

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### BUDGET COMMITTEE ON HEALTH CARE

Monday, October 13, 2003  
Southeast Human Service Center  
Fargo, North Dakota

Senator Judy Lee, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Judy Lee, Robert S. Erbele, Tom Fischer, Tim Mathern, Russell T. Thane; Representatives David Drovdal, Joyce Kingsbury, Gary Kreidt, Carol A. Niemeier, Vonnie Pietsch, Todd Porter, Sally M. Sandvig, Dale C. Severson, Gerald Uglen

**Members absent:** Senator Ralph L. Kilzer; Representative Ralph Metcalf

**Others present:** See attached appendix

**It was moved by Representative Drovdal, seconded by Senator Mathern, and carried on a voice vote that the minutes of the August 6, 2003, meeting be approved as distributed.**

Chairman Lee thanked the committee members for the support and concern she received after undergoing surgery. Chairman Lee introduced Nancy J. McKenzie, Director, Southeast and Northeast Human Service Centers, and thanked her for hosting the Budget Committee on Health Care meeting. Chairman Lee recognized Senators Richard Brown and John O. Syverson who attended the meeting.

#### PHARMACY ASSISTANCE PROGRAM STUDY

Chairman Lee called on Dr. Randy Seifert, PharmD, Seifert and Associates, Santa Barbara, California, who presented information regarding prescription drug cost containment. A copy of the information presented is on file in the Legislative Council office. Dr. Seifert presented a review of the Santa Barbara Regional Health Authority pharmacy benefit program, a Medicaid program in Santa Barbara County managed by Dr. Seifert. He said the program has a 58 percent generic drug utilization rate. He said management of the prior authorization program is contracted with RxAmerica. He said approximately 900 to 1,000 prior authorizations are done each month, with a denial rate of approximately 9 to 10 percent. He said the Pharmacy and Therapeutic Committee, an advisory committee for the Santa Barbara Regional Health Authority, is responsible for formulary additions and deletions to the pharmacy benefit program. He said the committee will not review new drugs during the first six months after

introduction. He said nonformulary drugs may be obtained through prior authorization.

Dr. Seifert said the program goal of the Santa Barbara Regional Health Authority is to maintain and increase access to pharmaceutical care with reasonable cost-benefit and health outcome results in an environment of limited resources. He said measures are used to determine the impact of formulary decisions on costs to health outcomes.

Dr. Seifert said employers are attempting to manage increasing health plan expenses by shifting costs to employees. He said factors that have increased prescription drug utilization rates and costs include:

- Perceived value of the pharmacy benefit.
- Greater prevalence of disease identification.
- Changes in treatment.
- Demographic changes.
- Direct consumer advertising.
- Changes in physician practice patterns.
- Shift from inpatient to outpatient treatment.
- New pharmaceutical products.

Dr. Seifert said there has been a significant increase in drug repackaging by mail order companies, chain pharmacies, and wholesalers. He said these companies purchase drugs in bulk and repack them into smaller lots for resale. He said a National Drug Code (NDC) number is assigned to the repackaged drug based on the drug's strength and lot size. He said the companies that repack the drugs are permitted to establish the average wholesale price for the repackaged product. He said for example there are 250 National Drug Code numbers for Celebrex with the average wholesale price ranging from \$1.80 per dose, which is the manufacturer's price, to \$2.90 per dose.

Dr. Seifert said there has been an increase in the use of tiered pharmacy benefit programs, with three-tiered programs being the most common. He said under a tiered program, required copayments vary based on the drug utilized. He said a three-tiered program consists of generic drugs, preferred brand drugs, and nonpreferred brand drugs, with generic drugs having the smallest percentage copayment and nonpreferred drugs the largest.

Dr. Seifert said increases in copayments generally result in reduced utilization of prescription drugs, with

the greatest impact on individuals who make less than \$25,000 per year. He said rebate programs, which are primarily offered from single-source patented products and paid on a market share basis, do not always generate cost-savings.

In response to a question from Senator Fischer, Dr. Seifert said the Santa Barbara Regional Health Authority recently implemented changes which increased the maximum allowable cost for generic drugs and decreased the pharmacy reimbursement rate for brand name drugs. He said the effect on utilization from the changes will be "tracked."

In response to a question from Senator Mathern, Dr. Seifert said advertising by pharmaceutical companies provides consumers with a better awareness of disorders; however, it may increase unnecessary drug utilization.

Dr. Seifert said 13 percent of adults in the United States have received a specific prescription in response to a drug they saw advertised.

In response to a question from Senator Lee, Dr. Seifert said the health outcomes resulting from implementing formulary changes are generally measured by comparing groups with similar diagnosis prior to and after the change. Measurements include comparing the history of emergency room or hospitalization services and other measurable outcomes such as blood pressure levels.

In response to a question from Representative Niemeier, Dr. Seifert said the cost of dispensing prescription drugs due to additional utilization is greater than the per unit savings that may be realized from volume discounts.

In response to a question from Representative Severson, Dr. Seifert said pharmacies and physicians are the groups most greatly affected by pharmaceutical management techniques. He said he believes pharmaceutical pricing in the United States is a problem. He said Congress has by law prevented pharmaceutical manufacturers from disclosing "best pricing."

In response to a question from Representative Severson, Dr. Seifert said the Department of Human Services would have to either contract with a private entity or increase staffing in order to monitor the pharmacy benefit program and provide the data necessary to make formulary and prior authorization decisions. Dr. Brendan Joyce, Administrator, Pharmacy Services, Department of Human Services, said he is the only employee in Pharmacy Services.

In response to a question from Representative Sandvig, Dr. Seifert said the goal of the Santa Barbara Regional Health Authority is to process requests for prior authorization within 24 hours of receiving the request. He said if an individual needs to have a prescription filled that requires prior authorization, pharmacies are permitted to issue the prescription before receiving the authorization. He said if the authorization is denied the Santa Barbara

Regional Health Authority will reimburse the cost for the original prescription.

Dr. Seifert said he anticipates the role of pharmaceutical representatives will decrease in the future. He said some clinics and hospitals have implemented policies which restrict or limit pharmaceutical representatives access to physicians during normal operating hours.

In response to a question from Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, Fargo, Dr. Seifert said it is unlikely the United States Food and Drug Administration would limit the direct advertising of pharmaceuticals to consumers.

In response to a question from Mr. St. Aubyn, Dr. Seifert said the Pharmacy and Therapeutic Committee for the Santa Barbara Regional Health Authority is a public corporation and public announcements are required for committee meetings.

Chairman Lee called on Dr. Joyce, who presented information regarding pharmaceutical assistance programs. A copy of the information presented is on file in the Legislative Council office. Dr. Joyce said during the first six months of 2003, the Department of Human Services paid \$27 million (prebate) for medications. He reviewed a comparison of drug cost-containment measures implemented by state Medicaid programs. He said the North Dakota Medicaid program limits individuals to a maximum 34-day supply per prescription drug.

Dr. Joyce said North Dakota currently has over 300 Medicaid recipients on a "lock-in" or "coordinated care" program. He said these individuals are required to select one physician, one pharmacy, and one dentist to assume primary responsibility for their care. He said this program allows all providers of care to gain more insight into the patient's overall care and utilization of medical services.

Dr. Joyce said North Dakota is currently in the process of implementing a prior authorization program. He said there is very little difference between a preferred drug list and a prior authorization program. He said a preferred drug list is a fairly new term for a broad prior authorization program. He said a preferred drug list program includes supplemental rebates, which are additional rebates offered by pharmaceutical companies to keep medications off the prior authorization list. He said typically the rebates offered do not provide substantial savings.

Dr. Joyce reviewed a summary of North Dakota's Medicaid program usage of brand name versus generic drugs for each class of drugs. He said many of the older classes with a large number of generics available have a higher percentage of generics being used, while new classes with fewer or no generics available have a low-generic usage percentage.

Dr. Joyce said many states have differential payment rates for rural versus urban pharmacies, independent versus chain pharmacies, and retail versus institutional or nontraditional pharmacies. He

provided the committee a summary of pharmacy payment and patient cost-sharing policies for all states. He said the reimbursement rate in North Dakota is the same for all pharmacies. He said North Dakota has implemented a higher dispensing fee for generic drugs.

Dr. Joyce said the costs incurred for the new Drug Use Review Board as compared to the previous Drug Utilization Review Board are essentially the same; however, additional committee time will be required to implement the prior authorization program.

In response to a question from Senator Mathern, Mr. David J. Zentner, Director, Medical Services, Department of Human Services, said the Department of Human Services has chosen to require the primary care case management process only for adults, caretakers, and most children. He said disabled individuals are not limited because they often require services of specialists who are not identified primary care case managers. He said the "lock-in" program is used to prevent misutilization of services among those not in primary care case management.

In response to a question from Representative Porter, Dr. Joyce said a Medicaid program provides reimbursement for former prescription drugs that are now sold over the counter. He said the Drug Use Review Board will meet on November 3, 2003, to prior authorize all antihistamines except OTC Claritin.

Chairman Lee called on Mr. David Peske, Director, Governmental Affairs, North Dakota Medical Association, who presented information on the Oregon preferred drug list. A copy of the information presented is on file in the Legislative Council office. He said in January 2003, because of budget concerns, the Oregon Health Resources Commission imposed a new state rule to broaden the voluntary Oregon preferred drug list program and required Oregon health plan participants to pay differential copayments for brand products. He said the new rule was to begin on May 1, 2003; however, the Oregon Legislative Assembly subsequently approved a bill that voided the change. He said legislators were convinced by parties, other than physicians, that a mandatory preferred drug list process was an infringement in the physician-patient relationship.

Senator Lee said pharmaceutical manufacturers lobbied against the Oregon mandatory preferred drug list.

Mr. Peske said physicians realize there is a prescription drug cost and utilization problem and are supportive of solutions to the problem. He said the Department of Human Services has served as a liaison to clinics and physicians regarding prescription drugs and the Medicaid program.

Chairman Lee thanked the physicians and pharmacists who have participated as members of the Drug Use Review Board.

Chairman Lee called on Mr. Galen Jordre, Executive Vice President, North Dakota Pharmaceutical

Association, who commented on the pharmacy assistance program study and the testimony from Dr. Seifert and Dr. Joyce. He said the North Dakota Medicaid program should consider implementing a policy of not considering new drugs for review until six months after introduction. He said the policy would allow for additional study of the new drugs after use on a broad term basis. He said in addition, new drugs are highly promoted during the first six months which may lead to unnecessary utilization.

Mr. Jordre said it may be beneficial to provide the market value of drugs to Medicaid and other third-party recipients. He said the perceived value of drugs is often different than the actual cost. He said pharmacies commonly purchase drugs in bulk, repackaging the drugs, and receive a new National Drug Code number for the repackaged product. He said each National Drug Code number is assigned a new average wholesale price, which may result in the pharmacy receiving a larger reimbursement than provided with the original or "innovator" National Drug Code. He said a program could be implemented where Medicaid only reimburses pharmacies based on the average wholesale price provided by the "innovator" National Drug Code.

Mr. Jordre said the North Dakota Pharmaceutical Association supports open access in the market place. He said certain drugs are currently offered only through specialty pharmacies. He said he would support a plan to have the Department of Human Services contract with local pharmacies to provide prescriptions. He said pharmacies have been voluntarily switching Medicaid customers from brand name drugs to over-the-counter medications, which saves money for the Department of Human Services but results in less income for the pharmacies.

In response to a question from Representative Kingsbury, Mr. Jordre said biotechnology drugs are expensive but are being used by certain individuals. In response to a question from Senator Lee, Mr. Jordre said pharmacists are allowed by law to administer "injectable" drugs upon the order of a physician.

The Legislative Council staff distributed a memorandum from the American Association of Retired Persons North Dakota regarding Medicaid drug expenditures and use of a preferred drug list. A copy of the memorandum distributed is on file in the Legislative Council office.

The committee recessed for lunch at 11:50 a.m. and reconvened at 1:10 p.m.

## **BUDGET TOUR**

### **Southeast Human Service Center**

Chairman Lee called on Ms. McKenzie to present an overview of the Southeast and Northeast Human Service Centers. A copy of the information presented is on file in the Legislative Council office.

Ms. McKenzie welcomed the committee to the Southeast Human Service Center.

Ms. McKenzie said the Southeast Human Service Center serves Region V, which consists of Cass, Richland, Steele, Sargent, Traill, and Ransom Counties. She said 85 percent of the clients served reside in Cass County. She said the Southeast Human Service Center served 5,370 unduplicated clients during the fiscal year ended June 30, 2002, or approximately a 1 percent increase compared to the previous year. She said the number of children served was approximately the same as the previous year and the number of adults served increased but at a slower rate of growth than previous years. She said the center has a staff of 184.2 full-time equivalent (FTE) positions. She said the Southeast Human Service Center reduced 7.55 FTE positions in the 2003-05 biennium budget as compared to the 2001-03 biennium.

Ms. McKenzie said the human service centers are in the process of implementing a new computer system or Regional Office Automation Project (ROAP) which will provide better information regarding who is being served, the duration of services provided, and the cost of the services provided. She said the Regional Office Automation Project will also provide comparative information regarding services provided in each region.

Ms. McKenzie said one year after children have enrolled in care coordination offered through the Southeast Human Service Center inpatient psychiatric hospitalization days decreased by 57.6 percent and days spent in residential treatment centers decreased by 31.1 percent as compared to the previous year. She said the number of Region V residents admitted to the State Hospital has steadily decreased from 254 in fiscal year 2001, to 190 in fiscal year 2002, and 155 in fiscal year 2003.

Ms. McKenzie reviewed the Southeast Human Service Center's current budget. She said the center's 2003-05 budget totals \$20.65 million, of which \$9.43 million is from the general fund. She said the 2001-03 budget was \$20.55 million, of which \$9.38 million was from the general fund.

### **Northeast Human Service Center**

Ms. McKenzie said the Northeast Human Service Center serves Region IV, which consists of Grand Forks, Nelson, Pembina, and Walsh Counties. She said 74 percent of the clients served reside in Grand Forks County. She said the Northeast Human Service Center served 3,954 unduplicated clients during fiscal year ended June 30, 2002, or approximately the same number served as compared to the previous year. She said the number of children served declined slightly and the number of adults served stayed approximately the same. She said the center has a staff of 136.9 FTE positions. She said the Northeast Human Service Center has reduced 6.5

FTE positions in the 2003-05 biennium budget as compared to the 2001-03 biennium.

Ms. McKenzie said one year after children were enrolled in care coordination offered through the Northeast Human Service Center inpatient psychiatric hospitalization days decreased by 38.7 percent as compared to the previous year. She said the number of Region IV residents admitted to the State Hospital has increased from 83 in fiscal year 2001 to 95 in fiscal year 2002. She said Region IV has averaged seven or eight admissions per month to the State Hospital over the last few years.

Ms. McKenzie said the Northeast Human Service Center's 2003-05 budget totals \$19.37 million, of which \$7.93 million is from the general fund. She said the 2001-03 budget was \$19.07 million, of which \$7.81 million was from the general fund.

Ms. McKenzie said areas of future concern for the Northeast and Southeast Human Service Centers include the increasing age of the region's population, increasing use of methamphetamine, identifying care and treatment required for the special needs population, and evaluating the sharing of resources among human resource centers.

In response to a question from Senator Thane regarding a reduction in support hours provided by "Easter Seals goodwill industries" because of a reduction of funding from the Department of Human Services, Ms. McKenzie said the Department of Human Services and the human service centers reduced the level of services provided in order to serve as many people as possible with available funding.

Ms. Candace Fuglesten, Deputy Director, Southeast Human Service Center, said the Department of Human Services is attempting to use state funds in a manner that maximizes federal funds.

Senator Thane said the support hours provided by Easter Seals are critical to some families. Ms. Fuglesten said if a reduction in services causes undue hardship, families may request the Department of Human Services to reevaluate the decision to reduce support hours on a case-by-case basis.

In response to a question from Senator Mathern, Ms. McKenzie said the human service centers may submit a request to the superintendent of the State Hospital for a transfer of funding from the State Hospital based on fewer than anticipated hospital admissions.

In response to a question from Senator Lee, Ms. Fuglesten said the Southeast Human Service Center has contracted with specific nonprofit organizations to provide client services, or in some cases families are authorized to receive certain types of services and allowed to choose their provider.

In response to a question from Senator Lee, Ms. McKenzie said because the Altru Health System in Grand Forks has chosen not to provide addiction and detoxification services, treatment services in

Region IV are provided on an outpatient basis and in some cases individuals travel to Fargo for services.

In response to a question from Senator Mathern, Ms. McKenzie said historically the budgets for the Northeast and Southeast Human Service Centers have been similar in amount despite the Northeast Human Service Center serving a smaller population.

Representative Severson said there are additional costs incurred in providing services to rural populations. He said services need to be made available through regional human service centers because of the lack of other alternatives in less populated areas and the high cost of traveling to large cities for services.

In response to a question from Representative Kreidt, Senator Lee said the Southeast Human Service Center does not receive a proportionate share of funding based on the population served; however, there are core services that must be provided by each human service center.

In response to a question from Senator Lee, Ms. McKenzie said there may be some distinct advantages to reducing regions or consolidating management among the regions while maintaining onsite services.

In response to a question from Senator Fischer, Ms. McKenzie agreed that if programs offered through the human service centers are not achieving desired goals, the clients should be entitled to receive the services from another service provider. She said the human service centers are responsible for providing necessary services in a cost-effective manner.

## **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Representative Porter said the Department of Human Services will begin to implement the prior authorization program on November 3, 2003. He asked that the Department of Human Services provide the Budget Committee on Health Care with updates on the program at future meetings. He said he is interested in the department's outcome-based measures for the program, including ensuring that the patient receives proper medication. He said it is important the Department of Human Services inform the Legislative Assembly as to what can be done to provide the needed flexibility to implement the program and to measure outcomes of the program.

Senator Mathern asked that the committee receive a report regarding state or federal laws that prevent the Department of Human Services from implementing a six-month waiting period prior to reviewing new drugs for the prior authorization program.

Chairman Lee said the next Budget Committee on Health Care meeting will tentatively be scheduled in Bismarck during the last two weeks in January.

The committee adjourned subject to the call of the chair at 2:30 p.m.

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Donald J. Wolf  
Senior Fiscal Analyst

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Jim W. Smith  
Legislative Budget Analyst and Auditor

ATTACH:1