

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Thursday, September 10, 2009

Great Plains Ballroom, North Dakota State University Memorial Union  
Fargo, North Dakota

Representative George J. Keiser, Chairman, called the meeting to order at 9:00 a.m.

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

**Members absent:** Representatives Tracy Boe, Mark A. Dosch, Scot Kelsh; Senator David Hogue

**Others present:** See [Appendix A](#)

Chairman Keiser called on Dr. Roger Gilbertson, MeritCare Health System, for comments regarding the merger of MeritCare Health System and Sanford Health. He said the news about the transfer has been public for several months and MeritCare has held several forums to discuss the merger. He said the merger involves the two largest health systems in North Dakota and South Dakota and covers a significant amount of the population of the two states. In addition, he said, MeritCare has a significant number of patients in Minnesota.

Dr. Gilbertson said the issues affecting health care delivery in this region are similar to those faced nationally. Because regulations differ among states, he said, health care providers serving multiple states must deal with different regulations and often multiple federal offices. He said health care providers are operating in a very complex environment with increasing regulatory initiatives, not all of which are successful. He said a survey of North Dakotans indicated that many people believe health care in this state is below average and health care costs high. However, he said, the state ranks very high in quality of care and generally provides that care at the lowest cost in the country. He said Medicare reimbursement in this state is low because health care providers were honest in providing cost estimates and this may not have been the case in many other areas of the country. He said a study of the surrounding seven states indicated that North Dakota had the lowest health care costs by a substantial amount. He said the Legislative Assembly has done a good job with increasing Medicaid rates, but there are concerns with providers receiving low Medicare reimbursement rates.

Dr. Gilbertson said the dilemma faced by MeritCare is how to deliver and maintain high-quality care with a low population density. He said a population of approximately 500,000 is necessary to

maintain three neurosurgeons. He said the merger of MeritCare and Sanford Health will provide the geography and population base to support the level of service desired. Although MeritCare suffered its first year of financial losses in 100 years, he said, the merger will provide access to capital that will allow future growth in rural health care. Because MeritCare and Sanford Health do not overlap market areas, he said, the merger will pose no antitrust issues.

In response to a question from Representative Kasper, Dr. Gilbertson said although MeritCare has not offered a health plan before, the merger will allow MeritCare to follow a model that is used by most larger health systems. He said the provision of health plans by those other systems has not posed a problem for insurers in other markets. He said Sanford has only about 10 percent of the health insurance market in South Dakota and has not impacted the business of Blue Cross Blue Shield in that state. He said health care providers generally will participate in several health insurance plans, and there is no point in a provider taking losses with health care plans by charging less than its costs to provide services. He said the addition of the health plan should be a positive thing for North Dakota consumers by providing competition. He said the wellness portion of the health plan can help consumers manage certain chronic diseases and will pay to help keep people well.

In response to a question from Senator Potter, Dr. Gilbertson said physicians are paid both by fee for services and through salary. He said incentive is an important aspect for the physicians. He said approximately one-half of MeritCare physicians are salaried. He said he would like to see more physicians incentivized for productivity, quality, and satisfaction indicators. He said physicians receive no pay or benefit for tests or ancillary services and are paid for seeing patients.

In response to a question from Representative Schneider, Dr. Gilbertson said the access to capital is vital for the growth of MeritCare. He said studies have shown that large organizations generally have better quality and lower costs.

In response to a question from Representative Berg, Dr. Gilbertson said the Medicare reimbursement rate in South Dakota is about 30 percent higher than in North Dakota. He said the merger will benefit MeritCare due to the geographic distribution of consumers and the change in the Medicare rate. He

said the merger is a merger of equals that will not result in the reduction of services in North Dakota. He said any changes by the federal government relating to health coverage must address the reimbursement rates, provide more universal coverage, allow portability of coverage, provide greater access through the elimination of preexisting condition provisions, and address indigent care. He said he does not favor a single-payer model. He said there is little cost-shift in this state, but there are large gaps in other states.

In response to a question from Representative Kasper, Dr. Gilbertson said the merger likely will result in more jobs. He said the merger will benefit Fargo and rural areas by providing additional resources.

In response to a question from Representative Keiser, Dr. Gilbertson said the Sanford Health plan is a small plan that will pay out-of-network costs if necessary. However, he said, he is not certain of the exact policy provisions. He said the addition of the insurance plan is a small issue included within the merger.

Representative Keiser said he is aware that issues such as out-of-network coverage are of a significant concern with other large regional plans.

In response to a question from Representative Keiser, Dr. Gilbertson said he believes this merger will not result in a decrease in service or an increase in rates. He said the hospitals have very little input in what the hospitals are paid. He said Medicare, Medicaid, and Blue Cross Blue Shield generally establish the rates paid. He said the rural competition is among insurers, not providers. He said health care in this state is in financial trouble.

In response to a question from Senator Potter, Dr. Gilbertson said increased competition with insurers could result in reimbursement rates going up. However, he said, there is always pressure to have lower costs. He said higher margins will allow MeritCare to invest in its organization.

In response to a question from Senator Wanzek, Dr. Gilbertson said getting physicians to locate in rural areas is difficult. With the merger, he said, MeritCare may be able to hire a pool of primary care physicians to cover rural communities in North Dakota and South Dakota. He said a pool of physicians would reduce some of the recruiting and lifestyle issues that contribute to the difficulty in getting physicians in rural areas. He said the shortage of primary care physicians is a significant challenge and there will be a significant shortage of physicians in the near future.

Chairman Keiser called on Mr. Adam W. Hamm, Insurance Commissioner, for comments regarding the committee's study of the factors impacting the cost of health insurance. He submitted written information ([Appendix B](#)).

Chairman Keiser called on Dr. John Baird, State Department of Health, for a presentation regarding health insurance coverage in this state. He submitted written testimony ([Appendix C](#)).

In response to a question from Representative Kasper, Dr. Baird said Indian Health Service facilities do not always provide all types of medical services. He said medical services provided to American Indians off the reservation may not be paid through the Indian Health Service without a referral.

In response to a question from Representative Berg, Dr. Baird said funding for the Indian Health Service frequently runs out before the end of a fiscal year.

In response to a question from Representative Amerman, Dr. Baird said individuals receiving medical services through the United States Department of Veterans' Affairs are likely classified in the survey he presented as being covered by insurance.

In response to a question from Representative Zaiser, Dr. Baird said some individuals in need of medical care may be reluctant to go to a medical facility because they know they will be billed for the services. He said not everyone is aware that they are able to go to an emergency room to receive guaranteed medical care.

In response to a question from Representative Kasper, Dr. Baird said individuals identified as being between the ages of 45 and 54 on the survey are not part of the declining trend of individuals not covered by insurance. He said that aberration in the trend could be due to individuals who are early retirees, individuals moving to different jobs without health insurance coverage, and individuals who are starting businesses and do not have coverage.

Chairman Keiser called on Dr. Richard Rathge, North Dakota State Data Center, for a presentation regarding health insurance coverage demographics. He provided written information ([Appendix D](#)).

In response to a question from Representative Keiser, Dr. Rathge said an aging population in this state will result in a sizable impact on the health care system, which will require significant policy deliberations. He said there is a different context in the Great Plains as compared with the rest of the country. He said the Great Plains have been buffered in significant ways from economic busts in other areas. He said this state has been fortunate to have a low percentage of unemployment. He said solutions for addressing health care reform in this state must address components of the state, including significant pockets of poverty. He said different segments of the population are affected differently. He said statistics showing the number of people without insurance coverage do not account for whether the lack of coverage is by choice or if coverage is not available.

In response to a question from Representative Zaiser, Dr. Rathge said there is a significant number of children in the state who could be covered by the state children's health insurance program but who are not covered. He said it is a matter of education of individuals regarding the availability of the coverage.

In response to a question from Representative Thorpe, Dr. Rathge said he is not certain of the

specific number of individuals who self-insure. However, he said, it is likely quite minimal.

Representative Berg said the presentations at this meeting illustrate the struggle legislators have with respect to determining the number of uninsured individuals in the state.

Dr. Rathge said the United States Census Bureau data is self-reported survey data. He said much of what is reported is often underreported.

Representative Keiser said determining the number of uninsured individuals is a very complex issue. He said there are a number of people who pay for health care without insurance. However, getting the number of people who pay without insurance is very difficult, in part because the data is perceived as proprietary information by hospitals. Although nonprofit organizations have certain obligations to meet with respect to charitable care, he said, hospitals in this state are collecting on most claims.

Dr. Rathge said the statistics coming from hospitals and clinics also do not account for the fortunate individuals who do not require medical care.

Representative Keiser said there are also individuals who need care but who do not seek it.

In response to a question from Senator Potter, Dr. Rathge said American Indians are the population most likely not to respond to census surveys. He said there are also a number of individuals who move frequently who do not report. He said there is a large number of transient individuals in the growth areas of the state working in the oil industry.

In response to a question from Representative Kasper, Dr. Rathge said about three years ago definitions were changed to not count individuals covered by the Indian Health Service as covered by insurance.

In response to a question from Representative Keiser, Dr. Rathge said he is not sure if incarcerated individuals are considered to be insured.

In response to a question from Senator Oehlke, Dr. Rathge said census surveys are typically done by mail. He said nonrespondents are followed up with by telephone and then by an individual visit. He said the increased use of cellular telephones as the sole household telephone is a growing problem for census data collection.

Chairman Keiser called on Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, for comments regarding the uninsured population in the state. He provided written information ([Appendix E](#)).

Mr. St. Aubyn said in trying to determine the number of individuals covered by insurance policies, he worked with the Insurance Department to gather information. He said the issue mentioned in the first note on his summary has been eliminated. He said the estimates could include some duplication. Although the individuals covered by the Indian Health Service are reflected as being covered, he said, he is not sure if that number is entirely accurate. He said he was unable to gather any information regarding veterans' coverage. Although not all insurers were

contacted and included in the estimate, he said, the larger insurance companies were included.

In response to a question from Representative Zaiser, Mr. St. Aubyn said if an individual were covered by the Public Employees Retirement System and by Medicare, the individual likely would be counted twice in the estimate.

In response to a question from Representative Keiser, Mr. St. Aubyn said he estimates that approximately 580,000 of the 640,000 residents of the state have some type of coverage.

Representative Keiser said that estimate is relatively close to the information provided by Dr. Baird.

Chairman Keiser said he expects this committee to work independently of the federal health insurance reform efforts and to develop an appropriate model for this state that addresses North Dakota issues. He said the committee must work to define what is the best strategy to identify uninsured and underinsured individuals.

Representative Kasper said people either have health insurance or do not have health insurance. He said there is always access to health care in this state.

Representative Zaiser said an individual may have some type of health insurance but not have adequate coverage when experiencing a health problem or may be unable to pay for health care not covered by the health insurance.

Senator Potter said he has seen a definition that suggests that if 10 percent or more of an individual's or family's income is spent on health care, the individual or family is defined as underinsured. He said there is a category of people who have health insurance but not nearly an adequate amount that is traditionally viewed as major medical coverage.

Representative Ruby said an individual or family may be underinsured if the health insurance coverage includes a high deductible or the individual or family is a high user of health care. He said the definition of underinsured that Senator Potter mentioned is based on tax-adjusted income. However, he said, tax liability can be reduced significantly, which makes the definition subjective and not precise.

Representative Kasper said the definition of insured would include anyone covered under a group health plan sponsored by an employer, covered by individual major medical policies, covered by Medicare or Medicaid, or covered by another major medical plan. He said the amount of deductible should not be considered in the definition of underinsured because deductibles can be an individual choice.

Senator Oehlke said in determining whether an individual is insured with respect to automobile coverage, a base amount of insurance is used as a determining factor.

Senator Potter said 16 percent of the nation's gross national product is spent on health care. He said he agrees with Representative Kasper in that it is important to look at who is insured under the methods

Representative Kasper mentioned. Everyone else, he said, is uninsured.

Representative Keiser said with other types of insurance, people do not insure for high-frequency, low-cost issues. However, with health insurance, he said, insurance drives costs which does not make sense. He said underinsured individuals are people who have insurance but do not have enough to pay bills. He said it is impossible to insure against every outcome. He said there is a lack of personal responsibility in health insurance. Because of the aging population in this state, he said, there could be a real health care crisis in 5 years to 10 years. He said that is especially likely if Medicare reimbursement rates decrease.

Representative Berg said it is important to guarantee that an individual who needs care has a safety net to provide protection. He said health care premiums in this state may be lower than other states due to a population that is less likely to use medical services. He said the questions to address are how does the state deal with individuals who choose not to

have insurance and how to help the people who would choose to have insurance but cannot afford insurance.

Senator Wanzek said if the federal government allowed a tax deduction for individuals in small businesses for providing or obtaining health insurance, it would be an incentive for people to insure.

Chairman Keiser called on Ms. Andrea L. Fonkert and Ms. Cindy Sheldon, Insurance Department, for a demonstration of the Choosing Health Plans All Together (CHAT) program. Ms. Fonkert said the Insurance Department has conducted 10 sessions around the state and has scheduled 4 more sessions for October.

Upon completion of the CHAT demonstration, Chairman Keiser adjourned the meeting at 3:30 p.m.

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John Bjornson  
Committee Counsel

ATTACH:5