

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, May 9, 2018
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, Bill Devlin, Gretchen Dobervich, Kathy Hogan, Jim Kasper, Mike Lefor, Karen M. Rohr; Senators Dick Dever, Jerry Klein, Oley Larsen, Judy Lee, Nicole Poolman

Members absent: Representatives Rick C. Becker, Robin Weisz; Senators Karen K. Krebsbach, Carolyn C. Nelson

Others present: See [Appendix A](#)

It was moved by Senator Dever, seconded by Senator Klein, and carried on a voice vote that the minutes of the February 1, 2018, meeting be approved as distributed.

Chairman Keiser said the agenda shows there will be a full day. Additionally, he said, he is frustrated with a letter a pharmacy benefits manager (PBM) lobbyist sent to committee members. He said he holds a pre-meeting planning session weeks before each committee meeting and interested parties are free to attend and participate with an eye to full transparency. He said at the most recent pre-meeting planning session it was made clear that because today's presentation on pharmacy benefits will take a significant amount of time and since this will be the first time this information is received it is not appropriate to schedule PBMs at this meeting but instead they will be scheduled at a subsequent meeting.

Chairman Keiser called on Ms. Linda Cahn, President, Pharmacy Benefit Consultants, for a presentation ([Appendix B](#)) on pharmacy benefits coverage under the Public Employees Retirement System (PERS) and under the state's Medicaid programs.

In response to a question from Representative Hogan, Ms. Cahn said if PERS pursued a blended contract that pins down prescription drug pricing terms and guarantees, PERS could update a request for proposal (RFP) she helped create for PERS.

In response to a question from Representative Dobervich, Ms. Cahn said NDC stands for the National Drug Code.

Mr. Danny Weiss, Senior Director, Pharmacy Benefits, Sanford Health Plan, said the abbreviation J-code is a category of the Healthcare Common Procedure Coding System which reflects pharmacy medical services.

Ms. Cahn said there is a series of J-codes for different drugs; however, there is a catchall J-code. She said anytime the catchall J-code is used, the claims data does not reflect the name of the drug.

In response to a question from Representative Hogan, Ms. Cahn said the amount of drug costs not traceable is not an insignificant number.

In response to a question from Representative Kasper, Ms. Cahn said an audit would identify these nontraceable drugs. However, she said, nontraceable J-codes typically are used in the medical side and not in the PBM side.

In response to a question from Chairman Keiser, Ms. Cahn said to accurately compare the drug costs under the Medicaid drug program to the Medicaid Expansion drug program to determine whether it would be cost-effective to bring the Medicaid Expansion drug program in-house, it would be necessary to conduct a comparison of the components of each drug. She said this comparison could be done in-house or could be contracted to a third party for a low cost.

In response to a question from Representative Hogan, Ms. Cahn said she does not know how much it would cost to bring the Medicaid Expansion drug program in-house, but it is likely the Department of Human Services could build on the small staff currently administering the Medicaid drug program and the administrative cost would not overshadow the savings.

In response to a question from Representative Doberovich, Ms. Cahn said if drug exclusion or steering is implemented to increase the use of generic drugs, there typically are medical exceptions and an identified appeal process.

Senator Lee said the Medicaid drug program uses steerage, and it is important to consult with the agency experts.

In response to a question from Representative Kasper regarding specialty drugs, Ms. Cahn said pharmacists in retail stores are as well trained as pharmacists in PBMs. However, she said, retail pharmacists do not have a conflict of interest, whereas PBM pharmacists have potential for a conflict. She said there is no need for specialty drug certification because certification does not offer much value but instead creates a noncompetitive market.

Senator Lee said the Board of Pharmacy should be the entity to determine whether certification is necessary or appropriate.

In response to a question from Representative Hogan, Ms. Cahn said historically federal efforts to regulate PBMs have been unsuccessful; however, there has been renewed interest.

Chairman Keiser said there has been a national discussion among states regarding which state entity might be best positioned to regulate PBMs--insurance departments, attorneys general, or pharmacy boards.

In response to a question from Senator Dever, Ms. Cahn said the original purpose of PBMs was to pull together multiple plans to negotiate with pharmacy manufacturers. She said if this negotiation takes place in a black box with no disclosure it hurts the market more than helps. However, she said, if PBMs operated differently, with no more black boxes, but instead with access to net costs of drugs by therapeutic category and locked prices for specified periods of time, PBMs could encourage price competition.

In response to a question from Chairman Keiser, Ms. Cahn said one element of the black box is that PBM contracts are confidential or proprietary. She said states can take a stand to make these contracts publicly available. She said the PERS and Medicaid Expansion PBM contracts should be made public.

Chairman Keiser called on Mr. Mike Schwab, Executive Vice President, North Dakota Pharmacists Association, for comments ([Appendix C](#)) regarding managed care pharmacy benefits and the status of 2017 PBM legislation.

In response to a question from Chairman Keiser, Mr. Schwab said he supports bringing the Medicaid Expansion and PERS drug programs in-house.

Ms. Elizabeth Gianini, Senior Director, State Government Affairs, WellCare, said WellCare met with Mr. Schwab and has agreed WellCare will not advocate for pharmacy to be included in a proposed Medicaid managed care program. She said there are examples of states with Medicaid managed care that carve out the pharmacy program.

Mr. Peter Harty, Consultant, Pharmaceutical Care Management Association, said he looks forward to participating at a future meeting to make a presentation from the perspective of the PBMs. He said Ms. Cahn has come up with a different mousetrap, and if a PBM is willing to accept the terms of this new RFP, that is how the system works. However, he said, he disagrees with Ms. Cahn's spread pricing proposal. He said PBMs are for-profit entities and as such need to make a profit.

Chairman Keiser called on Ms. Shila Thorson, Hospital Preparedness Program Director, State Department of Health, and Ms. June Herman, Regional Vice President, Advocacy, American Heart Association, to provide an overview ([Appendices D](#) and [E](#)) of the state's stroke system of care.

Chairman Keiser said the State Department of Health has done great work to improve the quality of care for individuals who have suffered a stroke. He said it would be helpful to have data regarding how stroke outcomes have changed as a result of this improvement and how North Dakota compares to other states.

Ms. Thorson said as more years of data become available, the department will try to make that data available.

Chairman Keiser called on Ms. Sharon Schiermeister, Interim Executive Director, Public Employees Retirement System, for a presentation ([Appendix F](#)) on uniform group insurance pharmacy benefits, an update on the multistate survey of state health benefits plans, and an update on the status of PERS.

In response to a question from Chairman Keiser, Ms. Schiermeister said due to reduction in force that occurred with the 2017-19 biennium, some state employees lost their jobs. She said if these state employees are non-Medicare eligible, after COBRA eligibility runs out, these individuals are not eligible to pay to participate in the PERS health benefits coverage until they reach age 65, at which time they may be eligible to join the retiree plan. She said the PERS Board looked into the cost of the premium to cover this pre-Medicare group and because the cost was projected to be more than double the regular premium, the PERS Board did not investigate further. She said it would take a change to the law to allow these individuals to return to the PERS health benefits coverage.

In response to a question from Representative Lefor, Ms. Schiermeister said although PERS offers Medicare and Medicare Part D coverage in a bundled plan, PERS does have the authority to offer these as separate plans. However, she said, it would take a change in the law to allow PERS to offer open enrollment for Medicare and Medicare Part D.

Chairman Keiser called on Ms. Shelly Peterson, North Dakota Long Term Care Association, for a presentation ([Appendix G](#)) regarding Medicaid managed care for the long-term care population.

In response to a question from Representative Dobervich, Ms. Peterson said the North Dakota Long Term Care Association has looked at the experience some states have had with managed care for long-term care, including Kansas, Indiana, and Tennessee. Additionally, she said, of the 22 states that have managed care for long-term care, the consistent feedback has been to be cautious and be careful. She said the program for all-inclusive care for the elderly (PACE) has been a successful long-term care managed care program in North Dakota.

Chairman Keiser called on Mr. Tim Cox, Northland PACE Senior Care Services, for a presentation ([Appendix H](#)) regarding Medicaid managed care for the PACE population.

Senator Lee said she hopes the PACE program is successful in expanding to Fargo.

Mr. Cox said the PACE expansion experience has been that as PACE moves into a community, it may contract for some services until it has the critical mass necessary to support hiring those services in-house.

In response to a question from Representative Hogan, Mr. Cox said one PACE eligibility requirement is that the individual be able to live independently in his or her home. He said some behavioral health issues may preclude independent living.

The committee reviewed a bill draft [[19.0149.01000](#)] to update the law regarding the PERS uniform group insurance plans for health benefits and a bill draft [[19.0148.01000](#)] to clarify the authority of the Insurance Commissioner to regulate a PERS self-insurance plan for health benefits.

Ms. Schiermeister provided testimony ([Appendix I](#)) regarding the bill draft addressing regulation of a PERS self-insurance plan for health benefits.

Chairman Keiser requested PERS to work with the Insurance Department to suggest amendments to the self-insurance bill draft at a future meeting.

In response to a question from Representative Kasper, Mr. Sparb Collins, Consultant, Public Employees Retirement System, said PERS periodically looks at whether the state benefits from allowing political subdivisions to participate in the PERS health benefit plan. He said during some periods the political subdivisions are higher risk and some periods they are lower risk.

Chairman Keiser called on Mr. Dave Molmen, Chief Executive Officer, Altru Health System, representing tertiary hospitals in the state, for a presentation ([Appendix J](#)) regarding an urban model concept of providing managed care for the state's Medicaid population.

In response to a question from Representative Rohr, Mr. Molmen said the working group has had 100 percent attendance by the tertiary hospitals, as well as attendance by representatives of two critical access hospitals, and the North Dakota Hospital Association. He said Indian Health Services has not specifically attended the meetings.

In response to a question from Senator Poolman, Mr. Molmen said it is possible there will be a place for the state contracting with managed care organizations to assist with managed care; however, it is the role of the stakeholders to help design the most effective managed care model.

Senator Lee said she struggles to see how hiring another level of administration will help improve care and cut costs.

Representative Dobervich said public health should have a seat at the table in designing a managed care model.

Chairman Keiser called on Mr. Bruce Murry, Executive Director, North Dakota Association of Community Providers, for a presentation ([Appendix K](#)) regarding Medicaid managed care for the developmental disabilities population.

Chairman Keiser requested Mr. Murry present additional information regarding managed care at a future meeting.

Chairman Keiser called on Mr. William R. Sherwin, North Dakota Dental Association, to provide followup information regarding managed care for dental services. Mr. Sherwin requested the dental service providers have a seat at the table in designing a managed care model.

Mr. Sherwin said the administrative burden drives participation in Medicaid, and one upside to managed care is that it works to streamline administrative burdens of reimbursement.

Senator Larsen said the state should consider having a State Dentist, like the state has a State Veterinarian and a State Coroner.

Chairman Keiser called on Mr. Jon Godfread, Insurance Commissioner, for a presentation ([Appendix L](#)) regarding the status of Section 1332 State Innovation Waivers.

In response to a question from Senator Larsen, Mr. Godfread said health shares or cooperatives are popular in some other states, such as Oklahoma, but are not popular in North Dakota.

In response to a question from Chairman Keiser, Mr. Godfread said if North Dakota pursues a waiver under the federal Affordable Care Act, he would be most comfortable with some type of legislation to this effect.

Chairman Keiser called on Representative Hogan to summarize ([Appendix M](#)) the activities of the interim Human Services Committee, Senator Lee to summarize the activities of the interim Health Services Committee, and Representative Lefor to summarize the activities of the Employee Benefits Programs Committee.

No further business appearing, Chairman Keiser adjourned the meeting at 4:35 p.m.

Jennifer S. N. Clark
Counsel

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