

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## HUMAN SERVICES COMMITTEE

Wednesday, May 30, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Alon Wieland, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Alon Wieland, Dick Anderson, Roger Brabandt, Tom Conklin, Curt Hofstad, Richard Holman, Robert Kilichowski, Vonnie Pietsch, Chet Pollert, Jim Schmidt; Senators Dick Dever, Robert Erbele, Joe Miller, Gerald Uglem

**Members absent:** Representatives Donald L. Clark, Kathy Hogan; Senator Tim Mathern

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

**It was moved by Senator Dever, seconded by Representative Pollert, and carried on a voice vote that the minutes of the April 17, 2012, meeting be approved as distributed.**

### STUDY OF GUARDIANSHIP SERVICES

Mr. Winsor C. Schmidt, faculty member, University of Louisville School of Medicine, provided an executive summary ([Appendix B](#)) and final report ([Appendix C](#)) for the study of guardianship services. He said North Dakota Century Code Chapters 30.1-26 and 30.1-28 govern guardianship services, and Chapter 11-21 governs public administrator services. He said Section 30.1-28-11(1) provides that a guardian may be any competent person or a designated person from a suitable institution, agency, or nonprofit group home. He said a guardian is court-appointed after a hearing for an incapacitated person. An incapacitated person is defined as any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or if the incapacity endangers the person's health or safety. He said a public administrator is an individual, corporation, or limited liability company appointed by the presiding judge as ex officio guardian and conservator of the incapacitated person for the county.

Mr. Schmidt provided the following summary of the report's findings and recommendations by major study area:

#### I. The need for guardianship services in the state - Review the number of guardians appointed by the courts and identify the unmet need for guardianship services in the state.

Observations and Findings

- There were 2,038 guardianship and conservatorship cases in North Dakota in 2010. There were 323 new filings in 2010 and an average of 311 new appointments per year from 2008 through 2010.
- Based on published national research on the extent of need for guardianship services, North Dakota's projected total population-based need for guardianship services is 751 individuals. The Department of Human Services has entered a contract with Catholic Charities North Dakota to serve 414 individuals in the 2011-13 biennium, and the department's Aging Services Division also has been provided funding to assist with the establishment of 32 guardianships for the 2011-13 biennium. Considering this, the total population-based unmet need for guardianship services in North Dakota is 305 individuals.
- The Council on Accreditation has developed adult guardianship accreditation standards. One of the standards provides that guardianship caseload sizes should support regular contact with individuals and the achievement of desired outcomes. Studies of guardianship programs recommend a 1-to-20 ratio to eliminate situations where there is little to no service being provided.
- One of North Dakota's principal corporate guardianship programs reports a guardianship staff-to-client ratio of 1 to 36-39.
- One of the several public administrators serving as guardian reports a part-time guardian caseload ranging from 22 to 29 with wards housed 210 miles apart.
- The *North Dakota Guardianship: Standards of Practice for Adults* publication provides that a guardian is to limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.

- The National Academy of Elder Law Attorneys, the National Guardianship Association, and the National College of Probate Judges convened a Wingspan Implementation Session in 2004 to identify implementation steps relating to guardian certification. Steps include enacting a statutory framework to require education and certification of guardians and establishing a statewide registration of guardians.
- Some of the North Dakota guardianship stakeholders expressed concerns relating to oversight and monitoring of guardians and guardian annual reports and lack of requirements, such as criminal background and credit checks.

Recommendations

- Enact a statutory framework to require education and certification of guardians as well as continuing education with the appointment process to ensure that all guardians meet core competencies.
- Adopt minimum standards of practice for guardians using the *National Guardianship Association Standards of Practice* as a model.

**II. The establishment of guardianships - Review the services available for assistance with the establishment of guardianships and the process for the establishment of guardianships and recommend proposed changes.**

Observations and Findings

- Chapter 30.1-28 provides the judicial process for the establishment of guardianships. Any interested person may petition for the appointment of a guardian for an allegedly incapacitated person. No filing fee may be required for a petition by a member of the individual treatment plan team or by any state employee. The court is to set a hearing date, appoint an attorney to act as guardian ad litem, appoint a physician or clinical psychologist to examine the proposed ward, and appoint a visitor to interview the proposed guardian and proposed ward. If the attorney appointed as guardian ad litem or other attorney is retained by the proposed ward to act as an advocate, the court may determine whether the guardian ad litem should be discharged. The proposed ward must be present at the hearing in person unless good cause is shown for the absence. If the court approves a visitor, lawyer, physician, guardian, or temporary guardian, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being. The court may appoint a guardian only after finding in the hearing record based on clear and convincing evidence that:

The proposed ward is an incapacitated person.

There is no available alternate resource plan which could be used instead of guardianship.

The guardianship is the best means of providing care, supervision, or habilitation.

The powers and duties given the guardian are the least restrictive form of intervention consistent with the ability of the ward for self-care.

- Section 30.1-28-10 authorizes the court to exercise the power of a guardian pending notice and hearing or, with or without notice, appoint a temporary guardian for a specified period of time, not to exceed 90 days, if:

An alleged incapacitated person has no guardian and an emergency exists; or

An appointed guardian is not effectively performing the guardian's duties, and the court finds that the welfare of the ward requires immediate action.

- Some North Dakota guardianship stakeholders expressed concerns with the judicial process for the establishment of guardianships, including the lack of mandatory reporting of vulnerable adult abuse and neglect, filing fees not waivable for indigents, limited legal assistance from state's attorneys or assistant attorneys general for petitioners in indigent cases, the lack of right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel, some proposed wards reportedly not present at hearings, and appointment of emergency guardians for up to 90 days without notice and a hearing.

Recommendations

- Change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect.
- Adopt model recommendations regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing.
- Adopt Section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardians.

**III. Petitioning and other costs - Identify petitioning and other costs associated with providing guardianship and public administrator services and financial assistance available.**

Observations and Findings

Petitioning and Other Costs Associated With Guardianship Services	
North Dakota - Department of Human Services Aging Services Division	Average petitioning cost was \$1,474 for the 2009-11 biennium. Funds available to provide a \$500 annual payment to 16 guardians in the first year of the 2011-13 biennium and 32 guardians in the second year of the biennium.

	<b>Petitioning and Other Costs Associated With Guardianship Services</b>
North Dakota - Department of Human Services Developmental Disabilities Division	Funding of \$2,052,415 available for 414 wards during the 2011-13 biennium, including \$51,720 for petitioning costs. The daily rate for corporate guardian services is \$6.52 per ward in the first year of the 2011-13 biennium (\$2,380 per client annually) and \$6.71 per ward in the second year of the biennium (\$2,449 per client annually).
Florida	Annual public guardian cost per client was \$2,857 in 1983 and \$2,648 in 2007.
Virginia	Annual public guardian cost per client was \$2,662 in 1997 and \$2,955 in 2002.
Washington	Average annual cost per public guardian for the period 2008-11 was \$3,163.

- Another area of review related to costs is the extent to which guardianship is cost-effective as well as the extent to which not having sufficient guardianship services costs more than providing sufficient guardianship services. As an example of cost-effectiveness, Catholic Charities North Dakota reports wards moving from a more restrictive and expensive setting to a less restrictive setting for 22 guardianship clients in 2011, including 7 clients moving from the State Hospital, 2 clients moving from the Developmental Center at Westwood Park, 2 clients moving from a nursing home to an individualized supported living arrangement, and 1 client moving from a hospital to a nursing home.

Recommendations

None

#### **IV. The entities responsible for guardianship and public administrator costs - Identify the entities currently responsible for guardianship and public administrator costs.**

Observations and Findings

- The North Dakota Legislative Assembly has provided appropriations to the Department of Human Services for providing corporate guardianship services and for petitioning costs and guardianship fee for individuals who have been diagnosed with a mental illness or traumatic brain injury or elderly individuals age 60 and over.
- Some counties in North Dakota have provided funding for several public administrators in the state.

Recommendations

None

#### **V. The interaction between the courts, counties, state agencies, and guardianship organizations regarding guardianship services - Review the**

**duties and responsibilities of these entities and the cooperation/collaboration and interaction between and among the entities associated with guardianship and public administrator services and recommend proposed changes.**

Observations and Findings

- Based on interviews with North Dakota guardianship stakeholders, the interaction between the courts, counties, state agencies, and guardianship organization regarding guardianship and public administrator services seems generally good. There is some tension with the counties regarding funding of public administrators appointed by presiding district judges.
- The following are alternative structures for state public guardianship programs:

Court model - This model establishes the public guardianship office as part of the court that has jurisdiction over guardianship and conservatorship.

Independent state agency model - This model establishes a public guardianship office in an executive branch agency that does not provide direct services for a ward or potential wards.

Social service agency model - This model provides for placement of the public guardianship function in an agency providing direct services to wards. Several studies conclude this model is a clear conflict of interest.

County agency model - This model provides for the public guardianship function at the county level.

- North Dakota is currently a hybrid of the social service agency model and the county model.
- Guardianship stakeholders expressed concerns about lack of uniformity and statewide coverage of guardianship services.

Recommendations

- Change from the hybrid of the social service agency model and the county model. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.

#### **VI. The efficacy of statutes governing guardianship and public administrator services - Review the statutes governing guardianship and public administrator services, evaluate the effectiveness of the statutes, and recommend proposed changes.**

Observations and Findings

- North Dakota has an "implicit" statutory scheme for public guardianship. Implicit schemes often name a state agency or employee as guardian of last resort when there are no willing and responsible family members or friends to serve.

Explicit schemes generally provide for an office and the ability to hire staff and contract for services.

- North Dakota provides general fund appropriations to the Department of Human Services to 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 (DD) case management services and to individuals diagnosed with a mental illness, traumatic brain injury, or elderly individuals age 60 and over. North Dakota statutory provisions authorize judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator in specified cases. This segregation may result in vulnerable individuals with dual or multiple diagnoses and eligibilities not receiving appropriate public guardian services.
- North Dakota provides that any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. A question to the effectiveness of public guardianship is whether public and private guardianship agencies may petition for appointment of themselves as guardian. This is a potential conflict of interest.
- The following are concerns regarding adult protective services and guardianship in North Dakota:
  - There is no mandatory reporting of vulnerable adult abuse and neglect.
  - There is perception of less review or investigation of vulnerable adult abuse and neglect in some cases.
  - Inconsistent adult protection services statewide and lack of state funding to provide them.
  - North Dakota is one of only two states without mandatory reporting of vulnerable adult abuse and neglect.
- Almost all of North Dakota's provisions for notice are comparable to the Uniform Guardianship and Adult Protective Proceedings Act. The most significant exception is the absence of provisions for informing the proposed ward or ward of rights at the hearing and of the nature, purpose, and consequences of appointment of a guardian.
- Almost all of North Dakota's provisions for hearing are comparable to the Uniform Guardianship and Adult Protective Proceedings Act.
- Some of the North Dakota guardianship stakeholders expressed concerns with the lack of right to counsel or public defender for the proposed ward if the proposed ward cannot afford counsel.

- Thirty-six states, including North Dakota, require "clear and convincing evidence" as the standard of proof in guardianship proceedings. The Model Public Guardianship Act recommends "clear, unequivocal, and convincing evidence" as the standard of proof.
- Several North Dakota guardianship stakeholders report insufficient physician specialists for clinical evaluations in guardianship proceedings.
- Twenty-seven states, not including North Dakota, have specific guardian background requirements like a credit check that disqualify felons from serving as guardian.
- At least 44 states specify a particular agency to serve as public guardian. North Dakota authorizes any appropriate government agency to serve a guardian as eighth priority except that an institution, agency, or nonprofit group home providing care and custody of the incapacitated person may not be appointed guardian. North Dakota also authorizes judicial appointment of a county public administrator with duties and powers to serve as ex officio guardian and conservator without application to court or special appointment in specified cases.
- Most state statutes provide that the public guardian has the same duties and general probate powers as any other guardian. Many state statutes also list additional duties and powers for the public guardian, such as requiring the public guardianship entity to maintain professional staff, contract with local or regional providers, and provide public information about guardianship and alternatives.
- Some North Dakota guardianship stakeholders expressed concerns about oversight and monitoring of guardians and guardian annual reports. Unlike a number of states, North Dakota does not have statutory provision for active court review of annual reports.
- Several North Dakota guardianship stakeholders expressed concerns with the temporary guardian statute. Compared with the emergency guardianship statutes in other states, North Dakota lacks required petition details, notice requirements, specific language about the right to a hearing pre and post order, right to counsel at the hearing, presence of the proposed ward at the hearing, limited duration, and specific language about the standard of proof.

#### Recommendations

- Adopt an explicit statutory scheme for public guardianship. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.

- Provide for public guardian services for all eligible incapacitated persons similarly, and not public guardian services for only particular diagnoses or categories. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
  - Adopt a prohibition against the public guardian petitioning for appointment of itself.
  - Change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect. (This recommendation is also included in Section II regarding the establishment of guardianships.)
  - Adopt a version of the Uniform Guardianship and Adult Protective Proceedings Act notice provisions regarding rights at the hearing and the nature, purpose, and consequences of appointment of a guardian.
  - Adopt the recommendations of the Model Public Guardianship Act regarding the right to counsel and the duties of counsel representing the proposed ward at the hearing. (This recommendation is also included in Section II regarding establishment of guardians.)
  - Adopt a right to trial by jury in guardianship proceedings.
  - Consider changing the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."
  - Consider adopting the Model Public Guardianship Act provision regarding evaluation in guardianship. The provision provides that the alleged incapacitated person has the right to secure an independent medical or psychological examination relevant to the issues involved in the hearing at the expense of the state if the person is unable to afford such examination and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.
  - Require information in the petition for appointment of a guardian and in the visitor's report about the qualifications of the proposed guardian to include the results of fingerprint, criminal history, and credit background checks before appointment of a guardian.
  - Specify one public guardian agency to serve as public guardian. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
  - Make the office of public guardian independent from all service providers. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
  - Require guardians and guardian organizations to comply with the North Dakota Guardianship Standard 13(V) that the guardian of the person visit the ward monthly and the North Dakota Guardianship Standard 23 (III) that the guardian limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers.
  - List additional duties and powers for the public guardian modeled after those in the Model Public Guardianship Act. See Section VII regarding methods for the delivery of guardianship and public administrator responsibilities for prioritized recommended alternatives.
  - Establish a system for active monitoring of guardianship annual reports, including filing and review of annual reports and plans.
  - Adopt Section 311 of the Uniform Guardianship and Protective Proceedings Act related to emergency guardians. (This recommendation is also included in Section II regarding the establishment of guardianships.)
- VII. Methods for the timely and effective delivery of guardianship and public administrator responsibilities and services - Determine the appropriate duties and responsibilities for entities involved in guardianship services, financial responsibilities, and the appropriate role for public administrators in providing guardianship services. Provide estimated costs for guardianship services for the 2013-15 biennium by recommended entity responsible for these costs.**
- Observations and Findings
- North Dakota has statutory provisions for guardianship of incapacitated persons and for county public administrators. Twenty-eight of North Dakota's 53 counties do not have a public administrator. The 2010 census population of the 28 counties is 151,026, which is 22.5 percent of North Dakota's population.
  - One nonprofit corporation with offices in Bismarck is reportedly the public administrator for 12 counties. These 12 counties have a 2010 census population of 147,799 (21.9 percent of the state's population) and cover an area of 16,031 square miles.
  - The lack of an adequate number of public administrators in North Dakota's counties suggests that delivery of public administrator responsibilities and services is currently untimely and ineffective.
- Recommendations
- Implement a model for public guardianship based on the strengths and weaknesses of each model and the particular needs of North

Dakota. The recommended prioritization of models for North Dakota is:

Independent state office model - Establish a new state agency modeled after the North Dakota Commission on Legal Counsel for Indigents to provide public guardianship services.

County model - Timely and effective public administrator responsibilities and services appear to require replacement of uneven county funding with state funding of a public administrator in each of North Dakota's 53 counties at a funding level that would reduce guardianship caseload ratio from the reported 1:22-29 on a part-time basis to a 1:20 staff-to-client ratio on a full-time basis.

Alternative county model - Establish an independent office of public guardian within each of North Dakota's counties.

Judicial model - Establish the public guardianship office as a division of the court that has jurisdiction over guardianship and conservatorship.

Estimated costs for the 2013-15 biennium

- The following is a summary of estimated costs for the 2013-15 biennium based on the 2011-13 legislative appropriation of \$2,052,416 to the Department of Human Services for corporate guardianship and petitioning costs in the Developmental Disabilities Division:

Estimated costs for guardianship services based on the Developmental Disabilities Division private contractor model for the 414 wards currently being served plus the 149 individuals currently in need of guardian services	\$2,546,082
Estimated costs for guardianship services based on the Developmental Disabilities Division private contractor model for the 156 wards of the additional unmet need	851,523
Total	\$3,397,605
<b>NOTE:</b> These estimated costs are for a staff-to-client ratio of 1:36-39. The recommended ratio is 1:20.	

- The following is a summary of estimated costs for the 2013-15 biennium based on the state of Washington's Administrative Office of the Courts private contractor model with a required staff-to-ward ratio of no more than 1:20:

Estimated costs for guardianship services based on the private contractor model for the 414 wards currently being served plus the 149 individuals currently in need of guardian services	\$4,456,302
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In response to a question from Representative Wieland, Mr. Schmidt said 27 states currently provide

a right to a jury trial in guardianship proceedings. He said the right to a jury trial would be claimed by the proposed ward, and the jury would determine if sufficient evidence was presented regarding the proposed ward's mental capacity.

In response to a question from Senator Miller, Mr. Schmidt said 28 of North Dakota's 53 counties do not have a public administrator. He said those counties are Adams, Barnes, Billings, Bottineau, Bowman, Burke, Divide, Dunn, Eddy, Foster, Golden Valley, Hettinger, LaMoure, McHenry, McKenzie, Mountrail, Pembina, Pierce, Ransom, Renville, Richland, Sargent, Sioux, Slope, Stark, Steele, Walsh, and Wells.

Mr. Bruce Murry, attorney, Bismarck, provided comments regarding the final report for the study of guardianship services. He expressed concern that the 90-day limit for temporary guardians is extended on a regular basis.

Ms. Sally Holewa, State Court Administrator, Supreme Court, provided comments regarding the final report for the study of guardianship services. She said the Legislative Assembly should address the needs for safeguards for guardianship services. She said the judicial branch is supportive of the recommendation to establish an independent state agency for guardianship services.

In response to a question from Representative Pollert, Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, said the association will provide information regarding current guardianship and public administrator costs incurred by counties at a future committee meeting.

Ms. Judy Vetter, public administrator and certified guardian, Guardian and Protective Services, Inc., Bismarck, provided comments regarding the final report for the study of guardianship services. She said counties believe guardianship and public administrator services are a state responsibility.

Representative Schmidt expressed concern regarding the potential costs needed for the infrastructure to implement an alternative method for the delivery of guardianship and public administrator responsibilities.

Chairman Wieland asked the Legislative Council staff to summarize the recommendations included in the final report and provide information regarding estimated costs of the alternative methods for the delivery of guardianship and public administrator responsibilities.

**It was moved by Representative Holman, seconded by Representative Anderson, and carried on a voice vote that the Human Services Committee accept the final report for the study of guardianship services.**

**OTHER COMMITTEE RESPONSIBILITIES**

Mr. Sheldon Wolf, Director, Health Information Technology Office, Information Technology Department, provided information ([Appendix D](#)) regarding the standardization of drug prior

authorization request transactions between providers and payers, insurance companies, and pharmacy benefit managers pursuant to Section 2 of 2011 House Bill No. 1422. He 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. In response, he said, the Health Information Technology Office has formed a workgroup consisting of legislators, pharmacists, State Board of Pharmacy members, payers, and industry experts. He said the workgroup is discussing the needs for prior authorizations, the number of prior authorizations that are being completed, activities in the industry, and a strategy for North Dakota proceeding with electronic drug prior authorizations. He said the workgroup is monitoring activities of the National Council for Prescription Drug Programs regarding the establishment of a national standard. He said the workgroup believes adopting a national standard is more beneficial than creating a state-specific standard.

### **STUDY OF QUALIFIED SERVICE PROVIDER SYSTEM**

The Legislative Council staff presented a memorandum entitled [Qualified Service Providers - Rates and Restrictions](#). The Legislative Council staff said a qualified service provider (QSP) is an individual or agency providing care and services for people to enable them to continue to live in their own homes and communities. There are two types of QSPs:

- An individual QSP needs to have competency in all the standards to provide a specific service. Individual QSPs are self-employed, independent contractors who are 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 hires staff and is responsible for ensuring its staff has the skills necessary to provide a specific service. The agency QSP is also responsible for withholding or paying any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums relating to its employees.

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 for providing services as a QSP. 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 because provider transportation is not considered a Medicaid benefit by the Centers for Medicare and Medicaid Services. The Centers for Medicare and Medicaid Services would allow the Department of Human Services to increase the unit rate to account for overhead costs, such as time or expenses associated with travel; however, the department would need additional funding from the Legislative Assembly to implement the increase.

### **STUDY OF THE AUTISM SPECTRUM DISORDER**

Chairman Wieland provided comments regarding the committee's study of the autism spectrum disorder. He said Specialisterne Minnesota is a newly incorporated entity headquartered in Minneapolis, Minnesota. He said the entity assesses individuals with an autism spectrum disorder and trains them for employment in highly technical positions that are often a good fit with the traits individuals with an autism spectrum disorder naturally display. He said the entity relies mostly on private contributions for support. He said the entity is considering opening an office in Fargo.

Ms. JoAnne Hoesel, Director, Division of Mental Health and Substance Abuse Services, Department of Human Services, provided information ([Appendix E](#)) regarding the department's regional autism spectrum disorder centers of early intervention and achievement pilot program. She said 2011 Senate Bill No. 2268 provides that the department may use up to \$200,000 of funding from its 2011-13 legislative appropriation to establish and operate a regional autism spectrum disorder centers of early intervention and achievement pilot program. At this time, she said, the department does not anticipate having the funding available for this purpose.

In response to a question from Representative Pollert regarding availability funding in the appropriation for DD grants, Ms. Hoesel said Section 8 of 2011 Senate Bill No. 2012 provides legislative intent that the department use any anticipated unexpended appropriation authority relating to DD grants resulting from caseload or cost changes during the 2011-13 biennium for costs associated with transitioning individuals from the Developmental Center to communities during the 2011-13 biennium.

Ms. Hoesel provided recommendations ([Appendix F](#)) from the Autism Spectrum Disorder Task Force. The following is a summary of the recommendations:

Rank	Description	Explanation	Estimated Biennial Costs
1	Add a state autism coordinator and assistant	Two new FTE positions responsible for implementing a one-stop shop for information and services for individuals with an autism spectrum disorder, developing a state outreach plan, holding regional meetings, holding an annual conference, and developing a protocol for use after screening	\$494,135
2	Provide comprehensive training funds	A statewide training effort, including physician training, regional training, and parent training, led by the state autism coordinator in coordination with key agencies	\$158,032
3	Expand and refocus the autism spectrum disorder Medicaid waiver	Expansion of the department's autism spectrum disorder Medicaid waiver to cover individuals from age 3 through end of life and to provide services, such as evidence-based practices, intervention coordination, in-home support, equipment and supplies, home monitoring, residential supports and services, extended vocational supports, and behavioral consultation	The department's current DD traditional waiver is budgeted on each person's services and support costing an average of \$27,239 per year for waiver services.
4-5	Increase behavioral analysts	Increase the number of professionals delivering behavioral analyst services by providing funding support for 16 people (two in each region) to complete the St. Paul online board-certified behavioral analyst program to include the required supervision up to the point of taking the certification	\$198,872
4-5	Establish dedicated diagnostic, evaluation, and service planning teams	Fund evaluation, diagnostic, and service planning teams comprised of a physician, occupational therapist, physical therapist, certified behavior analyst, and family support member. The teams must interact with regional coalitions, state agencies, and the Autism Spectrum Disorder Task Force and provide timely referral and outcome reports.	Evaluations and screenings currently range from \$1,725 to \$5,045 per child. Screening eight children in each of the eight regions would range from \$110,400 to \$322,880. Screening 16 children in each of the eight regions would range from \$220,800 to \$546,760.
6	Mandate private insurance coverage for autism care and treatment	Eliminate the exclusions for autism care and treatment in health insurance policies	Senate Bill No. 2268 (2011) as introduced provided for this recommendation and had a fiscal note of approximately \$5.8 million for state government for the 2011-13 biennium.
7	Establish an autism spectrum disorder registry	Develop and implement an autism spectrum disorder registry	\$200,646

In response to a question from Senator Erbele, Ms. Hoesel said the breakdown for the estimated costs for the state autism coordinator and assistant is:

Coordinator - Salary and benefits	\$212,478
Assistant - Salary and benefits	103,125
Operating expenses (office equipment, office rent, information technology fees, etc.)	100,532
Stipends for attendance at regional coalition meetings	48,000
Annual conference expenses	30,000
<b>Total</b>	<b>\$494,135</b>

In response to a question from Representative Wieland, Ms. Hoesel said the Legislative Assembly would need to decide the agency to employ the state

autism coordinator and assistant. She said potential agencies include the Department of Human Services, the Department of Public Instruction, or the State Department of Health.

In response to a question from Representative Wieland, Ms. Hoesel said the state autism coordinator would contract for the physician training, regional training, and parent training.

In response to a question from Representative Wieland, Ms. Hoesel said the department's autism spectrum disorder Medicaid waiver serves children birth through age 4 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 16 children served since services began in November 2010.

In response to a question from Representative Pollert, Ms. Hoesel said the Autism Spectrum Disorder Task Force reviewed the infrastructure in Washington and Kansas for autism spectrum disorder services. She said both states have implemented regional hubs that operate under a state-level entity with a statewide coordinator.

In response to a question from Representative Hofstad, Ms. Hoesel said the Autism Spectrum Disorder Task Force has identified needs in the areas of infrastructure, treatment, training, and funding. She said infrastructure needs, such as access to coordinated services, consistent early identification and screening, and consensus on service delivery standards, were ranked first by the task force.

In response to a question from Representative Schmidt, Ms. Hoesel said the statewide autism coordinator would be responsible for developing a "roadmap" or protocol for parents with children diagnosed with an autism spectrum disorder to follow.

Ms. Christine Hogan, counsel, Protection and Advocacy Project, provided comments ([Appendix G](#)) regarding the committee's study of the autism spectrum disorder. She said the Protection and Advocacy Project recommends adoption of the recommendations of the Autism Spectrum Disorder Task Force, including the proposed improvements to the autism spectrum disorder Medicaid waiver.

Dr. Lori Garnes, Associated Director of Development, North Dakota Center for Persons with Disabilities, Minot, provided comments regarding the committee's study of the autism spectrum disorder. She said the center is providing services to families and educators through the Great Plains Autism Spectrum Disorders Treatment Program.

Ms. Vicki Peterson, parent, Bismarck, provided comments regarding the committee's study of the autism spectrum disorder. She said she supports all of the Autism Spectrum Disorder Task Force recommendations. She said implementation of the recommendations needs to be a collaborative effort of several state agencies.

Chairman Wieland distributed recommendations ([Appendix H](#)) submitted by Ms. Peterson for the committee's consideration.

The committee recessed for lunch at 12:36 p.m. and reconvened at 1:21 p.m.

## **OTHER COMMITTEE RESPONSIBILITIES**

Ms. Jan Engan, Director, Aging Services Division, Department of Human Services, provided information ([Appendix I](#)) regarding the status of the dementia care services program, including information on budgeted and actual program expenditures, program services, and program outcomes. She said the Legislative Assembly, with the passage of 2009 House Bill No. 1043, directed the department to contract with a private vendor to provide for a dementia care services

program in each area of the state served by a regional human service center. Through a competitive procurement process, she said, the department awarded a contract to the Alzheimer's Association to provide the services. She said the contract award of \$962,085 was for the period January 2010 through June 2011. She said the goal of the program is to inform people with dementia and their caregivers about dementia care issues which may lead to decreased depression, increased family support, delays in nursing home placement, and a reduction in inappropriate use of health services. To achieve the goal, she said, the staff provides care consultation services to people with dementia and their caregivers, including needs assessment, care plan development, resource referral, emotional support dementia education, and followup as needed. She said the program also provides education for communities, professionals, and law enforcement agencies regarding the symptoms of dementia, the benefits of early detection and treatment, and the services available to individuals with dementia and their caregivers. She said the Legislative Assembly in 2011 provided a \$1.2 million general fund appropriation to the department for continuing the program in the 2011-13 biennium. From July 2011 through March 2012, she said, the program has worked with 502 caregivers and has provided 837 contacts for 284 persons with dementia.

Ms. Engan said the Alzheimer's Association subcontracts with the University of North Dakota (UND) Center for Rural Health to study and report outcomes of the dementia care services program, including the estimated long-term care and health care costs avoided and the improvement in disease management and caregiver assistance. She said UND reports an estimated cost avoidance of \$8,364,574 in long-term care costs between July 2011 and March 2012.

Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, provided information ([Appendix J](#)) regarding the development of a new DD reimbursement system pursuant to Section 1 of 2011 Senate Bill No. 2043. She said Senate Bill No. 2043 provides that:

- The department, in conjunction with DD service providers, develop a prospective or related payment system with an independent rate model utilizing the supports intensity scale.
- The department establish a steering committee consisting of representatives from all interested providers and department representatives. The steering committee is to guide the development of the new payment system, including assisting a consultant to conceptualize, develop, design, implement, and evaluate a new payment system.
- The department contract with a consultant by September 1, 2011, to develop, in collaboration with the steering committee, the payment system and the resource allocation model tying

funding to supports intensity scale assessed needs of clients.

- After the prospective or related payment system rates are developed, the new rates must be tested on a sampling of clients and providers allowing sufficient time to capture provider cost, client-realized need, and service provision data. The consultant is to provide the appropriate sampling number to sufficiently test the rates, types of services, and needs of clients with the intent to include as many providers as fiscally feasible.
- The department contract with a team of supports intensity scale assessors by September 1, 2011. The team is to begin assessing immediately the client pilot group identified by the consultant.
- Once testing is complete, the data must be analyzed by the consultant, and the consultant is to make any needed rate adjustments, resource allocation modifications, or process assumptions.
- Implementation of any system developed may not occur before the implementation of the department's new Medicaid management information system.

Ms. Bay said the department has established a steering committee consisting of representatives from all interested providers and the department to guide the development of the new payment system. She said the department has awarded a contract in the amount of \$445,903 to Johnston, Villegas-Grubbs and Associates, LLC., for development of the payment

system and the resource allocation model connecting funding to supports intensity scale assessed needs of clients. In addition, she said, the department awarded contracts to The Rushmore Group in the amount \$846,000 and the American Association on Intellectual and Developmental Disabilities in the amount of \$166,664 for work with supports intensity scale assessments. She said the department anticipates the contract work to be complete by June 30, 2013.

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

**It was moved by Senator Miller, seconded by Representative Anderson, and carried on a voice vote that the Human Services Committee meeting be adjourned subject to the call of the chair.**

Chairman Wieland adjourned the meeting at 1:50 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:10