

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### HUMAN SERVICES COMMITTEE

Thursday, October 16, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Jeff Delzer, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Jeff Delzer, Patrick R. Hatlestad, Curt Hofstad, Lee Kaldor, Gary Kreidt, Jon Nelson, Vonnie Pietsch, Chet Pollert, Clara Sue Price, Ken Svedjan, Robin Weisz; Senators JoNell A. Bakke, Dick Dever, Robert S. Erbele, Judy Lee, Jim Pomeroy, John M. Warner

**Members absent:** Representative James Kerzman; Senator Aaron Krauter

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

Representative Merle Boucher, member of the Legislative Council, was also in attendance.

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

**It was moved by Senator Dever, seconded by Representative Kreidt, and carried on a voice vote that the minutes of the July 1, 2008, meeting be approved as distributed.**

#### DEPARTMENT OF HUMAN SERVICES INFORMATION

Ms. Brenda M. Weisz, Director, Fiscal Administration, Department of Human Services, presented information on the department's budget for the 2007-09 biennium. She said through the first half of the biennium, 40.6 percent of the appropriation for the Temporary Assistance for Needy Families (TANF) program has been used. She said the department budgeted for an average monthly TANF caseload of 2,978 cases but had an actual monthly caseload average of 2,590 through June 2008.

Ms. Weisz said some medical assistance program service category expenditures have been more than anticipated. She said through 45.8 percent of the biennium, inpatient hospital, outpatient hospital, and dental services have spent from 48.1 percent to 52.5 percent of their biennial budgeted appropriation.

Ms. Weisz said the number of case managers in the Department of Human Services includes 79.25 full-time equivalent (FTE) positions assigned to developmental disabilities service programs and 110.50 FTE positions assigned to programs for persons with mental illness. She said through September 2008, 14 individuals have transitioned from the Developmental Center at Westwood Park to community-based programs. A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Delzer, Ms. Weisz said there are 122 individuals residing at the Developmental Center at Westwood Park.

In response to a question from Representative Delzer, Ms. Weisz said two persons are eligible for the medically fragile waiver service in the long-term care continuum program. However, she said, no expenditures have been reported for the service.

Mr. Erik Elkins, Assistant Director, Medical Services Division, Department of Human Services, presented information regarding the transfer of long-term care beds in the state. He said a number of beds are being transferred into urban areas from rural areas. He provided schedules prepared by the North Dakota Long Term Care Association detailing the transfer of long-term care beds in the state. He said between December 2007 and June 2010, a total of 218 beds are anticipated to be transferred into the Bismarck and Mandan area from other locations in the state. He said between January 2008 and January 2010, a total of 175 beds are expected to be transferred into the Fargo and West Fargo area from other locations in the state. A copy of the information presented is on file in the Legislative Council office.

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, said an increased demand for long-term care beds is occurring in Bismarck, Grand Forks, and Fargo. She said there is a decreasing demand for long-term beds in rural areas. She said new long-term care patients are primarily transferring from their homes or from a short hospital stay.

In response to a question from Representative Price, Ms. Peterson said medication dispensing issues impact hospital admissions more than long-term care admissions. She said devices are available to help individuals with the distribution of medications in their residences.

In response to a question from Representative Kreidt, Ms. Peterson said some long-term care facilities are selling their vacant beds. She said the current rate for the sale of a bed is \$18,000 to \$20,000 per bed. However, she said, the rate could decrease if the demand for beds decreases. She said the hospital in Richardton is in the process of converting to a long-term care facility. She said the facility has received a federal grant to assist in the purchase of vacant beds from other areas in the state.

In response to a question from Representative Delzer, Ms. Peterson said there are approximately

6,200 nursing facility beds in the state. She said approximately 56 percent to 57 percent of long-term beds are supported by Medicaid funds. She said other states have an average of 70 percent to 75 percent of long-term care beds supported with Medicaid funds.

Mr. Elkins presented information regarding recipient liability within Department of Human Services programs. He said medically needy coverage is available for Medicaid recipients whose incomes are too high to qualify for supplemental security income or TANF programs but who do not have enough income to meet their medical needs. He said medically needy coverage requires recipients to spend down their excess income on medical expenses prior to Medicaid paying any additional medical costs. He said medically needy income levels are intended to allow an individual, couple, or family enough money to meet their expenses for shelter, food, utilities, clothing, and other maintenance needs. He presented the following schedule, which compares the medically needy income eligibility levels to other programs:

Family Size	Medically Needy	Social Security Income	Food Assistance (Supplemental Nutrition Assistance)	Fuel Assistance (Low-Income Home Energy Assistance Program)
1	\$500	\$637	\$867	\$1,757
2	\$516	\$956	\$1,167	\$2,297
3	\$666	N/A	\$1,467	\$2,838
4	\$800	N/A	\$1,767	\$3,378

Mr. Elkins provided information on the estimated cost of increasing the income eligibility levels of the medically needy program from \$500 to \$720 for a one-person household and \$516 to \$969 for a two-person household. He said the cost increase for the 2009-11 biennium would be \$5.5 million, of which \$2 million would be from the general fund. A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Delzer, Mr. Elkins said he would provide the committee with information regarding income that is disregarded for the purposes of recipient liability calculations.

Senator Lee expressed concern regarding recipient liability levels. She said adjustments to liability levels may need to be considered by the 2009 Legislative Assembly.

At the request of Chairman Delzer, Ms. Carol K. Olson, Executive Director, Department of Human Services, provided information to the committee regarding the Medicaid management information systems project. She said the department is currently in negotiations with the project vendor to determine changes to the project schedule. She said the projected completion date has been extended due to issues arising with the project vendor.

In response to a question from Representative Boucher, Ms. Olson said there are no anticipated costs associated with the updates to the program due to the project delay.

In response to a question from Representative Svedjan, Ms. Weisz does not anticipate new coding specifications from the Centers for Medicare and Medicaid Services will increase the cost of the project. She believes the project contract provides that the vendor will include any changes in federal coding requirements.

### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES STUDY

Ms. Weisz presented information regarding the status of expenditures for the TANF program. She presented the following schedule detailing budgeted and estimated expenditures for the program during the 2007-09 biennium:

Category	Budgeted 2007-09 Biennium Expenditures	Estimated 2007-09 Biennium Expenditures	Difference
Assistance to needy families	\$10,168,692	\$6,689,618	(\$3,479,074)
Job preparation	9,861,098	9,125,819	(735,279)
Formation and maintenance of families	28,811,501	28,212,693	(598,808)
Other	4,086,963	4,404,483	317,520
Administration	6,289,141	7,321,757	1,032,616
Total	\$59,217,395	\$55,754,370	(\$3,463,025)

Ms. Weisz said in addition to expenditures being less than anticipated, the program has received an additional \$1,425,540 of TANF carryover from fiscal years 2006 and 2007. She said the total anticipated TANF carryover to the 2009-11 biennium has increased by \$4,888,565, from \$6,756,157 to \$11,644,722. A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Price, Ms. Weisz said six months of transitional child care is paid for through the TANF program.

In response to a question from Representative Delzer, Ms. Weisz said the state has not had any difficulty in meeting work requirements set forth by federal regulations for the TANF program.

Representative Svedjan expressed concern regarding the administrative expenses of the TANF program. Ms. Weisz said the department cannot expend more than 15 percent of the TANF block grant on administrative expenses. She said the increase in administrative expenses during the 2007-09 biennium is partly due to unanticipated expenses resulting from contracts with Job Service North Dakota.

In response to a question from Representative Kaldor, Ms. Weisz said some administrative expenses for the TANF program are paid to counties. She said counties are responsible for eligibility determination and targeted case management.

In response to a question from Representative Nelson, Ms. Weisz said some increases in administrative expenses are due to changes in federal requirements.

Representative Svedjan suggested the committee receive information regarding the administrative expenses of the TANF program. Chairman Delzer asked Ms. Weisz to provide the information to the committee.

**INFANT DEVELOPMENT PROGRAM STUDY**

Ms. JoAnne Hoesel, Developmental Disabilities Division, Department of Human Services, presented information regarding the infant development program. She said as of October 1, 2008, 908 infants and toddlers were receiving early intervention services which represents an increase of 56 children since January 1, 2008. She presented the following schedule which details the number of infants and toddlers receiving infant development services by region on October 1, 2008:

Region	Number Served
Northwest	39
North Central	79
Lake Region	61
Northeast	148
Southeast	207
South Central	80
West Central	224
Badlands	70
Total	908

A copy of the information presented is on file in the Legislative Council office.

In response to a question from Senator Lee, Ms. Hoesel said the infant development program targets children that have developmental delays.

Ms. Karen Larson, Developmental Disabilities Division, Department of Human Services, presented information regarding funding and ratesetting of the infant development program. She said funding for the program is provided from the general fund, federal Medicaid funds, and federal Part C funds. She presented the following schedule detailing funds available for the program and the projected program expenditures during the 2007-09 biennium:

	2007-09 Funds Available	2007-09 Projected Expenditures
General fund	\$3,892,327	\$3,600,395
Federal Medicaid funds	6,910,638	6,696,909
Federal Part C funds	82,164	267,840
Total	\$10,885,129	\$10,565,144

Ms. Larson said retrospective ratesetting requires that an interim rate be established for the purpose of reimbursing providers for reasonable costs. She said providers are required to submit a statement of budgeted costs annually to the department so an interim rate can be determined. She said providers

are reimbursed throughout the fiscal year based on the interim rate and each provider's rate is determined by the provider's allowable costs. She said at the close of the fiscal year, each provider reports actual costs for the previous fiscal year and a final rate and settlement amount is then determined. A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Delzer, Ms. Larson said federal Part C funds are used in the program for children entering the system. She said the funds provide reimbursement for the first partial month of service.

Senator Bakke expressed concern with the infant development program being administered by the Department of Human Services. She said it may be more appropriate for the Department of Public Instruction to be the administrator.

**IMMUNIZATION PROGRAM TRANSITION**

Ms. Arvy Smith, Deputy State Health Officer, State Department of Health, provided an update on the immunization program transition. She said local public health units began billing insurance companies on March 31, 2008. She said some local public health units have expressed concern regarding the time between vaccination dates and the billing of individuals by the University of North Dakota. She said through September 30, 2008, Blue Cross Blue Shield of North Dakota has processed 20,337 records and a total of \$539,069 has been paid to local public health units.

Ms. Smith provided the following schedule detailing the status of funding appropriated to the State Department of Health for the immunization program transition pursuant to 2007 House Bill No. 1435:

Total general fund appropriation	\$2,000,000
Funds spent through September 2008	
State-supplied vaccine purchases	(666,275)
Grants to local public health units for vaccine startup inventory for insured patients	(327,080)
University of North Dakota project startup costs	(23,786)
Travel and postage	(1,489)
Blue Cross Blue Shield of North Dakota programming costs	(60,436)
Additional local public health unit startup costs	(76,319)
Estimated remaining expenditures	
Additional startup costs for local public health units	(124,600)
Estimated remaining balance on June 30, 2009	\$720,027

Ms. Smith said the department will be focusing on the following issues that are affecting the immunization program transition:

- The number of patients not receiving vaccinations due to philosophical reasons and high-deductible insurance policies.

- The appropriateness of the \$2 administration fee withheld by the University of North Dakota for billing and collection expenses.
- Additional local public health unit needs resulting from the transition.
- Administrative costs incurred by local public health units.

A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Price, Ms. Smith said two local public health units have computer systems that need to be interfaced with the North Dakota immunization information system to avoid the double entry of vaccination records. She said until the interfaces are complete, the local public health units can hire temporary staff for data entry and bill the State Department of Health for the costs incurred.

In response to a question from Senator Bakke, Ms. Smith said some local public health units are reporting administration costs of \$35 to \$45 per vaccine. She said the immunization transition task force will be evaluating administration costs after December 2008.

In response to a question from Representative Price, Ms. Smith said the State Department of Health's 2009-11 budget request will include two FTE positions for administration of the immunization program transition.

In response to a question from Representative Delzer, Ms. Molly Sander, Immunization Program Manager, State Department of Health, said the department is anticipating a \$1.5 million Federal "317" vaccine allocation for fiscal year 2009. However, she said, a final allocation determination has not been made by the federal government and the state's allocation could decrease.

In response to a question from Representative Nelson, Ms. Smith said the collection of patient information is the cause for a large portion of administrative costs. She said the department is exploring alternative methods of collecting insurance information, including gathering data in collaboration with local school districts.

In response to a question from Senator Dever, Ms. Smith said local public health unit immunization billing is primarily conducted electronically through the North Dakota immunization information system.

Mr. Keith Johnson, Administrator, Custer District Health Unit, Mandan, commented to the committee regarding the immunization program transition. He said patient access is still available during the transition period. He questioned whether future funding for immunization programs will be provided by the state or whether counties, through local property taxes, will be responsible for providing the necessary funding.

In response to a question from Representative Delzer, Mr. Johnson said some private providers are choosing not to provide vaccinations which is

increasing the number of immunizations provided by local public health units.

The Legislative Council staff distributed written testimony regarding the immunization program transition from Ms. Debbie Swanson, Grand Forks Public Health Department. A copy of the testimony is on file in the Legislative Council office.

## OTHER COMMITTEE RESPONSIBILITIES

The Legislative Council staff presented a memorandum entitled [Agency Budgets for Analyses of Health Insurance Mandates](#). The Legislative Council staff said the Insurance Department has budgeted \$55,000 per biennium since 2003 for health insurance mandate analyses required by North Dakota Century Code (NDCC) Section 54-03-28. He said during the 2005 Legislative Assembly, the department paid \$13,929 for analyses and no legislative measures were considered by the 2007 Legislative Assembly that required an analysis.

The Legislative Council staff said the Public Employees Retirement System has not required the use of consultants when evaluating legislative measures mandating health insurance coverage. He said if future analyses require additional resources, NDCC Section 54-52.1-06.1 provides a continuing appropriation to the Public Employees Retirement System for consulting services related to the uniform group insurance program.

In response to a question from Senator Dever, Chairman Delzer said the Legislative Management Committee is reviewing deadlines for the introduction of bills mandating health insurance coverage. He said the deadlines will allow enough time to complete a proper analysis of the measures during legislative sessions.

The Legislative Council staff presented a memorandum entitled [Mental Health America of North Dakota's 2-1-1 Program](#). The Legislative Council staff said through July 2008, four state agencies have contracts with the 2-1-1 program during the 2007-09 biennium. He said in 2007, funding received by the 2-1-1 program from state agencies totaled \$25,126.

The Legislative Council staff said Mental Health America of North Dakota does not charge a fee for entities to be listed in its 2-1-1 database. However, he said, a fee may be charged if services to be provided require special training for staff, extra website or database activities, or specific entity reporting needs.

The Legislative Council staff presented a memorandum entitled [State Boards and Commissions Information Distribution Policies](#). The Legislative Council staff said the Drug Use Review Board adopted procedures that limit the distribution of certain information to board members. He said all contact by representatives of the Pharmaceutical Research and Manufacturers of America Association regarding board matters must be made through the board coordinator or the Department of Human Services Medicaid pharmacy program staff.

The Legislative Council staff said a review of various information sources did not provide reference to any guidelines for the distribution of information to members of boards and commissions. He said a survey of selected regulatory, occupational, commodity, and governing boards and commissions did not find any entity with a restriction in place.

The committee recessed for lunch at 11:50 a.m. and reconvened at 1:00 p.m.

Ms. Kelly Buettner-Schmidt, Chair of the Department of Nursing, Minot State University, presented information regarding the status of the Nursing Education Consortium. She said as of August 2008, there were 364 job positions open in the state for either registered nurses or licensed practical nurses.

Ms. Buettner-Schmidt said increases in nursing program enrollment have resulted in an increase in the number of registered nurse graduates. She said nursing program enrollments increased from 722 students in 2000 to 1,312 students in 2007.

Ms. Buettner-Schmidt presented the following schedule detailing the Nursing Education Consortium strategic plan for 2008-09:

Initiative	Action Plan
Remove obstacles to better meet current and future nursing needs	Obtain additional funding for faculty salaries
	Provide for appropriate enhancements for nursing faculty such as dues, licensing costs, research, and teaching support
	Define specific plans for recruitment and retention of nursing education and clinical faculty
Focus on the nursing needs of rural communities	Develop "grow-your-own" resources
	Develop additional rural clinic sites
	Enhance school nurse resources
	Increase simulation laboratory availability for rural students
Develop a collaborative program to develop mobile and stationary simulation laboratories	Strategize continuing needs for stationary and mobile laboratories using best practices
	Develop case statement for simulation laboratory development
	Pursue private, foundation, or federal funding for simulation laboratories for North Dakota nursing education

A copy of the information presented is on file in the Legislative Council office.

Senator Lee suggested the Nursing Education Consortium review Minnesota programs located near the North Dakota border.

In response to a question from Senator Warner, Ms. Buettner-Schmidt said simulator laboratories have a three- to five-year expected lifespan. She said maintenance expenses are a major cost component of the laboratories.

In response to a question from Representative Nelson, Ms. Buettner-Schmidt said accessibility to nursing education programs is important. She said

addressing the nursing faculty shortage and clinical education opportunity shortage are top priorities for the consortium.

In response to a question from Representative Price, Ms. Buettner-Schmidt said an increase in the enrollment size of nursing education programs has produced additional nursing graduates. She said student to faculty ratios have been impacted as a result of program expansions.

Dr. Carrie Sorenson, Chairman, Drug Use Review Board, presented information regarding board findings and recommendations. She presented the following recommendations proposed by the board in each drug class reviewed:

Drug Class	Recommendation
Human immunodeficiency virus (HIV)/acquired immune deficiency disorder (AIDS)	The board recommends Medicaid should not prior authorize HIV/AIDS medication, and a law need not exist to prohibit action in the future, specifically if a physician prescribed outside of the AIDS drug assistance program guidelines.
Oncology	The board recommends antineoplastics no longer be exempt from prior authorization and that the board be involved in the prior authorization of certain agents using private insurance as a guideline.
Attention deficit hyperactivity disorder	The board recommends removing the exemption for this class, prior authorizing Vyvanse after the Adderall XR trial, and prior authorizing Daytrana.
Antidepressants	The board recommends placing certain selective serotonin reuptake inhibitor medications on prior authorization and, therefore, removing the exemption for the antidepressant class of medications.
Antipsychotics	The board recommends prior authorizing alternate dosage forms and Invega if the exemption was removed from this class of medications.
Anticonvulsants	The board made no recommendation.

A copy of the information presented and the final report of the Drug Use Review Board are on file in the Legislative Council office.

In response to a question from Representative Kaldor, Dr. Sorenson said it may not be appropriate to prescribe generic anticonvulsant medication to a patient if the patient is already prescribed a non-generic anticonvulsant medication.

Representative Price said more attention needs to be placed on the overall effects of a medication instead of just the cost. She said readmissions, medication reactions, and compliance with medication dosage should also be considered.

In response to a question from Representative Delzer, Dr. Sorenson said the Drug Use Review

Board reviews statistics of patients to determine compliance with dosage requirements. She said the board also reviews the prescribing habits of providers.

In response to a question from Representative Delzer, Dr. Sorenson said efficacy and safety are considered by the board.

Dr. Brendan Joyce, Administrator, Pharmacy Services, Department of Human Services, said the board reviews certain criteria for each medication to determine proper use. He said information is gathered from Medicaid claims forms in the medication review process.

Dr. Jeffrey E. Hostetter, member, Drug Use Review Board, commented to the committee regarding policies and procedures of the board. He said board members are required to adhere to conflict of interest standards.

Dr. Hostetter said the board developed a policy to ensure all board members receive the same information from drug representatives. He said board policy was also developed in response to the increasing amount of time being required of board members in discussions with representatives of pharmaceutical companies.

Representative Delzer said current board policies may be an improper way of restricting access to members of a public board.

Representative Price suggested the committee receive a copy of the conflict of interest documents used by the board. Chairman Delzer asked Dr. Hostetter to provide the documents to the committee.

In response to a question from Representative Svedjan, Dr. Sorenson said current board policy does not appear to be limiting communication with board members. She said information is now being distributed through written communications.

Mr. Howard C. Anderson, Executive Director, State Board of Pharmacy, provided comments to the committee regarding the electronic drug monitoring program. He said certain controlled medications are reviewed to determine possible cases of drug abuse. He said an advisory committee is used to determine medication distribution levels that warrant further investigation.

Mr. Elkins presented an annual report of enrollment statistics and costs associated with the state children's health insurance program (CHIP) pursuant to NDCC Section 50-29-02. He said through August 2008, 4,038 children were enrolled in the Healthy Steps program which is 167 more children than were enrolled in September 2007. He said eligibility requirements of CHIP were expanded on October 1, 2008, to include children within 150 percent of the federal poverty level. As a result of the expansion, he said, an additional 800 children are expected to qualify for the program in the first 12 months of the new eligibility requirements.

Mr. Elkins presented the following schedule detailing appropriations and expenditures of the CHIP during the 2007-09 biennium:

Total CHIP Appropriation	CHIP Expenditures Through August 2008	Percentage of Appropriation Used <sup>1</sup>
\$20,204,746	\$10,537,506	52.15%

<sup>1</sup>Thirteen months (54.17%) of the biennium expired through August 2008.

Mr. Elkins said the federal CHIP plan is authorized through March 31, 2009. He said details of program reauthorization are unknown, including if additional funding will be available to states that wish to expand their programs. A copy of the information presented is on file in the Legislative Council office.

In response to a question from Representative Price, Mr. Elkins said the Department of Human Services received federal approval in June 2008 to expand CHIP eligibility to 150 percent of the federal poverty level. He said the department began the process of expanding the program in February 2008.

In response to a question from Representative Delzer, Mr. Elkins said the expanded eligibility requirements were effective October 1, 2008. He said the date was agreed to by the Department of Human Services and Centers for Medicare and Medicaid Services.

Representative Price expressed concern with the Department of Human Services' delay in implementing changes to the program.

Senator Lee stressed the importance of further developing electronic health records in the state. She said the Legislative Assembly may need to provide resources to assist stakeholders in developing electronic health records systems.

**It was moved by Senator Warner, seconded by Representative Price, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.**

Chairman Delzer acknowledged the retirement of Representative Price and thanked her for the years of service she provided to the Legislative Assembly.

**It was moved by Representative Price, seconded by Representative Kaldor, and carried on a voice vote that the committee be adjourned sine die.**

Chairman Delzer adjourned the meeting sine die at 2:45 p.m.

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Brady A. Larson  
Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:1