

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HUMAN SERVICES COMMITTEE

Tuesday, April 24, 2018
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Kathy Hogan, Chairman, called the meeting to order at 8:30 a.m.

Members present: Representatives Kathy Hogan, Bert Anderson, Pamela Anderson, Chuck Damschen, Daniel Johnston, Dwight Kiefert, Mary Schneider, Wayne A. Trottier, Greg Westlind; Senators Howard C. Anderson, Jr., David A. Clemens, Robert Erbele, David Hogue, Oley Larsen, Judy Lee

Members absent: Representative Christopher D. Olson; Senator Tim Mathern

Others present: Senator Joan Heckaman, New Rockford, member of the Legislative Management
See [Appendix A](#) for additional persons present.

It was moved by Senator Lee, seconded by Representative Schneider, and carried on a voice vote that the minutes of the January 4, 2018, meeting, be approved as distributed.

**STUDY OF PUBLIC HUMAN SERVICES
State Behavioral Health System**

Dr. Bevin Croft, Research Associate, Human Services Research Institute, presented information ([Appendix B](#)) regarding a study of the state's behavioral health system. She said goals of the study were to conduct an in-depth review of the state's behavioral health system; to analyze current utilization and expenditure patterns by payer source; to provide recommendations for enhancing the integration, cost-effectiveness and recovery orientation of the system to effectively meet community needs; and to establish strategies for implementing the recommendations. She said the study gathered data by reviewing existing reports and documents, by conducting stakeholder interviews, and by reviewing Medicaid claims and state service utilization data for behavioral health services.

Dr. Croft reviewed the following report recommendations and strategies:

Recommendation	Strategy
1. Develop a comprehensive implementation plan	1.1 Reconvene system stakeholders, including service users and their families 1.2 Form an oversight steering committee to coordinate with key stakeholder groups 1.3 Establish workgroups to address common themes identified in this report
2. Invest in prevention and early intervention	2.1 Prioritize and implement evidence-based social and emotional wellness initiatives 2.2 Expand existing substance use prevention efforts, restore funding for the Parents Listen, Educate, Ask, Discuss program 2.3 Build upon and expand current suicide prevention activities 2.4 Continue to address the needs of substance exposed newborns and their parents 2.5 Expand evidence-based services for first-episode psychosis
3. Ensure all North Dakotans have timely access to behavioral health services	3.1 Coordinate and streamline information on resources 3.2 Expand screening in social service systems and primary care 3.3 Ensure a continuum of timely and accessible crisis response services 3.4 Develop a strategy to remove barriers to services for persons with brain injury 3.5 Continue to invest in evidence-based harm-reduction approaches

Recommendation	Strategy
4. Expand outpatient and community-based service array	4.1 Ensure access to needed coordination services 4.2 Continue to shift funding toward evidence-based and promising practices 4.3 Expand the continuum of substance use disorder treatment services for youth and adults 4.4 Support and coordinate efforts to enhance the availability of outpatient services in primary care 4.5 Address housing needs associated with behavioral health needs 4.6 Promote education and employment among behavioral health service users 4.7 Restore/enhance funding for recovery centers 4.8 Promote timely linkage to community-based services following a crisis 4.9 Examine community-based alternatives to behavioral health services currently provided in long-term care facilities
5. Enhance and streamline system of care for children and youth	5.1 Improve coordination between education, early childhood, and service systems 5.2 Expand targeted, proactive in-home supports for at-risk families 5.3 Develop a coordinated system to enhance treatment-related foster care capacity and cultural responsiveness 5.4 Prioritize residential treatment for those with significant/complex needs
6. Continue to implement and refine criminal justice strategy	6.1 Ensure collaboration and communication between systems 6.2 Promote behavioral health training among first responders and others 6.3 Review behavioral health treatment capacity in jails 6.4 Ensure Medicaid enrollment for individuals returning to the community
7. Engage in targeted efforts to recruit and retain competent behavioral health workforce	7.1 Establish a single entity for supporting workforce implementation 7.2 Develop a single database of statewide vacancies for behavioral health positions 7.3 Provide assistance for behavioral health students working in areas of need in the state 7.4 Raise awareness of student internships and rotations 7.5 Conduct comprehensive review of licensure requirements and reciprocity 7.6 Continue establishing training and credentialing program for peer services 7.7 Expand credentialing programs to prevention and rehabilitation practices 7.8 Support a robust peer workforce through training, professional development, and competitive wages
8. Expand the use of telebehavioral health	8.1 Support providers to secure necessary equipment/staff 8.2 Expand the availability of services for substance use disorders, children and youth, and American Indian populations 8.3 Increase types of services available 8.4 Develop clear, standardized regulatory guidelines
9. Ensure the system reflects values of person centeredness, cultural competence, and trauma-informed approaches	9.1 Promote shared decisionmaking 9.2 Promote mental health advance directives 9.3 Develop a statewide plan to enhance commitment to cultural competence 9.4 Identify cultural/language/service needs 9.5 Ensure effective communication with individuals with limited English proficiency

Recommendation	Strategy
	9.6 Implement additional training 9.7 Develop/promote safe spaces for LGBTQ individuals within the behavioral health system 9.8 Ensure a trauma-informed system 9.9 Promote organizational self-assessments
10. Encourage and support the efforts of communities to promote high-quality services	10.1 Establish a state-level leadership position representing persons with lived experience 10.2 Strengthen advocacy 10.3 Support the development of and partnerships with peer-run organizations 10.4 Support community efforts to reduce stigma, discrimination, and marginalization 10.5 Provide and require coordinated behavioral health training among related service systems
11. Partner with tribal nations to increase health equity	Collaboration within and among tribal nations, and with state and local human service agencies
12. Diversify and enhance funding for behavioral health	12.1 Develop an organized system for identifying/responding to funding opportunities 12.2 Pursue 1915(i) Medicaid state plan amendments 12.3 Pursue options for financing peer support and community health workers 12.4 Sustain/expand voucher funding and other flexible funds for recovery supports 12.5 Enroll eligible service users in Medicaid 12.6 Join in federal efforts to ensure behavioral and physical health parity
13. Conduct ongoing, system-side data-driven monitoring of needs and access	13.1 Enhance and integrate provider data systems 13.2 Develop system metrics to monitor progress on key goals 13.3 Identify and target services to those with highest service costs

In response to a question from Representative P. Anderson, Dr. Croft said the state should prioritize the creation of infrastructure to assist in developing an action plan to implement the recommendations.

In response to a question from Senator H. Anderson, Dr. Croft said the study recommendations follow the guidelines of a good and modern behavioral health system approach which spans a number of program types and agencies to provide the required services at appropriate times.

Senator Lee said the University of North Dakota School of Medicine and Health Sciences' Indians into Medicine Program produces a large number of doctors who are American Indian. However, she said, it may be difficult to retain the doctors in the state to serve diverse populations.

Dr. Croft said one recommendation of the study is to gather additional data regarding the delivery of services to diverse populations. She said the state also needs to focus on retaining and recruiting a diverse workforce.

In response to a question from Senator Clemens, Dr. Croft said there are many opportunities to partner with faith-based organizations to provide community-based behavioral health services.

Senator Lee expressed concern regarding the lack of response from certain faith-based organizations in providing community-based behavioral health services.

Senator Clemens said family and faith-based services are an important component of the state's behavioral health system.

Dr. Croft said one study recommendation is to increase support and provide education to families and faith-based communities. She said there are a number of strategies that are effective in assisting parents in raising children.

Representative Schneider said prior interim committees have recommended additional funding to enhance behavioral health services. However, she said, many of the recommendations have not been enacted by the Legislative Assembly. She questioned how to implement the study recommendations without additional funding.

Dr. Croft said the response of North Dakota to behavioral health is similar to the response of several other states. She said most resources are directed to providing immediate intensive services to individuals. However, she said, the state should focus its resources strategically over the short- and long-term to effectively prevent behavioral health issues. She said it is more cost-effective to expend resources earlier on prevention and early intervention services for behavioral health issues than it is to later provide intensive services to individuals.

In response to a question from Chairman Hogan, Dr. Croft said it is not uncommon for individuals with behavioral health issues to be served in a nursing facility. She said a study recommendation is to review who is being placed in long-term care facilities and whether those individuals may be served in a less restrictive environment.

Chairman Hogan suggested committee members review the study data detailed by each region in the state. She said there are significant differences in how individuals are served in each region.

In response to a question from Representative Kiefert, Dr. Croft said Medicaid reimbursement rates affect the delivery of behavioral health services. She said providers need adequate funding to invest in qualified staff and continued staff training and development. Without adequate funding, she said, it is difficult for providers to meet best practices and standards for behavioral health.

Comments by Interested Persons

Ms. Jennifer Eberle, President/Owner and Licensed Professional Clinical Counselor, Creative Therapy, Valley City, provided comments ([Appendix C](#)) to the committee. She expressed concern regarding recent reductions in Medicaid reimbursement rates for counseling services. She said the reduced rates have resulted in providers accepting fewer Medicaid patients. She also said the shortage of licensed mental health counselors in the state is being worsened by licensing and reciprocity issues.

Ms. Valerie Meyers, Owner and Certified Counselor Supervisor, The Kids Therapy Center, Bismarck, provided comments to the committee. She said behavioral health services need to be offered across the state and not only in larger communities. She said low Medicaid reimbursement rates are affecting the ability of providers to train staff members. She also said Medicaid does not currently provide reimbursement for infant mental health which is a component of the behavioral health system.

In response to a question from Representative Schneider, Ms. Eberle said higher education institutions may not be providing enough information to students regarding scholarships available for programs that address high-demand workforce needs, such as counseling. She said some student loan forgiveness programs for counselors are not available to counselors in private practice.

Mr. Kurt A. Snyder, Executive Director, Heartview Foundation, Bismarck, provided comments to the committee. He suggested investing more behavioral health funding in prevention and community services. He said waiting to address an individual's behavioral health needs may require intensive treatment which is more expensive than prevention efforts.

Mr. Mark C. Palmer, Jamestown, provided comments to the committee. He said he has received training to become a mental health first responder and peer recovery specialist. He suggested focusing on recovery and person-centered treatment.

Ms. Trina Gress, Vice President of Employment, Community Options, provided comments ([Appendix D](#)) to the committee regarding the report of behavioral health services in the state. She said Community Options suggests the committee consider supporting the recommendations in the report regarding the development of a comprehensive implementation plan, the expansion of outpatient and community-based services, and the diversity and enhancement of behavioral health funding.

Ms. Heather Guttormson, Licensed Marriage and Family Therapist, Fargo, provided comments ([Appendix E](#)) to the committee. She expressed concern regarding changes to exclude marriage and family therapists from the advanced clinical specialist designation. She said the change has resulted in licensed marriage and family therapists being removed from the state's behavioral health network.

Mr. Carl Young, Protection and Advocacy for Individuals with Mental Illness Advisory Council, provided comments ([Appendix F](#)) to the committee. He said the council is supportive of the development of a comprehensive implementation plan for behavioral health services. He said the priorities of the council also include peer support and home- and community-based services.

Chairman Hogan said behavioral health is a statewide issue and not just the responsibility of government. She said communities and other entities, such as school districts and faith-based organizations, need to be involved in improving behavioral health. She said the behavioral health study report is a tool that can be used to enhance behavioral health services in the state.

Social Service Redesign Project

Mr. Christopher D. Jones, Executive Director, Department of Human Services, presented information ([Appendix G](#)) regarding the social services redesign project. He said the project is the result of 2017 Senate Bill No. 2206 which requires the Department of Human Services (DHS) to develop a plan to implement a state-paid economic assistance and social service program. He said the project is using four teams to review service needs and provide recommendations--children and family services, economic assistance eligibility, adults (aging and developmental disabilities), and administrative. He said the teams include representation from various stakeholder groups, including counties.

Mr. Jones reviewed the work of the children and family services committee, including the goals and barriers to success. He said the project will include receiving information from national experts, obtaining feedback from stakeholders, and reviewing structure and funding scenarios for the efficient implementation of changes. He said the project will likely take several bienniums to implement.

Senator Lee said the project initially started as a review of the finances for social service programs and has transformed into a review of the delivery of human services. She said she is supportive of the project and is encouraged by the work that has been completed.

In response to a question from Chairman Hogan, Mr. Jones said changes to the delivery of human services will need to be made incrementally.

In response to a question from Representative Westlind, Mr. Jones said DHS is reviewing the delivery of services to children in foster care. He said there may be significant cost-savings and improved outcomes by utilizing trained foster care families.

Senator Heckaman said changes in the delivery of human services may result in additional training for staff. She questioned if staff will have enough time to complete training and perform regular job duties.

Mr. Jones said the redesign project is also reviewing policy and law changes. He said there appears to be a large amount of administrative work that can be eliminated which would provide additional time for staff.

Mr. Terry Traynor, Executive Director, North Dakota Association of Counties, provided comments to the committee. He said initially county officials were concerned regarding the social service redesign project. However, he said, enthusiasm for the project has grown and county social service workers are encouraged by the project. He said counties are supportive of focusing on improving the delivery of social services to individuals.

Mr. Young provided comments to the committee regarding foster care services. He expressed concern regarding wait times for the placement of individuals in certain types of foster care. He said additional community services are needed and professional foster care may improve the current system.

Department of Human Services Update

Mr. Jones presented an update ([Appendix H](#)) on the structure and operations of DHS. He said priorities of DHS during the interim include restructuring the developmental disability payment system, adjusting the Medicaid program as necessary, developing the social services redesign project, implementing changes to behavioral health services, and improving DHS culture. He said the social service redesign project and behavioral health study report will likely affect several divisions and programs.

Senator Heckaman said consideration should be given to other services, such as transportation, when providing care for an individual. She said some individuals in rural areas may rely on public transportation to attend medical appointments. She said it is important for DHS to coordinate with other agencies, such as the Department of Transportation, to ensure proper services are being provided. She said individuals in some rural areas may not have access to public transportation services.

Mr. Jones said DHS plans to focus on areas with the greatest impact, such as transportation, when providing services to individuals. He said providing an individual with greater access to social services will reduce the individual's need for future medical services.

Senator Lee said local community participation can also assist in areas, such as transportation.

Chairman Hogan asked Mr. Jones to provide an update at the next committee meeting regarding the status of the implementation of legislation enacted by the 2017 Legislative Assembly that affects DHS.

STUDY OF THE TOMPKINS REHABILITATION AND CORRECTIONS CENTER

Ms. Pamela Sagness, Director, Behavioral Health Division, Department of Human Services, and Dr. Lisa Peterson, Clinical Director, Department of Corrections and Rehabilitation, presented information ([Appendix I](#)) regarding the vision for services provided through the Tompkins Rehabilitation and Corrections Center. Dr. Peterson said currently all Tompkins program participants are transitioning from prison and have a substance use disorder. She said the typical participant has legal charges related to substance use, is at moderate or high risk to reoffend, has a minimum custody classification, and is medically and psychiatrically stable.

Dr. Peterson said the Department of Corrections and Rehabilitation and DHS are recommending the following changes to the program:

- Accept participants that have serious mental health conditions, have a more challenging transition process than the average prison resident, or are under community supervision and are having difficulty meeting the expectations of their supervision term due to behavioral health concerns;
- Provide individualized assessment and recovery support plans for participants that enter the program from community settings;
- Develop in-reach from Free Through Recovery program providers;
- Implement medication-assisted treatment;
- Emphasize emotion regulation skills; and
- Build import-model services for employment development and educational and leisure opportunities.

In response to a question from Chairman Hogan, Dr. Peterson said the departments will be reviewing options to base a participants length of stay on the specific needs of the individual.

In response to a question from Representative P. Anderson, Dr. Peterson said there needs to be improved recovery supports that focus on each individual's needs. She said improving community support options, such as the establishment of peer support specialists, will improve recovery outcomes.

Ms. Sagness provided information ([Appendix J](#)) regarding outcomes of the Free Through Recovery program. She said from January 10, 2018, through April 18, 2018, there were 328 referrals to the program which resulted in 289 participants. She said program providers began recording the following outcome metrics:

- Is the participant living in a residence that is supportive of their recovery;
- Is the participant actively seeking or participating in employment;
- Is the participant demonstrating effort to reduce their substance use or the harm associated with their use or improving their mental health functioning; and
- Did the participant avoid law enforcement involvement resulting in arrest, criminal charges, or probation violations?

Ms. Sagness said in March 2018, 78 percent of program participants achieved at least three of the four outcome measurements. She said 22 percent of program participants achieved less than three of the measurement outcomes.

In response to a question from Chairman Hogan, Ms. Sagness said the majority of program referrals are from parole and probation officers. She said parole and probation officers validate outcome reports submitted by program providers.

In response to a question from Representative P. Anderson, Ms. Sagness said the program is used to partner care and coordination agencies with parole and probation officers. She said the program also matches participants with peer support services.

In response to a question from Chairman Hogan, Mr. Robbie Lauf, Policy Advisor, Governor's office, said the Governor does not currently have a recommendation regarding changes to the management and operations of the Tompkins Rehabilitation and Corrections Center. He said any recommended changes will be included in the 2019-21 biennium executive budget recommendation.

COMMITTEE DISCUSSION

Senator Clemens said other agencies, such as education agencies, also have a role in the human services system. He suggested the committee receive information regarding DHS key relationships and partnerships with other agencies.

Senator Larsen suggested the committee receive information regarding tribal involvement in the behavioral health system.

Senator Erbele suggested the committee receive information regarding the federal Medicaid 1915(i) waiver.

Representative P. Anderson expressed concern regarding delays in processing background checks for certain child care providers.

Chairman Hogan asked DHS to review the delay issues and provide information to the committee if needed.

Senator Larsen suggested the committee receive information regarding the qualified health assistant program. He also suggested the committee receive information regarding proposed changes to the foster care system.

STUDY OF REFUGEE RESETTLEMENT

Ms. Lodee A. Arnold, Assistant Director, Office of Indian/Multicultural Education, Department of Public Instruction, presented information ([Appendix K](#)) regarding English learner (EL) programs. She the state definition of an English learner is an individual who is aged 5 to 21, is enrolled in a North Dakota school district, has a primary language other than English or comes from an environment in which a language other than English significantly impacts the individual's level of English proficiency, and has difficulty speaking, reading, writing, and understanding English as determined by assessment results. She said federal law requires states to provide EL programs that meet specific standards.

Ms. Arnold said EL programs provide instruction to refugees, immigrants, and other individuals. She said in academic year 2017-18, 3,885 students were enrolled in EL programs. She said 1,111 of the 3,885 EL students had refugee status. She said some refugee students have achieved English proficiency and are not enrolled in EL programs. She presented the following schedule detailing total EL program enrollment at school districts, the number of EL students in the programs that are refugees, and the number of refugee students that are not enrolled in EL programs.

2017-18 EL Program Enrollment			
School District	Total EL Program Enrollment	Number of Refugee Students Enrolled in EL Programs ¹	Number of Refugee Students Not Enrolled in EL Programs ¹
Fargo	969	432	148
Bismarck	277	38	32
Dickinson	127	0 ²	0 ²
Dunseith	47	0	0
Grafton	49	0	0
Grand Forks	396	255	84
Mandan	112	0	0
McKenzie County (Watford City)	98	0 ²	0 ²
Minot	163	0 ²	0 ²
New Town	51	0	0
West Fargo	875	375	130
Williston	240	0	0
Other districts	481	0	0
Total	3,885	1,111 ²	400 ²

¹Includes individuals who have been in the country for more than 1 year and no longer have refugee status.

²Totals include students that are not listed for specific school districts due to the small number of refugee students enrolled in the school district.

Ms. Arnold said funding for EL programs is provided from state and other sources. She said state funding through the education funding formula is based on average daily membership (ADM). She said in addition to receiving general ADM funding for students, additional funding is provided for students enrolled in EL programs. She presented the following schedule detailing the general and weighted funding received by school districts for EL students:

2017-18 Funding Formula Payments for EL Students		
General ADM Payments for EL Students	Weighted EL Payment	Total Funding for EL Students
\$26,738,616	\$3,963,252	\$30,701,868

Ms. Arnold said state EL grants provide additional funding for instruction of EL students. She said 2017-18 school year grants were awarded to the four school districts in the state with the highest populations of EL students in specified proficiency levels. She presented the following schedule detailing grant awards:

School District	EL Grant Funding Awarded
Fargo	\$104,635
West Fargo	83,480
Grand Forks	34,984
Bismarck	26,901
Total	\$250,000

In response to a question from Senator Lee, Ms. Arnold said proficiency levels for EL students range from level 1 to level 6. She said level 1 students have the least amount of English proficiency. She said funding for EL grants is based on the number of EL students with proficiency levels 1, 2, and 3.

In response to a question from Representative P. Anderson, Ms. Arnold said the number of Native American students identified as EL students has decreased mostly due to changes in reporting practices.

In response to a question from Senator Heckaman, Ms. Arnold said EL students moving into the state may have had an EL assessment completed in another state. She said the assessment from the other state may be accepted if it is based on the same standards used by North Dakota schools.

In response to a question from Senator Clemens, Ms. Arnold said she would provide information to the committee regarding the number of staff providing EL instruction. Following the meeting, Ms. Arnold provided a document ([Appendix L](#)) detailing EL program staff at school districts in the state.

In response to a question from Senator Larsen, Ms. Arnold said the Department of Public Instruction provides EL funding only to school districts in the state. She said other programs, such as the Job Corps program, would receive EL funding through other sources.

Senator Lee said EL programs provide services to individuals from several different backgrounds, not just refugees. She said most EL students are not refugees.

Ms. Sonja Butenhoff, English Language Learner Coordinator, and Ms. Joy Retterath, Accountant, West Fargo Public Schools, presented information ([Appendix M](#)) regarding the West Fargo EL program. Ms. Butenhoff said approximately 850 EL students are in West Fargo schools with most EL students located in elementary schools. She said of the 850 EL students, 345 have refugee status.

Ms. Retterath said for the 2017-18 school year, the West Fargo Public Schools' EL program is estimated to cost \$3.3 million. She said state and federal funding provide \$1.1 million for the program with the remaining \$2.2 million provided from local funds.

In response to a question from Chairman Hogan, Ms. Butenhoff said the West Fargo school district established a "Welcome Center" for new students with minimal English skills. She said the center is a school that focuses on English proficiency through various methods of instruction. She said examples of EL instructional methods include the "pullout method" which provides instruction to the student outside of the general classroom and the "sheltered instruction method" which uses content area classes taught by an EL teacher.

In response to a question from Representative P. Anderson, Ms. Butenhoff said the number of EL students in the West Fargo district has been increasing. She said some of the increase is attributable to changes in proficiency testing which resulted in additional EL students. She said the number of refugee students in the school district has been consistent since 2011.

In response to a question from Senator Larsen, Ms. Butenhoff said EL students may speak multiple foreign languages. However, she said, for reporting purposes only one language is listed as the student's native language.

Mr. Jody Thompson, Assistant Superintendent of Teaching and Learning, and Mr. Travis Thorvilson, English Learners Coordinator, Grand Forks Public Schools, presented information ([Appendix N](#)) regarding the Grand Forks EL program. Mr. Thompson said there are 389 students in the Grand Forks EL program. He said there are 10 certified teachers providing EL instruction.

Mr. Thorvilson said for the 2016-17 academic year, the Grand Forks EL program had \$1.1 million of expenses. He said the average cost of the program per pupil was \$3,187.

In response to a question from Senator Lee, Mr. Thorvilson said Grand Forks schools also engage with families of EL students. He said the schools host various events to encourage families to visit and become familiar with the schools. He said an adult language immersion program is also offered through the school district.

Mr. David Burkman, Director, English Learner Program, Fargo Public Schools, presented information ([Appendix O](#)) regarding the Fargo EL program. He said there are currently 916 students in the Fargo EL program which represents 7.8 percent of total school enrollment. He said program expenses were \$2.8 million in fiscal year 2017.

Mr. Burkman said in 2017 there were 652 refugee students in the Fargo school system. He said 429 of the refugee students participated in the EL program.

In response to a question from Chairman Hogan, Mr. Burkman said the school district works to engage families of EL students. He said an example of improving family engagement is holding parent teacher conferences at locations near areas with large populations of EL families. He said the school district also uses EL social workers to support EL students and their families.

Ms. Valerie Fischer, Director of Adult Education, Department of Public Instruction, presented information ([Appendix P](#)) regarding adult EL services. She said adult learning centers provide free services and work with students over the age of 16 to improve proficiency in reading, speaking, understanding, and writing English. She said in the 2016-17 program year, there were 102 EL students aged 16 to 21 and 1,038 EL students over the age of 21.

In response to a question from Chairman Hogan, Ms. Fischer said the education funding formula does not provide funding for adult learning centers that provide services to individuals aged 16 to 21. She suggested adequate and equitable funding be provided for serving these students.

In response to a question from Senator Larsen, Ms. Fischer said some individuals enroll in adult education programs to obtain a general equivalency diploma. She said there are also individuals that enroll in an adult education program for the purpose of enhancing English skills.

Ms. Jennifer Frueh, Coordinator, Fargo Adult Learning Center, presented information ([Appendix Q](#)) regarding adult education. She said the Fargo Adult Learning Center provides programs for English learning, certified nursing assistant, family literacy, and general equivalency diploma. She said during the 2017-18 academic year, 650 students enrolled in the EL program. She said of this number, 78 students had refugee status.

In response to a question from Chairman Hogan, Ms. Frueh said the certified nurse assistant program is 1 month in length and courses are provided throughout the year. She said the program has been used to help meet workforce needs in the area.

Senator Lee said new Americans have also contributed to meeting the workforce needs of the manufacturing industry.

In response to a question from Representative P. Anderson, Ms. Frueh said the center also provides educational opportunities for children through the Even Start Family Literacy program. She said the program allows children to engage in age-appropriate learning and may include home visits to engage families.

In response to a question from Senator Clemens, Ms. Frueh said EL students generally complete education courses at a slower rate than non-EL students. She said an individual may continue high school courses until the age of 21. She said students may then enroll in the general equivalency diploma program at the center.

OTHER COMMITTEE RESPONSIBILITIES

Medicaid Fraud Control Unit Study

Ms. Maggie D. Anderson, Director, Medical Services Division, Department of Human Services; Mr. Lonnie Grabowska, Deputy Director, Bureau of Criminal Investigation; and Mr. Michael Mahoney, Assistant Attorney General, Attorney General's office, provided a report ([Appendix R](#)) pursuant to Section 1 of 2017 House Bill No. 1026 regarding a Medicaid fraud control unit feasibility and desirability study. Ms. M. Anderson said in August 1994 the Office of Inspector General of the federal Department of Health and Human Services approved a request to provide North Dakota a waiver from the requirements to establish a Medicaid fraud control unit. She said in 2016 the federal Centers for Medicare and Medicaid Services requested the state establish a plan for the implementation of a fraud control unit. She said a workgroup was established to review options to implement a fraud control unit.

Mr. Grabowska said the primary function of a Medicaid fraud control unit is to investigate provider fraud, including billing for services not performed, billing for a more expensive process, billing twice for the same service, and billing for services that should be combined into one billing. He said a fraud control unit can also investigate nursing home neglect and abuse complaints and theft of nursing home resident personal funds.

Mr. Grabowska provided an overview of Medicaid fraud control units operated by the states of Montana, South Dakota, and Wyoming. He said the number of staff members assigned to the fraud control units ranged from four staff in Wyoming to nine staff in Montana. He said unit staff generally consist of a combination of attorneys, investigators, auditors, administrative assistants, legal assistants, and unit directors.

Mr. Mahoney said the state has the option to establish a Medicaid fraud control unit using qui tam provisions. He said qui tam is a whistleblower law that allows private citizens to sue any individuals, companies, or other entities that are defrauding the state and recover damages and penalties on the state's behalf. He said to initiate a qui tam action, a private citizen, also known as a "realtor", must file a civil complaint with the court and serve a copy of the complaint and relevant evidence to the Attorney General. The state must then decide whether to take over the case or allow the private citizen to litigate the case. He said the private citizen may then be eligible to receive a portion of any proceeds recovered in the case.

Mr. Grabowska said the Medicaid fraud control unit workgroup is recommending the following staffing levels for a North Dakota fraud control unit based on whether qui tam provisions are utilized:

Recommended Staffing Levels	
Qui Tam Provisions Not Utilized	Qui Tam Provisions Utilized
1 Attorney/Director (criminal focus) 1 Attorney (civil focus) 2 Investigators 2 Auditors 1 Support staff	1 Attorney/Director (assist with criminal focus) 1 Attorney (criminal focus) 1 Attorney (civil focus) 2 Investigators 2 Auditors 1 Criminal analyst 1 Support staff
7 Total staff positions	9 Total staff positions

Mr. Grabowska reviewed the following estimated 2019-21 and 2021-23 biennium budgets for a North Dakota fraud control unit based on whether qui tam provisions are utilized:

	Qui Tam Provisions Not Utilized		Qui Tam Provisions Utilized	
	2019-21 Biennium	2021-23 Biennium	2019-21 Biennium	2021-23 Biennium
Estimated expenses				
Salaries and wages	\$1,333,716	\$1,412,965	\$1,716,394	\$1,819,328
Operating expenses	398,809	361,900	511,496	413,432
Equipment	84,800	0	84,800	0
Total	\$1,817,325	\$1,774,865	\$2,312,690	\$2,232,760
Funding sources				
General fund	\$181,733	\$310,601	\$231,269	\$390,733
Federal funds	1,635,592	1,464,264	2,081,421	1,842,027
Total funding	\$1,817,325	\$1,774,865	\$2,312,690	\$2,232,760

Mr. Grabowska said the Medicaid fraud control unit would be funded 90 percent from federal funds the first 3 years after being established and would be funded 75 percent from federal funds after 3 years.

In response to a question from Senator H. Anderson, Mr. Mahoney said state employees would not be allowed to initiate qui tam actions.

In response to a question from Chairman Hogan, Mr. Mahoney said qui tam provisions could apply to employees of a provider who report fraud or abuse.

Mr. Grabowska said tips regarding Medicaid abuse may come from various sources, including health care providers, nursing home staff, department staff, and private citizens.

Representative Schneider suggested the committee receive information regarding fraud control units in additional states, including funding recovered by the units.

In response to a question from Representative P. Anderson, Ms. M. Anderson said DHS and insurance companies will generally notify each other when cases of fraud are discovered. She said she will provide the committee with information regarding funding recovered through regular DHS auditing activities.

In response to a question from Chairman Hogan, Ms. M. Anderson said an implementation plan has not been developed for the establishment of a Medicaid fraud control unit. She said the implementation plan will be the next item developed by the workgroup.

In response to a question from Senator H. Anderson, Ms. M. Anderson said the duties of the existing Medicaid program integrity unit will not be diminished if a fraud control unit is established. She said the only change will be the entity to which Medicaid fraud cases are reported for investigation and prosecution.

In response to a question from Senator Heckaman, Ms. M. Anderson said the recovery of Medicaid funding from providers is made by adjusting claims and filing a prior period adjustment report with the federal government.

In response to a question from Senator Hogue, Ms. M. Anderson said DHS utilizes recovery audit contractors to conduct certain audits. She said there are many instances of unintentional overbilling as opposed to intentional fraud. She said a Medicaid fraud control unit focuses on intentional fraud.

Mr. Mahoney reviewed a proposed bill draft ([Appendix S](#)) to establish a Medicaid fraud control unit. He said the bill draft includes qui tam provisions.

Senator Lee said the establishment of a fraud control unit would cost over \$2 million. She said it is important for the legislative branch to be involved in the development of a fraud control unit.

It was moved by Representative Schneider, seconded by Representative P. Anderson, and failed on a voice vote to request the Legislative Council staff to prepare a bill draft to implement the recommended statutory provisions to establish a Medicaid fraud control unit. Representatives Hogan, P. Anderson, and Schneider and Senators Erbele and Lee voted "aye." Representatives B. Anderson, Damschen, Johnston, Trottier and Westlind and Senators H. Anderson, Clemens, Hogue, and Larsen voted "nay."

Developmental Disability Services Payment Methodology

Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, presented information ([Appendix T](#)) regarding changes to the payment methodology for developmental disabilities services. She said the new payment methodology was implemented on April 1, 2018, and applies to day services, residential and independent habilitation, intermediate care facilities, prevocational services, and small group and individual employment support services.

Ms. Bay said funding for developmental disability services has not changed, but the methodology to distribute the funds has changed. She said if an individual's provider team believes additional hours of service are necessary, outlier funding may be requested. She said the initial review of outliers resulted in 244 individuals submitting requests with 49.7 percent of requests approved.

In response to a question from Representative Schneider, Ms. Bay said she will provide the committee with information regarding the number of appeals submitted by individuals seeking outlier funding.

In response to a question from Representative Schneider, Ms. Bay said an individual is not entitled to a hearing to appeal a systemwide change that affects all individuals. She said an example of a systemwide change is an adjustment to the support intensity scale.

Representative Schneider expressed concern regarding changes in services that affect an individual's life and safety. She said there may be outliers that need continuous care. She said changes in the payment methodology may result in additional individuals being placed in care facilities.

Ms. Bay said outlier funding is to address care that is needed above the base level of support. She said DHS has a team to review requests for outlier funding. She said in many instances, the denial of outlier funding is the result of insufficient information being submitted to DHS. She said additional outlier information can be submitted if a funding request is denied.

Senator Heckaman said she was recently involved in a case involving the denial of outlier funding for an individual. She said the individual's developmental disabilities program manager did not provide the correct information in the appeal. She said there may be instances when program managers are overworked and unable to properly complete appeals for individuals under their care.

In response to a question from Representative P. Anderson, Ms. Bay said an outlier appeal may be resubmitted when new information becomes available. She said an individual's provider team should be aware that the appeal can be resubmitted.

In response to a question from Senator Lee, Ms. Bay said some individuals will receive an increase in the number of hours of services provided under the new payment methodology.

Senator Lee said some individuals may have more service hours because they are participating in programs, such as supported employment. She said some individuals with fewer hours of service may have more hours of intensive care.

Chairman Hogan said it will be important to monitor if the changes result in any unintended consequences, such as more individuals being placed in care facilities.

Ms. Bay said DHS has a staff member that addresses transition and diversion to review potential solutions for individuals to receive the most appropriate care.

Representative Schneider suggested the committee receive information regarding the number of outlier applications and appeals received, the reasons for appeals, and the outcomes.

Chairman Hogan said the actual expenses of the new payment methodology system should be monitored to determine how the payments compare to budgeted program funding.

Other Business

Chairman Hogan announced the next committee meeting is tentatively scheduled for Friday, July 27, 2018.

No further business appearing, Chairman Hogan adjourned the meeting at 4:30 p.m.

Brady A. Larson
Assistant Legislative Budget Analyst and Auditor

ATTACH:20