

November 2009

VOUCHER USE AND PROVIDER CHOICE FOR CLIENTS - BACKGROUND MEMORANDUM

The 2009 Legislative Assembly approved House Bill No. 1573 (attached as an [appendix](#)) providing for a Legislative Management study of voucher use and provider choice for clients in various human services and other state programs, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services. The bill provides that the study explore the extent to which vouchers are currently used in federal and state human service programs and other programs, how voucher systems are implemented, and the advantages and challenges posed by the use of vouchers as a mechanism for expanding service options and maximizing client choices. The study also must include a comprehensive review of funding for human services and other state programs, focusing on the feasibility of improving access to care and providers for clients through the use of a voucher system, including programs related to mental health services, addiction treatment, counseling services, and transition services.

Voucher use or provider choice is a method of providing goods and services to a beneficiary in the form of a voucher. The voucher can be submitted to the beneficiary's provider of choice for the goods or services. Federal, state, and local agencies develop service agreements with providers to supply goods and services in exchange for the vouchers, which are presented to the agencies for payment as provided in the agreement.

PREVIOUS STUDIES

The **1999-2000 Budget Committee on Health Care** studied the various challenges facing the delivery of health care in the state, including changes in hospital reimbursements, technological innovations, and the regionalization of services. The committee also studied health care access, quality, and cost to determine essential health care services, critical providers, and access sites and to identify geographic, demographic, and economic issues relating to health care. The committee also received a report from the Health Council on public input received regarding health care needs and services. The committee received information regarding provider reimbursements, home health care, nurse practitioners, critical access hospitals, access and utilization of preventive care services, health insurance, and other health care issues.

The committee asked the Legislative Council chairman to request that the Department of Human Services discontinue the development of a prospective payment system for outpatient Medicaid services using ambulatory patient groups, that all changes to the current payment system for outpatient

Medicaid services be delayed to allow the development and testing of ambulatory payment classifications by the Health Care Financing Administration, and that the department consider using ambulatory payment classifications in the development of a prospective payment system for outpatient Medicaid services in North Dakota. The chairman of the Legislative Council sent a letter to the Department of Human Services regarding the committee's request.

The **2001-02 Budget Committee on Human Services** studied the long-term care needs and nursing facility payment system in North Dakota. The committee received a report from a consultant hired by the Department of Human Services to review North Dakota's nursing facility payment system, which contained recommendations regarding the 90 percent occupancy incentive, frequency of rebasing evaluation, state's equalized rate policy, and case mix payment system. The committee recommended that the Department of Human Services present the final report of the long-term care needs assessment and nursing facility payment system study to the House and Senate Human Services and Appropriations Committees during the 2003 legislative session.

The **2001-02 Budget Committee on Human Services** also studied the issues and concerns of implementing Charitable Choice. Charitable Choice is the privatization of federally funded welfare services through faith-based organizations. Charitable Choice provisions were first included in the federal welfare reform measure--the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This law allows states to administer and provide temporary assistance for needy families (TANF) services or benefits through contracts with nongovernmental entities or to provide TANF recipients with certificates or vouchers redeemable with private entities. The law allows states to contract with religious organizations to provide federally funded services under specifically named programs on the same basis as any other nongovernmental provider without impairing the religious character of the organizations or the religious freedom of the recipients. Charitable Choice does not contain new funding for faith-based organizations, and it only applies to programs designated by Congress. In addition to the TANF program, other federal programs authorizing Charitable Choice include the child care and development block grant, programs available under the community services block grant, and substance abuse treatment and prevention services programs under Titles V and XIX of the Public Health Services Act.

The committee received information from select state agencies on contracts with faith-based organizations, including the Department of Human

Services, State Department of Health, Department of Corrections and Rehabilitation, and Department of Public Instruction.

The major faith-based organization contracts of the Department of Human Services related to refugee assistance, medical services, mental health services, guardianship services, intensive in-home services, and adoption services.

The committee learned that the State Department of Health's faith-based organization contracts related to screening, assessment, and educational services in the women, infants, and children program and sexual assault services in the stop violence against women program.

The State Department of Health continues to contract with faith-based organizations if they are the successful bidders in the procurement process.

The **2003-04 Budget Committee on Health Care** studied the feasibility and desirability of establishing an advisory council for the Medicaid program of the Department of Human Services. The committee received approval from the chairman of the Legislative Council to expand the study to include a review of Medicaid payments, access to services, and utilization. The committee learned the Department of Human Services Medicaid program operated a managed care program in Grand Forks County. The program began in 1997, and in January 2004 the program was expanded to include Walsh and Pembina Counties. Adult caretakers and most children are eligible to enroll in the managed care program. The program does not cover the aged, blind, or disabled, which are considered high-risk groups. Federal regulations require that Medicaid recipients have a choice of enrolling in the managed care plan or opting for the primary care provider program. Approximately 818 individuals were enrolled in the managed care plan. Under the managed care program, monthly payments are provided to a managed care service provider based on the age and gender of each recipient. The managed care provider is responsible for all necessary medical services outlined in the contract and is at risk if costs exceed payments. The objective of the managed care plan is to ensure that recipients receive preventive and other appropriate services and to reduce overall health care costs. The managed care program ended in October 2006.

The committee made no recommendations as a result of its study of a medical assistance program advisory council and the Medicaid program.

The **2003-04 Budget Committee on Human Services** studied the delivery of services and cost versus benefit of those services provided by the eight human service centers to consider the possibility of combining human service centers and the administrative costs of the centers related to the programs and clients served and to study third-party reimbursement and human service center competition with private providers.

The committee reviewed the history of the human service centers and learned they were established in

1982. Previously, services were offered through area social service centers, the regional vocational rehabilitation offices, and mental health and retardation centers. The centers were developed to coordinate and avoid duplication of services and to enhance a comprehensive approach to serving clients.

The committee received a listing of other organizations and private providers that offer services similar to the services offered by the human service centers by region and reviewed cooperative efforts of the human service centers, county social services, and private providers. The committee learned the number and types of private providers vary by region, and the human service centers, county social services, and private providers coordinate efforts to meet the human services needs in each region. Human service centers, county social services, and private providers may serve the same families but may be providing different types of services.

The committee recommended legislative committee and Budget Section tour groups request information from each human service center reflecting information for the current and two previous bienniums.

The **2003-04 Budget Committee on Human Services** also received information from the Department of Human Services regarding its progress in developing a fee-for-service payment system for treatment or care centers.

The 2001 Legislative Assembly approved Senate Bill No. 2307, which provided that the Department of Human Services, in cooperation with developmental disabilities service providers, prepare a joint recommendation for consideration by the 2003 Legislative Assembly regarding a new statewide developmental disabilities service provider reimbursement system. The 2001-02 interim Budget Committee on Human Services received reports from the Department of Human Services regarding the progress of the workgroup organized to develop the recommendation. Although a consensus of all developmental disabilities service providers was not reached, a strong majority expressed support that the department, in cooperation with the developmental disabilities service industry, develop a bill to implement a prospective fee-for-service payment system in lieu of the current retrospective system. The prospective fee-for-service model would have been based on allowable costs and would have been provider-specific. A prospective system establishes the reimbursement rate prior to the provision of services. Each provider's rate is unique based on each provider's historic costs. The initial rate is adjusted each year by inflationary increases until periodically rebased as determined by the Legislative Assembly. The targeted implementation date of the new payment system was to be July 1, 2005, and the payment system was to be budget-neutral as compared to the current system.

The Department of Human Services introduced 2003 Senate Bill No. 2086 to implement a

fee-for-service ratesetting system effective July 1, 2005. As passed by the 2003 Legislative Assembly, the bill created a workgroup consisting of one voting member appointed by the Governor, three voting members from the Department of Human Services, and three voting members from the North Dakota Association of Community Facilities. The bill:

1. Provided that the department implement a fee-for-service payment system by July 1, 2005. The fee-for-service payment system must require each developmental disabilities service provider to be responsible for its own operating costs and that the fee paid represents payment in full for the services provided.
2. Established a trust fund with up to two-tenths of 1 percent of the general fund appropriation provided for developmental disabilities grants for the 2005-07 biennium to be used for:
 - a. Reasonably unforeseeable costs experienced by developmental disabilities providers.
 - b. One-time improvements needed to comply with the Life Safety Code.
 - c. Additional costs associated with providing services to individuals with extraordinary needs.
3. Required the department to report to an interim Legislative Council committee regarding its progress in developing a fee-for-service payment system and to certify to the Legislative Council by October 1, 2004, whether the department and developmental disabilities providers reached an agreement on the new payment system.

The committee learned a workgroup was formed, as required by Senate Bill No. 2086, consisting of three representatives of developmental disabilities service providers, three representatives of the Department of Human Services, and one member appointed by the Governor.

The committee received reports from the workgroup. The committee learned the workgroup did not recommend changing from a retrospective payment system to a prospective or fee-for-service payment system but did recommend:

1. Allowable and nonallowable costs for developmental disabilities service providers contained in North Dakota Administrative Code Chapter 75-04-05 be changed. The changes were budget-neutral and were submitted to the Department of Human Services for consideration and final approval by the Administrative Rules Committee.
2. Additional funding for individualized, supported living arrangements be provided. Members of the workgroup representing the Department of Human Services abstained from voting on this recommendation because it was not budget-neutral.
3. The final ratesetting process be completed within a two-year cycle. This recommendation

would result in each provider's budget being based on an audited fiscal year that ended two years previously.

4. The provider penalty for filing a late cost report be reduced from 10 percent to 1 percent and the Department of Human Services be encouraged to strictly enforce the penalty provision.
5. The concept of the money following the client be expanded within the Department of Human Services budget when individuals are moved from the Developmental Center to community settings.
6. Regular meetings of representatives of the Department of Human Services, Governor's office, and developmental disabilities service providers be continued to discuss reimbursement issues and other issues that arise.

The committee received the workgroup's report but did not make any recommendations.

The **2005-06 Budget Committee on Human Services** studied the services provided by residential treatment centers and residential child care facilities and the appropriateness of the payments provided by the state for these services.

The committee learned 10 licensed group homes and residential child care facilities operate in the state providing 281 beds and 6 licensed residential treatment centers provide 84 licensed beds.

The committee learned the federal Centers for Medicare and Medicaid Services changed the regulations affecting the method of paying foster care providers for rehabilitation and treatment services. The federal changes require the state to use a 15-minute, fee-for-service, billable unit for services, rather than the daily rate method previously used by the department.

The committee learned beginning July 1, 2006, residential child care facilities and therapeutic foster care homes began billing Medicaid under the new federally required methodology for dates and services.

The committee made no recommendations regarding its foster care facility payment system study.

The **2007-08 Long-Term Care Committee** studied the long-term care system in North Dakota. The study was to include capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state needing additional nursing home beds, access, workforce, reimbursement, and payment incentives.

The committee received information from the Department of Human Services regarding various services available within North Dakota's long-term care continuum, including information on eligibility criteria and service limits. As of May 2007, 1,411 individuals were being served in the service payments for elderly and disabled (SPED) program, 114 individuals in expanded SPED, 249 individuals through home and community-based waiver services,

and 594 individuals under the Medicaid personal care option.

The committee learned the Department of Human Services began serving individuals who are technology-dependent through a home and community-based waiver and that the Interagency Program for Assistive Technology provides assistive technology devices that allow residents to continue living at home. The committee also learned four new services, approved during the 2007 legislative session, were added to the home and community-based waiver, including family home care for spouses, home-delivered meals, nurse management, and adult foster care.

The committee learned that in May 2007 the Department of Human Services was awarded an \$8.9 million federal grant for a money-follows-the-client demonstration project. The five-year initiative will assist 110 individuals, including 80 individuals currently in nursing homes and 30 individuals in developmental disabilities placements, to transition from an institutional setting to a home or community-based setting. It is anticipated 25 percent of all residents admitted to a nursing facility return to their own homes and one-third return home or to a lower

level of care, such as basic care, assisted living, adult foster care, or to the home of a family member.

The committee received information on the program of all-inclusive care for the elderly. The program is a five-year project to help the poor who screen in need of nursing facility care to remain at home with day support, care, and services. Northland Healthcare Alliance is the recipient of the program of all-inclusive care for the elderly planning grant. Participants must be at least 55 years old, live in a program of all-inclusive care for the elderly service area, and be certified as eligible for nursing home care by the appropriate state agency. The first urban program will be in Bismarck and the first rural program will be in Dickinson.

DEPARTMENT OF HUMAN SERVICES PROGRAM SUMMARY

The following is a summary of programs offered by the Department of Human Services. The chart includes program descriptions, eligibility requirements, descriptions of the program's provider choice, and the 2009-11 appropriation for each program.

	Description/Purpose	Eligibility Requirements	Provider Choice	2009-11 Legislative Appropriation		
				General Fund	Special Funds	Total
Adults and Aging Services						
Family caregiver support	Respite care for caregivers who are caring for an adult age 60 or older or who are age 60 or older and caring for grandchildren or other young relatives who are age 18 or younger	Services are free and there are no eligibility requirements.	Authorization for payment is made by the regional human service center.	\$190,154	\$ 1,492,146	\$1,682,300
SPED	Services for people who are older or physically disabled and who have difficulty completing tasks that enable them to live independently at home, including adult family foster care, case management, chore, emergency response system, environmental modifications, family home care, homemaker, personal care, and respite care	Liquid asset limitations and impairment in four activities of daily living or in five instrumental activities of daily living	Services are determined through the functional eligibility process. The individual chooses a qualified service provider to deliver the service.	\$16,620,560	\$874,767	\$17,495,327
Expanded SPED	In-home and community-based services for people who would otherwise receive care in a licensed basic care facility. Services provided are the same as those provided under SPED, with the exception of personal care service.	Eligible for Medicaid and Social Security income and not severely impaired in the activities of daily living and impaired in three of four instrumental activities of daily living	Services are determined through the functional eligibility process. The individual chooses a qualified service provider to deliver the service.	\$726,578	\$0	\$726,578
Medicaid waiver for home and community-based services	These services, which include adult day care, adult family foster care, case management, chore, emergency response system, environmental modification, homemaker, nonmedical transportation, residential care, respite care, specialized equipment, supported employment, and transitional living, enhance the ability of older individuals to maintain their independence. Services enable eligible individuals who would otherwise require nursing home services to remain in their homes or communities.	Eligible for Medicaid, screened eligible for nursing facility level of care, at least age 65 or disabled, and living independently	Services are determined through the functional eligibility process. The individual chooses a qualified service provider to deliver the service.	\$2,427,300	\$4,976,908	\$7,404,208

	Description/Purpose	Eligibility Requirements	Provider Choice	2009-11 Legislative Appropriation		
				General Fund	Special Funds	Total
Older Americans Act services	Services include congregate meals, shopping assistance, family caregiver support, health maintenance, home-delivered meals, legal assistance, out-reach, transportation, and senior companion	Age 60 and older. There is no means test.	Each participant has the ability to contribute what the individual can afford toward the cost of the service.	\$1,991,200	\$9,603,256	\$11,594,456
Children and Family Services						
Medicaid waiver for medically fragile children	The waiver is to assist families in keeping their children home instead of placing them in a nursing home. The waiver is parent-driven. They determine what their family needs for services. Available services are transportation, pediatric specialty, nutritional supplements, individual and family counseling, in-home support, equipment and supplies, environmental modifications, and institutional respite.	The child must be a Medicaid recipient aged 3 to 18. The child must meet the nursing facility level of care. The child must be living in the parent's home. The child must meet the level of need scoring tool criteria of 40 points.	The parent chooses the appropriate services for the child from the available services. The services are reimbursed through a fiscal agent.	\$376,213	\$771,631	\$1,147,844
Family preservation services	Respite care services provide temporary child care for families with disabled children, including chronically or terminally ill children, children with serious behavioral or emotional difficulties, and drug-affected children. Crossroads services provide child care assistance for eligible teenage parents who are pursuing high school, general educational development (GED), or alternative high school education.	Respite care services are provided to families based on the individual need of the family. The cost of care to the family is determined by the human service center sliding fee scale. Families access respite care services through a case manager with whom they are already working or by simply contacting the coordinating agency. To be eligible for Crossroads, the parent must have primary responsibility for the care of the child; be age 20 or younger; and attending school through a regular curriculum, alternative high school placement, or a GED program on a regular basis with the goal of completing a high school level education.	Services are determined by the individual needs and requests of the family working together with the case manager. Crossroads child care assistance provides clients with a certificate of eligibility that includes the percentage the department may pay for a given month. It does not guarantee payment.	\$278,494	\$483,211	\$761,705
Public assistance programs						
Child care assistance program	Provides help with child care costs for low-income families while they are working or participating in allowable training or allowable education programs. The Department of Human Services will pay a percentage of the child care bill determined by using a sliding fee scale. Payment is made directly to the child care provider. Parents are responsible to pay a copayment each month and any amount over the allowable maximum rates.	Parent is working, in allowable training, self-employed, or looking for work; the household income is within limits; and child care is related to the employment or allowable training	Child care assistance provides clients with a certificate of eligibility that includes the percentage the department may pay for a given month. It does not guarantee payment.	\$350,197	\$22,009,637	\$22,359,834
Alternatives to abortion	Services to women that provide alternatives to an abortion, including pregnancy testing, counseling, prenatal education, parenting education, and referrals	Any woman residing in North Dakota who is pregnant or who thinks she may be pregnant is eligible for these services.	The department has agreements with providers that provide alternatives-to-abortion services. The agreement does not guarantee payment. The department establishes and reimburses providers for services provided.	\$0	\$387,037	\$387,037

	Description/Purpose	Eligibility Requirements	Provider Choice	2009-11 Legislative Appropriation		
				General Fund	Special Funds	Total
Mental Health and Substance Abuse Services						
Mental health services and alcohol and drug treatment services	Provides leadership for the planning, development, and oversight of a system of care for children, adults, and families with severe emotional disorders, mental illness, and/or substance abuse issues. Mental health and substance abuse services are delivered through eight regional human service centers and the State Hospital.	Individuals with a mental health or substance abuse diagnosis, whose illness interferes with functioning, and who may be at risk of hospitalization or harm to themselves or others	Human service centers provide the services with employed staff or contract for services such as inpatient hospitalization, residential, etc.	\$45,036,432 ¹	\$52,485,938 ¹	\$97,522,370 ¹
Children's mental health services	Provides therapeutic and supportive services to children with serious emotional disturbance and their families so they can manage their illness and live in the community in the least restrictive setting. However, other services may be provided through psychiatric residential treatment facilities and a voluntary treatment program available through the collaboration of the Division of Mental Health and Substance Abuse Services and the Children and Family Services Division.	Youth must be age 18 or younger; have a mental health diagnosis, have service needs involving two or more community agencies; have symptoms that are expected to last or have lasted one year or longer; and are not doing well in school, home, or the community.	Human service centers provide the services with employed staff or contract for services such as inpatient hospitalization, residential, etc.	2	2	2
Services for individuals with disabilities						
Developmental Disabilities Services	Services provide support and training to individuals and families in order to maximize community and family inclusion, independence, and self-sufficiency; prevent institutionalization; and enable institutionalized individuals to return to the community. Services include program management; adult family foster care; waiver group care; day supports; extended services; family subsidy; family support; home health aide; homemaker; individualized, supported, living arrangement; infant development; parenting support; extended home health care; intermediate care facility; and minimally supervised, supported, and transitional community living. Consumers and primary caregivers also have the opportunity to self-direct supports by hiring their own in-home or employment support staff. They may also direct which vendors provide behavior consultation, environment modifications, or equipment and supplies.	Medicaid-eligible and screened appropriate for ICF/MR level of care	Developmental Disabilities Services contracts with private, nonprofit, and for-profit organizations to provide an array of residential services, day services, and family support services. Developmental Disabilities Services contracts with a fiscal agent to assist consumers in paying staff or vendors for supports authorized via an individual budget.	\$110,730,341	\$230,812,205	\$341,542,546
Technology-dependent Medicaid waiver	Services include attendant care service. The components of this service include nurse management and attendant care service provider. Case management is also included. The waiver is for individuals that are medically stable, competent, and vent-dependent for at least 20 hours per day.	Must be screened in need of nursing facility level of care. Must be age 18 or older and physically disabled as determined by the Social Security Administration or be at least age 65.	The individual chooses the attendants and nurse manager. The individual also directs the care required for the individual's specific needs.	\$174,557	\$358,051	\$532,608

	Description/Purpose	Eligibility Requirements	Provider Choice	2009-11 Legislative Appropriation		
				General Fund	Special Funds	Total
Vocational Rehabilitation, including vision services	Assists North Dakotans with disabilities to improve their employment opportunities and assists North Dakota businesses in finding solutions to their disability-related issues. Services help individuals with visual and other impairments so they can maintain independence in their home environments.	Must have a physical or mental impairment and the impairment must affect the individual's ability to obtain or maintain employment. Many services are provided at no cost. However, some services are subject to a sliding fee scale based on income. The older blind program is available to those age 55 and older who are experiencing a vision loss.	North Dakota Vocational Rehabilitation contracts with various community rehabilitation providers to provide a continuum of services, including job readiness training, job coaching, supported employment services, etc. Payment is made through Vocational Rehabilitation after review of reports.	\$2,564,171	\$11,358,699	\$13,922,870
Independent living	Services to eliminate barriers and provide assistance to individuals with disabilities so they can live and work more independently in their homes and communities include independent living skills training, peer support, individual and systems advocacy, and information and referral. Additional services may include personal assistance, housing assistance, transportation assistance, social and recreational activities, community awareness and education, and technical assistance to businesses and local governments.	Many services are provided at no cost. However, some services are subject to a fee (fee-for-service structure).	North Dakota Vocational Rehabilitation contracts with the Centers for Independent Living (four agencies) in North Dakota for specific independent living services. Payment is made by Vocational Rehabilitation after review of program reports.	\$930,958	\$1,056,581	\$1,987,539

¹These amounts also include funding for children's mental health services.

²Funding for children's mental health services provided by the human service centers is included in the appropriation amount shown for mental health services and alcohol and drug treatment services. Funding for services for children placed in a psychiatric residential treatment facility is included in the Medicaid budget.

STUDY PLAN

The committee may wish to proceed with this study as follows:

1. Receive information from the Department of Human Services, State Department of Health, Department of Public Instruction, and Department of Corrections and Rehabilitation regarding various human services and other state programs and their related funding, including programs related to mental health services, addiction treatment, counseling services, transition services, various home services, and other special services.
2. Receive information on the extent to which vouchers are currently used in federal and state human service programs and other programs.
3. Review examples of the use of voucher systems for allowing consumer choice in other states.
4. Receive an update from the Department of Human Services on the money-follows-the-client developmental disabilities service demonstration project.
5. Receive an update from the Department of Human Services on the status of the program of all-inclusive care for the elderly.
6. Consider on the feasibility of improving access to care and providers, both for profit and not for profit, through the use of a voucher system; how voucher systems are implemented; and the advantages and challenges posed by the use of vouchers as a mechanism for expanding service options and maximizing client choices.
7. Receive testimony from interested persons, including providers and clients, regarding voucher use and provider choice for clients in human services and other programs.
8. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
9. Prepare a final report for submission to the Legislative Management.

ATTACH:1