NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH SERVICES COMMITTEE

Thursday, July 26, 2018
Roughrider 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

Member absent: Senator Tom Campbell

Others present: Representative Kathy Hogan, Fargo, member of the Legislative Management
See Appendix A for additional persons present.

It was moved by Senator Erbele, seconded by Senator Mathern, and carried on a voice vote that the minutes of the April 25, 2018, meeting be approved as distributed.

STUDY OF EARLY INTERVENTION SYSTEM FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Federal Requirements Affecting Medicaid Eligibility for Early Intervention Services

Chairman Lee called on Ms. Tina Bay, Director, Developmental Disabilities Division, Department of Human Services, who presented information regarding federal requirements affecting Medicaid eligibility for early intervention services. Ms. Bay said child support is included in a child's income when determining Medicaid eligibility for early intervention services. She said the child support may cause a child to have a recipient liability. She said child support is not included in a child's income when determining other levels of Medicaid eligibility. She said the Department of Human Services (DHS) is waiting for a response from the federal Centers for Medicare and Medicaid Services regarding options for excluding child support when determining a child's income for early intervention services.

In response to a question from Senator Poolman, Ms. Bay said the requirements only apply to Medicaid waivered services.

In response to a question from Senator Mathern, Ms. Bay said the department would need to determine the fiscal impact if child support may be excluded when determining Medicaid eligibility for early intervention services.

In response to a question from Representative P. Anderson, Ms. Michele Gee, Director, Economic Assistance Policy, Department of Human Services, said child support is not included when determining a child's income if the child is not receiving the child support.

Recipient Liability Under Medicaid for Early Intervention Services

Chairman Lee called on Ms. Bay who presented information regarding recipient liability under Medicaid for early intervention services. Ms. Bay said when available, the department will provide the committee with information regarding the number of children that were Medicaid eligible prior to 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.

Comments by Interested Persons

Ms. Roxane Romanick, Executive Director, Designer Genes, presented information (Appendix B) regarding the study of the early intervention system for individuals with developmental disabilities. She referred committee members to a list of recommendations provided to the committee at its meeting on April 25, 2018. She asked the committee to support efforts to move some of the direct service expenses from the federal Part C program budget to the Medicaid program budget.

Committee Discussion

Representative Hogan said the early intervention system involves a number of agencies and systems. She suggested the Task Force on Children's Behavioral Health also consider reviewing the early intervention system.

Senator Mathern requested the Legislative Council staff prepare a memorandum regarding allowable uses of the common schools trust fund and the possibility of using its income for defraying the expenses of the early intervention system.

STUDY OF DEVELOPMENTAL DISABILITIES AND BEHAVIORAL HEALTH NEEDS

Insurance Department - Mental Health Parity

Chairman Lee called on Mr. Jeff Ubben, Deputy Commissioner and General Counsel, Insurance Department, who presented information (Appendix C) regarding mental health parity. Mr. Ubben said the federal Mental Health Parity and Addiction Equality Act was passed in 2008. He said the Act was enacted to prevent health insurance companies from placing more treatment limitations or financial requirements on services related to mental health or substance abuse than is placed on surgical or medical services. He said these types of treatment limitations are called qualitative treatment limitations. He said the Act also prohibits a health insurance policy from imposing nonquantitative treatment limitations on services related to mental health or substance abuse unless the limitations are comparable to and are not applied more stringently than factors used to apply limitations on surgical or medical services.

Mr. Ubben said the Insurance Commissioner issued Bulletin Number 2018-1 on July 10, 2018, relating to insurance coverage of treatments for the autism spectrum disorder. He said treatments for autism generally are considered a mental health service or benefit. He said the bulletin provides if an insurance company chooses to cover the autism spectrum disorder and seeks to place qualitative or nonqualitative treatment limitations on autism spectrum disorder treatments or benefits the company must identify a similar limitation exists for the insurance coverage of surgical or medical services treatments and benefits. He said the bulletin also addresses coverage of applied behavior analysis therapies for autism. He said applied behavior analysis therapies previously were considered an experimental or investigative therapy. He said many health insurance plans excluded experimental or investigative treatments for surgical and medical conditions and generally excluded the treaments for mental health. He said insurance companies no longer are allowed to classify applied behavior analysis therapies to treat children with autism spectrum disorder as an experimental or investigative therapy.

In response to a question from Senator Mathern, Mr. Ubben said a priority of the Insurance Department is to ensure provisions of the federal Mental Health Parity and Addiction Equality Act are being enforced according to the law. He said the department is enhancing its efforts to advocate for consumers.

Chairman Lee suggested the Insurance Department also consider reviewing possible instances when a health insurance company places more treatment limitations or financial requirements on services related to surgical or medical services than placed on mental health or substance abuse. She provided an example regarding limitations of experimental or investigative cancer treatments.

Senator Poolman provided comments regarding mental health parity. She expressed support for the issuance of Bulletin Number 2018-1, but expressed concern regarding the long-term effects of including autism under mental health. She said autism is not a mental illness. She said autism should be considered a physical disease since it affects intellectual capacity, fine motor skills, and the digestive system. She also expressed concerns regarding the lack of behavioral analysts in the state to provide therapy.

Department of Human Services - Status of Clients at the Life Skills and Transition Center Who Could be Transitioned to Community

Chairman Lee called on Ms. Susan Foerster, Superintendent, Life Skills and Transition Center, Department of Human Services, who presented information (Appendix D) regarding the status of clients at the Life Skills and Transition Center who could be transitioned to the community and the number of children served at the Life Skills and Transition Center and original county of residence of the children. Ms. Foerster said the Transition to the Community Task Force met on June 14, 2018, and suggested changes to the mission and goals of the Life Skills and Transition Center. She said the changes involve community capacity building and better aligning the Life Skills and Transition Center with community providers. She said the goals of the Life Skills and Transition Center are to provide specialized developmental disabilities services, develop and maintain dynamic community transition plans, shape overall support plans, and support community capacity building.

Ms. Foerster said an individual's residential decisionmaking profile is assessed a score between 4 and 18. She said individuals with a score of 12 or less meet readiness for discharge. She said of the 68 individuals residing at the Life Skills and Transition Center as of April 1, 2018, 26 individuals are on a priority planning list. She said the average time an individual is on the priority planning list is 1.9 years. She said of the 102 individuals discharged in 2017, 30 percent had a score of 13 or higher.

In response to a question from Senator Mathern, Ms. Foerster said individuals with a score of 12 or less have been determined to benefit from and likely succeed in a community placement opportunity.

In response to a question from Representative Schneider, Dr. Paul D. Kolstoe, Clinical Director, Life Skills and Transition Center, Department of Human Services, said the Superintendent of the Life Skills and Transition Center has final legal authority regarding the discharge of an individual from the center. He said resistance to a discharge can occur from a guardian. He said the center works with the individual and the guardian to identify a solution. He said the center also may refer an individual and guardian to the Protection and Advocacy Project or another agency to seek additional information.

Ms. Foerster said the federal Health Insurance Portability and Accountability Act rules prevent the Life Skills and Transition Center from providing a child's county of residence; therefore, she is not able to provide the number of children from each county. She said there are currently 15 youth under the age of 22 at the Life Skills and Transition Center. She said the 15 individuals are from 10 different counties in the state.

In response to a question from Representative Hogan, Ms. Foerster said the center began conducting supports intensity scale assessments a few months ago and have conducted 31 supports intensity scale assessments.

Department of Human Services - Updates Regarding Behavioral Health and Developmental Disabilities Initiatives

Chairman Lee called on Ms. Bay, who presented information (Appendix E) regarding developmental disabilities initiatives, including an update on implementation of the new payment system for providers of services to individuals with developmental disabilities. Ms. Bay said the department is drafting the renewal of the developmental disabilities home- and community-based services waiver. She said the waiver expires March 31, 2019. She said the renewal must be submitted to the federal Centers for Medicare and Medicaid Services by January 1, 2019. She said the department held public meetings in May and June 2018 to gather feedback from stakeholders. In addition, she said, the department is reviewing services to address gaps identified in the technical assistant report. She said consideration is being given to the creation of a children's waiver, changes to eligibility, and additional services being added to the existing waiver.

Ms. Bay said a steering committee was created to review the new payment system for providers of services to individuals with developmental disabilities. She said the committee has met twice since the implementation of the new system on April 1, 2018. She said two subcommittees were created to review quality measures and outliers. She said the purpose of the quality measures subcommittee is to develop a measure that will monitor employment services. She said the purpose of the outlier subcommittee is to review denials to determine whether changes are needed to the criteria.

In response to a question from Senator Poolman, Ms. Bay said the rate matrix under the new system does allow for intermediate care facility medically intense rates.

In response to a question from Representative Hogan, Ms. Bay said some providers have expressed concerns regarding administrative time required to provide the monthly billing data. She said the previous system allowed providers to bill for two types of services, which included day habilitation and extended services. She said the new system allows providers to bill for four types of services, including prevocational employment, small group employment, individual employment, and day habilitation services. She said the department is reviewing and has contacted the federal Centers for Medicare and Medicaid Services and the National Association of State Directors of Developmental Disabilities Services to identify other ways to authorize services.

Comments by Interested Persons

Mr. Tim Eissinger, Chief Executive Officer, Anne Carlsen Center, provided comments regarding the new payment system for providers of services to individuals with developmental disabilities. He said the center's medically complex children are not adequately addressed in the new payment system. He said there was error in the calculation of the new rate and the error was not corrected. He said he is working with DHS and the State Department of Health to develop a pilot project for creating a pediatric skilled nursing category.

Mr. Matthew McCleary, submitted information (Appendix F) on behalf of Ms. Kirsten Dvorak, Executive Director, The Arc of North Dakota, regarding the study of developmental disabilities and behavioral health needs. Ms. Dvorak suggested closing the Life Skills and Transition Center and using the funds made available for services to support individuals in the community.

In response to a question from Representative P. Anderson, Dr. Kolstoe said every individual at the Life Skills and Transition Center has a transition plan for community living in the state.

Mr. Carl Young, parent and advocate for individuals with mental illness and their families, Bismarck, submitted information (Appendix G) on behalf of the Mental Health Advocacy Network, regarding the study of developmental disabilities and behavioral health needs. He said the Mental Health Advocacy Network advocates for a consumer and family driven mental health system of care that provides an array of service choices that are timely, responsive, and effective. He said the Mental Health Advocacy Network suggests priorities for mental health services include peer-to-peer and parent-to-parent support services, consumer choice, diversion from corrections, a core services zero-reject model, conflict-free grievance and appeals processes, and access to a full and functional continuum of care. He said the Mental Health Advocacy Network supports the recommendations provided to DHS from a study conducted by the Human Services Research Institute relating to the state's behavioral health system.

Ms. Carlotta McCleary, Mental Health America of North Dakota, submited information (Appendix H) on behalf of Ms. Marcia Hettich, President, Consumer and Family Network, Elgin, regarding the study of developmental disabilities and behavioral health needs. The testimony indicated the mission of the Consumer and Family Network is to ensure the state's mental health care system and community support programs are consumer and family driven. The testimony indicated the Consumer and Family Network advocates for recovery choices and possibilities and suggests priorities include funding for peer support services, enhancing funding for recovery centers, providing training for law enforcement and hospitals, and establishing a federal 1915(i) Medicaid state plan amendment.

Ms. Melissa Schroeder, Parent-to-Parent Director, Family Voices, submitted information (Appendix I) regarding family supports.

Committee Discussion

Chairman Lee requested the Legislative Council staff to prepare a bill draft for the next committee meeting for a voucher program for individuals with a mental health condition.

Senator Mathern suggested DHS include implementation of the Human Services Research Institute's recommendations relating to the state's behavioral health system in the department's budget request for the 2019-21 biennium.

In response to a question from Chairman Lee, Ms. Pamela Sagness, Director, Behavioral Health Division, Department of Human Services, said based on recommendations that have been provided, the department is reviewing the possibility of establishing a federal 1915(i) Medicaid state plan amendment. She said the department has provided four scheduled trainings throughout the state for peer support specialists. She said almost 100 peer support specialists have been trained in the state. She said eight individuals have completed the Train the Trainer program. She said the program trains individuals to provide peer support training. She said there are opportunities for peer support specialists to work for the free through recovery program. She said the opportunities are paid positions offered through private providers. She said there also are opportunities to advance the peer support specialist program to broaden and enhance the services beyond the criminal justice system.

OTHER COMMITTEE RESPONSIBILITIES

State Department of Health - Newborn Screening Program and Metabolic Foods Program

Chairman Lee called on Ms. Joyal Meyer, Director, Newborn Screening Program, State Department of Health, and Ms. Tammie Johnson, Program Administrator, Division of Special Health Services, State Department of Health, who presented information (Appendix J) regarding the newborn screening program and the metabolic food program for individuals with phenylketonuria and maple syrup urine disease.

Ms. Meyer said newborn blood spot screening is conducted on a baby shortly after birth to test for certain rare metabolic and genetic disorders. She said babies can appear healthy initially, but can become sick within hours after being born. She said early identification and treatment is vital to the health outcomes of babies. She said the Iowa State Hygienic Laboratory has processed North Dakota newborn blood spot specimens since 1992. She said outsourcing the specimens to another state for testing is more efficient because of the increased complexity, sensitivity, and costs of the testing. She said specimens are transported by courier from all 12 facilities in the state 5 days a week. She said Iowa State Hygienic Laboratory processes specimens 365 days per year. She said a national committee recommended all newborn screening results be reported to a health care provider within 7 days of life and no later than 5 days of life for time-critical disorders. She said to achieve the recommendations, newborn screening specimens should be collected within 48 hours after birth and received by the laboratory within 24 hours after collection. She said the newborn screening program is planning to increase the courier service to 7 days per week beginning July 1, 2019, to meet timeliness goals for all babies born in the state.

In response to a question from Representative Dobervich, Ms. Meyer said the state laboratory in Bismarck is not able to process specimens. She said the Iowa State Hygienic Laboratory charges a fee of $75 per specimen. She said there are no additional costs for repeated testing. She said the fee range for specimen testing can be

anywhere from $0 to $162 per specimen. She said the laboratory in Minnesota charges a fee of $150 per specimen.

In response to a question from Representative McWilliams, Ms. Meyer said the $75 fee Iowa State Hygienic Laboratory charges per specimen includes any followup services needed, courier services, and administrative fees.

Ms. Johnson said phenylketonuria and maple syrup urine disease disorders do not allow the body to break down certain proteins. She said brain damage or death can occur if left untreated. She said management of the disorders include a lifelong diet of medical food and low-protein modified food products. She said North Dakota Century Code Section 25-17-03 requires the State Department of Health to:

- Provide medical food at no cost to males under the age of 26 and females under the age of 45 who are diagnosed with the disorder, regardless of income;
- Offer medical food products for sale at cost to females age 45 and over and males age 26 and over who are diagnosed with the disorder, regardless of income; and
- Provide low-protein modified food products to females under age 45 and males under age 26 who are receiving medical assistance and are diagnosed with the disorder, if medically necessary as determined by a qualified health care provider.

Ms. Johnson said 26 individuals are ordering medical food as of June 2018, 25 of which have a phenylketonuria disorder and 1 who has a maple syrup urine disease disorder. She said health insurance policies are required to include coverage for medical foods and low-protein modified food products, but coverage is not required to the extent benefits are available from the State Department of Heath or DHS; and coverage in excess of $3,000 per year is not required. She said the State Department of Health Services Division of Special Health Services is the primary payer for medical foods and low-protein modified food products for females under age 45 and males under age 26. She said a Newborn Screening Technical Assistance and Evaluation Program identified that of nine participating states, six states covered costs of medical food through the state's medical assistance program. She said five of the nine states have a medical food program.

In response to a question from Representative Schneider, Ms. Johnson said the state Medicaid plan does not cover phenylketonuria and maple syrup urine disease disorders. She said some state's Medicaid plans include these disorders.

Chairman Lee requested DHS to provide information at the next committee meeting 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.

Department of Human Services - Status of Children's Prevention and Early Intervention Behavioral Health Services Pilot Project

Chairman Lee called on Ms. Sagness, who presented information (Appendix K) regarding the status of the children's prevention and early intervention behavioral health services pilot project pursuant to Section 3 of 2017 House Bill No. 1040. Ms. Sagness said an informal group of stakeholders have been meeting over the past year to identify solutions for addressing mental health and substance use issues in schools. She said the group includes representatives of school administrators, special education, higher education, Department of Public Instruction (DPI), rural and urban schools, Department of Corrections and Rehabilitation (DOCR), DHS, and the Council of Educational Leaders. She said the group identified gaps between the behavioral health system and the educational system that had to be addressed before a pilot project could begin. She said the group reviewed four areas, including ensuring the same use of language and terminology in both systems; identifying the workforce and credentialing of key individuals; aligning the goals of the behavioral health system, the education system, and the special education system; and aligning the educational system multi-tiered level of support model with the behavioral health system continuum of care model. She said the group identified the following needs:

- Improve training and resources for schools and behavioral health professionals;
- Increase utilization of screening and early intervention services;
- Improve access to clinical services when needed both within the school and externally; and
- Provide recovery support during transitions from out of home services to school.

Ms. Sagness said the department will be announcing an invitation for elementary and middle schools to apply for the pilot project in August 2018. She said the group identified criteria that will be used for awarding the project, which includes the school:

- Ensures the support of its leadership;
- Has a culture supportive of behavioral health;
- Has implemented some prevention and early intervention supports;
- Has some level of multi-tiered system of support implemented;
- Has a readiness to take action; and
- Has sustainability plans.

Ms. Sagness said the information and work from the group has also been provided to the Children's Behavioral Health Task Force. She said there also are opportunities to identify programs schools have implemented, including behavioral health services efforts, efforts to share programs with other schools, and efforts to offer support for evaluating programs.

In response to a question from Senator Mathern, Ms. Sagness said the goals of the pilot project are aligned with the goals and recommendations provided by the Human Services Research Institute's study of the state's behavioral health system.

In response to a question from Representative Hanson, Ms. Sagness said some states have higher levels of school-based behavioral health and integrated health services. She said there are some barriers the state needs to address before a benchmark can be established for the state, including a review of current policies.

Task Force on Children's Behavioral Health - Efforts, Information on Adverse Childhood Experiences and Early Childhood Intervention and Education, and Recommendations for Any Proposed Legislation Necessary to Implement the Recommendations

Chairman Lee called on Ms. Sagness, who presented information (Appendix L) on behalf of Mr. Christopher D. Jones, Chairman, Task Force on Children's Behavioral Health, and Executive Director, Department of Human Services, regarding efforts and information on adverse childhood experiences and early childhood intervention and education and recommendations for any proposed legislation necessary to implement the recommendations. Ms. Sagness said the purpose of the task force is to assess and guide efforts within the children's behavioral health system to ensure a full continuum of care is available in the state. She said the task force includes representatives from DHS, Indian Affairs Commission, DPI, DOCR, and the Protection and Advocacy Project. She said the task force is focusing efforts to develop strategies to address gaps or needs in education, juvenile justice, child welfare, community, and health. She said the task force has met five times since April 2018. She said the task force anticipates four additional meetings in the next few months. She said DHS has contracted with the Consensus Council to project, manage, and facilitate task force meetings. She said the council also is developing a matrix of services, including service providers and who qualifies for services.

Ms Sagness said the task force identified several prospective policy initiatives that it may advance through legislative proposals or through interagency collaborations. The initiatives include:

- Adoption of school seclusion and restraint policy and practices guidelines;
- Formation of a state-level children's services committee or cabinet, with supportive regional subcommittees;
- Suicide prevention;
- Bullying prevention and intervention;
- Young drivers and traumatic brain injury;
- Taxation policy--dedicated sales tax increases and revenue use;
- Expanded emergency care resources;
- Juvenile court rules for maltreatment; and
- State and tribal service collaboration.

Ms. Sagness said the task force anticipates providing recommendations to the committee at its next meeting.

In response to a question from Representative Rohr, Ms. Sagness said suicide rates in the state have been increasing.

Anne Carlsen Center - Services for Individuals on the Autism Spectrum

Chairman Lee called on Dr. Barbara Stanton, Anne Carlsen Center, who presented information (Appendix M) regarding services for individuals on the autism spectrum. Dr. Stanton said the Anne Carlsen Center began providing these services in January 2018. She said the center serves individuals from infants to adults. She said the center serves individuals in areas including Minnesota, North Dakota, and South Dakota. She said mental health services provided by the center include the following:

- **Early childhood services** - Including diagnosis and treatment of mental health issues, autism spectrum diagnosis and treatment, autism spectrum disorder testing, Bayley Scales of Infant and Toddler Development screenings, family therapy, and consultation and advocacy with parents and child care.
- **School-age child services** - Including intake, diagnosis, and treatment; family therapy; autism spectrum disorder testing; autism spectrum diagnosis and treatment; consultation and advocacy with parents and school; trauma therapy; cognitive behavioral therapy; and skills groups.
- **Adult services** - Including intake, diagnosis, and treatment; family therapy; autism spectrum diagnosis and treatment; trauma therapy; cognitive behavioral therapy; and screening for mental health issues.
- **Other services** - Including training for professionals or community, and information and referrals.

Dr. Stanton said the center also will be providing an intensive outpatient program beginning in August 2018. She said the program is for school-age children who experience behavioral difficulties in school and home. She said the program will focus on the autism spectrum disorder and related disorders. She said components of the program will include performing a comprehensive functional behavior assessment and any other assessments, monitoring responses to interventions, developing a transition plan, working with school and caregivers after discharge, and providing referral for followup care.

Dr. Stanton suggested the committee consider reviewing the Minnesota Children's Therapeutic Services and Supports program when identifying school-based mental health services. She said the program provides grants to mental health organizations for providing services in schools.

In response to a question from Representative Rohr, Dr. Stanton suggested considering services not traditionally considered mental health services, including consultation, observation, and case management services.

Bill Draft to Amend the Definition of Brain Injury

The Legislative Council staff distributed a bill draft [19.0187.01000] relating to the definition of brain injury.

Chairman Lee called on Mr. Austyn Kloehn, Operations Officer, Community Options, who presented information (Appendix N) on behalf of 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, regarding the definition of brain injury. Mr. Kloehn said the definition of brain injury in statute defines a brain injury based on the origin of an individual's brain injury instead of the functional impact of the brain injury. He said the definition causes confusion regarding whether an individual qualifies for services. He said 19 individuals from the North Dakota Brain Injury Network and 4 individuals from the Community Options program were denied services during the state fiscal years 2015 through 2017 because of the definition.

In response to a question from Representative Schneider, Mr. Kloehn said the proposed definition for brain injury is derived from Alaska's definition for brain injury.

In response to a question from Representative Rohr, Mr. Kloehn said he will discuss with Ms. Quinn to determine if degenerative and congenital nature should be defined in the proposed bill draft.

In response to a question from Representative McWilliams, Mr. Kloehn said he will review with Ms. Quinn the potential number of individuals in the state that will be impacted and the estimated additional funding needs as a result of the bill draft.

Chairman Lee called on Ms. June Herman, Government Relations Director, American Heart Association, who presented information (Appendix O) regarding the definition of brain injury. Ms. Herman said a key service of the North Dakota Brain Injury Network is to assist individuals with navigating the services available for post-brain injury therapy. She said the benefits of including post-stroke patients in the brain injury definition include:

- Avoiding the need to develop a duplicate support process;
- Providing medical providers and the health care community one source of information regarding available next steps;

- Providing post-stroke patients with access to agency specialists able to review the patients' coverage options; and
- Providing data for further evaluation of post-stroke brain injury inquiries, disability level, and unmet needs.

In response to a question from Senator Mathern, Ms. Herman said statute does not allow an individual with a stroke to qualify for services for a brain injury. She said she will review whether changes also are needed to administrative rules.

In response to a question from Representative McWilliams, Ms. Herman said the proposed definition would allow the North Dakota Brain Injury Network to assist individuals with a stroke to navigate available services.

Senator Mathern suggested the committee also review the need to add resources to implement any changes to the definition of brain injury. He said the proposed change to the definition will increase the number of individuals seeking assistance from the North Dakota Brain Injury Network. He said resources should be available to assist everyone.

Chairman Lee asked that the North Dakota Brain Injury Network and DHS present information at the next meeting regarding the proposed definition for a brain injury and any additional funding needs.

State Department of Health - Results of the Independent Review of the Tobacco Prevention and Control Plan's Effectiveness and Implementation

Chairman Lee called on Mr. Neil Charvat, Director, Tobacco Prevention and Control Program, State Department of Health, who presented information (Appendix P) regarding the results of the independent review of the tobacco prevention and control plan's effectiveness and implementation. Mr. Charvat said the Comprehensive Tobacco Prevention and Control State Plan is consistent with the five components of the federal Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs*. He said the department is working with Professional Data Analysts, Inc., to provide an independent review and overall evaluation of the effectiveness and implementation of the state plan. He said final data for the 2017 and 2018 state fiscal years is being compiled and analyzed and a report will be finalized later this year. He said Professional Data Analysts, Inc., have indicated they do not anticipate major changes to the state plan.

Mr. Charvat said the updated state plan includes key focus areas that continue from the previous plan. He said these areas include:

- Educate the public and policymakers of the need to increase the price of tobacco products to decrease youth and adult smoking rates;
- Protect the statewide smoke-free indoor air law;
- Work with health systems to implement cessation protocols and referrals to the statewide telephone cessation program called NDQuits;
- Deliver health communication messages relating to changing social norms relating to tobacco;
- Utilize surveillance and evaluation to assess tobacco use in the state and determine the effectiveness of the program;
- Engage youth in tobacco advocacy efforts at the local level;
- Increase collaboration with DHS regarding tobacco retailer compliance checks and cessation; and
- Implement bidirectional referrals to NDQuits through electronic health records and send updates to primary care providers.

In response to a question from Chairman Lee, Mr. Charvat said individuals 18 to 24 years old continue using tobacco at a higher rate than other age groups. He said the department is working with the universities to address the issue. He said some tobacco policies on campuses need to be updated to also include the use of electronic products, including e-cigarettes.

In response to a question from Representative P. Anderson, Mr. Charvat said some states have changed the legal smoking age from 18 to 21 years old. He said the state's strategic plan includes increasing the legal smoking age to 21. He said the department is encouraging local communities to assess the interest in changing the legal smoking age.

In response to a question from Representative McWilliams, Mr. Charvat said the department encourages businesses to reduce tobacco use through programs, including developing cessation programs and establishing tobacco-free campuses.

In response to a question from Representative Dobervich, Mr. Charvat said the department works with the Indian tribes on tobacco prevention and control efforts.

In response to a question from Representative Karls, Mr. Charvat said the Tobacco Prevention and Control Program does not have a position on marijuana use. He said the program receives funding from and follows the federal Centers for Disease Control and Prevention best practices for tobacco prevention. He said marijuana use is not legal at the federal level.

Tobacco Free North Dakota - Proposal for a Bill Draft to Increase Tax Rates on Tobacco Products

Chairman Lee called on Ms. Heather Austin, Executive Director, Tobacco Free North Dakota, who presented information (Appendix Q) regarding a proposed bill draft to increase tax rates on tobacco products. Ms. Austin said Tobacco Free North Dakota was founded in 1986. She said the mission of the organization is to reduce the serious health and economic consequences of tobacco use. She said the organization provides advocacy, education, coalition-building, and lobbying efforts. She said tobacco use is the state's number one cause of preventable disease and death. She said raising the price of tobacco products has been shown to prevent youth initiation of tobacco products and has been shown to help tobacco users quit. She said raising the price of tobacco products also would generate additional revenue for the state. She said 12.6 percent of youth and 19.8 percent of adults in the state smoke tobacco products. She said 21 percent of youth in the state use e-cigarette and vape products. She said the state tobacco tax rate is $0.44 per pack and the federal tobacco tax rate is $1.01 per pack. She said the last tobacco tax increase in the state was in 1993 when the tax was increased from $0.29 per pack to $0.44 per pack. She said the federal Centers for Disease Control and Prevention and national tobacco prevention partners have identified an increase of $1.50 per pack as the amount significant enough to have an impact to encourage current users to quit tobacco and deter youth from starting.

Senator Erbele said some constituents have expressed concerns increasing the tax would be a regressive tax. He suggested Tobacco Free North Dakota review whether raising the state tobacco tax would increase activities in other areas, including illegal drugs and petty thefts.

In response to a question from Chairman Lee, Ms. Austin said Tobacco Free North Dakota is reaching out to Indian tribes in hopes they would increase the tribal tax rate for tobacco products by the same rate.

In response to a question from Representative Hanson, Ms. Austin said the proposed language for a bill draft will include applying a state tobacco tax increase for both traditional tobacco products and electronic cigarette products. She said the tax mechanism for electronic cigarette products will be different than for traditional tobacco products. She said the language will be similar to legislation passed by other states to increase taxes on electronic cigarette products.

In response to a question from Senator Mathern, Ms. Austin said the federal Centers for Disease Control and Prevention considers raising the tobacco tax rate as a best practice policy. She said the center considers raising the legal age to 21 for purchasing tobacco products as a promising practice policy.

Behavioral Health-Related Boards

The Legislative Council staff presented a memorandum entitled *Behavioral Health-Related Boards* which reviews the statutory requirements for appointment to behavioral health-related occupational boards. He said the memorandum includes information for the Board of Addiction Counseling Examiners, Board of Counselor Examiners, North Dakota Board of Social Work Examiners, State Board of Psychologist Examiners, North Dakota Board of Medicine, and North Dakota Marriage and Family Therapy Licensure Board.

Nebraska Laws Requiring Reviews on Licensing Board Rules

The Legislative Council staff presented a memorandum entitled *Nebraska's 2018 Legislative Bill No. 299 - Occupational Board Reform Act*, which provides information regarding 2018 Legislative Bill No. 299 relating to occupational board reform, which was recently approved by the Nebraska legislature.

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

Chairman Lee called on Ms. Heidi Nieuwsma, Chairman, North Dakota Board of Social Work Examiners, who presented information (Appendix R) regarding an update on plans to address licensing issues for social workers, and any recommendations for legislative changes. Ms. Nieuwsma said Senate Bill No. 2033, approved by the 2017 Legislative Assembly, allows the board to grant a license if the applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements for licensure. She said the board has granted 15 applicants licensure under the new provisions. She said the licensees were qualified for licensure based on experience in the practice of social work.

Ms. Nieuwsma said the board met on June 12, 2018, to discuss any proposed legislative changes. She said the board also met on June 28, 2018, to discuss suggestions that were made at the June 12, 2018, meeting. She said the board anticipates meeting on August 7, 2018, to vote on a final bill draft.

In response to a question from Chairman Lee, Ms. Nieuwsma said three new members have been appointed to the board.

Chairman Lee called on Mr. Steven Reiser, Director, Dakota Central Social Services, and member, North Dakota County Social Service Director's Association, who presented information regarding an update on plans to address licensing issues for social workers. Mr. Reiser said the North Dakota County Social Service Director's Association is willing to work with the North Dakota Board of Social Work Examiners to provide comments on a bill draft prior to the board's meeting on August 7, 2018. He said the association is also willing to provide comments on the final bill draft from the board.

Representative Hogan suggested the Board of Social Work Examiners also reach out to social workers specializing in other areas regarding any proposed changes.

Other Memorandums

The Legislative Council staff distributed memorandums entitled *Children's Mental Health Services Resources*; *State Plans to Comply with the 1999 Olmstead v. L.C. Case*; and *State Institutions for Individuals With an Intellectual or Developmental Disability*.

Comments by Interested Persons

Ms. Tara Geigle presented information (Appendix S) regarding the licensing of psychologists in the state. She said the following recommendations were presented to the State Board of Psychologist Examiners:

- Establish a new track within the University of North Dakota clinical program for graduates with a doctoral degree and allow for more credits and work experience to transfer;
- Consider hiring a member of the clinical program to conduct equivalency evaluations for licensure;
- Allow the clinical program to create classes for individuals seeking to meet the needs for equivalency;
- Allow individuals to conduct a year of postdoctoral employment without having to apply for licensure in the state or allow for a separate postdoctoral license;
- Allow individuals licensed in other states and in good standing with that state to obtain expedited licensure upon completion of the state exam, oral exam, and all necessary documents and supporting documents; and
- Establish standards for accepting applicants with a foreign degree or foreign license.

Chairman Lee requested the State Board of Psychologist Examiners present information at the next committee meeting regarding:

- Recommendations presented to the committee by Ms. Geigle;
- 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.

Committee Discussion

Chairman Lee requested representatives of the Governor's office and the Protection and Advocacy Project to present information at the next committee meeting regarding updates on the North Dakota Olmstead Commission.

Representative P. Anderson requested the committee provide the North Dakota Olmstead Commission with a copy of the memorandum entitled *State Institutions for Individuals With an Intellectual or Developmental Disability*.

Representative Hogan suggested DHS present at the next meeting regarding plans to implement recommendations provided to the department from a study conducted by the Human Services Research Institute relating to the state's behavioral health system.

Chairman Lee said the next committee meeting is tentatively scheduled for Wednesday, September 12, 2018.

It was moved by Representative Karls, seconded by Representative Hanson, and carried on a voice vote that the meeting be adjourned.

No further business appearing, Chairman Lee adjourned the meeting at 5:15 p.m.

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Michael C. Johnson
Fiscal Analyst

ATTACH:19