

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Wednesday, September 26, 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, Robin Weisz; Senators Dick Dever, Jerry Klein, Oley Larsen, Judy Lee, Carolyn C. Nelson, Nicole Poolman

**Members absent:** Representative Rick C. Becker; Senator Karen K. Krebsbach

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

**It was moved by Senator Larsen, seconded by Senator Dever, and carried on a voice vote that the minutes of the June 28, 2018, and August 22, 2018, meetings be approved as distributed.**

Chairman Keiser reviewed the committee's study charges and the agenda for the meeting.

Chairman Keiser called on Ms. Jill Grossman, Counsel, Legislative Council, to introduce herself to the committee. He said Ms. Grossman is the new legal staff hire to accommodate the promotion of Mr. John Bjornson.

Chairman Keiser called on Representative Hogan for comments ([Appendix B](#)) regarding the interim activities of the Human Services Committee, comments ([Appendix C](#)) by Senator Lee regarding the interim activities of the Health Services Committee, and comments ([Appendix D](#)) by Representative Lefor regarding the interim activities of the Employee Benefits Programs Committee.

**AFFORDABLE CARE ACT STUDY**

Chairman Keiser called on Mr. Jon Godfread, Insurance Commissioner, for the presentation of a status report ([Appendix E](#)) on the federal Affordable Care Act (ACA), including a review ([Appendix F](#)) of the September 19, 2018, Insurance Department bulletin on short-term, limited-duration insurance policies.

In response to a question from Chairman Keiser, Mr. Godfread said he anticipates the four questions an applicant is required to answer as part of a valid short-term, limited-duration insurance policy application will prompt a discussion between the agent and the applicant.

In response to a question from Representative Kasper, Mr. Godfread said he also anticipates a consumer will not sign documents the consumer does not understand and the requirement will prompt a discussion resulting in education of consumers.

In response to a question from Senator Larsen, Mr. Godfread said the benefit plans in the short-term marketplace likely will go a myriad of ways, with flexibility in rating, deductibles, and plan design. He said although comprehensive plans may be included in this marketplace, more will be known at this time next year. He said the short-term plans likely will offer something different from the ACA marketplace. He said in the short-term marketplace, essential health benefits requirement like there is in the ACA marketplace; however, the short-term plans will be required to follow the state health insurance mandates. He provided to the committee a list ([Appendix G](#)) of the state health insurance mandates.

In response to a question from Chairman Keiser, Mr. Godfread said the need to rewrite our state law regarding the regulation of plans in the short-term marketplace is due to the limited authority of the Insurance Department to approve these plans.

Chairman Keiser said New York has banned short-term plans completely in its marketplace. He said, due to the late date in the interim, this committee will not recommend any legislation on this topic.

Chairman Keiser called on Mr. Godfread to present the *North Dakota Insurance Department Proposed 1332 Waiver Analysis Report* ([Appendix H](#)) resulting from the department's state innovation study. Mr. Godfread said the study resulted in narrowing the discussion to two main options--creating an invisible, high-risk pool outside the Comprehensive Health Association of North Dakota (CHAND) and a state-based plan, such as the proposal in Idaho.

Mr. Godfread said he misspoke in August when he suggested the invisible high-risk pool could be operated as part of or administered through CHAND. He said there are a variety of reasons why this option will not work. He said Idaho has been in negotiations with the federal government since May and no decision has been made, so it is likely these state plans will cease to exist. He said it is possible this issue of state plans will be addressed following the November election.

Chairman Keiser said Idaho's proposal moves from a three-tier, age-band rating structure to a four-tier rating structure. He said a favorable aspect of changing the rating factor is it decreases the premium rate for the younger, healthier population; however, the drawback may be that it increases the cost for the older, less healthy sector of the population. He said this distinction would be important for North Dakota to consider as the state has an older population.

Mr. Godfread said the state-based plans would create a market outside the ACA marketplace, with the goal of encouraging the younger population to get insurance.

Senator Lee said the ACA decreased the number of age bands from five to three in part, to spread risk. She said the fairness of more age bands seems sound actuarially and not based on public policy.

Mr. Godfread said it is likely the reason for decreasing the number of age-bands was to drop the rate for the older end of the band with a slight increase in the younger end of that age band. However, he said, in practice, the rate for the older population remained stable and the rate for the younger population increased.

In response to a question from Senator Larsen, Mr. Godfread said the Idaho proposal anticipates a 25 percent reduction in rates for that new marketplace.

Chairman Keiser called on Ms. Donna Novak, Chief Executive Officer and President, NovaRest Inc., for a presentation ([Appendix I](#)) on a reinsurance plan proposal and possible state plan resulting from the Insurance Department's State Innovation report, "Options for Reform of North Dakota's Individual Health Insurance Market."

In response to a question from Chairman Keiser, Ms. Novak said the proposed reinsurance plan is integrated with the existing federal reinsurance program. She said under the federal reinsurance program, an insurer pays 40 percent of everything over \$1 million, with no maximum. She said the federal reinsurance program does not have a maximum.

In response to a question from Chairman Keiser, Ms. Novak said the advance premium tax credit (APTC) is available only to those plans in the ACA marketplace.

Senator Lee provided committee members with a copy ([Appendix J](#)) of the ACA Medicaid eligibility levels effective April 1, 2018.

In response to a question from Chairman Keiser, Ms. Novak said Slide 12 of her presentation clarifies insurers will recognize decreased claims regardless of which of the two attachment points is selected.

In response to a question from Representative Kasper, Ms. Novak said non-ACA plans would subsidize this state reinsurance plan. She said inclusion of the self-insurance health plan market is a policy decision. She said the self-insurance health plan market in North Dakota is smaller than the group market. She said the proposal also includes the small- and large-group markets. She said the broader the assessment is spread, the smaller the financial impact per policy.

In response to a question from Senator Lee, Ms. Novak said the APTC partially funds this program. She said the APTC is a federal program that benefits individuals in the ACA market up to 400 percent of the federal poverty level. She said the proposed reinsurance program would benefit individuals in the individual market over 400 percent. She said individuals in the individual market are not assessed, regardless of whether the individuals fall above or below 400 percent of the federal poverty level. She said the small- and large-group markets and the self-insurance market would not get a benefit from the proposed reinsurance program and it is possible their premiums would increase 1 to 1.5 percent to help pay for the program.

In response to a question from Chairman Keiser, Ms. Novak said if the state was reimbursed only up to 300 percent, leaving federal money on the table and decreasing APTC benefits, this adjustment could be made and may be used to help North Dakota get to a funding neutral position, as required under the 1332 waiver.

In response to a question from Representative Kasper, Ms. Novak said if the third-party administrator (TPA) assessment was zero, it would not make a significant difference. She said she can provide the committee with this information.

Chairman Keiser said because this proposed reinsurance program relies on federal funding, the state should be aware one technique the federal government uses in times of deficit spending is to delay or slowdown payments to states.

Ms. Novak said there may be problems related to cashflow, and possible alternatives might include paying out only what is in the fund or identifying another, possibly temporary, funding source.

Chairman Keiser said the state would need legislation to pursue the 1332 waiver, and a line of credit likely would need to be included in that legislation. He said the provider networks in the state rely on prompt payment and the line of credit could be a safety net to address this concern.

In response to a question from Senator Larsen, Ms. Novak said under the proposed state plan, the carrier would determine which health factors to include in setting rates.

Chairman Keiser said this reinsurance program proposal is expected to decrease the uninsured market by 1 percent, but there may be additional benefits of keeping people in the marketplace or helping people from decreasing their level of insurance, avoiding becoming underinsured.

Ms. Novak said it would require a carrier-by-carrier analysis to determine whether the reinsurance program resulted in savings to a carrier, with some carriers likely recognizing savings and some recognizing additional costs.

In response to a question from Representative Kasper, Ms. Novak said she will provide the committee with data on the number of uninsured in North Dakota.

In response to a question from Chairman Keiser, Ms. Novak said, regarding the proposed state plan and whether the inability to raise premium based on poor health and the ability to decrease premium for good health, the proposed state plan would have higher cost-sharing. She said because the high-cost individuals will have higher out-of-pocket expenses, those individuals likely would prefer to buy a product from the ACA marketplace.

Chairman Keiser called on Mr. Godfread for additional comments regarding the report. Mr. Godfread said the latest United States Census report states 8 percent of the state's population is uninsured. He said North Dakota's uninsured rate is low. He said the reinsurance concept is intended to help provide relief to those individuals in the individual marketplace whose income is too high to receive an APTC. He said he hopes to keep the insured in the marketplace and keep them from becoming uninsured. He said there may be the added benefit of decreasing the underinsured population. He said he would like to provide the individual market an affordable option to having people move to the short-term market or becoming uninsured.

Mr. Godfread said he seeks to add stability to the individual market. He said the proposal needs additional discussion. He said Congress may address the country's faulty health insurance system, but this is a state option to help address problems with the health insurance marketplace.

Mr. Godfread said he will not move forward with a 1332 waiver without legislative approval.

Senator Lee said she is not opposed to the proposal and recognizes the challenges in the individual market.

In response to a question from Senator Lee, Mr. Godfread said he will give additional thought to the concept of leaving some of the federal funds on the table. He said the goal is to address the needs of the individual market above the 400 percent poverty level because the ACA does not cap those premiums, and he would need to evaluate whether decreasing the APTC poverty level would adequately address the issue of addressing premium rates of those individuals over 400 percent.

Senator Lee said there are examples of North Dakota programs that leave some federal money on the table.

Ms. Novak said under the reinsurance proposal two income streams are at issue. She said to decrease the assessment, a change to the reinsurance program is needed. Additionally, she said, the APTC program can be distinguished from the childrens' health insurance program (CHIP), as the APTC is not a matching fund program.

Senator Lee said the APTC program is regressive. She said she wants to make certain we are making decisions in North Dakota based on the value of a dollar in North Dakota versus New York City or San Francisco.

Representative Weisz said the proposed reinsurance program is not income-based.

Mr. Godfread said he has not seen any other state reinsurance waiver applications vary from the 400 percent poverty level for the APTC.

In response to a question from Senator Larsen, Mr. Godfread said those people in ministry and consumer operated and oriented plan health plans likely are considered uninsured and included in the 8 percent uninsured.

Chairman Keiser called on insurers and providers to comment regarding the Insurance Department's State Innovation report.

Ms. Megan Houn, Director of Government Relations, Blue Cross Blue Shield of North Dakota, provided testimony ([Appendix K](#)) regarding the Insurance Department's report.

In response to a question from Representative Weisz, Ms. Houn said she is not opposed necessarily to the proposed reinsurance program imposing assessments against TPAs, but if there is a TPA assessment, it would be important to access all TPAs, not just health insurers acting as TPAs. She said it would be important the assessment be equitable.

In response to a question from Chairman Keiser, Ms. Houn said upon reviewing the report, her team did not consider the attachment point as one of the most important issues.

Ms. Novak said the benefits of the proposed reinsurance program would apply to individual ACA plans both in and outside the exchange. However, she said, this does not include grandfathered and transition plans.

Mr. Jay McLaren, Vice President of Public Policy and Government Relations, Medica, provided testimony regarding the Insurance Department's report. He said he agrees with Ms. Houn's remarks. He said the reinsurance program proposal is based on claims-based reinsurance, and the industry likes this approach. The other model, he said, which is disease-based or condition-based, is not as appealing. He said Alaska's state plan, which uses a disease-based model, works in Alaska because that state has a single carrier. He said North Dakota, however, has multiple carriers.

Mr. McLaren said his company operates in nine states and the funding mechanism discussion is universal. He said he is agnostic on the funding mechanism being proposed by the Insurance Department. He said Michigan passed a tax on TPAs, and although the tax was upheld in court, the Supreme Court did not opine on this issue. He said if a tax is applied to self-insurance plans, litigation is likely. He said it may be helpful to have funding contingency plans for litigation as part of the legislation.

Mr. McLaren said he commends the Insurance Department for trying to increase the younger population's participation in the health insurance marketplace. He said perhaps creating a separate risk pool could be considered.

In response to a question from Chairman Keiser, Mr. McLaren said he also is agnostic on the position of attachment points. He said it is a matter of what the state can afford. He said it is the funding source discussion that is challenging.

In response to a question from Senator Larsen, Mr. McLaren said federal law sets the metallic plan requirements and the essential health benefits. He said at the state level, flexibility exists in plan design. He said although he supports states exploring plan design options, Medica is required to follow the federal essential health benefits and other ACA requirements. He said Medica and other health insurers had seats at the table when the ACA was drafted and essential health benefits were considered.

Ms. Molly Carmody, Legislative Affairs Specialist, Sanford Health Plan, provided written testimony ([Appendix L](#)) from Ms. Lisa Carlson, Senior Director of Market Strategy, Sanford Health Plan, regarding the Insurance Department's report.

Mr. Godfread said the Insurance Department worked with the carriers to develop the plan and will continue to work with these carriers. The attachment point, he said, will impact the affect on premium and the cost of funding the reinsurance program.

Chairman Keiser said if the intent is for the proposed reinsurance program to apply to ACA plans, a federal waiver is required. He said this proposal is designed to meet the federal 1332 waiver requirements.

Senator Lee said the proposed reinsurance program appears to be a necessary proposal to address problems in the individual market. She said perhaps the 200 percent attachment point should be the starting point, recognizing it may move down as a result of the legislative process.

Chairman Keiser said he applauds the Insurance Department and Ms. Novak in designing a plan that addresses some of the state's needs and meets the federal 1332 waiver requirements.

Representative Kasper said he thinks the federal Employee Retirement Income Security Act of 1974 (ERISA) prohibits assessments on self-insurance plans. He said he has reservations about including the assessments on these ERISA Plans.

### MANAGED CARE STUDY

Chairman Keiser called on Dr. Craig Lambrecht, President, Sanford Health Bismarck, ([Appendix M](#)) and Ms. Cristal Thomas Gary, Principal, Leavitt Partners, ([Appendix N](#)) for a presentation regarding the status of the activities of the North Dakotans for the Advancement of Care Medicaid Work Group.

In response to a question from Chairman Keiser, Dr. Lambrecht said the value of using the collaborative effort of the hospitals, is that all hospitals recognize statewide coverage and access for North Dakotans is paramount and all the providers, institutions, and stakeholders need to participate.

In response to a question from Representative Kasper, Dr. Lambrecht said hospitals are in a highly regulated business and profit margins are very small. He said the hospitals' biggest concern is the patients. He said at the end of the day, the system needs to be a quality product. He said if the Medicare 340B drug pricing program and Medicaid lose funding, the hospitals have no bottom line. He said the hospitals need a seat at the table to be part of decisionmaking and the design of incentives.

In response to a question from Representative Kasper, Dr. Lambrecht said, regarding whether cost reductions will result from a transition to an accountable care organization (ACO) model, having the providers at the table will facilitate a discussion about controlling costs, such as hospitals case managing patients, and will ensure continuity.

Chairman Keiser said the Public Broadcasting System recently aired a television special on the Mayo Clinic and how to look at patients first and controlling costs second versus controlling costs first.

Dr. Lambrecht said smartphones are an example of how providers may be able to improve care without increasing billing.

In response to a question from Representative Dobervich, Dr. Lambrecht said because the stakeholders in the workgroup includes the North Dakota Hospital Association, critical access hospitals (CAHs) were included in the collaborative effort. He said it is important to keep CAHs and Indian Health Services viable. He said as continuity with CAHs and Indian Health Services is strengthened, the system will improve.

In response to a question from Representative Kasper, Ms. Thomas Gary said the current proposal does not include the detail of who would be the "convener" under the ACO model. She said the workgroup has not considered yet whether any in-state organizations are well suited to fulfill the role of convener, but this may be clarified through a request for information. She said Leavitt Partners does not contract to perform convener services.

In response to a question from Chairman Keiser, Ms. Thomas Gary said although the workgroup's proposal excludes the developmentally disabled population, the proposal could be revised to ensure all population groups are addressed. She said there are pros and cons to single ACO versus multiple ACO models.

Chairman Keiser said he expects providers all would want to participate in an ACO model.

Ms. Thomas Gary said she proposes an inclusive ACO model.

In response to a question from Representative Kasper, Ms. Thomas Gary said the proposed ACO model does not make a recommendation regarding who would provide pharmacy benefits. She said the proposal recognizes the importance of managing pharmacy costs and maximizing drug effectiveness. She said this model does not delve into the details of how pharmacy benefits management would work.

In response to a question from Chairman Keiser, Ms. Thomas Gary said the details of the financial and payment model regarding risk has not been resolved.

Senator Lee said the health information hub is in place but not funded. She said if the state funded this hub, it would help provide legislators the data necessary to evaluate similar proposals.

Chairman Keiser called on Ms. Shelly Ten Napel, Chief Executive Officer, and Ms. Jody Link, Director of Policy and Communications, Community HealthCare Association of the Dakotas (CHAD), for a presentation ([Appendix O](#)) regarding recommendations for improving health outcomes and reducing costs.

In response to a question from Senator Larsen, Ms. Ten Napel said a health home program could be provided by a primary provider or community health program.

In response to a question from Representative Lefor, Ms. Ten Napel said she can provide the committee additional details regarding savings. She said the 90 percent federal match is available for the first 8 quarters of the program. She said after 2 years, the federal reimbursement returns to the regular reimbursement rate. She said the increased federal reimbursement is designed to encourage the states to experiment and try something new.

In response to a question from Chairman Keiser, Ms. Ten Napel said she is familiar with the health home efforts of Blue Cross Blue Shield of North Dakota as this program is similar in concept. She said from the provider perspective, some areas of the programs could align.

Chairman Keiser called on Mr. Jeffrey C. Greene, Chief Executive Officer, MedEncentive, LLC, for a presentation ([Appendix P](#)) regarding health care cost containment strategies through the Trilateral Health Accountability Model.

In response to a question from Senator Lee, Mr. Greene said the small-scale trials he referenced in his presentation were in the general population; however, the pilot project was in the public employee and Medicaid populations. He said providers reported doctors are fully supportive of the model once the doctors realize how easy the model is to implement and how effective it is.

In response to a question from Representative Dobervich, Mr. Greene said he is in the process of publishing the results of 13 years of effort. He said these findings will be presented next month. He said October is health literacy month. He said he can provide the committee a prerelease copy of the report. He said the University of Kentucky School of Medicine and other third parties independently are evaluating the report and data.

In response to a question from Chairman Keiser, Mr. Greene said the cost to implement the model is between \$80 to \$100 per plan member.

In response to a question from Representative Dobervich, Mr. Greene said studies have been done in a variety of populations, some with more education than others.

### **PUBLIC EMPLOYEES RETIREMENT SYSTEM HEALTH BENEFITS STUDY**

The Legislative Council staff reviewed a bill draft [[19.0289.01000](#)] updating the uniform group insurance law and revising the requirements and regulation of a self-insurance health plan for state employees. She said this bill draft is a combination of the two bill drafts the committee considered during the interim.

**It was moved by Representative Kasper, and seconded by Representative Lefor, that the bill draft relating to the uniform group insurance law and regulation of self-insurance health plans be approved and recommended to the Legislative Management.**

Representative Weisz said one of the benefits of a self-insurance health plan is it is not locked into state health insurance mandates. He said he does not want to limit the ability of the Public Employees Retirement System (PERS) to design a health plan.

Mr. Scott Miller, Executive Director, Public Employees Retirement System, said he had an opportunity to review the bill draft and he does not have any concerns.



Representative Devlin said he supports the use of the emergency clause, however, it may be more beneficial to giving the Insurance Department more statutory guidance for adopting rules as to what plans may be exempt.

Mr. Jeff Ubben, Deputy, Insurance Department, said the department, which was involved in the drafting of the bill draft, finds the bill draft to be sound. He said if PERS moves to a self-insurance health plan without these legislative changes, there will be no regulation of that plan. He said the regulation of self-insurance health plans is important to help avoid problems the PERS self-insurance health plan experienced the 1980s.

In response to a question from Senator Lee, Mr. Ubben said he envisions drafting the self-insurance health plan rules based on the existing multiple employer welfare arrangements (MEWA) rules. He said there would be some carve outs from the MEWA rules. He said a benefit of keeping the state health benefit mandates in the self-insurance health plan is it will allow the comparison of fully-insured to self-insurance.

In response to a question from Senator Poolman, Mr. Ubben said without this bill draft, a PERS self-insurance health plan would not be regulated by ERISA or the state's MEWA rules and it is unclear who, if anyone, would regulate the financial requirements of this plan as the law is silent on this matter.

Chairman Keiser said under existing law, PERS does not have authority to move from essential health benefits, and existing law provides a PERS self-insurance health plan must include most of the state health benefit mandates. He said this bill draft gives the Legislative Assembly the authority to determine health benefits. He said current law, would not permit a PERS self-insurance health plan. He said representatives of the carriers testified the carriers do not have large groups that are fully-insured, as all use self-insurance.

Mr. Ubben said a PERS self-insurance health plan would not be subject to the consumer protections a fully-insured plan offers. He said allowing the Insurance Department to regulate a PERS self-insurance health plan provides consumer protections.

Representative Kasper said self-insurance health plans, have the benefit of the oversight of the Insurance Department. He said MEWAs also have the benefit of the oversight of the Insurance Department. He said it is important to have the Insurance Department regulate a PERS self-insurance health plan.

**After this discussion, the motion carried on a roll call vote.** Representatives Keiser, Hogan, Kasper, and Lefor and Senators Dever, Klein, Larsen, Lee, Nelson, and Poolman voted "aye." Representatives Devlin, Dobervich, and Weisz voted "nay."

Chairman Keiser called on Mr. Miller and Ms. Sharon Schiermeister, Chief Operating Officer, Public Employees Retirement System, for an update ([Appendix Q](#)) on the health insurance contract renewal and rebid process and the status of retiree drug benefits and contract renewal.

In response to a question from Representative Kasper, Mr. Miller said during the health insurance contract renewal negotiations, he and his staff were the primary negotiators for PERS. He said PERS worked with Sanford Health Plan to identify the differences in projections, resulting in Sanford decreasing its renewal projection from 14.5 percent and the PERS consultant increasing its projection to 13.3 percent. He said an example of issues addressed in negotiations was that several political subdivisions have left the PERS uniform group health plan.

In response to a question from Representative Lefor, Mr. Miller said cost is the primary reason for the political subdivisions leaving the PERS health plan. He said he is aware of one political subdivision that moved to a self-insurance health plan and two that moved to fully-insured health plans.

In response to a question from Chairman Keiser, Mr. Miller said initially PERS leaned toward putting the health plan out to bid. He said upon learning this information, the carrier responded with a better offer.

Chairman Keiser said the experience of the carrier responding with a better offer may suggest PERS should have put the health insurance plan out to bid.

Chairman Keiser said Representative Al Carlson has raised the issue of the bundled Medicare part D. He said the issue arose because of constituent concerns regarding the PERS part D program reimbursement rates for main street pharmacies in small towns.

Ms. Schiermeister said the PERS Board will include Medicare part D on the agenda for its regular October meeting.

Ms. Schiermeister said if a retiree is covered under PERS retirement benefits, that retiree receives a retiree health insurance credit of \$5 for every year of service, which is put toward the \$285 part D premium.

Chairman Keiser said if employees are paying their money, the employees should have a say in how that money is used.

In response to a question from Representative Kasper, Ms. Schiermeister said she expects there are drug rebates under the part D plan. She provided this information to the committee.

In response to a question from Senator Nelson, Ms. Schiermeister said the key to receiving the retiree health insurance credit is that the retiree must be under the PERS retirement plan. She said, for example, legislators and teachers are not covered under the retirement plan.

### **COMMITTEE DISCUSSION**

**It was moved by Senator Nelson, seconded by Senator Klein, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management.**

**It was moved by Senator Klein, seconded by Senator Nelson, and carried on a voice vote that the committee be adjourned sine die.**

Chairman Keiser thanked the committee members for their hard work and recognized the full participation of stakeholders in the premeeting planning sessions he held to prepare for each of the eight committee meetings during the interim.

No further business appearing, Chairman Keiser adjourned the committee sine die at 3:00 p.m.

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Jennifer S. N. Clark  
Counsel

ATTACH:18