

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

BUDGET COMMITTEE ON HEALTH CARE

Tuesday, April 30, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Judy Lee, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Judy Lee, Gary A. Lee, Michael Polovitz, Ken Solberg, Russell T. Thane; Representatives Rick Berg, Audrey B. Cleary, William R. Devlin, David Drovdal, Jim Kasper, Carol A. Niemeier, Kenton Onstad, Chet Pollert, Todd Porter, Clara Sue Price, Robin Weisz

Members absent: Senator Dennis Bercier; Representative George Keiser

Others present: See Appendix A

It was moved by Representative Drovdal, seconded by Representative Berg, and carried on a voice vote that the minutes of the February 12, 2002, meeting of the Budget Committee on Health Care be approved as distributed.

MANDATED HEALTH INSURANCE COVERAGE STUDY

At the request of Chairman J. Lee, the Legislative Council staff presented a memorandum entitled *Review and Analysis of Legislative Measures Mandating Health Insurance Coverage*. The Legislative Council staff said North Dakota Century Code Section 54-03-28 creates a review and analysis process for legislative measures mandating health insurance coverage. However, certain issues may require legislative consideration to ensure that the proposed review and analysis process works in a timely and cost-effective manner. The issues which may require legislative consideration relate to the time required for completion of the review and analysis process and the cost of preparing a cost-benefit analysis for each proposed legislative measure mandating health insurance coverage. Possible legislative consideration includes the adoption of legislative rules, enacting statutory changes, or including cost-limiting provisions in the contract to be entered into between the Legislative Council and an actuarial consultant. Statutory changes could include amending the review and analysis process to make it similar to the process used in North Dakota for legislative measures affecting the workers' compensation fund and the Public Employees Retirement System. Statutory changes could also include enacting a process similar to that used in other states to analyze

health insurance mandates. Other states considered include Arkansas, Hawaii, Kansas, and Louisiana.

Chairman J. Lee called on Mr. Lou McPhail, Legal Counsel, Insurance Department, who presented testimony relating to the role of the Insurance Department in the review and analysis process for legislative measures mandating health insurance coverage. Mr. McPhail said the committee should consider statutory changes to allow more time to review bills and complete the required cost-benefit analysis. As an example of statutory changes which could be considered by the committee, Mr. McPhail distributed a copy of Kansas Statutes Section 40-2248, which provides that it is the responsibility of the person or organization which seeks sponsorship of a bill that mandates health insurance coverage to provide an actuarial impact report to the legislative committee considering the bill. He said the Insurance Department's role in the review of future legislative measures should be advisory in nature and the ultimate decision as to whether a proposed measure or amendment should be accompanied by a cost-benefit analysis should be left to a legislative committee.

Senator J. Lee said the Kansas statute may restrict legislators' ability to introduce legislation because it may be difficult for an individual legislator to obtain such a cost-benefit analysis.

In response to a question from Senator J. Lee, Mr. McPhail said the contract between Milliman USA and the Insurance Department for the study of existing health insurance mandates will cost less than the amount budgeted. He said it may be possible for some of the remaining money to be used by the Insurance Department to pay for cost-benefit analyses of proposed legislative measures during the 2003 legislative session if the \$55,000 appropriation from the insurance regulatory trust fund for that purpose is not adequate.

In response to a question from Representative Niemeier, Mr. McPhail said the Workers Compensation Bureau administers the workers' compensation insurance program, but the Insurance Department does not administer a health insurance program. He said the Insurance Department merely regulates the insurance industry in North Dakota, thus differentiating its role from that of the Workers Compensation Bureau. He said that although it may be appropriate

for the Workers Compensation Bureau to review all legislation and determine if it has an impact on the workers' compensation fund, it would not be appropriate for the Insurance Department to review all legislation to determine if it includes a health insurance mandate.

Representative Berg said to facilitate the process of reviewing legislation to determine if it contains a health insurance mandate, it would be beneficial for the definition of "health insurance mandate" to be clarified. Mr. McPhail said at the October 2001 meeting of the Budget Committee on Health Care, he presented information regarding the definition of "health insurance mandate" and identified the 24 health insurance mandates contained in North Dakota law.

Chairman J. Lee called on Mr. William F. Bluhm and Ms. Leigh M. Wachenheim, Principals, Milliman USA, Consultants and Actuaries, Minneapolis, Minnesota, who presented information regarding services which could be provided by Milliman USA. A copy of their presentation is on file in the Legislative Council office. Mr. Bluhm said Milliman USA has assigned three senior staff members to work on the current study of health insurance mandates. He said those three staff persons will likely be involved in performing future analyses of legislative measures if the Legislative Council enters into a contract with Milliman USA for those services. He said Milliman USA is a large international firm with extensive experience performing reviews and analyses relating to health insurance and health care topics. He said as part of the current study of existing health insurance mandates, the company is developing a scoring system which could also be used for reviewing future legislative mandates. He said the scoring system will consider the following items:

1. Level of demand.
2. Impact of not providing treatment.
3. Impact of mandating the benefit.
4. Premium cost impact on stakeholders.
5. Impact of not covering the benefit under private insurance.

Ms. Wachenheim said the analysis Milliman USA is proposing will address the proposed impact on health insurance premiums, but will also consider other impacts, such as reduced sick days or disability benefits. She said Milliman USA has completed similar projects for the states of Minnesota, Texas, and Ohio, and the company has a wide array of resources and professional expertise to draw upon to meet the needs of North Dakota. She said the time required to complete an analysis and the actual cost will be dependent upon the specific mandate, its complexity, the availability of information, and the advance notice given to Milliman USA. She said the first one or two analyses completed by Milliman USA may cost more and require more time than subsequent analyses. She said most analyses should be

completed within two to three weeks at a cost of \$4,000 to \$8,000.

Representative Berg said the Legislative Assembly may prefer a more limited analysis which would examine only the potential impact on insurance premiums. Ms. Wachenheim said such an analysis could be done by Milliman USA and could be completed in less time and at less cost than a more complete analysis.

Representative Berg said rather than paying for each analysis based on an hourly rate, it may be beneficial for both Milliman USA and the Legislative Council to consider entering into a flat rate contract which would include a minimum payment, even if no analyses were done, and a maximum payment, regardless of the number of analyses.

In response to a question from Representative Onstad, Ms. Wachenheim said Milliman USA is not planning to develop a composite score for each measure analyzed. Ms. Wachenheim said each measure analyzed would receive a score for each of the various analysis categories previously discussed. She said a composite score could be developed by applying weights to each category.

Chairman J. Lee distributed a Legislative Council memorandum entitled *Legislative Procedural Requirements for Analyzing Mandated Health Insurance Coverage* and related amendments to Senate and House Rules 402. The proposed rules change would provide that a bill mandating health insurance coverage of services or payment for specified providers of services may not be introduced after the fifth legislative day. Chairman J. Lee said the rules change would ensure that bills mandating health insurance coverage be introduced at an early date to allow more time for the review and analysis process, but would still allow adequate time for legislators to introduce such legislation.

Senator Solberg said adoption of the proposed rules will not address the issue of the limited time available for completing a cost-benefit analysis of amendments.

Senator J. Lee said adoption of the proposed rules may not be the only action required to ensure that the review and analysis process works efficiently and effectively, but the proposed rules change will make the process more workable.

In response to a question from Representative Weisz, Mr. Jim W. Smith, Legislative Budget Analyst and Auditor, Legislative Council, said that if a bill introduced after the five-day deadline is later determined by the committee to include a health insurance mandate, an analysis could be requested at that time.

Representative Price said the proposed rule is necessary to make the review and analysis process function effectively during the 2003 legislative session. She said statutory changes may be required to change the process for subsequent legislative sessions.

It was moved by Representative Berg, seconded by Representative Price, and carried on a roll call vote that the Budget Committee on Health Care recommend the proposed amendments to Senate and House Rules 402 and request that they be forwarded to the Legislative Management Committee for consideration at its next meeting. Senators J. Lee, G. Lee, Polovitz, Solberg, and Thane and Representatives Berg, Cleary, Devlin, Drovdal, Kasper, Niemeier, Onstad, Pollert, Porter, Price, and Weisz voted "aye." No negative votes were cast.

Representative Berg said the Budget Committee on Health Care may want to consider recommending legislation that would enact a process similar to that used in Kansas where health insurance mandates are enacted only on a trial basis and are applied only to the state employees health insurance plan. He said although Kansas uses a one-year trial period, it may be more appropriate for North Dakota to consider a two-year trial period because of our biennial legislative sessions. Representative Berg requested that the Legislative Council staff prepare such a bill draft for consideration by the committee at its next meeting.

Senator Solberg said the committee should consider legislation to require that any health insurance mandate passed by the Legislative Assembly has a delayed implementation date to allow for a complete and thorough analysis of the costs and benefits of the measure. He said it would also be beneficial for bills which include a health insurance mandate to have a sunset provision, thereby requiring that the bill be reviewed at a later date after information is available regarding the actual costs and benefits of the mandate. Senator Solberg requested that the Legislative Council staff prepare two bill drafts--one requiring a delayed implementation date for health insurance mandates and one requiring a sunset provision for health insurance mandates--for consideration by the committee at its next meeting.

COORDINATION OF MEDICAID AND HEALTHY STEPS PROGRAMS STUDY

Chairman J. Lee called on Mr. David Zentner, Director, Medical Services, Department of Human Services, who presented information on the status of Medicaid plan amendments to eliminate the asset test for Medicaid eligibility, the development of a combined application form for the Medicaid and Healthy Steps programs, and other issues relating to the committee's study. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said all necessary amendments to the state children's health insurance program (CHIP) and the Medicaid program have received approval from the Centers for Medicare and Medicaid Services. He said the combined Medicaid and Healthy Steps application form has been completed and is in the final stages of printing. A copy of the combined application form was distributed to committee members along with Mr.

Zentner's testimony and is attached as Appendix B. He said the combined application form will be available for distribution on May 1, 2002.

Mr. Zentner said the asset test for children and family Medicaid coverage was eliminated on January 1, 2002. He said the department originally estimated that about 960 children would transfer from Healthy Steps to Medicaid during calendar year 2002 as a result of eliminating the asset test. He said in addition, it was estimated that another 700 adults and children would become eligible for Medicaid as a result of eliminating the asset test. He said for the first four months of the year, a monthly average of 179 adults and 333 children, who previously would have been ineligible due to their asset level, were enrolled in the Medicaid program. He said contrary to projections, there has not been a decline in Healthy Steps enrollment.

Mr. Zentner said the department continues to review the definition and treatment of income for various economic assistance programs. He said federal requirements for different programs complicate the department's ability to standardize the definition of income.

Mr. Zentner said that in order to expand the Healthy Steps program by adding family health coverage through employer-sponsored insurance, the department would need to meet a benchmark equivalency test. He said such a test requires that benefits provided by an employer-sponsored plan meet or exceed a benchmark plan. He said a cost-effective test must also be met to ensure that the subsidy paid to employers is not greater than what the state would have paid to enroll the children in the Healthy Steps program. He said several states have implemented this type of program, but due to the complicated nature of the administrative requirements have experienced only minimal success.

In response to a question from Representative Kasper, Mr. Zentner said in order for the Department of Human Services to pursue adding family health insurance coverage to the Healthy Steps program through subsidizing employer-sponsored insurance, the department would need specific legislative authorization.

In response to a question from Representative Price, Mr. Zentner said other states that have expanded the state CHIP to provide family health insurance coverage through employer-sponsored insurance have found it difficult to design wraparound coverage to meet the benchmark equivalency requirements due to the myriad of health insurance plans offered by employers.

Representative Kasper said despite the administrative difficulties associated with offering family health insurance coverage through employer-sponsored insurance, the issue may have merit. He said the state could save money if employer dollars could be used to assist in the purchase of insurance coverage

for people who would otherwise be insured through a program funded entirely by the state.

Mr. Zentner said if the Legislative Assembly is interested in providing family health insurance coverage through employer-sponsored insurance, it may be more feasible to consider pursuing a Section 1115 Medicaid demonstration waiver rather than expanding the Healthy Steps program.

Chairman J. Lee complimented the Department of Human Services on its efforts to develop the combined Healthy Steps and Medicaid application form and its efforts to obtain a federal waiver to allow the state to claim the CHIP federal matching percentage for Medicaid recipients previously eligible for the Healthy Steps program.

PRESCRIPTION DRUG PRICES STUDY

Chairman J. Lee called on Mr. Rod St. Aubyn, Director, Government Relations, Blue Cross Blue Shield of North Dakota, who presented information regarding factors contributing to increases in health insurance premiums. A copy of the information presented is on file in the Legislative Council office. Mr. St. Aubyn said there are several factors that contribute to increasing health insurance premiums, including increasing utilization of services, increasing cost per service, and increasing costs for prescription drugs. Mr. St. Aubyn presented information which showed changes in three components of premium costs--institutional costs, professional costs, and prescription drug costs. Mr. St. Aubyn said the rate of increase in payments for prescription drugs is the highest of the three components, increasing from \$10.88 per member per month in 1997 to \$18.76 per member per month in 2001. He said there has been a shift in expenditures from other health care services to drugs as a percentage of total payments made by Blue Cross Blue Shield of North Dakota from 1997 to 2001.

Representative Onstad said Blue Cross Blue Shield of North Dakota is able to negotiate reimbursement rates for institutional and professional services. He said Blue Cross Blue Shield's ability to control these costs may have helped limit their increase. He said Blue Cross Blue Shield of North Dakota may find it more difficult to limit pharmaceutical costs in the same fashion as other health care costs. Mr. St. Aubyn said Blue Cross Blue Shield of North Dakota has taken steps, such as the implementation of drug formularies, to limit the increase in drug expenditures.

Representative Porter said the information presented by Blue Cross Blue Shield of North Dakota shows total per member per month costs of approximately \$120. He said the cost of an average Blue Cross Blue Shield of North Dakota policy is much higher than this amount and asked what constitutes the difference. Mr. St. Aubyn said the \$120 per month figure represents the cost per member, not per policy. He said many policies cover several persons.

Representative Porter requested information on average premiums for Blue Cross Blue Shield of North Dakota single and family policies. Mr. St. Aubyn said he will provide the information to the committee at its next meeting.

Representative Kasper said doctors must be held accountable if their prescribing practices do not meet standards or if they are issuing prescriptions based on patient requests. Mr. Dan Ulmer, Assistant Vice President, Government Relations, Blue Cross Blue Shield of North Dakota, said Blue Cross Blue Shield of North Dakota compiles information on physician prescribing practices, which shows comparisons to peer physicians. He said, however, the information is provided to doctors for educational purposes and is not used in a punitive fashion.

Representative Porter said the 2001 Legislative Assembly authorized issuance of a health insurance policy which was subject to limited mandates. He asked if Blue Cross Blue Shield of North Dakota is marketing such a limited coverage plan. Mr. St. Aubyn said that Blue Cross Blue Shield of North Dakota already offers a "basic" plan, which was previously authorized by the Legislative Assembly. He said there has been very little consumer interest in the "basic" plan and Blue Cross Blue Shield of North Dakota chose not to offer the newly authorized limited coverage plan. Mr. St. Aubyn pointed out that the legislation authorizing the issuance of the limited coverage plan was permissive in nature and did not require insurance companies to offer such a plan.

The committee recessed for lunch from 12:00 noon to 1:00 p.m.

Chairman J. Lee called on Mr. Zentner who presented information on the status of the Medicaid prescription drug budget and actions implemented or under consideration by the department to reduce the anticipated budget shortfall. A copy of the information presented is on file in the Legislative Council office. Mr. Zentner said the department's 2001-03 biennium Medicaid prescription drug budget was initially set at \$79.1 million, of which \$18.5 million was from the general fund. He said based on current expenditure levels, it is estimated that drug expenditures for the 2001-03 biennium will total at least \$84.7 million, of which \$20.8 million will be from the general fund. Mr. Zentner said the department, with the assistance of the Drug Utilization Review Board, has initiated several changes designed to slow the rate of increase in Medicaid prescription drug expenditures, including:

- Reviewing the prescribing patterns of physicians and sending correspondence to physicians asking them to consider changing their prescribing practices in ways that will not affect the quality of services provided to Medicaid enrollees.
- Starting a physician education program to persuade physicians to prescribe the most cost-effective proton pump inhibitor class

medication that will achieve the desired therapeutic results.

- Adding additional edits to the Medicaid payment system to ensure that medications are used within medical guidelines for safety, age, gender, and dosage.
- Implementing a disease management program for individuals with certain diseases to ensure that they are provided appropriate drug therapy and receive instruction on how to better self-manage their medical conditions.

Mr. Zentner said the following options have been considered but not yet implemented by the department:

- Instituting a prior authorization process for certain classes of drugs.
- Establishing a state maximum allowable cost pricing formula for certain drugs that have generic equivalents.
- Instituting copayments for Medicaid enrollees. The maximum copayment would be \$3 per prescription for brand name drugs. Children, pregnant women, and institutionalized individuals would not be subject to copayments.
- Establishing a preferred drug list for certain classes of drugs. Drugs not on the list would be subject to prior authorization. Drug manufacturers with drugs on the preferred list would be asked to provide supplemental rebates.
- Reducing the formula used to pay for drugs provided by participating pharmacists.
- Restricting the number of prescriptions any one recipient could receive in a given month.

In response to a question from Representative Devlin, Dr. Brendan Joyce, Administrator of Pharmacy Services, Department of Human Services, said the Drug Utilization Review Board met on April 29, 2002, and supported the following actions which could be implemented to help slow the rate of increase of Medicaid drug expenditures:

- Establishing a state maximum allowable cost pricing formula for certain drugs with generic equivalents.
- Establishing a preferred drug list.
- Establishing a prior authorization process.
- Requiring copayments for brand name drugs for certain Medicaid enrollees.
- Requiring prior authorization for use of out-of-state pharmacies.
- Expanding educational activities.

Representative Berg asked if physician groups have provided input to the department regarding how prescribing practices can be affected to reduce Medicaid drug costs. Mr. Zentner said some input has been received from the North Dakota Medical Association and also from the physician representatives on the Drug Utilization Review Board.

In response to a question from Representative Polovitz, Mr. Zentner said total Medicaid drug costs are going up 15 to 20 percent per year.

In response to a question from Senator Solberg, Mr. Zentner said approximately 47,000 people are eligible for Medicaid prescription drug coverage in North Dakota.

In response to a question from Senator Solberg, Mr. St. Aubyn said Blue Cross Blue Shield of North Dakota provides coverage to approximately 285,000 individuals.

OTHER COMMITTEE DUTIES

Chairman J. Lee called on Ms. Constance B. Kalanek, Executive Director, North Dakota Board of Nursing, who presented information on the board's study of nursing education requirements and the nursing shortage in the state. A copy of the information presented is on file in the Legislative Council office. Ms. Kalanek said pursuant to an agreement entered into between the Board of Nursing and the University of North Dakota Center for Rural Health, the center will perform the following activities:

- Establish and maintain a data base on nursing supply and demand in the state.
- Study the nursing shortage in North Dakota, with particular attention to workforce implications for rural communities.
- Provide progress reports to the Board of Nursing and to the Legislative Council.
- Present analyzed data to a panel of stakeholders.

Ms. Kalanek said the center's nursing workforce study efforts will be guided by a panel of stakeholders. She said establishment of this panel is underway and approximately 30 individuals have agreed to participate. She said in order to fund the project, the Board of Nursing has increased renewal, endorsement, and license examination fees by \$20 per two-year period beginning July 1, 2002. She said in addition, the board has committed \$110,000 to the project. She said the Board of Nursing has also applied for grant funding from many organizations but has been unsuccessful in obtaining grant funding for the project.

Ms. Kalanek also discussed the status of rule changes to facilitate the North Dakota licensure of nurses licensed to practice in other states. Ms. Kalanek said the Board of Nursing has joined the nurse license compact administrator group, which consists of 17 states including North Dakota. Ms. Kalanek said in January 2002 the Board of Nursing became a participant in a national data base of nurse licensure information. She said rules relating to the North Dakota licensure of nurses licensed to practice in other states should be available for public hearing in September 2002.

In response to a question from Senator G. Lee, Ms. Kalanek said the Board of Nursing receives enrollment reports from nurse education programs in

the state. She said 90 percent of the programs in the state have recently increased enrollment.

In response to a question from Representative Price, Ms. Kalanek said board rules relating to the transitional licensure of nurses should take effect June 1, 2002.

COORDINATION OF BENEFITS FOR CHILDREN WITH SPECIAL NEEDS STUDY

Chairman J. Lee called on Mr. St. Aubyn who presented information on the activities of the Blue Cross Blue Shield of North Dakota task force on augmentative communication devices. A copy of the information presented is on file in the Legislative Council office. Mr. St. Aubyn said Blue Cross Blue Shield of North Dakota has conducted a series of meetings with parents, therapists, providers, public school staff, Medicaid staff, and Blue Cross Blue Shield staff to explore issues relating to benefits for augmentative communication devices and other services provided to children with special needs. He said one of the goals of the meetings was to understand the respective roles of insurance carriers, parents, schools, and government programs relating to the purchase of augmentative communication devices. He said that at this time the task force has not identified the need for specific legislation. He said if legislative action is needed, he will inform the Budget Committee on Health Care at a future meeting.

Chairman J. Lee called on Mr. Kevin Olson, Bismarck, who commented on the work of the Blue Cross Blue Shield of North Dakota task force on augmentative communication devices. Mr. Olson said he has served on the Blue Cross Blue Shield of North Dakota task force and is the parent of a child who uses an augmentative communication device. He said better coordination is needed between schools and health care providers in the purchase of augmentative communication devices. He said augmentative communication devices are medically necessary in many cases.

COMMITTEE DISCUSSION

Representative Onstad requested that at the next committee meeting Milliman USA provide an example of the type of analysis proposed for future legislative measures, including an example of the analysis process and the types of information considered.

Representative Berg requested that at the next committee meeting a representative of the Department of Human Services present information on the number of children who have been enrolled in Medicaid as a result of the elimination of the asset test and the number of those children who did not previously have insurance coverage.

Representative Niemeier requested that at the next committee meeting representatives of the Department of Human Services present information regarding the number of people who may become eligible for coverage under the Healthy Steps program if income eligibility criteria were increased to 150 percent, 175 percent, and 200 percent of the federal poverty level, based on net income. She also requested that the monthly income amounts be identified for each income eligibility level.

Representative Pollert requested that at the next meeting a representative of the Department of Human Services provide information relating to the number of persons eligible for Medicaid drug coverage, including utilization information, demographic information, and reasons why the number of Medicaid-eligible persons is increasing.

Representative Kasper requested that a representative of Blue Cross Blue Shield of North Dakota present information on the coverage included in the company's "basic" insurance policy.

Chairman J. Lee announced that the committee's next meeting is tentatively scheduled for June 20, 2002.

The meeting was adjourned subject to the call of the chair at 2:20 p.m.

Joe R. Morrisette
Senior Fiscal Analyst

Jim W. Smith
Legislative Budget Analyst and Auditor

ATTACH:2