

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## LONG-TERM CARE COMMITTEE

Thursday, October 29, 2009  
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, Chet Pollert, Gerry Uglen, Robin Weisz, Alon C. Wieland; Senators JoNell A. Bakke, Dick Dever, Tom Fiebiger, Judy Lee, Jim Pomeroy

**Members absent:** Representatives Vonnie Pietsch, Louise Potter; Senators Joan Heckaman, Terryl L. Jacobs

**Others present:** Jim W. Smith, Legislative Council, Bismarck

See attached [appendix](#) for additional persons present.

### SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE

Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

### COMMENTS BY THE COMMITTEE CHAIRMAN

Chairman Kreidt welcomed the members to the Long-Term Care Committee. He said the committee has been assigned studies relating to long-term care services, the impact of individuals with traumatic brain injury, and the registration of health care professionals.

### STUDY OF LONG-TERM CARE SERVICES

The Legislative Council staff presented a memorandum entitled [Study of Long-Term Care Services - Background Memorandum](#). The Legislative Council staff said the Long-Term Care Committee has been assigned the following two responsibilities relating to long-term care services:

- Section 10 of 2009 House Bill No. 1012 provides for a Legislative Management study of long-term care services in the state, including a review of the Department of Human Services' payment system and a review of the State Department of Health's survey and inspection programs and processes.
- Section 2 of 2009 House Bill No. 1263 provides for a Legislative Management study of how state laws and administrative rules regulate

basic care and assisted living facilities. The study is to include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities.

The Legislative Council staff reviewed previous studies relating to long-term care services, 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 2003-04 Budget Committee on Health Care relating to the nursing home survey process, and the 2007-08 Long-Term Care Committee relating to the long-term care system in North Dakota.

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-a-day 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-a-day 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.
- Emergency response system.
- Environmental modification.
- Case management.
- Homemaker.
- Transportation (nonmedical).
- Respite care.
- Specialized equipment/supplies.
- Supported employment.
- Transitional care.

- Nurse management.
- Attendant care service.

Service payments for elderly and disabled (SPED) - 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.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker.
- Respite care.
- Personal care.

Personal care services - Provides in-home care to individuals who are impaired in at least one activity of daily living or at least three of the four instrumental activities of daily living. 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 but who are impaired in at least three of the four activities of daily living 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.
- Emergency response system.
- Environmental modification.
- Family home care.
- Case management.
- Homemaker.
- Respite care.

The Legislative Council staff presented the following schedule of the 2009-11 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 Serve	General Fund	Federal Funds	Other Funds	Total
Nursing facilities	3,323	\$132,415,339	\$286,519,675	\$6,926,264 <sup>1</sup>	\$425,861,278
Basic care facilities	455	8,219,552	7,514,011	2,380,362 <sup>2</sup>	18,113,925
TBI waiver	27	707,879	1,451,929		2,159,808
Aged and disabled waiver	322	2,427,300	4,976,908		7,404,208
Technology-dependent waiver	3	174,557	358,051		532,608
Children's medically fragile waiver	11	376,213	771,631		1,147,844
Program of all-inclusive care for the elderly	76	2,427,882	4,965,829		7,393,711
Personal care option	671	8,214,016	16,830,583		25,044,599
Targeted case management	458	641,694	1,316,202		1,957,896
SPED	1,597	16,620,560		874,767 <sup>3</sup>	17,495,327
Expanded SPED	129	726,578			726,578
Dementia care services		1,200,000			1,200,000
Assisted living rent subsidy pilot project				200,000 <sup>4</sup>	200,000
Community of care program		120,000			120,000
<b>Total</b>	<b>7,072</b>	<b>\$174,271,570</b>	<b>\$324,704,819</b>	<b>\$10,381,393</b>	<b>\$509,357,782</b>

<sup>1</sup>This amount consists of \$4,124,506 from the health care trust fund and \$2,801,758 of contingent Bank of North Dakota loan proceeds.

<sup>2</sup>This amount consists of \$96,000 of estate collections and \$2,284,362 of retained funds.

<sup>3</sup>County funds.

<sup>4</sup>Health care trust fund.

The Legislative Council staff said the 2009 Legislative Assembly provided funding to:

- Allow for a 6 percent inflationary increase in the second year of the 2009-11 biennium for rebased services (hospitals, physicians,

chiropractors, and ambulances) and dentists and a 6 percent per year inflationary increase for all other providers.

- Provide a salary and benefit supplemental payment for individuals employed by basic care

and nursing care facilities, except for administrators and contract nursing.

- Increase nursing facility bed limits in the formula for nursing home payments.
- Provide a \$1 per hour increase for qualified service providers.
- Revise the SPED fee schedule based on the actual cost-of-living adjustment through January 2008 and an estimated cost-of-living adjustment for January 2009 to allow individuals with higher incomes to receive SPED services without paying a fee.

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 used 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--McVille 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. The federal government has 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, \$11.4 million was used for long-term care facility loans and the remainder for other programs and purposes. The health care trust fund has a projected June 30, 2011, fund balance of \$25,607.

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, 23 loans have been approved totaling \$11.4 million. As of June 2009, \$8.9 million of outstanding loans remain. Of the approved loans, 3 were for assisted living facilities, 17 for nursing home facilities, 1 for a basic care facility, and 2 for combination nursing, assisted living, and basic care facilities.

The Legislative Council staff provided information on nursing home facilities, including information on survey processes, licensing requirements, and the state's payment system. Nursing homes that provide services under Medicare or Medicaid must be certified as meeting certain federal minimum requirements established by Congress. Certification is achieved

through routine facility surveys performed by the State Department of Health under contract with the Centers for Medicare and Medicaid Services. The State Department of Health conducts the inspections of each nursing home on an average of once a year. North Dakota Administrative Code (NDAC) requires that nursing home facilities obtain a license from the State Department of Health to operate in North Dakota.

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 under 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 a 30-day notice to its residents whenever the facility's rates change.

The Legislative Council staff provided information on basic care facilities, including information on licensure, survey processes, and the state's payment system. North Dakota Century Code Section 23-09.3-01 defines a basic care facility as a residence that provides room and board to five or more individuals who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular 24-hour-a-day medical or nursing services. A basic care facility is to apply annually to the State Department of Health for a license and pay the annual license fee of \$10 per bed. North Dakota's basic care facilities payment system has been in place since 2003. Rates are established for personal care and room and board. The personal care costs are included under the Medicaid program, and the room and board costs are paid entirely from state funds. Facility rates change annually on July 1. Rates are facility-specific and are based on historical costs of the facility.

The Legislative Council staff provided information on assisted living facilities, including information on licensure, services, duties, educational requirements, and the state's payment system. North Dakota

Century Code Section 50-32-01 defines an assisted living facility as a building or structure operated to provide services for five or more individuals and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility is to apply annually to the Department of Human Services for a license and pay the annual license fee of \$75 for each facility. Individuals in assisted living facilities are responsible for paying their own room and board expenses. Individuals may be eligible to receive assistance for personal care services.

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, including information regarding the department's payment system.
2. 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.
3. 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 2007-09 and 2009-11 bienniums.
4. Receive information from the State Department of Health regarding the department's survey and licensure processes for nursing home and basic care facilities.
5. Review statutory provisions and administrative rules regarding the regulation of basic care and assisted living facilities.
6. Receive testimony from interested persons, including the North Dakota Long Term Care Association, regarding the long-term care system in North Dakota, including the regulation of basic care and assisted living facilities.
7. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
8. Prepare a final report for submission to the Legislative Management.

In response to a question from Representative Kreidt, the Legislative Council staff said the health care trust fund's estimated beginning balance for the 2009-11 biennium is \$3.3 million. The fund's estimated 2009-11 revenues are approximately \$1.1 million and the fund's 2009-11 legislative appropriations are approximately \$4.4 million resulting in an estimated balance at the end of the 2009-11 biennium of \$25,607.

Representative Pollert suggested the committee receive information from the Department of Human Services regarding funding from the general fund needed in the 2011-13 biennium to replace funding appropriated from the health care trust fund for the

2009-11 biennium and funding needed to replace other sources of funding that may not be available in the 2011-13 biennium, including federal temporary assistance for needy families funds.

Ms. Carol K. Olson, Executive Director, Department of Human Services, provided information regarding the committee's study of long-term care services. A copy of the information presented is on file in the Legislative Council office. She suggested the committee include in its study a review of nursing facility private pay appeals and assisted living licensing provisions.

Ms. Olson said the responsibility for nursing facility private pay appeals resides within the Department of Human Services because the department is responsible for the oversight of the nursing facility ratesetting for both private pay clients and Medicaid clients. She said she believes the private pay appeal process is not an appropriate function to be administered by the Department of Human Services. She said the private pay appeals could be managed by the Office of Administrative Hearings or through a peer review process.

Ms. Olson said NDCC Section 50-32-02 provides that the Department of Human Services is responsible for the licensing of assisted living facilities. She said the State Department of Health is responsible for the licensing of both nursing home facilities and basic care facilities.

In response to a question from Senator Bakke, Ms. Olson said the department processes approximately 130 nursing facility private pay appeals per year.

Senator Lee suggested the committee review the nursing home private pay appeals process and administrative rules changes necessary to allow for changes in a nursing home resident's classification due to significant changes in a resident's health.

In response to a question from Representative Kreidt, Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, said the Centers for Medicare and Medicaid Services plans to implement a new version of the minimum data set in October 2010. She said the implementation may require the department to revise administrative rules regarding nursing home facility payments.

Representative Kreidt suggested the committee receive information from the Department of Human Services regarding the implementation of the new version of the minimum data set and any potential related administrative rules changes.

Senator Lee said North Dakota is the only state that differentiates between basic care and assisted living facilities.

Senator Bakke suggested the committee review the licensure of assisted living facilities, including consideration of the appropriate agency to license the facilities.

Senator Lee suggested the committee receive information regarding the Department of Human Services' adult foster care program.

Ms. Darleen Bartz, Section Chief, Health Resources Section, State Department of Health, provided information regarding the committee's study of long-term care services. A copy of the information presented is on file in the Legislative Council office. She said the State Department of Health is responsible for the state licensure and the federal Medicare and Medicaid certification of skilled nursing facilities in North Dakota. She said the department completes the state licensure survey in conjunction with the federal certification survey at the frequency required by the Centers for Medicare and Medicaid Services. She said skilled nursing facilities are to be surveyed every 9 to 15 months with an average of no more than 12.9 months between surveys.

Ms. Bartz said there are currently 84 skilled nursing facilities in North Dakota with 6,310 licensed and certified beds. She said there is a moratorium limiting the expansion of skilled nursing facility bed capacity. She said there are currently 253 beds that have been transferred from existing facilities and are awaiting licensure. She said there are four new facilities under construction that will acquire 184 of those beds. She said there are also at least four replacement facilities and other additions and remodeling projects at existing facilities in various construction phases.

Ms. Bartz said the 2009 Legislative Assembly authorized two new full-time equivalent positions for the State Department of Health for completing plans reviews and conducting onsite construction inspections for all health facilities licensed by the department. She said the positions have been filled, and the employees are completing training.

Ms. Bartz said there are several changes occurring on the federal level that will impact the state's skilled nursing facilities and the department's survey process. She said the changes include:

- Implementation of a new version of the minimum data set in October 2010.
- Implementation of a new survey process--Quality Indicator Survey. This process is to promote consistency in the identification and citation of deficiencies. North Dakota is scheduled to implement the new process between 2012 and 2013.
- Review of the cost-share for completion of the survey process. Historically, the cost of surveying skilled nursing facilities has been funded approximately 10 percent with funds from the general fund or special funds, 45 percent with Medicare funds, and 45 percent with Medicaid funds. The Centers for Medicare and Medicaid Services is reviewing the licensure rules for each facility type to determine if the state share should be increased.

Ms. Bartz said the State Department of Health has been responsible for the licensure of basic care facilities since 1989. She said basic care facilities provide services to individuals on a 24-hour-a-day basis within the facility, including assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; supervision of nutritional needs and medication administration; and memory problems.

Ms. Bartz said there are currently 61 licensed basic care facilities in the state with 1,670 beds. She said there is a moratorium limiting the expansion of basic care bed capacity. She said there are currently 49 beds that have been transferred from existing facilities and are awaiting licensure.

Ms. Bartz said the department's goal is to survey basic care facilities for health and Life Safety Code every two years; however, this timeframe can vary based on the availability of staff. She said the department also investigates complaints onsite for both health and life safety concerns.

Ms. Bartz said assisted living facilities are licensed by the Department of Human Services for program requirements and by the State Department of Health for food preparation and life safety requirements. She said there is no moratorium related to the state bed capacity for assisted living. She said there are currently 64 assisted living facilities licensed for food preparation and life safety requirements directly by the State Department of Health with additional facilities licensed by local health units through memorandums of understanding with the department.

In response to a question from Representative Kreidt, Ms. Bartz said the State Department of Health completes approximately 84 federal certification surveys per year. She said the federal government completes approximately five followup surveys per year.

Senator Lee said individuals in assisted living facilities are responsible for paying their own room and board, and therefore the state does not have any regulation of the maximum number of beds.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, provided information regarding the committee's study of long-term care services. A copy of the information presented is on file in the Legislative Council office. She said the state adopted the minimum data set for its payment system in 1999. She said the minimum data set is designed to capture and measure the resources necessary to care for individuals. Although the payment system is complex, she said, it is a credible instrument based upon current medical practice and resource utilization.

Ms. Peterson said every year each licensed and certified nursing facility receives an unannounced survey from the State Department of Health. She said the purpose of the unannounced visit is to evaluate the facility's compliance with state licensure rules and federal regulations.

Ms. Peterson said the North Dakota Long Term Care Association has surveyed its members regarding whether basic care and assisted living care categories should be combined. She said the majority of members said basic care and assisted living care categories should be separate.

In response to a question from Representative Kreidt, Ms. Peterson said the number of individuals utilizing long-term care insurance benefits in assisted living and basic care facilities is increasing.

Senator Bakke suggested the committee receive information regarding the assisted living facility rent subsidy pilot project provided for in 2009 House Bill No. 1327.

Senator Lee suggested the committee review the definitions for basic care and assisted living facilities.

Representative Pollert said the 2009 Legislative Assembly provided funding to the Department of Human Services for increasing nursing facility property limits in the formula for nursing home payments. He suggested the committee receive information from the department regarding the cost to continue the increases in the 2011-13 biennium.

**It was moved by Senator Dever, seconded by Representative Uglem, and carried on a voice 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 regarding the department's payment system and any administrative rules changes necessary to allow for changes in a nursing home resident's classification due to significant changes in a resident's health and changes relating to implementation of the new version of the minimum data set.**
2. **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.**
3. **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 2007-09 and 2009-11 bienniums.**
4. **Receive information from the Department of Human Services regarding the cost to continue programs in the 2011-13 biennium, including information regarding funding from the general fund needed to replace funding appropriated from the health care trust fund, federal temporary assistance for needy families funds, and other sources, and the cost to continue the funding increases relating to changes in nursing facility property limits.**
5. **Receive information from the Department of Human Services regarding the department's adult foster care program.**
6. **Receive information from the State Department of Health regarding the department's survey and licensure processes for nursing home and basic care facilities.**
7. **Receive information from the Department of Human Services and other appropriate persons regarding the nursing home private pay appeals process.**
8. **Review statutory provisions and administrative rules regarding the regulation of basic care and assisted living facilities.**
9. **Review the definitions for basic care and assisted living facilities.**
10. **Review the licensure of assisted living facilities, including which entity should be responsible for the licensing of facilities.**
11. **Receive information regarding the assisted living facility rent subsidy pilot project provided for in 2009 House Bill No. 1327.**
12. **Receive testimony from interested persons, including the North Dakota Long Term Care Association, regarding the long-term care system in North Dakota, including the regulation of basic care and assisted living facilities.**
13. **Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.**
14. **Prepare a final report for submission to the Legislative Management.**

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

The Legislative Council staff presented a memorandum entitled [\*Study of the Impact of Individuals With Traumatic Brain Injury - Background Memorandum\*](#). The Legislative Council staff said Section 16 of House Bill No. 1012, approved by the 2009 Legislative Assembly, provides for a Legislative Management study of the impact of individuals with traumatic brain injury (TBI), including veterans who are returning from wars, on the state's human services system. The study is to include an analysis of the estimated cost of providing human service-related services to the individuals with TBI.

The Legislative Council staff said in April 2003 North Dakota received a TBI planning grant totaling approximately \$381,000. As part of the grant, the State Department of Health contracted with the University of North Dakota School of Medicine and Health Sciences Center for Rural Health to form a TBI advisory committee, conduct a statewide TBI assessment, and develop a plan to address the needs of North Dakotans with TBI and their families. The advisory committee met regularly, the needs assessment was completed, and an action plan was developed which provided for the following outcomes:

- Traumatic brain injury will have a presence in the state with accessible, available, appropriate, and affordable services and supports for individuals with TBI and their families.
- Individuals with TBI, family members, significant others, and providers of support and services will have timely information, resources, and education regarding TBI.
- Individuals with brain injuries and their families will have access to a coordinated system for services and supports.
- Individuals with TBI and their families will have increased quality and availability of key supports.
- American Indian individuals with TBI and their families will have access to culturally appropriate TBI information, services, and supports.

As a result of the action plan, the Department of Human Services, in partnership with the University of North Dakota School of Medicine and Health Sciences Center for Rural Health, applied for and was awarded a TBI implementation partnership grant in April 2007. The grant is a three-year grant with the department receiving approximately \$118,000 each year. The goals of the grant are:

- To build a formal presence and infrastructure for the advancement of TBI-focused issues.
- To provide timely information, resources, and education regarding TBI to individuals with TBI, family members, other caregivers, and service and support providers.
- To ensure a coordinated system to access and receive services and support for individuals with brain injuries and their families.
- To improve access for American Indian individuals with TBI and their families to culturally appropriate information, services, and supports.

The Legislative Council staff said the 2009 Legislative Assembly approved Senate Bill No. 2198 which:

- Requires the Department of Human Services to provide outreach services and conduct public awareness efforts regarding the prevention and identification of TBI.
- Allows the department to accept and expend money from public or private sources for any purpose involving TBI or the provision of services to individuals with TBI and their families.
- Directs the department to contract with public or private entities for the provision of informal supports to individuals with TBI.
- Amends NDCC Section 50-06.4-02 to provide that the department is to annually call a joint meeting of the Adjutant General, the State Department of Health, the Department of Veterans' Affairs, and the Superintendent of

Public Instruction to discuss the provision of services to individuals with TBI.

- Directs the department to provide or contract for the provision of social and recreational services for individuals with TBI.
- Directs the department to provide or contract for the provision of increased and specialized vocational rehabilitation and consultation to individuals with TBI.
- Requires the department to provide home and community-based services to individuals who have moderate or severe impairments as a result of TBI as a part of the department's personal care services program and as a part of the department's services for eligible disabled and elderly individuals. The department is to provide outreach and public awareness activities regarding the availability of home and community-based services to individuals who have moderate or severe impairments as a result of TBI, and the department is to conduct quality control activities and make training available to case managers and other persons providing services to individuals with TBI.
- Provides a \$330,000 general fund appropriation to the department for providing services to individuals with TBI.

The Legislative Council staff proposed the following study plan:

1. Gather and review information on services available in the state for individuals with TBI, including services available to returning veterans through the federal government and services provided through the Department of Human Services and the private sector; the cost of these services; and funding available to assist in paying for these services.
2. Receive information from representatives of the Department of Human Services regarding the TBI implementation partnership grant, including progress toward implementing the goals of the grant, and the implementation of 2009 Senate Bill No. 2198.
3. Receive information from interested persons regarding TBI services.
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
5. Prepare a final report for submission to the Legislative Management.

Ms. JoAnne Hoesel, Director, Division of Mental Health and Substance Abuse, Department of Human Services, provided information regarding the committee's study of the impact of individuals with TBI on the state's human services system. A copy of the information presented is on file in the Legislative Council office. She said the Department of Human Services is the designated lead agency for TBI in North Dakota. She said the department has established a TBI leadership team, which includes leaders from divisions that provide services to

individuals who have sustained a TBI, and has appointed a TBI program lead. She said this management style allows for a cohesive TBI delivery system throughout the department's divisions. She said the State Department of Health, Department of Public Instruction, Protection and Advocacy Project, and various private sector provider groups and advocacy groups also play a significant role serving the TBI community.

Ms. Hoesel said North Dakota does not have a reliable method for monitoring the number of TBIs occurring in the state. She said the Centers for Disease Control and Prevention National Center for Injury Prevention and Control estimates can be used to derive approximate rates of TBIs, deaths, and disabilities. Using the Centers for Disease Control and Prevention estimates, she said, North Dakotans experience the following TBI-related incidents per year: 112 fatalities, 267 hospitalizations, 2,281 emergency department visits, and 153 disabilities. Based on the national TBI incidence estimate of 2 percent, she said, approximately 12,844 North Dakotans are currently living with one or more TBI-related disabilities.

Ms. Hoesel said North Dakota has risk factors that may put the actual incidence of TBI higher than the national average. She said those risk factors include an aging population, high National Guard deployment rates, low population density, and high drunk driving rates. In addition, she said, national statistics indicate that incidents of TBI are higher on tribal reservations. She said these risk factors mean that despite having a small population North Dakota may have more individuals who have sustained a TBI than originally estimated.

Ms. Hoesel said a home and community-based services TBI data collection tool will be used in county social service offices beginning in December 2009. She said plans are in place for TBI screening of all clients at the human service centers by March 2010.

In response to a question from Senator Lee, Ms. Hoesel said the department does not have specific information regarding the number of residents at the Veterans' Home who have sustained a TBI.

In response to a question from Senator Fiebiger, Ms. Hoesel said North Dakota does not have a reliable method for monitoring the number of TBIs occurring in the state.

Ms. Elaine Grasl, Bismarck, provided comments regarding the committee's study of the impact of individuals with TBI on the state's human services system. She said the state should increase public awareness regarding services available for individuals with TBI and should provide appropriate funding for those services.

**It was moved by Senator Dever, seconded by Representative Wieland, and carried on a voice vote that the committee proceed with this study as follows:**

1. **Gather and review information on services available in the state for individuals with**

**TBI, including services available to returning veterans through the federal government and services provided through the Department of Human Services and the private sector; the cost of these services; and funding available to assist in paying for these services.**

2. **Receive information from representatives of the Department of Human Services regarding the TBI implementation partnership grant, including progress toward implementing the goals of the grant, and the implementation of 2009 Senate Bill No. 2198.**
3. **Receive information from interested persons regarding TBI services.**
4. **Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.**
5. **Prepare a final report for submission to the Legislative Management.**

The committee recessed for lunch at 11:25 a.m. and reconvened at 12:15 p.m.

## **STUDY OF THE REGISTRATION OF HEALTH CARE PROFESSIONALS**

The Legislative Council staff presented a memorandum entitled [\*Study of the Registration of Health Care Professionals - Background Memorandum\*](#). The Legislative Council staff said Section 3 of House Bill No. 1269, as approved by the 2009 Legislative Assembly, provides for a Legislative Management study of steps necessary to enable the State Department of Health to administer the registry for certified nurse assistants, nurse assistants, and unlicensed assistive persons, and examine the possibility of one registry and a potential location for that registry.

The Legislative Council staff said North Dakota, unlike the majority of other states, has two registries that impact health care professionals, including certified nurse assistants, nurse assistants, and unlicensed assistive persons--one with the State Board of Nursing and one with the State Department of Health.

The Legislative Council staff said an unlicensed assistive person is any individual who is an assistant to a nurse who regardless of title is authorized to perform nursing interventions delegated and supervised by a nurse. An unlicensed assistive person complements the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse.

Pursuant to NDAC Section 54-07-02-01, the State Board of Nursing is to establish and maintain an unlicensed assistive person registry. Individuals may be placed on the registry either through competency evaluation by an employer or licensed nurse or through a national nurse aide competency evaluation



testing program. Individuals must renew their registration every two years. The State Board of Nursing charges a \$30 fee for individuals to be placed on the registry. If an individual practices as an unlicensed assistive person without registration, the State Board of Nursing may discipline the individual. Pursuant to NDCC Section 43-12.1-14.2, enacted by the 2009 Legislative Assembly, the action of the board in the case of first violation is limited to the issuance of a letter of concern.

The Legislative Council staff said a certified nurse aide (commonly known as a certified nursing assistant) is any individual who has successfully completed the requirements for the state-approved nurse aide training and competency evaluation program or state-approved competency evaluation program. The scope of work for a certified nurse aide includes infection control, safety and emergency procedures, promoting resident or patient independence, basic nursing skills, and personal care skills.

The State Department of Health Division of Health Facilities is designated by the Centers for Medicare and Medicaid Services as the agency responsible for the registration of certified nurse aides. Individuals may be placed on the department's registry after successfully completing a state-approved competency evaluation program. Individuals must renew their registration every two years. Federal regulations prohibit charging fees to the individual for placement of their name on the registry. The department's registry is recognized by the State Board of Nursing as provided for in NDAC Section 54-07-01-03.

The Legislative Council staff proposed the following study plan:

1. Gather and review information on the registration of certified nurse assistants, nurse assistants, and unlicensed assistive persons, including the registration maintained by the State Department of Health and the registration maintained by the State Board of Nursing.
2. Examine the possibility of one registry and a potential location for that registry.
3. Receive information from interested persons regarding the registration of certified nurse assistants, nurse assistants, and unlicensed assistive persons.
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
5. Prepare a final report for submission to the Legislative Management.

Ms. Bartz provided information regarding the committee's study of the registration of health care professionals. A copy of the information presented is on file in the Legislative Council office. She said the State Department of Health is designated by the Centers for Medicare and Medicaid Services for registration of certified nurse aides in North Dakota.

She said specific responsibilities of the department related to the registry include:

- Approval of competency evaluation programs.
- Approval of nurse aide training programs and competency evaluation programs.
- Onsite inspection of the approved nurse aide training programs.
- Operation of the certified nurse aide registry.
- Investigation of allegations of abuse, neglect, or misappropriation of property regarding certified nurse aides working in skilled nursing facilities.
- Placement of validated findings of abuse on the certified nurse aide registry.

Ms. Bartz said there are 17,852 active registrants on the certified nurse aide registry. She said individuals who are registered as certified nurse aides are eligible to work in skilled nursing facilities and other health care settings.

In the fall of 2008, Ms. Bartz said the State Department of Health invited individuals from the State Board of Nursing, long-term care industry, and the Legislative Assembly to begin conversations regarding the two health care professional registries and how to promote communication between the registries and the provider industry. She said the department believes this workgroup should continue to meet and should discuss the following issues:

- The number of registrants on each registry and categories of registration.
- The differences between the operation of the two registries and requirements for registration of individuals on the two registries.
- Categories of registrants on the State Board of Nursing registry that would be appropriate for the State Department of Health to administer on its registry.
- Communication between the State Board of Nursing registry and the State Department of Health registry.
- Steps that would need to be taken to integrate a state registry program into the State Department of Health's federal registry to allow for one nurse aide registry.
- Costs related to the additional state workload, including investigation of complaints.
- Identification of any legislative actions that may be needed.

Mr. Buzz Benson, President, State Board of Nursing, provided information regarding the committee's study of the registration of health care professionals. A copy of the information presented is on file in the Legislative Council office. He said individuals may be placed on the board's unlicensed assistive persons registry either through competency evaluation by an employer or through the national nurse aide competency evaluation testing program. He said the registry includes individuals employed in hospitals, home health, assisted living facilities, and basic care facilities. He said the board is required to investigate every complaint received against

registrants. He provided the following statistics regarding the unlicensed assistive persons registrants and medication assistant registrants:

Fiscal Year	Total Number of Unlicensed Assistive Person Registrants
2004-05	3,530
2005-06	3,170
2006-07	3,479
2007-08	4,504
2008-09	4,009

Fiscal Year	State Board of Nursing Medication Assistant Registrants	State Department of Health Medication Assistant Registrants	Total
2004-05	505	756	1,261
2005-06	609	799	1,408
2006-07	688	954	1,642
2007-08	889	1,297	2,186
2008-09	697	1,331	2,028

Representative Wieland suggested the State Board of Nursing provide the committee with definitions of nursing professionals, including information regarding qualifications of each professional. Chairman Kreidt asked that the board provide the committee with this information.

In response to a question from Senator Bakke, Mr. Benson said if an individual practices as an unlicensed assistive person without registration, the State Board of Nursing may discipline the individual. In the case of first violation, he said, the discipline is the issuance of a letter of concern. He said a second violation may result in the board issuing a fine or suspending the individual.

Ms. Peterson provided information regarding the committee's study of the registration of health care professionals. A copy of the information presented is on file in the Legislative Council office. She said the North Dakota Long Term Care Association would prefer the State Department of Health administer a registry for health care professionals working at nursing home, basic care, and assisted living facilities. She said the association is committed to working with the department and the workgroup to determine the steps necessary to achieve a single registry.

Mr. Chuck Stebbins, Minot State University North Dakota Center for Persons With Disabilities, provided information regarding the North Dakota Personal Assistance Services Registry. A copy of the information presented is on file in the Legislative Council office. He said the North Dakota Personal Assistance Services Registry is a free website administered by the North Dakota Center for Persons With Disabilities to help connect senior citizens, people with disabilities, and family members needing personal assistance services and various home and community-based care services with available providers of such services. He said the registry is

available to North Dakota residents and to providers working in North Dakota. He said participation in the registry is voluntary.

In response to a question from Senator Lee, Mr. Stebbins said an individual needs to be a qualified service provider to be included on the registry.

In response to a question from Representative Kreidt, Mr. Stebbins said the registry began as a pilot project in the Grand Forks area. He said the North Dakota Center for Persons With Disabilities is working on expanding the registry statewide.

Chairman Kreidt suggested the State Department of Health continue the workgroup regarding the two health care professional registries and provide information to the committee on the workgroup's discussions and recommendations.

**It was moved by Senator Dever, seconded by Senator Pomeroy, and carried on a voice vote that the committee proceed with this study as follows:**

- 1. Gather and review information on the registration of certified nurse assistants, nurse assistants, and unlicensed assistive persons, including the registration maintained by the State Department of Health and the registration maintained by the State Board of Nursing.**
- 2. Receive information from the State Department of Health and other representatives of the department's health care registries workgroup on the workgroup's discussions and recommendations.**
- 3. Examine the possibility of one registry and a potential location for that registry.**
- 4. Receive information from interested persons regarding the registration of certified nurse assistants, nurse assistants, and unlicensed assistive persons.**
- 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.**

**OTHER COMMITTEE RESPONSIBILITIES**

The Legislative Council staff presented a background memorandum entitled [Other Duties of the Long-Term Care Committee - Background Memorandum](#). The Legislative Council staff said in addition to the study responsibilities assigned to the Long-Term Care Committee for the 2009-10 interim, the committee has also been assigned to:

- Receive reports from the Department of Human Services after June 30, 2010, regarding the outcomes of the dementia care services program (Section 2 of House Bill No. 1043).
- Receive a report from the Department of Human Services before September 1, 2010, regarding the outcomes and recommendations

from 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 (Section 1 of House Bill No. 1556).

### **Dementia Care Services Program**

The Legislative Council staff said the 2007-08 interim Long-Term Care Committee studied the availability of and future need for dementia-related services and funding for programs for individuals with dementias. The committee recommended House Bill No. 1043, which was approved by the 2009 Legislative Assembly. The bill:

- Directs the Department of Human Services to contract with a private provider for a dementia care services program in each area of the state served by a regional human service center. The dementia care services must include:
  - Identifying available services within the region.
  - Providing information to medical professionals, law enforcement, and the public regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers.
  - Assessing the needs of individuals with dementia and their caregivers.
  - Training care providers to manage and provide for the care of individuals with dementia.
  - Providing consultation services to individuals with dementia and their caregivers.
  - Facilitating the referral of individuals with dementia and their caregivers to appropriate care and support services.
- Provides for a report to the Legislative Management regarding the outcomes of the program.
- Provides a \$1.2 million general fund appropriation for the program.

### **Developmental Disabilities Service Provider Rates**

The Legislative Council staff said House Bill No. 1556 provides that during the 2009-10 interim the Department of Human Services contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse all developmental disabilities service providers, including public and private; licensed developmental disabilities ICF/MR facilities, such as the Anne Carlsen Center; and home and community-based service providers serving ICF/MR medically fragile and behaviorally challenged individuals. The study is to address reimbursement adequacy and equitability and fairness of reimbursement rates among such providers, the level of medical and supportive services required by providers to adequately serve individuals in those categories, the varying levels of medical and behavioral complexity of individuals requiring services by the providers, and any other analytical comparisons bearing upon issues of reimbursement adequacy, fairness, and equitability to such providers.

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

Chairman Kreidt announced the next committee meeting may be held in conjunction with the Health and Human Services Committee in January or February 2010.

**It was moved by Senator Lee, seconded by Senator Pomeroy, 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 1:04 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:1