

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HUMAN SERVICES COMMITTEE

Tuesday, July 31, 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, Roger Brabandt, Donald L. Clark, Tom Conklin, Curt Hofstad, Kathy Hogan, Richard Holman, Robert Kilichowski, Vonnie Pietsch, Chet Pollert, Jim Schmidt; Senators Dick Dever, Robert Erbele, Tim Mathern, Gerald Uglem

Members absent: Representative Dick Anderson; Senator Joe Miller

Others present: See [Appendix A](#)

It was moved by Senator Mathern, seconded by Representative Clark, and carried on a voice vote that the minutes of the May 30, 2012, meeting be approved as distributed.

STUDY OF GUARDIANSHIP SERVICES

The Legislative Council staff presented a memorandum entitled [Study of Guardianship Services - Final Report Recommendations](#). The memorandum provides a summary of recommendations included in the final report for the study of guardianship services completed by Mr. Winsor C. Schmidt, faculty member, University of Louisville School of Medicine. The recommendations are categorized by those relating to general guardianship provisions and those relating to delivery of guardianship services and include final report page references.

The Legislative Council staff presented a memorandum entitled [Study of Guardianship Services - Delivery Model for Guardianship Services - Preliminary Estimated Costs](#). The memorandum summarizes the preliminary estimated costs of implementing the proposed guardianship services delivery models. The estimates are preliminary and are subject to change as determinations are made and additional information becomes available. The cost estimates vary from \$1.36 million per biennium for the alternative county model to \$8.2 million for the judicial model.

Ms. JoAnne Hoesel, Cabinet Lead, Program and Policy, Department of Human Services, provided comments ([Appendix B](#)) regarding the final report for the study of guardianship services. She said the final report assumes the department's current contracted guardianship services would be moved to a new

guardianship services model to avoid having multiple models in the state. She said there are questions on how individuals currently receiving guardianship services from the department would be affected by a change in the guardianship services model. If individuals are transferred to a different guardian, she said, it is possible that court involvement would be required resulting in additional costs.

Ms. Hoesel said the recommendation to change from voluntary reporting of abuse or neglect to mandatory reporting of abuse or neglect may affect the department's Vulnerable Adult Protective Services (VAPS) program. If mandatory reporting is approved, she said, it will be necessary to review and address the impact to the VAPS program to ensure that reports of exploitation and other concerns can be reviewed and assessed in an effective and timely manner.

Ms. Hoesel said guardianship services differ based on the individual under guardianship. She said there are very different needs for individuals with developmental disabilities, a traumatic brain injury, or a serious mental illness and individuals who are elderly. She said the differences impact guardianship costs and affect the number of individuals a guardian can appropriately serve.

In response to a question from Representative Hogan, Ms. Hoesel said the department will provide the committee with information regarding the department's VAPS program, including information on the number of full-time equivalent (FTE) positions that are currently assigned to the program.

Representative Hogan said the Department of Human Services' current system of providing guardianship services to individuals with developmental disabilities is functioning effectively and should not be changed. She said the committee could consider establishing a guardianship program for individuals with a traumatic brain injury or a serious mental illness and individuals who are elderly.

Ms. Sally A. Holewa, State Court Administrator, North Dakota Supreme Court, provided comments ([Appendix C](#)) regarding the final report for the study of guardianship services. She provided the following summary of the estimated costs associated with implementing a court guardianship services model:

Description	Estimated Biennial Costs
Version A - This version assumes the Department of Human Services continues to provide guardianship services under its Developmental Disabilities Division, and the judicial branch would be responsible for establishing a guardianship program for the additional potential 305 guardianship cases. In addition, the judicial branch would be responsible for training and monitoring of guardians.	\$4,577,549
Version B - This version assumes the judicial branch would be responsible for establishing a guardianship program for all public guardianship cases in the state.	\$8,254,851
Version C - This version assumes the county and the Department of Human Services Developmental Disabilities Division would each continue to provide public guardianships. The state could choose to reimburse the counties for the guardianship daily costs. The court would assume responsibility for setting standards for guardians, providing training to guardians, and monitoring the guardians.	\$2,163,322

Ms. Holewa said the final report for the study of guardianship services makes a number of recommendations to strengthen procedural safeguards. She said the following recommended changes could be incorporated into the current guardianship process with minor adjustments:

General procedural safeguards	<p>A petition for guardianship includes detailed information regarding the need for guardianship and information about the qualifications of the proposed guardian.</p> <p>The proposed ward be given notice of the hearing.</p> <p>The proposed ward be provided with a written notice of the ward's rights prior to the hearing, including information on the nature, purpose, and consequences of a guardianship.</p>
Emergency guardianship safeguards	<p>Notice be given to the proposed ward of the petition and hearing prior to the emergency hearing unless certain conditions are met.</p> <p>The right to request a hearing on an emergency order, and if an emergency order is issued, that the proposed ward be given notice of the ward's right to request a hearing on the order.</p> <p>Reduction in the length of time an emergency appointment can be in effect from 90 days to 60 days.</p>

Ms. Holewa said the following recommendations included in the final report raise concerns with the judicial branch and have the potential to add significant costs to the state:

- Provide the right to counsel to the proposed ward.

- Grant the alleged incapacitated person 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.
- Adopt a right to trial by jury in guardianship proceedings.
- Change the standard of proof in guardianship proceedings to "clear, unequivocal, and convincing evidence."

Ms. Holewa said the judicial branch supports the following recommendations included in the final report relating to the prevention of exploitation and abuse:

- Enact guardianship qualification requirements, such as requiring fingerprint, criminal history, and credit background checks before appointment as a guardian.
- Establish a system for monitoring guardianship annual reports, including filing and reviewing annual reports and plans.

Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, provided comments ([Appendix D](#)) regarding the final report for the study of guardianship services. He said the state's guardianship and public administrator system is an ad hoc system that varies in funding and service providers from county to county. He said the proposed independent state office model or the court model offer improvements to the current system.

Honorable Gerald W. VandeWalle, Chief Justice, Supreme Court, provided comments regarding the final report for the study of guardianship services. He expressed concern with the unmet guardianship need for the elderly and the monitoring of guardianships.

Mr. Larry Bernhardt, Executive Director, Catholic Charities North Dakota, provided comments regarding the final report for the study of guardianship services. He said Catholic Charities North Dakota contracts with the Department of Human Services to provide guardianship services to individuals with developmental disabilities. He said the program is functioning well. He said the organization's guardians have a current caseload ratio of 1 to 36. He said the recommended guardianship ratio of 1 to 20 is too low.

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 she supports the recommendations included in the final report for the study of guardianship services. She said it is important to provide education, certification, and qualification requirements for guardians.

In response to a question from Senator Mathern, Ms. Vetter said Guardian and Protective Services, Inc., provides guardianship services to the elderly. At this time, she said, the organization is not providing

guardianship services to individuals with a traumatic brain injury or a serious mental illness.

In response to a question from Representative Hogan, Ms. Vetter said the recommended guardianship ratio of 1 to 20 seems appropriate.

It was moved by Representative Hogan, seconded by Senator Mathern, and carried on a roll call vote that the Legislative Council staff prepare a bill draft to incorporate the final report recommendations to strengthen the general procedural and emergency guardianship safeguards. Representatives Wieland, Brabandt, Clark, Conklin, Hofstad, Hogan, Holman, Kilichowski, Pietsch, Pollert, and Schmidt and Senators Uglem, Dever, Erbele, and Mathern voted "aye." No negative votes were cast.

In response to a question from Representative Wieland, Mr. Bernhardt said Catholic Charities North Dakota has a waiting list for guardianship services of approximately 45 individuals. He said the organization has requested a funding increase to allow for additional guardianships for the 2013-15 biennium.

In response to a question from Representative Wieland, Ms. Hoesel said the waiting list for guardianship services for individuals with disabilities began in March 2012.

Senator Mathern requested the committee receive comments from a representative of the Commission on Legal Counsel for Indigents regarding the potential for providing guardianship services at the committee's next meeting. Chairman Wieland said the presentation will be requested for the committee's next meeting.

STUDY OF QUALIFIED SERVICE PROVIDER SYSTEM

The Legislative Council staff presented a memorandum entitled [Status of the Study of the Qualified Service Provider System](#). The memorandum provides information regarding the status of the committee's study of the state's qualified service provider (QSP) system.

Representative Hogan expressed concern regarding the recruitment of QSPs in areas of the state affected by oil and gas development.

In response to a question from Representative Wieland, Ms. Carol K. Olson, Executive Director, Department of Human Services, said the department is in the process of preparing its budget request for the 2013-15 biennium. She said the department has not determined whether the budget request will include a funding increase for QSPs.

Ms. Chris Burd, Ph.D., R.N., home and community-based services consultant, Standing Rock Sioux Tribe, provided comments ([Appendix E](#)) regarding the committee's study of the QSP system. She said the QSP system needs improvements to be effective in the future as a better option to assist the elderly and individuals with disabilities. She said the following

barriers have been identified during QSP training sessions and discussions with members of the QSP Association of North Dakota:

- Many individuals are not offered the option of receiving home and community-based care services.
- Delays occur when setting up QSP services for individuals seeking services.
- Standardized training for QSPs is lacking.
- Access to nursing consultations is lacking for medically complicated individuals.
- There is a lack of assistance with questions on the application and billing processes.

Mr. Chuck Stebbins, Disability Resource Specialist, North Dakota Center for Persons with Disabilities, provided comments regarding the committee's study of the QSP system. He said QSPs are important providers in the home and community-based services system. He said many elderly and people with disabilities are choosing to use the home and community-based services system to continue to live in their homes as long as possible rather than enter a nursing facility. He said it is important to recruit and retain QSPs.

STUDY OF THE DEPARTMENT OF HUMAN SERVICES' CASELOADS AND PROGRAM UTILIZATION

Ms. Debra McDermott, Assistant Director, Fiscal Administration, Department of Human Services, provided information ([Appendix F](#)) regarding the status of the department's legislative appropriation for the 2011-13 biennium and anticipated budget needs for the 2013-15 biennium. She said the department is currently analyzing expenditures for the first year of the 2011-13 biennium. She said the state's federal medical assistance percentage (FMAP) for federal fiscal year 2013 is 52.27 percent, a decrease of 3.13 percent from the state's 2012 FMAP of 55.40 percent. She said the decrease is anticipated to result in an estimated general fund deficiency request for the 2011-13 biennium of \$21.2 million. She said the estimated FMAP for fiscal year 2014 is 50 percent, resulting in an estimated additional general fund need of \$91.5 million for the 2013-15 biennium.

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix G](#)) regarding historical caseloads and program utilization for the Medical Services Division and long-term care continuum programs and the estimated impact of the Affordable Care Act (ACA) on the department's anticipated caseloads and budget, including information on the status of related full-time equivalent positions authorized by the Legislative Assembly during the 2011 special legislative session. She provided the following summary of historical caseloads and program utilization for the Medical Services Division and long-term care continuum programs:

	2006 (Actual)	2007 (Actual)	2008 (Actual)	2009 (Actual)	2010 (Actual)	2011 (Actual)	2011-13 (Budgeted)
Total Medicaid recipients	38,878	38,833	41,435	42,231	46,027	46,351	1
Medical services							
Inpatient hospital	909	843	1,228	1,151	1,229	1,188	1,227
Outpatient hospital	6,396	4,949	7,824	8,397	8,920	8,707	8,813
Physicians	17,667	15,542	20,171	21,436	23,806	23,538	24,360
Drugs (net)	19,883	15,907	Not available	Not available	18,580	19,240	17,854
Healthy Steps	3,278	3,764	4,006	3,470	3,368	3,718	4,026
Long-term care							
Nursing facilities (days paid)	110,289	126,222	109,182	102,286	100,684	99,635	102,058
Basic care (days paid)	27,025	25,647	25,761	27,470	30,856	35,334	32,651
Service payments for elderly and disabled (SPED)	1,240	1,321	1,434	1,360	1,299	1,278	1,350
Expanded SPED	127	116	109	106	116	122	137
Home and community-based services waiver	279	241	244	256	287	304	327
Targeted case management	342	342	427	416	460	494	488
Personal care option	512	571	570	569	617	621	671
Technology dependent waiver			1	1	1	1	2
Medically fragile waiver				1	2	3	9
Partnership in assisting community expansion (PACE)				10	41	53	85
Children's hospice waiver							17
Developmental disabilities grants	2,765	3,027	3,131	3,235	3,326	3,293	1

¹Recipient information is not available as budget is based on units of service for individual categories.

NOTE: The caseload information for nursing facilities and basic care represent the average number of days paid for recipients for a month. All other services represent recipients served.

Ms. Anderson said the ACA, which was enacted in March 2010, requires each state to expand Medicaid coverage for all individuals under age 65 with incomes up to 138 percent of the federal poverty level by January 1, 2014. She said the ACA authorized federal funding as follows for the newly eligible individuals:

Calendar Years	Federal Funding
2014 through 2016	100 percent
2017	95 percent
2018	94 percent
2019	93 percent
2020 and subsequent years	90 percent

In 2010 Ms. Anderson said the Department of Human Services prepared a preliminary estimate of the impact of the ACA, including the Medicaid expansion. She said the estimate included the impact of providing coverage for the newly eligibles and previously eligibles as well as coverage for children who may switch between the children's health insurance program and Medicaid and for the medically needy group. She said the preliminary estimate was that North Dakota expenditures could increase by \$106 million through 2019 and that Medicaid enrollment could increase by as much as 50 percent.

Ms. Anderson said the United States Supreme Court recently upheld the 2014 Medicaid expansion; however, the Court struck down the mandate providing that the federal government could withhold all federal Medicaid funding if a state chooses to not expand Medicaid. Therefore, she said, the decision about whether to expand the Medicaid program is left to each state.

Ms. Anderson said the department is in the process of reanalyzing the impact of the Medicaid expansion and the affiliated areas that was prepared in 2010. She said the new analysis will be available for the 2013 regular legislative session.

Ms. Anderson said there will be impacts to the Medicaid program and Medicaid expenditures even if the state chooses not to expand Medicaid because the ACA requirements to move to modified adjusted gross income eligibility requirements remain.

Ms. Anderson provided the following summary of the status of the seven FTE positions authorized during the November 2011 special legislative session to assist the department with the workload resulting from the ACA:

Position	Requested Start Date	Actual or Anticipated Start Date
Economic assistance - Policy trainer	April 1, 2013	April 2013
Child support enforcement - Attorney	January 1, 2012	September 2012
Medical services - Eligibility policy	January 1, 2012	February 6, 2012
Medical services - Program integrity	January 1, 2012	January 17, 2012
Medical services - Nurse	October 1, 2012	October 2012
Medical services - Surveillance and utilization review system analyst	January 1, 2013	January 2013
Medical services - Administrative support	January 1, 2013	January 2013

In response to a question from Senator Mathern, Ms. Anderson said the ACA allows different benefit options for the newly Medicaid eligibles.

The committee recessed for lunch at 12:26 p.m. and reconvened at 1:18 p.m.

STUDY OF THE AUTISM SPECTRUM DISORDER

The Legislative Council staff presented a memorandum entitled [Autism Spectrum Disorder Task Force Recommendations](#). The memorandum summarizes the recommendations of the Autism Spectrum Disorder Task Force presented to the Human Services Committee on May 31, 2012.

Dr. Theodore Kleiman and Dr. Linda Getz-Kleiman, Essentia Health, Fargo, provided comments regarding the committee's study of the autism spectrum disorder. Dr. Kleiman and Dr. Getz-Kleiman said there has not been a sufficient amount of evidence-based research completed regarding the diagnosis and treatment of the autism spectrum disorder.

Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, provided comments ([Appendix H](#)) regarding the committee's study of the autism spectrum disorder. Pursuant to North Dakota Century Code Section 54-35-02.4, he said, any health insurance mandate, such as an autism insurance mandate, must be heard by the Employee Benefits Programs Committee before a standing legislative committee can take action on the bill. He said an actuarial analysis must be completed prior to a decision by a standing committee. He said all health insurance mandates must be applied to the Public Employees Retirement System for one biennium to ascertain the actual cost benefit.

Ms. Kristen Wallman, President, Autism Society of North Dakota, Fargo, provided comments ([Appendix I](#)) regarding the committee's study of the autism spectrum disorder. She said the Autism Society of North Dakota has identified the following three priority initiatives relating to autism spectrum disorder programs and services in North Dakota:

1. Autism spectrum disorder registry - Mandate the development of an autism spectrum disorder registry to be maintained within the State Department of Health. The estimated biennial cost is \$200,646.
2. Best practice standards - Convene a temporary ad hoc committee to establish best practice standards for the state's autism spectrum disorder protocol from screening to assessment. The estimated cost to convene a committee for four months to six months is \$6,000.
3. Voucher system for services and support - Establish a voucher system to be used for autism spectrum disorder programs and services. The estimated cost for 150 individuals is \$4,085,850 per year, or \$8,171,700 for a biennium.

In response to a question from Representative Hogan regarding the Autism Spectrum Disorder Task Force recommendation to fund a state autism coordinator, Ms. Wallman said the Autism Society of North Dakota believes a statewide coordinator is needed, but the cost of the position is too high.

Dr. Barbara Stanton, autism specialist, Prairie St. John's, Fargo, provided comments ([Appendix J](#)) regarding the committee's study of the autism spectrum disorder. She said she supports the priority initiatives recommended by the Autism Society of North Dakota.

Ms. JoAnne Vieweg, President, Red River Valley Asperger-Autism Network, Fargo, provided comments ([Appendix K](#)) regarding the committee's study of the autism spectrum disorder. She said she supports the priority initiatives recommended by the Autism Society of North Dakota.

Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, provided information ([Appendix L](#)) regarding the autism spectrum disorder Medicaid waiver, including information on services provided, individuals served, and budgeted and actual expenditures for the 2011-13 biennium. She said the department's autism spectrum disorder Medicaid waiver was approved by the Centers for Medicare and Medicaid Services for a period of three years (November 1, 2010, through October 31, 2013). She said the waiver has the capacity to annually serve 30 children ages birth through four years who have a confirmed autism spectrum disorder diagnosis. She said the following services are available through the waiver:

- Intervention coordination - Services that support families through coaching and problem-solving to implement strategies within daily routines.
- In-home supports - Services that offer the family a staff person in the family's home to assist in the consistent implementation of evidence-based interventions.
- Equipment and supplies.
- Environmental modifications.

Ms. Bay said there are currently 19 children receiving services through the waiver. She said children may receive multiple services based upon their needs. Of the 19 children, she said, 12 have been authorized for in-home supports, 7 authorized for equipment and supplies, and 17 authorized for intervention coordination.

Ms. Bay said the department's budget for the children's autism spectrum disorder waiver for the 2011-13 biennium is \$1,860,324. She said actual expenditures total \$124,651 to date. She said data indicates that the number of children receiving services has increased over the last three months as well as the expenditures for these individuals.

In response to questions from Representative Hogan, Ms. Bay said the department will provide the committee with information regarding the geographic location of the children enrolled in the waiver, locations of referrals for the waiver, and the number of children determined not to be eligible for the waiver.

Chairman Wieland asked the Legislative Council staff to summarize all recommendations submitted to the committee regarding the study of the autism spectrum disorder.

**COMMITTEE DISCUSSION
AND STAFF DIRECTIVES**

Chairman Wieland announced that the upcoming meetings are tentatively scheduled for Thursday, August 30, 2012, and Thursday, October 4, 2012.

It was moved by Senator Mathern, seconded by Senator Dever, 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 2:44 p.m.

Roxanne Woeste
Assistant Legislative Budget Analyst and Auditor

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:12