

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HUMAN SERVICES COMMITTEE**

Thursday, September 12, 2019  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Karen M. Rohr, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Karen M. Rohr, Jeff A. Hoverson, Lisa Meier, Matthew Ruby, Mary Schneider, Kathy Skroch, Bill Tveit, Greg Westlind; Senators JoNell A. Bakke, Dick Dever, Kathy Hogan, Judy Lee, Tim Mathern, Jessica Unruh

**Member absent:** Representative Dwight Kiefert

**Others present:** See [Appendix A](#)

At the request of Chairman Rohr, the Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Rohr welcomed committee members. She said the committee is tentatively scheduled to meet five times during the interim. She said the committee has been assigned two studies and will receive several reports during the interim.

**DEPARTMENT OF HUMAN SERVICES OVERVIEW**

Mr. Christopher D. Jones, Executive Director, Department of Human Services, presented an overview ([Appendix B](#)) of the Department of Human Services (DHS). He said the mission of DHS is to provide quality, efficient, and effective services. He said the goal of DHS is to provide consistent services across the state and to provide services to its clients as close to their homes as possible.

Mr. Jones said the social determinants of health are all necessary and mutually reinforcing in securing the well being of an individual or family. He said social determinants of health include items, such as education, food, economic stability, and health care. He said investing in community resources to improve access to the social determinants can decrease the number of individuals who receive services from DHS.

Mr. Jones said the overall purpose of DHS is to provide services for community inclusion, behavioral health, and family stability. He said each purpose is supported by various DHS policy and service delivery divisions. He said the divisions work together to provide the best possible outcomes for clients.

In response to a question from Representative Meier, Mr. Jones said DHS contracts with a private organization to administer the therapeutic foster home program.

In response to a question from Representative Tveit, Mr. Jones said DHS needs to partner with outside agencies to ensure services are provided in all areas of the state. He said one example is creating partnerships with schools to allow children to receive services during school hours.

In response to a question from Senator Mathern, Mr. Jones said the county social and human services project will utilize 19 human service zones for administrative purposes only. He said a client may choose to obtain services in a zone different from where the client resides.

Senator Lee said the purpose of human service zones is to provide equivalent services to individuals regardless of where they live. She said county social service employees are important because they are located where the individuals live but there may be instances in which the county employees do not have the expertise needed to effectively provide certain services. She said the use of vouchers may allow an individual to receive services in the individual's community rather than requiring the individual to travel to a human service center.

In response to a question from Senator Mathern, Mr. Jones said DHS is applying for a federal Medicaid 1915(i) waiver to allow more home- and community-based services to be provided through the Medicaid program. He said workforce shortages may present a challenge in providing services authorized by the waiver.

In response to a question from Senator Hogan, Mr. Jones said DHS is developing a communications plan to coordinate the delivery of human service programs with other entities such as law enforcement.

At the request of Chairman Rohr, Mr. Don Schmidt, Human Services Consultant, provided comments to the committee. He said DHS and tribal governments in the state recently signed an agreement relating to the use of federal Title IV-E funds. He said federal Title IV-E funds support children through adoption, foster care, and kinship care programs. He said the agreement allows tribal social service organizations to license foster homes located off a reservation if the homes are utilized for children under tribal jurisdiction. He said the state is eligible to receive 83 percent federal reimbursement for maintenance payments for children under tribal jurisdiction.

## **STUDY OF THE IMPLEMENTATION OF THE HUMAN SERVICES RESEARCH INSTITUTE'S REPORT ON BEHAVIORAL HEALTH**

### **Background Memorandum**

At the request of Chairman Rohr, the Legislative Council staff presented a memorandum entitled [Study of the Implementation of Recommendations of the Human Services Research Institute's Study of the State's Behavioral Health System - Background Memorandum](#). The Legislative Council staff said in 2017, DHS contracted with the Human Services Research Institute (HSRI) to conduct a review of the state's behavioral health system. The 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. He 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. As a result of the study, he said, the final HSRI report identified 13 recommendations and 65 specific strategies to direct future behavioral health policy and services in the state.

The Legislative Council staff presented the following proposed study plan for the committee's consideration:

1. Receive updates regarding the status of implementing each of the recommendation areas included in the HSRI report;
2. Receive information regarding the behavioral health programs and services provided by DHS and other community providers;
3. Receive information regarding options to improve access and availability of behavioral health services;
4. Gather input from behavioral health stakeholders;
5. Receive comments from interested persons;
6. Develop recommendations and any bill drafts necessary to implement the recommendations; and
7. Prepare a final report for submission to the Legislative Management.

Senator Hogan suggested the committee receive information regarding total funding included in the DHS budget for behavioral health.

Senator Dever suggested the committee receive updates regarding the peer support services program.

Mr. Jones presented information ([Appendix C](#)) regarding the implementation of recommendations included in the HSRI report. He said the Behavioral Health Planning Council is acting as the steering committee for the implementation of recommendations included in the HSRI report. He said 570 individuals completed a survey in December 2018 to prioritize the implementation of strategies included in the HSRI report. He said the top five strategies ranked in the survey were included in the 2019 behavioral health strategic plan.

The top five strategies are:

1. To implement training on trauma-informed approaches for criminal justice staff;
2. To expand in-home community supports;
3. To implement crisis intervention team training for law enforcement officers and emergency medical responders;

4. To review behavioral health treatment capacity in jails and develop a plan to address needs; and
5. To expand school-based mental health and substance use disorder treatment services for youth.

He said the remaining strategies are being prioritized for implementation by the behavioral health planning council.

Ms. Carlotta McCleary, Mental Health Advocacy Network (MHAN), provided comments ([Appendix D](#)) regarding the implementation of recommendations included in the HSRI report. She said MHAN supports the study and wants to ensure report recommendations are implemented. She said the report provides for the recommendations to be implemented through reconvening system stakeholders, using an oversight steering committee, and establishing workgroups to address common themes in the report.

In response to a question from Representative Hoverson, Ms. McCleary said serious emotional disorders may include conditions such as anxiety and depression.

In response to a question from Representative Schneider, Ms. McCleary said the 2019 Legislative Assembly provided increased funding for behavioral health services, including the federal Medicaid 1915(i) waiver. She said it is important to continue to review the number of individuals being served and to ensure individuals are receiving all medically needed services.

In response to a question from Representative Skroch, Ms. McCleary said 1 in 10 children in the state have a serious emotional disorder and should be receiving services. She said this number is based on an estimated 6.36 percent of children having a disorder.

Representative Skroch suggested the committee receive information regarding the number of children by condition included in the estimated number of children in the state with a serious emotional disorder.

Senator Mathern said there is a significant difference in the number of children needing services versus the number of children receiving services. He said it is important for advocacy groups to make legislators aware of the issues that need to be addressed.

In response to a question from Senator Dever, Ms. McCleary said children being placed in foster care may have parents with behavioral health needs that are not being addressed. She said the behavioral health needs of an entire family need to be addressed. She said partnerships also are important to provide parents with the needed resources to address children's mental health issues.

Senator Lee said legislation approved by the 2019 Legislative Assembly created the Children's Cabinet and the Commission on Juvenile Justice. She said the Children's Cabinet was created to serve children who have no connection with the correctional system. She said the Commission on Juvenile Justice is reviewing statutes to determine if any updates are needed. She said addressing behavioral health issues in children may help prevent a child from later becoming an offender and being placed in a correctional facility.

In response to a question from Representative Tveit, Ms. McCleary said mental health prevalence numbers are used to develop a mental health service system based on the possible number of individuals that need services.

In response to a question from Senator Hogan, Mr. Tom Eide, Director of Field Services, Department of Human Services, said the department's electronic health records system was implemented in March and April 2019 and is being used to analyze the services provided to clients at human service centers.

## **STUDY OF THE OLMSTEAD COMMISSION**

### **Background Memorandum**

At the request of Chairman Rohr, the Legislative Council staff presented a memorandum entitled [Study of the Olmstead Commission - Background Memorandum](#). The Legislative Council staff said *Olmstead v. L.C.* is a 1999 United States Supreme Court case regarding discrimination against people with mental disabilities. In *Olmstead*, he said, the Court found mental illness is a form of disability and unjustified isolation of a person with a disability is a form of discrimination under Title II of the federal Americans with Disabilities Act of 1990 (ADA). He said, the Olmstead Commission was created in 2001 through an executive order issued by Governor John Hoeven. He said the order provided the commission was to develop a plan to implement the Olmstead decision by providing appropriate community-based placement for individuals with disabilities in a manner consistent with the needs and resources of the state.

The Legislative Council staff presented the following proposed study plan for the committee's consideration:

1. Receive information regarding the requirements of the Olmstead decision;
2. Receive information regarding the new structure of the Olmstead Commission;
3. Receive updates from the Protection and Advocacy Project regarding the development of the agency as a main point of contact for the commission;
4. Receive updates regarding the actions of the commission, including the appointment of subgroups for specific issues;
5. Receive testimony from stakeholders regarding the commission;
6. Receive updates regarding emerging issues related to services for elderly individuals and individuals with behavioral health issues, physical disabilities, or intellectual disabilities;
7. Receive comments from interested persons;
8. Develop recommendations and any bill drafts necessary to implement the recommendations; and
9. Prepare a final report for submission to the Legislative Management.

Ms. Teresa Larsen, Director, Protection and Advocacy Project, presented information ([Appendix E](#)) regarding the Olmstead Commission. She said the Olmstead decision was the result of a United State Supreme Court case involving two individuals with mental health conditions who sued the state of Georgia over their confinement to a hospital operated by the state. She said the decision requires states to provide community-based treatment for persons with mental disabilities when the placement in a community setting is appropriate, the affected persons do not oppose the placement, and the placement can be reasonably accommodated taking into account the resources available to the state and the needs of others with mental disabilities.

Ms. Larsen said the Olmstead Commission was created in 2001 and was administered by DHS. She said DHS hired a consultant to facilitate stakeholder group meetings around the state. She said an Olmstead plan was developed and federal grant funding was used for local demonstration projects. She said in 2015 a subcommittee was established to review issues related to the Olmstead plan and the subcommittee determined additional data was needed to effectively update the plan.

Ms. Larsen said the 2019 Legislative Assembly authorized 1 full-time equivalent position for the Protection and Advocacy Project to assist the Olmstead Commission. She said she anticipates the position will be filled soon.

In response to a question from Senator Hogan, Ms. Larsen provided a copy ([Appendix F](#)) of the Olmstead plan to the committee.

In response to a question from Representative Schneider, Ms. Larsen said the Olmstead Commission will be meeting more frequently and will be reviewing issues involving the Olmstead decision more comprehensively.

Ms. Leslie Bakken Oliver, Counsel, Governor's office, provided comments ([Appendix G](#)) regarding the Olmstead Commission. She said a 2018 executive order issued by Governor Doug Burgum changed the membership of the commission. She said the commission is now co-chaired by a citizen member and a representative of the Governor's office. She said the commission consists of 10 voting members and several nonvoting members.

Ms. Bakken Oliver said the administrative services provided to the Olmstead Commission were moved from DHS to the Protection and Advocacy Project. She said the Protection and Advocacy Project is an independent agency that serves to protect the rights of individuals with disabilities. She said the Protection and Advocacy Project has a centralized intake process and can serve as the point of contact for information and referrals.

Ms. Bakken Oliver said in 2015 the United States Department of Justice received complaints from North Dakota citizens who were residing in nursing facilities but would prefer to reside at home. She said an investigation was conducted and the state is negotiating a settlement with the Department of Justice. She said the goal is to reach a settlement that meets the standards required under the ADA in a realistic manner.

In response to a question from Representative Schneider, Ms. Bakken Oliver said the newly added position at the Protection and Advocacy Project will be responsible to receive complaints under the Olmstead decision. She said the agency will serve as the point of contact for any inquiries related to the Olmstead decision.

In response to a question from Senator Mathern, Ms. Bakken Oliver said statutory and regulatory changes may be needed as a result of the Department of Justice settlement. She said existing appropriations will be used for any costs required by the settlement.

In response to a question from Senator Hogan, Mr. Jones said the settlement may focus on identifying individuals at risk and transitioning those individuals to a community-based setting. He said DHS has applied for Medicaid waivers for home- and community-based services and the county social and human services project is adjusting employees to provide consistent home- and community-based services across the state.

Senator Hogan said community providers and in-home service agencies will need to be informed about any new requirements as a result of the settlement.

Ms. Bakken Oliver said the settlement may include a training and education requirement and case management services may be required.

Senator Hogan suggested an advisory committee be used to provide input on implementing new requirements resulting from the settlement.

In response to a question from Representative Skroch, Ms. Bakken Oliver said the focus of the Department of Justice investigation was on individuals admitted into a skilled nursing facility who may not have had an opportunity to access community services.

In response to a question from Senator Hogan, Ms. Bakken Oliver said she is not aware of any other Department of Justice investigations in the state. She said the Olmstead Commission has not yet developed the procedures to be used when a complaint is received.

## OTHER COMMITTEE RESPONSIBILITIES

### Background Memorandum

At the request of Chairman Rohr, the Legislative Council staff presented a memorandum entitled [Other Duties of the Human Services Committee - Background Memorandum](#). The Legislative Council staff said the committee has been assigned the responsibility to receive 12 reports during the 2019-20 interim. He said the committee also has received approval from the Legislative Management Chairman to receive updates from the State Department of Health regarding the state's newly created medical marijuana program.

### Children's Health Insurance Program

Ms. Caprice Knapp, Director, Medical Services Division, Department of Human Services, presented a report ([Appendix H](#)) on the children's health insurance program (CHIP). She said the CHIP program received an appropriation of \$12,821,689 for the 2019-21 biennium. She said through August 2019 the program has used \$1,280,403, or 10 percent, of the appropriation. She said in August 2019 there were 2,158 children enrolled in the program. She said monthly enrollment over the past year has ranged from 2,006 to 2,148.

Ms. Knapp said Senate Bill No. 2106 (2019) allows DHS to transfer CHIP from a managed care to a fee-for-service arrangement. She said the planned transition date is January 1, 2020. She said the change to a fee-for-service arrangement is estimated to save the state \$6.1 million of funding, of which \$1.9 million is from the general fund.

In response to a question from Senator Mathern, Ms. Knapp said the small number of enrollees in the CHIP program is the primary reason why it costs less to administer the program in a fee-for-service arrangement.

In response to a question from Representative Skroch, Ms. Knapp said she will provide the committee with information regarding CHIP program enrollments and terminations. She said CHIP enrollees generally are in good health compared to children enrolled in the traditional Medicaid program.

Senator Lee said one benefit of DHS administering the CHIP program is that the transition between the CHIP program and the Medicaid program is easier and requires less paperwork to be completed by the enrollee.

Ms. Knapp said the Medicaid and CHIP programs will utilize the same benefit card which will allow for a seamless transition between the programs.

In response to a question from Senator Hogan, Ms. Knapp said CHIP program enrollees are eligible for assistance for medical costs for the 3 months prior to enrollment.

### County Social and Human Services Project and Family First Legislative Initiatives

Mr. Jones presented information ([Appendix I](#)) regarding the county social and human services project authorized by Senate Bill No. 2124 (2019). He said the project will transition service delivery from 47 primarily single-county units to no more than 19 multicounty zones. He said the new structure will increase collaboration, allow for specialization of program delivery, and better utilize capacity. He said an initial planning meeting was held in June 2019, and zone agreements must be approved by the department by December 2019. He said the project is anticipated to be fully functional by January 2021.

In response to a question from Senator Mathern, Mr. Jones said the human service zones are for administration purposes only. He said services may be provided by a county in one zone to individuals in another zone.

In response to a question from Senator Dever, Mr. Jones said DHS has been reviewing options to establish one human service zone specifically for foster care services provided on reservations. He said using one zone would ensure consistent support is provided on all reservations.

In response to a question from Representative Rohr, Mr. Jones said the zone boundaries may change at any time but any changes would likely occur based on payment schedules.

In response to a question from Senator Hogan, Mr. Jones said many counties were working ahead of time to establish possible zones. He said some of the zones are based on historical working agreements.

In response to a question from Senator Mathern, Mr. Jones said the eligibility system information technology project being developed may not meet the needs of the new service delivery system. He said the eligibility system will be reviewed once the new service delivery system is implemented. He said policy changes also are being reviewed to determine if changes need to be made.

Senator Hogan said the review of policy changes also should include consideration of the need for statutory changes.

Ms. Kelsey Bless, Permanency Administrator, Department of Human Services, presented information ([Appendix J](#)) regarding the federal Family First Prevention Services Act. She said the Act adjusts how states may use federal Title IV-E funds for programs such as foster and kinship care. She said the Act allows funding to also be used for preventative services.

In response to a question from Chairman Rohr, Ms. Bless said more effort is being placed on avoiding the need to place children into foster care. However, she said, there always will be a need for short-term shelter care.

In response to a question from Senator Mathern, Ms. Bless said there is research that indicates children removed from families and placed in unfamiliar situations have poorer outcomes in life.

In response to a question from Senator Hogan, Ms. Bless said DHS is reviewing how the Family First Prevention Services Act will enhance child services and how it will be integrated into the county social and human services project.

In response to a question from Senator Dever, Ms. Bless said standards for existing residential child care facilities are being increased to the standards of qualified residential treatment programs. She said other levels of care include psychiatric residential treatment facilities, supervised independent living, therapeutic family foster homes, and traditional foster homes.

Senator Lee said some states are reviewing options to provide training and employment opportunities to youth who age out of foster care services and are not employed or attending college.

Mr. Terry Traynor, Executive Director, North Dakota Association of Counties, provided comments ([Appendix K](#)) regarding the county social and human services project. He said from an administrative perspective, one major issue is the employee benefit packages offered by various counties. He said benefit packages vary by county and zone employee benefits will be administered by the host county. He said this may affect an employee's benefit coverage level as well as how much counties pay for employee benefits.

Mr. Traynor said indirect costs will be an issue that needs to be addressed by the 2021 Legislative Assembly. He said indirect costs include items, such as travel, office equipment, and lease costs. He said statutory provisions relating to indirect costs expire at the end of the biennium.

In response to a question from Senator Mathern, Mr. Traynor said most counties are enrolled in the Public Employees Retirement System health insurance and retirement plans. However, he said, the amount of health insurance premiums and retirement contributions paid by a county vary.

In response to a question from Senator Hogan, Mr. Traynor said zone employees will be covered by the North Dakota Insurance Reserve Fund. However, he said, it is not yet known if the employees will be covered under the host county policy or a separate zone policy.

### **Autism Spectrum Disorder Task Force and Pilot Project**

Ms. Krista Fremming, Assistant Director, Medical Services Division, Department of Human Services, presented a report ([Appendix L](#)) on the Autism Spectrum Disorder (ASD) Task Force and pilot project. She said the ASD Task Force was established in 2009 and meets quarterly to discuss various topics relating to ASD. She said the task force developed a state ASD plan and the task force updates the plan as needed.

Ms. Fremming said the state ASD plan goals for children from birth to age 18 are as follows:

- Assure that individuals with suspected ASD receive an appropriate diagnosis as soon as possible;
- Review and provide recommendations on the centralized locations for information on ASD; and
- Establish a model identifying training and education opportunities available which address the needs of diverse stakeholders.

Ms. Fremming said the state ASD plan goals for adults over the age of 18 are as follows:

- Identify the needs and service gaps for adults with ASD;
- Strengthen supports for transitions from adolescent to adult services; and
- Develop more opportunities for adults with ASD to be valued, contributing members of their communities based on their unique strengths, differences, and challenges.

Ms. Fremming said the ASD voucher program was established in 2014 to assist with funding equipment, assistive technology, respite care, and other supports. She said during the 2017-19 biennium, about 30 percent of the program appropriation was expended. She said the 2019 Legislative Assembly authorized DHS to consider administrative code changes that include adding a voucher solely for technology support, adding a voucher for in-home supports, adding case management or parent-to-parent support as an allowed service; and reducing the amount of time during which a household may use approved voucher funds. She said DHS consulted with the ASD Task Force on the proposed administrative code changes. She said the changes will become effective April 1, 2020.

In response to a question from Senator Hogan, Ms. Fremming said DHS is defining the eligibility criteria and services for the federal Medicaid 1915(i) waiver. She said there may be several instances in which the waiver can be used to provide services to individuals with ASD.

### **Developmental Disabilities Reimbursement Project**

Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, presented information ([Appendix M](#)) regarding the developmental disabilities reimbursement project. She said Senate Bill No. 2043 (2011) required DHS to implement a prospective developmental disability payment system utilizing the support intensity scale. She said the payment system was implemented on April 1, 2018. She said DHS has contracted with a vendor to review the new payment rate structure and methodology to determine the appropriateness of assumptions and to recommend potential adjustments to the system.

In response to a question from Representative Skroch, Ms. Bay said provider payment rates have changed due to the new payment system as well as other factors such as changes in a provider's case mix.

In response to a question from Senator Hogan, Ms. Bay said the new payment system is increasing consistency in payment rates for providers. She said the changes in the new payment system are designed to be budget neutral.

In response to a question from Senator Mathern, Ms. Bay said she is not aware of providers adjusting their services or caseload due to the new payment system.

In response to a question from Senator Bakke, Ms. Bay said some providers have expressed interest in expanding services and offering new programs. However, she said, workforce shortages are affecting the ability of providers to expand services.

In response to a question from Senator Hogan, Ms. Bay said outliers are included in the payment system report data.

In response to a question from Representative Meier, Ms. Bay said a steering committee that included representatives of provider groups was used to develop the new payment system.

In response to a question from Senator Lee, Ms. Bay said the previous payment system was retrospective and used an interim rate for provider payments. She said at the end of each fiscal year providers would submit cost documentation to DHS and a final rate would be calculated.

Senator Lee said developmental disability clients are able to choose the provider they want and receive services in multiple areas of the state. She said it is important for providers to be properly reimbursed but there needs to be oversight to ensure clients are served appropriately.

Senator Hogan said some providers have expressed concern regarding the requirement for 15 minute unit reporting under the new payment system.

Mr. Bruce Murry, Executive Director, North Dakota Association of Community Providers, provided comments to the committee and later provided written testimony ([Appendix N](#)) regarding the developmental disabilities payment system and the review of support intensity scale assessment scores. He said the most recent round of assessment scores appear to have normalized compared to previous testing results. He said fewer deviations using professional judgment were needed to provide adequate services.

### **Revised Payment Methodology for Nursing Facility Services**

Mr. Jones presented an update ([Appendix O](#)) regarding a study of a revised payment methodology for nursing facility services. He said Senate Bill No. 2012 (2019) requires DHS, with advice from representatives of the nursing facility industry, to develop an implementation plan for a revised payment methodology for nursing facility services. He said DHS is to report to the Legislative Management before October 1, 2020, regarding the plan and is to include any estimated costs relating to the new payment methodology in the department's 2021-23 biennium budget request.

Mr. Jones said the objectives of the payment methodology are to be financially sustainable for providers, be financially sustainable for the state and private pay residents, provide fair and equitable reimbursement, to encourage quality care, encourage and allow for maintenance and improvement of facilities, and be easy to understand and administer.

Mr. Jones said the main nursing facility reimbursement methodologies are cost-based, price-based, and a combination of cost- and price-based. He said a price-based methodology would provide more predictable and stable revenues to facilities and provide fairness in payments. However, he said, there is concern regarding how a fair price would be determined.

In response to a question from Chairman Rohr, Mr. Jones said as of March 2018 approximately two-thirds of nursing facilities were operating at a deficit. He said one cause of the deficit is an inflationary increase had not been provided for several years.

In response to a question from Representative Westlind, Mr. Jones said certified nursing assistant (CNA) wages at North Dakota nursing facilities exceed those of other states. He said the average CNA wage in North Dakota is approximately \$17.50 per hour.

In response to a question from Representative Westlind, Mr. Jones said indirect cost payments to nursing facilities vary significantly among facilities.

In response to a question from Representative Skroch, Mr. Jones said the analysis of CNA wages compared to other states included other factors such as cost of living and patient acuity levels. He said the analysis also compared CNA wages to the wages of other similar professions.

Representative Skroch said because of workforce demands, many CNAs are receiving additional education and moving to higher-level nursing positions such as licensed practical nurse.

Senator Lee said consideration needs to be given to the length of time a CNA has spent in the care industry. She said there are many CNAs dedicated to their work, and they are paid more. She said areas of the state with workforce shortages also may have higher wages. She said a new payment methodology should not reduce the quality of care currently being provided by facilities.

Mr. Jones said the nursing facility analysis included comparisons for urban versus rural, east versus west, and large versus small facilities. Following the meeting he provided a copy of the analysis ([Appendix P](#)).

Ms. Shelly Peterson, President, North Dakota Long Term Care Association, provided comments ([Appendix Q](#)) regarding the nursing facility payment methodology study. She said the nursing facility payment methodology is a reimbursement system based on documented costs. She said staffing and direct care costs may vary greatly by facility. She said one of the primary reasons for differences in direct care costs is the staffing level of facilities.

Ms. Peterson said a price-based funding methodology provides the same funding rate for all facilities for similar services. She said a price-based methodology does not recognize the difference in staffing levels, and ultimately quality of care, provided by different facilities. She said it may be prudent to review making changes to the current funding methodology rather than implementing a price-based methodology. She said representatives of nursing facilities are part of the DHS nursing payment methodology study and she asked for committee member feedback regarding the payment methodologies.

In response to a question from Representative Hoverson, Ms. Peterson said differences in facility direct care staffing costs are generally related to the number of staff employed by the facility rather than the level of salary and benefits provided to employees.

In response to a question from Representative Westlind, Ms. Peterson said a price-based methodology requires a payment amount to be set. She said one option for a pricing system is using median plus a cap limit of 3.46 percent. She said there has not been any discussion regarding using a case mix system to determine payments. She said cost reports would continue to be submitted to DHS.

In response to a question from Senator Hogan, Ms. Peterson said one option for changing the payment methodology is to provide increases based on flat rates rather than percentages.

Chairman Rohr asked Ms. Peterson to provide the committee with information regarding nursing facility occupancy rates.

In response to a question from Senator Lee, Ms. Peterson said a facility may receive a deficiency if staffing levels are too low. She said many facilities use contracted staff to ensure adequate staffing levels.

In response to a question from Representative Westlind, Ms. Peterson said the average CNA wage does not include contracted staff. She said using contracted staff may cause a facility to exceed direct care cost limits.

### **OTHER BUSINESS**

No further business appearing, Chairman Rohr adjourned the meeting at 4:15 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

ATTACH:17