NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Tuesday, September 29, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative George Keiser, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives George Keiser, Alan Fehr, Robert Frantsvog, Eliot Glassheim, Mary C. Johnson, Jim Kasper, Mike Lefor, Karen M. Rohr; Senators Tom Campbell, Gary A. Lee, Tim Mathern, David O'Connell

Members absent: Representatives Rick C. Becker, Alex Looysen, Alisa Mitskog; Senator Ronald Sorvaag

Others present: See Appendix A

It was moved by Senator O'Connell, seconded by Representative Rohr, and carried on a voice vote that the minutes of the Wednesday, July 22, 2015, meeting be approved as distributed.

HEALTH CARE DELIVERY SYSTEM STUDY

Chairman Keiser called on Legislative Council staff to present the memorandum entitled *Health Care Delivery System Study - Background Memorandum*.

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, to present information (Appendix B) regarding the implementation of the federal Affordable Care Act (ACA).

In response to comments by Chairman Keiser and Representative Kasper, Ms. Ternes said the amount of the income tax penalties for failure to show evidence of minimum essential health insurance coverage is still too low to be an effective incentive.

In response to a question from Representative Kasper, Ms. Ternes said it is difficult for the Insurance Department to gather accurate data regarding employers offering self-funded plans and regarding Indian Health Services coverage.

Senator Campbell commented the data indicates the current rate of uninsured in 2015 is approximately 8 percent, and was approximately 7.9 percent in 2014 and 11.4 percent in 2013.

In response to a question from Chairman Keiser, Ms. Ternes said if health insurance sales are opened across state lines, there will be issues regarding regulation and pricing.

In response to a question from Representative Kasper, Ms. Ternes said that although we currently have out-of-state companies offering health insurance in the state, these companies are required to be licensed in the state and are regulated by the Insurance Commissioner. She said the regulatory authority of the Insurance Commissioner is clear under the current model.

Representative Kasper said an insurer needs to have an adequate number of provider contracts and needs to reach a critical mass before it makes sense to enter a state. Ms. Ternes said several factors play a role in whether an insurer will enter the state, including the state's small population, whether the network is adequate, and the degree of uniformity or lack of uniformity of policies from state to state.

In response to a question from Representative Lefor, Ms. Ternes said the Insurance Department does not keep data on cost-sharing or out-of-pocket expenses. She said the apparent trend in the increasing numbers of high-deductible plans is not unexpected. She said it is possible insurers and employers may be able to provide the committee with this data.

Chairman Keiser invited the following representative of insurers to participate in a panel discussion regarding upcoming changes to the ACA and access and affordability of health insurance under the ACA - Ms. Lisa Carlson, Sanford Health Plan; Ms. Kate Johansen, Medica; and Ms. Jessica Stimpson, Blue Cross Blue Shield of North Dakota (Appendix C).

In response to a question from Representative Lefor, Ms. Stimpson said self-funded health insurance plans are essentially a different way to address risk. She said under self-funded plans, the group takes on the risk, whereas under a fully-insured plan the insurer takes on that risk. However, she clarified that risk can be offset through mechanisms such as reinsurance.

Representative Glassheim said it must be recognized that one driver impacting prices is the price charged by providers.

Ms. Carlson reviewed upcoming changes under the ACA, including a change in the tool used to determine the actuarial value and the identification of the related metallic plan, the 2018 Cadillac plan tax, and employer reporting requirements. She reported that Sanford Health Plan will offer three additional plans for 2016, including one high-deductible plan.

Ms. Carlson stated in North Dakota, Sanford Health Plan's distribution of plans is approximately 2 percent catastrophic, 6 percent gold, 47 percent silver, and 44 percent bronze. She said this distribution is similar to the national trend.

Ms. Carlson said insurers have been aware of the upcoming changes under the ACA and have been planning accordingly. She said she expects to see a shift in the mid-size market to more self-funded plans.

In response to a question from Representative Kasper, Ms. Carlson said Sanford Health Plan does not offer employers a software program to calculate the number of employees under the ACA; however, Sanford Health Plan does provide some guidance and offer some educational seminars for employers.

In response to a question from Chairman Keiser, Ms. Carlson said after 2016, the reinsurance and risk corridor provisions of the ACA will expire. However, she said, in the Midwest the health insurance plans were generally pretty rich and homogenous, making for an easier transition to the ACA requirements. However, she said, there may have been some incidences of insurers underpricing plans and relying on the safety nets of the risk-sharing provisions under the ACA.

In response to a question from Senator Mathern, Ms. Carlson explained some of the mechanisms and regulations in place to ensure Sanford's insurance business is kept separate from its health care business.

Ms. Johansen reported Medica is expecting a rate increase in 2016, but has been planning for the upcoming changes in the ACA in order to minimize rate increases and to provide for a smooth and stable transition that does not result in a price shock for consumers. Additionally, she said, as part of this rate increase she expects provider fees to increase by 1 to 2 percent.

In response to a question from Senator Lee, Ms. Johansen said a move to a high-deductible plan does not necessarily result in decreased quality of care or decreased health. She said it is important to note that a rich plan may have a high deductible.

In response to a question from Representative Kasper, Ms. Carlson said some larger health systems renegotiate provider rates on an annual basis or even more frequently. Ms. Johansen said provider reimbursement contracts vary based on the insurer's relationship with the provider, but she expects it is common to review rates on an annual basis.

In response to a question from Chairman Keiser, Ms. Stimpson reported that at Blue Cross Blue Shield of North Dakota there is a trend for employers to move to qualified high-deductible plans. She said an employer's move may occur all at once or may take place over time through an employee option. Ms. Carlson stated the success of a high-deductible plan is largely related to whether it is accompanied by an employer contribution in a health savings account and data indicates the high-deductible plans are more successful when employees hold white collar positions and are slightly older. Ms. Johansen agreed that health savings accounts should be paired with high-deductible plans to increase the rate of success.

In response to a question from Chairman Keiser, Ms. Stimpson said under the ACA the maximum annual out-of-pocket for in-network providers is $6,850. However, she said, although the ACA does not provide an

out-of-network maximum, Blue Cross Blue Shield of North Dakota does set an out-of-network maximum of about double the in-network maximum.

Chairman Keiser called on Mr. Bradley Hawk, Indian Health Systems Administrator, Indian Affairs Commission, to testify regarding the health care delivery system in Indian country, including implementation of the ACA (Appendix D).

In response to a question from Representative Kasper, Mr. Hawk stated that through treaties, the federal government has a responsibility to provide 100 percent of health care costs for Native Americans, and there are ongoing efforts to enforce this trust relationship. He clarified under this trust responsibility it is not Indian Health Services that has the duty, but the federal government. He said the ACA is one way the federal government is working to meet its responsibility.

Senator Mathern questioned why tribes do not take efforts to enroll every member under the ACA. Mr. Hawk stated the ACA does offer a mechanism to enroll more tribal members; however, due to the complexities, not all tribes are ready to move forward with full tribal enrollment.

In response to a question from Representative Rohr, Mr. Hawk stated land-based tribes have significant rural health issues.

In response to a question from Chairman Keiser, Mr. Hawk said generally, Indian Health Services coverage requires that services be offered by Indian Health Services on the reservations.

In response to a question from Senator O'Connell, Mr. Hawk said some oil revenue is being used by tribes to provide health services. He said with decreasing oil revenues he expects this will have a negative impact on the amount of funding available for health services.

In response to a question from Representative Kasper, Mr. Hawk said in order to increase ACA enrollment in Indian country, it will require education to change the current mindset. He said ACA enrollment is but one of multiple issues tribal governments are faced with.

In response to a question from Representative Fehr, Mr. Hawk said if the state were to elect to discontinue Medicaid Expansion, this would negatively impact tribal members.

In response to a question from Senator Mathern, Mr. Hawk said ACA enrollment requires enrollees to provide data and this requirement often acts as a barrier to enrollment by tribal members.

In response to a question from Chairman Keiser, Mr. Hawk said he can look into what ACA enrollment barriers may exist at the state level and report back to the committee at a future meeting.

Chairman Keiser called on Ms. Dana Schaar Jahner, representing Community HealthCare Association of the Dakotas (Appendix E); Ms. Tinka Duran, Great Plains Tribal Chairmen's Health Board (Appendix F); and Mr. Neil Scharpe, North Dakota Center for Persons with Disabilities at Minot State University (Appendix G), to testify regarding enrollment services under the ACA being provided by navigators, assisters, and certified application counselors.

In response to a question from Chairman Keiser, Mr. Scharpe said he supports the state participating in Medicaid Expansion. He said South Dakota has elected to not participate and it has resulted in some undesirable situations.

Chairman Keiser called on Ms. Stephanie Waloch, Medicaid Expansion Administrator, Department of Human Services, to testify regarding implementation of the ACA, including Medicaid Expansion, the children's heath insurance program, and the eligibility modernization project (Appendix H).

Representative Kasper requested Ms. Waloch provide the committee members with copies of the Medicaid Expansion brochure as well as a copy of the enrollee handbook.

Committee members suggested that during the interim the committee receive additional information regarding Medicaid Expansion, including whether the Medicaid Expansion program is decreasing the number of uninsured and therefore decreasing the incidence of bad debt, prescription drug reimbursement, data on enrollment trends, whether the program is having any positive impact on quality of life, and utilization trends.

Senator O'Connell requested additional information at a future meeting regarding whether the working poor can afford health care premiums. Chairman Keiser requested additional information regarding Medicaid Expansion utilization data. Chairman Keiser requested additional information regarding premium collection, the number of insureds, and claims paid out.

In response to a question from Chairman Keiser, Ms. Brenda Peterson, Department of Human Services, stated the children's health insurance plan is still relevant for several reasons, including the fact that the income eligibility level is higher than for Medicaid Expansion and the dental and vision benefits differ between the two programs.

Ms. Nancy Kopp, Executive Director, North Dakota Optometric Association, stated Medicaid Expansion does not provide adults coverage for dental and vision services. She said as a result, there are approximately 18,800 low-income adults in the state who are not eligible for coverage of vision services and this lack of coverage has an impact on the charitable vision programs, which do not have the resources to provide services to this large number of adults.

STATE HEALTH INSURANCE PREMIUM CONTRIBUTIONS

Chairman Keiser called on Legislative Council staff to review the memorandum entitled *Study of State Contributions to State Employee Health Insurance Premiums - Background Memorandum*.

Chairman Keiser called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, for testimony regarding the committee's study of state health insurance premium contributions (Appendix I).

In response to a question from Senator O'Connell, Mr. Collins reported the Public Employees Retirement System (PERS) does not have data regarding the number of state employees who are not eligible for PERS health coverage. However, he said the Office of Management and Budget may have this data.

In response to a question from Chairman Keiser, Mr. Collins said if the ACA definition of a small employer changes from 50 to 100 full-time equivalent positions, he is not certain whether this will impact the number of political subdivisions participating in the PERS health plan.

In response to a question from Representative Kasper, Mr. Collins said at any time local governments can elect whether to participate in the PERS health plan or to withdraw from participation. However, he said, if a local government elects to withdraw before the completion of five years, it may be subject to a penalty.

Representative Kasper said the negative experience PERS had with a self-funded plan seems to be a reflection of inadequate funding levels. Mr. Collins agreed that in the past, funding was not adequate and health costs were experiencing significant increases during this time.

In response to a question from Representative Lefor, Mr. Collins stated that currently the PERS health plan is fully insured, but modified to allow PERS to share in gains and limited losses. He said under this hybrid plan, the policy is regulated by the Insurance Commissioner and is subject to the ACA. However, he said, PERS continues to consider self-funded plans when it goes out to bid.

In response to a question from Chairman Keiser, Mr. Collins stated that in 2013-15, the PERS health plan experienced a rate increase of 11 percent; however, this was actually an increase of 13 percent, with 2 percent of this increase bought down by reserves.

In response to a question from Representative Kasper, Mr. Collins stated the current reserve fund balance is approximately $40 million, which is equivalent to slightly less than two months of claims.

Representative Kasper requested data regarding PERS health plan utilization by employees, spouses, and dependents as well as the fifteen most numerous claims by dollar amount. He said with this data the committee should be able to determine who and what is driving claims. He suggested the state should pay 100 percent of the employee and a portion of spouse and dependent health plan.

Senator Campbell expressed an interest in additional information regarding the effectiveness of wellness incentives. Representative Kasper suggested the committee receive testimony from Mr. Dick Hedahl regarding his experience with self-funding and incentives.

Chairman Keiser called on Mr. Stuart Savelkoul, North Dakota United, for comments regarding the committee's study of state contributions to state employee health insurance premiums. He stated that as the committee performs this study, it will be important for the committee as well as state employees to better understand this

benefit. Additionally, he said, it may be important to consider the impact the health plan has on the ability of the state to recruit employees as well as retain employees.

Mr. Savelkoul stated there is a growing number of state employees who have reached the rule of 85 or normal retirement age who are still working. He said if the health benefits are changed, it may impact these employees' decisions regarding whether to remain employed with the state.

No further business appearing, Chairman Keiser adjourned the meeting at 4:00 p.m.

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Jennifer S. N. Clark
Counsel

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