

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Tuesday, November 3, 2009
Roughrider Room, State Capitol
Bismarck, 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, Scot Kelsh, Dan Ruby, Mike Schatz, Elwood Thorpe, Don Vigesaa; Senators David Hogue, Dave Oehlke, Tracy Potter

Members absent: Representatives Tracy Boe, Mark A. Dosch, Steven L. Zaiser; Senators Arthur H. Behm, Terry M. Wanzek

Others present: Senator David O'Connell, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Representative Clark, seconded by Representative Thorpe, and carried on a voice vote that the minutes of the September 10, 2009, meeting be approved as distributed.

Chairman Keiser said if members of the committee intend to propose legislation, the proposals should be drafted as soon as possible so the committee will have time for discussion at future meetings. He said the committee will continue to monitor federal legislation and attempt to determine the impact of federal health care reform legislation on the state. However, he said, the committee will continue to work independently of any federal legislation. He said it appears this state is the only state that has an interim study dedicated to this issue.

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, for an update of proposed federal health care legislation. She submitted a written summary ([Appendix B](#)) entitled *Major Health Care Legislation in Congress*.

In response to a question from Representative Kasper, Ms. Ternes said the National Association of Insurance Commissioners has had some discussion relating to the constitutionality of requiring everyone to have insurance or be subject to penalties.

Representative Kasper said he does not believe there is a significant problem with the uninsured in this country. He said he believes there likely are only 6 million to 7 million people uninsured.

In response to a question from Representative Berg, Ms. Ternes said the cost range of the federal proposals under consideration extend from approximately \$850 billion to \$1.5 billion over a 10-year period.

In response to a question from Representative Kasper, Ms. Ternes said issues relating to the selling of insurance across state lines must take into account the need to have provider contracts in place. She said it is difficult for an insurer to compete in the state without negotiating provider contracts.

Representative Berg said the federal legislation appears to create a large system at a large cost which would have little impact on the ability of residents of this state to get health care. He said people needing hospitalization in this state are not turned away.

In response to a question from Senator Potter, Ms. Ternes said recent trends have shown annual health insurance premium increases ranging from 6 percent to 15 percent. She said the cost of health care likely will continue to rise at an annual rate of 10 percent in part because of choices consumers make regarding utilization of services.

Representative Keiser said if the federal projections for the cost over a 10-year period underestimate the actual increase in medical costs, the current estimates will be considerably low.

Representative Kasper said the federal bureaucracy created to fix the system will add more cost to the actual increases in the cost of health care.

In response to a question from Representative Keiser, Ms. Ternes said the federal legislation may result in it being more cost-effective for an employer to pay a 2.5 percent penalty rather than pay health insurance premiums for employees.

Senator Potter said the imposition of a significant payroll tax could lead to employers dropping coverage for currently covered employees.

In response to a question from Representative Ruby, Ms. Ternes said the idea of treating insurance benefits as taxable income has not been discussed in the most recent proposals.

Chairman Keiser called on Mr. Michael Fix, Life and Health Division Director and Actuary, Insurance Department, for comments ([Appendix C](#)) regarding minimum loss ratio requirements, market rating rules, and the modified community rating structure.

Mr. Fix said Montana has no minimum loss ratio requirement and has no provision for review of premium rates. He said he visited with an actuary from the Insurance Department in Montana who said there is no accurate method of comparison of rates between that state and North Dakota. He said the Insurance Department surveyed insurers regarding impairments to doing business in this state about five

years ago. He said the survey identified five impediments, including the amount of time taken to review policy forms for new entrants into the market, the small population of the state, the presence of a dominant market share provider, the difficulty in getting provider agreements, and the minimum loss ratio requirements. However, he said, after reducing the minimum loss ratio, no additional companies applied to do business in the state. Therefore, he said, the minimum loss ratio does not appear to be a significant factor in attracting additional competition in the state.

In response to a question from Representative Kasper, Mr. Fix said the primary reasons for the lack of competition appear to be the small population of the state and the difficulty in obtaining provider agreements.

In response to a question from Representative Keiser, Mr. Fix said it appears the premium growth rate in this state compared to Montana is very similar.

In response to a question from Senator Potter, Mr. Fix said the advantage of competition is additional benefit choices. He said many companies are efficient and have similar loss ratios.

Representative Kasper said disparities in provider reimbursement contracts will stifle competition. He said all insurance companies should be allowed to be relatively close in reimbursement so that health care providers are not picking the winners and losers in the insurance market.

Mr. Fix said it is important to address disparity in costs with different providers. In addition, he said, there are concerns with predatory pricing that leads to significant increases in premium costs down the road.

In response to a question from Representative Keiser, Mr. Fix said a lower ratio of the highest premium to the lowest premium will not allow as much cherry picking by insurers. He said the higher ratio provides for a larger range of premiums that may lead to more competition. However, the larger range also allows insurers to target healthy groups.

Representative Ruby said a lower ratio could reduce the incentive for a policyholder to reduce premiums through healthy behaviors.

Chairman Keiser called on Mr. Paul von Ebers, President and CEO, Blue Cross Blue Shield of North Dakota, for comments ([Appendix D](#)) regarding proposed federal health reform legislation.

Mr. von Ebers said the minimum loss ratio requirement likely does not have a significant impact on attracting new insurance carriers to the state. He said Blue Cross Blue Shield administrative costs are well within the statutory requirements. However, he said, flexibility is needed to work with providers. He said the Blue Cross Blue Shield loss ratio is around 90 percent, but varies by the segment of the business. With respect to the modified community rating structure, he said, a larger range may allow an insurer to more accurately price a piece of its business. By minimizing the range, he said, the effect of cherry picking may not necessarily be reduced. He said

benefit design may be used as a means of cherry picking.

In response to a question from Representative Kasper, Mr. von Ebers said Blue Cross Blue Shield accepts 90 percent of applicants in the individual market. He said 10 percent of applicants are rejected due to medical questions. He said Blue Cross Blue Shield only rescinds about five policies per year, generally due to false information being provided on an application.

In response to a question from Senator Potter, Mr. von Ebers said applicants who are rejected are able to obtain coverage through the Comprehensive Health Association of North Dakota (CHAND) program.

In response to a question from Representative Kasper, Mr. von Ebers said even though Blue Cross Blue Shield pays 165 percent of Medicare rates, the reimbursement is still lower than hospital rates in other states. He said the 165 percent figure is an average and urban providers are often paid slightly less while rural hospitals receive a bit higher reimbursement.

In response to a question from Senator Hogue, Mr. von Ebers said the health care cooperatives mentioned in some of the federal health care reform debates would be similar to the operating model of Blue Cross Blue Shield. However, he said, Blue Cross Blue Shield would not be able to be designated as a cooperative under the proposed legislation. For a cooperative to be effective, he said, the cooperative would need to cover approximately 500,000 individuals. He said a multistate cooperative would likely result in a loss of customers for Blue Cross Blue Shield and a loss of jobs in this state.

In response to a question from Senator Potter, Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, said the CHAND program runs at a deficit of approximately \$5 million per year. He said insurers in the state make up the deficit, and the payments to make up the deficit are credited against the premium tax.

In response to a question from Representative Kasper, Mr. von Ebers said the CHAND program provides for guaranteed issue in the state. However, he said, the premium under the CHAND program is higher than other premiums. He said guaranteed issue under the proposed federal legislation likely will result in higher premiums.

In response to a question from Representative Ruby, Mr. von Ebers said one of the bigger issues to address in this state is increasing Medicare reimbursement for providers. He said another issue to address is the problem of rising medical costs. He said health care quality in this state is excellent and should continue to improve while maintaining reasonable costs. He said Blue Cross Blue Shield of North Dakota will continue to work with hospitals and physicians to maintain quality and affordable health care in the state.

In response to a question from Senator Potter, Mr. von Ebers said premium costs in the state have been rising at 7 percent to 8 percent annually. Although Blue Cross Blue Shield has been fundamentally well run, he said, the company must address a crisis of confidence because cost control has not been addressed effectively. He said insurance companies cannot control how people live their lives or what doctors prescribe. He said Blue Cross Blue Shield will work with doctors to help them match care with what is right at the particular time. In addition, he said, the company will continue to work on wellness programs and collaborate with providers and members to help reduce health care costs.

In response to a question from Representative Kelsh, Mr. von Ebers said some of the federal health care reform proposals would limit the size of wellness and prevention incentives. He said those types of provisions are a concern, and it is important to be more aggressive in promoting wellness initiatives.

Chairman Keiser called on Mr. Bruce Levi, Executive Director, North Dakota Medical Association, for comments ([Appendix E](#)) regarding the federal health care reform proposals.

In response to a question from Representative Keiser, Mr. Levi said the association continues to attempt to address Medicare reimbursement rates.

In response to a question from Representative Kasper, Mr. Levi said the North Dakota Medical Association has not taken a position opposing a public option and additional detail is needed before being able to examine the impact of a public option. He said the resolution that was adopted by the North Dakota Medical Association Council was purposely ambiguous because additional detail is still needed.

Representative Kasper said the association and its members should have the courage to come out on one side.

Mr. Levi said the association has come out strongly with respect to the Medicare reimbursement issue.

In response to a question from Senator Hogue, Mr. Levi said now is a good time to address the elimination of the geographic indexes for Medicare reimbursement. He said one option would be to have a value index under which quality is a factor in the cost. He said such an index would increase reimbursement rates in this state. He said progress has been made on reimbursement rates and the association will continue to address the issue.

In response to a question from Representative Ruby, Mr. Levi said the association will continue to bring issues of concern to the Legislative Assembly. During the last legislative session, he said, the Legislative Assembly addressed Medicaid reimbursement and progress has been made with respect to reimbursement for work injuries. He said the association continues to work with other groups to help provide high-quality care in the state. He said a stable medical liability insurance market helps in recruiting physicians. He said the association has

also addressed patients' rights and fair contracting issues.

In response to a question from Representative Keiser, Mr. Levi said he is working to provide additional information regarding medical provider salaries to help provide perspective on how reimbursement arrangements are structured. If Medicare reimbursement rates are increased, he said, other payers will not have to subsidize the underpayments of Medicare.

Senator Potter said it would be helpful to see information relating to overhead costs to help determine what expenses are due to the system and what expenses may be addressed legislatively.

Chairman Keiser said the Legislative Assembly has the ability to impact the cost of health insurance premiums and will continue to need input from impacted groups.

Representative Berg said the federal reform legislation will likely have the effect of raising costs. He said the federal program appears to attempt to massively fix a small problem in this state. He said the state can take a proactive role and let the federal government know what this state needs. He said this committee can request the chairman of the Legislative Management to approve a communication summarizing the issues that affect North Dakota and forward that communication to the state's Congressional Delegation.

Chairman Keiser called on Mr. Mark Halvorson, Vice President, Business Development, Medica, for comments ([Appendix F](#)) relating to entering the insurance market in this state. He also submitted documents relating to Medica services and products, copies of which are on file in the Legislative Council office.

Mr. Halvorson said he agrees that federal reform of the health care system is necessary. He said Medica is in favor of guaranteed issue and a strong mandate. He said the minimum loss ratio has not been an issue that has affected Medica's ability to operate in North Dakota. He said the company operates within the current standards and likely will continue to expand operations in this state. He said the company has brought additional products to the state. He said the company was the first to market Fit Choices to provide reimbursement dues for health clubs. In addition, he said, the company has been innovative in allowing consumers to obtain rates for services provided at medical facilities through the use of an iPhone. He said it is important to educate consumers to be more diligent in making utilization decisions. To do that, he said, the company must provide access to information and provide transparency. He said insurers can help providers better manage their products by sharing data with the providers.

In response to a question from Senator Potter, Mr. Halvorson said Medica obtains provider quality data from public sites. He said all major care systems in Minnesota provide data for comparison purposes, which is evidence-based. He said quality data is

difficult to obtain, but progress is being made. Through the use of quality and cost data, he said, consumers will change behaviors.

In response to a question from Representative Kasper, Mr. Halvorson said the most significant obstacle to doing business in North Dakota has been developing a provider network. He said it is vital to have a good financial arrangement with providers to be able to compete in the market. He said consumers and providers are skeptical of new insurers in the market and Medica needs to earn the trust of consumers by providing a quality product. He said it has been difficult to obtain competitive provider contracts.

In response to a question from Representative Keiser, Mr. Halvorson said the proposed federal legislation may affect wellness programs. He said the legislation should allow private insurers to continue to be innovative.

In response to a question from Representative Kasper, Mr. Halvorson said Medica subcontracts with a pharmacy benefits manager for claims processing. He said Medica uses rebates to pass on savings to consumers. He said the large self-funded customers can choose to take the rebates or have the rebates used for reductions in administrative costs.

Mr. Halvorson said Medica partners with providers to innovate and provide better care at lower costs. He said the company is looking to redesign a clinic to make the clinic more efficient and to provide better results. He said the redesign should result in improved employee productivity and reduce patient office visits.

Chairman Keiser called on Mr. Tim Blasl, Vice President, North Dakota Healthcare Association, for comments ([Appendix G](#)) regarding the impact of the federal health care reform proposals.

In response to a question from Representative Clark, Mr. Blasl said the proposed \$20 billion fee that would be generated from medical device makers would be a cost that ultimately would be passed on to consumers and taxpayers.

In response to a question from Representative Keiser, Mr. Blasl said he is unsure of the impact on premiums of increases in Medicare reimbursements. However, he said, he would speculate that insurance premiums likely would not be reduced. He said hospitals need increased reimbursement to help catch up on delayed capital expenditures.

Chairman Keiser called on Mr. Darrold Bertsch, CEO, Sakakawea Medical Center, for comments ([Appendix H](#)) regarding financial issues relating to critical access hospitals in the state.

In response to a question from Representative Keiser, Mr. Bertsch said the 2007 data used in the surveys was the most recent available for the study. He said additional data has become available, and he has requested all critical access hospitals in the state to provide additional financial statements.

In response to a question from Senator Hogue, Mr. Bertsch said there is not a designated seat on the

Blue Cross Blue Shield of North Dakota Board of Directors for a representative of a critical access hospital. However, he said, one current member of the board is employed at a critical access hospital.

In response to a question from Representative Kasper, Mr. Bertsch said the Legislative Assembly needs to continue to be aware of the fragile nature of the health care system in the state and do whatever is possible to help the system remain strong. He said there likely is a need to subsidize care in critical access hospitals. He said it is very difficult to recruit physicians, and it is often necessary to pay more to get primary care physicians in rural areas.

In response to a question from Representative Keiser, Mr. Blasl said operating margins in noncritical access facilities have been less than 1 percent.

In response to a question from Representative Kasper, Mr. Blasl said the North Dakota Healthcare Association would not support federal legislation that provided a public plan at Medicare reimbursement rates. He said association members also have other concerns with the proposed legislation and will continue to study the impact of proposals.

Chairman Keiser requested members of the committee to submit any proposals for legislation or for additional information.

Senator Potter said it may be helpful to consider a bill draft that would require insurers to provide additional information for consumers regarding the minimum loss ratio.

Representative Amerman said he would like to hear from individuals who are uninsured and have more testimony from consumers.

It was moved by Representative Berg, seconded by Representative Schatz, and carried on a roll call vote that the committee request the chairman of the Legislative Management to forward a letter to the North Dakota Congressional Delegation which expresses the concern of the committee regarding direct and indirect costs of the proposed federal health care reform legislation, the impact to the health care delivery system in this state of the proposed legislation, and other issues that the committee has identified. Representatives Keiser, Berg, Clark, Kasper, Ruby, Schatz, and Vigasaa and Senators Hogue and Oehlke voted "aye." Representatives Amerman, Kelsh, and Thorpe and Senator Potter noted "nay."

Senator Potter said he would like to see any proposal before it is sent.

Chairman Keiser said he would prefer to e-mail any proposed letter to members of the committee for their review before requesting the Legislative Management chairman's approval.

Senator Potter said much of the discussion at this meeting has related to Medicare costs and a public option, both of which are issues that are not that relevant in the federal proposals still under consideration.

Representative Berg said the committee should invite the state's Congressional Delegation to attend a future meeting of the committee.

Senator Potter requested the Legislative Council staff to prepare a bill draft that would exempt nonprofit health insurers from the insurance premium tax.

Representative Keiser requested the Legislative Council staff to work with the Insurance Commissioner to address methods to allow business entities that are a nonmembership group to form health insurance groups.

Representative Kasper said the Insurance Department representatives can address which laws need to be changed that would allow those types of groups to have an insurance plan.

Representative Potter said the committee should attempt to have a Canadian provider discuss the impact of the public option on health care.

Representative Kasper requested the Legislative Council staff to prepare a bill draft to address uninsured individuals through providing a plan to establish a health insurance pool for individuals who are uninsured due to financial or employment issues. He said the bill draft should provide for a subsidy to be paid for by insurance companies participating in underwriting the cost and should offer various plan options.

Chairman Keiser said the committee will attempt to meet in December in Grand Forks at the medical school. There being no further business, Chairman Keiser adjourned the meeting at 2:15 p.m.

John Bjornson
Committee Counsel

ATTACH:8