NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON LONG-TERM CARE

Wednesday and Thursday, May 20-21, 1998
The Terrace and St. Vincent's Care Center
Bismarck, North Dakota

Representative Bill Oban, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Bill Oban, Grant C. Brown, Ron Carlisle, James O. Coats, Gereld F. Gerntholz, Shirley Meyer; Senators Bill L. Bowman, Aaron Krauter, Evan E. Lips, Harvey Sand, Russell T. Thane

Members absent: Representatives Mike Callahan, Jeff W. Delzer, Lynn J. Thompson

Others present: See attached appendix

It was moved by Senator Krauter, seconded by Senator Lips, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Mr. Dave Sjostrom, Administrator, The Terrace, welcomed the committee to The Terrace. He said The Terrace is owned by the Burleigh County Housing Authority and opened on May 1, 1996. Mr. Sjostrom said the 40-bed facility was filled within six weeks. He said the 1997 occupancy rate was approximately 98 percent and there are 162 people on a waiting list. Mr. Sjostrom said the facility tries to maintain a resident mix of approximately 50 percent private pay and 50 percent state assistance. He said the monthly rate for a private pay resident is $1,900.

In response to a question from Senator Thane, Mr. Sjostrom said he has had no turnover of the original core staff in the two years the facility has been open. He said the part-time staff has had some turnover.

In response to a question from Senator Lips, Mr. Sjostrom said approximately 90 percent of the residents are from Burleigh County.

In response to a question from Senator Thane, Mr. Sjostrom said since the facility has started working with the Burleigh County Social Services expanded case management system pilot project, the people on the waiting list who reside at home are receiving home and community-based services, if needed.

The committee toured The Terrace.

In response to a question from Senator Sand, Mr. Sjostrom said the facility pays a negotiated property tax to the city. He said the amount was approximately $30,000 last year.

In response to a question from Senator Thane, Mr. Sjostrom said he is unable to provide specifics regarding the construction funding. He said the facility has approximately $2.4 million of debt relating to its construction. He said he would provide information regarding the construction funding to the Legislative Council. Chairman Oban said the Legislative Council would forward the information to the committee members.

In response to a question from Representative Oban, Mr. Sjostrom said the residents of The Terrace have a wide range of needs. He said in order to reside in a basic care facility the resident must be continent and self-transferring.

Chairman Oban distributed an article from *The Forum* regarding Medicaid funding. A copy of the article is on file in the Legislative Council office. He also reminded the committee that the next meetings would be June 29-30, 1998, in Kenmare, and September 10-11, 1998, in Bismarck.

The Legislative Council staff presented a memorandum entitled *Senior Citizens' Mill Levy Match Funding*. The memorandum provided information on the 1996, 1997, and 1998 disbursements to counties and cities for the senior citizens' mill levy match program.

Mr. Brian Arett, Fargo Senior Commission, Inc., commented on the senior citizens' mill levy match. He said the senior citizens' mill levy match was established in the 1980s as a dollar-for-dollar match but was never funded adequately to actually match county and city funds on a dollar-for-dollar basis. He said the closest match was approximately 96 cents on the dollar. Mr. Arett said for 1998 the funding provided to counties and cities is at a match of about 42 cents on the dollar. He said this program is an important part of the continuum of care because it goes toward services which help keep people in their homes. He said the funds are also used by

cities and counties as a match for the receipt of federal funds.

Representative Oban asked what this committee could do to improve the senior citizens' mill levy match funding. Mr. Arett said the Legislative Assembly will be approached next session with a request to increase the funding in an attempt to get closer to the dollar-for-dollar match.

Representative Oban asked if the 1999-2001 biennium budget for the Department of Human Services would include an increase for the senior citizens' mill levy match and if the department sees it as a priority in the continuum of care. Ms. Linda Wright, Department of Human Services, said the mill levy match is a priority, but she is not sure how it will fit into the budget. Ms. Carol Olson, Department of Human Services, said the mill levy match is a consideration in the budgeting process and is a priority program. She said she is aware of the budgetary needs, but it is too early in the budget process to make any comment about specific dollar levels of funding.

Mr. David Zentner, Department of Human Services, presented information on the possibility of the federal government changing the Medicaid program to a block grant. A copy of his presentation is on file in the Legislative Council office. He said in 1995 and 1996 Congress proposed to block grant the Medicaid program. He said the administration opposed the block grant and put forth a plan which would have provided for an average per capita cap. He said the block grant bill was sent to the President and vetoed and the President's plan was never approved by Congress.

Mr. Zentner said there appears to be some renewed interest in Congress to again consider block grants for Medicaid. He said a proposal being discussed in the House Budget Committee would block grant the acute care portion of the Medicaid program and leave the long-term care portion of Medicaid in its current status. He said the committee is looking for funds that can be used to provide tax reductions in other areas. Mr. Zentner said in exchange for the block grant in the Medicaid program, the Medicaid budget would be reduced by $200 million in 1999 and $4.8 billion over five years. He said it is likely this proposal will be opposed by the administration, and it is unknown how much support the proposal will receive in Congress. Mr. Zentner said although the potential for a Medicaid block grant is always present, there appears to be a reluctance on the part of the administration and many in Congress to give states flexibility in the operation of the Medicaid program in exchange for a block grant that limits federal expenditures.

Mr. Zentner distributed copies of the draft report of the Task Force on Long-Term Care Planning. A copy of the report is on file in the Legislative Council office.

Ms. Olson presented information regarding the work of the Task Force on Long-Term Care Planning. A copy of her presentation is on file in the Legislative Council office. She said the task force adopted the majority of recommendations made with only three of the recommendations being rejected. She said the task force requested additional study regarding the potential of providing one-time payments to nursing facilities for a reduction in bed capacity. Ms. Olson said a subcommittee will further explore this issue and report back to the task force by June 15, 1998. She said further information will be provided to this committee at its meeting on June 29-30, 1998.

Ms. Olson said the task force concluded that additional efforts must be made to provide a more seamless system of care, including an effective case management system which offers cost-effective long-term care services in the least restrictive setting possible. She said as of 1995 North Dakota still spent a higher percentage of its Medicaid budget (60 percent) on long-term care services than any other state in the country. She said the current biennium budget contains approximately $244.6 million or 97.7 percent for nursing facility care and only $5.7 million or 2.3 percent for home and community-based services. Ms. Olson said this is in contrast to a state such as Oregon which allocates 39 percent of its Medicaid long-term care expenses for home and community-based care. She said North Dakota has approximately 75 nursing facility beds per 1,000 people over 65 years of age, whereas Oregon has been able to reduce that number to only 34 beds per 1,000.

Ms. Olson said while the task force's goals are not as dramatic as those adopted by Oregon, it does believe that reducing the reliance on institutional care by offering quality services in alternative settings is appropriate, cost-effective, and in the long run in the best interest of the elderly and disabled of our state.

Ms. Olson distributed written comments of Mr. Murray G. Sagsveen, Department of Health. She said he was unable to attend the meeting but requested that his comments be distributed. A copy of his comments is on file in the Legislative Council office.

Chairman Oban asked if the task force could review the needs of the senior citizens' mill levy match program and include that in the task force report presented to this committee during its

June meeting. Ms. Olson said the task force could expand its focus to include the senior citizens' mill levy match funding.

BASIC CARE RATE EQUALIZATION

Ms. Barb Fischer, Department of Human Services, presented information on the Long-Term Care Task Force's preliminary recommendations regarding basic care rate equalization and a bill draft to implement the recommendations of the task force. A copy of her presentation and the bill draft are on file in the Legislative Council office. Ms. Fischer said the task force is recommending that rate equalization for basic care facilities be repealed. She said the primary reasons for this recommendation are:

- The task force is considering basic care services as an alternative to nursing facility care. With anticipated changes in funding streams for basic care and the impetus to move to alternatives, rate equalization would have an adverse impact or prevent changes in the basic care industry to accomplish the long-range goals of using alternatives to nursing facility care.
- Data on basic care rates indicates that "cost (revenue) shifting" to private pay residents is not occurring within the industry.
- Access for basic care assistance residents may be adversely affected by rate equalization since facilities with low assistance to private pay ratios may opt to not be included in the basic care assistance program so as not to be subject to rate equalization.
- Rate equalization does not assure that additional payments will not be sought for services which are not a part of the daily rate.

Ms. Shelly Peterson, North Dakota Long Term Care Association, expressed support for the recommendation of the task force regarding basic care rate equalization. She said the basic care industry supports the repeal of basic care rate equalization. She said the industry's opinion is that it is providing a cost-effective alternative to nursing facility care.

Chairman Oban said because the task force's bill draft contains the necessary provisions to repeal basic care rate equalization, there is no need to review the bill draft prepared by the Legislative Council staff to repeal basic care rate equalization.

ADULT PROTECTIVE SERVICES

The Legislative Council staff presented a memorandum entitled *Vulnerable Adult Protective Services*. The memorandum provided a background and history on 1989 House Bill No. 1058 which established the vulnerable adult protective services program. The memorandum also included information on statistics maintained on existing vulnerable adult service caseloads and on funding levels for South Dakota, Minnesota, and Montana adult protective services programs.

The committee recessed for lunch at 12:00 noon and reconvened at 1:00 p.m.

Ms. Wright presented information on the task force's preliminary recommendations regarding adult protective services. A copy of her presentation is on file in the Legislative Council office. She said the task force concluded that an adult protective services program is essential as options for home and community-based care expand. She said the urgent need for adult protective services has been voiced by a number of groups in addition to the task force. Ms. Wright said incorporating adult protective services into existing systems rather than creating an entire new system would provide a cost-effective means of implementation.

Ms. Wright said the subcommittee working on service availability, qualified service provider training, and case management recommended that legislation be introduced to amend North Dakota Century Code Chapter 50-25.2 to require implementation of the vulnerable adult protective services statute. She said due to legal questions that have been raised since the last meeting of the task force, this recommendation was referred back to the task force for further discussion before making a final recommendation.

In response to a question from Representative Oban, Ms. Wright said the legal questions regarding the recommendation related to liability issues. She said if the permissive language is removed and the department is mandated to implement adult protective services but does not implement it due to a lack of funding, there were thoughts that the department may be open to lawsuits.

In response to a question from Representative Oban, Ms. Wright said the position of the department regarding the vulnerable adult protective services program being a funding priority has not changed because of the task force reviewing its recommendation.

Mr. Chester E. Nelson, Jr., Legislative Budget Analyst and Auditor, Legislative Council, said this committee has the option of having a bill drafted

for its next meeting which would implement this recommendation. He said along with the bill draft, the committee could receive a memorandum that would explain the legal implications to the Department of Human Services of changing this program from being implemented subject to legislative appropriation to being a mandated program.

It was moved by Senator Krauter, seconded by Senator Lips, and carried that the Legislative Council staff be requested to prepare and present at the next meeting a bill draft to remove language from North Dakota Century Code Chapter 50-25.2 providing that the vulnerable adult protective services program only be implemented if a legislative appropriation is provided, and that the Legislative Council staff prepare a memorandum regarding the legal implications of the Department of Human Services not complying with the law. Voting "aye" were Representatives Oban, Brown, Coats, Gerntholz, and Meyer and Senators Bowman, Krauter, Lips, Sand, and Thane. No negative votes were cast.

Senator Bowman asked if the committee has an obligation to propose a funding source for this program if it is going to propose mandating that the program be provided.

Mr. Nelson said if the bill draft is approved by this committee, the department could proceed to include the funding for this program in its budget. He said if the department chooses not to include the funding in its budget, a fiscal note would be requested on the bill during the early days of the legislative session. He said the information on the fiscal note would then be provided to legislative leadership and the Appropriations Committee members through a memorandum done by the Legislative Council fiscal staff.

Senator Krauter said it is an indication to the department that this committee considers this program a priority. He said the department's actions on the funding of the program will be an indication to the Legislative Assembly of where the program is on the department's priorities.

EXPANDED CASE MANAGEMENT SYSTEM PILOT PROJECTS

Mr. Arett presented information regarding the task force's preliminary recommendations on the expanded case management system pilot projects. A copy of his presentation is on file in the Legislative Council office. He said two contracts for the purchase of expanded case management services within the state of North Dakota have been implemented. He said one is in Burleigh County and one is in a multicounty area which includes Benson, Eddy, Ramsey, and Towner Counties. He said due to a number of factors the startup dates for the expanded case management system pilot projects were December 1, 1997, for Burleigh County and January 6, 1998, for Benson, Eddy, Ramsey, and Towner Counties. He said unfortunately neither project will have been operating long enough to provide meaningful information during this legislative interim. He said in order to evaluate the effectiveness of the expanded case management system pilot projects it will be necessary to continue the projects into the next biennium.

Mr. Arett said the following recommendation regarding the expanded case management system pilot projects was adopted by the task force:

- That the Department of Human Services continue to monitor the progress of the pilot projects and prepare a final report on the results no later than June 30, 2000. Continued funding of these projects comes from within the Department of Human Services' budget.

Mr. Arett said the task force is also recommending that Medicaid-eligible individuals who are at risk of entering nursing facilities be required to obtain case management services, including a preadmission assessment of needs, before deciding how to access long-term care services. He said this recommendation is included in a bill draft to be presented later in the day.

Ms. Colette Mund, Burleigh County Social Services, presented information regarding the Burleigh County Social Services expanded case management system pilot project. A copy of her presentation is on file in the Legislative Council office. She said expanded case management is meant to serve as a single point of entry for elderly and physically disabled Burleigh County residents to access the whole continuum of long-term care services, including home services, community-based services, and basic care or nursing facility services. She said the overall goal of expanded case management is to delay or prevent nursing facility placement.

Ms. Mund said from December 1997 through February 1998 the general public was made aware of the expanded case management services by a variety of means. She said these included the distribution of brochures and ink pens, the development of an Internet web site, mailings to applicants on skilled nursing and basic care facility waiting lists, written advertisement on Community Access Television's community bulletin board message service, and meetings with social services staff from various public and

private agencies and facilities. She said the result of the project's networking, outreach, and advertising efforts was 24 referrals during the first three months. She said the project is trying to reach clientele not typically served by county social services.

Ms. Mund said another goal of the expanded case management system pilot project includes the implementation of a comprehensive computerized data base assessment tool which will be done on a laptop computer in the client's environment. She said this will make it possible to electronically transfer individual client data to other service providers, with the appropriate releases, in order to improve coordination of services and save time.

Senator Thane asked how close the pilot project is to implementing the computerized assessment tool. Ms. Mund said they hope to be using the computerized assessment tool in a month. She said it will be a standardized assessment tool and will hopefully be able to be used by other caseworkers.

AMERICAN INDIAN LONG-TERM CARE NEEDS STUDY

Mr. Fred Larson, Department of Health, presented information regarding the task force's preliminary recommendations on American Indian long-term care needs issues. A copy of his presentation is on file in the Legislative Council office. He said the task force was to be studying American Indian long-term care and case management needs, access to services, and the functional relationship between state service units and American Indian reservation service systems. He said the task force was unable to establish a committee comprised of representatives of each reservation and non-American Indians to study these issues. He said because a different approach is called for, the task force has directed him to attempt to establish a working group on each of the reservations to carry out the study. Mr. Larson said findings and recommendations will not be available during this interim.

In response to a question from Mr. Nelson, Mr. Larson said the reference to greatest opportunity for improvement relates to the possibilities of coordination of state, county, and local service units and tribal or reservation service delivery and case management.

INCENTIVES FOR FINANCING ISSUES RELATING TO REDUCING THE NUMBER OF LONG-TERM CARE BEDS AND THE DEVELOPMENT OF ALTERNATIVE SERVICES

Ms. Fischer presented testimony on the task force's preliminary recommendations on financing incentives relating to reducing the number of long-term care beds and the development of alternative services. A copy of her presentation is on file in the Legislative Council office. She said the task force developed seven recommendations relating to the creation of incentives and disincentives and the removal of impediments to encourage facilities to reduce occupancy or licensed capacity or develop alternative home and community-based services for individuals at risk of institutionalization. She summarized the task force recommendations as follows:

- Change the current basic care ratesetting system to allow for an operating margin of three percent. She said the 1997 Legislative Assembly approved a two percent operating margin for basic care facilities for the 1997-99 biennium. She said the two percent operating margin sunsets on June 30, 1999, and is not a part of the current ratesetting methodology. She said a three percent operating margin would cost approximately $150,000 in general fund moneys. She said this recommendation can be implemented within the confines of the current ratesetting system and does not require specific legislation; however, it may require an appropriation if the impact is not included in the Governor's budget.
- Change the current basic care ratesetting system to allow for the inclusion of property costs as a passthrough. She said the inclusion of the property rate in the limit rate provides a disproportionate advantage to older facilities which do not have significant debt or costs related to buildings and equipment. She said if facilities are required to use revenues relating to operating expenses to pay property costs, the facility will not be as able to expand or provide alternative services. Ms. Fischer said the fiscal impact of recognizing property costs as a passthrough is approximately $195,000 per biennium of general fund moneys. She said this recommendation can be implemented within the confines of the current ratesetting system and does not require specific legislation;

however, it may require an appropriation if the impact is not included in the Governor's budget.

- Create a disincentive for facilities with a low case mix average and provide an incentive for facilities with a high case mix average. She said the incentive would encourage facilities to admit individuals in need of more care while the disincentive would encourage facilities to look at providing alternatives rather than admit individuals who are higher functioning and may not be in need of 24-hour nursing care. She said facilities with an average case mix below a low threshold would have rates decreased by 2.5 percent and facilities with an average case mix above a high threshold would have their rates increased by 2.5 percent. Ms. Fischer said the fiscal impact of the incentive and disincentive package as calculated using the January 1, 1998, rates is a decrease of approximately $50,000 per biennium, of which $35,000 would be federal funds and $15,000 would be general fund moneys. She said this recommendation can be implemented within the confines of the current ratesetting system and does not require specific legislation.
- Provide an exception to the 90 percent occupancy limitation. A facility with less than 90 percent occupancy currently has its rate decreased because daily rates for direct care and property costs are calculated as if the facility has a 90 percent occupancy. A facility with a 90 percent occupancy limitation has a negative incentive to admit residents so rates will not be adversely impacted in the future and to generate revenues. She said as an incentive to reduce licensed capacity, the task force recommends that if a facility has a 90 percent occupancy limitation and reduces licensed capacity prior to or during a rate year, the 90 percent occupancy limitation would be waived. She said if a facility commits to delicensing beds during a rate year and receives a waiver of the 90 percent occupancy limitation and then does not decrease licensed capacity, the 90 percent occupancy limitation would be applied retroactively and refunds to payers would be required. She said this recommendation can be implemented within the confines of the current ratesetting system and does not require specific legislation.
- Provide a rate incentive to facilities that have an annual average length of stay below a predetermined threshold. She said this incentive should encourage facilities to look at alternatives to nursing facility care upon initial admission as well as encourage facilities to provide necessary care and then discharge individuals to appropriate alternative settings. She said using an average length of stay of 200 days as the threshold, a facility would receive an increase in its daily rate equal to one percent if its average length of stay was under 201 days, two percent if below 181 days, and three percent if below 161 days. She said the fiscal impact of providing this incentive is approximately $320,000 per biennium, of which $94,000 would be from general fund moneys. She said this recommendation can be implemented within the confines of the current ratesetting system and does not require specific legislation; however, it may require an appropriation if the impact is not included in the Governor's budget.
- Change the statutory definition of a private pay resident to exclude managed care organizations as an entity subject to rate equalization. She said the ability to negotiate rates for short stays is an important incentive which has no fiscal impact on state funds or private pay residents but has a significant impact on the facility's revenue potential because these individuals tend to have high resource utilization which will not be adequately compensated by the case mix rate.
- Provide an incentive to facilities that significantly decrease licensed capacity or close an entire facility. She said this recommendation is still being reviewed by the task force. She said the final draft of this recommendation will be available at this committee's June meeting.

Ms. Fischer said the bill draft which provides for the repeal of basic care rate equalization also contains a section changing the definition of a private pay resident to exclude managed care organizations.

Senator Krauter asked if the department is planning to include the fiscal impact of these recommendations in its 1999-2001 budget. Ms. Olson said the department is not far enough into the budget process to be able to identify which items will and will not be included in the budget.

In response to a question from Senator Krauter, Ms. Olson said she hopes that by this committee's June meeting more information will be available regarding items included or excluded from the department's budget.

In response to a question from Senator Sand, Ms. Fischer said under the current definition Medicare+Choice contracts are subject to rate equalization because the managed care organization is a private organization which does not have ratesetting authority. She said the current definition precludes any third-party payer from negotiating or establishing rates unless the payer is a governmental entity.

Mr. Nelson asked if the intent of the task force is to allow for the negotiation of charges at a rate above rate equalization but not less than rate equalization rates. Ms. Fischer said Medicaid provisions would prohibit that type of a statute.

Mr. Nelson asked if the bill draft could include language that would provide that the minimum negotiated rate would have to be at least the same as rate equalization rates. Ms. Fischer said that type of language could be included in the bill draft.

Ms. Fischer presented information on long-term care facilities negotiating with managed care organizations and insurance companies. A copy of her presentation is on file in the Legislative Council office. She said the task force has recommended that managed care organizations be allowed to negotiate rates with nursing facilities. She said the task force recommendation does not include insurance companies because insurance companies typically pay a flat rate per day and are not involved with an individual's choice of care.

Ms. Fischer said the Medicare payment on a fee for service basis is based on a Medicare room and board rate applicable to all residents and specific charges for therapies, medical supplies, and drugs. She said by limiting payment to the rate established for private pay and Medicaid residents and not allowing a Medicare+Choice managed care organization to negotiate for services to be provided by a nursing facility, the nursing facility will usually incur higher costs for the care provided to the Medicare beneficiary and not generate the revenue necessary to pay for those costs. She said the managed care organization is the only entity that benefits from the lack of ability to negotiate rates.

It was moved by Senator Sand and seconded by Senator Thane that the Legislative Council staff be requested to review the task force's bill draft relating to the repeal of basic care rate equalization and the definition of a private pay resident and make any necessary form and style changes and present the bill draft at this committee's next meeting.

It was moved by Representative Coats, seconded by Senator Krauter, and carried on a voice vote that the bill draft be amended to include a section providing that rates negotiated by managed care organizations may not be lower than the rates established under rate equalization. The amended motion carried. Voting "aye" were Representatives Oban, Brown, Coats, Gerntholz, and Meyer and Senators Bowman, Krauter, Sand, and Thane. No negatives votes were cast.

Ms. Peterson said the Long Term Care Association does not support one of the recommendations of the task force. She said the recommendation for the disincentive for low case mix average facilities is not supported by the Long Term Care Association. She said the revenue of the nine facilities with the lowest case mix would be negatively impacted by the disincentive. She said the Long Term Care Association does support rebasing the reimbursement system. She said this was not a recommendation of the task force but is something the Long Term Care Association supports. She said the estimated cost to rebase the reimbursement system is approximately $12 million. Ms. Peterson said the Long Term Care Association also supports a recommendation, which was not adopted by the task force, which would allow for a facility to charge private pay residents the cost of care.

Senator Krauter said allowing facilities to charge private pay residents the cost of care appears to be contrary to rate equalization.

Chairman Oban said the Legislative Council staff would work with Mr. Larson on the preparation of a resolution regarding the American Indian long-term care needs study issues. He said the resolution would be presented at this committee's next meeting.

Mr. Zentner presented information on the task force's preliminary recommendations relating to the development of alternative long-term care services for the elderly and disabled residents of North Dakota. In addition, he presented three bill drafts relating to the preliminary recommendations of the task force. A copy of his presentation and the bill drafts are on file in the Legislative Council office.

Mr. Zentner said the task force recommendations were categorized as those relating to alternative services, case management, and moratorium on nursing facility and basic care beds. He said the alternative service recommendation is:

1. Enact enabling legislation which would direct the Department of Human Services,

Department of Health, long-term care industry, and consumers to develop, during the period July 1, 1999, through December 31, 2000, the rules, policies, and procedures necessary to implement the proposed changes in the current delivery system for alternative long-term care services. He said the actual implementation of the law would occur on July 1, 2001, unless otherwise changed or rescinded by the Legislative Assembly. He said the enabling legislation should:

a. Repeal existing laws regarding the definition of assisted living facilities and the definition, regulatory oversight, and payment requirement for basic care facilities.
b. Define a new category of residential facility that would include facilities formerly classified as basic care facilities or assisted living facilities to include facilities that include 24-hour health, social, or personal care services to five or more individuals who are not related by blood or marriage to the owners or operators.
c. Require the development of a fire safety standard for the above-defined group of facilities that meets, as a minimum, those standards contained in Chapter 22 of the National Fire Protection Association Standard 101 (Life Safety Code) for new facilities and Chapter 23 for existing facilities.
d. Require the development of rules that would designate the state agency responsible for enforcement of the above standards. Require that rules, policies, or procedures be developed that set forth the manner in which each facility will arrange for, obtain, and pay for an inspection and assure compliance with the standards, including any regulatory remedies that may be necessary for noncompliant facilities, subject to approval by the 2001 Legislative Assembly.
e. Require the Department of Human Services to develop rules, policies, or procedures that would establish minimum standards for the delivery of personal care services to individuals residing in residential facilities, including regulatory remedies for noncompliance, subject to approval by the 2001 Legislative Assembly.
f. Require the Department of Human Services to develop payment rules, policies, or procedures that would allow program payments to follow eligible clients irrespective of the housing option chosen. The payment process should vary based on the needs of each individual and may be developed on a regional or statewide basis and need not be tied directly to the costs incurred by individual providers of service. The payment should also include subsidized housing as necessary for recipients of basic care assistance not to exceed defined limits and individuals receiving home and community-based care services if cost-effective.
g. When feasible allow clients to select the care provider of their choice to provide personal care services in the various available housing options.

Mr. Zentner reviewed a bill draft which provides the statutory changes necessary to implement the task force's recommendations relating to alternative services.

Mr. Zentner said the recommendations of the task force relating to case management are:

- Require that any individual eligible for the Medicaid program must, prior to entering a nursing facility or accessing other long-term care services, obtain a preadmission needs assessment to determine the type of services necessary to maintain each individual and what long-term care alternatives, if any, could meet those care needs.
- Authorize the Department of Human Services to implement a targeted case management program for elderly and disabled individuals at risk of entering a nursing facility or needing other long-term care services, including the necessary general fund and federal funds spending authority to operate the service in the next biennium.
- Consider monitoring the results of this program to determine if the above policy should be extended to all individuals wishing to enter nursing facilities.

Mr. Zentner reviewed a bill draft which provides the statutory changes necessary to implement the task force's recommendations relating to case management.

In response to a question from Representative Meyer, Mr. Zentner said the preadmission needs assessment is not a criteria to be used to judge individuals on their eligibility for admission to a

long-term care facility. He said the assessment is a tool to help inform people of the appropriate level of care that would best suit that individual's needs. He said it will help individuals make the most informed decision possible.

Mr. Zentner said the task force's recommendations, which would require statutory changes, relating to the moratorium on nursing facility and basic care beds are:

- Continue the current moratorium that prohibits an increase in the nursing facility bed capacity and basic care facility bed capacity.
- Allow for an exception to the basic care facility moratorium that would permit the addition of one basic care facility specifically designed to meet the care needs of the traumatically brain-injured (TBI) population, not to exceed the greater of 10 beds or the number of available slots permitted in the waiver.

Mr. Zentner reviewed a bill draft which provides the statutory changes necessary to implement the task force's recommendations relating to the moratorium on nursing facility and basic care beds.

Mr. Zentner said an additional recommendation of the task force is that the Department of Human Services change current funding and administrative policies to allow nursing facilities to provide and receive payment from the department for other services up to the level of the license of a skilled nursing facility.

It was moved by Representative Meyer, seconded by Senator Krauter, and carried that the Legislative Council staff be asked to review the three task force bill drafts relating to alternative services, case management, and the moratorium on nursing facility and basic care beds and make any necessary form and style changes and clarify Section 3 of the bill draft relating to case management, as to the purpose of the preadmission assessment, and present the bill drafts at the committee's next meeting. Voting "aye" were Representatives Oban, Brown, Coats, Gerntholz, and Meyer and Senators Bowman, Krauter, Sand, and Thane. No negative votes were cast.

Senator Krauter requested that the Department of Human Services provide the committee with numbers and statistics supporting the need for the exception to the basic care facility bed moratorium relating to a facility for TBI individuals. Chairman Oban said that would be included on the June meeting agenda.

The committee recessed at 5:10 p.m. and reconvened at 9:00 a.m. on Thursday, May 21, 1998, at St. Vincent's Care Center.

Ms. Lynn Blakeman, Administrator, St. Vincent's Care Center, welcomed the committee to St. Vincent's Care Center. She said St. Vincent's provides services to three distinct types of residents. She said Immanuel Place has 41 beds and is utilized for the high level of need individuals. She said Sacred Heart Place is for the lower level medically needy. Ms. Blakeman said St. Vincent's also has a 20-bed Alzheimer's unit.

Ms. Blakeman said in her opinion the biggest challenge facing nursing facilities is the Medicare changes which will begin July 1, 1998. She said the changes relate to the Federal Balanced Budget Act and provide that new admissions after July 1, 1998, will only receive $1,500 per year. She said some of the services the $1,500 is to cover are rehabilitation costs, laboratory fees, and ambulance fees.

In response to a question from Senator Lips, Ms. Blakeman said that approximately 65 percent of the residents are Medicaid.

Ms. Blakeman said St. Vincent's recently received two residents that suffered from strokes. She said both were rehabilitated and able to leave St. Vincent's and go back to their own homes. She said the cost for these two residents was approximately $10,000 each. The committee toured Immanuel Place, Sacred Heart Place, and the Alzheimer's unit.

Ms. DeLana Duffy-Aziz, Cass County Social Services, presented information on the adult protective services program. A copy of her presentation is on file in the Legislative Council office. She said Cass County has a long history in adult protective services dating back to the 1970s. She said Cass County is fortunate to have an adult protective services program in existence today. She said it only exists because the county commissioners value it and are willing to fund it with county dollars. She said the 1997 budget for adult protective services was $137,790. She said during that time period an average of 90 vulnerable adults were served each month. She said 62 percent were 65 years and over and the remaining 38 percent were age 18 to 59. She said 61 percent of the cases were categorized as self-neglect.

Ms. Duffy-Aziz said the North Dakota adult protective services law is based on an assessment model and does not utilize law enforcement-type investigations. She said the vulnerable adult's capabilities and limitations, support systems, and living environment are assessed and the vulnerable adult is then apprised of the full range of options and services available. She said the vulnerable adult is provided the degree of

assistance needed to arrange for services. Ms. Duffy-Aziz said the reports are approached with the assumption that the individuals are competent to make their own decision and live their life as they choose.

HOME AND COMMUNITY-BASED SERVICES AVAILABILITY, QUALIFIED SERVICE PROVIDER TRAINING, AND GEROPSYCHIATRIC SERVICES

Ms. Mary Evanson, Task Force on Long-Term Care Planning, presented information on the task force's preliminary recommendations on home and community-based services availability and qualified service provider training. A copy of her presentation is on file in the Legislative Council office. She said the number of persons age 65 and older is projected to increase from 93,000 to 166,000 by the year 2025. She said the data available on present service availability for the elderly and physically disabled population is gathered primarily from public and formal providers such as regional human service centers, county social services, service payments for elderly and disabled (SPED), expanded SPED, Older Americans Act Titles III and IV, and medical assistance. She said very little is known about the services provided by the existing private pay formal and the voluntary informal services such as hospitals, churches, neighbors, relatives, and civic organizations. Ms. Evanson said the task force believes that the formal system should supplement, not replace, the informal network.

Ms. Evanson said the following home and community-based services availability recommendation of the task force would require administrative action:

- That the Aging Services Division of the Department of Human Services contract with a public or private organization for an assessment to determine the extent of the current and future service delivery systems for North Dakotans age 60 and older and for persons age 18 through 59 with physical disabilities.

Ms. Evanson said this recommendation would require a budgetary commitment from the Department of Human Services.

Ms. Evanson said under the present qualified service provider system individuals are independent contractors and not employees. She said in order to maintain this independent contractor status the Department of Human Services cannot train qualified service providers. She said the department does have standards in place that require competency in specific areas of service delivery.

Ms. Evanson said if there is to be training to meet the needs of all in-home care providers a curriculum needs to be developed that focuses on care provided in the home setting. She said the cost of such training must also be taken into consideration since most potential service providers have limited resources to invest in such training. She said the subcommittee on service availability and qualified service provider training discussed an appropriate curriculum for in-home care providers with the State Board for Vocational and Technical Education. She said in addition Benson County is working with UND-Lake Region to develop such a curriculum. She said the task force developed the following qualified service provider training recommendations, which would require administrative action:

- The Department of Human Services should coordinate with the State Board for Vocational and Technical Education to establish a statewide model curriculum for in-home certification/competency. They should then expand on the availability of the customized training network within the State Board of Vocational and Technical Education to make programs available regionally throughout the state. It was also recommended that the Department of Human Services explore statewide funding options through welfare to work and Work Force 2000 as well as encourage and monitor the development of the pilot project for training of in-home care providers in Benson County.
- The Task Force on Long-Term Care Planning should investigate the impact of a formalized in-home care training program on service availability and quality service delivery.
- In order to attract and retain in-home care providers, competitive reimbursement rates must be established. A market analysis should be commissioned to determine the financial resources needed to support the in-home care provider system.

In response to a question from Senator Thane, Ms. Wright said there are approximately 1,000 qualified service providers receiving reimbursement through the Aging Services Division of the Department of Human Services. She said of those 1,000 approximately 800 are individuals and the other 200 are agencies. She said the average reimbursement is approximately $8 per hour.

In response to a question from the previous day, Mr. Larson presented information regarding

the characteristics of long-term care delivery systems in Colorado, Oregon, and Washington. A copy of his presentation is on file in the Legislative Council office. He said North Dakota has 8,000 institutionalized long-term care clients and less than 2,000 home and community-based service clients. He said Oregon has 14,000 home and community-based service clients and less than 8,000 institutionalized clients. He said Washington has approximately 22,000 home and community-based service clients and less than 18,000 institutionalized clients.

Mr. Larson presented the task force's preliminary recommendations on geropsychiatric services and a related bill draft to implement the necessary statutory changes. A copy of his presentation and the bill draft are on file in the Legislative Council office. He said one of the conclusions of the task force was that nursing homes have not become a concentration point for a high percentage of seriously mentally ill elderly. He said the task force also noted that mental health services in the rural areas are far less accessible than is desirable.

Mr. Larson said the following two geropsychiatric service recommendations of the task force require legislative action:

- Provide for a legislative study to explore expansion of psychiatric and geropsychiatric training for general practice and family practice physicians at the University of North Dakota School of Medicine.
- Provide a legislated exception to the case mix system of nursing home reimbursement to allow for the establishment of a 14-bed geropsychiatric nursing unit to serve clients that are elderly or physically disabled and severely mentally ill.

Mr. Larson reviewed a bill draft to implement the recommendation relating to the exception to the case mix and the establishment of a 14-bed geropsychiatric unit.

Mr. Larson said the recommendation regarding the study resolution is to enhance the mental health service capacity of primary care providers in the rural areas. He said it could also be extended to include nurse practitioners and physician assistants.

Mr. Larson said additional recommendations of the task force relating to geropsychiatric services, but not requiring legislative action, are:

- The Department of Health and the Department of Human Services should work to expand continuing education opportunities in psychiatric and geropsychiatric care for rural North Dakota primary care providers in cooperation with the state medical, psychiatric, and nursing associations.
- Expand networking models for provision of services to the elderly, including geropsychiatric services to all human service centers. A formally organized, collaborative approach to elder services, including a psychiatric component, should be present in each human service center.
- Integrate human service centers and the State Hospital into telemedicine networks to provide enhanced access in rural North Dakota to psychiatric and geropsychiatric services from medical centers and the State Hospital.
- The Department of Human Services should contract with an existing nursing facility for the establishment of a 14-bed geropsychiatric nursing unit. This unit should be created within existing licensed capacity and would continue to be licensed as nursing facility beds.

In response to a question from Representative Brown, Mr. Larson said the 14-bed facility that would replace the unit at the State Hospital would probably be located somewhere near Jamestown in order to be able to utilize the professional services available from the State Hospital.

In response to a question from Senator Bowman, Mr. Larson said the 14-bed facility would save approximately $100 per patient per day when compared to the unit at the State Hospital.

Senator Krauter requested that the department provide the committee with fiscal information regarding the cost analysis of a 14-bed unit located within a nursing facility as compared to the State Hospital unit. Mr. Larson said the task force examined the business plan of the Sheyenne Care Center in Valley City and that by sharing these numbers with the committee other facilities would be informed of the information provided by the Sheyenne Care Center and would then be able to underbid the Sheyenne Care Center. He said he can provide some general numbers to the committee. Chairman Oban said that would be included on the June meeting agenda.

Representative Carlisle asked what would happen to the State Hospital facility if the unit is relocated. Mr. Larson said he was unable to answer that and possibly the committee could have Mr. Alex Schweitzer, Administrator, State Hospital, at its next meeting to answer that question.

Senator Bowman asked if the State Hospital will lose efficiencies by reducing the number of residents. Mr. Larson said that would be a

question for Mr. Schweitzer to address at the next meeting.

Representative Brown asked about the cost of a nursing facility-based 14-bed geropsychiatric unit. Mr. Larson said that would be a question for Mr. Schweitzer or Mr. Christenson from the Sheyenne Care Center in Valley City.

Chairman Oban indicated that Mr. Christenson and Mr. Schweitzer would be invited to the June meeting in Kenmare.

Chairman Oban requested that the Legislative Council staff and Mr. Larson prepare a study resolution relating to the expansion of psychiatric and geropsychiatric training at the University of North Dakota School of Medicine.

It was moved by Senator Krauter, seconded by Representative Meyer, and carried on a voice vote that the Legislative Council staff be requested to review the task force's bill draft relating to the recommendations on geropsychiatric services and make any necessary form and style changes and present the bill draft at the committee's next meeting. Voting "aye" were Representatives Oban, Brown, Carlisle, Coats, Gerntholz, and Meyer and Senators Bowman, Krauter, Lips, Sand, and Thane. No negative votes were cast.

Senator Krauter said at the first meeting statistical information was presented regarding licensed beds, occupied beds, and the percentage of private pay residents and state or county pay residents. He requested that the Department of Human Services provide updated statistics to the committee at its next meeting regarding the number of licensed beds, occupied beds, private pay residents, and state or county pay residents for basic care and long-term care facilities. He said in addition information was provided on the number of recipients receiving services through the Medicaid waiver, SPED program, expanded SPED program, and TBI waiver. He requested that this information also be updated. Chairman Oban said that would be included on the June meeting's agenda.

Chairman Oban requested the Legislative Council staff and Mr. Zentner prepare, for the next meeting, a resolution relating to the study of the swing bed process to determine if any changes are necessary in the current requirements for providing services to swing bed residents, including the need for a standard assessment process and whether any limits such as length of stay or number of available swing beds should be implemented.

ALZHEIMER'S AND RELATED DEMENTIA POPULATION PILOT PROJECT AND THE DELIVERY OF ALTERNATIVE SERVICES

Mr. Zentner presented information on the task force's preliminary recommendations on the Alzheimer's and related dementia population pilot project and on the delivery of alternative services and a bill draft to implement the statutory changes regarding the recommendations on the Alzheimer's and related dementia population pilot project. A copy of his presentation and the bill draft are on file in the Legislative Council office. He said the Baptist Home of Kenmare, a basic care facility, has converted one floor of its present building into an Alzheimer's unit. He said the Good Samaritan Society is also planning to develop two projects by converting nursing facility beds into Alzheimer's and related dementia population pilot project units at Lisbon and Arthur. Mr. Zentner said these pilot projects will not be operational until sometime in 1999. He said due to the delay in the startup for these three projects it will not be possible to fully evaluate the effectiveness of these projects during the current biennium.

Mr. Zentner said the task force concluded that it would be appropriate to allow other entities the opportunity to provide alternative residential services if the proposed services are cost-effective and meet the guidelines outlined by the Department of Human Services. Mr. Zentner said the task force developed the following recommendations which would require legislative action:

- Authorize the Department of Human Services to continue the three approved Alzheimer's and related dementia population pilot projects into the 1999-2001 biennium.
- Require the department to monitor the progress of the projects and prepare a final report for the Legislative Assembly that provides conclusions and recommendations regarding the future of these pilot projects no later than June 30, 2000.

Mr. Zentner reviewed a bill draft which provides the statutory changes necessary to implement the task force's recommendations relating to the Alzheimer's and related dementia population pilot projects.

Mr. Zentner said additional task force recommendations relating to the Alzheimer's and related dementia population pilot projects which do not require statutory changes are:

- Request that the Department of Human Services allow other entities the opportunity to develop alternative residential

services for Alzheimer's and related dementia or other populations that meet quality and financial standards established by the department.

- Provide funding for these projects from existing appropriations through the Medicaid home and community-based services waiver or the expanded SPED program. The number of projects will be limited by the number of available home and community-based waiver slots approved by the federal government, the cost neutrality requirement contained in the home and community-based service waiver, and the total appropriation for the expanded SPED program.

Ms. Mary Stroud, Baptist Home, Kenmare, said the Alzheimer's and related dementia population pilot project unit opened on April 20, 1998. She said six of the 12 beds are already filled. She said of the six residents three are private pay and three are medical assistance. Ms. Stroud said the construction project was budgeted for $160,000 and the facility is able to complete the project within that amount.

It was moved by Representative Coats, seconded by Senator Lips, and carried that the Legislative Council staff be requested to review the task force's bill draft relating to Alzheimer's and related dementia population pilot projects and make any necessary form and style changes and present the bill draft at the committee's next meeting. Voting "aye" were Representatives Oban, Brown, Carlisle, Coats, Gerntholz, and Meyer and Senators Bowman, Krauter, Lips, Sand, and Thane. No negative votes were cast.

Senator Sand presented information on hospice and home care rates charged in Langdon, North Dakota, and a schedule showing the reimbursement rates of a for-profit company located in Minneapolis, Minnesota.

Chairman Oban reminded the committee that the next meeting is scheduled for June 29-30, 1998, in Kenmare. He asked that if possible the task force report be sent out to committee members ahead of the meeting. He said at the Kenmare meeting the committee will review the final report of the task force and all of the bill drafts and resolutions requested at this meeting.

The committee adjourned at 12:00 noon.

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Paul R. Kramer
Senior Fiscal Analyst

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Chester E. Nelson, Jr.
Legislative Budget Analyst and Auditor

ATTACH:1