

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Wednesday, January 15, 2014  
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, Rick Becker, Alan Fehr, Robert Frantsvog, Kathy Hogan, Nancy Johnson, Jim Kasper, Alex Looyson, Karen M. Rohr; Senators Tyler Axness, Oley Larsen, Judy Lee, Tim Mathern, Dave Oehlke

**Members absent:** Representative Eliot Glassheim; Senator Spencer Berry

**Others present:** Representative Chuck Damschen, member of the Legislative Management, was also in attendance.

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

**It was moved by Senator Mathern, seconded by Representative Frantsvog, and carried on a voice vote that the minutes of the November 12, 2013, meeting be approved as distributed.**

Chairman Keiser said in looking forward, the committee will continue to monitor the implementation of the federal Affordable Care Act (ACA), with a focus on the federally facilitated marketplace (FFM), which is the federally administered health benefit exchange, Medicaid Expansion; and the ACA waiver opportunity. Additionally, he said, at future meetings the committee will receive information regarding scope of practice issues for health care providers.

Senator Mathern said if the committee pursues legislation regarding the ACA waiver, he encourages the committee to think of the 2015 legislative session as the time for decisionmaking instead of considering a special session to address this issue. He said a regular legislative session allows more time for detailed discussions, whereas a special session tends to move too quickly for indepth discussions.

Representative Kasper said it will be important for the committee to receive data regarding the enrollment through the FFM as well as enrollment for Medicaid. Chairman Keiser said the committee will receive this information during the meeting and will continue to receive updates at future meetings.

**AFFORDABLE CARE ACT****Navigators and Certified Application Counselors**

Chairman Keiser called on Ms. Tinka Duran, Program Manager, Great Plains Tribal Chairmen's Health Board, for a presentation regarding the status of the navigator program being provided through the Great Plains Tribal Chairmen's Health Board (GPTCHB). Ms. Duran gave a computer presentation ([Appendix B](#)) and distributed the brochure *Navigator Program - Providing Health Insurance Marketplace enrollment assistance* (on file in the Legislative Council office).

Ms. Duran said one problem area under the FFM is that the FFM does not allow applicants to upload their tribal identification information, and therefore, the information online does not reflect the special opportunities available for tribal members. Although the tribal identification information can be submitted in writing, she said, this process is very time-consuming and is not conducive to enrollment completion. She said the Centers for Medicare and Medicaid Services (CMS) reports it is working on this problem.

Senator Lee raised a concern about a situation with which she is familiar, in which an enrolled member of a tribe gave birth and released that child for adoption. However, she said, as part of that adoption proceeding, the birth mother relinquished the child's tribal enrollment. She said when that adopted child neared adulthood, the child attempted to have that enrollment status reinstated, but the tribe denied the request. She said she understands tribal sovereignty but has concerns about the far-reaching consequences of denying the adopted child's request for reinstatement of the enrollment. For example, she said, enrolled members of tribes qualify for enhanced benefits under the ACA.

Chairman Keiser said he will contact the Indian Affairs Commission to request that the issue raised by Senator Lee be brought to the Tribal and State Relations Committee.

In response to a question from Representative Kasper, Ms. Duran said the health insurance subsidies and the enhanced benefits are available to enrolled tribal members who purchase insurance through the FFM. She said these subsidies and benefits do not apply if the enrolled tribal member receives health insurance through an employer.

In response to a question from Representative Kasper regarding concerns of lack of security of the FFM, Ms. Duran said in her experience the enrollment process seems secure as there are at least four different steps in the enrollment process at which an enrollee is requested to submit security questions. She said she does not have an opinion regarding whether the federal government is using enrollment information in a secure manner.

In response to a question from Representative Becker, Ms. Duran said as a condition of receipt of the navigator grant, the GPTCHB is collecting data for the first quarter report. She said she expects this data will be available at a future meeting. She said as part of the data collection, the GPTCHB is also keeping track of funds expended. She said she will provide the committee with this funding data as well.

In response to a question from Senator Mathern, Ms. Duran said in the tribal community there have been discussions regarding the feasibility of the tribal government adopting an opt-out approach under which all tribal members are enrolled in an insurance plan. She said in the Great Plains there is a tribe that offers a private health insurance policy for tribal members. She said the GPTCHB has not addressed this specific issue.

In response to a question from Representative Keiser, Ms. Duran said looking forward she expects there will be great increases in enrollment. She said the initial rollout experienced website problems, and this has been a significant barrier to enrollment. She said because the website is improving, she expects the removal of this barrier will be reflected in enrollment numbers. Additionally, she said, as Indian Health Service (IHS) employees become navigators, she expects this also to have a positive impact on enrollment numbers.

In response to a question from Representative Keiser regarding the future role of IHS, Ms. Duran said even with the increased availability of health insurance through the ACA, she does not think IHS will cease to exist. She said there is a transportation system in place to get people to IHS, and the community is accustomed to receiving health services through IHS.

In response to a question from Senator Lee, Ms. Duran said when navigators go through training, there is an entire training module on the federal Health Insurance Portability and Accountability Act (HIPAA).

In response to a question from Senator Larsen, Ms. Duran said she has not been working with insurance agents to help with enrollment because it is important that she be neutral. She said she has been working with representatives of the three insurers, however, to have the insurers participate in outreach events.

Senator Larsen said he is frustrated with the FFM because it does not provide consumers with adequate information regarding the provider networks covered by the three insurers offering North Dakotans coverage through the FFM. He said there are areas of the state which are outside some of the insurer's networks. He said in a situation like this, it would be valuable for consumers to have the services of an agent.

Chairman Keiser called on Mr. Larry Shireley, Director of Policy and Community Planning, Community HealthCare Association of the Dakotas, for testimony ([Appendix C](#)) regarding the status of the certified application counselors (CACs) services offered through Community HealthCare Association of the Dakotas (CHAD).

In response to a question from Senator Axness, Mr. Shireley said if an uninsured person comes to a CHAD clinic, the clinic will provide medical services and will engage with the person to help enroll that person through the FFM.

In response to a question from Senator Mathern, Mr. Shireley said the navigators and CACs have the same access to the FFM as members of the public have. He said when a CAC or navigator accesses the FFM, there is not special access or access to additional enrollment tools.

In response to a question from Representative Becker, Mr. Shireley said he will have data for the first quarter of CAC services at a future meeting.

In response to a question from Representative Fehr, Mr. Shireley said one of the differences between CACs and navigators is that the navigators receive more training than the CACs.

In response to a question from Representative Keiser regarding the low enrollment rates for people assisted by navigators and CACs, Mr. Shireley said the enrollment data the committee has received is an estimate, and as a practical matter, most people do not enroll at the first meeting so the navigators and CACs are unsure of how many clients actually go home and finish the enrollment process. Additionally, he said, during the first quarter there were technology problems with the FFM. He said he expects the second quarter data will reflect higher rates of enrollment.

Chairman Keiser called on Mr. Neil Scharpe, Navigator Project Director, North Dakota Center for Persons with Disabilities, Minot State University. Mr. Sharpe provided written testimony ([Appendix D](#)). As part of his presentation, he used the projector and Internet to walk the committee through the "See Plans Before I Apply" feature of the FFM. See <https://www.healthcare.gov/>.

In response to a question from Senator Larsen, Mr. Scharpe said as a navigator, he will convey information from the FFM site to his client, but he will not advise which plan he thinks may be most appropriate for the client. He said he will explain but will not advise.

Representative Kasper said he is concerned navigators and CACs may be practicing insurance without a license. He said North Dakotans may be getting the wrong information or advice. He suggested the state law be amended to address this issue.

Mr. Jeff Ubben, General Counsel, Insurance Department, said he has been looking into scope of practice issues related to concerns navigators and CACs are participating in the practice of insurance. He said the bottom line is these determinations are very fact-dependent, and there does not appear to be a bright line test. Additionally, he said, due to supremacy issues, before the Legislative Assembly addresses this issue it will be important to consider how the federal law addresses this topic.

In response to a question from Senator Larsen, Mr. Ubben said if an unlicensed person violates the law by practicing insurance without a license, the Insurance Department has authority to take action.

Representative Keiser pointed out the Legislative Assembly chose to defeat legislation that would have provided for a state-administered health benefit exchange and would have addressed state regulation of navigators.

Senator Lee said it is important to remember if the state were administering a health benefit exchange, the state would be responsible for funding the state's navigator system.

In response to a question from Representative Frantsvog, Mr. Scharpe said the navigators in the state are paid through the federal grants awarded to his organization and the GPTCHB. He said additional CACs could be added to the system if there is a qualified sponsoring organization. Ms. Duran said the IHS navigators will be paid through IHS and will not be paid through the GPTCHB grant.

### **Factors Affecting Premium**

Chairman Keiser called on Ms. Dianne Bricker, Regional Director for State Affairs, America's Health Insurance Plans, for comments regarding health care costs under the ACA. Ms. Bricker provided two handouts ([Appendix E](#))--*Health Insurance Tax: Making Health Care More Expensive for North Dakota* and a document summarizing health care coverage in North Dakota. She summarized the following six factors that will affect health insurance premiums:

1. Coverage of the previously uninsured;
2. Guaranteed access, regardless of preexisting conditions;
3. Essential health benefits;
4. Limitation of premium differences;
5. Subsidies; and
6. Tax on health insurance companies.

Ms. Bricker said traditionally there have been multiple factors that impact the cost of health insurance, including technology, demographics, lifestyle choices, transparency in costs, provider consolidation, prescription drug prices, and coordination of care.

Ms. Bricker said the ACA taxes on health insurance companies are expected to be passed on to consumers through increases in premiums. She said data for North Dakota indicate the related annual premium increase will be approximately \$430 for a family plan purchased on the exchange, \$493 for a family plan offered through a small employer, and \$648 for a family plan offered through a large employer.

In response to a question from Senator Mathern regarding steps that could be taken to help the ACA work, Ms. Bricker said America's Health Insurance Plans (AHIP) recognizes the ACA is law, and health plans have spent significant resources to be prepared to implement and comply with the ACA. She said there are several factors the committee members should take into account, including:

- Health plans worked with and are continuing to work with the federal government to prepare for the FFM rollout;
- Although the health insurance industry is a vital and healthy industry, full implementation of the ACA will result in major changes in the health care system;
- The single-payer model has not been implemented in the United States, and although our system is not perfect, it is better than it would be under a single-payer system; and
- In evaluating our medical system, it is important to recognize how very complex this system is, with multiple players; therefore, every player can be considered "part of the problem" and every player has a role in improving the system.

Ms. Bricker introduced Mr. Jason Siegel, FSA, MAA, Actuary, Milliman, Chicago-Milwaukee Office, who AHIP sponsored to travel to Bismarck and present to the committee. Mr. Siegel gave a computer presentation ([Appendix F](#)) regarding emerging trends in health care costs under the ACA.

In response to a question from Senator Oehlke, Mr. Siegel said the ACA's health insurance tax provision is unique in that the amount the federal government will collect has been established ahead of time, so the issue then becomes determining how the tax will be collected from the insurers. He said once this tax is collected by the federal government, the government may use these funds as it sees fit.

Mr. Siegel said the trend of low enrollment under the ACA is likely in large part due to the lack of publicity. He said once taxpayers incur the associated tax penalties for failure to acquire health insurance, the enrollment numbers likely will improve and over time public awareness will increase.

In response to a question from Representative Keiser contrasting North Dakota's health insurance policies to those in New York, Mr. Siegel said New York is in a different position than most other states in that even before implementation of the ACA, New York had guaranteed issue and full community rating. Additionally, he said, traditionally, New York health insurance plans have offered benefit-rich plans.

In response to a question from Senator Larsen, Mr. Siegel said in those states that opted to participate in Medicaid Expansion, there may be situations in which it is more affordable for a young adult up to age 26 to participate in Medicaid Expansion rather than stay on a parent's plan.

In response to a statement from Representative Becker that with guaranteed issue and the elimination of consideration of preexisting conditions, our health insurance is really no longer actually "insurance," Mr. Siegel said that only time will tell how the health care system will change. He said in order for the guaranteed issue provision of the ACA to work, it is essential that the ACA include a health insurance mandate that has an adequate penalty.

Representative Keiser stated the media has done a good job reporting on the likelihood of youth failing to acquire health insurance policies, but he does not think enough has been reported on the changing role of medical providers. For example, he said, in the North Dakota oilfield, health care providers have changed their business models in reaction to the increasing number of noncollectible bills. He said he thinks under the ACA, society may change its expectations, with a movement toward stressing personal responsibility for medical bills. Mr. Siegel said the data he is using does not take into account these possible social changes because it has not been observed yet, but if and when these social changes take place, the data will take these changes into account.

Representative Kasper said when the federal government interferes with the marketplace, we can expect there to be negative, unintended consequences.

## DEPARTMENT OF HUMAN SERVICES

Chairman Keiser called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, for an update ([Appendix G](#)) on the status of implementation of Medicaid Expansion.

In response to a question from Representative Hogan, Ms. Schwab said of the 4,433 who to date have applied for Medicaid Expansion, approximately 1,863 submitted applications through the local social services offices.

In response to a question from Representative Fehr, Ms. Schwab said the Department of Human Services is trying to help the local social services offices with the transitions taking place under the ACA. She said although the local offices just recently came on board assisting with Medicaid Expansion applications, it already is apparent there are some frustrations at the local level because they learn of changes at the last minute. She said the department is trying to keep the lines of communication open to help as much as possible.

In response to a request from Representative Kasper, Ms. Schwab said she will provide the committee members with a copy of the document Blue Cross Blue Shield of North Dakota (BCBSND) used to withdraw its proposal to contract to provide coverage under the Medicaid Expansion program. Mr. Erik Elkins, Department of Human Services, testified the reason the department was planning to award two contracts for the Medicaid Expansion was that this was required by CMS. He said when the withdrawal occurred, the department submitted to CMS a request for a waiver of this federal requirement.

In response to a question from Representative Hogan, Ms. Schwab said the modified adjusted gross income (MAGI) requirement under the ACA applies to traditional Medicaid as well as Medicaid Expansion.

In response to a question from Representative Fehr, Ms. Schwab said day by day the department is seeing increases in the number of Medicaid applications. She said although the department did not set goals or benchmarks for enrollment under the ACA, it was expected the initial enrollment would be slow. She said time will give a better picture of the enrollment and application numbers and trends. She said she expects over the course of the year as uninsured go to providers to receive medical care, these providers will be taking steps to have these individuals submit Medicaid applications.

In response to a question from Representative Hogan, Ms. Schwab said although she is not aware of counties adding additional staff to deal with the changes under the ACA, she expects the number of applications taken at the local level will continue to increase.

In response to a question from Senator Mathern, Ms. Schwab said the department has been working closely with CMS to implement the changes required under the ACA, and CMS has been helpful and goal-oriented. She said the issues arising in North Dakota are not unique as all the states are dealing with these transition issues.

Senator Lee complimented Ms. Schwab on the accomplishments of the Department of Human Services in making these transitions. Ms. Schwab said as CMS provides guidance to the states on how to deal with estate recovery issues for the Medicaid Expansion population, she will pass this information on to the committee.

Chairman Keiser called on Ms. Jenny Witham, Director, Information Technology Services Division, Department of Human Services, for testimony ([Appendix H](#)) regarding the status of the department's eligibility system modernization project.

## **INSURANCE DEPARTMENT**

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, to provide a status report on the implementation of the ACA. Ms. Ternes provided written testimony and attached material ([Appendix I](#)).

In response to a request from Representative Kasper, Ms. Ternes said she will provide the committee with a National Association of Insurance Commissioners (NAIC) position memorandum addressing the issue of whether President Barack Obama has the authority to authorize insurance companies to renew health insurance policies that do not comply with the ACA.

In response to a question from Senator Larsen, Ms. Ternes said the federal government has reported in North Dakota 262 insurance agents and brokers have registered to use the FFM; however, she does not know with which insurers these agents and brokers are affiliated. She said by law, an agent or a broker is required to be appointed by the insurance company in order to sell that company's policies, but she is not certain whether the FFM has addressed this. Traditionally, she said, the Insurance Department has left this to the insurance companies to address.

## **INSURERS**

Chairman Keiser called on Ms. Lisa Carlson, Director of Planning and Regulation, Sanford Health, and Mr. Luther Stueland, Director, Health Policy Impact and Exchanges, Blue Cross Blue Shield of North Dakota, to participate in a panel discussion regarding the status of implementation of the ACA.

Ms. Carlson reported Sanford's ACA statistics for North Dakota:

- 92 enrollees have applied via the FFM, with 30 of these enrollees' applications pending and 62 of these enrollees effectuated.
- 122 enrollees have applied outside of the FFM.

She said of the FFM applicants, 84 percent have received some sort of subsidy, the average age of the enrollee is 35 years old, the bronze plan has been most popular, and for the vast number of enrollees there is not an agent tied to the application.

Ms. Carlson said if Sanford gets a policy through an agent that is not appointed, Sanford has a practice of reaching out to that agent to see if the agent wishes to be appointed.

Ms. Carlson said the FFM is not designed to deal with life events, such as marriage, birth, and divorce. She said the FFM is instructing insureds to contact the insurer to make appropriate changes if a life event occurs.

Ms. Carlson said of the 744 Sanford enrollees in North Dakota who received termination letters, 546 chose to keep their plan and 198 made other arrangements.

In response to a question from Senator Mathern, Ms. Carlson said Sanford has TV and radio commercials playing in North Dakota. She said these advertisements are not specific to the ACA and the FFM, and she is not certain how the marketing budget has been divided between North Dakota and South Dakota. Additionally, she said, agents appointed with Sanford have participated in webinars to learn about the ACA and the FFM, and these agents have financial incentives to sell policies.

In response to a question from Representative Hogan, Ms. Carlson said the Sanford website does not screen applicants to determine whether they may be eligible for subsidies under the ACA. She said agents should be advising consumers of eligibility for subsidies.

In response to a question from Senator Larsen, Ms. Carlson said it is not possible to make an accurate comparison between the costs of a plan under the old system and under the ACA. She said in the past, a policy price was based on health status and this is no longer applicable, and there are different rate bands now than before.

In response to a question from Representative Kasper, Ms. Carlson said in determining whether to offer policyholders the option of continuing the plans that were initially planned to be discontinued, Sanford consulted with AHIP and consulted with the NAIC. She said she understands there may be litigation regarding the continuation, but Sanford made its decision based on what Sanford determined was permissible and what was best for Sanford's members.

In response to a question from Representative Keiser, Ms. Carlson said Sanford's enrollment rates have been much higher in South Dakota than in North Dakota. She said she does not know why there has been such a significant difference.

Mr. Stueland reported as of December 10, 2013, BCBSND had effectuated 1,214 policies. He said the enrollment figures from December were significantly larger than those for October and November. He said he expects another influx of enrollment at the end of March 2014.

Mr. Stueland said the approval process for products offered on the FFM takes almost one year, so BCBSND is already working on what products will be offered for the next open enrollment period.

In response to a question from Representative Kasper, Mr. Stueland said although he does not have the precise data, BCBSND has experienced more enrollments from outside the FFM than from within the FFM. He said BCBSND has a large portion of its business that is made up of grandfathered plans.

Mr. Stueland said of the 30,000 lives for which BCBSND discontinued a policy that did not comply with the ACA requirements, approximately half were in the individual market and half were in the small group market.

In response to a question from Senator Mathern, Mr. Stueland said under the market that existed before the ACA, the individual market saw enrollment throughout the year, whereas in the small group market it was common for the groups to follow a January enrollment.

In response to a question from Representative Becker, Mr. Stueland said for those policyholders who received cancellation notices for individual policies, the noncompliant plans will terminate by Wednesday, April 30, 2014, although the policyholders have been notified they may cancel their noncompliant plans before then.

In response to a question from Representative Keiser, Mr. Stueland said BCBSND does not have data regarding how or with whom these canceled policyholders are getting insurance following termination.

### HEALTH CARE DELIVERY SYSTEM

Chairman Keiser called on Dr. Terry Dwelle, State Health Officer, State Department of Health, for testimony ([Appendix J](#)) regarding the functions of public health and the benefits of prevention in the state's health care delivery system.

Chairman Keiser asked committee members to consider how the state could restructure the Public Employees Retirement System, the children's health insurance plan, and Medicaid to incentivize healthy lifestyles.

Representative Kasper said Mr. Dick Hedahl, Hedahls Auto Plus, has been very active in incentivizing healthy lifestyles for his employees and their families. He said starting in the early 1990s, Mr. Hedahl restructured his self-funded employer-sponsored health plan by basing the employees' premium obligation on the employee's and the employee's spouse's height and weight, tobacco use, and alcohol use. He said as a result of this restructuring, the cost of the health plan decreased and the premium for family coverage is now less than \$900 per month. He said it took three years for the employees to get comfortable with the approach. He said regardless of the success of this model, the model has not caught on in the rest of the state and the rest of the nation.

Dr. Dwelle said he supports addressing every business and school in the state with a constant message regarding healthy lifestyles. He said a successful approach should also include engaging health care providers and ensuring there is community engagement.

Senator Mathern said if the state wants to support this approach, it will be necessary for the Legislative Assembly to provide adequate funding to implement this community engagement piece.

Representative Keiser said up to this point, the interim committee has not made any recommendations regarding this issue. He said perhaps if providers were given the right incentives, they would embrace prevention through programs, such as MediQHome.

Dr. Dwelle said whatever approach is taken, it is important to integrate. For example, he said, in implementing a comprehensive worksite wellness program, the program could use the following five tools:

1. Public health tools;
2. Call-a-nurse program;
3. Chronic disease management;
4. Onsite clinics; and
5. Case management.

In response to a question from Representative Rohr, Dr. Dwelle said the Healthy North Dakota Network is an example of a strategic approach that includes participation by stakeholders.

Chairman Keiser called on Ms. Karen K. Ehrens, RD, LRD, Ehrens Consulting, Consultant to the State Department of Health, for comments regarding the Healthy North Dakota Network. Ms. Ehrens provided written testimony ([Appendix K](#)) and gave a computer presentation ([Appendix L](#)).

Chairman Keiser also called on Ms. Ehrens, as an interested party, for testimony ([Appendix M](#)) regarding the links between health care reform and prevention.

In response to a question from Representative Fehr, Ms. Ehrens said food companies have an interest in getting people to eat more food.

In response to a question from Senator Mathern, Ms. Ehrens said although it can be difficult to come up with a single solution to problems relating to chronic illness, it does appear that a multiprong approach works best.

Chairman Keiser called on Ms. Marnie Walth, Director of Strategic Planning and Public Policy, Sanford Health, for testimony ([Appendix N](#)) regarding preventative health.

### COMMITTEE DISCUSSION

Chairman Keiser encouraged committee members to take some time after the meeting and reread the written material distributed at the meeting and to consider what actions might be appropriate for the Legislative Assembly. He said in considering committee recommendations, he thinks it will be important to always keep in mind what may be the appropriate role for the state to take.

Representative Fehr said he is interested in receiving information regarding models or examples of approaches to incentivize outcome instead of fee for service. Chairman Keiser said he will plan to have the topic of outcomes addressed at a future meeting.

Representative Keiser said under the ACA, hospitals are aggressively engaged in decreasing their readmission rates and infection rates. He said under the ACA, the reimbursement rates for Medicare will penalize the 50 percent of hospitals with the highest 30-day readmission rate. Additionally, he said, hospitals will no longer be able to bill for infections incurred during hospitalization. He said Bismarck hospitals are unique in that unlike urban hospitals, Bismarck hospitals release patients to their homes which may be hours away from Bismarck.

Senator Mathern said he would like to receive additional information regarding insurance coverage for substance abuse treatment. Chairman Keiser said in addition to the work being done by Senator Lee's and Representative Damschen's committees, he will try to include this topic at a future meeting.

Representative Rohr said she would like to know how other states have addressed the issue of incentivizing positive medical outcomes.

In preparation for the next committee meeting, Chairman Keiser distributed the document *2017 Waiver for State Innovation* ([Appendix O](#)).

No further business appearing, Chairman Keiser adjourned the meeting at 3:30 p.m.

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Jennifer S. N. Clark  
Committee Counsel

ATTACH:15