-home support staff to help provide structured activities focusing on communication, behavior, and other needs to 30 children birth to age 4. Children qualify based on diagnosis and the child's income.

The Legislative Council staff said Senate Bill No. 2268 provides that the Department of Human Services may use up to \$200,000 of its legislative appropriation for the 2011-13 biennium to establish and operate a regional autism spectrum disorder centers of early intervention and achievement pilot program. The department is to report to the Human Services Committee before September 30, 2012, regarding the preliminary findings and recommendations concerning the regional autism spectrum disorder pilot program, and before December 31, 2012, summarizing the status of the pilot program and any findings and recommendations.

The Legislative Council staff proposed the following study plan:

1. Receive information from families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood service providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities regarding the diagnosis and early treatment of, care for, and education of individuals with autism spectrum disorder.
2. Receive the following information from the Department of Human Services:
 - a. Information regarding services provided by the department for individuals with autism spectrum disorder, including Medicaid services and services under the autism spectrum disorder waiver.
 - b. An annual status report relating to the autism spectrum disorder plan and any related recommendations from the Autism Spectrum Disorder Task Force.
 - c. Preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program by June or July 2012 and a status report on the pilot program and any findings and recommendations by October 2012.
3. Receive information from the Department of Public Instruction regarding education of individuals with autism spectrum disorder.
4. Review of a sliding fee scale for payment of services and the value of service provided.
5. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
6. Prepare a final report for submission to the Legislative Management.

Ms. JoAnne Hoesel, Director, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided testimony ([Appendix C](#)) regarding the committee's study of the autism spectrum disorder. She said autism spectrum disorders are a group of developmental disabilities that can cause significant social, communication, and behavioral challenges. She said the Centers for Disease Control and Prevention estimates an average of 1 child in 110 children in the United States have an autism spectrum disorder.

Ms. Hoesel said services for individuals with autism spectrum disorder are provided by several entities, including education, mental health, primary health care, developmental disabilities, advocacy organizations, and vocational rehabilitation. She said the Department of Human Services provides services to individuals with autism spectrum disorder through the infant development program, the developmental disabilities system, the vocational rehabilitation system, and the mental health system. In the developmental disabilities system, she said, individuals need to have a developmental or

intellectual disability, must be in need of institutional level of care, and be diagnosed with mental retardation. She said the department does not consider autism spectrum disorder services as a core service of the department.

Ms. Hoesel said the Department of Human Services implemented a Medicaid waiver for children ages birth through four years of age who have autism spectrum disorder or have significant delays in the areas affected by autism spectrum disorder. She said the intent of the waiver is to provide interventions early to mitigate the effects of the conditions. She said the waiver has capacity for 30 children, and there have been 14 children served since services began in November 2010. She said the waiver includes intervention coordination services, in-home supports, equipment and supplies, and environmental modifications.

Ms. Hoesel provided the following general issues for the committee to consider regarding its study of the autism spectrum disorder:

- Consistent service delivery, provider expertise, and public awareness options.
- Methods to increase access to services.
- Financial impact on families receiving effective services.
- Potential incentives for individuals to encourage the pursuit of educational degrees and certifications to address the lack of well-trained workforce.
- Include all age groups in the scope of the study.
- Public policy needs to support an effective and comprehensive service delivery system for individuals in need of support.

In response to a question from Senator Miller, Ms. Hoesel said the Medicaid waiver for children with autism spectrum disorder allows the department to pay for certain services that are not eligible services under North Dakota's state plan for Medicaid.

Senator Miller suggested the committee receive information from the Department of Human Services regarding the number of Medicaid waivers that have been approved by the Centers for Medicare and Medicaid Services and implemented in the state. Chairman Wieland said the information would be requested for a future committee meeting.

In response to a question from Representative Hogan, Ms. Hoesel said identifying autism spectrum disorder services as a core service of the Department of Human Services is a public policy decision.

In response to a question from Representative Hogan, Ms. Hoesel said approximately 445 individuals of the 4,500 individuals in the department's developmental disabilities program have an autism spectrum disorder.

Representative Hogan suggested the committee receive updated information from the Department of Human Services regarding the number of individuals in the developmental disabilities program that have an autism spectrum disorder.

Senator Heckaman suggested the committee receive information from the Department of Human Services regarding respite care services provided for families with an individual with an autism spectrum disorder.

Chairman Wieland said the information would be requested for a future meeting, along with information regarding the private entities providing early intervention services under the infant development program.

Mr. Robert Rutten, Special Education Regional Coordinator, Department of Public Instruction, provided testimony ([Appendix D](#)) regarding the committee's study of the autism spectrum disorder. He said the Department of Public Instruction is responsible for the general supervision of the Individuals With Disabilities Education Act (IDEA), which is the federal law for special education. He said the Department of Human Services is responsible for the IDEA services for infants and toddlers and their families, and the Department of Public Instruction is responsible for the IDEA special education services for children and youth with disabilities ages 3 through 21. Because of this shared administration, he said, the two agencies jointly created state guidelines for identifying, serving, and educating children and youth with autism.

Mr. Rutten said each year the Department of Public Instruction completes an annual count of the number of eligible students with disabilities ages 3 through 21 who are receiving special education and related services in North Dakota public schools. He said the most recent statewide count was completed on December 1, 2010, and at that time, it was determined that there were 13,170 such students. Of the 13,170 students, he said, 586 students were reported as having a primary disability of autism.

Mr. Rutten said the range of abilities among young people who have an autism spectrum disorder varies. To address these diverse needs, he said, schools need to have access to special education teachers, speech-language pathologists, behavioral experts, and paraprofessionals. He said schools also need appropriate materials and assistive technology.

Dr. Brent Askvig, Executive Director, North Dakota Center for Persons with Disabilities, provided comments ([Appendix E](#)) regarding the committee's study of the autism spectrum disorder. He said the center has had considerable interest in and experience with state issues relating to the autism spectrum disorder. He said the center has worked closely with state and national organizations to provide services, research, training, and information regarding the autism spectrum disorder. He said the center offers the following suggestions regarding the committee's study of the autism spectrum disorder:

- Examine the Autism Spectrum Disorder Task Force state plan and survey results to avoid duplication of questions and items.

- Examine all available state reports and studies already conducted regarding survey questions and results.
- Consider the following items in a future survey or needs assessment:

Service disparities in rural and urban areas in North Dakota.

Service access issues regarding evidence-based services, quality and quantity of service, and service provider training.

Parent education and family support issues for all families of children with autism spectrum disorder.

Access to interdisciplinary team assessments for diagnosing autism spectrum disorders.

Services provided and gaps in services for adults with autism spectrum disorders.

Cost coverage issues related to public and private insurance, private pay, and long-term cost-benefit analyses of services for children and youth with autism spectrum disorders.

In response to a question from Senator Heckaman, Dr. Askvig said the center has provided basic information to child care providers regarding autism spectrum disorders, including early warning signs, screening procedures, and referral mechanisms.

Mr. John Vastag, Fargo, provided comments regarding the committee's study of the autism spectrum disorder. He said the committee should consider options for involving music therapists in services to individuals with autism spectrum disorders.

Senator Mathern suggested that the committee receive information from the Department of Human Services regarding the cost of implementing autism spectrum disorder services as a core service of the department.

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

- 1. Receive information from families affected by autism spectrum disorder, insurers, educators, treatment providers, early childhood service providers, caretakers, and nonprofit intermediate care facilities for individuals with intellectual disabilities regarding the diagnosis and early treatment of, care for, and education of individuals with autism spectrum disorder.**
- 2. Receive the following information from the Department of Human Services:**
 - a. Information regarding services provided by the department for individuals with autism spectrum disorder, including Medicaid services and services under the autism spectrum disorder waiver and the**

additional cost of implementing autism spectrum disorder services as a core service.

- b. An annual status report relating to the autism spectrum disorder plan and any related recommendations from the Autism Spectrum Disorder Task Force.**
 - c. Preliminary findings and recommendations concerning its regional autism spectrum disorder centers of early intervention and achievement pilot program by June or July 2012 and a status report on the pilot program and any findings and recommendations by October 2012.**
- 3. Receive information from the Department of Public Instruction regarding education of individuals with autism spectrum disorder.**
 - 4. Review of a sliding fee scale for payment of services and the value of service provided.**
 - 5. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.**
 - 6. Prepare a final report for submission to the Legislative Management.**

Representatives Wieland, Anderson, Brabandt, Clark, Conklin, Hofstad, Hogan, Kilichowski, and Schmidt and Senators Erbele, Mathern, Miller, and Uglem voted "aye." Representative Pollert and Senator Dever voted "nay."

STUDY OF GUARDIANSHIP SERVICES

The Legislative Council staff presented a memorandum entitled [Study of Guardianship Services - Background Memorandum](#). The Legislative Council staff said Section 1 of 2011 House Bill No. 1199 provides that the Legislative Management contract with a consultant to study guardianship services for vulnerable adults in the state. The study must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; and the interaction between the courts, counties, state agencies, and guardianship organization regarding guardianship services. The consultant is to provide periodic reports and present the final report and recommendations regarding the study before June 1, 2012.

The Legislative Council staff said the Legislative Management also provided that the Human Services Committee is to study the efficacy of statutes governing public administrator services and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.

The Legislative Council staff said a guardian may be appointed when a court determines that an

individual lacks the capacity to make or communicate the decisions necessary to manage his or her own personal affairs. Guardianship is the process by which a court, after determining that an individual is incompetent to make specific decisions, delegates the right to make those decisions to a guardian. The following is a summary of the types of guardianship:

- A general guardian is responsible for decisions in all aspects of the ward's (incompetent individual's) life.
- A limited guardian has the authority to make decisions only in specific areas of the ward's life, such as financial or residential.
- An emergency or temporary guardian may be appointed in situations where immediate action is required to prevent harm to the ward. An emergency guardianship cannot be in effect longer than 90 days and has only the authority identified by the court at the time of the appointment. The court may grant an extension beyond the 90-day limit if necessary.
- A testamentary guardian is established when a guardian spouse or guardian parents of a person determined to be incapacitated appoints, by will, a successor guardian for that person.
- A conservator may be appointed to manage the estate and finances of a ward.

The Legislative Council staff said during the 2003-04 interim, the Legislative Council's Criminal Justice Committee studied the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly adults, and individuals with traumatic brain injuries. The committee focused on two issues--the guardianship services needs in the state and procedural guardianship. The committee recommended the following bills which were approved by the Legislative Assembly in 2005:

- Senate Bill No. 2028 provided that the Department of Human Services may contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system is to include a base unit funding level, provider standards, staff competency requirements, and guidelines and training for guardians. The bill provided a \$40,000 general fund appropriation to the department for contracting for the establishment and maintenance of a guardianship services system.
- Senate Bill No. 2029 established a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian.
- Senate Bill No. 2030 provided for an annual report requirement for guardians and conservators. The bill also requires the State

Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

The Legislative Council staff said the Department of Human Services provides guardianship services under two divisions--Developmental Disabilities and Aging Services. Under the Developmental Disabilities Division, the department has entered a contract with Catholic Charities North Dakota for full or limited guardianship services to individuals with developmental disabilities. Under the Aging Services Division, the department has established a program for providing guardianship services to individuals who have been diagnosed with a mental illness or a traumatic brain injury or elderly individuals aged 60 and over. The Legislative Assembly in 2011 appropriated \$104,000 from the general fund to the department for guardianship services under the Aging Services Division for the 2011-13 biennium.

The Legislative Council staff proposed the following study plan:

1. Prepare a request for proposal for consultant services for a study of guardianship services for vulnerable adults in the state. The proposal must include an analysis of the need for guardianship services in the state; the establishment of guardianships; petitioning costs and other costs associated with providing guardianship services; the entities responsible for guardianship costs; the interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services; the efficacy of statutes governing public administrator services; and methods for the timely and effective delivery of guardianship and public administrator responsibilities and services.
2. Select a consultant and recommend that the chairman of the Legislative Management enter a contract for consultant services.
3. Receive information from the Department of Human Services, the judicial branch, and other appropriate entities regarding guardianship services for vulnerable adults in the state.
4. Receive periodic reports from the consultant.
5. Receive the final report and recommendations regarding the study from the consultant before June 1, 2012.
6. Receive comments by interested persons regarding the study of guardianship services for vulnerable adults in the state.
7. Develop recommendations and any bill drafts necessary to implement the recommendations.
8. Prepare a final report for submission to the Legislative Management.

Ms. Jan Engan, Director, Aging Services Division, Department of Human Services, provided testimony ([Appendix F](#)) regarding the committee's study of guardianship services. She said the process of

establishing a guardianship is relatively straightforward; however, there are issues such as having the financial ability to pay for the petitioning costs for guardianship or the costs associated with attorney's fees, medical fees, and visitor fees. She said another issue is the ability to secure a guardian. Based on a survey completed in 2004 by the North Dakota Guardianship Task Force, she said, 50 percent of those responding indicated difficulty in finding individuals who are willing to serve as guardians.

Ms. Engan said a guardian is required to act in and represent the best interests of the ward, to protect the ward and the ward's rights, and to ensure services are provided in the most normal and least restrictive means possible.

Ms. Engan said the Department of Human Services received a \$40,000 general fund appropriation in the 2005-07 biennium for the purpose of contracting for the creation and coordination of a guardianship services system for vulnerable adults who are not developmentally disabled. She said the department requested proposals to establish the system and received no responses. She said the department decided to use the appropriation to pay for costs associated with the establishment of guardianships. She said currently a request for funds to pay for costs of a guardianship comes to the Aging Services Division for discussion and payment approval. She said funds are used for petitioning costs and include attorney's fees, guardian ad litem, and court visitor costs. She said the number of guardianships established per biennium is:

- 2005-07 biennium - 10.
- 2007-09 biennium - 29.
- 2009-11 biennium - 29.

Ms. Engan said subsidized guardianship is a well-established program within the child welfare system in North Dakota. She said the subsidized guardianship program administered through the Children and Families Services Division of the Department of Human Services provides a monthly payment of \$490 to guardians. She said a similar program for adult guardianships is not well-established.

Representative Hogan suggested the committee receive information regarding the total number of guardianships appointed by the court system. Chairman Wieland said the information would be requested for a future committee meeting.

Mr. Rodger Wetzel provided comments regarding the committee's study of guardianship services. He said North Dakota has a good system of guardianships for adults with developmental disabilities, but the state does not have a similar program for other adults who are cognitively disabled and in need of a guardian. He said if there is no willing family member to volunteer to serve as guardian, the state has no program to obtain and pay for guardians for these adults.

Mr. Larry Bernhardt, Executive Director, Catholic Charities North Dakota, provided comments regarding

the committee's study of guardianship services. He said Catholic Charities North Dakota provides guardianship services for individuals in the developmental disabilities program. He said Catholic Charities North Dakota is willing to assist with the study.

Mr. Bob Johnson provided comments regarding the committee's study of guardianship services. He said he supports the committee's study of guardianship services.

Ms. Karen Watrel provided comments regarding the committee's study of guardianship services. She said guardians provide a valuable service, and guardians can change people's lives.

It was moved by Senator Mathern, seconded by Senator Dever, and carried on a roll call vote that the committee approve the proposed study plan for the study of guardianship services. Representatives Wieland, Anderson, Brabandt, Clark, Conklin, Hofstad, Hogan, Kilichowski, Pollert, and Schmidt and Senators Dever, Erbele, Mathern, Miller, and Uglem voted "aye." No negative votes were cast.

The committee recessed for lunch at 12:15 p.m. and reconvened at 1:00 p.m.

STUDY OF DEPARTMENT OF HUMAN SERVICES' CASELOADS AND PROGRAM UTILIZATION

The Legislative Council staff presented a memorandum entitled [Study of Department of Human Services' Caseloads and Program Utilization - Background Memorandum](#). The Legislative Council staff said 2011 Senate Concurrent Resolution No. 4020 provides for a Legislative Management study of the causes of the increases in the Department of Human Services' caseloads and program utilization and the impact of federal health care reform.

The Legislative Council staff reviewed Department of Human Services' legislative appropriations, caseloads and utilization rates for selected Department of Human Services' programs, statistics related to North Dakota's economy, and background information regarding the Affordable Care Act.

The Legislative Council staff proposed the following study plan:

1. Receive information from the Department of Human Services regarding:
 - a. The department's legislative appropriation for the 2011-13 biennium and anticipated budget needs for the 2013-15 biennium.
 - b. Historical caseloads and program utilization, including information regarding increases and decreases by program and reasons for the changes in caseloads and utilization.
 - c. Anticipated and actual caseloads and program utilization for the 2011-13 biennium.

- d. The estimated impact of the Affordable Care Act on the department's anticipated caseloads and budget.
2. Receive testimony from interested persons regarding the study of the Department of Human Services' caseloads and program utilization.
3. Develop committee recommendations and prepare any legislation necessary to implement the recommendations.
4. Prepare a final report for submission to the Legislative Management.

Representative Pollert said the committee should review all Department of Human Services' caseloads as a part of the study.

Ms. Carol K. Olson, Executive Director, Department of Human Services, provided testimony ([Appendix G](#)) regarding the committee's study of causes of the increases in Department of Human Services' caseloads and program utilization. She said the department administers several economic assistance programs intended to serve vulnerable individuals and those unable to access services by other means. The economic assistance programs administered by the department include:

- Supplemental nutrition assistance program (SNAP).
- Temporary assistance for needy families (TANF).
- Child care assistance.
- Medicaid.
- Children's health insurance program.

Ms. Olson said the SNAP caseload has increased during the past year, and the caseloads for TANF and child care assistance are fairly stable. She said the Medicaid and CHIP caseloads have both increased during the past year; however, the increase in the Medicaid caseload during the past 12 months (July 2010 through June 2011) has been less than the increase during the previous 12 months. She said the CHIP caseload has increased which corresponds to the outreach efforts and the eligibility level being increased from 140 percent to 150 percent in October 2008 and from 150 percent to 160 percent in July 2009.

In response to a question from Representative Hogan, Ms. Olson said the increase in the SNAP caseload is due in part to policy changes enacted by the federal government, and the increase in Medicaid is due in part to the implementation of continuous eligibility for children.

It was moved by Senator Mathern, seconded by Representative Pollert, and carried on a roll call vote that the committee approve the proposed study plan for the Department of Human Services' caseloads and program utilization study. Representatives Wieland, Anderson, Brabandt, Clark, Conklin, Hofstad, Hogan, Holman, Kilichowski, Pollert, and Schmidt and Senators Dever, Erbele, Mathern, and Uglem voted "aye." No negative votes were cast.

STUDY OF THE QUALIFIED SERVICE PROVIDER SYSTEM

The Legislative Council staff presented a memorandum entitled [Study of the Qualified Service Provider System - Background Memorandum](#). The Legislative Council staff said Section 9 of 2011 Senate Bill No. 2012 provides for a Legislative Management study of the state's QSP system. A QSP is an individual or agency providing care for people to enable them to continue to live in their own homes and communities. A QSP does not need to have a special certificate or license but needs skills necessary to provide care.

There are two types of QSPs:

- An individual QSP needs to provide they have competency in all the standards to provide a specific service. They are self-employed contracts and responsible to withhold or pay any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums from the payment received as a QSP.
- An agency QSP needs to assure its staff has the skills necessary to provide a specific service.

A QSP may provide the following services:

- Adult day care.
- Adult family foster care.
- Adult residential service.
- Case management.
- Chore service.
- Emergency response system.
- Environmental modification.
- Extended personal care/nurse education.
- Family personal care.
- Home-delivered meals.
- Homemaker service.
- Nonmedical transportation.
- Personal care.
- Respite care.
- Specialized equipment.
- Supported employment.
- Transitional living service.

To become enrolled as a QSP, an individual or agency must submit appropriate forms to the Department of Human Services. The department will provide the individual or agency with a provider number, instructions on how to bill for services provided, and rules about providing services as a QSP. The department will also provide the QSP with a form detailing the services the QSP is allowed to perform. The QSP may bill the individual who is provided care or the department for each 15-minute block of time during which services were provided. The QSP may not bill for time or expenses associated with travel.

The Legislative Council staff said the Department of Human Services has enrolled 1,516 individual QSPs and 141 agency QSPs as of July 20, 2011.

The Legislative Council staff proposed the following study plan:

1. Receive information from the Department of Human Services regarding the state's QSP system, including information regarding the enrollment of a QSP, payment for QSP services, and any suggested changes.
2. Receive testimony from interested persons regarding the study of the state's QSP system.
3. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
4. Prepare a final report for submission to the Legislative Management.

Ms. Nancy Nikolas-Maier, Program Administrator for Home and Community-Based Services, Medical Services Division, Department of Human Services, provided testimony ([Appendix H](#)) regarding the committee's study of the QSP system. She said a QSP is a county, agency, or independent contractor that agrees to meet standards for service and operations established by the Department of Human Services. She said QSPs provide care to recipients receiving services from one or more of the following programs:

- Service payments for elderly and disabled (SPED);
- Expanded SPED;
- Home and community-based services;
- Medicaid waiver;
- Technology dependent Medicaid waiver; and
- Medicaid state plan personal care.

Ms. Nikolas-Maier said the Department of Human Services enrolls two types of QSPs--individual and agency. She said enrolled QSPs can choose to have their name added to a public list of QSPs, which is given to clients by county home and community-based services case managers. She said home and community-based services recipients use this list to choose an individual or agency QSP. Once chosen, she said, the QSP is authorized to provide services by the county case manager. She said the authorization provides the amount and type of care the QSP is approved to provide to the client. She said QSPs bill the department directly for services provided.

Ms. Nikolas-Maier said the department recently contracted with the University of Minnesota to develop a video called *Direct Support: A Realistic Job Preview*. She said the video was created to educate individuals who may be interested in pursuing enrollment as a QSP. She said the committee may wish to view a portion of the video at a future meeting.

In response to a question from Representative Hogan, Ms. Nikolas-Maier said the number of agency QSPs is increasing, and the number of individual QSPs is remaining consistent.

In response to a question from Representative Kilichowski, Ms. Nikolas-Maier said some QSP rates are based on the service provided.

Representative Kilichowski suggested the committee receive additional detail on QSP payment

rates. Chairman Wieland said the committee would request that information for a future meeting.

Mr. Chuck Stebbins, Disability Resource Specialist, North Dakota Center for Persons with Disabilities, provided comments ([Appendix I](#)) regarding the committee's study of the QSP system. He said independent QSPs are important providers in the home and community-based services system. He said many elderly and people with disabilities are choosing to use the home and community-based services system to continue to live in their homes for as long as possible rather than enter a nursing facility. He said the committee's study of the QSP system should include the review of financial incentives to encourage individuals to become QSPs.

Ms. Tammy Theurer, Regional Director, North Dakota Association for Home Care, provided comments ([Appendix J](#)) regarding the committee's study of the QSP system. She said QSP services are provided by individuals, proprietary agencies, and home health care agencies. She said funding shortfalls have forced many home health care agencies to discontinue their QSP services. She said the committee should consider the possibility of including a payment rate for travel costs for QSP services or to increase reimbursement rates for home health services.

Representative Hogan suggested the committee receive information regarding the number of home health agencies in the state and a map of the agencies' coverage areas.

Senator Miller suggested the committee receive information regarding the amount of funding being spent by the state on QSP services. Chairman Wieland said the committee would request the information for a future meeting.

It was moved by Senator Dever, seconded by Representative Pollert, and carried on a roll call vote that the committee approve the proposed study plan for the QSP system study. Representatives Wieland, Anderson, Brabandt, Clark, Conklin, Hofstad, Hogan, Holman, Kilichowski, Pollert, and Schmidt and Senators Dever, Erbele, Mathern, Miller, and Uglem voted "aye." No negative votes were cast.

OTHER COMMITTEE RESPONSIBILITIES

The Legislative Council staff presented a memorandum entitled [Other Duties of the Human Services Committee - Background Memorandum](#). The Legislative Council staff said in addition to the study responsibilities assigned to the Human Services Committee for the 2011-12 interim, the committee has also been assigned to:

- Receive annual reports from the Department of Human Services describing enrollment statistics and costs associated with the CHIP state plan (Section 50-29-02).
- Receive a report from the Health Information Technology Advisory Committee by June 30, 2012, regarding the outline on how best to

standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers (Section 2 of 2011 House Bill No. 1422).

- Receive periodic reports from the Department of Human Services during the 2011-12 interim regarding the status of the dementia care services program (Section 6 of 2011 Senate Bill No. 2012).
- Receive reports from the Department of Human Services and its steering committee beginning in June 2012 regarding the development of a new developmental disabilities reimbursement system (Section 1 of 2011 Senate Bill No. 2043).
- Receive preliminary findings and any recommendation from the Department of Human Services before September 30, 2012, regarding the department's comprehensive review of the substance abuse services pilot voucher payment program (Section 2 of 2011 Senate Bill No. 2326).

Children's Health Insurance Program

The Legislative Council staff said Section 50-29-02 provides that the Department of Human Services is to prepare, submit, and implement a CHIP state plan and report annually to the Legislative Management and describe enrollment statistics and costs associated with the plan.

Health Information Technology

The Legislative Council staff said Section 1 of House Bill No. 1422, codified as Section 23-01-38, provides that:

- Effective August 1, 2013, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request.
- Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence through economic incentives the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain

pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements must be consistent with the product label, supported by scientific evidence, and meet the federal Food and Drug Administration requirements for advertising pharmaceutical products.

- Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

Section 2 of House Bill No. 1422 provides that during the 2011-12 interim, the Health Information Technology Advisory Committee is to establish an outline on how best to standardize drug prior authorization request transactions between providers and the payers, insurance companies, and pharmacy benefit managers responsible for adjudicating the authorization or denial of the prescription request. The outline must be designed with the goal of maximizing administrative simplification and efficiency in preparation for electronic transmissions and alignment with standards that are or will potentially be used nationally. By June 30, 2012, the Health Information Technology Advisory Committee is to provide a report to the Legislative Management regarding the outline on how best to standardize drug prior authorization request transactions.

Dementia Care Services Program

The Legislative Council staff said Section 6 of Senate Bill No. 2012 provides that the Department of Human Services is to report periodically to the Legislative Management regarding the status of the dementia care services program. The reports must include information on budgeted and actual program expenditures, program services, and program outcomes.

Developmental Disabilities Reimbursement System

The Legislative Council staff said Senate Bill No. 2043 provides that the Department of Human Services, in conjunction with developmental disabilities service providers, develop a prospective or related payment system with an independent rate model utilizing the supports intensity scale. Beginning June 2012 the department is to report development activities and status information to the Human Services Committee.

Substance Abuse Services Pilot Voucher Payment Program

The Legislative Council staff said Senate Bill No. 2326 provides that the Department of Human Services is to establish and administer a pilot voucher

payment program to provide substance abuse services for the 2011-13 biennium. The program must consist of voucher use and private choice as a method of providing substance abuse services to beneficiaries and must allow a voucher to be submitted to the beneficiary's provider of choice for payment of substance abuse services. The department is to develop service agreements with substance abuse service providers licensed and accredited by the state to offer services in exchange for vouchers, which may be presented to the department for payment as provided for in the agreement. The payment amount may not exceed the cost of the same service provided by the state. The program must be developed to improve access to substance abuse services. The department is to apply for funding available through a federal Access to Recovery grant program available from the federal Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment. All money received by the department through the federal Access to Recovery grant for the pilot program are appropriated to the department for costs associated with the program.

The Legislative Council staff said the department is to perform a comprehensive review of the substance abuse services pilot voucher payment program for the 2011-13 biennium. The review must include information regarding the cost of substance abuse services provided through the pilot voucher payment

program compared to the cost of similar substance abuse services provided during the 2011-13 biennium. The review must also analyze the effect of the substance abuse services pilot voucher payment program on access to care and outcomes. The department is to report the preliminary findings of the comprehensive review and any recommendations for continuation or expansion of the pilot voucher payment program to the Human Services Committee prior to September 30, 2012.

Representative Kilichowski requested the committee receive a presentation on the status of the substance abuse services pilot voucher payment program at the committee's next meeting. Chairman Wieland said the presentation will be requested for the committee's next meeting.

No further business appearing, Chairman Wieland adjourned the meeting at 2:31 p.m.

Roxanne Woeste
Assistant Legislative Budget and Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:10