NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday, April 28, 2010
North Dakota Heritage Center Auditorium, 612 East Boulevard Avenue
Bismarck, North Dakota

Representative George J. Keiser, Chairman, called the meeting to order at 8:00 a.m.

Members present: Representatives George J. Keiser, Bill Amerman, Rick Berg, Donald L. Clark, Mark A. Dosch, Kathy Hogan, Jim Kasper, Scot Kelsh, Dan Ruby, Mike Schatz, Elwood Thorpe, Don Vigesaa, Steven L. Zaiser; Senators Arthur H. Behm, Dave Oehlke, Tracy Potter, Terry M. Wanzek

Members absent: Representative Tracy Boe; Senator David Hogue

Members of the Legislative Management present: Representatives Al Carlson, Merle Boucher, Gary Kreidt, Robin Weisz, Lisa Wolf; Senators Robert S. Erbele, Ray Holmberg

Members of the Health and Human Services Committee present: Representatives Tom Conklin, Kari L. Conrad, Robert Frantsvog, Richard Holman, Alon C. Wieland; Senators Dick Dever, Judy Lee, Tom Fiebiger, Tim Mathern, Jim Pomeroy

Others present: Edmund Gruchalla, State Representative, Fargo

Ken Svedjan, State Representative, Grand Forks

See Appendix A for additional persons present.

It was moved by Senator Potter, seconded by Representative Dosch, and carried on a voice vote that the minutes of the March 18, 2010, meeting be revised in the last sentence of the fifth paragraph on page three to state that "However, he said, the current trend is showing some decrease in the increase of rates of medical costs." rather than a "decrease in medical costs."

It was moved by Senator Potter, seconded by Senator Wanzek, and carried on a voice vote that the minutes of the March 18, 2010, meeting be approved as revised.

Chairman Keiser said the members of the interim Health and Human Services Committee and other members of the Legislative Assembly have been invited to participate in this meeting to help determine the impact of the federal health care reform legislation on the state and state agencies that will be affected by the legislation.

Chairman Keiser called on Mr. Michael D. Tanner, Senior Fellow, Cato Institute, Washington, D.C., for comments regarding the federal health care reform legislation. Mr. Tanner said the health care reform legislation package contained over 2,500 pages and 400,000 words. He said the cost of the legislation is equal to $1.2 million per word. He said panelists are still finding out what is in the legislation. He said the legislation will not cause insurance premiums to go down. He said the Congressional Budget Office determined that if health care reform legislation were not passed, health insurance premiums would have doubled in the next decade. However, he said, the Congressional Budget Office also estimated that after the legislation was adopted health insurance premiums will roughly double. Although there may be little difference in the cost of health insurance premiums as a result of the legislation, he said, large companies may see a smaller increase in health insurance costs, small businesses may see little change in the amount of increase, and the individual market will likely see a 15 percent greater increase than the doubling of the cost of health insurance premiums. He said the rate of increase may also vary by the age of the policyholder, with the young and healthy more likely to see a larger increase in premiums than they would have without the reform legislation.

Mr. Tanner said the health insurance reform legislation will not result in universal health insurance coverage. However, he said, there will be a significant increase in coverage after 2014. That increase, he said, may be approximately a 60 percent increase. He said North Dakota will likely have about 20,000 uninsured after implementation of the legislation. He said the increase in the access to coverage will result in an increase in demand but may not result in an increase in supply. He said the Massachusetts health reform law has demonstrated that waiting periods to see a general practitioner have increased from 33 days to 55 days. He said decreases in Medicare reimbursement could lead to the failure of approximately 15 percent of hospitals, which will further increase accessibility problems.

Mr. Tanner said 40 percent of the increased coverage will be within the Medicaid system. He said the cost of that increase will be picked up initially by the federal government. Over the 10-year period, he said, North Dakota should be close to breaking even with respect to the increase in Medicaid coverage. However, he said, the increased Medicaid costs will occur later in the decade and will result in additional costs down the road. He said the estimates in increased Medicaid costs were likely underestimated. He said one unique aspect that he has discovered with respect to North Dakota is that a larger number of lower income individuals are insured in this state than in other states. He said he is not sure why that is. He

said the federal legislation will not result in reduced health care spending and likely will increase costs for businesses, states, and individuals.

In response to a question from Senator Potter, Mr. Tanner said the Centers for Medicare and Medicaid Services projected that the number of uninsured in the nation will be decreased by about 60 percent from approximately 55 million to about 22 million. He said he does not have state-by-state data to address the impact of the frontier states amendment and to compare the impact on the frontier states with respect to the estimated 15 percent failure rate for hospitals. He said a significant number of individuals involved in the Medicare Advantage program will be forced to go to traditional Medicare.

In response to a question from Representative Amerman, Mr. Tanner said the Cato Institute is a nonpartisan think tank that is considered to be a libertarian institute. He said the institute is based upon the philosophy of free market principles. He said approximately 80 percent of the funding for the institute comes from individuals, 10 percent from foundations, and 5 percent from corporations.

In response to a question from Senator Mathern, Mr. Tanner said the potential loss of hospitals in North Dakota if the frontier states amendment had not been included in the federal legislation has not been determined. He said the increased Medicare reimbursement will have some initial impact in this state. However, he said, there will be a need to look at capacity and supply issues in the future.

In response to a question from Representative Kasper, Mr. Tanner said access to medical providers nationwide could become a significant problem due to underreimbursement by Medicaid. He said one-third of physicians nationwide no longer will see Medicaid patients. After the Massachusetts state health care reform legislation was implemented, he said, the number of low-income individuals having difficulty seeing a physician increased. If medical costs increase, he said, there will likely be efforts to cut back spending, which could impact the availability of physicians for Medicare patients.

In response to a question from Representative Dosch, Mr. Tanner said one potential result of the federal health care reform legislation is young and healthy individuals may not seek health insurance. He said the low penalty for noninsurance will act as an incentive for the young and healthy not to have insurance until it is necessary. Because of guaranteed issue, he said, those individuals will buy coverage when they get sick and drop the coverage after the sickness is over. He said two of the top four insurers in Massachusetts are losing money.

In response to a question from Senator Lee, Mr. Tanner said of the estimated 50 million individuals in the United States who are uninsured, 14 million are eligible for government programs but are not enrolled and 12 million are noncitizens. He said approximately 42 percent of the uninsured have incomes above the poverty level. Most of the uninsured, he said, are uninsured for four months or less and are considered working poor who cycle in and out of the job market. He said he is not sure if the 50 million noninsured estimate includes American Indians eligible for health care from the Indian Health Service. He said legislation has been introduced to correct an oversight in the reform legislation that will address coverage for veterans.

In response to a question from Representative Zaiser, Mr. Tanner said the physicians' oath to treat patients may be more significant with respect to critical care than with noncritical care or preventative medicine. He said physicians cannot be forced to provide care at a financial loss and still be able to remain in business. He said costs are shifted to the insured under the current system, and under the federal reform legislation, there is the potential that a tipping point will be reached where a number of physicians may be forced to stop accepting additional Medicaid patients.

Chairman Keiser called on Ms. Joy Johnson Wilson, Health Policy Director, National Conference of State Legislatures (NCSL), Washington, D.C., for comments (Appendix B) regarding the federal health care reform legislation.

In response to a question from Representative Boucher, Ms. Johnson Wilson said the penalty for being uninsured is intended to provide an incentive to purchase coverage. However, she said, the penalty will not contribute much to the cost of care for the uninsured and is not earmarked for health care. She said she is not sure of the total amount that is projected to be collected through the penalties.

In response to a question from Representative Keiser, Ms. Johnson Wilson said she has heard a significant amount of discussion regarding whether employers may reduce employee health coverage to single policies rather than family policies. She said it appears that the largest employers will continue to offer family coverage while smaller employers are unsure of the end result. She said one of the biggest issues resulting from the legislation is the uncertainty as to what people will do once the law is implemented. She said coverage will depend in great deal upon the net worth within exchanges and the prices available in the exchanges.

In response to a question from Senator Wanzek, Ms. Johnson Wilson said the Medicaid eligibility rule was determined by income only. She said a single, childless adult could qualify if the individual's income is low, despite the fact that the individual holds a significant amount of assets. She said North Dakota appears to be somewhat unique in that a fairly high number of people around 133 percent of the poverty level have insurance coverage. She said those individuals will not be eligible for Medicaid.

In response to a question from Representative Wolf, Ms. Johnson Wilson said the legislation exempts small employers with 50 or fewer employees from the insurance mandate. However, she said, the legislation also includes incentives for those small

employers to provide insurance coverage for employees, and some small businesses may start coverage for employees if the incentives are right.

In response to a question from Representative Conrad, Ms. Johnson Wilson said the application deadlines for the maternal and child health program are within the next six months. She said assessments of current programs and resources must be included within the application. She said NCSL has experts looking into the program and may be able to provide additional information.

In response to a question from Senator Lee, Ms. Johnson Wilson said the legislation will require each state to continue the children's health insurance program (CHIP) in order to keep Medicaid funding. In 2014, she said, higher income participants in CHIP may go into the exchange if the exchange has plans of equal coverage. She said CHIP is authorized through 2015, but Congress needs to appropriate funds through 2019.

In response to a question from Representative Vigesaa, Ms. Johnson Wilson said the exemption from the penalties for members of Indian tribes probably was considered to be a tax issue related to taxing of individuals who are members of a sovereign nation.

Chairman Keiser called on Mr. Josh Goldberg, Health Policy and Legislative Analyst, National Association of Insurance Commissioners, Washington, D.C., for comments (Appendix C) regarding the federal health care reform legislation.

In response to a question from Representative Zaiser, Mr. Goldberg said the grandfathered plans may remain quite healthy if the young and healthy remain insured. However, he said, some of the plans could become more expensive.

In response to a question from Representative Kasper, Mr. Goldberg said the impact and requirements of the federal legislation upon self-funded plans will vary. He said all plans will have to have both internal and external appeals processes. He said he will attempt to put together additional information regarding the impact upon self-funded plans.

In response to a question from Senator Dever, Mr. Goldberg said the legislation is an expansion of the federal government into insurance regulation. However, he said, the states will continue to regulate the insurance market. He said there will be less flexibility within the exchanges and the lowest plan within the exchanges will generally have less coverage than most current employer plans. He said individuals and businesses will be able to work through insurance agents for coverage and there is no requirement that parents take on the responsibility of providing coverage for their dependents up to the age of 26.

In response to a question from Representative Keiser, Mr. Goldberg said the requirement for extending coverage for dependents up to age 26 will take effect for plan years beginning September 23, 2010. He said the plan year is easy to define for group coverage, but it is more difficult to determine for individual coverage. With respect to individual coverage, he said, the question is whether the plan year is the anniversary date of coverage or the date of renewal of the policy. He said many insurance carriers are voluntarily implementing the dependent coverage before the effective date.

In response to a question from Senator Mathern, Mr. Goldberg said the Congressional Budget Office estimated that the legislation would result in a reduction in the federal deficit of $138 billion over 10 years. He said $800 billion in costs are projected to be paid in a number of ways, including an estimated $200 billion in savings due to a change in the way Medicare Advantage plans are reimbursed. He said changes in Medicare reimbursement rates with respect to productivity adjustments, a variety of tax provisions, income tax changes, and mandate penalties also will be sources of revenue.

Mr. Tanner said the deficit reduction does not take into account the amount needed for the Medicare "doctor fix," which is estimated to add about $150 billion to the deficit.

In response to a question from Senator Potter, Mr. Goldberg said the requirement that medical loss ratios be disclosed likely will be disclosure of actual, retrospective loss ratios. He said the requirement will apply only to major medical plans.

In response to a question from Representative Amerman, Mr. Goldberg said he will attempt to examine more closely the impact of the federal legislation with respect to workers' compensation insurance. However, he said, he believes the legislation will not apply to workers' compensation coverage.

In response to a question from Representative Keiser, Mr. Goldberg said the elimination of lifetime limits in the legislation likely applies only to coverage provided within the essential benefits package. He said he will attempt to provide additional information regarding the elimination of lifetime limits. He said he is unaware of any data regarding the cost of insurance premiums based upon the number of ratings groups.

Chairman Keiser called on Ms. Melissa Bianchi, Pharmaceutical Research and Manufacturers of America, Washington, D.C., for comments (Appendix D) regarding the impact of the federal health care reform legislation.

In response to a question from Representative Schatz, Ms. Bianchi said the individuals who qualify for the $250 donut hole reimbursement will receive a check within 60 days to 90 days after the end of the quarter in which the individual hits the donut hole.

In response to a question from Representative Keiser, Ms. Bianchi said the pharmaceutical manufacturing companies will pay 50 percent of the cost related to the closing of the donut hole. She said the donut hole has been an obvious problem that hits individuals with the greatest needs and was something that everyone wanted to fix. She said the federal legislation will affect pharmaceutical

manufacturers' costs in a number of ways and could result in some increases in the cost of prescription drugs. She said the increases will be different from company to company and market to market. She said the changes in the limits for medical spending accounts and the elimination of reimbursement for over-the-counter medications were likely made to address revenues needed to fund the legislation. However, she said, she is not familiar with how the decisions were made.

In response to a question from Senator Wanzek, Mr. Tanner said some estimates indicate that up to 12 million people may move off their insurance coverage due to the cost of premiums and the low penalties in the legislation. He said 2 million of the 12 million may move to Medicaid coverage and the others likely would be seeking coverage under the insurance exchanges. He said businesses may eliminate coverage for employees, and individuals who are young and healthy may opt not to have coverage.

Mr. Goldberg said many businesses offer insurance coverage as a means of attracting employees. He said the individual coverage mandate may make employer-provided coverage more valuable for employees.

In response to a question from Representative Kreidt, Ms. Johnson Wilson said the federal legislation includes various programs to support medical provider workforce needs. She said the National Health Service Corps program will provide additional loans for health professionals who commit to three years of practice in an underserved area. She said that program should increase the supply of medical providers for underserved areas. In addition, she said, a number of grants within the legislation will provide support for health workforce training programs. She said there likely will be an additional emphasis on paraprofessionals to address workforce issues.

Mr. Tanner said the legislation will provide for a shift in reimbursement from specialty care to primary care.

In response to a question from Representative Weisz, Mr. Goldberg said the legislation requires a temporary high-risk pool which is designed as a bridge to implementation of the legislation in 2014.

Chairman Keiser called on Mr. Adam W. Hamm, Insurance Commissioner, for comments (Appendix E) relating to the impact of the federal health care reform legislation.

In response to a question from Representative Vigesaa, Commissioner Hamm said most of the work in preparation for the implementation of an insurance exchange will need to be projected during the 2011 legislative session.

In response to a question from Representative Berg, Commissioner Hamm said the decision whether to operate a state high-risk pool or have the federal government operate the pool for the state must be made by April 30. He said he is reviewing a number of options and attempting to gather additional information to determine the financial responsibility to the state.

In response to a question from Senator Potter, Commissioner Hamm said he is uncertain as to whether all the eligibility changes that would be required for the Comprehensive Health Association of North Dakota (CHAND) program to operate as the state high-risk pool could be accomplished through administrative rules. He said his biggest concern with operating a state high-risk pool would be what would happen when federal funding runs out before 2014.

Senator Lee said the CHAND program is overseen by a board that determines the assessments and premiums. She said Utah has created an insurance exchange which appears to be very successful. She said the Utah exchange has only two full-time employee positions and a budget of approximately $600,000. She said she has requested additional information from Utah representatives regarding the exchange.

In response to a question from Representative Kasper, Commissioner Hamm said he has received no in-person or phone inquiry offering to operate an exchange for this state.

In response to a question from Senator Mathern, Commissioner Hamm said directions from this committee would be helpful with respect to whether the state should cooperate with other states to operate a multistate insurance exchange. He said the remainder of the interim should be used to address the exchange issue. He said he is opposed to the federal government operating a permanent exchange in this state.

Chairman Keiser said each of the state agencies affected by the federal legislation should be examining legislative changes that will be necessary to implement the requirements of the legislation.

In response to a question from Representative Boucher, Commissioner Hamm said the federal law has been in place for only one month and is a work in progress. He said the state will need to comply with federal laws and regulations as well as meet the needs of North Dakotans. He said it will be important to look at what other states are doing to help determine what is best for this state. He said he believes that the exchange in place in Utah is significantly different from what will be required by federal law.

In response to a question from Representative Keiser, Commissioner Hamm said the frontier states amendment will end some of the cost-shifting due to underreimbursement for Medicare patients. He said there has been some discussion within his office with respect to the impact on insurance premiums, and he will consider that impact when reviewing insurance company rate increase requests.

Chairman Keiser called on Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, for comments (Appendix F)

regarding the impact of the federal health care reform legislation.

In response to a question from Representative Conrad, Ms. Anderson said she will provide the committee with additional information at future meetings regarding the biennial impact of the changes in Medicaid eligibility. She said the estimate that she has provided only addresses the mandatory provisions of the legislation and are preliminary estimates. However, she said, she does not expect the estimates to decrease as more information is gathered.

In response to a question from Representative Boucher, Ms. Anderson said the administrative costs of implementing the federal legislation will begin soon. She said the bulk of the cost estimate she provided is for a five-year period.

Senator Holmberg said the department must provide long-term estimates and biennial estimates so that the Legislative Assembly has a good picture of the total costs that will need to be addressed.

In response to a question from Representative Kasper, Ms. Anderson said the cost estimates are in current dollars and not inflated. She said the department will place the estimates into budget tables to include inflation rates and will attempt to run estimates with certain inflation levels to provide the Legislative Assembly with additional information.

Chairman Keiser said each affected agency should continue to provide the committee with estimates regarding the number of full-time equivalent (FTE) positions needed and the funding needed to implement the legislation. He said the committee will continue to seek updated information from the affected agencies at each future meeting.

In response to a question from Representative Hogan, Ms. Anderson said the Medicaid unit has 63.5 FTE positions and some temporary staff.

In response to a question from Representative Wieland, Ms. Anderson said she does not have an estimate of the impact of the 5 percent income disregard. She said the additional information is needed from the Centers for Medicare and Medicaid Services.

Chairman Keiser called on Ms. Arvy Smith, Deputy State Health Officer, State Department of Health, for comments regarding the impact of the federal health care reform legislation. Ms. Smith said the legislation provides for a dozen programs relating to public health prevention. She said some of the programs have authorized funding but most do not have funding yet. She said the department may be required to administer certain mandates in the legislation. She said the department is reviewing the programs for which appropriation authority was provided for 2010 to determine what is required under the programs. She said there is a significant amount of funding available in the maternal and child health area. Although much of the funding will be channeled to local governments, she said, local matches may be required.

Ms. Smith said the federal legislation requires criminal background checks for employees of health care providers. She said the responsibility for the background checks is currently under the Attorney General's office. Although some funding may be available for implementing that requirement, she said, the requirement would have a significant impact. She said state matching funding may be required to receive federal funding to cover additional employee positions, and indirect and initial costs incurred in implementing and administering the programs would be the responsibility of the state. She said there are many questions regarding the programs, such as the requirement for nutrition disclosure and which agency would be required to administer the program. In addition, she said, the department has to determine the impact of programs such as the breastfeeding support program. To maintain federal funding, she said, the state will be required to conduct a maternal and child health needs assessment. She said the department is continuing to analyze the impact to programs administered by the department which are affected by Medicaid, Medicare, and other insurance provisions within the legislation.

In response to a question from Representative Conrad, Ms. Smith said she is unsure of the amount of funding provided for chronic disease management. She said she believes the funding was authorized but not appropriated.

Representative Conrad requested Ms. Smith to provide the committee with a list of each of the programs provided for under the federal legislation which would provide for funding of programs implemented or administered by the State Department of Health.

Chairman Keiser said the committee and the Legislative Assembly must be informed of the matching funding requirements or other expenses involved in programs that each state agency may be required to implement.

Chairman Keiser called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System (PERS), for comments (Appendix G) relating to the impact of the federal health care reform legislation.

In response to a question from Senator Potter, Mr. Collins said approximately 13,000 of the 25,000 contracts under the group health insurance program administered by PERS are state contracts. He said the total cost of the additional requirements attributable to the federal legislation would amount to approximately $5.50 per contract per month.

In response to a question from Representative Amerman, Commissioner Hamm said the fiscal impact estimate provided by the Insurance Department assumes that the health insurance exchange would be housed within the Insurance Department. He said the estimate is a biennial estimate and does not include the one-time cost to develop the information technology infrastructure needed to manage the exchange.

Chairman Keiser called on Dr. D. Wayne Taylor, Executive Director, The Cameron Institute and Health Services Management Programme, McMaster University, Hamilton, Ontario, Canada, for comments (Appendix H) relating to pharmaceutical industry functions in Canada and differences between the Canadian and American systems.

In response to a question from Senator Mathern, Dr. Taylor said access to new drugs is important for the senior population, and it is important not to restrict access to those who are most vulnerable.

In response to a question from Representative Kasper, Dr. Taylor said the Canadian government negotiates pharmaceutical prices with manufacturers. He said the prices negotiated generally do not exceed the average cost in the G-7 countries. He said drug purchasing is done by each provincial government. During the last year, he said, the provincial governments began negotiating rebates for the drug manufacturers. However, he said, that process has not gone well. He said nurses in Canada are employed by not-for-profit hospitals funded by the provinces and salary bargaining for nurses is done centrally. He said doctors operate mostly on a fee-for-service basis.

Chairman Keiser called on Mr. Bruce Levi, Executive Director, North Dakota Medical Association, for comments (Appendix I) regarding the health care reform legislation.

In response to a question from Representative Wolf, Mr. Levi said he will attempt to gather information from the various health systems in the state regarding physicians who are not accepting new patients. He said the walk-in clinics are providing an alternative that helps keep people out of the emergency room.

In response to a question from Senator Dever, Mr. Levi said health care in the state could not be sustained in the same manner with health care reform if the reform package did not address Medicare reimbursement. He said the North Dakota Medical Association worked to ensure that the Congressional Delegation would see that the frontier states amendment to provide additional Medicare reimbursements would be included in the reform legislation. He said the entire process in which the legislation was adopted was frustrating and awkward, but the legislation includes a number of important and good things for this state. He said there was a diversity of opinions from physicians regarding the legislation. He said the legislation strengthened primary care, which was an identified need in the state. He said physicians from some specialties opposed the reform legislation. He said the North Dakota Medical Association made it clear to the Congressional Delegation what the association favored in the legislation and what aspects of the legislation it opposed. He said the association will continue to address medical reform issues with the Congressional Delegation.

In response to a question from Senator Oehlke, Mr. Levi said because health care is different throughout the country, some initiatives in the legislation will help different areas. He said there will be some trial and error in certain aspects of the legislation and its implementation.

In response to a question from Representative Schatz, Mr. Levi said the University of North Dakota School of Medicine and Health Sciences has developed a proposal that will start a good discussion with respect to providing more family practice physicians. He said the federal legislation includes some incentives for primary care.

In response to a question from Representative Berg, Mr. Levi said when it became clear that the "doctor fix" would not be included in the federal legislation, work began to address that problem on a long-term basis through different bills.

In response to a question from Senator Potter, Mr. Levi said the additional Medicare funding likely will mean that additional funds may be available for recruiting and training medical providers as well as updating technology and facilities.

In response to a question from Representative Keiser, Mr. Levi said approximately 70 percent of the physicians in the state are members of the North Dakota Medical Association. He said the additional Medicare reimbursement within the federal legislation will impact the communities in which hospitals are located. He said hospitals are often the largest employer in communities, and the additional funding may make the facilities more competitive in bringing in workforce. He said he will continue to work to gather for the committee additional information relating to a comparison of salaries and benefits for physicians in this state as well as national data.

Chairman Keiser called on Mr. Paul von Ebers, President and CEO, Blue Cross Blue Shield of North Dakota, Fargo, for comments (Appendix J) regarding the impact of the federal health care reform legislation. Mr. von Ebers said Blue Cross Blue Shield of North Dakota is committed to implementing the new law and providing consumers with necessary information and advice relating to the legislation. He said Blue Cross Blue Shield will begin to implement the dependent care coverage immediately so that no one under the age of 26 is dropped before the implementation date of the requirement. Although the company cancels only 5 to 10 policies per year due to a lack of information provided in the application, he said, Blue Cross Blue Shield is open to outside review of the decisions and will implement some of the required provisions in advance. He said it appears that approximately one-half of the individual market will be eligible for federal subsidies and 30 percent to 40 percent of the small group market could be eligible for subsidies. He said the penalties on the individual mandate are too small, and he is concerned with individuals dropping coverage due to the low penalty. In addition, he said, there is concern with respect to small employers dropping coverage due to the small

business exemption. With respect to the large employers, he said, the penalties are too small and could encourage employers to drop coverage. He said the legislation appears to require employers to collect household income information from employees.

Mr. von Ebers said the excise tax on high-cost plans is not likely to affect many North Dakota health insurance plans. He said the establishment of a health insurance exchange will be a substantial cost to the state and the enrollment process will add significant administrative costs. Although Blue Cross Blue Shield is likely to offer more products, he said, the product limitation in the exchange may result in standardized product design. He said one consideration is whether there is a need to have two exchanges--one for the individual market and one for the group market. He said Blue Cross Blue Shield will pay approximately $12 million in insurance taxes in 2014 and $16 million per year after 2016. He said the tax will result in an approximate 2 percent increase in premium rates.

In response to a question from Representative Conrad, Mr. von Ebers said Blue Cross Blue Shield did not advocate for a specific amount of a penalty for not maintaining health insurance. However, he said, it appears the individual mandate penalty would need to be approximately two to three times higher to be effective.

In response to a question from Representative Keiser, Mr. von Ebers said it appears that the lifetime and annual limits will depend upon the definition of essential benefits.

In response to a question from Representative Dosch, Mr. von Ebers said he will do additional research to determine if two half-time employees will count as one full-time employee when determining the number of employees employed by a small business.

In response to a question from Senator Potter, Mr. von Ebers said the frontier states amendment may restrain some need for a premium increase by Blue Cross Blue Shield. However, he said, the health care system in the state has many needs that must be addressed. He said the increased reimbursement may provide some room for a slowdown in the rate of increases over time and provide room to consider creative approaches.

In response to a question from Senator Wanzek, Mr. von Ebers said the legislation provided exceptions for seasonal workers who work fewer than 120 days in determining the number of employees employed by a small employer.

Chairman Keiser called on Mr. Doug Vang, North Dakota Hospital Association, Fargo, for comments regarding the impact of the federal health care reform legislation. Mr. Vang said the legislation was an important and positive step for health care in the state. He said the state has been hamstrung by the lower Medicare reimbursements for years. He said the disparity on a regional basis was 14 percent and 16 percent on a national basis. Despite that disparity, he said, North Dakota health care is the lowest cost and highest quality health care in the country. However, he said, it has become increasingly difficult to retain health care workforce in the state. He said the federal legislation expands coverage for uninsured patients and will help ensure better patient care while allowing hospitals to continue to operate in communities throughout the state. However, he said, the legislation also included certain payment reductions and failed to address permanent, direct physician reimbursement. He said there is more work to do going forward.

Chairman Keiser called on Mr. Tim Blasl, Vice President, North Dakota Hospital Association, for comments (Appendix K) regarding the impact of the federal health care reform legislation. Mr. Blasl also distributed written comments (Appendix L) from Mr. Russell Staiger, Bismarck/Mandan Development Association, relating to the impact of the federal health care reform legislation.

Mr. Blasl said North Dakota has among the oldest health care facilities in the country, and the frontier states amendment will help provide funding to upgrade the facilities. He said five states qualify for the frontier amendment funding, which will provide approximately $650 million in additional funding to North Dakota hospitals. He said the North Dakota Hospital Association is working to compare the impact of the amendment with the productivity adjustments and other reductions provided for in the legislation to determine the net effect. He said the percentage of bad debt for hospitals is 2.44 percent and the percentage of charity care provided is .71 percent. He said the percentage is based upon gross charges.

In response to a question from Representative Keiser, Mr. Blasl said the bad debt and charity care includes the cost of services provided to those who are underinsured.

Representative Keiser said the committee has reviewed information that indicates that approximately 7 percent of the residents of the state are uninsured. He said one-third of those choose to be uninsured, which is not likely to change with the federal legislation. He said another one-third of that number are eligible for Medicare and Medicaid but not enrolled.

In response to a question from Representative Keiser, Mr. Vang said no statewide data has been collected with respect to the age and condition of physical plants of hospitals in the state. However, he said, the facility for which he works has a dated physical plant, and he does not see the issue being significantly different between hospitals in small and large communities. Another issue to consider, he said, is the cost of technology. He said the type of care being provided has changed significantly and hospitals need to be better equipped.

In response to a question from Representative Berg, Mr. Blasl said he will attempt to get more detailed data regarding the cost of the "doctor fix."

In response to a question from Representative Kasper, Mr. Vang said members of the North Dakota Hospital Association know that health care has to change and have been advocating the rewarding of good work. He said the association's support of the federal legislation was a result of difficult choices. He said the legislation also contains small, but important, pilot projects, which hospitals have used in the past, some of which have become national models.

In response to a question from Senator Wanzek, Mr. Levi said physicians on a national basis were disappointed in the fact that the federal legislation did not include medical malpractice reform. He said North Dakota has good liability reform which provides stability in the liability insurance market. He said the association is working to protect what it has in this state.

In response to a question from Representative Keiser, Mr. von Ebers said he is concerned that some cost increases and income tests under the federal legislation could drive more people to the bronze level in the exchanges, which could lead to more bad debt for health care providers. He said current benefits generally cover 80 percent, and he is concerned that the result of the legislation could mean a collapse to the 60 percent bronze level.

In response to a question from Representative Berg, Mr. Vang said the federal legislation includes a number of small incentives and penalties in areas of accountability and outcome measures that could act as incentives to reduce costs. He said those small items could have an impact that could be elevated in the future.

Senator Potter said it is important to keep in mind that Mr. Tanner indicated that health care costs will double during the decade with or without the federal health care reform legislation.

In response to a question from Senator Potter, Mr. von Ebers said he will attempt to get additional information regarding which employer would be required to provide insurance for employees that hold multiple jobs.

Mr. von Ebers said health care costs would be a problem regardless of the federal reform legislation. Although Blue Cross Blue Shield needed a 26 percent premium increase in the individual market to break even, he said, the company requested only a 13 percent increase. Nonetheless, he said, the company was flooded with telephone calls after the increase was announced and it will result in many consumers having problems paying the additional costs. He said it is important to work to slow the rate of increase of health care costs without losing quality.

In response to a question from Senator Mathern, Mr. Levi said the work of this committee is a good start at bringing all of the affected and interested parties together to work to best implement and take advantage of the opportunities provided in the federal legislation.

Mr. Vang said various groups within the state have been collaborating in the past and will continue to collaborate to provide quality health care in the state.

In response to a question from Representative Boucher, Mr. von Ebers said although the federal legislation may not have had many cost control efforts, the driving force behind the reform effort was to reduce costs. He said it is difficult to improve the North Dakota system in many ways. However, he said, the state will have to address many issues, including an aging population. He said the small size of a state may allow for a better process to work through problems in a collaborative effort. He said solutions are needed to address the fact that 60 percent of health care revenue for hospitals comes from Medicare and Medicaid. He said the implementation of the federal legislation will be a work in progress, and despite the historical nature of the effort, the legislation has many flaws that will need to be addressed.

Chairman Keiser called on Mr. Dale Preszler, OSI, Inc., for comments (Appendix M) regarding the impact of the federal health care reform legislation.

In response to a question from Representative Conrad, Mr. Preszler said 20 percent to 30 percent of his employees are covered by health insurance through a spouse or another individual who does not work for him. He said his employees are given the option of taking cash or putting an amount toward a health care plan and the vast majority of the employees take the cash. He said the service industry in which he is engaged would essentially be eliminated if the business were required to purchase insurance for its employees. Although he would like to purchase insurance for his employees, he said, his option is either to hire an employee or not provide insurance.

Representative Conrad said studies have shown that approximately $100 of the cost of an insurance premium is the result of cost-shifting to cover the uninsured.

Representative Keiser said businesses such as Mr. Preszler's involve competition with individuals who are difficult to compete against.

Mr. Preszler said businesses that are near the point of being considered a large employer will likely decide to downsize.

Chairman Keiser called on Mr. Randy Hauck, Envision Consulting, Inc., for comments regarding the federal health care reform legislation. Mr. Hauck said the legislation redefined what is considered a large employer. He said it appears the tax credit will be available to a family of four with an income up to $88,200. He said the legislation also will require additional income withholding by employers, and employers will need to guess whether the withholding is necessary. He said passive income will be subject to the 3.8 percent Medicare tax beginning in 2014. He said the medical expenses deduction has been increased to 10 percent of the taxpayer's income.

Mr. Hauck said the legislation imposes an excise tax on tanning services and creates other excise taxes that will be passed on to consumers. He said the tax credits for small employers that purchase health insurance for employees will be phased-in. In addition, he said, the legislation narrowly defines which small employers will qualify for the tax credit and will exclude professional businesses due to wage limits. However, he said, the tax credits will help some small businesses that have low average wages. He said owners and self-employed individuals also are excluded from the tax credit eligibility.

Mr. Hauck said the legislation has very confusing language with respect to the determination of the number of employees of a business. He said it appears it will be very difficult for an employer to avoid penalties unless the employer is providing 100 percent insurance coverage for employees. Although the tax on $27,000 family premiums will likely affect few policies now, he said, premium increases after 2014 could bring more policies into the $27,000 per year range. He said employers need to be planning ahead to be ready for implementation of the legislation and to find ways to deal with the law. He said there will be a number of taxes and costs that will be passed on from businesses.

In response to a question from Representative Berg, Mr. Hauck said the 3.8 percent Medicare tax is applied to income over $200,000.

In response to a question from Senator Fiebiger, Mr. Hauck said many small businesses will not qualify for the tax credit because of average compensation over $50,000. He said most small businesses consist of only a few employees and the tax credit likely will be of limited value.

Senator Fiebiger said he believes that most small businesses in this state do not have an average base compensation of over $50,000.

In response to a question from Senator Wanzek, Mr. Hauck said bonuses count as compensation in the calculation of gross income. He said reporting requirements will increase burdens upon small employers.

In response to a question from Representative Keiser, Mr. Hauck said he believes the legislation provides for 16,000 additional Internal Revenue Service agents to address the complicated tax issues included within the legislation.

Chairman Keiser called on Mr. Eric Aasmundstad, President, North Dakota Farm Bureau, Devils Lake, for comments (Appendix N) regarding the impact of the federal health care reform legislation.

In response to a question from Representative Keiser, Mr. Aasmundstad said the Farm Bureau has no way to track the number of farmers that carry health insurance.

Chairman Keiser called on Dr. William Canham, Medcenter One Health Systems, for comments (Appendix O) regarding similarities and differences between the American and Canadian health systems. Dr. Canham said publicly funded health care accounts for 10 percent of the Canadian gross domestic product, which covers 70 percent of the health care costs in the country. He said the cost of the entire health care system in the United States accounts for 16 percent of this country's gross domestic product.

In response to a question from Senator Potter, Dr. Canham said the 1984 legislation in Canada restricted physicians from charging patients an additional 15 percent fee. He said Canadian citizens may opt out of the government medical program and pay a physician directly. He said the medical societies negotiate with the provincial governments for funds to be divided between the specialists and family physicians. Up to 1984, he said, the Canadian government paid 50 percent of the cost of the health care system and provinces had to be in compliance with the federal requirements. After difficult financial times, he said, the law was changed so that provinces had to pay an increased cost-share, mostly through increased sales taxes.

In response to a question from Representative Kelsh, Dr. Canham said primary care access is good in Canada and people go quickly to medical providers to control health issues. However, he said, access to specialty care is a problem.

In response to a question from Representative Ruby, Dr. Canham said when governmental health care was implemented in Canada, private insurance companies essentially were put out of business. He said he is concerned with similar problems occurring in this country. If that happens, he said, there will be no viable private insurance industry to establish standards of care for comparison purposes.

Mr. Steve Strege, Executive Vice President, North Dakota Grain Dealers Association and Health Trust, Fargo, said the North Dakota Grain Dealers Association established a group health care trust for its members. He said the reporting requirements in the federal legislation are a concern, as well as the many areas in which rules will need to be adopted. He said he is concerned that the group health trust will not be able to continue to operate due to the federal legislation. He said the government should be required to have an assessment of the cost to private sector businesses when adopting legislation.

In response to a question from Senator Mathern, Chairman Keiser said he had many requests to add additional speakers to the meeting agenda. However, he said, because of time limits, additional speakers could not be added for this meeting. He said he is committed to accepting recommendations for future meetings and to providing a fair opportunity for all sides to be represented.

In response to a question from Representative Keiser, Commissioner Hamm said he would like some direction from the committee with respect to the state's participation in a health insurance exchange. He said he is not sure if there is a nonprofit entity in this state that would qualify to operate the exchange.

In response to a question from Representative Kasper, Commissioner Hamm said the deadline for

responding to participation in the high-risk pool is April 30.

Representative Keiser said he believes the federal government should operate the temporary high-risk pool for North Dakota. However, he said, he is not comfortable with the state entering a multistate arrangement for the exchange. He said he would like to keep control of the exchange within the state and keep jobs here.

Representative Carlson said although Commissioner Hamm is seeking input from the committee, the committee does not have authority to make decisions that need to be made by the Legislative Assembly. He said Commissioner Hamm will need to make some decisions and make recommendations to the Legislative Assembly in 2011.

In response to a question from Representative Amerman, Commissioner Hamm said although the cost estimates for additional full-time positions for the Department of Human Services appear to be less than those for the Insurance Department, the estimates for his department are conservative estimates and the result of an analysis of the responsibilities needed to operate an insurance exchange.

Senator Lee said it is important to not make hasty decisions and the state needs to look at what has been done in Massachusetts, Utah, and other states. She said there may be efficiencies in collaborating with other states in operating the health insurance exchange.

Senator Potter said there could be a conflict with the Insurance Commissioner establishing and operating an exchange within the Insurance Department while being the insurance regulatory authority.

In response to a question from Senator Potter, Commissioner Hamm said the individuals who are seeking coverage through the state high-risk pool will be eligible for the new pool only after going without coverage for six months.

No further business appearing, Chairman Keiser adjourned the meeting at 5:20 p.m.

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John Bjornson
Committee Counsel

ATTACH:15