

**TESTIMONY BEFORE THE SENATE APPROPRIATIONS COMMITTEE
REGARDING THE LONG TERM CARE APPROPRIATION**

HB 1012

MARCH 1, 2005

Chairman Holmberg, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear before you to provide information on that portion of the Long Term Care budget that the Medical Services Division exercises administrative responsibility.

PROGRAMS

The three long-term care services that are the direct responsibility of the Medical Services Division include Nursing Facilities, Basic Care Facilities and the personal care option.

Nursing Facility services account for about 87% of Medicaid expenditures for the long term care continuum, and this budget item continues to increase each biennium.

In 2001, the Department received approval for a state plan amendment from Centers for Medicare and Medicaid Services (CMS) that permitted the Medicaid program to claim the time spent by basic care staff in caring for residents, as an allowable cost through the personal care option. Prior to this time all payments made to Basic Care Facilities were paid using all state funds.

In 2003, the Legislature required the Department to expand the personal care option to include services provided in a home setting. As a result, the Department was required to prepare a new state plan amendment that was

submitted in August 2003 with an effective date of September 1, 2003. The federal government has finally approved the state plan. The major stumbling block had been the payment of personal care in a Basic Care Facility. Initially CMS was going to deny the amendment because of this issue even though they had previously agreed that we could include personal care services provided in a Basic Care Facility, in a previous state plan amendment approval. While we were able to convince them that those services were legitimate personal care services, we argued for months over what costs could be included as personal care services. We anticipate receiving official notice of the approval within the next week. We have not been able to claim personal care services for individuals living in their own homes. When the official plan amendment is received in our office we will be able to claim federal funds back to September 1, 2003.

The number of Medicaid paid nursing facility days for December 2004 and January 2005 averaged 108,695 per month, which is the equivalent of 3,564 individuals occupying a bed during the two-month period. These payments include services provided in the 80 licensed nursing facilities in North Dakota, swing bed hospitals, and out of state facilities. For the same period the number of paid Basic Care days averaged 14,436 per month, which is equivalent to 473 individuals occupying a bed during the two-month period.

TRENDS

The number of individuals entering nursing facilities has declined over the past few years. Many elderly and disabled individuals wish to receive long term care services in their homes and communities for as long as possible. We see this trend continuing, and must make an effort to ensure that home and community based services are available at a reasonable price for those individuals who wish to access services in the community, rather than seek them in an institution.

While the number of individuals entering nursing facilities is declining, the cost of providing services to this group of Medicaid recipients continues to increase. [Attachment A](#) shows the increase in expenditures, and the Budget to the Senate for the next biennium. Based on current expenditure trends, which include the equalized rates provision and other mandated increases such as re-basing, we see continued growth in expenditures. At the present rate of growth, the cost of nursing facility services will double in 14 years. This rate could be accelerated if additional future funding is provided for re-basing and salary increases above indicated inflation increases, and if the number of individuals entering nursing facilities increases.

Over the next 15 years the number of individuals in our aged population will increase dramatically. The number of individuals over age 65 will increase from 97,771 in 2005 to almost 150,000 in 2020. The number of individuals over 85, who are most likely to need long term care services will increase from 15,289 in 2005 to 24,258 by 2020, an increase of 9,000. This demographic will have a profound affect on service delivery in the future.

We continue to believe that a moratorium on the building of nursing facility beds should remain in place. While some areas of the state could experience shortages in the coming years, the transfer of beds from areas where there are excess beds should satisfy the need for some time to come.

While nursing facilities will continue to fill an important niche in the long term care continuum, it is likely that changes in the manner in which care will be provided and in the environment in which it will be provided, will change over the next two decades. There will likely be more flexibility in how care is delivered including changes in the way facilities are configured, and changes in the way care is delivered. This trend, while important to provide the most flexibility to residents, could have an affect on future expenditures for facility upgrades and staffing patterns.

Since the issue of the state plan amendment has been resolved with the federal government, we believe the Basic Care Program will remain relatively static into the near future. We believe that personal care services will expand as individuals begin to access home based services without the need to qualify for Medicaid waivers in order to access the service.

BUDGET CHANGES

The following information details the proposed appropriation for nursing facility, basic care, and personal care for the 2005-2007 biennium, as compared to the current biennium appropriation, and the changes made by the House.

	2003 - 2005 Budget	Increase / Decrease	2005 - 2007 Request	House Changes	Request to Senate
Nursing					
Homes	318,444,621	30,332,902	348,777,523	(7,839,235)	340,938,288
Basic Care	8,395,725	4,416,997	12,812,722	235,459	13,048,181
Personal Care	2,800,273	11,860,835	14,661,108	698,862	15,359,970
	<u>329,640,619</u>	<u>46,610,734</u>	<u>376,251,353</u>	<u>(6,904,914)</u>	<u>369,346,439</u>
General	103,718,283	29,212,532	132,930,815	(2,370,642)	130,560,173
Federal	223,637,974	17,398,202	241,036,176	(4,534,272)	236,501,904
Other	2,284,362	0	2,284,362	0	2,284,362

BUDGET HIGHLIGHTS

- The Executive Budget request for nursing facilities totaled \$348.8 million, of which \$122.6 million were state funds. The current budget for nursing facility services is \$318.4 million, of which \$102.1 is general funds.
- The total Executive Budget proposed increase for nursing facility care was \$30.3 million, and the general fund increase totaled \$20.5 million.

- **The Executive Budget was based on Medicaid occupancy of 3,631 beds per month. During the first six months of the current state fiscal year, the number of individuals for which a nursing facility payment was made averaged 3,564. In addition we have moved the portion of the hospice service for payment of nursing facility room and board payments to the long-term care appropriation. Previously, this cost was budgeted under the hospice option, even though the payments were for nursing facility care when an individual had elected the hospice option. During the first six months of the current state fiscal year, the monthly average number of individuals with the hospice option in nursing facilities was 71 recipients. Given that the number of individuals over 85 is expected to increase by at least 3,500 in the next five years, we believe this estimate is appropriate.**
- **The primary reason for the increase in state funds is the result of the change in the Federal Medical Assistance Percentage (FMAP) that I detailed in my previous testimony. The change will result in an additional \$10.5 million just to maintain the current nursing facility services.**
- **The Executive Budget includes funds to re-base current nursing facility limits to the 2003 fiscal year reporting period. The limits are based on the 1999 cost reporting year. Currently, limits are based on the 99th percentile for direct care, 85th percentile for other direct care, and the 75th percentile for indirect care. This proposal also changes the method of setting the limits to a median plus 20% for direct and other direct care, and median plus 10% for indirect care. Under this proposal, all facilities have the ability to stay under the limits, whereas the percentile process will guarantee some facilities will always be in excess of the established limits. The proposed cost of re-basing and converting the payment limits the median plus 20/20/10 is \$8.8 million, of which \$3.1 million are general funds. House Bill 1252 establishes the new method of calculating the limits and**

establishes a rebasing schedule. The level at which the median plus will be set will be based on the wishes of the Legislature during the appropriation process each session.

- The remaining proposed increase of \$6.9 million in general funds is due to statutory requirements that establish the inflation rate, the operating margin, the indirect incentives, and the increase in costs permitted by the present payment system, including a pass through for new or remodeling construction if it does not exceed established limits. This amount takes into consideration a \$3 million decrease of which \$1 million is general funds due to an anticipated reduction in the number of recipients accessing nursing facility services.
- The Basic Care Assistance program budget totals \$12.8 million of which \$5.2 million are general funds and \$2.3 million are retained funds. The current appropriation totals \$8.4 million, of which about \$.75 million are general funds and \$2.3 million are retained funds. The Department underestimated the need for basic care assistance in the current biennium. We are expected to expend \$11.0 million in the current biennium for this service. In addition, due to the required changes in how we claim federal funds through the personal care option, the anticipated amount of federal funding has not been realized. We anticipate expending \$2.75 million in general funds this biennium, an increase of \$2 million.
- The budget for basic care was further complicated because we did not know what CMS would allow for federal matching purposes. CMS did approve the personal care state plan amendment; but restricted the types of expenses we can claim as personal care services. Also, they have more narrowly defined the criteria necessary to qualify for personal care services for individuals in a Basic Care Facility. This could result in some individuals who are currently residing in Basic Care to no longer be eligible

to receive federal funding for Medicaid personal care services. We know the amount will not increase, and it is more likely that the amount of projected federal funds is overstated.

- The basic care budget is based on serving 457 individuals per month. For the first six months of the state fiscal year, an average of 479 individuals had a basic care payment made on their behalf. We project that the use of basic care services will remain static during the new biennium.
- We project that personal care services will increase during the next biennium as we encourage individuals in need of long term care to access home and community based care services. It includes personal care services for individuals who were receiving these services through the home and community based care Medicaid waivers, through the Expanded SPED program and those Medicaid eligible recipients receiving SPED personal care services. In addition other Medicaid recipients who meet established criteria may also access personal care services through this optional service.
- The original estimated appropriation of \$14.7 million, of which \$5.2 million is general funds, was based on the estimated average monthly cost of providing personal care services as experienced through the waivers and the SPED and Expanded SPED programs, times the number of recipients anticipated to receive these services. The actual usage is difficult to gauge because we have no experience with how many individuals will actually access this service once it becomes a Medicaid entitlement.

HOUSE CHANGES

- The House Appropriations Committee reduced the monthly average number of beds from 3,631 to 3,600 resulting in a reduction of \$2.9 million

of which \$1.0 million are general funds. For the first six months of the current state fiscal year the monthly average beds occupied by Medicaid recipients averaged 3,635. In addition, the number of individuals over 85 years of age is expected to increase by at least 3,500 in the next five years. Based on these trends we ask that the Senate consider reinstating these funds to the Executive Budget request.

- The committee also changed the statutory requirement relating to the establishment of inflation rates for nursing facilities. Currently, nursing facilities receive an inflation factor based on one-half the Consumer Price Index and one-half based on Global Insight's estimate of future cost increases within the nursing facility industry. The committee changed the law and reduced the inflation factor to 2% per year the same as is provided to all other Medicaid providers. If the Senate wished to restore the inflation factor to the current state law requirements, you would need to add back a total of \$4.9 million of which \$1.8 million is general funds.
- Increased funding for Basic Care Facilities by \$235,000 of which \$162,000 is general funds to increase the inflation factor to 2 percent a year, the same as other enrolled Medicaid providers.
- The Department provided the House Appropriations Committee with a new projection for all home and community based services. It anticipated an overall reduction of \$2.0 million in general funds. However, it was estimated that personal care costs would increase by about \$700,000 of which about \$249,000 is general funds. The House made those adjustments in their final version of the bill.

I would be happy to respond to any questions you may have.