NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, March 19, 2014
Reimers Conference Room, Alumni Center, North Dakota State University
Fargo, North Dakota

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

Members present: Representatives Rick Becker, Alan Fehr, Robert Frantsvog, Eliot Glassheim, Kathy Hogan, Nancy Johnson, Jim Kasper, Karen M. Rohr; Senators Tyler Axness, Oley Larsen, Judy Lee, Tim Mathern, Dave Oehlke

Members absent: Representative Alex Looysen; Senator Spencer Berry

Others present: See Appendix A

It was moved by Senator Mathern, seconded by Representative Johnson, and carried on a voice vote that the minutes of the January 15, 2014, meeting be approved as distributed.

Chairman Keiser said as the committee moves forward with its study charges, committee members should be thinking about legislative proposals to be part of the committee's recommendations.

HEALTH CARE DELIVERY SYSTEM AND THE FEDERAL AFFORDABLE CARE ACT

Community Health Needs Assessments

Chairman Keiser called on Mr. Brad Gibbens, Deputy Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, to give a presentation (Appendix B) regarding the most recent community health needs assessments (CHNAs) of North Dakota critical access hospitals as required under the federal Affordable Care Act (ACA).

In response to a question from Representative Fehr, Mr. Gibbens said when the CHNAs list mental health as one of the top three prevalent, persistent, and substantial needs or issues, this likely refers to emergency care as well as nonemergent care. He said he thinks this issue is more than a reflection of unmet inpatient treatment services.

Senator Mathern said generally, there is less need for crisis mental health services if there is adequate daily care available. He said for legislators, it will be very important for them to know where the health care workforce shortages exist.

Mr. Gibbens said the CHNAs did not create a weighted list of which health care professions have the greatest workforce shortages. However, he said, he can try to get information on this matter that is more-detailed.

Senator Lee said the interim Human Services Committee has contracted with a consultant and has the help of stakeholders to assist the committee in studying the topic of behavioral health.

Representative Rohr said the Legislative Assembly recently passed a bill relating to the use of telehealth for mental health services. Mr. Gibbens said this first round of CHNAs have been conducted over the last three years, so they may not reflect 2013 changes to the law.

Chairman Keiser said he is frustrated because the Legislative Assembly has not yet received suggested solutions to these workforce issues. He said the committee needs to be informed regarding possible scope of practice issues and needs suggested solutions. He questioned what funding sources may exist to address the workforce issues raised.

Mr. Gibbens said the health care delivery system workforce solutions will require more than one entity or group to propose solutions. He said as an employee of an institution of higher education, he views his job's role as helping provide resources to communities and stakeholders. He said he thinks the solution proposals need to

come from the local communities and stakeholders. He said the solutions to these health care delivery system issues are more than just public policy issues.

Chairman Keiser agreed with Mr. Gibbens, however, stated often there are policy and law changes required to allow the communities to reach solutions.

In response to a question from Representative Rohr, Mr. Gibbens said the purpose of the CHNAs was not to reach recommendations. He said the CHNAs are actually several individual surveys, but the Center for Rural Health thought it might be valuable to put these individual surveys into an aggregate report.

In response to a question from Senator Mathern, Mr. Gibbens said the Center for Rural Health has an employee who specifically works with medical facilities to track provider needs.

Public Employees Retirement System and Medical Home

North Dakota

Chairman Keiser called on Ms. Kathy Allen, Benefits Program Manager, Public Employees Retirement System, and Mr. Kevin Schoenborn and Ms. Eunah Fischer, M.D., Internal Chief Medical Officer, Blue Cross Blue Shield of North Dakota, for comments regarding the ACA grandfathered status of the Public Employees Retirement System (PERS) uniform group insurance plan and regarding whether it may be possible to increase coordinated care in the uniform group insurance plan.

Ms. Allen stated PERS has a health insurance plan that meets the grandfather status requirements of the ACA and also has two nongrandfathered plans.

In response to a question from Chairman Keiser, Ms. Allen said for the PERS uniform group insurance plan, the projected increase for the next two plan years is projected to be 7 percent per year. She said in 2013 the increase was approximately 4 percent.

In response to a question from Senator Mathern, Ms. Allen stated the PERS grandfathered plan has approximately 26,000 contracts, the nongrandfathered high-deductible plan has approximately 80 contracts, and the other nongrandfathered plan has fewer than 1,000 contracts.

In response to a question from Representative Kasper, Ms. Allen said of the 26,000 contracts in the grandfathered plan, it is pretty equally divided between state employees and employees of participating political subdivisions. She said PERS looks at claims experiences in the aggregate and does not break out the state and local policyholders. She said although she may be able to get data regarding the claims experiences of the two classes of employees, if the PERS plan was changed based on this factor, it would likely result in the loss of the grandfathered status.

Representative Kasper suggested this breakout distinguishing between state employees and political subdivision employees may be very important. He said perhaps the political subdivision policies have higher claims histories.

Mr. Schoenborn provided written testimony (Appendix C).

In response to a question from Representative Kasper, Mr. Schoenborn said Blue Cross Blue Shield of North Dakota (BCBSND) has done some modeling based on different scenarios. For example, he said, modeling has been done based on changes in employer/employee contributions and based on increased copay amounts. He said as a result of these scenarios, he suggests PERS consider increasing out-of-pocket obligations and increasing copayment amounts, specifically as these copayments relate to prescription drugs and office calls. He said he recommends PERS not increase the amount of the deductible. He said the projected 7 percent per year increase does not take into account these recommended changes.

Mr. Schoenborn said several factors impact current health insurance cost trends, such as the MediQHome program and the prescription drug program. Representative Kasper requested additional information providing a breakdown of medical trends versus prescription drug trends.

In response to a question from Senator Mathern, Mr. Schoenborn said he is not aware of any provisions of the ACA that would limit implementation of programs, such as the MediQHome program.

In response to a question from Chairman Keiser, Mr. Schoenborn said BCBSND has modeled the possible impacts associated with the loss of grandfathered status for the PERS uniform health plan. However, he said, BCBSND has not modeled the possible impact of implementing MediQHome because this program is already being utilized.

Dr. Fischer provided written testimony (Appendix D).

In response to a question from Senator Mathern, Dr. Fischer said the No. 1 barrier in getting full participation in the MediQHome program is lack of data that all parties agree on. She said additionally, there are challenges related to our currently accepted model through which providers are paid based on a fee-for-service model instead of being paid on a pay-for-performance model.

In response to a question from Chairman Keiser, Dr. Fischer said BCBSND continues to use multiple models to determine the financial impact and clinical return on investment using the MediQHome model.

In response to a question from Representative Rohr, Dr. Fischer said BCBSND is collecting MediQHome data through the use of a third-party vendor.

In response to a question from Senator Mathern, Dr. Fischer said she expects there would be some resistance from providers if the laws were changed to mandate a change in the delivery and payment systems. Additionally, she said, she thinks consumers might find it important to feel free to contract for services as they desire.

Chairman Keiser requested updated data at a future meeting. He said BCBSND is in a unique position due to its large market share. He said the Legislative Assembly needs data if it is going to consider legislative action regarding this matter.

In response to a question from Representative Hogan, Dr. Fischer said almost 90 percent of PERS members are enrolled in MediQHome. She said the next logical step is to increase physician engagement. Chairman Keiser said the public policy consideration may be whether to create an incentive for providers to participate.

South Dakota

Chairman Keiser called on Mr. Tony Tiefenthaler, Chief Strategy Officer, Sanford Health, for comments regarding coordinated care efforts being taken in South Dakota with state employees. Mr. Tiefenthaler explained the multifaceted evolution that took place in South Dakota--with Wellmark Blue Cross Blue Shield of South Dakota establishing a quality program for identified medical conditions, with Medicaid adopting a four-tiered rate and a management fee, and with a recent pilot program with state employees.

Mr. Tiefenthaler said Sanford recently purchased analytic software that can be used to help analyze and create risk scores for individuals. He said this same software can be used to help identify where there may be coverage gaps and could be used to identify people who should be enrolled in medical homes.

In response to a question from Representative Fehr, Mr. Tiefenthaler said individuals with chronic disease have higher incidences of behavioral health issues, and therefore at primary care clinics, registered nurse coaches can be used and behavioral health triage can be implemented to address these concerns.

Department of Human Services

Chairman Keiser called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, for a presentation (Appendix E) regarding existing programs and possible opportunities for Medicaid, Medicaid Expansion, and the children's health insurance program (CHIP) to utilize coordinated care, such as medical homes.

In response to a question from Senator Mathern, Ms. Schwab said the department is in the process of implementing several new programs and systems with limited resources, and when the department is in a position to focus on these coordinated care programs, the department may need additional resources to assist in gathering and analyzing data.

Navigators and Certified Application Counselors

Chairman Keiser call on Mr. Neil Scharpe, Navigator Project Director, North Dakota Center for Persons with Disabilities, for comments regarding the experience of navigators in conducting outreach and enrollment under the ACA. He discussed data regarding use of navigator services and regarding the number of people who have used the Marketplace to enroll for health care coverage.

Mr. Scharpe said navigators in North Dakota appreciate the fact the state opted to participate in Medicaid Expansion. He said in a state such as South Dakota, which is not participating in Medicaid Expansion, navigators are faced with more people who are falling through the cracks. He said due to Medicaid Expansion, more people are getting medical coverage in North Dakota.

In response to a question from Representative Glassheim, Mr. Scharpe said in addition to providing one-on-one enrollment assistance, navigators provide outreach and education to large groups.

In response to a question from Senator Mathern regarding the number of people who bypass navigators and instead go directly to the Marketplace, Mr. Scharpe said he does not have data addressing this situation.

Chairman Keiser called on Ms. Lori Kinn, Family HealthCare, for comments regarding the experience of certified application counselors (CACs) in conducting outreach and enrollment under the ACA.

In response to a question from Senator Larsen, Ms. Kinn said the CACs do not tell people that it is necessary to use the services of CACs.

Chairman Keiser called on Mr. Ed Dorsett, Agent, member of North Dakota National Association of Insurance and Financial Advisors, for comments regarding enrollment under the ACA. Mr. Dorsett said the last couple years have been frustrating for agents as it has been difficult to stay abreast of the health insurance law changes. He said when you take into account the time spent by and the services offered by agents, the agents are not being paid too much for their services.

Committee Counsel distributed written testimony (Appendix F) from Mr. Larry Shirely, North Dakota Community Health Centers.

Insurance Department

Chairman Keiser called on Mr. Adam W. Hamm, Commissioner, Insurance Department, for comments regarding the status of the implementation of the ACA. Mr. Hamm provided written information (Appendix G) regarding the Marketplace. Committee Counsel distributed a copy (Appendix H) of the Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation's March 11, 2014, *Health Insurance Marketplace: March Enrollment Report for the Period: October 1, 2013 - March 1, 2014*.

Mr. Hamm discussed the transitional policy issue that arose when the President announced states may allow an extension of up to two years for those nongrandfathered individual and small group plans that do not meet the requirements of the ACA.

In response to a question from Chairman Keiser, Mr. Hamm said half the states allowed for the extension and half did not. Interestingly, he said, the decision of whether to allow the extension had less to do with party lines and more to do with whether the state had a state-administered exchange. He said states with state-administered exchanges were less likely to authorize the extension.

In response to a question from Representative Becker, Mr. Hamm said the marketplace enrollment data assembled by his office is collected monthly. He said he does not think the federal government's data collection is as accurate as his data collection in this respect.

In response to a question from Senator Mathern, Mr. Hamm said he does not support extending the initial open enrollment period beyond the set six-month period. He said although there were initially problems with the Marketplace website, the six-month period was long enough. He said the insurers need to be given the time and opportunity to evaluate the risk pool for the 2015 plan year.

Involuntary Commitment Proceedings and Scope of Practice

Chairman Keiser called on Mr. Robert Olson, M.D., and Ms. Kathryn Cameron, CNS, Sanford Health, for comments regarding issues relating to scope of practice for mental health commitment proceedings. Dr. Olson provided written material (Appendix I). Dr. Olson and Ms. Cameron requested the law relating to involuntary treatment be amended to allow advanced practice registered nurses to perform examinations related to these commitment proceedings.

In response to a question from Senator Oehlke, Dr. Olson said although there may be some general practice physicians who are not comfortable addressing psychiatric health issues, there are many general practitioners who are well-suited to providing the services and have the necessary expertise. He said the bottom line is that the practitioners needs to know their own limitations.

Ms. Cameron testified the advanced practice registered nurses should be fully utilized, and this proposed law change furthers this objective.

In response to a question from Senator Lee, Ms. Cameron said she does not think there will be any scope of practice issues or conflicts with the State Board of Nursing. She said she did contact the State Board of Nursing, and it appears to be supportive of this law change.

In response to a question from Representative Hogan, Dr. Olson said the North Dakota Psychological Association supports this proposed law change.

In response to a question from Senator Mathern, Dr. Olson said he did not discuss this proposed law change with advocates of individual rights and civil rights. He said perhaps this was an oversight on his part.

Department of Human Services

Eligibility System

Chairman Keiser called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, to provide an update on the status of the department's eligibility system. Ms. Anderson said the ACA requires that states use a standardized modified adjusted gross income (MAGI) eligibility standard. Therefore, she said, the state would have been faced with a new eligibility system regardless of whether it opted to participate in Medicaid Expansion.

Ms. Anderson said that because North Dakota's eligibility system is not yet in place, the Department of Human Services contracted with a third-party contractor to assist with applications until the new system is in place. She said the Information Technology Department reports this contingency solution is expected to be in place well into 2015.

Ms. Anderson reviewed the flat file waiver the department received to allow for transition and eligibility determination.

Ms. Anderson stated September 2014 is the target date for the Medicaid management information systems (MMIS) project to go live; however, because the final eligibility system will not be in place yet, this will likely impact this implementation.

Ms. Anderson said the current application process has resulted in a great amount of work for the counties. She said the 45-day timeline to process applications remains in effect, and the counties and third-party contractor are tasked with ensuring timely processing of applications.

In response to a question from Representative Hogan, Ms. Anderson said the counties are dealing with the increased workload in different ways. She said some counties have added staff, and some have not. She said it is unknown whether the counties will experience a decrease or increase in application numbers when the open enrollment period ends.

Medicaid Expansion

Chairman Keiser called on Ms. Schwab and Ms. Lisa Carlson, Director of Planning and Regulation, Sanford Health, for a presentation regarding the status of Medicaid Expansion. Ms. Schwab provided written testimony (Appendix J).

In response to a question from Chairman Keiser, Ms. Schwab said to her knowledge all access requirements of the ACA are being met in the Medicaid Expansion program. She explained the capitated rates used in the Medicaid Expansion contract with Sanford and the federal government.

In response to a question from Senator Mathern, Ms. Anderson said she expects that after the first year of experience, the department will be able to release aggregate data relating to the Medicaid Expansion risk experience.

Representative Hogan said in looking at risk data for the first year of Medicaid Expansion, this first year may differ from future years. Ms. Anderson said the Department of Human Services did anticipate the first year's utilization figures may not be reflective of future years because there may be a backlog of unmet medical needs being addressed.

Ms. Carlson said we are three months into the Medicaid Expansion, and it has been a whirlwind process. She said there have been approximately 5,200 Medicaid Expansion enrollees. She said the success of this enrollment is a testament to the counties and the Department of Human Services.

Ms. Carlson said Sanford is participating in case management for the Medicaid Expansion population. She said in some instances the clients are resisting this a bit, but this will likely be overcome as education regarding the program increases.

Ms. Carlson said Sanford is using its existing provider network for the Medicaid Expansion program. She said in some areas of the state, Sanford is looking to expand. Additionally, she said, Sanford is using its existing pharmacy network. She said the network is pretty strong, as approximately 190 of the state's 210 pharmacies contract with Sanford. She said Sanford contracts with a pharmacy benefits management entity. She said there has been some confusion with the pharmacies because Sanford is using commercial prescription drug rates instead of Medicaid rates.

In response to a question from Senator Lee, Ms. Carlson said the following hospitals do not have direct contracts with Sanford--Trinity, Kenmare, Turtle Lake, and Bottineau. However, she said, some of these facilities have indirect contracts with Sanford.

Chairman Keiser said this issue of pharmaceutical coverage through the Medicaid Expansion program will be addressed in more detail at a future meeting.

In response to a question from Chairman Keiser regarding the state's and Sanford's risk under the Medicaid Expansion program, Ms. Carlson said Sanford is an insurance company and, as such, is in the business of risk. She said the Medicaid Expansion contract is consistent with Sanford's business practice. She said the margin of risk is minimal, and if Sanford experiences a loss that exceeds certain limits, the federal government will pay a portion of this. She said for the first three years of Medicaid Expansion, the state has zero financial risk.

Comprehensive Health Association of North Dakota

Chairman Keiser called on Ms. Kathy Robley and Mr. Brad Bartle, Comprehensive Health Association of North Dakota, for information regarding how the Comprehensive Health Association of North Dakota (CHAND) has been impacted by the ACA and whether the implementation of the ACA will necessitate any changes to the CHAND program. Ms. Robley provided written testimony (Appendix K). She said she thinks even with the ACA, there is still a need for CHAND. She said with the passage of the ACA, several states discontinued the states' high-risk pools; however, some of these states are now trying to reinstate these high-risk pools.

In response to a question from Senator Mathern, Mr. Bartle said the formula for CHAND premiums is set by statute, and so far the premiums do not appear to be impacted by the ACA, although over time this may change. He said he expects that over time the number of traditional CHAND applicants will decrease as the number of health insurance denials decreases over time.

Chairman Keiser said the cost of the CHAND program is ultimately paid by North Dakotans. He said it may make sense to keep the CHAND program until the ACA is more established and running more smoothly.

Health Insurers

Chairman Keiser called on Ms. Carlson and Mr. Luther Stueland, Blue Cross Blue Shield of North Dakota, to sit on a panel to discuss the status of implementation of the ACA. Ms. Carlson said figuring out the anticipated health care trends for the health insurance market is the million dollar question that all health insurers are trying to figure out. She said trends Sanford is trying to follow include:

- How low enrollment numbers may impact the market;
- What impact the enrollment of high-risk enrollees will have on the market;
- What impact the extension of transitional plans may have on adverse selection; and
- What impact a delay in implementing the individual mandate may have on the market.

Ms. Carlson said the implementation of the ACA can be looked at as three phases:

1. 2010-13--steps were taken to level the health insurance playing field;
2. 2014-17--health insurance is provided and required; and
3. 2018 forward--the focus is on bending the cost curve and affordability.

In response to questions from Chairman Keiser and Representative Glassheim, Ms. Carlson said at a future meeting, she can try to provide the committee with additional information regarding how the anticipated increase in premium for Sanford policies sold on the Marketplace compare to the anticipated annual 7 percent increase for the

PERS plan and additional information on trends regarding the number of policies Sanford has sold before and after implementation of the ACA.

Mr. Stueland said in addition to the Marketplace, Sanford and BCBSND continue to offer insurance outside the exchange. He said the ACA means different things to different people. For example, he said, the change to the three-tier age rating band is good for consumers who are at the top of the bands and not so good for those who are at the bottom of the bands, and the consideration of tobacco usage may be beneficial to nonsmokers. Additionally, he said, the ACA's coverage of preventative services without cost-sharing is expected to have long-term benefits, but there will be some initial upfront costs.

Mr. Stueland said as the open enrollment period comes to a close, he expects there will be an increase in enrollment numbers, and as nongrandfathered plans are discontinued, those individuals will qualify to enroll in nongrandfathered plans.

Chairman Keiser said he thinks the "young invincibles" will enroll in droves for the 2015 plan year. Additionally, he said, with the personal mandate in effect, the providers should now increase efforts to get payments from the uninsured, such as requiring payment upfront via credit card or loans.

Mr. Stueland said as the penalty for the individual mandate increases over time, this should also have a positive impact on enrollment. Historically, he said, North Dakota has allowed year-round enrollment, and as consumers become more educated about the new open enrollment period, he expects this will result in increases in enrollment.

COMMITTEE DISCUSSION AND DIRECTIVES

Chairman Keiser distributed a committee bill draft [15.0092.01000] to provide for continuation of the interim study of the state's health care delivery system and a bill draft [15.0079.01000] to provide for health insurance reimbursement for services provided through telemedicine. He said the committee will review these bill drafts at the next committee meeting. Committee Counsel said the Employee Benefits Programs Committee is required to review bill drafts that will impact the PERS uniform group plans, and the committee will likely hold its next meeting in June. She said it would be helpful if the Health Care Reform Review Committee acted on the telemedicine bill draft as soon as possible to allow the Employee Benefits Programs Committee to consider the bill draft.

Representative Rohr said as the committee considers telemedicine, it might be helpful to receive an update on how telehealth is being used for mental health.

It was moved by Senator Lee, seconded by Senator Mathern, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft to address the scope of practice issues for nurses in commitment proceedings.

Representative Becker raised the issue of using tort reform to address rising health insurance premiums.

Senator Mathern said he would like the committee to receive more information regarding health care service workforce shortages. He said once the committee has workforce data, it will be in a better position to look at how to best incentivize filling of these open positions.

Representative Fehr said he would like the committee to receive more information regarding South Dakota's public employees and Medicaid programs.

Representative Kasper suggested PERS look at separating the PERS health plan for state employees and employees of political subdivisions.

Chairman Keiser said at the next meeting, he plans to have information presented regarding the ACA Section 1332 Waiver for Innovation option and whether this might be a feasible opportunity for North Dakota in 2017.

No further business appearing, Chairman Keiser adjourned the meeting at 3:55 p.m.

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Jennifer S. N. Clark
Committee Counsel

ATTACH:11