

North Dakota State Legislature
Legislative Management's
INTERIM HUMAN SERVICES COMMITTEE
Chairman, Representative Kathy Hogan

Historical Overview of Human Services in North Dakota

This historical overview is presented in the context of the Human Services Committee's review of the state's human service systems. It focuses on the state's culture of self-reliance, its often-troubled relationship with the federal government and related mandates, and seeks to consider current threats, challenges, and strengths.

The following overview is meant as one tool in the effort to understand how we arrived at our current situation. It is organized chronologically, beginning with a brief look at territorial policies and attitudes, leading up to the present with more focused consideration of developments during the key moments of U.S. social policy including the Progressive Era, the New Deal, and the War on Poverty. It also considers potential issues in relation to the Supreme Court's Olmstead decision, and the findings of the Schulte report.

Self-reliance

In almost identical fashion to the historic origins of human services in all fifty states, North Dakota began with an emphasis on self-reliance and faith-based support for public emergencies. As noble as the sentiment of self-reliance is, the reality is that pioneers to the state sought to recreate the supportive communities they came from, and they were largely dependent on the federal government and large corporations (especially the Railroad companies) for administering land law and for building the initial infrastructure. One dramatic example of the need for public support was the reality that in 1935, through no fault of their own, more than a quarter million North Dakotans, fully forty percent of the population, were destitute. The federal government provided 90% of the public relief.

It would be a mistake to think of the Great Depression as entirely unique. To the contrary, the state and its people have weathered recurring economic crises, but these tend to create long-term devastation for the poorest of the state's families.

Self-reliance should always be the goal—it is rarely sufficient as we all depend upon one another in a host of ways.

Counties, State, and even townships? Early Developments

Recognizing the role and responsibility of government ‘as overseers of the poor,’ especially for women with dependent children under the age of fourteen, the Territorial Legislature authorized Boards of County Commissioners to provide aid, and to establish county poor houses. There was even a brief period in 1913 when the desire for local control (and local responsibility) pushed this down to the Township level. That experiment was short lived. Indeed, it became increasingly clear that the state would have to take on a greater role, and then, within another generation, the federal government assumed a central role.

But, back In 1883, the territorial legislature took a major step forward in delivery of what would come to be known as ‘Human Services’ with the authorization of a “hospital for the insane.” Soon after, the Superintendent reported “one hundred and twenty-five feeble minded children” were living at the hospital.

In 1901, using a combination of state and federal funds, the state legislature authorized the building of an institution for the feeble minded in Grafton. Later, the individuals would be described as mentally retarded—an attempt to provide a more scientific sounding term—and today, the preferred term is persons with development disabilities. From the beginning, a large number of the residents in Grafton were children, but often they were not actually developmentally disabled. Instead, the state had few resources for dealing with children who were otherwise problematic. Perhaps many will still remember a time when parents and communities were told to simply bring their children to Grafton and to forget them. The wisdom, or at least the belief at that time, was that separation would be best for the children and parents alike. We now know that those policies caused unbelievable harm and heartbreak.

A quick overview of three major periods when the social safety net expanded

The development of social policy in the United States over the last century has historically followed a pattern of experiments at the state level resulting in something akin to what we would presently call ‘best practices.’ Those models have frequently been adopted by the federal government, and those policies were then either required of, or forced upon, the states along with various amounts of federal aid, usually along the lines of some sort of matching formula. When these programs have included more generous federal funding, they have generally been warmly received. In the absence of adequate funding, such programs are often derided as ‘unfunded mandates.’ This process first began to appear during the Progressive Era (1880s till the end of WWI), it was expanded during the New Deal, (1932 through the end of WWII and even up to the present), and perhaps reached its zenith with the War on Poverty (1964 till 1968, though, once again, many of those programs survive to the present).

The Progressive Era (1880s through the end of WWI)

This was the period when North Dakota first became a territory and then a state. This was also a period of mass migration from Southern and Eastern Europe, or, as was the case for North Dakota, from Scandinavia and the German-speaking region of the Volga River in Russia.

While few federal, human service mandates came about in this era, it was a time during which numerous political reforms and policy patterns emerged. Women received the right to vote, there were unprecedented conversations about the immorality of child labor, and there were efforts to address political corruption and to create a healthier environment.

The University of North Dakota offered its first classes in Social Work in 1905, and the state emerged as one of the leaders in the study of rural poverty issues. This was also the period during which the socialist experiments of the Bank of North Dakota and the State Mill were proposed, debated, and passed. Those two institutions continue to serve the state in wonderfully profitable and beneficial ways to this day.

In the final years of WWI, the state was dabbling with administrative level research into the “economic, moral, and social condition of women, girls, and child workers.” By 1921, not quite a decade after the federal government had formed the U.S. Children’s Bureau, and a year after Congress had passed legislation supporting vocational rehabilitation, North Dakota formed the Children’s Code Commission to study and advance the interests of children. The goals included the promotion of self-reliance among children aging out of care, as well as able-bodied adults who had, for various reasons, been unemployed. Through the 1920s, statewide, administrative authority continued to expand services for children including probation officers for juvenile delinquents and the care of “illegitimate, defective, crippled, or neglected children.”

New Deal (1932 through the end of WWII and up till the present)

In the midst of the Great Depression (“Great” because it was the worst in a series of depressions that had reoccurred every decade since the Civil War, and also “Great” because it was worldwide), in 1932, a newly elected Franklin Roosevelt promised the American people a New Deal. The New Deal quickly mandated a forty-hour work week and a minimum wage (intended as a livable wage at that time), workers compensation and unemployment insurance (both of which provided little benefit to North Dakota’s ‘self-employed’ farm families), the major expansion of federal farm programs, rural electrification, and multiple public works projects that provided income for families, and benefits to the state that we continue to enjoy to this day. In North Dakota, the Board of County Commissioners was given jurisdiction over the administration of new federal dollars for poor relief, setting the stage for the pass through of federal dollars through the state, to the counties.

In 1935, the New Deal produced the first major web of human service systems that provided the basics of a federally mandated social safety net. While conservative in comparison to other industrialized nations around the world, the Social Security Act provided Old Age and Disabilities benefits, Aid to Dependent Children, and the emergence of public health systems. In North Dakota, the process of federal mandates with federal funding for poor relief was further reinforced with the formation of the State Board of Public Welfare at the state level, and County Welfare Boards. The programs were both beneficial for, and, eventually, highly popular with North Dakotans.

War on Poverty (1963 through 1969 and up till the present)

As the federal government sought ways to address the demands of the Civil Rights movement and the realization that fully one third of the nation's citizens were living in poverty, Congress moved forward with bold initiatives to put a man on the moon and to fight a War on Poverty. By the end of the decade, Neil Armstrong had walked on the moon, and poverty rates had been cut by more than half.

In North Dakota, the combined passage of two War on Poverty era health programs including Medicare for the elderly, and Medicaid for low-income individuals, greatly improved the lives of many elderly in the state with the inflow of federal dollars. Additionally, the emergence of nursing homes financed with these federal dollars created a new form of economic development activity, including much needed employment, in rural communities across the state.

Despite these more immediate benefits, overall, North Dakota was slow to incorporate the federal, war on poverty programs. The Economic Opportunity Act of 1964 (the EOA), created a host of federal programs, including three key programs: Head Start, Community Action, and Job Corps.

The state moved forward fairly quickly in implementing Head Start programs, which are designed to provide proactive, early education and other supports for low-income children. Within a year after passage of the EOA, North Dakota was operating Head Start programs.

The next leg in the war on poverty's three-legged stool was community action, which seeks to work directly with low-income populations at the local level. It was twelve years after passage of the EOA before the North Dakota Community Action Partnership was established in 1976.

The last of the three was Job Corps, which had been initiated as a form of vocational training through quasi-military camps to serve low-income youth for whom university was unlikely. The Quentin N. Burdick *Job Corps* Center did not open in Minot until 1994, thirty years after the original legislation, despite indications that the program is highly effective with an eighteen percent return on investment.

All three programs offered beneficial matching ratios for state governments, but North Dakota's political climate during that period, and its strong emphasis on self-reliance, resulted in a determined resistance against these programs. This resulted in a loss of potential federal funding and worse, as will be discussed below in relation to the process of deinstitutionalization and the *ARC v ND* lawsuit.

Establishment of the Department of Human Services

As the state slowly implemented various anti-poverty programs utilizing federal funding, state government also moved forward with the formalization of its human service systems. The creation of the eight regional human service centers in the late 1960s and 70s, and the consolidation of various state agencies, all led to the creation of the Department of Human Services in 1981.

At present, DHS is headed by an Executive Director appointed by the Governor. The department oversees Aging Services, Behavioral Health, Child Support, Child and Family Services, Developmentally Disabled Services, Economic Assistance, Medical Services, Vocational Rehabilitation, and the Life Skills and Transition Center (the retooled institution in Grafton).

During the 1980s, North Dakota also began the process of licensing social workers, and the University of North Dakota gained approval for the only graduate-level social work program across the upper-tier states between Minneapolis and Seattle.

Mission and Roles of DHS

Mission:

- To provide quality, efficient, and effective human services, which improve the lives of people.

Roles:

- Provides services that help vulnerable North Dakotans of all ages to maintain or enhance their quality of life, which may be threatened by lack of financial resources, emotional crises, disabling conditions, or an inability to protect themselves.
- Supports the provision of services and care as close to home as possible to maximize each person's independence while preserving the dignity of all individuals and respecting their constitutional and civil rights.

Constitutional Requirements: “Powers and duties of the department”

The Century Code includes twenty-six designated responsibilities for DHS and the Regional Human Service Centers. Essentially, they include the following:

- DHS is the primary agency for all social welfare and human service activity, including the role of the state's official agency in dealing with related, federal issues, including distribution of funds.
- To study, advocate for, and provide preventive, rehabilitative, and other services to support individuals and families to retain or attain independence and self-reliance.
- In a cooperative and collaborative relationship, and with supervision from the courts, DHS is responsible for children who require state care including children in adoptive or foster homes, and children with special needs.
- To establish, administer, and oversee necessary standards and best practices including maintenance of associated records.
- Provision of general social services including social-psychological evaluations and treatments
- Administration of supplemental nutrition assistance programs, and all related cash assistance programs
- and, Administration of relevant programs and general protection of vulnerable adults.

ARC vs ND

The Community Mental Health Act of 1963, required that states 'deinstitutionalize' large institutions serving persons with developmental disabilities, and provide community services to promote the least restrictive environment possible including necessary assistance to promote independent living. Despite some limited efforts to implement aspects of the law, nearly thirty years later North Dakota was dead last in the process of deinstitutionalization.

In 1982, a year *after* the establishment of DHS, the North Dakota ARC initiated a lawsuit to force the state to adhere to federal law. What followed was court control of the state's system that lasted until 1995. Court sanctioned studies found deplorable conditions of overcrowding, forced sterilizations, extensive use of chains, cages, and other restraints, and woefully undertrained and under resourced staff. While the state eventually emerged with one of the top programs in the country, it only did so after great (and unnecessary) expense, and damage to its reputation.

Devolution since the 1980s

Over the last forty years human service systems in North Dakota, and the rest of the country, have been impacted by the parallel forces of privatization and devolution.

Privatization is the process by which services formerly provided by government are contracted out to private, for-profit or not-for-profit organizations. The belief is that government is inherently inefficient and that business is inherently superior. While the process of privatization has enjoyed some limited success, especially in terms of reducing budget expenses, the process has also created vulnerabilities to law suits and compromises in the quality of services. Additionally, private firms tend to cherry pick cases, leaving government with the most challenging and expensive clients.

Devolution is the process by which the federal government has retreated from its financial obligations while maintaining many of its requirements, leading to complaints about unfunded mandates.

Olmstead

In 1999, the U.S. Supreme Court heard the Olmstead case, which has been described as the most important civil rights decision for people with disabilities in the nation's history. Essentially, it requires that all people with disabilities have a qualified right to state funded supports and services to assure their maximum independence.

Olmstead applies to all state and Medicaid funded institutions, including nursing facilities. To date, the record on Olmstead is that individuals and groups have generally been successful in suing states, and that the courts continue to expand the various aspects of the decision to include broader understandings of disability (including addiction and related behavioral health issues), and state's responsibilities in providing accommodations.

North Dakota wisely has an Olmstead commission to monitor services and conduct planning in an ongoing effort to comply with the Olmstead decision. However, at present it is unlikely that any state can claim to be fully Olmstead compliant; of course, some states are more vulnerable to lawsuits than others. Importantly, as Olmstead continues its current expansion, advocates work toward a time when all Americans will have the supports they need. This will likely continue to increase costs and requirements for individual states.

Schulte Report

In July 2014, the Interim Legislative management received a report that it had commissioned in its desire to better understand behavioral health systems and related outcomes for the state. The resulting Schulte report begins with the stark sentence:

The North Dakota mental health and substance abuse system is in crisis.

That is followed by two paragraphs that describe the resulting challenges as “self-imposed,” and resulting from poor choices in relation to limited engagement with an “essential health benefits package for Medicaid [and] refusing to spend state funds ,on services and not applying for Medicaid waivers.” Having chosen to cut core services, the state failed to add necessary programs in relation to the population growth stemming from the oil boom. Additionally, the resulting workforce shortages throughout the system have been debilitating. In a related fashion, as many of you, and especially Senator Lee know all too well, the lack of coursework and the strength of independent licensing boards have made obtaining licensure “difficult to impossible,” and the resulting hiring challenges have created critical, statewide workforce shortages. The list of concerns goes on.

Perhaps most significantly, the conclusions of the Schulte report, especially in the context of the Olmstead decision, point to potentially significant threats to the state’s purse and its ability to chart its own course in relation to the governance of its human service systems.

Neglect of Native Am issues

One major omission from this overview is the complicated policy history involving human services and American Indian peoples. Indigenous people are the most legislated population in the U.S. due to severe pendulum swings in policies between, on the one extreme, providing assistance, and, on the other end of the continuum, genocidal efforts to kill Indians either physically or culturally. For instance, the motto of the Boarding School Movement was literally, “kill the Indian, save the child.” It was during the 1940s, on the heels of the changes wrought by the New Deal, that the state’s welfare systems first began merging with the state’s Indian Affairs Commission.

North Dakota presently has some of the most infamous of failed, tribal child welfare systems in the nation. At the same time, it would be a mistake to believe that this problem is limited to, or that it could be contained within reservation communities. Presently, only about 60% of enrolled members of North Dakota tribes live on reservations: most of the remaining 40% live in urban areas.

Recently, MHA Nation broke ground in North Bismarck on a \$25 million project (detox, residential and day treatment, and transitional living) to serve tribal members, with the hope of expanding service to members of other tribes in the future, including families and children.

As this committee pursues its work, it would be well advised to spend some focused time on Native American issues, the related systems, and that population’s unique needs.

Threats and weaknesses in the current system

In addition to a highly unpredictable federal environment, the state faces the specter of either a national law suit or investigation. The Olmstead Decision, especially in relation to the issues raised in the Schulte Report, clearly points to the potential for a reoccurrence of something along the lines of the

ARC v ND case from the 1980s. That sort of event is costly and threatens the state's ability to chart its own course as the state's freedom of governance may be compromised by outside forces. Additionally, that form of public conflict is bad for the state's national and global reputation, and . . . the state's leaders simply have a responsibility to ensure adequate services for its workforce, citizenry, and tax payers without being forced to do so.

Opportunities

As noted in the Schulte report, North Dakota has all the experience and resources necessary to address the human service systems' current challenges. The state has a long history of addressing challenges—we know how to get work done! Additionally, the size of the state's population means that our problems exist at a very human scale in which it is far easier to imagine solutions than in more densely populated areas where the problems are exponentially worse and the way forward more difficult to envision.

Strengths

Although North Dakota's Human Service systems are dealing with severe workforce shortages, they are staffed by dedicated professionals seeking to serve the state despite being under resourced and under financed. The state's strong ethos of self-reliance, along with the potential for strong, matching support from the federal government, and a willingness to study the challenges, all point toward the very real possibility of important changes and improvements in the state's human service systems. While federal mandates and humanitarian considerations put the state at some risk of major legal and financial ramifications if the current problems are not addressed, the actions of this committee represent an essential opportunity to avoid that trouble and to put the state on track toward greater support for vulnerable populations and greater self-reliance for those able to live independently.

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