

Testimony
Engrossed House Bill 1012 – Department of Human Services
Senate Appropriations
Senator Holmberg, Chairman
March 15, 2017

Chairman Holmberg, members of the Senate Appropriations Committee, I am Maggie Anderson, Director of the Medical Services Division for the Department of Human Services and I am here today to provide an overview of the Long-Term Care (LTC) Continuum budget. Nancy Nikolas-Maier, Director of the Aging Services Division, is also here, as several of the services within this area were transferred to the Aging Services Division in the Summer of 2016.

Programs

The LTC services included in this area of the budget are nursing facilities, basic care facilities, and home and community-based services programs, which have the following funding sources: Service Payments for the Elderly and Disabled (SPED); Expanded SPED; the Medicaid Technology-Dependent Waiver; the Medicaid Home and Community-Based Services (HCBS) Waiver, Personal Care; the Program for All-Inclusive Care of the Elderly (PACE); Targeted Case Management; Children’s Medically Fragile Waiver, Children’s Hospice Waiver, the Medicaid Children’s Autism Waiver, and the State-funded Autism Voucher.

The LTC Continuum encompasses a wide range of medical and support services for individuals who lack some capacity for self-care, and are expected to need care for an extended period of time.

Program Trends

As of September 30, 2016, the percentage of Medicaid-eligible individuals in nursing facilities was 51%. **Attachment A** shows the Licensed and Occupied Nursing Facility Beds since October 2014, and **Attachment B** shows the Medicaid occupied beds. Based on the September 30, 2016, occupancy reports, 16 facilities were below 90% occupancy. The average occupancy for these 16 facilities is 79% as compared to two years ago when the Department presented budget testimony; there were 29 facilities below 90% occupancy.

Basic Care

As of September 30, 2016, 47 basic care facilities are enrolled in the Basic Care Assistance Program with Medicaid. The overall number of participating basic care facilities has decreased in the past biennium. Six of the facilities that closed were smaller basic care facilities attached to a nursing facility. There was one freestanding basic care facility that closed in the last biennium. However, the number of beds utilized by individuals who are Medicaid eligible has remained fairly stable during the current biennium.

Major Program Changes

During the overview of the Medical Services testimony, I included an update on the impact of the **Fair Labor Standards Act** final rule which impacts home care services. This area of the budget is specifically impacted by the Rule and estimated costs were included in the executive request.

You have heard from both Tina Bay and Nancy Nikolas-Maier about the impact of the **Home and Community-Based Settings Rule**. This area of the budget is also specifically impacted by that Rule.

During the current biennium, the Department was authorized to increase the capacity of the **Autism Voucher** and the **Medicaid Autism Waiver**. The increased voucher slots and some of the increased waiver slots were not filled as part of the budget allotment. The Medicaid Autism Waiver slots related to increasing the age limit will still be added. The Department intended to add these additional slots in the Fall of 2015; however, CMS is requiring that the states remove most of the services from the waiver and instead; add them to the Medicaid state plan under the Early and Periodic Screening, Diagnosis and Treatment benefit. We have been working with CMS to implement this significant shift in coverage. There are impacts on both the traditional Medicaid area of the budget and this area of the budget.

Money Follows the Person Demonstration Grant

The federal government awarded the Department a Money Follows the Person (MFP) grant in 2007. MFP efforts help eligible individuals who are elderly or have physical, intellectual or other disability and who live in nursing homes, the Life Skills Transition Center, or other institutions transition to community settings. MFP is designed to assist states with increasing the use of HCBS to meet the long-term service needs for Medicaid-eligible individuals.

Through November of 2016, the grant has assisted **351 individuals** in transitioning from institutional care.

Grant Year	Older Adult	Individuals with a physical disability	Individuals with an Intellectual disability	Children	TOTAL
2007	0	0	0	0	0
2008	1	1	3	0	5
2009	4	7	4	0	15
2010	4	6	16	0	26
2011	5	8	19	0	32
2012	13	21	11	1	46
2013	14	18	19	1	52
2014	17	27	14	2	60
2015	14	28	17	5	64
2016	9	22	16	4	51
Totals	81	138	119	13	351

Additional MFP Information and Funding

Since April 2014, North Dakota has been awarded \$585,567 in supplemental funds for the Money Follows the Person Grant-Tribal Initiative (MFP TI). The MFP-TI will build sustainable community-based supports and services specifically designed for Indian country.

North Dakota submitted the required MFP Sustainability Plan in the Fall of 2015. The Plan includes how North Dakota will improve and sustain MFP transition activities through 2018, how North Dakota plans to continue to provide transition services to the community after the last day of service funding, an accounting of how the MFP rebalancing funds will be spent, how stakeholders will be involved with the plan, and a plan to meet ongoing reporting requirements.

An Optional Adjustment Request for MFP Sustainability was included in the Department's budget request to OMB and was funded in the Executive Budget request.

Department of Justice

In December 2015, the Department of Justice notified the State of North Dakota (through the Governor's office) that they had opened an investigation of the State's system of care for individuals needing long-term care services. As part of the complaint, the Governor's office received information requests. The Department of Human Services coordinated the collection and submission of the information requested. The final information requested was provided to the Department of Justice this past fall and, to date, the Department of Justice has not issued a decision regarding the result of their investigation.

Nursing Home Provider Assessment

The Executive Budget funded certain expenditures with revenue generated from a Nursing Home Provider Assessment. House Bill 1130 contained the policy language for the Assessment; and was defeated during the first half of the session. Later in my testimony, I will cover the House Amendments related to the funding shifts necessary as a result of the defeat of House Bill 1130. The services that were originally proposed to be funded with the revenue from the Assessment will be reviewed as we review the detail on the Long-Term Care walkthrough.

Overview of the 2015-2017 Budget to the 2017-2019 Budget to the House

Description	2015-2017 Budget	Increase / (Decrease)	2017-2019 Executive Budget	House Changes	2017-2019 Budget To Senate
Long Term Care Grants	641,223,107	90,728,644	731,951,751	(47,733,583)	684,218,168
Total	641,223,107	90,728,644	731,951,751	(47,733,584)	684,218,168
General Fund	333,673,259	2,705,982	336,379,241	13,137,820	349,517,061
Federal Funds	304,301,767	43,183,377	347,485,144	(17,126,571)	330,358,573
Other Funds	3,248,081	44,839,285	48,087,366	(43,744,832)	4,342,534
Total	641,223,107	90,728,644	731,951,751	(47,733,583)	684,218,168
Full Time Equivalent (FTE)	0	0	0	0	0

Attachment C is a chart showing the daily rates for Nursing Home Facilities for State Fiscal Years 1980 through 2019.

House Changes from the Executive Budget:

House Amendments removed the 1% inflation for the second year of the biennium, which equals \$5,671,144. The inflation in this area of the budget was funded in the Executive Budget request with Nursing Home Provider Assessment funds.

House Amendments removed the funding from the Executive Request to comply with the Fair Labor Standards Act Home Care Rule for Qualified Service Providers. Unless the rule is formally repealed, the Department expects to need to continue to make efforts to comply with this Rule. The House Amendments removed \$3,518,393 in general fund and \$4,047,774 in other funds. The Department had presented a revised estimate to the

subcommittee and is requesting a restoration of \$2,871,613 in general fund and \$1,937,248 in other funds.

The House did not restore the Incentive component within the nursing home rates. If the Incentive is not restored, N.D.C.C. 50-24.4-10 will need to be updated:

50-24.4-10. Operating costs.

5. The efficiency incentives to be established by the department pursuant to subsection 3 for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates. The efficiency incentive must be included as a part of the indirect care cost rate.

The House Amendments restored a portion of the allotment reductions for Basic Care facilities. The allotment reductions included not implementing provisions from 2015 House Bill 1359 (July 2016) and removing the operating margin (January 2017). The Department will need guidance on which Basic Care items the Legislature will want restored with the partial funding in the House Amendments.

	General Fund/Equivalent	Federal/Other Funds
Executive Budget	\$1,844,669	\$207,601
House Amendments	\$1,000,000	\$207,601
Difference	\$844,869	\$0

Attachment D shows the changes in the Long-Term Care Continuum Budget from 2015-2017 Appropriation to the 2017-2019 Executive Budget to the Senate.

This concludes my testimony and LeeAnn, Nancy and I would be happy to answer any questions you may have.