

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Thursday, August 3, 2017  
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, Gretchen Dobervich, Kathy Hogan, Jim Kasper, Mike Lefor, Karen M. Rohr, Robin Weisz; Senators Dick Dever, Karen K. Krebsbach, Oley Larsen, Judy Lee, Carolyn C. Nelson, Nicole Poolman

**Members absent:** Representatives Rick C. Becker and Bill Devlin; Senator Jerry Klein

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

Chairman Keiser said the committee will study public benefits managed care, the federal Affordable Care Act (ACA), and the public employee health benefits plans. In conducting the studies, he said, committee members should refrain from making political statements and instead focus on pursuing collaboration. He called on the Legislative Council staff to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

**PUBLIC BENEFITS MANAGED CARE STUDY**

Chairman Keiser called on the Legislative Council staff to present a memorandum entitled [Public Benefits Managed Care Study - Background Memorandum](#).

Chairman Keiser called on Mr. Mike Leavitt, Founder, and Ms. Robin Arnold-Williams, Consultant, Leavitt Partners, to provide an overview ([Appendix B](#)) of managed care options for public benefit programs. Mr. Leavitt said health care reform is like "the fog of war" in that in times of action, there is a challenge to understand the significance of information as it is received. Instead, he said, it is necessary to step back and view the information in context.

Mr. Leavitt said today, as we did 250 years ago at the Constitutional Convention, we are tackling the fundamental, philosophical questions regarding the roles of government and the free market.

In response to a question from Senator Dever, Mr. Leavitt said as states consider whether block grants may allow them to design their own health care systems, it is important to realize block grants mean different things to different people. He said for states, block grants mean increased flexibility; whereas, for the federal government, block grants are a way to limit financial liability.

Mr. Leavitt said if North Dakota has a plan for health care reform, the state should submit a waiver proposal to the federal Department of Health and Human Services.

Chairman Keiser said the competing forces are that the federal government wants to provide the minimum amount of funding and the states want to receive the maximum amount of funding.

In response to a question from Representative Hogan, Ms. Arnold-Williams said slide 3 of the presentation is based on 2015 data for Medicaid, Medicaid Expansion, and the children's health insurance program. She said the states with the lowest enrollment have approximately 10 percent of the population enrolled, states with the highest enrollment have approximately 29 percent, and the average is approximately 20 percent. She said she did not bring data regarding the percentage of each state's population which is eligible. She said in evaluating the data, it is important to recognize that some states have implemented Medicaid Expansion and some states have not.

In response to a question from Chairman Keiser, Mr. Leavitt said there is not an ideal level of Medicaid coverage because philosophies vary from increasing the insured population to dealing with individuals with medical hardship on a case-by-case basis. He said the philosophy embraced will dictate what enrollment coverage is ideal. Although

it is important for a state's model to include consideration of the state's ability to finance public benefits, he said, it also is important to address the state's philosophical approach and goals to coverage.

In response to a question from Representative Kasper, Mr. Leavitt said there are several factors that should be considered social determinants of health. He said if a population is employable, that population is likely healthier than an unemployable population. However, he said, relevant social determinants may vary from program to program.

Senator Lee said a large percentage of the state's Medicaid population is elderly or children and therefore not considered employable.

In response to a question from Senator Larsen, Ms. Arnold-Williams said some states are discussing whether to decrease the Medicaid Expansion income eligibility level from 138 percent of the federal poverty level to 100 percent.

In response to a question from Chairman Keiser, Ms. Arnold-Williams said the jury is still out on which model of managed care is the right model. She said the model chosen should be related to the goals and objectives of implementing managed care.

Ms. Arnold-Williams said considerations in evaluating whether to implement a new managed care model and during implementation include:

- The public benefit programs' populations, including:
  - The needs of the populations;
  - The utilization patterns of the populations; and
  - Provider readiness for change.
- The managed care model chosen needs to reflect the goals, not the inverse.
- Participation by stakeholders, including providers and recipients, and it should be expected there will be some push back from stakeholders.
- There are benefits to reviewing what models other states have implemented and the processes used to evaluate model selection and implementation.
- It may be desirable to phase in new managed care models, based on factors such as population or geography.
- What is the appropriate role of the state agency.
- During implementation, have a strong contracting process, including a clear contract with clear expectations.
- During and following implementation, continue to monitor and refine because continuously refining will be necessary to meet the state's objectives.

Mr. Leavitt said as the state considers whether to move forward with a new managed care model:

- It is imperative the decision makers understand who North Dakota is serving and take time to meet with the stakeholders performing Medicaid enrollment and listen to the stories to better understand the process.
- Implementation through a phased-in approach is valuable.
- Federally qualified health centers should be supported and integrated into the managed care model.

Chairman Keiser said over the years there have been several managed care models that have fallen in and out of favor, including health maintenance organizations (HMOs), diagnosis-related groups, and value-based purchasing (VBP). He said VBP is not a value or outcome issue, but is a funding issue, and the reason the federal government supports VBP is the federal government thinks VBP will save federal funds.

Ms. Arnold-Williams said a goal of VBP is to keep prices down, and the goal of collaboration is a win/win because it changes utilization patterns, saves money, and results in increased health.

Mr. Leavitt said the managed care conversation began 40 to 50 years ago. He reviewed the history of the creation of Medicaid and Medicare in the 1960s as a payment system, and said the benefits included the standardization of billing codes, but an unintended consequence is that the programs incentivised the wrong thing--

providing more medical services. In the 1970s, he said, the creation of diagnosis-related groups perpetuated the same problem of over utilization. However, he said, in the 1990s, there was a shift to managed care. He said people hated managed care because they did not like insurance companies driving care, and this opposition resulted in passage of patient bill of rights legislation. Most recently, he said, managed care has shifted its focus to quality and how to measure components of quality, such as hospital readmission rates.

Ms. Arnold-Williams said if North Dakota moves forward in adopting a new model of managed care, it will be important for the state to define "quality" and how quality will be measured.

Senator Lee said advantages North Dakota has include its small size and its history of collaborating. Additionally, she said, one thing unique to North Dakota is how it uses rate equalization for skilled nursing and long-term care.

In response to a question from Representative Rohr, Ms. Arnold-Williams said availability of VBP data is increasing.

Mr. Leavitt said because there have been significant investments in the current fee-for-service system, it makes sense to provide for a gradual transition to a VBP system. However, he said, in changing to a VBP system it will be necessary for the state to push this change.

In response to a question from Representative Hogan, Mr. Leavitt said his experience as Secretary of Department of Health and Human Services from 2005 to 2009 taught him important lessons, including that a change in health care will require a change in managed care. Because managed care is moving to VBP, he said, Congress likely will recognize the fee-for-service model is a problem, coordinated care is better than uncoordinated care, and for a proposed change in the model to be successful it will have to show the proposed change will bend the cost curve.

In response to a question from Representative Hogan, Ms. Arnold-Williams said the data that is just coming out for states that have engaged in multi-payor approaches for programs, such as public employee health benefits, corrections, and Medicaid, seems promising.

In response to a question from Senator Dever, Ms. Arnold-Williams said in the Medicaid population there appears to be mixed results regarding whether wellness programs are beneficial.

Mr. Leavitt said because the Department of Health and Human Services did not get uniform results with wellness programs, the wellness programs were stopped. He said it is important to know and understand the population before pursuing a wellness program. For example, he said, wellness programs may be more appropriate in the dual-eligible population than in the developmental disability program.

Chairman Keiser said Blue Cross Blue Shield of North Dakota tried a medical home model, and although there was a return, this investment took increased resources and this investment resulted in provider burnout.

Mr. Leavitt said "value" means different things to different people, and there are multiple anomalies with the Medicaid system and how that system works. However, he said, North Dakota would not have to be saddled with these complexities because the state can borrow from what other states have done.

In response to a question from Representative Kasper, Mr. Leavitt said in measuring whether quality has been met under a managed care model, ideally the outcome measures, such as patient satisfaction and readmission rates, should be surrogates for quality.

Ms. Arnold-Williams said third-party validation can be used to ensure data reflects what is actually happening.

Chairman Keiser suggested the committee members go online and go through the process of applying for North Dakota medical assistance. He said the application is confidential and the members should submit accurate information to avoid the risk of a claim of fraud. He said it is okay to apply even if you know you will not be eligible.

Representative Hogan said another option is for committee members to contact their local human service centers to arrange to watch an application for medical assistance.

Mr. Leavitt said three metaphors are applicable to the committee's study:

- Implement a 500-day plan with a 5,000-day horizon;

- This is crystal making, so find something to work on, begin work, and learn from this; and
- This is like moving cattle to the range, so there will be a need for some prodding along the way.

### **AFFORDABLE CARE ACT STATUS STUDY**

Chairman Keiser called on the Legislative Council staff to present a memorandum entitled [Affordable Care Act Status Study - Background Memorandum](#).

Chairman Keiser called on Mr. Jon Godfread, Insurance Commissioner, to make a presentation ([Appendix C](#)) regarding the status of implementation of the ACA, implementation of 2017 legislation regarding air ambulances, and the status of the Comprehensive Health Association of North Dakota (CHAND).

Mr. Godfread summarized recent actions of Congress relating to the ACA. He said the National Association of Insurance Commissioners supports increasing state flexibility under the ACA. Although North Dakota law does not authorize the Insurance Commissioner to pursue an ACA waiver and the department does not have the necessary resources and staff to pursue the waiver, he said, he is watching what other states are doing related to waivers.

Senator Lee said she is a member of the CHAND Board, and she remembers at the time the ACA was passed, there was a reluctance to repeal the CHAND law.

Mr. Godfread said the Insurance Department did a comparison of the benefits of CHAND coverage and ACA coverage for the high-risk pool. He said CHAND coverage is comparable to platinum ACA plans.

In response to a question from Senator Dever, Mr. Godfread said state-administered health benefit exchanges typically have more flexibility than federally-administered exchanges. He said the states pursuing ACA waivers are state administered; however, if a state were to transition from a federally-administered to a state-administered health benefit exchange, the state likely would be responsible for the exchange startup costs.

Chairman Keiser said as enticing as the ACA waivers may appear, in reality they are limited because the waivers require that the cost of health care may not increase and access to health care may not decrease.

Mr. Godfread said he agreed, and the ACA waiver requirements essentially allow for a waiver without a waiver.

Senator Dever said if the state pursues a managed care model for Medicaid, it will be very important for all parties to be very engaged and the Legislative Assembly needs to consider how the proposals impact behavioral health and substance use services.

In response to a question from Representative Rohr, Mr. Christopher D. Jones, Director, Department of Human Services, said as the committee moves forward on this study, the department will work to provide medical assistance utilization data and will work with the committee to clarify and refine the data the committee seeks.

Representative Hogan said the committee should follow the activities of other interim committees that may have some overlap in study charges, including the Human Services Committee, Health Services Committee, and Employee Benefits Programs Committee.

### **PUBLIC EMPLOYEE HEALTH INSURANCE PLAN STUDY**

Chairman Keiser called on the Legislative Council staff to present a memorandum entitled [Public Employee Health Insurance Plan Study - Background Memorandum](#).

Chairman Keiser called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, to present information ([Appendix D](#)) regarding county health benefit coverage.

In response to a question from Representative Hogan, Mr. Traynor said he does not know whether the Grand Forks County health plan with Blue Cross Blue Shield of North Dakota is a grandfathered plan.

Chairman Keiser called on Ms. Helen Askim, Human Resources Director, Williams County, for comments regarding the experience of Williams County in insuring county employees. Ms. Askim said Williams County has been proving health benefits through a self-funded plan since 1987.

Ms. Askim said that in simplified terms, the insurance premium is like a savings account the county uses for health, dental, and vision services and to pay the small administrative fees. She said the premium is based on experience, and the county includes some employee representatives in setting premium rates. She said inclusion of

employee representatives has the additional benefit of helping to educate employees and thereby gaining employee buyin.

Ms. Askim said since 1987, Williams County had one incidence of underfunding its plan; however, the county was intentionally being frugal and this underfunding was done knowingly.

In response to a question from Representative Rohr, Ms. Askim said the county sets its administration fee based on a percentage of claims processed. She said as a human resources director, she is aware of employees' concerns and she knows that after passage of the ACA there was consideration of whether to keep the policy's grandfathered status. Ultimately, she said, the county decided to move to a nongrandfathered plan.

In response to a question from Representative Kasper, Ms. Askim said Williams County has slightly more than the recommended 6 percent of anticipated claims in reserve. She said this excess has developed primarily because the county's employees are getting younger and therefore less expensive. She said the county has decided to decrease reserves slowly, in recognition that claims experience is typically cyclical.

In response to a question from Representative Lefor, Ms. Askim said the county has learned that employee education is not very effective if it is provided through mandatory meetings.

In response to a question from Senator Poolman, Ms. Askim said the county's experience has been that reinsurance for large claims is not very expensive.

In response to a question from Chairman Keiser, Ms. Askim said the county has both individual and aggregate stop-loss coverage.

Chairman Keiser called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, to provide a presentation ([Appendix E](#)) on the history of the public employee health benefits coverage, the current coverage, and options for future coverage design.

In response to a question from Representative Kasper, Mr. Collins said with the exception of health care benefits, over time the premiums for the Public Employees Retirement System (PERS) uniform group insurance plans tend to hold steady and benefits tend to increase. He said at a future meeting he will provide the committee with additional information regarding the history of the health insurance reserve fund balance.

Senator Dever said he expects that now that there is competition in the state's health insurance market, the carriers will sharpen their pencils and bids for the PERS health benefits contract will be more accurate and the carriers will be less likely to overbid, resulting in the reserves being less likely to grow.

Chairman Keiser said if the state's financial situation does not improve, the state will use up reserves quickly if the state does not change its current approach to funding public employees' health benefits coverage.

In response to a question from Chairman Keiser, Mr. Collins said the PERS wellness benefits for payment of gym memberships have been reinstated and these benefits will be taxable for the employees.

In response to a question from Representative Weisz, Mr. Collins said the wellness benefits under the PERS health benefits coverage are being utilized; however, PERS is doing a study of how to measure the impact of these benefits.

In response to a question from Chairman Keiser, Mr. Collins said the PERS health benefits address chronic health issues, such as diabetes, by partnering with pharmacies, providing wellness benefits, and through the carrier's managed care efforts.

Senator Dever said Mr. Collins will be retiring November 1, 2017. He said Mr. Collins likely will continue to contract with PERS until a new executive director is selected.

Chairman Keiser said he will try to schedule time at upcoming committee meetings to have periodic updates from other interim committees that have study charges related to this committee's study charges.

**It was moved by Senator Dever, seconded by Senator Larsen, and carried on a voice vote, that the committee pursue the study plans proposed in the background memorandums.**

No further business appearing, Chairman Keiser adjourned the meeting at 3:10 p.m.

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Jennifer S. N. Clark  
Counsel

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