

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Tuesday, June 14, 2011
Pioneer Room, State Capitol
Bismarck, North Dakota

Representative George J. Keiser, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives George J. Keiser, Donald L. Clark, Robert Frantsvog, Nancy Johnson, Lee Kaldor, Jim Kasper, Gary Kreidt, Lisa Meier, Ralph Metcalf, Marvin E. Nelson, Karen M. Rohr, Lonny B. Winrich; Senators Dick Dever, Jerry Klein, Judy Lee, Tim Mathern

Members absent: Representatives Eliot Glassheim, Robin Weisz; Senator Spencer D. Berry

Others present: See [Appendix A](#)

Chairman Keiser welcomed committee members, stated the committee meeting is being broadcast on the Internet and perhaps on local cable channels, informed committee members that he plans to continue the process of planning and organizing the agenda for this interim's committee meeting by meeting with stakeholders in between committee meetings, announced the chairman of the Legislative Management expanded the study charges of the committee to include a study of the feasibility and desirability of developing a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens, and called on committee counsel to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

BACKGROUND

Chairman Keiser called on committee counsel to present two background memorandums entitled *Impact of the Federal Affordable Health Care Act on the Comprehensive Health Association of North Dakota - Background Memorandum* ([Appendix B](#)) and *Impact of Federal Affordable Care Act - Background Memorandum* ([Appendix C](#)).

In response to a question from Representative Winrich, Chairman Keiser said he expects the committee will need to recommend proposed legislation before the special session tentatively scheduled for early November 2011. He said any state legislation required under the Affordable Care Act (ACA) before the regular 2013 legislative session will be brought forward and addressed during the special legislative session; whereas, matters that are not required to be addressed before the regular 2013 legislative session he expects will follow the typical legislative timeline and process.

In response to a question from Representative Nelson, committee counsel said she can provide additional information at a future meeting regarding the breakdown of enrollees in the Comprehensive Health Care Association of North Dakota (CHAND). Senator Lee informed the committee that both she and committee member Representative Johnson are members of the CHAND Board of Directors.

Chairman Keiser commented that the committee's charges are very unique because every North Dakotan is impacted by the ACA. He said for this reason, the committee will attempt to hold committee meetings across the state. Additionally, because of the timelines associated with implementation of the ACA, the committee will be meeting every two to three weeks between now and the special legislative session. Because of these legislative deadlines, the committee will need to jump right into the substantive elements of the committee's study charges.

Chairman Keiser stated that as he views the committee's charges, there are three directions the committee can consider:

1. Oppose state implementation of the ACA. He said he expects that later in the interim the committee will take up this discussion; however, he does not view this as being the first item on the committee's agenda.
2. Move down the path of implementing the state provisions of the ACA. He said if the courts uphold all or parts of the ACA, the states are going to need to be prepared to move forward with implementation. He said he expects the ACA health benefit exchange requirement will be the first item the committee and the state will have to address this interim and then the committee likely will move on and address the other elements of the ACA which will be implemented.
3. Consider what steps the state can take to address the shortcomings of the state's current health care and health insurance system. He said this is the basis of the committee's expanded study charge. Regardless of the ACA, he said, North Dakota needs to address how health care can be improved in the state.

In response to a question from Representative Kreidt, Chairman Keiser said the National Association of Insurance Commissioners (NAIC) is tracking the activities of other states in implementing the ACA. He

said the Insurance Commissioner will give periodic updates on this during the interim.

In response to a question from Senator Mathern, Chairman Keiser said although it would be helpful if the committee could contact the federal government to find out the date on which the federal rules regarding the ACA will be finalized, the reality is that this information is not yet available. He said several organizations, including the NAIC, National Conference of Insurance Legislators (NCOIL), North Dakota Hospital Association, and National Conference of State Legislatures all want to know when the rules will be finalized and are doing everything within their power to gather this information.

Representative Kasper said at least four states have opted out of a state-administered health benefit exchange, instead allowing the federal government to run the states' exchanges. He said he would like information at a future meeting regarding these states and the decisions made by these states.

INSURANCE COMMISSIONER

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Insurance Commissioner, Insurance Department, for information regarding the ACA. Ms. Ternes distributed written material ([Appendix D](#)), including a copy of an ACA timeline for the period 2010 through 2018, a list of the NAIC's and Insurance Commissioner's duties under the ACA, a list of the federal grants available to states to assist in implementation of the health benefit exchanges and the status of these grants, and a brief summary of the status of the states' implementation of the ACA's health benefit exchange requirement.

In reviewing the timeline for the period 2010 through 2018 and answering questions regarding this document, Ms. Ternes stated since the ACA was enacted, the Insurance Commissioner has been taking steps to implement the necessary provisions. She said this process is a heavy burden for the Department of Insurance and is very time-consuming.

Ms. Ternes said under the federally administered preexisting condition insurance plan (PCIP), nine North Dakotans are currently enrolled.

Ms. Ternes said in looking at the timeline for 2011, it is deceptive because the list of action items appears to be short; however, the Insurance Department has been very busy with meeting these requirements.

In response to a question from Representative Frantsvog, Ms. Ternes said the ACA provides insurance companies will need to calculate the annual loss ratios and if the company does not meet the federal requirement, the insurance company will need to issue payments to insureds. However, she said, traditionally North Dakota insurance companies have done a good job in meeting the state requirements for loss ratios and this should also reflect well for these companies meeting the federal loss ratio requirements.

In response to a question from Senator Lee regarding the ACA long-term care program that will be

financed through payroll deductions, Ms. Ternes said she will provide additional information regarding the status of this element of the ACA at a future meeting.

In reviewing the list of the NAIC's and Insurance Commissioner's duties under the ACA and answering questions regarding this document, Ms. Ternes stated because of North Dakota's small size, the NAIC has been invaluable in providing assistance to the Insurance Commissioner in implementing the ACA. Additionally, she said, she would try to provide additional information at a future meeting regarding efforts some states are taking to enter interstate compacts in order to avoid federal requirements to implement provisions of the ACA.

In reviewing the list of the federal grants available to states to assist in implementation of the health benefit exchanges and the status of these grants and answering questions regarding this document, Ms. Ternes said the federal Department of Health and Human Services has unlimited funding for grants to states to implement the health benefit exchange portion of the ACA, but by 2015 the exchanges must be self-sustaining. She said in moving forward with the exchange, the state will benefit greatly from the work of states that have received Innovator grants.

Ms. Ternes said some states have created new state entities to administer the states' health benefit exchanges; however, Kansas is planning on having the Insurance Commissioner administer the state exchange. She said it is hard to fathom how multiple states could actually implement a multistate exchange but would not rule out consideration of the feasibility of North Dakota entering such an exchange.

In reviewing the list of the NAIC's and Insurance Commissioner's duties under the ACA and answering questions regarding this document, Ms. Ternes stated Louisiana and Florida are the only states that have opted to let the federal government administer the states' health benefits exchanges; however, Alaska and Georgia may take this step. She said Utah and Massachusetts have high-profile health benefit exchanges. However, she said, Utah's exchange does not meet the ACA requirements, so it will be interesting to see how Utah addresses this.

In response to a question from Representative Kasper, Ms. Ternes said the Utah exchange has not "killed" the private group market as it is still "alive and well." However, she said, there are still several portions of the ACA that are not in effect.

Representative Keiser distributed a document ([Appendix E](#)) that lists preliminary questions he believes need to be answered in the process of addressing the health benefit exchange requirement of the ACA. Ms. Ternes said the Insurance Commissioner is not prepared to answer these preliminary questions at this point as the department is still actively researching these issues.

LEAVITT PARTNERS

Chairman Keiser called on Mr. Michael O. Leavitt, Leavitt Partners, Salt Lake City, Utah, to present

information regarding the ACA and the steps taken by Utah to create a health benefit exchange. Mr. Leavitt stated that his experience as the former Governor of Utah and as the former Secretary of Health and Human Services has provided him with experiences that may be helpful in assisting North Dakota address the issue of the ACA health benefit exchange requirement.

Mr. Leavitt said that in moving forward to address the ACA health benefit exchange requirements, North Dakota needs to consider how best to meet the needs of North Dakota. He said the Department of Health and Human Services will likely acknowledge the state's attempt and recognize the needs of the state. He said in addressing the exchange requirement, he recommends that perfection not stand in the way of the good.

Mr. Leavitt said that although North Dakota may choose to take no action in creating a state-administered exchange and thereby allow the federal government to administer an exchange, he would advise against this option.

Mr. Leavitt said the two basic questions to ask in addressing the health benefit exchange requirement are:

1. What is the role of government? He said the role of government may be to organize an efficient marketplace, such as food stamps or meals on wheels, or it may be to operate the system, such as the military. Mr. Leavitt said he supports the role of government to organize and not to operate.
2. Should the health benefit exchange be inside state government or should it be outside state government?

Mr. Leavitt said in considering the Utah health exchange system, it is important to recognize the exchange is a proof of concept, but it is a go-cart, not a race car.

Mr. Leavitt discussed some serious problems states are experiencing with the Medicaid program. He said demographics are making this a bigger problem as the population ages and as a result, we cannot continue to manage the program as we have in the past.

In response to a question from Representative Kasper regarding the Rhode Island waiver to opt-out of the Medicaid program, Mr. Leavitt said he is not able to comment on whether such a waiver would work in North Dakota, although he said North Dakota's small size may work in the state's favor in seeking a waiver from the Department of Health and Human Services.

In response to a question from Representative Winrich, Mr. Leavitt said although managed care was successful in containing costs, consumers did not like the system. He said it is the financial market not the ACA that is driving the new models of health maintenance organization changes in health care.

In response to a question from Senator Mathern, Mr. Leavitt said that as a conservative he believes that

health care reform requires government involvement, but the real question is what role government should take. He said he supports government helping to construct an efficient environment for health care. For example, he said, some states will use the exchanges to run every aspect possible, whereas other states will not.

In response to a question from Senator Lee, Mr. Leavitt said in today's environment, community health centers will grow in importance and become central to the health care system. He said it is natural that whenever there is a need for competitiveness, the system automatically forms networks and creates more efficiencies.

In response to a question from Representative Winrich, Mr. Leavitt said there are multiple ways for companies to create networks and efficiencies, including creation of integrated corporate systems as well as creation of collaborative networks. As an example of a government organizing an efficient marketplace for health care, Mr. Leavitt cited the example of the system used in Singapore.

In response to a question from Representative Rohr, Mr. Leavitt said problems with our current system of health care include the focus on volume over value. He said with our current system being based on fee for service, the system incentivizes high numbers of procedures instead of quality outcomes.

DEPARTMENT OF HUMAN SERVICES

Chairman Keiser called on Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, for comments regarding the impact of the ACA on the state's medical assistance program and the state's children's health insurance program. Ms. Anderson distributed written testimony ([Appendix F](#)).

In response to a question from Representative Kasper, Ms. Anderson said the Department of Human Services is not prepared to take a position at this time regarding whether North Dakota should seek a Medicaid waiver, such as the Rhode Island Medicaid waiver.

In response to a question from Senator Mathern, Ms. Anderson said although she does not have specific information regarding who comprises the new individuals forecasted to enter the Medicaid rolls under the ACA; she expects these new enrollees come from a variety of places, including the uninsured as well as some employees whose employers stop providing group insurance.

In response to a question from Senator Lee, Ms. Anderson said although the state medical assistance program is currently working to refine data gathering regarding disease management, anecdotally the department is seeing positive results.

In response to a question from Representative Keiser, Ms. Anderson said she will provide the committee with additional information regarding Medicaid management information system (MMIS) issues related to diagnostic-related groups (DRGs).

Chairman Keiser called on Ms. Jennifer Witham, Director, Information Technology Services Division, Department of Human Services, for comments ([Appendix G](#)) regarding modifications to the department's eligibility system which are required to comply with the ACA.

INFORMATION TECHNOLOGY DEPARTMENT

Chairman Keiser called on Ms. Lisa Feldner, Chief Information Officer, Information Technology Department, for comments regarding the health benefit exchange requirements under the ACA and how other states have addressed this issue. Ms. Feldner provided written testimony and gave a computer presentation. A copy of the written testimony is attached as [Appendix H](#) and the computer presentation is attached as [Appendix I](#).

In response to a question from Representative Frantsvog, Ms. Feldner said she expects North Dakota will have access to health benefit exchange design information from other states but would incur a charge for actual use of the other states' system.

In response to a question from Senator Lee, Ms. Witham said the Department of Human Services shares Senator Lee's concerns regarding the difficulty of having states share a health benefit exchange system when the state health benefit requirements vary from state to state.

In response to a question from Representative Keiser, Ms. Feldner said North Dakota is working with South Dakota on the health information exchange system and is experiencing some issues because South Dakota is not working as fast as North Dakota is working. She said she has concerns that similar issues would arise if North Dakota attempted to work with other states in establishing or administering a health benefit exchange. Ms. Witham said from an information technology standpoint, integration of the health benefit exchange system would work better if it is kept in state.

Senator Mathern said he does not question it would be easier for the state to establish and administer a health benefit exchange system on its own; however, the real question is whether it would be affordable in the long term. He said it might make sense for North Dakota to ask neighboring states if any of them are interested in considering working with North Dakota in establishing a health benefit exchange.

STATE DEPARTMENT OF HEALTH

Chairman Keiser called on Ms. Arvy Smith, Deputy Health Officer, State Department of Health, for comments regarding the ACA. Ms. Smith provided written testimony ([Appendix J](#)).

In response to a question from Representative Kaldor, Ms. Smith said she is not certain whether the opportunity still exists for the State Department of Health to apply for any of the three 5-year grants.

COMMITTEE DISCUSSION AND DIRECTIVES

Chairman Keiser said he seeks guidance regarding the committee's wishes regarding the type of health benefit exchange the state should pursue. He said he recognizes the committee does not have much time to ask questions and get answers. He said other states are equally as concerned as North Dakota regarding the lack of time to address governance issues in time to get substantive answers.

Representative Kaldor questioned whether any other states have inquired into whether North Dakota might like to join a multistate health benefit exchange. Ms. Ternes said the only serious inquiry from other states she is aware of was from Wyoming. However, she said, this inquiry appears to have been a direct result of a legislative directive.

Senator Mathern said he agrees a single-state health benefit exchange would be most expedient. However, he said, as we are moving forward perhaps we could also make inquires as to possible opportunities for the state to cooperate with other states in establishing or administering the exchange.

Representative Keiser said he agrees it is important to be careful North Dakota is not positioned in a manner that precludes cooperation with other states at a later stage. He said he supports doing what it takes to learn from other states.

In response to a question from Representative Kasper, Ms. Ternes said by January 1, 2013, the state must be certified by the Department of Health and Human Services that the state meets the demands to run our own exchange. She said she is not certain of the exact requirements; however, the largest step will be the decision to have a state exchange. Representative Keiser said it is his understanding federal certification of the health benefit exchange would require a governance plan and an information technology plan.

Representative Winrich said time restraints are such that the committee needs to move forward with a state-based exchange system. He said while the state moves forward it should keep open any opportunities to cooperate with other states.

Senator Lee said she supports pursuing the concept of a state health benefit exchange plan.

It was moved by Senator Lee, seconded by Senator Klein, and carried on a roll call vote that the committee move forward in establishing a plan for a state health benefit exchange while keeping opportunities open for cooperation with other states. Representatives Keiser, Clark, Frantsvog, Johnson, Kaldor, Kasper, Kreidt, Metcalf, Nelson, Rohr, and Winrich and Senators Dever, Klein, Lee, and Mathern voted "aye." No negative votes were cast.

Representative Kasper voiced concern that the health benefit exchange needs to be designed in such a manner as to preserve the private insurance market.

He said he could not support any plan that had the effect of killing the private insurance market.

Representative Keiser said it is important that any health benefit exchange plan recommended by the committee be actuarially sound and not merely based on political decisions.

Representative Winrich requested that the committee members receive an executive summary of the NAIC model legislation as well as a copy of the full model legislation.

Senator Mathern said he seeks information from interested persons regarding where a state health benefit exchange should be housed. Representative Keiser said he agrees that governance will be the next issue to address. He said it would be valuable to learn more about governance as it relates to interested organizations.

Senator Lee said she sees a conflict of interest in having the Insurance Commissioner administer a state health benefit exchange. She said she would like to see a steering committee made up of many stakeholders administer the exchange.

In response to a question from Representative Kasper, Chairman Keiser said although he is open to having the committee address topics other than the health benefit exchange between now and the special session, he thinks most or all of the committee

agenda will be made up of the issue of the exchange. He said if the courts overturn the health benefit exchange portion of the ACA, the committee will clearly need to be ready to address this.

Senator Lee said as the committee moves forward, it should also address related Medicaid issues.

Representative Keiser said although Mr. Leavitt focused on challenging the underlying assumptions regarding our health care system, such as minimum loss ratios, Montana does not have minimum loss ratios but has similar rates as all other states.

Representative Kasper suggested the committee look into contracting with Leavitt Partners to provide the state suggestions regarding creation of a North Dakota model for a health benefit exchange.

Senator Klein said it is difficult to establish the road to take when the destination has not yet been finalized by the Department of Health and Human Services.

No further business remaining, Chairman Keiser adjourned the meeting at 3:25 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:10