

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, May 14, 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, Jim Kasper, Alex Looyesen, Karen M. Rohr; Senators Spencer Berry, Oley Larsen, Judy Lee, Dave Oehlke

Members absent: Representatives Eliot Glassheim, Kathy Hogan, Nancy Johnson; Senators Tyler Axness, Tim Mathern

Others present: See [Appendix A](#)

The committee discussed the minutes of the March 19, 2014, meeting.

It was moved by Senator Oehlke, seconded by Representative Rohr, and carried on a voice vote that the minutes of the March 19, 2014, committee meeting be approved as revised to correct the reference on page 5 from the North Dakota Psychology Association to the North Dakota Psychiatric Society.

Chairman Keiser said the agenda provides for a full day, and as a result of this full schedule, there are some topics that have not yet been scheduled. He said he will continue to work to get these items scheduled at a future meeting.

INSURANCE DEPARTMENT

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, for comments ([Appendix B](#)) regarding the status of implementation of the federal Affordable Care Act (ACA).

In response to a question from Chairman Keiser, Ms. Ternes said the deadline for the open enrollment period and the extension for applicants who had started but not finished the enrollment process has passed. She said the enrollment data reflects the end of this open enrollment period.

In response to a question from Representative Kasper, Ms. Ternes said if possible, the Insurance Department will continue to provide committee members with monthly enrollment updates.

In response to a question from Representative Kasper, Ms. Chrystal Bartuska, Director, Product Filing Division, Insurance Department, said as the department is reviewing policy filings for the upcoming 2015 policy year, the department is requesting claims data for January, February, and March 2014. She said the department will work with insurers to get the most recent data available. Representative Kasper said he is concerned the insurers will not have adequate claims experience information to set rates.

In response to a question from Chairman Keiser, Ms. Ternes said upcoming dates on the ACA timeline include Friday, June 6, 2014, insurers submit 2015 policies to the Insurance Department; Saturday, November 15, 2014, the open enrollment period begins again; and Thursday, January 1, 2015, policy coverage begins.

In response to a question from Senator Oehlke, Ms. Ternes said the process under the ACA will allow insurers to implement quarterly policy premium updates; however, these rates must be established at the time the policy is reviewed by the Insurance Department, and these increases will only apply to those insurance policies that are entered after the increase occurs. She said a quarterly rate increase will not increase the premium rate of a person once a policy is purchased.

In response to a question from Chairman Keiser, Ms. Ternes said the Insurance Department has not been receiving complaints regarding network limitations preventing consumers from going to the provider of their choice.

In response to a question from Senator Berry, Ms. Ternes said when the Insurance Commissioner authorized insurers to continue to offer nonconforming policies, Blue Cross Blue Shield of North Dakota (BCBSND) chose to not extend any of its policies, Sanford chose to extend all of its policies, and Medica chose to extend individual policies and not extend group plans.

Senator Lee expressed concerns regarding the premium increase a former legislator is facing as he moves off the Consolidated Omnibus Budget Reconciliation Act (COBRA) policy. Chairman Keiser said as it relates to the Public Employees Retirement System (PERS) uniform group insurance policy, it is important to remember the individual and group policy each cost \$1,000 per month. Ms. Ternes said moving off a COBRA policy should constitute a change that allows a person to purchase a policy on the federally facilitated marketplace (FFM).

DEPARTMENT OF HUMAN SERVICES

Chairman Keiser called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, for testimony ([Appendix C](#)) regarding the status of implementation of Medicaid Expansion.

Senator Lee distributed a copy ([Appendix D](#)) of a letter to the editor recently published in *The Forum*, in which North Dakota legislators are criticized for making health insurance unaffordable for senior citizens. Ms. Anderson said in responding to these criticisms, legislators should remember:

1. Federal law dictates which subsidies and advanced premium tax credits apply under the ACA. She said when the ACA was passed by Congress, Medicaid Expansion was required, and it was only after the United States Supreme Court ruled states had the option of whether to participate in Medicaid Expansion that some of the coverage gaps arose.
2. Federal law dictates there is not an asset test for Medicaid Expansion.
3. The federal government has provided that a state's option to participate in Medicaid Expansion is an all or nothing choice. States are not allowed to choose a lesser income level for Medicaid Expansion.
4. Federal law dictates that individuals over age 65 are not eligible for Medicaid Expansion.

Senator Lee said if North Dakota were to expand the state's Medicaid program to allow this new class of senior citizens to be eligible, it would likely be funded by state funds, not federal funds.

Representative Kasper requested that Ms. Anderson provide committee members with a written response to *The Forum* letter.

In response to a question from Representative Becker, Ms. Anderson said traditionally, the "medically frail" Medicaid population has not been very large. She said the department is evaluating this population to determine whether there may be some legislative changes that could be made to improve coverage of these individuals.

Senator Lee said she supports estate recovery; however, her concern is that we may be inconsistent in how we apply the policy.

In response to a question from Chairman Keiser, Ms. Anderson said she does not have information regarding the fiscal impact of changing the department's process to exempt the Medicaid Expansion population from estate recovery.

Chairman Keiser called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, to provide an update ([Appendix E](#)) on Medicaid Expansion.

In response to a question from Representative Frantsvog, Ms. Schwab said she expects the Medicaid Expansion enrollment numbers will continue to increase. She said the initial data indicated there may be as many as 20,000 new Medicaid Expansion enrollees under the ACA, and the department has not received any revised data on this matter.

In response to a question from Senator Lee, Ms. Schwab said the department continues to work on getting the new eligibility system up and running; however, until it is fully implemented and while the contingency plan is still being used, there will be increased work for the department and for the counties. She said the department will continue its contract with Automated Health Systems to assist with enrollment until the new eligibility system is up and running.

In response to a question from Representative Kasper, Mr. Erik Elkins, Department of Human Services, said the department will gather data for the committee regarding the age of enrollees. However, he said, claims experience data is not yet available.

In response to a question from Chairman Keiser, Ms. Schwab said the department is working on establishing the presumptive eligibility for hospitals. She said as this opportunity becomes available, hospital staff will receive training to learn how to make these determinations. She said once this presumptive eligibility is up and running, in theory, all of the 20,000 Medicaid Expansion eligibles will be covered if they present for services.

Chairman Keiser called on Ms. Lisa Carlson, Sanford Health, for comments regarding the status of the implementation of Medicaid Expansion. She said the enrollments are expected to hit 8,000 soon, and initial data indicates the Medicaid Expansion group has a higher utilization of services than the commercial block of business.

Chairman Keiser called on Mr. Mike Schwab, Executive Vice President, North Dakota Pharmacists Association, for comments ([Appendix F](#)) regarding the state's implementation of Medicaid Expansion.

Chairman Keiser called on Mr. Steve Boehning, Linson Pharmacy and North Dakota Pharmacists Association, for comments ([Appendix G](#)) regarding the state's implementation of Medicaid Expansion.

In response to a question from Representative Kasper, Mr. Boehning said Express Scripts, the pharmacy benefits manager (PBM) being used by Sanford for the Medicaid Expansion block, is not the only PBM to use a take-it-or-leave-it approach with contract negotiations; however, Express Scripts is one of the larger PBMs. He said he thinks he should have the option of opting out of participating with Medicaid Expansion.

Senator Lee said traditionally, providers have had the choice of whether to provide services to the Medicaid population.

In response to a question from Representative Kasper, Mr. Boehning said because PBMs do not want pharmacists to contact plan sponsors directly, he has not made direct contact with Sanford regarding his concerns.

In response to a question from Representative Becker, Mr. Schwab said due to antitrust provisions, pharmacists are limited in their ability to work together to address reimbursement issues.

In response to a question from Representative Kasper, Mr. Schwab said he is not aware of an existing appeal process with the Department of Human Services to address these pharmacy concerns. He said he would be happy to work with the department and Sanford to address these concerns, but these conversations have not taken place due to the PBM's direction to the pharmacies to refrain from contacting Sanford. Ms. Anderson said when the pharmacies first brought these concerns to the attention of the department, the department contacted Sanford. She said through a series of conversations with Sanford, options were discussed. She said the department requested that the PBM go back to the pharmacies to discuss the contracts. She said the department is willing to continue to work with the parties to address this matter.

Representative Kasper said he is aware of several pharmacies that are taking issue with this Medicaid Expansion rate issue. He said this issue is more than a matter of improving communication and transparency. He said the issue is that Medicaid Expansion is using low rates and the PBM is using a take-it-or-leave-it approach. He said he is concerned that if a pharmacy is ultimately allowed to opt-out of the Medicaid Expansion program, it may negatively impact the pharmacy's other business.

In response to a question from Chairman Keiser, Ms. Anderson said the fiscal impact of addressing these concerns will depend on what solution is reached.

Ms. Carlson said Sanford has been consulting with the department regarding this issue. She said pharmacists are welcome to contact Sanford directly to address this issue.

In response to a question from Representative Kasper, Ms. Carlson said Sanford does not review the contracts the PBM enters with pharmacies. However, she said, as the contract with the PBM is renewed and revised, the costs related to these contracts will directly impact the rates Sanford pays the PBM for its services. She said as a solution is being reached, it will be necessary to retain transparency. She said if the solution is financially driven, it will be important for the parties to have the necessary information.

Chairman Keiser asked that the stakeholders meet and come back to the committee with a proposed solution. He asked that Representative Kasper and Senators Oehlke and Larsen be invited to participate in these discussions as they are insurance agents.

INSURERS

Chairman Keiser called on Mr. Luther Stueland, Blue Cross Blue Shield of North Dakota, and Ms. Carlson to participate in a panel to discuss the status of implementing the ACA.

Mr. Stueland said BCBSND's rate of effectuation has been consistent with the federal figures of 80 to 90 percent. He said possible reasons for the difference in the federal and state ACA enrollment data may include effectuation versus enrollment as well as the occasional occurrence of duplicate applications. Additionally, he discussed the process an insurer is required to follow under the ACA if a policyholder stops making premium payments on a policy.

Mr. Stueland reviewed the morbidity of insureds and stated that although the ACA does provide for family policies, these family policies now differ in that the rates are based on a composite rate, based on the members of the family. Additionally, he clarified that if an insurer has quarterly premium adjustments, this is limited to group policies.

In response to a question from Senator Larsen, Mr. Stueland said typically the small group market has been the bread and butter of BCBSND.

In response to a question from Chairman Keiser, Ms. Carlson said in looking at the ACA enrollment figures, Sanford only has data regarding the number of enrollees who are new to Sanford. She said there is not data on the number of new enrollees who were previously uninsured.

Ms. Carlson said in the small group market, there seems to be a reluctance to change policies, and this may be a reflection of the groups wanting to remain on their transition plans. She said in the individual market, some families are choosing to purchase multiple individual policies instead of purchasing a single family plan.

Ms. Carlson said in looking at the ACA enrollments, the average age range is between 34 and 39; the average subsidy is 87 percent, or \$441 per month; and the most popular plan is the bronze plan. However, she said, North Dakotans seem to be more likely to choose a gold plan than in other states.

In response to a question from Senator Berry, Mr. Stueland said he is not able to say whether the policies and plan deductibles are more expensive under the ACA. He said for some individuals the plans are richer and for some they are less rich, and for some individuals the deductibles are higher and for some they are lower. Ms. Carlson said consumers are doing what best meets their needs. She said fewer than 10 percent of the ACA policies have an agent attached, and therefore, Sanford is taking steps to encourage consumers to use the agents.

SECTION 1332 WAIVER FOR INNOVATION

Chairman Keiser called on Mr. Joshua Goldberg, Health Policy and Legislative Advisor, National Association of Insurance Commissioners, to give a presentation regarding the ACA's Section 1332 Waiver for Innovation. Mr. Goldberg provided written testimony ([Appendix H](#)) and gave a computer presentation ([Appendix I](#)).

Chairman Keiser said if a state submits an application for a Waiver for Innovation, the state is required to have legislation that addresses each waiver element, and the federal government will then evaluate the waiver request. He said there appears to be some unknown regarding what the federal government would do if the state has a general law that generally authorizes the waiver.

In response to a question from Representative Becker, Mr. Goldberg said he does not know whether the Waiver for Innovation would allow a state to identify certain demographics, such as allowing a policy on an individual basis which is sold to a man to offer higher deductibles for maternity benefits.

In response to a question from Chairman Keiser, Mr. Goldberg said in the case of states with federally facilitated exchanges, it would appear as though some of the Waiver for Innovation options may be limited, based on large part on the technology limitations of using the FFM. However, he said, even if the federal government were willing to make unique changes to the FFM, it is likely the state would need to pay the federal government for the cost of making these changes in order to avoid running afoul of the prohibition on negatively impacting the federal deficit.

In response to a question from Representative Becker, Mr. Goldberg said the ACA's permitted catastrophic plan has the required essential health benefits and other qualified plan requirements but has a higher deductible than the metallic plans.

In response to a question from Representative Fehr, Mr. Goldberg said if the state were to increase the age of who is eligible to purchase a catastrophic plan, he does not think it would run afoul of the federal deficit provision.

In response to a question from Chairman Keiser, Mr. Goldberg said it is possible the Waiver for Innovation program would allow a state to leave the individual policies alone and create a state-administered Small Business Health Options Program (SHOP) Marketplace.

In response to a question from Senator Berry, Mr. Goldberg said so far, it appears certain that Oregon will change from a state-administered exchange to the FFM, and it is possible Hawaii, Maryland, and Massachusetts will change from their state-administered exchange to the FFM or use the software of a different state's exchange. He said although he has heard that Minnesota has had some exchange issues, he is not aware of these issues having risen to the level of actually scrapping the state's exchange.

In response to a question from Representative Becker, Mr. Goldberg said in looking at which state-administered exchanges have been successful, it is worth looking at the state-administered exchanges of California, Connecticut, New York, and Kentucky. He said in considering what makes a successful exchange, one thing to consider is the state's population, as larger states are able to spread out the cost of design and implementation among more people. However, he said, it may be valuable to distinguish between the cost of establishing an exchange and the cost of running an exchange, as the cost of establishing an exchange can be amortized over time.

In response to a question from Representative Kasper, Mr. Goldberg said the methodology of establishing a per person cost of establishing an exchange is one way to assess the exchanges, even though there are other factors that should also be considered. He said the federal establishment grants will be discontinued at the end of 2014.

Chairman Keiser called on Ms. Shannon Breuer, Partner, Eide Bailly LLP, for a presentation regarding employer responsibilities, opportunities, and the latest changes relating to the ACA. Ms. Breuer gave a computer presentation ([Appendix J](#)) and handed out a folder of material published by Eide Bailly LLP, which is on file in the Legislative Council office.

In response to a question from Representative Kasper, Ms. Breuer said Eide Bailly LLP does not have a software program to help an employer calculate the number of its employees based on the ACA's definitions.

In response to a question from Chairman Keiser, Ms. Breuer said she is aware of a federal penalty for employers that fail to report employees, but she has not seen any penalty for an employer misreporting its employees. However, she said, the federal forms have not been released.

In response to a question from Senator Lee, Ms. Breuer discussed how employers are directed to count seasonal full-time employees under the ACA. Chairman Keiser said it will be interesting to see how the legislative branch will count legislative session employees.

WORKFORCE

Chairman Keiser called on Mr. Matthew Perry, Research Analyst, Job Service North Dakota, and Ms. Mary Amundson, Assistant Professor, University of North Dakota School of Medicine and Health Sciences, to give a presentation regarding workforce needs in the state's health care delivery system. Mr. Perry provided written testimony and a computer presentation ([Appendix K](#)), and Ms. Amundson provided written testimony ([Appendix L](#)).

In response to a question from Representative Fehr, Mr. Perry said the Standard Occupational Classification (SOC) codes are established by the Bureau of Labor Statistics.

Chairman Keiser said he is very happy with the data Mr. Perry pulled together and presented to the committee.

In response to a question from Representative Rohr, Ms. Amundson said communities need to be very deliberate and implement long-term planning in order to recruit health professionals.

In response to a question from Chairman Keiser, Ms. Amundson said the Rural Opportunities in Medical Education (ROAM) program has been used with success to help address the need for physicians in rural communities. She said the ROAM program, which allows 8 to 10 medical students to participate in a 24-week to 32-week interdisciplinary experience in a rural primary care setting, is an example of a success story.

Mr. Brad Gibbens, Deputy Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, testified regarding actions being taken to prepare health care data on the status of the state's health care workforce. Chairman Keiser said the committee will plan to receive this information at the end of the interim.

BILL DRAFTS

Interim Study

The committee reviewed a bill draft [[15.0092.01000](#)] to provide for continuation of the committee's study of the needs and challenges of the North Dakota health care delivery system. Chairman Keiser offered a bill draft [[15.0132.01000](#)] prepared in his name for the committee to consider as an alternative to the committee's bill draft. He said the language in the two bill drafts is the same, except his bill draft provides the University of North Dakota School of Medicine and Health Sciences Advisory Council would provide the committee with periodic reports on the status of the advisory council's biennial report. The Legislative Council staff was directed to revise the committee's bill draft to reflect the changes in Chairman Keiser's bill draft.

Telemedicine

Committee Counsel presented a bill draft [[15.0079.01000](#)] relating to health insurance coverage of telemedicine. She distributed a copy of the correspondence Avera eCARE provided to Chairman Keiser in follow up to the November 12, 2013, committee meeting and a copy of an informational paper, *Telehealth and Rural Health Care Delivery*, prepared by the National Conference of State Legislatures ([Appendix M](#)). She stated this bill draft is based on a Montana law that became effective January 1, 2014, as a result of enactment of Senate Bill No. 270. She reported she used the Montana law as a model because of the proximity of Montana as well as the fact it was a recently enacted law so it may have been drafted in a manner that complies with the ACA. She said she checked with the Insurance Department and was informed that according to a representative of Montana and according to the federal government, this Montana law does not appear to cause increased state liability resulting from expansion of the state's ACA essential health benefits.

Committee Counsel said that as the telemedicine bill draft has been drafted, it will likely be considered to be health insurance mandated coverage of services under North Dakota Century Code Section 54-03-28. She said if a standing committee determines the bill draft provides for a health insurance mandate, the finding will necessitate a cost-benefit analysis, and the bill draft will be amended to limit the mandate to the PERS plan for two years. Additionally, she said, because the bill draft appears to impact the PERS plan, if the committee might be interested in recommending the bill draft at the completion of the interim, the bill draft should be presented to the Employee Benefits Programs Committee for review. She said the Employee Benefits Programs Committee is scheduled to hold its next meeting on Thursday, June 5, 2014.

Chairman Keiser reviewed the background on Section 54-03-28. He suggested the committee consider revising the bill draft to comply with this law.

Representative Becker said he is a big fan of telemedicine, especially in rural communities; however, he supports the free market and questions whether it is appropriate to create health insurance mandates. He questioned whether the bill draft may result in double reimbursement as it might be possible that both the presenting medical facility and the remote medical provider may be reimbursed.

Chairman Keiser said the bill draft may result in increasing the cost of medical services.

Representative Fehr said it is important to recognize that some medical services are done well through telemedicine and some are not well-suited for telemedicine.

Mr. Jerry Jurena, President, North Dakota Hospital Association, stated the bill draft will likely increase the cost of medical care and will likely increase the number of medical consults due to increased convenience. He stated that although he is in support of eHealth, he does recognize it may increase the incidence of fraud and abuse. He said it may also raise licensure issues for out-of-state providers.

Ms. Cheryl Rising, Legislative Liaison, North Dakota Nurse Practitioners Association, stated the topic of telehealth is a big topic in national discussions. She said state licensure is often a point of contention as telehealth is discussed.

Chairman Keiser said he expects the State Board of Medical Examiners will be making some recommendations regarding professional licensure with an eye to streamlining and expediting the application process.

Committee Counsel was requested to revise the bill draft to comply with Section 54-03-28 and to refer the bill draft to the Employee Benefits Programs Committee as a bill draft the Health Care Reform Review Committee is considering.

Involuntary Commitment Proceedings

Committee Counsel presented a bill draft [[15.0133.01000](#)] relating to scope of practice for involuntary commitment proceedings . She said the bill draft increases the role an advanced practice registered nurse may play in involuntary commitment proceedings by adding advanced practice registered nurses to the defined terms "expert examiner" and "independent expert examiner" as well as adding advanced practice registered nurses to those provisions in the chapter which authorize physicians to act. She said the bill draft is drafted with the goal of expanding the role advanced practice registered nurses may play in the involuntary commitment proceedings but not expanding the scope of practice established by the State Board of Nursing. Additionally, she said, in preparing the bill draft, she attempted to perform housekeeping in Chapter 25-03.1 in order to allow stakeholders the opportunity to review as much of the chapter as possible to consider whether there may be portions of the chapter that are in need of substantive updating.

In response to a question from Representative Kasper, Committee Counsel agreed the bill draft does expand the role and possible liability of advanced practice registered nurses, but it is not intended to expand the scope of practice beyond those activities the State Board of Nursing determines advanced practice registered nurses are qualified to perform.

Representative Becker suggested the bill draft be revised on page 4, line 23, to replace "dangerousness" with "danger".

Chairman Keiser called on Dr. Rosalie Etherington, Clinical Director, State Hospital, for comments ([Appendix N](#)) regarding the involuntary commitment proceedings bill draft.

Dr. Etherington said upon her initial review, it does not appear as though the bill draft expands the scope of practice of advanced practice registered nurses beyond what they are trained and qualified to do.

Ms. Rising agreed the bill draft does not appear to expand the scope of practice of advanced practice registered nurses. She said based on her initial review, the bill draft looks good.

No further business appearing, Chairman Keiser adjourned the meeting at 4:45 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:14