

TO: Health Care Reform Review Committee

FROM: Allen C. Hoberg, Director, Office of Administrative Hearings

RE: Bill Draft on State-Governed Health Benefit Exchange

DATE: October 20, 2011

Unfortunately, I am unable to attend the Committee's October 20, 2011, meeting because of an administrative hearing commitment in Dickinson. However, I will be available on October 21, if needed, if the Committee is still meeting on that day.

I am not certain whether or to what extent the Office of Administrative Hearings may be involved in adjudicative proceedings arising out of the bill draft, however, after having briefly reviewed the bill draft, I offer the following comments, primarily relating to section 54-66-15 of the bill draft, on pages 27-28:

Although perhaps not required, but because I am not certain from which entity or entities adjudicative proceedings may arise under the bill draft and because of definitional concerns, I would add another subsection. I have been made aware that appeals may at least arise from certification decisions. Those decisions appear to be made by the division, i.e. the office of management and budget and the budget health benefit exchange division. OMB is not an administrative agency subject to N.D.C.C. chapter 28-32, except for limited purposes. *See* N.D.C.C. section 28-32-01(2)(a). Moreover, it may not be clear from where all appeals generated by this bill draft may arise. Thus, I would suggest that another subsection be added (perhaps the first subsection of 54-66-15) to read as follows:

1. All adjudicative proceedings arising under this act shall be conducted as provided by chapter 28-32.

Because it appears to be uncertain exactly what types of proceedings may be required and whether informal proceedings and informal dispositions may be required or desirable, I suggest that a section also be added to authorize some entity, likely the division, to adopt rules. I would suggest the following section (perhaps the last subsection of 54-66-15) to read as follows:

4. The division may adopt rules, in accordance with chapter 28-32, to implement the provision of adjudicative proceedings arising under this act.

Finally, I would make some changes to the title of section 54-66-15 and the current subsections to be more closely aligned with the definitional provisions of N.D.C.C. section 28-32-01. In the title to the section, on page 27, line 24, I would strike "Administrative hearings" and insert in lieu thereof, "Adjudicative proceedings." Then, on page 27, line 25, I would strike "an adjudicative" and insert in lieu thereof, "a." The term adjudicative hearing is not found in chapter 28-32 and although most hearings are commonly referred to as "administrative hearings," the appropriate terminology to refer to a hearing under chapter 28-32 is simply the term, "hearing." The term "adjudicative proceeding" is a broader term that refers to hearings and related

proceedings, including informal dispositions. Thus, I would also make the same change on page 27, line 28, striking "an adjudicative" and inserting in lieu thereof, "a."

Again, I apologize for not being in attendance at the Committee's October 20 meeting. However, I will be available on October 21, and I am available for further consultation, if necessary.