

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, July 22, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Representatives George Keiser, Alan Fehr, Robert Frantsvog, Mary C. Johnson, Jim Kasper, Mike Lefor, Alex Looyen, Alisa Mitskog; Senators Tim Mathern, David O'Connell

Members absent: Representatives Rick C. Becker, Eliot Glassheim, Karen M. Rohr; Senator Tom Campbell

Others present: See [Appendix A](#)

Chairman Keiser welcomed committee members and thanked them for their commitment and willingness to attend the meeting on such quick notice. He said at this committee meeting, the committee will focus on the essential health benefits (EHB) study under 2015 House Bill No. 1378. He called on Committee Counsel to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

ESSENTIAL HEALTH BENEFITS STUDY**Background**

Chairman Keiser called on Committee Counsel to present the document [Selection of Essential Health Benefits Under House Bill No. 1378 - Background Memorandum](#). Committee Counsel said she will email committee members the online links to the 2011-12 interim Health Care Reform Review Committee's Final Report and the Insurance Department's compilation of testimony and reports the department provided to this committee during the 2011-12 interim.

In response to a question from Senator Mathern, Committee Counsel said if the state fails to notify the federal government of the state's selection of an EHB benchmark plan, the default benchmark plan will be the state's largest plan by enrollment in the small group market. Chairman Keiser stated that failure of a state to select an EHB benchmark plan will not stop implementation of the federal Affordable Care Act (ACA) or identification of the state's EHB, but instead will result in the state's EHB package for the 2017 plan year and beyond being based on the default benchmark plan.

Insurance Department

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Insurance Commissioner, Insurance Department, to provide information ([Appendix B](#)) regarding the history of state selection of EHB under the ACA; the current opportunity for the state to participate in defining the state-based EHB package for plan years 2017 and beyond; and a review of the state's EHB benchmark plans.

In response to a question from Chairman Keiser, Ms. Ternes briefly reviewed some of the timeline items related to the 2017 EHB plan. She said once a state informs the federal government of the state's EHB benchmark plan, the selection will be incorporated into federal rules, health insurance carriers will design health plans, the designed plans will be submitted for rate and form approval, the plans will be placed on the state's health benefit exchange in time for the 2017 open enrollment period, and then the plan itself will be effective for the 2017 plan year. In addition, Committee Counsel reported that once the Health Care Reform Review Committee makes a recommendation to the Legislative Management, the Legislative Management will need to meet to determine whether to direct the Governor to notify the federal government of the state's decisions relating to the state's benchmark plan and the state's EHB package for the plan years 2017 and beyond, the Governor will notify the federal government; and finally, the federal government will incorporate the state's selection into the federal rules.

In response to a question from Representative Kasper, Ms. Ternes said the table included in her written testimony does not include a column that shows the benefits of the current (2014 plan year) EHB. She said the 10 benchmark plans included in the table reflect the plan benefits offered March 31, 2014. She said the second column in the table, the Sanford small group plan, is nearly identical to the benchmark plan selected by the state in

2012 with inclusion of the 10 federal EHB categories.

In response to a question from Senator Mathern, Ms. Ternes said the federal government has not authorized the states to pick and choose benefits from among the 10 benchmark plans, and this prohibition applies equally to the three North Dakota employee health benchmark plans.

In response to a question from Senator Mathern, Ms. Ternes said because the benchmark plans were based on the benefits offered on March 31, 2014, and reflect a snapshot at a moment in time, it is possible one or more of these plans may have added benefits that are more generous than what was offered at the time of the snapshot. Therefore, she said, it is possible the selection of a benchmark plan could result in a rollback of benefits for that plan.

In response to a question from Representative Fehr, Ms. Ternes said depending on which benchmark plan is used to set the state's EHB package, premium rates may be impacted, although she does not think the selection will result in any decrease in premium. She said the Insurance Commissioner is concerned about how EHB package selection may negatively impact premium rates for consumers. She said implementation of the ACA resulted in new taxes and fees, which were passed on to the consumers as increased premium. However, she said, the nature of EHB is that the health plans in the state have become more alike and the 10 benchmark plans are very similar to each other, with the largest difference being the grandfathered state employee health plan, which offers fertility benefits. Although health premium rates increase over time due to inflationary increases, the recent trend has been lower than expected.

Ms. Ternes reminded the committee that there is still a large portion of the state's insureds who have grandfathered plans and under the ACA these grandfathered plans are not required to provide the EHB.

Senator Mathern said as a legislator, the two most common things he hears from constituents regarding health insurance are that under the ACA they have experienced a decrease in benefits and that they are frustrated with their plans' high deductibles and out-of-pocket requirements. He said it is likely the issues related to deductibles are related to the insured's choice of plans and that plans with lower deductibles and out-of-pocket expenses are available for a higher premium.

In response to a question from Senator Mathern, Ms. Ternes said the implementation of the health benefit exchanges and EHB is too recent for there to be meaningful data. She said the 2014 plan year just ended December 31, 2014, and to determine meaningful trends it will be necessary to have more than one year of data. However, she said, as it relates to pediatric vision and dental, it is possible the state's children's health insurance plan (CHIP) has data regarding whether inclusion of this coverage helps to control costs because the state's CHIP has included these pediatric benefits for several years.

In response to a question from Representative Lefor, Ms. Ternes said the Insurance Department has noticed there have been some shifts in the state from insurance products to self-funded plans, which are not required to provide EHB. Additionally, she said, in practice, as premium increases over the years, consumers shop for perceived bargains and tend to move to higher deductible plans, resulting in an increase in the incidence of unpaid medical bills, resulting in providers increasing the cost of services, which in turn results in increased premium. She said the implementation of the ACA is still too recent to determine whether the ACA will help stem this trend.

Senator Mathern said mental health and substance abuse coverage were hot topics during the 2015 legislative session, but he thinks that perhaps these issues are less a matter of insurance benefit coverage and are more a matter of health insurance carriers' determinations of medical necessity.

Health Insurer Panel

Chairman Keiser called on Ms. Lisa Carlson, Sanford Health Plan; Ms. Katherine Johansen, Medica; and Ms. Jessica Stimpson, Blue Cross Blue Shield of North Dakota, to participate in a panel discussion regarding the selection of a benchmark plan to establish the state's EHB package.

Ms. Carlson clarified that regardless of the state's EHB package, the carriers will be required to follow federal health mandates. For example, she said, even though the benchmark plans do not reflect the current federal mental health parity requirements that the carriers are complying with today, regardless of which benchmark plan is selected, the carriers will continue to be required to comply with the federal mental health parity law.

In response to a question from Representative Kasper regarding Sanford Health Plan's coverage of speech therapy, Ms. Carlson said the Sanford small group benchmark plan does cover speech therapy related to surgery, an illness, or an injury but does not cover speech therapy related to correction of a speech impediment. She said

that often speech therapy coverage issues are resolved through addressing coding issues.

In response to a question from Senator Mathern, Ms. Carlson said selection of a benchmark plan should not result in a rollback of mental health or substance abuse benefit coverage; however, depending on which plan is selected, there may be a rollback of private duty nursing or organ transplant benefit coverage.

Ms. Johansen said that because Medica designs its health plans to meet mandates in neighboring states, its plans offer richer benefits in some areas, such as acupuncture, acupressure, and biofeedback. However, she said, if the Medica small group benchmark plan is selected she expects there would be little material effect in premium as the Medica plans have limitations on who can provide these services and limitations on the number of sessions covered and, as is the case with all medical services, there is the requirement of medical necessity.

Ms. Stimpson provided written testimony ([Appendix C](#)). She said as the committee looks at the three state employee health plans, the traditional nongrandfathered plan closely reflects what the grandfathered plan would look like once the 10 federal EHB categories are added. She said the estimated actuarial impact of private duty nursing coverage is insignificant and the estimated actuarial impact of fertility coverage would be 1 percent.

In response to a question from Senator Mathern, Ms. Carlson said there is a value to standardization of health plan benefits. She said as benefits become more standardized, price becomes more similar and the consumer tends to focus more on the quality of services.

In response to a question from Representative Kasper, Ms. Carlson said she does not have data readily available regarding the number of small group plans provided under the Sanford benchmark plan.

In response to a question from Chairman Keiser, Ms. Ternes said once the state's EHB package is determined, it will be effective for plan years 2017 and beyond. She said once the EHB package is established it would take state legislation for the state to add required benefits or coverage, and if the federal government considered the additional benefits or coverage to be a health mandate, the state may be financially liable for any increase in cost of premium related to that addition.

Ms. Carlson said in considering the actuarial impact of adding fertility benefits, it is important to consider secondary costs, such as the increased costs related to the increased incidence of multiple births and premature births.

Committee Discussion and Directives

Senator Mathern said as all the health insurance plans in the state become more alike, the consequence of the EHB benchmark decision seems quite minimal. He said in 2012 when an EHB benchmark plan was selected, the decision had a much greater impact than it does now.

Representative Kasper said he thinks the state should either do nothing, resulting in default, or should select the Blue Cross Blue Shield of North Dakota small group plan, which also happens to be the default benchmark plan. He said it makes sense to use the benchmark plan that has the greatest enrollment.

It was moved by Representative Kasper and seconded by Representative Frantsvog that the committee recommend to the Legislative Management that the Legislative Management consider directing the Governor to notify the federal government that North Dakota selects the Blue Cross Blue Shield of North Dakota small group benchmark plan as the state's essential health benefits package for the plan years 2017 and beyond.

Senator Mathern voiced concern the suggested benchmark plan does not include coverage for private duty nursing. He said if private duty nursing decreases the use of nursing homes, it may be an important benefit.

Ms. Stimpson said the Blue Cross Blue Shield of North Dakota small group benchmark plan does not cover private duty nursing, regardless of whether it is medically necessary. She said although she is not certain where this service falls on the spectrum of care, the actuarial impact of providing the benefit is zero or minimal.

Chairman Keiser said private duty nursing is an expensive option, which he expects sees limited usage. He distinguished private duty nursing from in-home health care, which is covered under the benchmark plans.

Representative Fehr said if the Sanford small group plan is most similar to the current EHB package, he supports selection of the Sanford benchmark plan.

Chairman Keiser said because of adverse selection, the impact of EHB is that it sets both a ceiling and a floor

and all the plans migrate to the EHB. He said the committee has this one shot to make a change and can recommend a benchmark plan that essentially makes no change or a benchmark plan that makes some small changes.

The motion carried on a roll call vote, Representatives Keiser, Fehr, Frantsvog, Johnson, Kasper, Lefor, Looyesen, and Mitskog voted "aye." Senators Mathern and O'Connell voted "nay."

As a matter of background and in preparation for a future meeting, Chairman Keiser distributed a document, addressing ACA Section 1332 State Innovation Waivers ([Appendix D](#)) and a document providing an overview of EHB ([Appendix E](#)).

In response to a question from Chairman Keiser, Ms. Ternes said she does not know the federal timeline on applications for the Section 1332 State Innovation Waivers.

No further business appearing, Chairman Keiser adjourned the meeting at 11:40 a.m.

Jennifer S. N. Clark
Counsel

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