OTHER DUTIES OF THE HUMAN SERVICES COMMITTEE - BACKGROUND MEMORANDUM

In addition to the study responsibilities assigned to the Human Services Committee for the 2017-18 interim, the committee has also been assigned to:

- Receive annual reports from the Autism Spectrum Disorder Task Force (North Dakota Century Code Section 50-06-32 (Appendix A)).
- Receive a report from the Department of Human Services (DHS) regarding the autism spectrum disorder program pilot project (Section 50-06-32.1 (Appendix B)).
- Receive annual reports from DHS describing enrollment statistics and costs associated with the children's health insurance program state plan (Section 50-29-02 (Appendix C)).
- Receive a report from DHS before August 1 of each even-numbered year regarding provider reimbursement rates under the medical assistance expansion program (Section 38 of 2017 House Bill No. 1012 (Appendix D)).
- Receive a report from DHS regarding the levels of funding provided for and spent on nursing home services and home- and community-based services by program during the 2015-17 and 2017-19 bienniums. The department is also to provide recommendation on options to include the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium (Section 3 of 2017 House Bill No. 1038 (Appendix E)).
- Receive a report from DHS before August 1, 2018, regarding the outcome of the Medicaid fraud control unit feasibility and desirability study (Section 1 of 2017 House Bill No. 1226 (Appendix F)).
- Receive a report from DHS before April 1, 2018, on the outcome of the Medicaid waiver study (Section 2 of 2017 Senate Bill No. 2041 (Appendix G)).

AUTISM SPECTRUM DISORDER TASK FORCE

Senate Bill No. 2174 (2009), codified as Section 50-06-32, established an Autism Spectrum Disorder Task Force consisting of the State Health Officer, the Executive Director of the Department of Human Services, the Director of Special Education, the Executive Director of the Protection and Advocacy Project, and the following members appointed by the Governor:

- A pediatrician with expertise in the area of autism spectrum disorder;
- A psychologist with expertise in the area of autism spectrum disorder;
- A college of education faculty member with expertise in the area of autism spectrum disorder;
- A licensed teacher with expertise in the area of autism spectrum disorder;
- An occupational therapist;
- A representative of a health insurance company doing business in the state;
- A representative of a licensed residential care facility for individuals with autism spectrum disorder;
- A parent of a child with autism spectrum disorder;
- A family member of an adult with autism spectrum disorder; and
- A member of the Legislative Assembly.

The task force is to examine early intervention and family support services that would enable an individual with autism spectrum disorder to remain in the least restrictive home- or community-based setting, programs transitioning an individual with autism spectrum disorder from a school-based setting to adult day programs and workforce development programs, the cost of providing services, and the nature and extent of federal resources that can be directed to the provision of services for individuals with autism spectrum disorder.

The task force is to develop a state autism spectrum disorder plan and continue to review and periodically update or amend the plan to serve the needs of individuals with autism spectrum disorder. The task force is to provide an annual report to the Governor and the Legislative Council regarding the status of the state autism spectrum disorder plan.

AUTISM SPECTRUM DISORDER VOUCHER PROGRAM PILOT PROJECT

House Bill No. 1038 (2013), codified as Section 50-06-32.1, requires DHS to establish a voucher program pilot project beginning July 1, 2014, to assist in funding equipment and general educational needs related to autism spectrum disorder for individuals below 200 percent of the federal poverty level from age 3 to under age 18 who have been diagnosed with autism spectrum disorder. In addition, the department is required to adopt rules addressing management of the voucher program pilot project and to establish eligibility requirements and exclusions for the voucher program pilot project. The 2015 Legislative Assembly provided funding for 53 voucher slots for the 2015-17 biennium. However, funding for 10 of the slots was removed due to the August 2016 general fund budget reductions. The 2017 Legislative Assembly restored funding for the voucher slots to provide for 53 voucher slots for the 2017-19 biennium. The department is required to provide a report to the Legislative Management regarding the autism spectrum disorder program pilot project. Section 13 of 2015 Senate Bill No. 2012 provided for the continuation of Section 50-06-32.1, to require DHS to continue the autism spectrum disorder voucher program pilot project and to report to the Legislative Management regarding the autism spectrum disorder program pilot project.

CHILDREN'S HEALTH INSURANCE PROGRAM

Section 50-29-02 provides DHS is to prepare, submit, and implement a children's health insurance program state plan and report annually to the Legislative Management and describe enrollment statistics and costs associated with the plan. The responsibility to receive the report has been assigned to the Human Services Committee.

Healthy Steps--North Dakota's children's health insurance plan--provides premium-free health coverage to uninsured children in qualifying families. It is intended to help meet the health care needs of children from working families that earn too much to qualify for full Medicaid coverage but not enough to afford private insurance. To be eligible for the program, the family's net income may not exceed 175 percent of the federal poverty level.

Legislative Appropriations

The schedule below summarizes legislative appropriations for the Healthy Steps program since the 2003-05 biennium.

Biennium	General Fund	Federal Funds	Total
2003-05	$2,127,162	$7,359,222	$9,486,384
2005-07	$2,895,233	$9,180,309	$12,075,542
2007-09	$4,669,885	$15,534,861	$20,204,746
2009-11	$5,598,799	$16,033,737	$21,632,536
2011-13	$8,517,391	$19,007,011	$27,524,402
2013-15	$11,400,407	$21,293,663	$32,694,070
2015-17	$2,831,220	$17,643,704	$20,474,924
2017-19	$1,870,086	$13,712,891	$15,582,977

Federal Medical Assistance Percentage and North Dakota's Allocation

The schedule below summarizes the federal medical assistance percentage (FMAP) and North Dakota's allocation of federal funds for the Healthy Steps program.

Federal Fiscal Year Ending	FMAP	North Dakota Allocation
September 30, 2005	77.24%	$6,384,719
September 30, 2006	76.10%	$6,346,156
September 30, 2007	75.30%	$7,737,529
September 30, 2008	74.63%	$11,017,680[1]
September 30, 2009	74.21%	$15,821,554
September 30, 2010	74.11%	$16,595,628
September 30, 2011	72.25%	$15,257,665
September 30, 2012	68.78%	$16,063,553
September 30, 2013	66.59%	$17,311,376
September 30, 2014	65.00%	$18,787,251
September 30, 2015	65.00%	$20,997,498
September 30, 2016	88.00%	$21,240,226
September 30, 2017	88.00%	$21,886,855
September 30, 2018 (estimate)	88.00%	$21,200,000
September 30, 2019 (estimate)	88.00%	$21,200,000

[1]This amount includes one-time additional federal funding of $3,128,684.

Children Enrolled and Premium Rates

The schedule below summarizes the average annual recipients and premium rates in effect for the majority of the year for the majority of children covered.

State Fiscal Year Ending	Average Annual Recipients	Monthly Average Premium Rates
June 30, 2007	3,821	$183.45
June 30, 2008	4,006	$202.32
June 30, 2009	3,470	$204.03
June 30, 2010	3,368	$229.15
June 30, 2011	3,718	$232.82
June 30, 2012	3,872	$272.69
June 30, 2013	4,046	$272.67
June 30, 2014	3,879	$280.52
June 30, 2015	2,591	$287.56
June 30, 2016	2,298	$273.12
June 30, 2017	2,186 (estimate)	$263.38 (estimate)
June 30, 2018	2,200 (estimate)	$285.95 (estimate)
June 30, 2019	2,200 (estimate)	$299.00 (estimate)

MEDICAID EXPANSION PROVIDER REIMBURSEMENT RATES

Section 38 of 2017 House Bill No. 1012 continues the medical assistance expanded program through June 30, 2019. The section provides for the contract between DHS and the insurance carrier to include a provision for the carrier to provide DHS with provider reimbursement rate information when selecting a carrier. The section also requires DHS to provide the Legislative Management a report regarding provider reimbursement rates under the medial assistance expansion program. The report may include trend data but may not disclose identifiable provider reimbursement rates.

NURSING HOME AND HOME- AND COMMUNITY-BASED SERVICES

Section 3 of 2017 House Bill No. 1038 requires DHS to review services and related funding provided within its long-term care division for the 2015-17 and 2017-19 bienniums. The department is to report to the Legislative Management during the 2017-18 interim on the levels of funding provided for and spent on nursing home services and home- and community-based services by program during these time periods and is to provide recommendations for options to increase the number and level of services and funding provided for home- and community-based services for the 2019-21 biennium.

Background

The Department of Human Services Long-Term Care Division provides funding for nursing facilities, basic care facilities, and home- and community- based services. Home- and community-based services including service payments for elderly and disabled (SPED), expanded SPED, Medicaid technology-dependent waiver, Medicaid home and community-based services waiver; program for all-inclusive care for the elderly; targeted case management, children's medically fragile waiver, children's hospice waiver, Medicaid children's autism waiver, and the state autism voucher.

The 2015-16 interim Human Services Committee studied family caregiver supports and services. The committee reviewed current services provided through DHS's Aging Services Division. The committee also received recommendations from a consultant regarding options to improve family and caregiver support services. The committee recommended, and the Legislative Assembly approved, 2017 House Bill No. 1038 which included a section for DHS to study long-term care funding.

MEDICAID FRAUD CONTROL UNIT STUDY

Section 1 of 2017 House Bill No. 1226 requires DHS, with the cooperation of the Governor and Attorney General, to study the feasibility and desirability of establishing a Medicaid fraud control unit. The department is to provide a report to the Legislative Management prior to August 1, 2018, regarding the results of the study.

Background

Section 1902(a)(61) of the federal Social Security Act requires states to operate a Medicaid fraud and abuse control unit unless the state demonstrates that the operation of a unit would not be cost-effective and beneficiaries of the plan will be protected from abuse and neglect in connection with the provision of medical assistance without the control unit. North Dakota has received an exemption since 1994 from the requirement to operate a Medicaid fraud control unit. In January 2017, the Centers for Medicare and Medicaid Services (CMS) notified the Governor that the state's exemption would not be continued and requested the state to provide a plan to implement a Medicaid fraud control unit. The Governor responded that the Legislative Assembly was considering several bills relating to

the establishment of a fraud control unit and a further response would be provided following the conclusion of the 2017 legislative session. As of June 2017, the Governor, in consultation with DHS and the Attorney General, is developing a further response to the proposed discontinuation of the state's exemption.

House Bill No. 1226 (2017), as introduced, provided for the establishment of a Medicaid fraud control unit in the Attorney General's office. The bill was amended, and subsequently approved, to provide for DHS to study the feasibility and desirability of establishing a Medicaid fraud control unit.

DEVELOPMENTAL DISABILITY MEDICAID WAIVER STUDY

Section 2 of 2017 Senate Bill No. 2041 requires DHS to study the current eligibility requirements for the developmental disability Medicaid waiver. The study is to include an analysis of whether the current developmental disability waiver eligibility determination protocol uses age-appropriate assessment methods, uses assessment tools reliable and valid in nature for level of need determinations, and utilizes assessment information that may already be available in an individual's record. The study is also to include an evaluation of the feasibility and desirability of including in the eligibility determination consideration of related conditions and the possible use of certain medical conditions, such as Down syndrome. The department is to provide a report to the Legislative Management prior to August 1, 2018, regarding the result of the study.

Background

In March 2014, CMS established a new rule relating to the requirements for the qualities of settings that are eligible for reimbursement for Medicaid home- and community-based services, which are provided by the federal 1915(c) home and community-based services waivers. The Department of Human Services completed a review of current services, which included site visits and work with CMS, consumers, and providers to assure compliance with new rules. Section 1 of 2015 Senate Bill No. 2234 required DHS to study eligibility for developmental disability waivers and to provide a report to the Legislative Management regarding the eligibility for developmental disability waivers.

The Department of Human Services created an internal eligibility workgroup in October 2014 to review the new Diagnostic and Statistical Manual of Mental Disorders, American Psychiatric Association, 5th edition, text revision (2013), and its impact on developmental disability eligibility. Initial recommendations provided by the workgroup include:

- If cognitive testing has been completed and is still valid, it will be considered in eligibility determination, but will not hold as much weight in the eligibility formula as it currently does.
- If cognitive testing has not been completed or it is no longer valid, it will not be required, but cognitive screening will be required.
- Adaptive functioning testing will be required and will hold more weight in the eligibility formula than intellectual functioning.
- Individuals with related conditions must have an intellectual disability or adaptive functioning disability.

The Department of Human Services requested guidance from CMS regarding eligibility of developmental disabilities case management services. An individual must qualify as needing an institutional level of care to be eligible for the developmental disabilities waiver. Even though an individual may meet certain criteria to be eligible for services, that individual may not qualify for any services because the individual does not meet the institutional level of care requirement. A state may choose its own level of care for determining eligibility for developmental disabilities waivers, which includes hospitalization, intermediate care facility, or nursing facility. Various tools are available to help states make a determination and a state must receive approval from CMS for its level of care. North Dakota chose an institutional level of care.

The 2015-16 interim Human Services Committee recommended 2017 Senate Bill No. 2041 which added Down syndrome to the definition of developmental disability for determining eligibility assistance. The bill as introduced would have allowed an individual 3 years of age or older with a diagnosis of Down syndrome to be eligible for a home- and community-based waiver without regard to intellectual disability or impairment of general intellectual functioning. The bill was amended and subsequently approved to remove the eligibility criteria and instead provide for DHS to study the eligibility requirements of the disability Medicaid waiver.

ATTACH:7