

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Thursday, November 30, 2017

Room E101, University of North Dakota School of Medicine and Health Sciences  
1301 North Columbia Road, Grand Forks, North Dakota

Representative George J. Keiser, Chairman, called the meeting to order at 8:30 a.m.

**Members present:** Representatives George J. Keiser, Rick C. Becker, Bill Devlin, Gretchen Dobervich, Kathy Hogan, Jim Kasper, Mike Lefor, Karen M. Rohr; Senators Karen K. Krebsbach, Carolyn C. Nelson

**Members absent:** Representative Robin Weisz; Senators Dick Dever, Jerry Klein, Oley Larsen, Judy Lee, Nicole Poolman

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

**It was moved by Representative Hogan, seconded by Representative Rohr, and carried on a voice vote that the minutes of the August 3, 2017, and September 14, 2017, meetings be approved as distributed.**

Chairman Keiser said the meeting date was rescheduled to allow participation in the Dean's Hour over the lunch break.

Chairman Keiser called on Dr. Joshua Wynne, Dean, University of North Dakota School of Medicine and Health Science. Dr. Wynne welcomed the committee to the University of North Dakota (UND) School of Medicine and Health Sciences and extended greetings from UND President Mark Kennedy, who was in Bismarck, attending a meeting of the State Board of Higher Education.

Dr. Wynne said the purpose of the new facility is to comply with the educational programs' duties of education, service, and discovery. The committee members and members of the public toured the facility in two groups.

**PUBLIC EMPLOYEES RETIREMENT SYSTEM STUDY**

Chairman Keiser called on Mr. Pat Bellmore, Chief Marketing Officer, Blue Cross Blue Shield of North Dakota, and Mr. Jim Wynstra, Senior Director of Actuarial Services, Sanford Health Plan, for comments (Appendices [B](#) and [C](#)) regarding Public Employees Retirement System (PERS) health benefits, including current practices and experience in self-funded plans for single- and multiple-employer plans; possible changes ([Appendix D](#)) to the North Dakota Century Code provisions relating to the uniform group insurance plans, including self-funding, which were identified by the Executive Director of PERS at the September 14, 2017, committee meeting; and assumption of risk ([Appendix E](#)) for the spectrum of insurance plans, including fully insured and hybrid fully insured plans. Medica did not have a representative in attendance, but submitted written comments ([Appendix F](#)).

In response to a question from Representative Kasper, Mr. Bellmore said Blue Cross Blue Shield of North Dakota (BCBSND) administers self-funded plans for groups with fewer than 200 employees, some as small as 50 to 100 employees, and the largest with approximately 850 employees.

In response to a question from Representative Rohr, Mr. Bellmore said BCBSND administers self-funded plans for North Dakota domiciled employers as well as out-of-state employers that have a North Dakota presence.

In response to a question from Representative Hogan, Mr. Bellmore said of BCBSND's 178 self-funded groups, two employers do not have stop-loss coverage.

Chairman Keiser said the nature of self-funded plans is the plan can be very flexible and the employer can make its decision regarding whether to have stop-loss coverage.

Mr. Bellmore said some of its plans use BCBSND stop-loss coverage and some purchase the coverage from a third party.

In response to a question from Representative Kasper, Mr. Bellmore said an employer has the choice of whether to bundle or unbundle pharmacy benefits with the hospital and medical coverage.

In response to a question from Chairman Keiser, Mr. Bellmore said individual stop-loss coverage is designed to provide the plan protection from a covered individual's high claims, whereas aggregate stop-loss coverage is designed to provide the plan protection from high claims of the entire group. He said for a large group such as PERS, the aggregate maximum would seldom be reached.

In response to a question from Representative Lefor, Mr. Bellmore said typically a claims administrator brings the suggested reimbursement rates to the table. He said in his 33 years of experience he is not aware of a group of 750 or more employees moving from a self-funded plan to a fully insured plan.

In response to a question from Chairman Keiser, Mr. Bellmore said when PERS is evaluating potential carriers for health benefits, consideration of performance guarantees is very important and once a carrier is selected it is important to hold the carrier to those performance guarantees.

Mr. Bellmore said the City of Fargo recently withdrew from the PERS health benefits plan based on the last couple years of claims, during which the Fargo group was less expensive than the overall PERS group. By going out on its own, he said, the city will recognize significant savings. He said he expects the withdrawal of this group from the PERS plan will have some impact on the PERS plan.

Mr. Wynstra said because each subgroup in the PERS plan has its own claims experience, the loss of the City of Fargo will not have a significant impact on the large group.

In response to a question from Representative Lefor, Mr. Wynstra said if PERS moves to a self-funded plan, it may benefit from stop-loss coverage for the first several years to assist in the transition. He said there are several options for stop-loss coverage, such as individual coverage for mega claims.

In response to a question from Representative Kasper, Mr. Wynstra said Sanford Health Plan does not provide stop-loss coverage in house. He said each stop-loss insurer has its own philosophy and premium cost. He said in general, the larger the group the larger the number of consultants involved. In the case of PERS, he said, Sanford Health Plan and the PERS consultants would provide PERS with the expected values.

In response to a question from Chairman Keiser, Mr. Wynstra said it is estimated under the PERS plan there will be a 4 to 9 percent change per year, although the larger the group, the smaller the effect in change in trend. He said with the large size of the PERS plan, he expects a 6 to 8 percent change in trend 90 percent of the time.

In response to a question from Representative Lefor, Mr. Wynstra said the PERS plan is not subject to the federal Affordable Care Act (ACA) premium tax.

In response to a question from Chairman Keiser, Mr. Wynstra said in a large group like PERS there is very little difference in administrative fees for the fully insured versus self-funded plan.

In response to a question from Representative Kasper, Mr. Wynstra said the administrative fees are more transparent in the case of a self-funded plan. Additionally, he said, in a competitive bidding situation, he expects the fact the PERS plan is a hybrid under which PERS keeps a portion of the profits likely has very little effect on premium because the carriers would not want to put the contract at risk.

In response to a question from Chairman Keiser, Mr. Wynstra said in the case of public employee contracts, typically the plan contracts are for a single year; however, the contract is not rebid annually.

Chairman Keiser called on Ms. Sharon Schiermeister, Interim Director, Public Employees Retirement System, regarding the status of the PERS survey of how other states provide health benefits for public employees ([Appendix G](#)).

Chairman Keiser said it is important for committee members to understand and appreciate the value of this data PERS is compiling.

Representative Lefor said he encourages the PERS Board to continue collaborating with the legislative committees.

In response to a question from Representative Hogan, Ms. Schiermeister said one surprise in gathering data has been that PERS assumed all self-funded plans would include stop-loss coverage. However, she said, PERS will follow up and ask the number of insured lives the other state plans have.

Chairman Keiser called on Mr. Jeff Ubben, Deputy Commissioner, Insurance Department, regarding the similarities and differences between federally regulated and state-regulated self-funded insurance plans ([Appendix H](#)).

In response to a question from Representative Hogan, Mr. Ubben said although the federal Employee Retirement Income Security Act (ERISA) exempts government health plans from regulation under ERISA, the North Dakota Administrative Rules do not exempt government health plans from the Insurance Department's regulation of multiple employer welfare arrangements (MEWAs).

Chairman Keiser requested that at the next committee meeting the Insurance Department provide the committee with proposed bill draft language to clarify the Insurance Department's role in regulating PERS health benefit plans.

Representative Hogan suggested PERS include this question of state regulation in the PERS survey of other states.

In response to a question from Senator Nelson, Mr. Ubben said political subdivisions are allowed to opt into health benefit coverage under PERS. He said if the Legislative Assembly changed the law to prohibit participation by political subdivisions, there may be other health benefit choices for the political subdivisions to consider, such as pooling with other subdivisions.

Chairman Keiser said at the National Association of Insurance Commissioners and at the federal level, there is concern of opening MEWAs to anyone who wants to join. He said there are concerns there may be problems with insolvency and no state guarantee fund to back up the plans.

Mr. Ubben said the Insurance Commissioner is aware of these concerns and the department is monitoring the situation and considering whether it might be appropriate to amend the department's administrative rules.

### **DEAN'S HOUR PANEL DISCUSSION**

During the lunch break, the committee members and the Deputy Insurance Commissioner participated in the Dean's Hour panel discussion, moderated by Dr. Wynne.

### **AFFORDABLE CARE ACT STUDY**

Chairman Keiser called on Mr. Jon Godfread, Insurance Commissioner, for comments ([Appendix I](#)) regarding the status of ACA, including open enrollment; North Dakota insurers participating in the Federally Facilitated Marketplace; and federal changes and proposed changes affecting ACA.

In response to a question from Chairman Keiser, Mr. Godfread said generally, the 2018 health insurance plan year is set, barring a massive upheaval. He said health insurance plans are designed in early spring of the year before the plan coverage begins. He said if Congress makes changes to ACA during April 2018, and these changes required changes in federal rules, it is possible those changes would not be implemented for the 2019 health insurance plan year.

Chairman Keiser said he is concerned federal law may change to allow association health plans and this may impact state regulation of MEWAs.

Mr. Godfread said if MEWA changes are made via ERISA, it is possible state laws and rules would be trumped by federal law.

In response to a question from Representative Hogan, Mr. Godfread said if ACA did not apply to the proposed short-term limited duration insurance plans there would be very few standards regulating these plans. He said these plans are intended to be short-term to cover catastrophic health issues.

In response to a question from Representative Becker, Mr. Godfread said with the loss of cost sharing reduction (CSR) payments, there are no winners. He said as between insureds bearing the loss and the insurers bearing the loss, he has taken the position the insurers are in a better position to bear this risk. He said he recognizes the loss of these payments may result in a price shock in 2019.

In response to a question from Representative Hogan, Mr. Godfread said North Dakota has two insurers offering health insurance through the Federally Facilitated Marketplace and three insurers offering health insurance outside the Federally Facilitated Marketplace.

In response to a question from Chairman Keiser, Mr. Godfread said there are ways for an insurer to pull back without fully dropping out of the Federally Facilitated Marketplace, such as how Sanford Health Plan decreased its footprint in the Federally Facilitated Marketplace. However, he said, once an insurer exits the Federally Facilitated Marketplace, that insurer may not reenter the marketplace for 5 years.

Chairman Keiser said he is concerned the smaller footprint of Sanford Health Plan corresponds with the five counties in which it has providers and that this loss will be borne by consumers.

In response to a question from Representative Hogan, Mr. Godfread said although the ACA open enrollment for the 2019 plan year was shortened and there was a cut in advertising funding, this is not the first open enrollment and most consumers are familiar with the process. He said he will have more information regarding enrollment after the open enrollment period ends.

Chairman Keiser called on Ms. Courtney Koebele, Executive Director, North Dakota Medical Association, regarding the positions of the American Hospital Association and American Medical Association on changes and proposed federal changes to ACA ([Appendix J](#)).

Representative Becker said if ACA is repealed, there is nothing preventing Congress from passing a new law addressing the Frontier Amendment.

In response to a question from Representative Hogan, Ms. Koebele said ACA has, in part, addressed some of the state's access to care issues.

Chairman Keiser called on Ms. Lisa Carlson, Senior Director of Market Strategy, Sanford Health Plan, and Mr. Bellmore for comments ([Appendices K](#) and [L](#)) regarding ACA and open enrollment under ACA, including the status of CSR payments and the impact of decreases in federal advertising funding.

In response to a question from Senator Kreun, Ms. Carlson said insurers seek to design competitive plans and to comply with the federal actuary tool to comply with the Federally Facilitated Marketplace plans. She said the plans do not take into account the insured's income, but the insurers seek to be competitive and make a marginal profit.

In response to a question from Chairman Keiser, Ms. Carlson said from a pricing standpoint, minimal changes in the essential health benefits will decrease volatility in the insurance marketplace. She said if a state selects a thinner plan as a benchmark plan for establishing essential health benefits, it will have the effect of decreasing subsidies because subsidies are directly related to premium. She said the first time the state selected a benchmark plan, the plan selected was portrayed as the skinniest plan. However, she said, because of the risk of adverse selection, the marketplace plans have migrated to the essential health benefits.

In response to a question from Representative Hogan, Mr. Bellmore said for the 2018 plan year there has been an increase of approximately 23 percent in the BCBSND metallic plan premiums. He said Sanford Health Plan is betting the CSRs will be reinstated and BCBSND is betting they will not be reinstated.

In response to a question from Chairman Keiser regarding premium approval by the Insurance Commissioner, Mr. Bellmore said in future years BCBSND will have to have these rate discussions with the Insurance Commissioner.

Chairman Keiser called on Mr. Godfread for a presentation ([Appendix M](#)) regarding the status of Section 1332 ACA State Innovation Waivers. Mr. Godfread said the submission deadlines are March 16, 2018, for the 2019 plan year and July 1, 2018, for the 2020 plan year.

In response to questions from Senator Nelson and Chairman Keiser, Mr. Godfread said not only are states responsible for startup costs for implementing the waivers, but he expects once a state implements its waiver, there will be a point the federal subsidies would be inadequate if the state plan does not fix the ongoing problems of increasing premium.

Mr. Godfread said unless there are significant changes in the federal waiver rules, he does not see any value in North Dakota pursuing a waiver.

Representative Becker and Chairman Keiser said to be informed and responsible they are interested in investigating the waiver options.

Dr. Wynne extended an invitation to the Legislative Assembly to return to Grand Forks on Wednesday, March 28, 2018, to participate in a "medical degree in a day" program being held at the school.

No further business appearing, Chairman Keiser adjourned the meeting at 3:35 p.m.

---

Jennifer S. N. Clark  
Counsel

ATTACH:13