

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Thursday, March 18, 2010  
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, Mark A. Dosch, Kathy Hogan, Jim Kasper, Scot Kelsh, Mike Schatz, Elwood Thorpe, Don Vigesaa, Steven L. Zaiser; Senators Arthur H. Behm, David Hogue, Dave Oehlke, Tracy Potter, Terry M. Wanzek

**Members absent:** Representatives Bill Amerman, Rick Berg, Tracy Boe, Dan Ruby

**Others present:** Representative Merle Boucher, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

**It was moved by Senator Wanzek, seconded by Senator Potter, and carried on a voice vote that the minutes of the February 4, 2010, meeting be approved as distributed.**

Chairman Keiser called on Mr. Adam W. Hamm, Insurance Commissioner, for a summary ([Appendix B](#)) of the federal health care reform legislation.

In response to a question from Senator Potter, Commissioner Hamm said it appears that the federal legislation may not allow insurance company premium discounts for not smoking or for health club memberships.

In response to a question from Representative Keiser, Commissioner Hamm said the proposed legislation is advertised as reducing the federal deficit by \$100 billion over 10 years. However, he said, the total cost of the legislation appears to be \$940 billion over 10 years.

Representative Keiser said a significant amount of tax increases and assessments are due to begin immediately after the adoption of the legislation, while implementation of many programs is delayed until 2014. He said the legislation will collect taxes upfront to offset future costs.

Commissioner Hamm said the fiscal impact of the legislation accounts for 10 years of revenue to pay for 6 years of benefits. He said the cost of the legislation cannot continue to have 10 years of revenue to pay for 6 years of administration. In addition, he said, the legislation includes a 21 percent reduction in physician reimbursement under Medicare.

In response to a question from Representative Clark, Commissioner Hamm said the \$940 billion cost does not include the costs incurred by the states. He said states will need to find funds to meet increased Medicaid costs.

In response to a question from Representative Hogan, Commissioner Hamm said the amendment to provide additional reimbursement for Medicare costs in frontier states is included in the Senate bill.

In response to a question from Representative Dosch, Commissioner Hamm said in addition to the federal and state government costs, there will be a significant impact on businesses and consumers. He said there does not appear to be any significant change in the regulatory authority of states with respect to the insurance market. However, he said, it is likely that the Insurance Commissioner will have additional responsibilities.

In response to a question from Representative Kasper, Commissioner Hamm said the National Association of Insurance Commissioners has been very diligent in reviewing the legislation to ensure that state regulatory authority will not be impacted. However, he said, the impact may not be determined until the legislation actually is implemented.

In response to a question from Representative Zaiser, Commissioner Hamm said health insurance premium increases in the group market increased 9.9 percent in 2007 and 7.9 percent in 2009. In 2010, he said, rate increases will be reviewed on a quarterly basis, with a .8 percent increase for the first quarter and a 1.5 percent increase for the second quarter. He said the increases for the individual market were 9.4 percent in 2007 and 0 percent in 2008 and 2009. He said the premium increases in North Dakota have been substantially lower than in other states. He said he will attempt to provide the committee with additional information relating to increases in this state and will look to see if national data is available.

Chairman Keiser called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, for information ([Appendix C](#)) relating to the federal health care reform legislation and the impact on the Public Employees Retirement System.

In response to a question from Representative Keiser, Mr. Collins said the total impact of the federal legislation has not been determined, and he will continue to provide the committee with information as it becomes available.

In response to a question from Senator Potter, Mr. Collins said he has not considered whether the Public Employees Retirement System could operate or qualify as a health insurance exchange under the federal legislation.

Chairman Keiser called on Ms. Arvy Smith, Deputy State Health Officer, State Department of Health, for comments regarding the federal health care reform legislation. Ms. Smith said the federal legislation includes funding for several public health programs. However, she said, the details of the programs and the amount of funding that may be available to the state is not known yet. She said the National Prevention, Health Promotion and Public Health Council will likely receive additional funding to address public health workforce training, wellness programs, and immunization and oral health programs.

Chairman Keiser called on Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, for information ([Appendix D](#)) relating to Medicaid eligibility and the federal health care reform legislation. Ms. Anderson said the federal legislation will expand Medicaid eligibility to individuals at up to 133 percent of the poverty level so that childless adults who were not previously eligible for Medicaid will be eligible under the extended coverage. She said the state will be required to expand the Medicaid program no later than January 1, 2014. Therefore, she said, it is important to begin the enrollment process before that date. Although the children's health insurance program (CHIP) was extended through 2019, she said, the program was only funded through 2015. She said the federal legislation also makes significant changes to the federal medical assistance percentage (FMAP) total, but she is unsure of the impact of the legislation. She said there will be an increase in the FMAP for childless adults, but there will not be an enhanced FMAP. She said the portion of the legislation affecting the Medicaid drug rebate percentage will result in a fiscal impact in this biennium. Another aspect of the legislation in which the impact on the state has not been determined is the effect of the maintenance of effort provisions. In determining Medicaid eligibility, she said, this state allows numerous deductions that may not be applicable under the new legislation.

Ms. Anderson said the change in the income guidelines in going to 133 percent of the poverty level will increase the cost of the program to the state. She said the state will likely retain the decision whether to provide eligibility for groups above 133 percent of poverty. She said the Congressional Budget Office estimates did not take into consideration state administrative costs when determining the cost of the legislation. She said increases in enrollment will result in increases of service requests and claims and also affect staffing. To save money in the program integrity efforts, she said, there will need to be an additional emphasis on those efforts. In addition, she said, contracts for services will be affected and the volume of claims will increase costs. She said county social service costs also will be increased. She said there will need to be computer system changes to address determinations of eligibility, as well as for reporting requirements and interoperability requirements. She said the department will continue

to work with the other agencies involved to address the changes.

In response to a question from Representative Hogan, Ms. Anderson said the eligibility income changes will be effective January 2014. She said there are numerous questions regarding the impact of those changes. She said the Medicaid program has increased from approximately 51,000 eligibles in June 2008 to about 61,000 eligibles now. Although there has been an increase in eligibility, she said, there has not been as significant of an increase in the number of recipients of service.

In response to a question from Representative Dosch, Ms. Anderson said she is unsure of the impact of the change in determining eligibility based on modified adjusted gross income. She said the department is seeking additional information on that change and the effect of the maintenance of effort requirement. She said most of the proposed changes will result in increased expenditures by the state.

In response to a question from Senator Potter, Ms. Anderson said the increase in the number of individuals eligible for Medicaid during the last year was due to the implementation of continuous eligibility and outreach efforts for CHIP. In addition, she said, job losses in the state have had an impact on eligibility. She said the newly eligible group under the legislation could result in a 50 percent increase in the program.

In response to a question from Senator Wanzek, Ms. Anderson said the asset test for the adult population will need to be closely examined.

In response to a question from Representative Keiser, Ms. Anderson said the expansion of the Medicare program also could impact Medicaid expenditures. She said demonstration projects and optional plans are being offered to the state for addressing individuals with two chronic conditions or mental health conditions.

In response to a question from Representative Vigesaa, Ms. Anderson said the department will work with its national association to examine the impact of the federal legislation. She said the department's budget is due in July unless the department receives an extension. She said determination of the cost of the required changes will be a priority for the department. To address the additional requirements that will be implemented in 2014, she said, the department will need to add the staff before January 2014 to be prepared.

In response to a question from Representative Boucher, Ms. Anderson said the enhanced FMAP is scheduled to end December 31, 2010. She said an extension could go through June 30, 2011, but she has heard no discussion regarding further extensions. She said Medicaid may pay a partial premium under a health plan for an eligible individual if the payment is cost-effective.

In response to a question from Senator Potter, Ms. Anderson said the department generally does not track the rate of inflation in medical costs because the

department sets fee schedules based on what other payers are paying and on what the Legislative Assembly provides.

In response to a question from Representative Keiser, Ms. Anderson said the access to dental care and to other health care providers may be an area of concern after expanding Medicaid eligibility.

Chairman Keiser requested that each of the state agencies involved in the discussion prepare additional information for the next meeting which addresses the state costs related to implementation of the federal legislation.

In response to a question from Representative Hogan, Commissioner Hamm said there has not been any discussion regarding the development of a health insurance exchange for the state.

In response to a question from Representative Kasper, Commissioner Hamm said there has not been time to examine the impact of the federal legislation on self-funded plans.

In response to a question from Senator Potter, Mr. Collins said the Public Employees Retirement System group health insurance contract is renewed every two years. He said the last premium increase was approximately 26 percent. Under the contract, he said, the insurer will take a loss if claims incurred are higher than the amount of premiums paid. However, he said, the current trend is showing some decrease in the increase of rates of medical costs.

In response to a question from Representative Zaiser, Mr. Collins said the Public Employees Retirement System will review bids for the next two-year contract this summer. He said long-term trends need to be examined in planning for 36 months in advance. He said the 26 percent premium increase may have been a bit high, and a percentage of the excess premiums will likely be returned because the amount of premiums is exceeding the amount of claims.

In response to a question from Representative Kasper, Mr. Collins said the average age of enrollees in the Public Employees Retirement System group health plan has been going up. In addition, other factors, such as the plan design, have contributed to the premium increases.

Chairman Keiser called on Mr. Bruce Levi, Executive Director, North Dakota Medical Association, for comments ([Appendix E](#)) relating to the federal health care reform legislation. Mr. Levi said it is difficult to assess the impact of the prevention, wellness, and workforce provisions of the federal legislation. He said certain aspects of the legislation already are being addressed in this state, such as a statewide accountable care organization. He said the state is well-positioned to take part in some of the demonstration projects. However, he said, there is some concern with transition and implementation which must be addressed by state agencies, as well as the impact on patients. He said providing payment for value rather than on a geographic basis will help North Dakota providers. He said the state historically

has been considered a low-cost and high-quality state with respect to health care.

In response to a question from Representative Thorpe, Mr. Levi said the increased Medicare reimbursement should aid hospitals in recruiting and retaining physicians.

In response to a question from Senator Hogue, Mr. Levi said the increased Medicare reimbursement will not directly apply to critical access hospitals, but will be applicable to the large and small hospitals.

In response to a question from Representative Kasper, Mr. Levi said the North Dakota Medical Association has not taken specific positions on all the individual aspects of the legislation. However, he said, the focus on primary care is important.

In response to a question from Representative Keiser, Mr. Levi said he will work to obtain information relating to the average compensation of physicians by specialty in the four major cities in the state compared with other regional cities.

Chairman Keiser called on Ms. Linda Johnson Wurtz, Associate State Director for Advocacy, AARP North Dakota, for comments ([Appendix F](#)) relating to the federal health care reform legislation.

In response to a question from Representative Keiser, Ms. Wurtz said she considers the term uncompensated care to cover any care provided to uninsured individuals who are unable to pay. She said studies indicate that 37 percent of care provided to the uninsured is paid out-of-pocket and 26 percent is covered by charity. She said the remainder is entirely uncompensated.

Representative Keiser said the hospital for which he is a board member had to change its bylaws to redefine uncompensated care. He said the amount of uncompensated care in Bismarck is very low.

Ms. Wurtz said some hospitals report a significant amount of uncompensated care.

Representative Keiser said he has requested information relating to uncompensated care from the North Dakota Hospital Association but has not received that information.

Chairman Keiser called on Mr. Rod St. Aubyn, Director of Government Relations, Blue Cross Blue Shield of North Dakota, Fargo, for comments ([Appendix G](#)) relating to the federal health care reform legislation.

In response to a question from Senator Potter, Mr. St. Aubyn said the federal health care reform legislation limits the ratings upon which insurance may be based. He said the fiscal estimates of the legislation assume that physician reimbursement rates will not be changed over the next two decades. Because of the legislation, he said, group health insurance premiums will likely see a 15 percent increase and individual premiums will see a 75 percent to 100 percent increase. He said North Dakota insurance premiums rank as the least expensive in the country, and reimbursement levels are approximately 17 percent lower than the regional average. He said he is unsure what the impact of the

legislation will be on the Comprehensive Health Association of North Dakota (CHAND) program.

In response to a question from Representative Boucher, Mr. St. Aubyn said the federal legislation will require changes in the products that insurance companies offer because the products must meet the requirements of qualified plans. He said the health insurance exchange essentially will be an electronic shopping center in which to check products and cost. Although the exchange will have some value to consumers, he said, the number of options for consumers will be reduced.

In response to a question from Representative Schatz, Mr. St. Aubyn said the federal legislation does not prevent the purchasing of an insurance rider for abortion coverage.

In response to a question from Representative Zaiser, Mr. St. Aubyn said the individuals participating in the CHAND program will save money by moving to another plan under guaranteed issue and the insurance exchange. He said the CHAND program would not likely qualify as a plan, and there will be a need for a transition to the exchange.

In response to a question from Senator Hogue, Mr. St. Aubyn said he is aware of a number of states that are considering legislation to challenge the federal legislation, but he is unaware of the details.

In response to a question from Representative Vigesaa, Mr. St. Aubyn said the penalties under the legislation for employers that chose not to purchase health insurance for employees will likely be significantly cheaper than the cost of purchasing insurance.

In response to a question from Representative Kasper, Mr. St. Aubyn said self-funded programs are generally exempted from the impacts of the legislation.

In response to a question from Senator Potter, Mr. St. Aubyn said issues such as which employer is responsible for health insurance for an employee who has multiple employers is not addressed in the bill. He said there will be a need for a significant amount of federal regulations, and the timeframes provided under the law are very short for going through the rulemaking process.

Chairman Keiser called on Mr. Mike Schwab, Executive Vice President, North Dakota Pharmacists Association, for information ([Appendix H](#)) relating to the coverage and market share of pharmacy benefits managers.

In response to a question from Representative Keiser, Mr. Schwab said the legislation includes a prescription drug industry fee that will be an annual fee apportioned among pharmaceutical manufacturers or importers of brand name prescriptions. He said the fee likely will be passed on to consumers. He said the federal legislation will not allow over-the-counter medications to be considered a qualified medical expense under a flexible spending account, which likely will result in an increase in the use of brand name prescription drugs.

Mr. St. Aubyn said insurance companies are likely to change policies to exclude coverage of certain drugs if an equivalent is available over the counter.

In response to a question from Representative Vigesaa, Mr. St. Aubyn said the federal legislation includes a medical device tax of approximately 2 percent.

In response to a question from Senator Potter, Mr. St. Aubyn said health insurance premiums in this state are lower in part because reimbursement of providers is about 17 percent lower than surrounding states. In addition, he said, utilization is a factor in the lower premiums.

In response to a question from Representative Keiser, Mr. Joe Becker, Tax Department, said many of the provisions of the federal legislation will impact North Dakota taxes because of the effect on federal taxable income. He said the Tax Department has not been able to analyze the excise taxes included in the bill, but the legislation should have little impact on the Tax Department.

Mr. Dan Ulmer, Assistant Vice President, Government Relations, Blue Cross Blue Shield of North Dakota, Fargo, said the \$940 billion Congressional Budget Office estimate of the fiscal impact of the federal legislation does not include the amount needed to address physician reimbursement. He said it appears it will take another \$200 billion to address that issue.

Chairman Keiser called on Ms. June Herman, Senior Advocacy Director, American Heart Association, Jamestown, for comments ([Appendix I](#)) regarding wellness and disease prevention.

In response to a question from Representative Keiser, Ms. Herman said the data in her report for North Dakota is similar to the national results. She said she hopes the My Life Check Assessment will provide North Dakota data that can be compared with other states. She said trends show increases in risk factors, such as obesity, across the nation.

Mr. Michael Fix, Life and Health Division Director and Actuary, Insurance Department, said there were questions at the last meeting regarding how many insurance companies will be affected by the bill draft [[10022.0100](#)] relating to the insurance premium tax. He said seven companies would be affected, and the amount collected from those companies is approximately \$12 million. He said \$11 million of that \$12 million is collected from Blue Cross Blue Shield of North Dakota.

Senator Potter said the bill draft should address all major medical insurance policies whether through a nonprofit or a for-profit company.

Chairman Keiser requested Mr. Fix to provide the committee information regarding the fiscal impact of revising the bill draft to include for-profit companies.

Senator Hogue said the committee should investigate what other states are doing in response to the federal legislation. He said some states have initiated lawsuits to challenge the constitutionality of the legislation.

**It was moved by Representative Kasper, seconded by Representative Vigesaa, and carried on a roll call vote that the chairman of the Legislative Management be requested to approve the payment of travel expenses to allow the committee to have national experts attend the next meeting of the committee to address the impact of the federal health care reform legislation.** Representatives Keiser, Clark, Dosch, Hogan, Kasper, Kelsh, Schatz, Vigesaa, and Zaiser and Senators Hogue, Oehlke, and Potter voted "aye." Representative Thorpe voted "nay."

No further business appearing, Chairman Keiser adjourned the meeting at 2:45 p.m.

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John Bjornson  
Committee Counsel

ATTACH:9