

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Thursday, September 6, 2012
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, Donald L. Clark, Robert Frantsvog, Eliot Glassheim, Lee Kaldor, Jim Kasper, Gary Kreidt, Ralph Metcalf, Marvin E. Nelson, Karen M. Rohr, Robin Weisz; Senators Dick Dever, Jerry Klein, Judy Lee, Tim Mathern

Members absent: Representatives Nancy Johnson, Lisa Meier, Lonny B. Winrich; Senator Spencer Berry

Others present: See [Appendix A](#)

It was moved by Representative Frantsvog, seconded by Senator Dever, and carried on a voice vote that the minutes of the July 25, 2012, meeting be approved as distributed.

CHAIRMAN'S COMMENTS

Chairman Keiser stated he will be flexible and if necessary will schedule another meeting of the committee if it does not complete its study charges at this meeting. He said the focus of this meeting will be the report on the essential health benefits (EHB).

AFFORDABLE CARE ACT

Chairman Keiser called on Mr. Adam W. Hamm, Insurance Commissioner, Insurance Department, for testimony regarding the status of the EHB deadlines and options, status of states' implementation of the health benefit exchange requirements under the federal Affordable Care Act (ACA), and an overview of how the EHB relate to the ACA. Mr. Hamm distributed written testimony and associated handouts ([Appendix B](#)).

In response to a question from Representative Keiser, Mr. Hamm said the federal government has not yet issued the final rule on how it will address a benchmark plan that has a dollar limit on a covered service. He said it is important for states to have this information before making a final decision regarding selection of a benchmark for the EHB.

Chairman Keiser called on Mr. Joe Higgins, Actuary, INS Consultants, Inc., for presentation of the report on the analysis of the state's EHB benchmark plans. Mr. Higgins gave a computer presentation and distributed a copy of the document "Analysis of Essential Health Benefits Under the Patient Protection and Affordable Care Act Prepared for the North Dakota Insurance Department" ([Appendix C](#)).

In response to questions from Representative Keiser, Mr. Higgins said in reviewing a state's employer plan as an EHB benchmark plan, it is important to note these plans differ from state to state. Additionally, he said, the issue of deductibles and copayment amounts are not addressed as part of the EHB analysis because these items will not be addressed as part of the EHB but instead will be addressed through the precious metals classifications.

In response to a question from Representative Kasper, Mr. Higgins said the intention under the ACA is that the current health care marketplace will continue to function as it does today.

In response to questions from Representative Glassheim, Mr. Higgins said based on the current information, it is likely that after 2015 the states and possibly the federal government will be able to revisit the issue of the EHB. Additionally, he said, in reviewing the benchmark plans, all the plans except for the federal health employee benefit plans provide coverage for the state's health mandates.

In response to a question from Senator Mathern, Mr. Higgins said he is not familiar with the ACA Section 1332 State Innovation Waiver.

In response to a question from Representative Keiser, Mr. Higgins said in comparing the benchmark plans it is generally accurate that the more benefits that are covered in a plan, the higher the cost of the plan. For this reason, he said, once the EHB are selected, insurers may be hesitant to add benefits above and beyond the EHB. Additionally, he said, if a more benefit-rich benchmark plan is selected, it will likely have the impact of leveling the playing field.

Representative Keiser stated the EHB benchmark the state selects will impact the amount of the subsidies available to consumers. He said the subsidies are calculated based on the cost of a plan, so the greater the cost of a plan, the greater the amount of the subsidies that will be available to consumers.

Representative Kasper stated that with a federally administered health benefit exchange, there may be limits on the ability of the federal government to provide subsidies to consumers.

In response to a question from Representative Glassheim, Mr. Higgins said in comparing the benchmark plans, the Sanford Health Plan that is a health maintenance organization (HMO) appears to be the most basic plan, while the Blue Cross Blue

Shield of North Dakota small employer plans are the most benefit-rich plans.

In response to questions from Representatives Keiser and Frantsvog, Mr. Higgins reported he did not contact the federal Department of Health and Human Services in preparing the analysis.

Senator Lee stated she is concerned the ACA appears to limit consumers from selecting high-deductible plans, and some people prefer these plans.

Senator Lee distributed material ([Appendix D](#)) that clarifies comments made by a pediatrician and included in the stakeholder comments document.

The following panel of stakeholders discussed the intended and unintended consequences of selecting different EHB benchmark plans:

- Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota;
- Mr. Jay McLaren, Medica;
- Ms. Lisa Carlson, Sanford Health;
- Ms. Amy Davis, North Dakota Academy of Nutrition and Dietetics;
- Ms. Courtney Koebele, North Dakota Medical Association;
- Ms. Cheryl Rising, North Dakota Nurse Practitioners Association; and
- Mr. Tim Blasl, North Dakota Hospital Association.

Mr. McLaren and Ms. Carlson confirmed the richer the state's EHB, the higher the subsidy will be, as the subsidy is calculated based on the second-lowest cost silver plan; however, the subsidy amount is the same regardless of whether the consumer buys a Cadillac plan or a bare bones plan.

Mr. St. Aubyn stated in his discussions with the federal government, it has been explained that if the state selects a benchmark plan that has coverage limitations based on dollar amounts, the EHB would not require unlimited coverage but instead would be required to offer the actuarial equivalent.

Mr. St. Aubyn suggested in considering what benchmark the state should select, the committee consider affordability, what plan is most representative of a typical policy in the state, the impact on providers, and the impact on small businesses.

Ms. Rising stated whatever benchmark plan the state selects, she requests that the policies include nurse practitioners as providers.

Ms. Carlson said the report distributed by Mr. Higgins seems complete as it relates to benefits covered under the benchmark policies; however, it seems incomplete as it relates to pricing of benefits.

Representative Kaldor said he is concerned consumers will experience rate shock if too rich of a benchmark plan is selected.

Ms. Carlson supported selecting the most basic benchmark plan in order to allow insurers to add benefits as they choose.

Representative Keiser said Tennessee experienced issues when it increased the covered services in its Medicaid program. He said if the

Medicaid benefits are more inclusive than the private policies, there may be an incentive to stay on Medicaid.

In response to questions from Representatives Keiser and Glassheim, Mr. Hamm said if North Dakota selects a benchmark plan that is different from the default plan, the state will need to notify the federal Department of Health and Human Services. He said if he exercises his authority to select the state's EHB benchmark plan, he will want to receive the input of the Legislative Assembly. He said the selection of the benchmark plan has historically been a legislative function, but due to the deadlines, he may be faced with fulfilling this role.

Mr. Hamm said his perspective is if the state selects a benchmark plan, there is an appeal to selecting the benchmark plan that is more basic, such as the Sanford HMO. However, he said, he has not determined whether he will exercise his authority to select a benchmark plan. He said there are multiple reasons for the state to decline selection of a benchmark plan, such as the lack of final rules and the knowledge that the federal government will modify whatever benchmark plan is selected.

Senator Mathern said the issue of cost-shifting should be part of any benchmark selection consideration.

Senator Dever said the spirit of competition would be best served by choosing the most basic benchmark plan.

Representative Keiser said in the marketplace there are two issues in play--first, are you insured, and if you are insured, are you underinsured. He said a possible unintended consequence of selecting a bare bones benchmark plan to determine the state's EHB is that it may create a large number of people who are underinsured.

Chairman Keiser called on Ms. Maggie Anderson, Interim Executive Director, Department of Human Services, to report on the status of the department's implementation of the ACA and the issues related to the state's option to expand Medicaid under the ACA. Ms. Anderson provided written testimony ([Appendix E](#)).

In response to a question from Representative Nelson, Ms. Anderson said under the ACA, the newly Medicaid-eligible will be eligible for benchmark coverage, whereas the currently eligible population will be covered under the current program.

Chairman Keiser said the committee is faced with some decisions regarding how to or whether to address selection of an EHB benchmark plan. He said the committee can address its wishes through committee discussion, a concurrent resolution draft, or a bill draft. If necessary, he said, the committee can hold another meeting this interim.

Committee counsel reviewed the two-reading rule and explained if a measure is drafted by the Legislative Council, that measure does not need to be read at two separate meetings.

The following panel discussed the Frontier Amendment provision of the ACA, the Independent Payment Advisory Board provision of the ACA, and charity and bad debt for medical services:

- Ms. Koebele ([Appendix F](#));
- Mr. Blasl ([Appendix G](#));
Mr. Douglas Salwei, Altru Health; and
- Mr. Stan Okland, Sanford Health.

In response to a question from Senator Lee, Mr. Blasl said he is not certain of the impact of the ACA cuts versus the gains hospitals receive under the Frontier Amendment. He said it is possible it is a zero sum game; however, under the Frontier Amendment, the states are put on more even footing. He said as the ACA cuts relate to the critical access hospitals, the smaller hospitals are not impacted; but he is not prepared to speak to how those cuts may impact doctors at those smaller hospitals.

Mr. Blasl said there are 50 to 60 deals similar to the Frontier Amendment the federal government has made across the country. He said if the ACA is repealed or otherwise ceases to exist, out of equity he would hope that those other 50 to 60 deals go away as well. He said he recognizes the Medicare payment system is flawed, but this is the reality the hospitals are working with at this time, and over the past two years under this Frontier Amendment, the hospitals in North Dakota have benefited.

Senator Lee said she does not support the approach that just because the Frontier Amendment is included in the ACA, we should support the ACA. She thinks there should be a different option. Additionally, she said, the state has been funding critical access hospitals because they are in the red. She said there is a need for a new business model.

Mr. Salwei discussed the issues of bad debt and charity care. He said he tends to combine these two items because they are directly related. He said often there is bad debt because patients failed to inquire regarding charity care.

Mr. Salwei said hospitals in Fargo experienced a 35 percent increase in bad debt and charity care over the past two years. He said the data is similar in Bismarck. This bad debt and charity care, he said, is related at least in part to people being underinsured and having high-deductible plans. Additionally, he said, clinics are experiencing even greater increases in bad debt and charity care than the hospitals.

Mr. Salwei said the ACA will not resolve the issue of bad debt and charity care, as there will continue to be bad debt on high-deductible plans.

In response to a question from Senator Klein, Mr. Salwei said bad debt for medical services has been increasing nationwide; however, up until recently, North Dakota has been insulated from this trend. Mr. Okland said there has been a trend in increasing numbers of high-deductible plans, and this means approximately \$.55 of every \$1 billed is billed to self-pay.

In response to a question from Representative Kaldor, Mr. Okland said there has been a decrease in

the number of bankruptcies, in large part as a result of the new bankruptcy rules, and this has resulted in higher numbers of requests to turn unpaid bills into bad debt. Mr. Salwei said his experience has been that he has not seen any change in the number of bankruptcies, and he thinks it is a myth that health care debt is the specific cause of people's debt because hospitals are willing to work with people to address debt.

Chairman Keiser called on Mr. St. Aubyn for comments regarding the costs of implementing the ACA. He distributed written testimony ([Appendix H](#)).

COMMITTEE DISCUSSION AND BILL DRAFTS

The committee discussed selection of a benchmark plan for the EHB.

Senator Lee said she favors the standard and basic federal employee health benefit plans.

Senator Klein said he is concerned the federal plans do not cover all of the state's mandates, and therefore, the state could be financially liable for that coverage. Senator Lee said she forgot the state would be on the hook for those services.

Representative Kasper said he supports the Sanford HMO because it keeps the EHB basic and allows insurers to respond in the marketplace.

Representative Kaldor said the Blue Cross Blue Shield of North Dakota small group plan--Comp Choice--would provide for the least amount of disruption to those with existing plans, and he thinks the EHB should reflect what is currently expected in today's marketplace.

Representative Keiser said a majority of North Dakotans appeared to be covered under the grandfathered state employee health plan and the Sanford HMO.

The committee considered a bill draft [[13.0175.01000](#)] prepared for Senator Mathern which would direct the state to apply for a waiver for state innovation under the ACA to allow for expansion of the Public Employees Retirement System (PERS) uniform group insurance plan to allow for enrollment of Medicaid recipients, private sector employees, and other North Dakota residents.

It was moved by Representative Nelson and seconded by Representative Kaldor that the bill draft relating to a waiver for state innovation be adopted by the committee.

Representative Glassheim said if the committee were to move forward with this idea, he would want to have one more committee meeting to allow for public comment.

Senator Lee said she does not support opening the PERS health plan to members of the public.

The motion failed on a roll call vote. Representatives Glassheim, Kaldor, and Nelson voted "aye." Representatives Keiser, Clark, Frantsvog, Kasper, Kreidt, Rohr, and Weisz and Senators Klein, Dever, and Lee voted "nay."

The committee considered a bill draft [[13.0171.01000](#)] prepared for Representative Keiser to provide for a Legislative Management study of the ACA and state alternatives for state-based health care reform.

It was moved by Representative Kasper, seconded by Representative Glassheim, and carried on a voice vote that the Legislative Management study bill draft be amended to include participation by the State Department of Health.

It was moved by Representative Kreidt, seconded by Senator Lee, and carried on a roll call vote that the Legislative Management bill draft, as amended, be approved and recommended to the Legislative Management. Representatives Keiser, Clark, Frantsvog, Glassheim, Kaldor, Kasper, Kreidt, Nelson, Rohr, and Weisz and Senators Klein, Dever, and Lee voted "aye." No negative votes were cast.

It was moved by Representative Frantsvog, seconded by Senator Klein, and carried on a roll

call vote that the Chairman and the staff of the Legislative Council 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. Representatives Keiser, Clark, Frantsvog, Glassheim, Kaldor, Kasper, Kreidt, Nelson, Rohr, and Weisz and Senators Klein, Dever, and Lee voted "aye." No negative votes were cast.

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

No further business appearing, Chairman Keiser adjourned the meeting sine die at 2:40 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:8