

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

### Minutes of the

## HEALTH SERVICES COMMITTEE

Wednesday, September 12, 2018

Harvest Room, State Capitol

Bismarck, North Dakota

Senator Judy Lee, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Judy Lee, Robert Erbele, Tim Mathern, Nicole Poolman; Representatives Bert Anderson, Pamela Anderson, Gretchen Dobervich, Karla Rose Hanson, Karen Karls, Aaron McWilliams, Karen M. Rohr, Mary Schneider, Kathy Skroch

**Members absent:** Senator Tom Campbell

**Others present:** Representatives Kathy Hogan, Fargo, and Corey Mock, Grand Forks, members of the Legislative Management

Dustin Assel, Legislative Council, Bismarck

See [Appendix A](#) for additional persons present.

**It was moved by Representative B. Anderson, seconded by Representative Skroch, and carried on a voice vote that the minutes of the July 26, 2018, meeting be approved as distributed.**

### STUDY OF DEVELOPMENTAL DISABILITIES AND BEHAVIORAL HEALTH NEEDS

#### Voucher Program for Individuals with a Mental Health Condition

The Legislative Council staff presented a bill draft [[19.0295.01000](#)] relating to improving mental health services. The bill draft:

- Provides \$750,000 to the Department of Human Services (DHS) for establishing and administering a voucher system to address underserved areas and gaps in the state's unified mental health delivery system and to assist in the payment of mental health services provided by mental health providers;
- Requires DHS to ensure private providers accepting vouchers collect and report process and outcome measures;
- Requires DHS to develop requirements and provide training and technical assistance to private providers accepting vouchers;
- Requires private providers accepting vouchers to provide evidence-based services; and
- Requires DHS to provide a report to the Legislative Management regarding the rules adopted to establish and administer the voucher system.

In response to a question from Representative Hanson, Ms. Pamela Sagness, Director, Behavioral Health Division, Department of Human Services, said the department will identify areas of gaps in mental health services and develop eligibility criteria. She said a total of \$4.7 million was appropriated to the department for the 2017-19 biennium for the substance use disorder voucher program. She said the substance use disorder voucher was expanded last session to include methadone medication assisted treatment, which is not covered by Medicaid.

In response to a question from Representative Hogan, Ms. Sagness said the substance use disorder voucher is only for individuals over the age of 18.

In response to a question from Senator Mathern, Ms. Sagness said the substance use disorder voucher may be used only to obtain services from licensed private substance use disorder providers or medical facilities. She said the department would need to determine who may provide mental health services.

In response to a question from Representative Dobervich, Ms. Sagness said the department suggests adding 1.5 full-time equivalent positions and \$300,000 to the bill draft for administrative support of the program and allowing the department 1 year to plan for implementation of the program. She said administrative rules will need to be updated before the program can be implemented.

It was moved by Senator Mathern, seconded by Representative P. Anderson, and carried on a voice vote that the bill draft be revised to add 1.5 full-time equivalent positions and \$300,000 for administrative support for the program and delay implementing the program for 1 year to allow the department to adopt administrative rule changes, identify mental health service gaps, and determine eligibility criteria.

It was moved by Senator Mathern, seconded by Representative Dobervich, and carried on a roll call vote that bill draft [19.0295.01000](#) [as revised], relating to establishing and administering a mental health services voucher system, be approved and recommended to the Legislative Management. Senators Lee, Erbele, and Mathern and Representatives B. Anderson, P. Anderson, Dobervich, Hanson, Karls, McWilliams, Rohr, Schneider, and Skroch voted "aye." No negative votes were cast.

### **Memorandum of a Survey of Agency Alcohol, Drug, and Risk-Associated Behavior Prevention, Treatment, and Enforcement Programs**

The Legislative Council staff presented a memorandum entitled [Survey of Agency Alcohol, Drug, and Risk-Associated Behavior Prevention, Treatment, and Enforcement Programs](#) which provides information relating to programs for prevention, treatment, and enforcement of alcohol, tobacco, and drug abuse and other kinds of risk-associated behaviors which are operated by various state agencies. He said agencies include the State Department of Health, Attorney General, Department of Corrections and Rehabilitation, DHS, Department of Transportation, Department of Public Instruction, judicial branch, National Guard, North Dakota Higher Education Consortium for Substance Abuse Prevention, Governor's office, and Indian Affairs Commission.

### **Governor's Office North Dakota Olmstead Commission**

Chairman Lee called on Ms. Leslie Bakken Oliver, General Counsel, Governor's office, who provided an update ([Appendix B](#)) on the implementation of a new structure for the North Dakota Olmstead Commission. Ms. Oliver said the structure of the commission is being revised based on the recommendations from an advisory group. She said an Executive Order defining the revised Olmstead Commission structure is ready for the Governor's signature. She said the order includes changes to governance, roles and responsibilities, and the focus of the commission. She said the focus of the commission will include access for all individuals in the state with disabilities to essential services, including health, housing, employment, transportation, and community services and supports in the least restrictive environment. She said 8 of the 10 board members have been appointed. She said a citizen member also will be appointed to serve as co-chairman of the board. She said a member of the judicial branch also has been identified as a possible board member. She said the Protection and Advocacy Project will serve as the point of contact for the commission. She said the Protection and Advocacy Project has structures and processes to answer questions from individuals and providers, make referrals, and provide education and communications regarding the commission requirements for businesses and community groups. She said the board will hold its first meeting in October 2018.

In response to a question from Senator Mathern, Ms. Oliver said the state is required to have a plan to address the decision in the 1999 United States Supreme Court case *Olmstead v. L.C.* 527 U.S. 581 (1999) (Olmstead). She said the federal Department of Justice has conducted investigations in many states relating to the Olmstead decision.

Chairman Lee called on Ms. Teresa Larsen, Executive Director, Protection and Advocacy Project, who presented information ([Appendix C](#)) regarding the implementation of a new structure for the North Dakota Olmstead Commission. Ms. Larsen said the new Olmstead Commission structure proposes the Protection and Advocacy Project be the point of contact for the commission. She said the commission has no staff or resources. She said the commission needs to be more proactive than reactive. She said there is a need to educate entities to help ensure compliance. She said, as part of its 2019-21 biennium budget proposal, the Protection and Advocacy Project anticipates requesting one Attorney II full-time equivalent position for the commission. She said the proposal will include total funding of \$238,929, of which \$164,314 is from the general fund, for the new position and operating costs.

In response to a question from Representative Hogan, Ms. Larsen said the Olmstead Commission has operated on the basis of an executive order since the inception of the commission.

Chairman Lee requested the Legislative Council staff review other states' statutes to determine the extent to which Olmstead Commission structures are established in statute.

Representative Hanson provided comments regarding the Olmstead Commission. She suggested Risk Management review potential liabilities for noncompliance of the Olmstead decision.

Mr. Christopher D. Jones, Executive Director, Department of Human Services, and Chairman, Task Force on Children's Behavioral Health, provided comments regarding the Olmstead Commission. He said he supports the Protection and Advocacy Project being the point of contact for the commission. He said there is a need to educate municipalities and providers in addition to state agencies regarding the Olmstead decision and how to provide the least restrictive environment.

### **North Dakota County Social Service Director's Association and North Dakota Board of Social Work Examiners - Update on Addressing Licensing Issues for Social Workers**

Chairman Lee called on Mr. Cory Pedersen, Board Member, North Dakota Board of Social Work Examiners, who presented information ([Appendix D](#)) on behalf of Ms. Heidi Nieuwsma, Chairman, North Dakota Board of Social Work Examiners, regarding an update on addressing licensing issues for social workers. Mr. Pedersen said a proposed bill draft was approved by the board on September 6, 2018. He said the proposed bill draft was distributed to all licensees and stakeholders in the state. He said the board is waiting for feedback regarding the proposed bill draft.

In response to a question from Representative Hogan, Mr. Pedersen said the board will review the mental health tiered system and determine if the board has any suggestions for social worker classifications.

Chairman Lee called on Mr. Steven Reiser, Director, Dakota Central Social Services, and member, North Dakota County Social Service Director's Association, who presented an update on addressing licensing issues for social workers. Mr. Reiser said the North Dakota County Social Service Director's Association has reviewed the proposed bill draft and does not have any major concerns with the bill draft. He said the proposed bill draft addresses reciprocity. He said there are three different levels of social workers. Because the state definitions of the different levels of social workers are not consistent with other states, he said, the proposed bill draft amends the definitions to be more consistent with other states.

In response to a question from Chairman Lee, Mr. Reiser said the North Dakota County Social Service Director's Association was included in the planning sessions for the proposed bill draft. He said the association provided suggestions that are included in the proposed bill draft.

In response to a question from Representative Dobervich, Mr. Reiser said every licensed social worker in the state has been sent a copy of the proposed bill draft. He said the supervision of social workers has been addressed in the proposed bill draft.

### **Bill Draft to Amend the Definition of Brain Injury**

The Legislative Council staff presented a bill draft [[19.0187.01000](#)] to amend the definition of brain injury.

Chairman Lee called on Ms. Rebecca Quinn, Program Director, North Dakota Brain Injury Network, and Program Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, who presented information ([Appendix E](#)) relating to traumatic brain injury and a potential bill draft to amend the definition of brain injury. Ms. Quinn said DHS contracts with the Center for Rural Health to manage the North Dakota Brain Injury Network and to provide administrative support to the North Dakota Brain Injury Advisory Council. She said the proposed definition would allow for more alignment within programs and planning areas within the different systems of care for individuals with a brain injury. She said the North Dakota Brain Injury Advisory Committee voted in favor of the proposed bill draft but suggested revising the proposed definition for brain injury to remove reference to an insult from physical force or internal damage.

**It was moved by Senator Mathern, seconded by Representative McWilliams, and carried on a voice vote that the bill draft be revised to remove reference to an insult from physical force or internal damage.**

**It was moved by Representative McWilliams, seconded by Representative Hanson, and carried on a roll call vote that bill draft [19.0187.01000](#) [as revised], relating to the definition of brain injury, be approved and recommended to the Legislative Management.** Senators Lee, Erbele, and Mathern and Representatives B. Anderson, P. Anderson, Dobervich, Hanson, Karls, McWilliams, Rohr, Schneider, and Skroch voted "aye." No negative votes were cast.

### **Behavioral Health Workforce Implementation Plan Development**

Chairman Lee called on Ms. Quinn who presented an update ([Appendix F](#)) on the development of a behavioral health workforce implementation plan. Ms. Quinn said the Center for Rural Health contracted with DHS to analyze the behavioral health workforce, including geographical coverage across the state, develop a process for training peer support specialists and recommendations for peer support certification, and prepare a behavioral health workforce development plan based on reviews of national best practices and previous recommendations. She provided the following recommendations:

1. Establish the infrastructure available to support and coordinate workforce development efforts, which includes:
  - a. Establishing an entity to provide support and oversee the implementation of behavioral health workforce related efforts in the state; and
  - b. Improving and expanding the collection, analysis, and dissemination of data about behavioral health workforce.
2. Develop and provide ongoing support for the paraprofessional behavioral health workforce, which includes:
  - a. Developing and providing ongoing support of peer support services; and
  - b. Evaluating the value of paraprofessionals through standardized training, support, and recognition.
3. Support the development and adoption of mechanisms to enhance the capacity of the existing workforce, which includes:
  - a. Expanding and supporting the adoption and use of telebehavioral health services; and
  - b. Expanding and supporting the integration of primary care with behavioral health care.

Ms. Quinn said the recommendations align with the recommendations provided by the Human Services Research Institute in the *North Dakota Behavioral Health Systems Study – Final Report*. She also provided information regarding the tiered system for behavioral health professionals in the state and developing peer support specialists. She said assistant behavior analysts, licensed social workers, and peer support specialists are not included in the tiered system. She said 43 states have established Medicaid reimbursable programs to train and certify peer specialists.

In response to a question from Representative McWilliams, Ms. Quinn said peer support specialist training was conducted in Fargo in April 2018 as a targeted response to opioids.

In response to a question from Representative Dobervich, Ms. Quinn said the peer support specialist training is a broad-based training designed to help peers learn to use personal lived experience to work with others.

### **Department of Human Services - Update on Plans to Implement Recommendations From a Study of the State's Behavioral Health System**

Chairman Lee called on Ms. Sagness who presented information ([Appendix G](#)) regarding plans to implement recommendations provided to DHS from a study conducted by the Human Services Research Institute relating to the state's behavioral health system. Ms. Sagness said the Human Services Research Institute in the *North Dakota Behavioral Health Systems Study – Final Report* includes 65 specific recommendations in 13 areas. She said the department has contracted with the Human Services Research Institute to develop a comprehensive implementation plan and assist the department with monitoring the progress of implementation. She said the department will begin the first phase of implementing the recommendations between September and October 2018. She said the first phase includes planning and organizing the recommendations into categories to determine funding strategies and determine which recommendations require legislative involvement and which can be addressed by agency policies, licensing boards, providers, or advocacy groups. She said the department anticipates seeking guidance from the Behavioral Health Planning Council for implementation strategies. She said Phase 2 of the project will include prioritization and refinement of the recommendations and will occur between November and December 2018. She said Phase 3 will include implementing the recommendations and will occur between January and March 2019. She said Phase 4 will include monitoring and sustaining implementation and will occur between April and June 2019.

### **Task Force on Children's Behavioral Health - Update on Efforts**

Chairman Lee called on Mr. Jones who presented information ([Appendix H](#)) regarding an update of the task force efforts. Mr. Jones said the Task Force on Children's Behavioral Health includes members from the Department of Health, Department of Juvenile Services, DHS, the Protection and Advocacy Project, tribal areas, and the Department of Public Instruction. He said the task force strategies to achieve its desired results include interagency agreements, statutory changes, and proposed funding. He said the task force has developed recommendations in the following areas:

- Adoption of school seclusion and restraint policy and practices guidelines;
- Formation of a state-level children's services committee and regional children's services committees;
- Suicide prevention;
- Bullying prevention and intervention;

- Brain development;
- Sufficient and sustainable funding;
- Expanded emergency care resources;
- Juvenile court rules for maltreatment;
- State and tribal service collaboration;
- Early intervention, including Part C of the federal Individuals with Disabilities Education Act; and
- Substance exposed newborn services.

In response to a question from Representative Rohr, Mr. Jones said next steps include determining how the recommendations align with the recommendations in the Human Services Research Institute *North Dakota Behavioral Health Systems Study – Final Report*. He said one of the goals is to identify ways to coordinate how services are delivered.

### **Cass County - Behavioral Health Program**

Chairman Lee called on Captain Andrew Frobig, Jail Administrator, Cass County Sheriff's office, regarding a new behavioral health program to assist incarcerated individuals. Captain Frobig said a large portion of the jail population includes individuals with behavioral health issues, including those with addictions, substance abuse, and mental illness. He said a new program began in Cass County in April 2018 with the creation of a community supervision unit with dedicated staff who serve both as a social worker and a parole officer. He said each dedicated staff member is assigned a caseload. He said the program identifies participants based on risk assessments and screening tools that help determine which individuals may be better served and who will maintain compliance within the community. He said the staff conducts an individualized needs assessment and establishes goals in partnership with the participant. He said the assessment includes identifying effective transportation, stable housing, positive peer groups, and health care needs. He said the program allows those individuals to serve a sentence by staying home and enrolling in a community treatment program. He said the program has allowed chronic offenders to enter treatment programs for both drug and alcohol abuse. He said both municipal courts in Fargo and the district court are participating in the program.

Captain Frobig said the the program has been effective. He said of the 50 participants who entered the program, only 4 were found to be in noncompliance with the program. He said of the participants who completed the program, only 2 have been arrested for new offenses. He said although community resources are different across the state, the program could be implemented in other areas.

Captain Frobig said addressing children's behavioral health needs now will have a positive effect on the criminal justice system over the next 15 to 30 years.

In response to a question from Representative P. Anderson, Captain Frobig said the program is limited to individuals who have been sentenced. He said there may be opportunities in the future to allow individuals to enter the program in lieu of posting bail.

In response to a question from Representative McWilliams, Captain Frobig said the average cost of housing an inmate in Cass County is \$109 per day. He said the daily average number of prisoners in the jail is 260. He said the jail can hold up to 348 prisoners. He said the daily average number of prisoners was 330 one year ago.

In response to a question from Senator Mathern, Captain Frobig said the average cost of \$109 per day does not include capital costs.

Senator Mathern said factoring in other costs like capital costs means the actual cost-savings of the program is higher than \$109 per day.

In response to a question from Representative Mock, Captain Frobig said the Cass County jail has a contract with the United States Marshal's service for 40 federal beds. He said many of those inmates are local but have been charged in federal court.

In response to Representative Schneider, Captain Frobig said the main component that could help other areas replicate the program is the use of the substance use disorder voucher. He said the voucher is available to individuals once they begin the program. He said the advancement of telepsychiatry also may assist the program efforts.



### Comments by Interested Persons

Ms. Donnell Preskey, Government/Public Relations Specialist, North Dakota Association of Counties, presented information regarding behavioral health programs for individuals who have been incarcerated. She said county jails throughout the state have been developing innovative ideas for programs similar to the Cass County program. She expressed support for expanding the free through recovery program.

Chairman Lee distributed testimony ([Appendix I](#)) from Dr. Paul Kolstoe, Representative, State Board of Psychologist Examiners, regarding efforts of the State Board of Psychologist Examiners relating to the licensure process. Dr. Kolstoe's testimony also addresses recommendations provided at the July 26, 2018, committee meeting, regarding the licensing of psychologists in the state, the number of applicants denied licensure in the past 2 years, and information regarding a comparison of state requirements, including which states require a degree from an American Psychological Association/Canadian Psychological Association program, which states allow education that is academically equal, and which states do not require either.

## STUDY OF EARLY INTERVENTION SYSTEM FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

### Allowable Uses of the Common Schools Trust Fund

Mr. Dustin Assel, Counsel, Legislative Council, presented a memorandum entitled [Common Schools Trust Fund - Related Constitutional and Statutory Provisions - Use of Funds for Early Intervention Services](#). Mr. Assel said the memorandum provides information regarding allowable uses of the common schools trust fund, and whether income earned on the fund may be used for a DHS early intervention services program for children under 2 years old. He said funding an early intervention program administered by DHS likely would not be an investment that would generate income or returns for the fund, and therefore likely would not comply with the prudent investor rule to which the Board of University and School Lands must adhere for the benefit of the common schools. In addition, he said funding of this type of program likely would not meet the requirement that trust fund assets be used to support and maintain the common schools of the state without some nexus being shown between the program and the support of the common schools.

In response to a question from Senator Mathern, Mr. Assel said distributions from the common schools trust fund are appropriated for state school aid as part of the Department of Public Instruction appropriations.

### Department of Human Services - Updates

Chairman Lee called on Ms. Maggie D. Anderson, Director, Medical Services Division, Department of Human Services, who presented an update ([Appendix J](#)) on eligibility requirements for Medicaid waived services, including whether child support may be excluded when determining Medicaid eligibility for early intervention services; the number of children that were Medicaid eligible before entering the early intervention system; and the number of children who would have been able to access Medicaid instead of using federal Part C funds. Ms. M. Anderson said the department has been discussing various issues regarding Medicaid eligibility and waived services with the federal Centers for Medicaid and Medicare Services (CMS). She said the department's policy for Medicaid waived services disregards the first \$50 of income per month for children when the household receives some type of child support. She said the department has confirmed with CMS that the department can change the \$50 amount or eliminate the disregard. She said eliminating the \$50 amount would have a fiscal effect.

In response to a question from Senator Poolman, Ms. M. Anderson said the department would seek an appropriation from the Legislative Assembly for the fiscal effect of eliminating the \$50 disregard. She said many children would not qualify for Medicaid waived services if the department considered household income when determining eligibility.

Ms. M. Anderson said the department has preliminary data and is continuing to review the number of children that were Medicaid eligible before entering the early intervention system; and the number of children who would have been able to access Medicaid instead of using federal Part C funds. She said the department anticipates there may be changes to allow the department to use Medicaid funds for some of the expenditures paid by federal Part C funds. She said the department plans to attend the next meeting of the early intervention system task force to provide updates on the data and answer questions regarding any policy changes.

In response to a question from Chairman Lee, Ms. Tina Bay, Director, Developmental Disabilities, Department of Human Services, said the state had required families to apply for Medicaid to receive early intervention services. She said the state has established a Medicaid waiver for early intervention services to maximize federal funds for the program. In addition, she said, federal regulations for the federal Part C program provided states could not require a family to apply for Medicaid. She said there has been a gradual increase in federal Part C program expenditures as a result of this. She said the department also determined a family could not be charged a recipient liability for early intervention services. As a result, she said, the department was paying for the first partial month of services with federal Part C funds.

Ms. M. Anderson said CMS does not allow other entities to pay for an individual's recipient liability. She said recipient liability is similar to a premium or a deductible for individuals. She said the state could not cover the Medicaid medically needy population if the state did not require a recipient liability.

### **Nurse-Family Partnership Program**

Chairman Lee called on Mr. Jordan Wildermuth, Government Affairs Manager, Upper Midwest, Nurse-Family Partnership, who presented information ([Appendix K](#)) regarding a program for seriously at-risk parents. Mr. Wildermuth said Nurse-Family Partnership is a volunteer-based program that provides regular home visits to first-time, low-income mothers, beginning early in pregnancy and continuing through a child's 2<sup>nd</sup> year. He said the program is free and voluntary. He said individuals in the program generally are young, living in poverty, and at the highest risk of experiencing significant health, educational, and employment disparities. He said most developmental disabilities begin before an individual is born. He said disabilities may be caused by a number of factors, including parental health and behaviors during pregnancy, complications during birth, infection, and environmental toxins. He said the goals of the program include improving:

- Pregnancy outcomes by assisting women with preventative health practices;
- The health of a child by assisting parents with responsible and competent care; and
- The economic self-sufficiency of the family by assisting parents with developing a vision for the family's future, future pregnancies, continuing education, and finding work.

Mr. Wildermuth said Nurse-Family Partnership is an evidence-based nationwide model. He said the model is administered by the Fargo Cass Public Health Department. He said approximately 160 families are served in Cass County. He said funding for the program is provided by Cass County, the City of Fargo, Cass Clay United Way, and the Dakota Medical Foundation.

In response to a question from Chairman Lee, Mr. Wildermuth said sources of referrals include the Women, Infant, and Children (WIC) programs, primary care providers, physicians, and schools. He said the program began in Cass County in 2004.

In response to a question from Senator Poolman, Mr. Wildermuth said a nurse screens a child for potential delays and if a delay is identified, the nurse will refer the child to an early intervention program. He said a nurse will work with the family during home visits to integrate care with the early intervention program.

In response to a question from Representative Rohr, Mr. Wildermuth said the Nurse-Family Partnership works with 12 different Indian tribes throughout the United States. He said some of the programs are on reservations.

In response to a question from Senator Mathern, Mr. Wildermuth said a coalition of home-visiting services is operating in the state. He said Nurse-Family Partnership interacts and works with other home visiting programs both at the local and national level.

### **Health Families Program**

Chairman Lee called on Ms. Missi Baranko, Team Lead, Healthy Families Program, Lutheran Social Services of North Dakota, who presented information ([Appendix L](#)) regarding the healthy families program. Ms. Baranko said the healthy families program is a voluntary home visitation program. She said the healthy families program is one of only 14 evidence-based, federally recognized home visitation programs. She said the program began in the city of Grand Forks and Nelson County in 2000. She said the program began in Burleigh and Morton Counties in 2008. She said the program is designed to support families. She said interaction between family support specialists and families are designed to promote positive parent-child relationships and healthy attachments through strength-based, family-centered, culturally sensitive, and reflective practices. She said the program is designed to support parents who may have a history of childhood trauma, violence, poor mental health, or substance abuse issues. She said in-home visits begin prenatally or right after birth. She said in-home visits are offered until a child is 3 years of age. She said the program is free and serves all income levels. She said referrals include birthing units, health care providers, other families, and other community supports for new families. She said over 80 families receive home visits or are scheduled for initial assessments. She said a healthy families America parent survey is used to determine program eligibility and identify a family as being at risk for adverse childhood outcomes. She said the program provides support to the family for accessing medical providers, WIC programs, public health services, housing, financial assistance programs, Job Service North Dakota, education and training, public transportation, child care, Head Start, Early Head Start, and early intervention services.

In response to a question from Representative Rohr, Ms. Baranko said sources of funding for the program include DHS, the United Way Foundation, private corporations, other foundations, and personal contributions.

In response to a question from Chairman Lee, Ms. Baranko said there are not specific requirements for staff training but many have bachelor level degrees in psychology or child development. She said the healthy families program provides extensive training for staff.

### Comments by Interested Persons

Ms. Krisanna Peterson, Bismarck, provided information regarding the early intervention system for individuals with developmental disabilities study. She expressed support for identifying at-risk children earlier in the intervention process. She also recommended creating a Medicaid waiver for individuals with mental health issues.

Ms. Donene Feist, Director, Family Voices of North Dakota, presented information regarding the committee studies. She said Family Voices of North Dakota provides a parent-to-parent program, a health information and education center, and a program called Project Carson. She said the health information and education center helps families with a child navigate health care needs. She said Project Carson is an early intervention program which connects families with a child that received a prenatal or adverse diagnosis to other families who have gone through the same experience. She said the Human Services Research Institute *North Dakota Behavioral Health Systems Study – Final Report* included recommendations relating to family supports. She suggested the committee consider intersecting family organizations with peer-to-peer support models.

Chairman Lee distributed testimony ([Appendix M](#)) from Ms. Roxane Romanick, Executive Director, Designer Genes, regarding the study of the early intervention system for individuals with developmental disabilities. She provided information regarding the use of the common schools trust fund to fund components of the early intervention system.

### Committee Discussion

Senator Mathern suggested the committee members receive data, when it becomes available, from DHS regarding the number of children who were Medicaid eligible before entering the early intervention system and the number of children who would have been able to access Medicaid instead of using federal Part C funds.

## OTHER COMMITTEE RESPONSIBILITIES

### State Department of Health - Diabetes Prevention and Control Program

Chairman Lee called on Ms. Jane Myers, Diabetes Prevention and Control Program Director, State Department of Health, who presented a report ([Appendix N](#)) entitled *Diabetes in North Dakota 2018*, and information regarding goals, benchmarks, and ways to reduce the incidence of diabetes in the state, improve diabetes care, and control complications associated with diabetes pursuant to North Dakota Century Code Section 23-01-40. Ms. Myers said the national diabetes prevention program is an evidence-based lifestyles change program for individuals at risk of type II diabetes or those who have pre-diabetes. She said representatives from the State Department of Health, DHS, Indian Affairs Commission, and Public Employees Retirement System collaborated to produce the report. She said goals include:

- Expand the national diabetes program pilot project to 7 cities in the state, including Bismarck, Mandan, Jamestown, Minot, Fargo, Grand Forks, and Dickinson in the 2019-21 biennium.
- Evaluate the efficacy of the pilot project to determine whether the program should be added to the Public Employees Retirement System health plan.
- Implement a statewide diabetes prevention action plan.
- Increase awareness of pre-diabetes and the National Diabetes Prevention Program.
- Identify the availability of the National Diabetes Prevention Program in underserved regions of the state.
- Increase the rate of screening, testing, and referral of individuals with pre-diabetes to the national diabetes prevention program.
- Increase insurance coverage of the National Diabetes Prevention Program by state health plans.
- Continue to support and expand diabetes care in education programming in underserved areas of the state.

Ms. Myers said benchmarks have been established to monitor the effectiveness of strategy implementation. She said diabetes prevalence in the state is 8.6 percent. She said the number has remained stable. She said American Indians in the United States are 2.3 times more likely to have diabetes than non-Hispanic whites. She said individuals with diabetes in the United States incur an average of \$16,750 of medical expenses each year. She said this amount is 2.3 times higher than for individuals without diabetes. She said pre-diabetes is estimated to affect approximately 34 percent of the state's population. She said reducing incidents, improving care, and controlling the complications of diabetes is promoted through many programs and collaborative efforts, including the diabetes care services provided by the Special Health Services Division of the State Department of Health, the Diabetes Health



Management Program provided by the Public Employees Retirement System, and a diabetes prevention program through the State Department of Health.

Ms. Myers said the report includes the following recommendations:

- Support coverage of the National Diabetes Prevention Program for the Public Employees Retirement System health plan beneficiaries;
- Support healthy, vibrant communities; and
- Support policies that improve outcomes for individuals with or at risk for diabetes and other chronic diseases.

### **Ignition Propensity Standards**

Chairman Lee called on Mr. Douglas Nelson, State Fire Marshal, Attorney General's office, who presented information ([Appendix O](#)) regarding a report of findings and recommendations for legislation to improve the effectiveness of the law on reduced ignition propensity standards for cigarettes pursuant to Section 18-13-02. Mr. Nelson said there was an increase in fires caused by cigarettes from 2010 to 2017, but a decrease in the fire injuries and deaths related to smoking. He said annual statistics indicate the increase in cigarette fires is related to the increase in total fires. He said the percentage of fires caused by smoking in the state remains stable. He said the number of cigarettes certified since the program's inception in 2010 is 1,305. He said the number of cigarettes currently certified is 1,001. He provided two recommendations regarding the improvement of the effectiveness of the law on reduced ignition propensity standards for cigarettes:

- Amend Section 18-13-02 to provide clearer direction regarding the standard to use and allow the State Fire Marshal's office to enforce the most recent and safest standards; and
- Amend Section 18-13-02 to include "any product to be rolled for smoking," which will help maintain commercial competition requirements for similar products and ensure fire safety standards continue to be met in the future.

In response to a question from Chairman Lee, Mr. Nelson said the second recommendation would include recreational marijuana if the measure is approved in November 2018 general election.

Chairman Lee suggested Mr. Nelson to include the recommendations in an agency bill draft proposal for the next Legislative Assembly to consider.

In response to a question from Representative P. Anderson, Mr. Nelson said e-cigarettes are not certified through this statute. He said there is no way to test e-cigarettes to the ignition propensity standards because they do not burn the same way a cigarette does.

### **Cost-Benefit Analysis of Health Insurance Mandates**

Chairman Lee called on Mr. Jon Godfread, Insurance Commissioner, who provided the Insurance Commissioner's recommendation ([Appendix P](#)) for a private entity to contract with to perform cost-benefit analysis of health insurance mandates during the 2019 legislative session. Mr. Godfread said before every legislative session, the Insurance Department makes a recommendation for a firm to provide analysis. He said proposals, received from NovaRest, Inc., Arthur J. Gallagher & Co., Milliman, Inc., and Acumen Actuarial LLC, were evaluated 60 percent on bidder qualifications and 40 percent on cost. He said NovaRest, Inc. scored 10 points, Arthur J. Gallagher & Co. scored 6.7 points, Milliman, Inc. scored 6.4 points, and Acumen Actuarial LLC scored 7.9 points. He said he recommends the Legislative Council contract with NovaRest to perform cost-benefit analysis during the 66<sup>th</sup> Legislative Assembly.

**It was moved by Representative Skroh, seconded by Representative Karls, and carried on a roll call vote to accept the Insurance Commissioner's recommendation to contract with NovaRest, Inc., for cost-benefit analysis on health insurance mandates during the 2019 legislative session.** Senators Lee, Erbele, and Mathern and Representatives B. Anderson, P. Anderson, Dobervich, Hanson, Karls, McWilliams, Rohr, Schneider, and Skroch voted "aye." No negative votes were cast.

### **State Department of Health - Updates**

Chairman Lee called on Ms. Brenda Weisz, Chief Financial Officer, State Department of Health, who presented information ([Appendix Q](#)) regarding changes at the department and information regarding grant opportunities the department is pursuing. Ms. Weisz said the department's new structure includes the following divisions: Fiscal & Operations, Healthy & Safety Communities, Emergency Preparedness & Response, Health Resources, Medical Services, and Environmental Health. She said the Fiscal & Operations Division includes a Chief Operating Officer, Chief Financial Officer, Field Medical Officer, and the Office of the State Epidemiologist. She said the department

divided laboratory services because of the upcoming separation of the Department of Environmental Quality and the State Department of Health. She said the microbiology laboratory is under the Medical Services Division and the chemistry laboratory is now under the Environmental Health Division. She said the state anticipates approval from the federal Environmental Protection Agency to move forward with the separation. She said the department anticipates establishing the Department of Environmental Quality on January 1, 2019. She said the department is working to develop separate policies for the two agencies. Once the agencies are separated, she said, the Fiscal and Operations Division will continue to provide shared services, including accounting, human resources, and payroll services for both departments.

Ms. Weisz said the department anticipates receiving funding for the National Violent Death reporting system. She said the funding will allow the department to extract data from three sources, including law enforcement data, medical examiners office data, and death certificates data. She said the department also anticipates receiving funding of \$1.9 million from the federal Centers for Disease Control and Prevention public health response grant relating to the opioid crisis.

### **Department of Human Services - Options to Include Coverage under the Medicaid Program**

Chairman Lee called on Mr. Brendan Joyce, Administrator of Pharmacy Services, Medical Services Division, Department of Human Services, who presented information ([Appendix R](#)) regarding options to include coverage under the Medicaid program for metabolic services and other similar conditions not covered by the special foods program administered by the State Department of Health. Mr. Joyce said CMS considers nutritional supplementation coverage through Medicaid optional. He said the state Medicaid program does provide coverage of common products including those covered by Medicare, which includes Ensure, Boost, and other similar products. He said the program also provides coverage of nutritionally complete formula if the product is the sole source of nutrition. He said the program excludes coverage of any inherited disease of metabolism. He said some manufacturers inappropriately give medical food products National Drug Codes and then enter the product into the CMS Drug Data Repository. He said this has caused some confusion over what is covered by Medicaid. He said the state Medicaid Pharmacy Program provides coverage for drugs approved pursuant to sections 505 or 507 of the federal Food, Drug, and Cosmetic Act. He said metabolic foods are not included in these sections. He said DHS does not anticipate expanding coverage to include metabolic services and other similar conditions not covered by the special foods program administered by the State Department of Health.

### **State Department of Health - Updates on a Finalized Statewide Tobacco Prevention and Control Plan**

Chairman Lee called on Mr. Neil Charvat, Director, Tobacco Prevention and Control Program, State Department of Health, who presented an update ([Appendix S](#)) on a finalized statewide tobacco prevention and control plan that is consistent with the five components of the Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs* pursuant to Section 16 of 2017 Senate Bill No. 2004. Mr. Charvat said the five components include state and community interventions, health communication interventions, cessation interventions, surveillance and evaluation, and administration and management. He said the state's comprehensive tobacco prevention and control plan is based on the federal Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs*. He said the plan is organized into four goal areas, which include preventing initiation of tobacco use among youth and young adults, eliminating exposure to secondhand smoke, promoting quitting tobacco use, and building capacity and infrastructure to implement a comprehensive evidence-based tobacco prevention and control program. He said the state plan was finalized in October 2017. He said the state plan is intended to be a fluid document and strategies and activities of the plan may change to respond to the needs of tobacco prevention and control priorities. He said Professional Data Analysts Inc., is evaluating the plan. He said the company has provided preliminary evaluation results for the fiscal year ending June 30, 2018.

Chairman Lee suggested the department introduce a bill to the next Legislative Assembly to add language clarifying e-cigarettes and other similar products be considered tobacco products.

### **Committee Discussion and Staff Directives**

Chairman Lee thanked staff, committee members, agencies, and other stakeholders for support, assistance, participation, and input during the interim.

**It was moved by Senator Erbele, seconded by Representative Rohr, and carried on a voice vote that the Chairman and the Legislative Council staff prepare a report and the bill drafts recommended by the committee, and to present the report and recommended bill drafts to the Legislative Management.**

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

No further business appearing, Chairman Lee adjourned the committee sine die at 4:00 p.m.

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Michael C. Johnson  
Fiscal Analyst

ATTACH:19