

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Wednesday, May 18, 2016  
 Brynhild Haugland 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, Alisa Mitskog, Karen M. Rohr; Senators Tom Campbell, Gary A. Lee, Tim Mathern, David O'Connell, Ronald Sorvaag

**Members absent:** Representatives Rick C. Becker, Eliot Glassheim, Alex Looyen

**Others present:** See [Appendix A](#)

Chairman Keiser welcomed Senator Holmberg, Chairman of the Legislative Management, and Representatives Chet Pollert and Robin Weisz and Senators Judy Lee and Ralph Kilzer, who were invited to participate due to the educational nature of this agenda and the likelihood the topics of Medicaid and Medicaid Expansion will be of interest during the 2017 legislative session. Chairman Keiser informed the committee and members of the public in attendance that due to the public interest in the subject matter of Medicaid and Medicaid Expansion, the State Department of Health will be recording and live streaming this committee meeting. The State Department of Health will make the recording available at <http://ndhealth.gov/ET/WebcastCalendar/> under the topic "Healthcare Reform - ACA."

Chairman Keiser said as the committee and the Legislative Assembly move forward and consider options regarding Medicaid Expansion, he sees five options:

1. Continue with the state's current Medicaid Expansion contract;
2. Continue with a revised version of the state's current Medicaid Expansion contract;
3. Allow the Medicaid Expansion law to sunset;
4. Provide Medicaid Expansion through a Department of Human Services (DHS) administered program, similar to traditional Medicaid; and
5. Provide Medicaid Expansion through an alternative model, such as what Arkansas and Tennessee have done.

**It was moved by Representative Fehr, seconded by Senator Mathern, and carried on a voice vote that the minutes of the January 19, 2016, meeting be approved as distributed.**

**MEDICAID AND MEDICAID EXPANSION****Medicaid Expansion Utilization Data**

Chairman Keiser called on Ms. Lisa Carlson, Executive Director of Planning and Regulation, Sanford Health Plan, to provide followup information ([Appendix B](#)) on Medicaid Expansion utilization.

In response to a question from Senator Mathern, Ms. Carlson said she will provide the committee with additional information regarding why the data on emergency room utilization uses the classification of "behavioral" and the case management opportunity data breaks down behavioral health issues into subcategories. Additionally, Ms. Carlson said she will provide the committee with followup information regarding why depression is not treated as a chronic condition for purposes of the disease fingerprint data.

In response to a question from Representative Rohr, Ms. Carlson said she can work with DHS to pull together data for the committee regarding the number of Medicaid Expansion clients who have lapses in coverage due to the need to reauthorize.

In response to a question from Senator G. Lee, Ms. Carlson said although she can provide the committee with additional information, she thinks the data will show the vast majority of providers accept Medicaid Expansion patients. Ms. Carlson said the Sanford Health Plan case management nurses report it is no more challenging to make arrangements to get a Medicaid Expansion patient in to see a primary care provider than it is to make arrangements for any other private market patient. However, she said, there is a greater challenge for all patients to get in to see primary care providers if they are not already established patients of the providers.

In response to a question from Senator J. Lee, Ms. Carlson said the Sanford Health Plan case management nurses have helped Medicaid Expansion patients decrease the frequency of missed appointments. Ms. Carlson said the nurses' success in this area is in part related to the ability of the nurses to provide assistance in making transportation arrangements.

In response to a question from Representative Rohr, Ms. Carlson said although the emergency rooms address detox, it can be challenging to track this data due to the fact the primary diagnosis may be something other than detox or treatment.

In response to a question from Chairman Keiser, Ms. Carlson said when the Medicaid Expansion program was launched, there was a pent up demand, and for that reason, Medicaid Expansion patients participating in wellness screening such as mammography experienced a higher incidence of advanced cancer.

### **Medicaid Expansion Enrollment Data**

Chairman Keiser called on Ms. Stephanie Waloch, Medicaid Expansion Administrator, Department of Human Services, to make a presentation ([Appendix C](#)) regarding Medicaid Expansion enrollment data.

### **Medicaid Expansion and Medicaid**

Chairman Keiser called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, to make a presentation regarding Medicaid and Medicaid Expansion, including:

- A status report on provider reimbursement rates for the 2015-17 biennium;
- A review of Medicaid Expansion plan design options for the 2017-19 biennium; and
- Federal funding of Medicaid and Medicaid Expansion in Indian country.

In addition to continuing the computer presentation initiated by Ms. Waloch, Ms. Anderson distributed a document ([Appendix D](#)) providing Medicaid income eligibility levels and a document ([Appendix E](#)) providing Medicaid Expansion premium rates.

### **Reimbursement and Plan Design**

In response to a question from Representative Pollert, Ms. Anderson said if the Medicaid Expansion contract DHS has with Sanford Health Plan ends, 90 days is not much time to transition. Ms. Anderson said if, during the 2017 legislative session, the state's Medicaid Expansion program is extended but revised, DHS would need until January 1, 2018, to implement a revised program. She said when DHS first put the Medicaid Expansion program out for bid, there were two bids--one by Sanford Health Plan and one by Blue Cross Blue Shield of North Dakota. However, she said, Blue Cross Blue Shield of North Dakota withdrew its bid due to actuarial concerns.

Chairman Keiser said under North Dakota Century Code Section 50-24.1-37, DHS is required to implement Medicaid Expansion by bidding through private carriers or by utilizing the federal marketplace. He said if a private carrier is not willing to participate, continuation of the program may require a change in the law.

In response to a question from Representative Kasper, Ms. Anderson said she may not disclose the specifics of the commercial fee schedules because the fee schedules are proprietary. However, Ms. Anderson said, the Medicaid provider reimbursement is approximately 147 percent of Medicare rates. She said effective June 1, 2017, the state's Medicaid rates are moving to 100 percent of Medicare rates. She said DHS is working to reduce Medicaid Expansion reimbursement rates.

In response to a question from Representative Weisz, Ms. Anderson said the efforts of DHS to change Medicaid Expansion reimbursement rates will be effective January 1, 2017, as that is when the state becomes liable for 5 percent of the program costs.

Senator Mathern said DHS's proposed changes appear to save the federal government money but also will have the effect of providing less to North Dakota providers. He questioned how this approach would actually help North Dakota, and said it may harm providers' ability to serve North Dakotans. He said he hopes DHS and the

committee will consider different ways to address the state's 5 percent liability, such as keeping provider reimbursement rates at the current level and implementing a different fee providers pay to the state.

Ms. Anderson said in addition to changes to fee schedules, DHS is looking at other savings. However, she said, effective January 1, 2017, the state's 5 percent liability under Medicaid Expansion will be paid by general fund dollars.

Chairman Keiser said the law appears to allow the state to move the previously eligible Medicaid population from Medicaid Expansion to Medicaid, but he questions what impact this move might have on the Medicaid Expansion risk pool.

Ms. Anderson said she is working with Sanford Health Plan to evaluate options and the impact of these options. She said if the previously eligible population is moved to Medicaid, it could happen as early as January 1, 2017.

In response to a question from Senator Mathern, Ms. Anderson said representatives of DHS have not had discussions with representatives of the federal government regarding possible sharing of savings.

In response to a question from Representative Kasper, Ms. Anderson said she can provide the committee with a coverage manual and with data regarding the state's Medicaid prescription rebate program. Ms. Anderson said DHS does not use a pharmacy benefits manager for the Medicaid program.

In response to a question from Chairman Keiser, Ms. Anderson said although there are differences between the Medicaid Expansion and Medicaid benefit packages, they are comparable. Ms. Anderson said if an individual is designated as medically frail, that individual is able to choose between the two benefit packages. She said the dental and vision benefits is one difference between the benefit packages.

In response to a question from Representative Kasper, Ms. Anderson said if the Medicaid Expansion program is brought in house to DHS, the impact on DHS would depend on how DHS is directed to provide this service. Ms. Anderson said if Medicaid Expansion is treated the same as Medicaid, there will be few additional tasks for DHS but if DHS is directed to provide case management services similar to what Sanford Health Plan is currently providing, there will be a significant number of additional tasks for DHS. She said if the state moves Medicaid Expansion from the private market to DHS, the federal government likely will approve the change. However, she said, the change and approval will not be a quick process.

Senator J. Lee said the case management services being provided through the current Medicaid Expansion program likely will have a long-term impact of improving health and ultimately saving the state money. She said as the committee and Legislative Assembly move forward in their deliberations, it will be important to consider the impact any approach will have on the return on investments on health care costs of the covered population.

Chairman Keiser questioned why case management services are not provided to the Medicaid population if it is such an effective service.

In response to a question from Representative Fehr, Ms. Anderson said in 2013 when the Legislative Assembly considered whether to participate in Medicaid Expansion, the focus of the discussion was on whether to participate and the discussion did not address benefit packages. Ms. Anderson said when DHS designed the benefits package it took a conservative approach recognizing it is easier to add benefits than take away benefits.

Senator Mathern noted this may be an opportunity for the state to standardize the eligibility standards, reimbursement rates, and benefit packages for Medicaid and Medicaid Expansion.

Ms. Anderson said the benefit packages and reimbursement rates are set by the state. Although there are a variety of public policy factors to consider, she said, changes could be made in a seamless manner so recipients are not aware of most changes. She said if DHS is directed to standardize the programs, this change will take time and it will not be feasible to implement the changes by July 1, 2017.

In response to a question from Chairman Keiser, Ms. Anderson said it is a state decision regarding whether to put a population into managed care. However, Ms. Anderson said, once the state makes this decision there are a variety of rules the state must follow. As it relates to the Medicaid Expansion risk corridor, she said, 2014 has been settled, 2015 is in the process of being settled, and 2016 is not yet finished. She said DHS is taking steps to continue this risk corridor to 2017 to address the multiple changes made to the Medicaid Expansion program. She said she will provide the committee with data regarding the 2014 risk corridor settlement.

Chairman Keiser said at a future meeting he will plan to receive information regarding the expected costs of implementing the different plan options.

Ms. Anderson said as the allotment process moves forward and reimbursement rates are set, this financial information will be available.

### **Federal Funding In Indian Country**

The Legislative Council staff distributed a copy of the federal Centers for Medicare and Medicaid Services letter ([Appendix F](#)) informing states of updates in federal Medicaid payments.

In response to a question from Representative Kasper, Ms. Anderson said this new federal funding opportunity was discussed at the quarterly meeting at which DHS participates with representatives of the tribal communities and representatives of the State Department of Health. Ms. Anderson said DHS is participating in discussions with regional offices and as the parties implement this new funding opportunity, there will be state monitoring responsibilities.

In response to a question from Representative Frantsvog, Ms. Anderson said if the associated parties pursue this new funding opportunity, the state will experience savings in the Medicaid program.

In response to a question from Representative Rohr, Ms. Anderson said although participation in this increased federal funding is voluntary, initial discussion with the tribes and providers indicate openness to this arrangement. She said she has not heard of any parties being in opposition.

In response to a question from Senator J. Lee, Ms. Anderson said this new funding opportunity will cover both 638 contract facilities and Indian Health Services. Ms. Anderson said it seems like a win-win opportunity as it allows the state to capture additional revenue and it may help with coordination of benefits.

### **COMMITTEE DISCUSSION**

In response to a question from Representative Pollert, Chairman Keiser said the committee's study charge allows the committee to forward recommendations regarding Medicaid and Medicaid Expansion to the Legislative Management. Chairman Keiser said it will be the committee's decision whether to limit its activities to education and the receipt of information or whether it will also forward recommendations. He said to make meaningful recommendations, the committee will need to receive fiscal information during this interim.

Representative Fehr said the idea of letting the Medicaid Expansion program sunset seems untenable. He said he supports looking into expending benefits to include dental coverage.

Chairman Keiser distributed information ([Appendix G](#)) from The Henry J. Kaiser Family Foundation regarding the Medicaid Expansion program in Arkansas. He said at a future meeting it may be possible to hear from representatives of other states that have implemented alternative Medicaid Expansion programs.

Senator Mathern said he supported this and said the committee should not limit its review to the Arkansas program.

**It was moved by Senator O'Connell, seconded by Representative Rohr, and carried on a voice vote that the committee invite representatives familiar with the Arkansas Medicaid Expansion program to testify before this committee.**

Chairman Keiser said he is familiar with someone who is knowledgeable of the Arkansas program and he will check her willingness and availability to address this committee. He said he will check with the Legislative Management to determine whether any funding may be available.

Senator Holmberg recommended Chairman Keiser determine whether someone may be available to address the committee without Legislative Management funding.

Senator Holmberg distributed a news article ([Appendix H](#)) regarding Oklahoma's alternative Medicaid Expansion program.

### **Health Policy Consortium**

Chairman Keiser called on Mr. Dave Molmen, Chief Executive Officer, Altru Health System, representing the Health Policy Consortium for a presentation ([Appendix I](#)) to comment regarding the impact Medicaid Expansion has had on bad debt of hospitals, on patient care, and on health care facilities in the state.

Mr. Molmen said although it is very early in the implementation of the program to evaluate the impact of Medicaid Expansion, initial data shows the program is accomplishing some of its intended goals. He said recipients of Medicaid Expansion are using emergency rooms less often as a primary access point to the medical system and are more likely to use primary care services.

Mr. Molmen shared a story of a homeless couple's experience, with one person qualifying for traditional Medicaid and benefiting from the associated prenatal care it offers, and one person qualifying for Medicaid Expansion and becoming healthy enough to return to the workforce and qualify for employer-sponsored health insurance. For this young couple, he said, the opportunities offered through Medicaid Expansion worked as a stepping stone to become more self-sufficient. He said Medicaid Expansion helps North Dakotans who are falling between the cracks.

Mr. Molmen said in addition to the impact Medicaid Expansion is having on covered individuals, it is having an impact on the delivery system. He said a recently published federal report indicates the states with Medicaid Expansion have recognized a \$45 billion decrease in uncompensated care, and the inverse is true in states without Medicaid Expansion as they will be absorbing \$45 billion in uncompensated care. He said the Robert Wood Johnson Foundation recently reported rural hospitals in states with Medicaid Expansion are 50 percent less likely to face foreclosure than in those states without.

Mr. Molmen said by the start of the 2017 legislative session, the Health Policy Consortium will have more complete data regarding the impact of implementation of Medicaid Expansion.

In response to a question from Senator Mathern, Mr. Molmen said if Medicaid Expansion ended, the health care delivery system would experience a decrease of 1.5 percent of the entire cost of operating. Mr. Molmen said this may seem like a small amount; however, it is a very significant amount. He said this amount exceeds the whole bottom line of some rural hospitals in the state.

In response to a question from Representative Fehr, Mr. Molmen said the decreasing trend in the number of self-payers associated with the implementation of Medicaid Expansion closely follows the decrease in charity care. Mr. Molmen said approximately 91 percent of self-pay ultimately becomes charity care.

In response to a question from Senator Campbell, Mr. Molmen said in the case of the young homeless couple he described, the cost of services received was approximately \$30,000 to \$40,000.

In response to a question from Representative Rohr, Mr. Molmen said anecdotally he is seeing a large number of Medicaid Expansion recipients move off the program as they get established.

Senator J. Lee said her legislative experience with welfare reform was that as people work their way off benefits, they are happy to be off welfare and are not interested in completing followup reports for the state or the health care system. Although this followup data would be valuable, she said, it is hard to get. She said she would like to receive additional information regarding the impact of Medicaid Expansion on critical access hospitals.

Mr. Molmen said although he testifies today as a representative of the Health Policy Consortium, he also sits on the board of the North Dakota Hospital Association and recognizes the importance of payment and reimbursements. He said he expects this information will be available at a future meeting.

### **Medicaid and Medicaid Expansion in Indian Country**

Chairman Keiser called on Dr. Don Warne, Chairman, Department of Public Health, North Dakota State University, to present on the status of Medicaid, Medicaid Expansion, health insurance enrollment in Indian country, and the status of federal funding for Medicaid and Medicaid Expansion. Dr. Warne gave a computer presentation ([Appendix J](#)) and provided written testimony ([Appendix K](#)).

In response to a question from Representative Fehr, Dr. Warne said health risk factors, such as diabetes, are public health issues.

In response to a question from Representative Kasper, Dr. Warne said reasons for the slow enrollment under the federal Affordable Care Act (ACA) are multifaceted, but include the cultural shift in enrolling for health insurance. Dr. Warne said the change to private health insurance is a big change and in addition to the need for ongoing education, there is a distrust of new government programs and a concern the ACA may be contrary to treaty rights. He said there is a need for improved awareness the ACA is consistent with the current trust responsibilities of the federal government. Overall, he said, increasing enrollment will take time.

Senator Mathern questioned why we have not seen tribal initiatives to enroll all tribal members in the marketplace. He said it may be more effective for a tribal government to drive this change than to rely on individuals.

Dr. Warne said in the case of tribes with economic means, self-insurance may be more feasible. He said due to the poverty on North Dakota reservations, a large number of the enrolled tribal members will not qualify for private insurance on the marketplace, but instead will qualify for Medicaid or Medicaid Expansion.

In response to a question from Chairman Keiser, Dr. Warne said eligibility for Indian Health Services is pretty broad, as it included enrolled tribal members, descendants of enrolled tribal members, and identified community members. However, Dr. Warne said, to be eligible for an Indian Health Services referral, the individual must be a resident of the reservation or of a surrounding county. He said the residency requirements are an ongoing challenge for referrals. He said if an American Indian has private insurance, that person is not burdened by the referral limitations.

Chairman Keiser said the new federal reimbursement opportunity sounds like a good idea, but in practice it may be a challenge for tribal members living outside the reservation.

In response to a question from Representative Rohr, Dr. Warne said a majority of North Dakota American Indians live on reservations.

In response to a question from Chairman Keiser, Dr. Warne said for purposes of the new reimbursement opportunities, legislative action is not required at this time, but the state may improve the health care delivery system in Indian country by addressing health care provider credentialing. Dr. Warne said because the state designs the Medicaid plan, the state has the ability to address reimbursement rates.

In response to a question from Senator J. Lee, Dr. Warne said there are two Indian Health Services hospitals with inpatient facilities in the state.

### **COMMENTS AND COMMITTEE DISCUSSION**

Mr. Jerry Jurena, President, North Dakota Hospital Association, said the association is working on gathering information regarding the impact Medicaid Expansion is having on the health care delivery system, including critical access hospital data and bad debt data.

Mr. Andy Askew, representing Essentia Health, introduced Ms. Cathy VonRueden, Vice President of Payor Contracting and Population Care Management, Essentia Health. Ms. VonRueden testified in support of Medicaid Expansion. She said when a patient has health insurance, that patient is more likely to seek preventive care and is less likely to receive emergency care. She said not only is emergency care more expensive, but it is typically more fractured and less coordinated in its delivery. Whatever happens with Medicaid and Medicaid Expansion reimbursement rates, she said, the rates must be fair and reasonable.

In response to a question from Senator J. Lee, Ms. VonRueden explained the steps Essentia Health is taking to employ community paramedics. Ms. VonRueden said this service is offered at no cost to the patient, but has helped address readmissions and post-discharge complications.

In response to a question from Senator Mathern, Ms. VonRueden said the clinics employ nurses to provide case management services for patients identified as high risk.

Mr. Tim Rave, Vice President of Public Policy, Sanford Health Plan, said South Dakota has been active at the ground level in discussions regarding increased federal reimbursement for Medicaid. He said he is happy to present more detailed information regarding South Dakota's collaborative care agreements to implement this increased reimbursement opportunity.

In response to a question from Senator Mathern, Mr. Rave said he can provide additional information regarding the financial differences between its experience in South Dakota without Medicaid Expansion and in North Dakota with Medicaid Expansion.

Mr. Neil Scharpe, Navigator, North Dakota Center for Persons with Disabilities, Minot State University, said as North Dakota navigators enter the fourth year in open enrollment, he is very supportive of Medicaid Expansion because of the great opportunity for North Dakotans to get health care. He said his counterparts in South Dakota have a very different experience as navigators in a state without Medicaid Expansion.

Ms. Ynonne Jonk, Health Economist, Department of Community Health, University of North Dakota School of Medicine and Health Sciences, brought to the attention of the committee data she has gathered from other states that have implemented Medicaid Expansion.

Chairman Keiser said he will invite Ms. Jonk to a future meeting.

Senator J. Lee asked that those who have made informal comments provide the Legislative Council staff with a copy of their remarks to distribute to the committee.

Mr. Kurt Snyder, Executive Director, Heartview Foundation, testified ([Appendix L](#)) regarding the positive impact Medicaid Expansion has had on providing treatment services.

In response to a question from Representative Fehr, Mr. Snyder said Heartview accepts both Medicaid and Medicaid Expansion, but he is aware of some smaller providers that do not participate due to the additional reporting required.

Senator J. Lee said at a future meeting she would like to receive information from the State Department of Health Emergency Medical Services Division regarding whether Medicaid Expansion has had any impact on emergency medical services.

Senator Mathern said an additional option the committee may consider is placing the entire Medicaid program under a managed care program under a private provider.

No further business appearing, Chairman Keiser adjourned the meeting at 2:05 p.m.

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Jennifer S. N. Clark  
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ATTACH:12