

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Wednesday, July 23, 2014  
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, Rick Becker, Alan Fehr, Robert Frantsvog, Kathy Hogan, Nancy Johnson, Jim Kasper, Alex Looyzen, Karen M. Rohr; Senators Spencer Berry, Oley Larsen, Judy Lee, Tim Mathern, Dave Oehlke

**Members absent:** Representative Eliot Glassheim; Senator Tyler Axness

**Others present:** See [Appendix A](#)

**It was moved by Representative Fehr, seconded by Representative Frantsvog, and carried on a voice vote that the minutes of the May 14, 2014, meeting be approved as distributed.**

Chairman Keiser said he expects the committee will have its next meeting in September, and it is possible this will be the committee's final meeting of the interim.

**INSURANCE DEPARTMENT**

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Insurance Commissioner, Insurance Department, for comments ([Appendix B](#)) regarding the status of implementation of the federal Affordable Care Act (ACA).

In response to a question from Representative Becker, Ms. Ternes said yesterday, a panel of the United States Court of Appeals for the District of Columbia Circuit struck down a portion of the ACA, ruling that insurance subsidies are not authorized in states that have federally facilitated marketplaces (FFMs). However, she said, that same day, a panel of the United States Court of Appeals for the Fourth Circuit, based in Richmond, Virginia, issued a contradictory ruling on the same issue but in a different case. She said she expects the United States Supreme Court will ultimately address this issue.

Chairman Keiser noted that lower courts have issued previous rulings that have supported the subsidies in FFMs.

In response to a question from Representative Fehr, Ms. Ternes said she does not know how the FFMs will address the small business health options program (SHOP) requirement to provide the employee choice model, through which the employer chooses a level of coverage and contribution amount and then the employee selects a plan within those parameters. She said it is possible the FFMs will use a defined contribution model.

Chairman Keiser said Utah has a modified SHOP that has been in effect for approximately seven years; however, under the Utah model, the SHOP has the ability to split premiums between multiple employers and also allows the employer to limit the policies from which an employee is allowed to choose.

In response to a question from Senator Lee, Ms. Ternes said under the ACA, the premium for a family plan can now be based on family size.

Senator Lee said one of the wrinkles with the implementation of the ACA is that Medicare-aged individuals are prevented from qualifying for Medicaid Expansion even though some of these seniors are not eligible for Medicaid. Additionally, she said, under Medicaid Expansion, new refugees are routed to Medicaid Expansion; however, Medicaid Expansion does not include dental coverage, and this is a special need for this population group.

In response to a question from Chairman Keiser, Ms. Ternes said the insurance plans for the 2015 plan year have been filed but have not yet been approved. She stated initially, the open enrollment period would be Wednesday, October 15, 2014, through Sunday, February 15, 2015; however, later corrected this information to

state the upcoming open enrollment period will run from November 15 through February 15. She said after February 15, there will be limited enrollment.

In response to a question from Senator Mathern, Ms. Ternes said insureds need to work with their insurance agents to determine what policies best meet their needs. She said the Insurance Department website continues to publish a list of agents who have completed the ACA training.

Chairman Keiser said although it may still be a possibility for the state to pursue a Section 1332 waiver, it appears at this time there is not strong support, and the waiver information has not been forthcoming from the federal government. He said perhaps the committee might want to consider whether it would be feasible and desirable to have a modified SHOP.

In response to a question from Senator Mathern, Ms. Ternes said that right now, North Dakota has an individual exchange and a SHOP, but we are still waiting to learn whether the SHOP will allow individual choice. She said the federal subsidies available to individuals will not be available to employees who purchase insurance through the SHOP.

### **SUBSTANCE ADDICTION SERVICES**

Chairman Keiser called on Mr. Kurt Snyder, Executive Director, Heartview Foundation, for comments regarding the implementation of the ACA. Mr. Snyder reviewed his concerns regarding the state's essential health benefits (EHB) lack of coverage for residential treatment for substance addiction. He said the American Society of Addiction Medicine (ASAM) recognizes the following levels of care:

- Early intervention;
- Outpatient and intensive outpatient/partial hospitalization services;
- Residential and inpatient services; and
- Medically managed intensive inpatient services.

Mr. Snyder said prior to the ACA and our state's selection of EHB, Blue Cross Blue Shield of North Dakota (BCBSND) covered three types of residential treatment; however, with the implementation of the EHB, the insurance policies in the state, including BCBSND's policies, have limited coverage to high-intensity/residential services for those insured under the age of 21 and have ceased covering residential treatment for all other insureds.

Mr. Snyder said the state is now faced with choosing between funding the treatment of addiction or funding the costs of bad behavior through the funding of our correctional system, deaths, and domestic violence. Additionally, he said, the way this new system is working is that Medicaid is providing coverage for these services while the private insurers are able to avoid providing this service. He said an unintended consequence will include the correctional system being a major provider of addiction services.

Mr. Snyder said we need to support the private sector provision of residential treatment services. He asked the committee to empower the private sector to provide these services to help fill this treatment gap.

In response to a question from Chairman Keiser, Ms. Ternes said in comparing the covered benefits of the benchmark plans, BCBSND had the richest coverage in the area of addiction services. She said 2016 will be the first opportunity for states to change their EHB selection. Until 2016, she said, if a state changes its EHB, the state will be financially liable for increasing the state's EHB. Mr. Snyder stated that although increasing the state's EHB may cost the state money, failure to act is costing the state money.

Senator Lee asked Mr. Snyder to provide the committee members a written copy of his testimony.

Senator Mathern said almost a year ago, he asked the Attorney General for an opinion on this issue, and he has not yet received an opinion. However, he said, the Attorney General continues to assure him the opinion will be coming soon. He questioned why the insureds have not brought a lawsuit to address whether the federal mental health and substance abuse parity law is being violated.

Ms. Ternes reminded the committee that there is an ongoing market conduct examination being conducted which addresses this issue. Additionally, she said, in 2015 when the federal parity rules go into effect, the EHB distinction based on age will go away.

Chairman Keiser asked Ms. Ternes to provide the committee with information regarding which EHB benchmark insurance plans covered residential substance addiction services.

Ms. Lisa Carlson, Director, Planning and Regulation, Sanford Health Plan, stated that in 2010 when Sanford entered the North Dakota health insurance marketplace, it made sure its policies were meeting the state's health insurance mandates. She said that as it relates to the age 21 distinction in coverage, in 2015, with implementation of the federal parity requirements, this issue will correct itself.

Senator Mathern questioned whether insureds will be reimbursed for the costs incurred for the insurers failing to provide substance addiction coverage. He requested that Committee Counsel prepare a bill draft for the next meeting which amends our state health insurance mandate to address this issue. He said it will be important for the committee to receive information regarding the fiscal impact of the legislation as well as the fiscal impact if the state fails to act on this issue.

## INSURERS

Chairman Keiser called on Mr. Luther Stueland, Director, Health Policy Impact and Exchanges, Blue Cross Blue Shield of North Dakota, and Ms. Carlson to participate in a panel to discuss the status of implementing the ACA.

Ms. Carlson reviewed some data on Sanford's experience with North Dakota's FFM. She said 486 members purchased coverage through the FFM, with 50 percent of those policies being bronze and 33 percent being silver. She said less than 10 percent of the members who purchased through the FFM indicate they used an agent, and Sanford is taking steps to try to increase agent usage.

Ms. Carlson said under the ACA if an insured is terminated due to nonpayment, the federal government has clarified an insurance company is required to accept reenrollment even if that applicant has a past-due account. She said with the upcoming 2015 open enrollment period, the insureds will be able to auto enroll. Additionally, she said, for 2015, Sanford is issuing correspondence to try to help ease some of the confusion that may arise in this reenrollment period.

Ms. Carlson said with the implementation of the ACA, Sanford has noticed there have been some small groups that have decided to not offer group coverage. She said when this occurs, it allows the individuals to go to the FFM and receive subsidies.

Ms. Carlson said for the FFM policies the money is flowing, although the federal reconciliation process continues to be slow. She said as a result of this delay, it is common that Sanford is busy with retroactive events to clean up files to address these errors.

In response to a question from Senator Oehlke, Ms. Carlson reviewed the steps the insureds are required to take to address issues of nonpayment or delinquency. Mr. Stueland said during the three-month nonpayment period, the insurer continues to receive the subsidy for the first month but does not for the second and third months.

In response to a question from Representative Frantsvog, Ms. Carlson said Sanford does not auto-assign agents; but as renewal is approaching, Sanford is sending insureds a list of local agents in an attempt to increase agent usage.

Mr. Stueland said there will likely be some reenrollment issues as the 2014 plan year comes to a close. He said for example, for 2015, the 2014 subsidy amount will be the amount reported for reenrollment, but the insured's income or circumstances may have changed, the premium amount may have changed, and there may have been inflationary changes to the poverty level.

Mr. Stueland said BCBSND is experiencing issues with confirming immigration/citizenship status for insureds. He said if during August this information has not been provided, the plans will be terminated. However, he said, these individuals will be eligible to purchase coverage outside the FFM, and the federal government has asked the insurers to take some transitional steps to assist these insureds in changing policies. He said these transitional steps will be an administrative challenge.

Mr. Stueland said there are some special enrollment period issues as well. He said the insurers do not have many ways to verify whether an application made during the special enrollment period actually establishes there has been a qualifying life event and therefore qualifies to purchase during this period; therefore, the insurers tend to accept these applications. He said with this practice, there are some adverse selection concerns. Ms. Carlson said she agrees the FFM does run rather loosely and tends to accept applicants without the necessary verification, thereby resulting in a risk pool that is not ideal.

Senator Lee requested that Ms. Carlson and Mr. Stueland provide the committee members with a written copy of their testimonies. Representative Hogan requested the insurers provide the committee members with copies of the federal government's reenrollment letters that North Dakotans will be receiving.

### COMPARISON

Chairman Keiser distributed a document ([Appendix C](#)) comparing and contrasting his business's grandfathered health plan to a metallic plan under the ACA. He said after doing significant research to narrow down the metallic plans to this one BCBSND plan, his employees were faced with deciding which plan they wanted.

Chairman Keiser said that during the course of the interim, the committee members have continued to receive comments from North Dakotans who want to testify regarding the impact of the ACA, but who are not willing to disclose the facts of their situation; therefore, he is using his small business as an example of how one business has been impacted.

Chairman Keiser said in reviewing the information, it is important to note that the grandfathered policy experienced a 22 percent increase in premium from last year to this year. He said the insurer reported that 2 to 2.5 percent of this increase is attributable to the ACA. He said he really wants to know what caused the remaining 20 percent increase.

Chairman Keiser said as his employees reviewed this information to determine which plan the business should go with, it appeared the larger families and the tobacco users experienced a large increase in premium under the ACA's metallic plan.

In response to a question from Representative Kasper, Chairman Keiser said they did an indepth analysis, looking back at five years of experience, and there were winners and losers under both options. He said the bottom line is that this rate of premium increase cannot continue.

In response to a question from Senator Mathern, Representative Keiser said so far his employees have not pressed him to change to a metallic plan, as at this point the employees' primary concern is simply that they receive health insurance coverage.

Representative Becker said his business had a similar experience; however, on average, the FFM prices were higher. He said he does not believe that only 2 to 2.5 percent of the premium increase is attributable to the ACA. Bottom line, he said, is that his employees lost if they went with a metallic plan and then if they needed hospitalization or major surgery.

Senator Berry said he recently attended a symposium on the ACA, and it looks like small employers are starting to move away from offering health insurance or are instead moving toward providing a set dollar amount for employees to use in the SHOP.

Ms. Carlson said it may sound appealing for a small business to provide a defined contribution plan for its employees; however, in practice the employers have a hard time taking this step. She said perhaps the difficulty comes because the employers tend to take a paternalistic approach and perhaps it is that the employers realize they have to deal with the fallout of the employees' choice.

Ms. Carlson said in comparing the typical North Dakota group coverage to the typical South Dakota group coverage, North Dakota's coverage is great. She said in North Dakota the deductible is typically \$1,000, whereas in South Dakota it is typically \$2,000.

In response to a question from Chairman Keiser, Mr. Stueland said if an employer provided a defined contribution plan, neither the employer nor the employee would benefit if the plan was not purchased in the SHOP. Ms. Carlson said if the plan was purchased in the SHOP, there would be tax benefits if the employee choice program gets up and running and actually works. She said she has her doubts regarding whether the federal SHOP will be working due to information technology issues.

In response to a question from Senator Berry, Ms. Carlson said Sanford has testified the ACA will result in increased costs; however, the federal government says the tax benefits and subsidies will make these policies more affordable.

Senator Lee said in looking at comparisons of grandfathered plans and ACA plans, it is important to remember that although the consumer does not have co-pays for preventive care, this does not mean the care is provided for free.

## ENROLLMENT SERVICES

Chairman Keiser called on Mr. Neil Sharpe, Project/Research Director, North Dakota Center for Persons with Disabilities, to report on the status of navigators assisting consumers and enrollment under the ACA ([Appendix D](#)).

In response to a question from Representative Johnson, Mr. Sharpe said yes, his organization did work within its budget; however, it would have been beneficial to have had additional funds to use for media coverage.

In response to a question from Senator Mathern, Mr. Sharpe said his organization has submitted an application for the next round of navigator grants. He said that although the application provides for the same basic network and services as this round, the application seeks to improve marketing. He said he expects there will be new issues this time around as the renewal process begins.

In response to a question from Representative Kasper, Mr. Sharpe said his navigators undergo criminal background checks. He said this background check is not a federal requirement but is a part of his proposal.

In response to a question from Representative Frantsvog, Mr. Sharpe said he expects there will be a small number of phone calls during the gap period; but even with low-projected calls, this gap does not reflect well on his organization.

In response to a question from Representative Hogan, Mr. Sharpe said his program does utilize the Medicare state health insurance assistance program (SHIP) as appropriate, but perhaps SHIP would be of some assistance in providing services during the gap period.

In response to a question from Senator Larsen, Mr. Sharpe said he does have an itemized report of how his organization spent the federal grant money, and he will provide it to committee counsel to distribute to the committee members. He said the navigators do provide some education regarding fines and the appeal process. He said he and his navigators have not made a point of providing tax advice regarding insurance choices.

In response to a question from Chairman Keiser, Mr. Sharpe said he thinks the navigator services provided through the Great Plains Tribal Chairman's Health Board will also experience this gap period, although he thinks that organization has some additional funding sources that may help fill this gap.

Chairman Keiser called on Ms. Dana Schaar Jahner, representing the Community HealthCare Association of the Dakotas, to report on the status of the certified application counselors assisting consumers and enrollment under the ACA ([Appendix E](#)).

In response to a question from Representative Hogan, Ms. Schaar Jahner said she does not have data regarding whether the federally qualified health centers have recognized a decrease in unreimbursed care, but she can look for this information.

In response to a question from Senator Larsen, Ms. Schaar Jahner said she does not know whether insurance agents were specifically invited to the community events.

## DEPARTMENT OF HUMAN SERVICES AND MEDICAID EXPANSION

Chairman Keiser called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, for testimony ([Appendix F](#)) regarding the implementation of the ACA, including Medicaid Expansion and ACA transition programs.

Senator Lee said the ACA's required change to using the modified adjusted gross income (MAGI) is a huge negative which is negatively impacting more than 3,000 children in the state. She said the federal imposition of MAGI is a glaring example of something that has gone awry under the ACA.

In response to a question from Representative Hogan, Ms. Schwab said the change from an assessment state to a determination state should help alleviate some of the burden at the local level.

In response to a question from Representative Fehr, Ms. Schwab said with the change to being a determination state, she does not anticipate a dramatic increase in the number of applications found eligible due to the change.

In response to a question from Senator Lee, Ms. Schwab said the Department of Human Services had been making referrals to the Caring for Children Foundation to help address the needs of children who exceed 175 percent of poverty; however, they stopped making these referrals at the request of the foundation.

Chairman Keiser called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, to address proposed resolutions to the Medicaid Expansion pharmacy reimbursement rate issues. Ms. Anderson reported that the Department of Human Services, Sanford, Express Scripts, stakeholders, Representative Kasper, and Senators Oehlke and Larsen held multiple meetings via conference call in order to come up with some proposals on how the concerns of the North Dakota Pharmacists Association may be addressed.

Chairman Keiser called on Ms. Carlson to testify regarding the issues related to Medicaid Expansion and pharmacy reimbursement ([Appendix G](#)).

In response to a question from Representative Becker, Ms. Carlson said in the case of sole community providers under solution two, these pharmacies are typically not part of a large chain. She said Sanford recognizes these pharmacies provide services that are necessary for the network to work well. Additionally, she said, rural pharmacists typically spend more time with patients than urban pharmacists do. She acknowledged that in the case of medical providers, Sanford does not reimburse a physician more if that physician is the only provider in the community.

In response to a question from Chairman Kasper, Ms. Carlson said under solution four, she envisions the transparency would provide the information is accessible to all. She said the stakeholders are still in the process of working out the details. She said she expects transparency would include transparency regarding rebates, spread pricing, and audits.

In response to a question from Representative Keiser, Ms. Anderson said the 2013 bill directed that Medicaid Expansion be provided through the FFM or through a private health insurance plan. She said the legislative language did not dictate the pharmacy reimbursement fee schedule; however, in the area of pharmacies, there are concerns regarding the issue of access. She said the Department of Human Services will pursue resolving this issue without requiring legislation. She said her intention is to continue to move forward and have the permanent changes in effect Thursday, January 1, 2015. She said one concern with codifying the resolutions to this issue is that it may unintentionally bind us in the future.

Representative Kasper said he is concerned this issue is improperly being presented or addressed as if the pharmacies are being greedy or self-serving.

Ms. Anderson said the 2015 Medicaid Expansion pharmacy reimbursement rates have not been addressed yet. She said they may be tied to the Medicaid rates or might not.

Chairman Keiser said he is able to distinguish between Sanford paying different pharmacy reimbursement rates for Medicaid Expansion than the state is paying for Medicaid.

Senator Lee said the Legislative Assembly created this issue when it directed the Department of Human Services to provide Medicaid Expansion through private insurance. She said in making this decision, it seems inherent that the reimbursement will differ for each program. Additionally, she said, she recognizes the importance of the services provided through pharmacies, and she can distinguish between the services provided by a pharmacist and services provided by a physician.

Ms. Anderson said the Department of Human Services is still learning how best to implement the Medicaid Expansion program; however, she said, the department does have some experience providing services through the private market in programs such as the children's health insurance program (CHIP) and the Medicaid pharmacy benefit management services.

Chairman Keiser called on Mr. Mike Schwab, Executive President, North Dakota Pharmacists Association, to testify regarding the issues related to Medicaid Expansion and pharmacy reimbursement ([Appendix H](#)).

In response to a question from Representative Becker, Mr. Schwab said the proposed solution two was proposed by Sanford and is likely an attempt to ensure the Medicaid Expansion program has an adequate pharmacy network.

Representative Kasper said in rural areas, the pharmacists are more likely to be quasi-medical providers.

Ms. Carlson said medical providers in rural areas have more contracting leverage. She said there is precedence for there being a reimbursement difference between urban providers and rural providers.

Chairman Keiser thanked the parties for their work on this project.

## UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES

Chairman Keiser called on Mr. Nicholas H. Neumann, M.D., Dean, University of North Dakota School of Medicine and Health Sciences Southwest Campus, for testimony ([Appendix I](#)) regarding the status of the school's workforce survey.

Dr. Neumann said the University of North Dakota School of Medicine and Health Sciences Advisory Council has been active under Dean Joshua Wynne's tenure. He said he expects the Advisory Council will be ready to present a preliminary report on the workforce survey at the committee's September committee meeting.

In response to a question from Senator Lee, Dr. Neumann said he is not certain whether the survey will specifically address nurse practitioners; however, the intent is that the survey will cover all health care practitioners.

Representative Hogan brought to Dr. Neumann's attention the recommendations of the behavioral health study just received by the interim Human Services Committee. Dr. Neumann said he expects the workforce survey will include recommendations as part of the analysis.

## LOAN REPAYMENT PROGRAMS

Chairman Keiser called on Ms. Mary Amundson, Director, Office of Primary Care, State Department of Health, for testimony ([Appendix J](#)) regarding statutory programs to help with student debt for health service providers.

In response to a question from Senator Lee, Ms. Amundson said she will provide the committee with data regarding the number of North Dakota students participating in the Western Interstate Commission for Higher Education (WICHE) program.

Senator Mathern said these loan repayment programs seem to have been pieced together over the years. He questioned whether it might be valuable to standardize these loan programs. Ms. Amundson said the federal loan repayment program is more standardized, so there is that precedence.

In response to a question from Chairman Keiser, Ms. Amundson said the penalty and repayment provisions are not standardized under the state repayment programs. She said some changes could be made to these programs to make them more attractive. Chairman Keiser requested that information be provided at the next meeting regarding the use of these programs. He said it is important to know whether the programs are adequately funded or underfunded.

Representative Becker said in evaluating the programs, it is important to know the number of recipients who leave at the end of their term and compare this number to the number of practitioners who leave without the program, and it is important to survey the recipients to find out whether the incentive played a significant role in that individual's selection of the job and community. Ms. Amundson said there is a multistate retention survey that does track some of this data; however, one weakness in this survey is the low response rate.

In response to a question from Chairman Keiser, Ms. Amundson said potential changes to the loan repayment programs might include allowing three-year and four-year loan repayment, revisiting the community match requirement as sometimes it is a hardship for the community to find these funds, revisiting the dental loan repayment program to determine why so few dentists use the program, and perhaps increasing the work with students. She said she would be happy to help the committee and can further investigate this topic.

In response to a question from Senator Larsen, Ms. Amundson said she does get asked why there are not loan forgiveness programs for chiropractors and for addiction counselors.

Senator Mathern suggested the committee also review the recommendations from the interim Human Services Committee report on behavioral health. Senator Lee suggested the committee receive information from the State Board of Higher Education. Ms. Amundson said one challenge with loan forgiveness programs for psychologists is the licensure process requires that graduates practice for two years before being licensed. Senator Lee said the interim Health Services Committee is also looking at some of these issues.

## RECRUITMENT

Chairman Keiser called on Ms. Marnie Walth, Director, Strategic Planning and Public Policy, Sanford Health, for testimony ([Appendix K](#)) regarding recruitment programs for health service providers.

In response to a question from Representative Kasper, Ms. Walth said even with the transition of the Sanford College of Nursing to North Dakota State University, Sanford will continue to budget for the nursing loan program.

She said initially the program provided for 100 percent loan forgiveness but has changed to 75 percent loan forgiveness.

In response to a question from Chairman Keiser, Ms. Walth said under the physician stipend program, if the obligation is met, the stipend is written off.

In response to a question from Representative Rohr, Ms. Walth said she does not know the percentage of the budget designated for sign-on and relocation, but it is a budgeted program and has to live within these budgetary limitations.

## BILL DRAFTS

### Legislative Management Study

Chairman Keiser called on Committee Counsel to present the second draft [15.0092.02000] of a bill draft providing for a Legislative Management study of the health care delivery system. She said this bill draft was revised to include language to provide the University of North Dakota School of Medicine and Health Sciences Advisory Council shall make periodic reports to the Legislative Management on the status of the biennial report developed pursuant to North Dakota Century Code Section 15-52-04.

**It was moved by Representative Fehr, seconded by Senator Mathern, and carried on a roll call vote that the bill draft relating to the Legislative Management study of the health care delivery system be approved and recommended to the Legislative Management.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyson, and Rohr and Senators Berry, Larsen, Lee, Mathern, and Oehlke voted "aye." No negative votes were cast.

### Telemedicine

Chairman Keiser called on Committee Counsel to present the second draft [15.0079.02000] of a bill draft to provide health insurance parity in health insurance coverage of telemedicine. She said this bill draft was revised to provide the mandate of coverage be limited to the Public Employees Retirement System (PERS) uniform group insurance plan for the first two years, to direct PERS to study the impact of the bill during that two-year period, and to direct PERS to introduce at the 2017 legislative session a bill to extend the mandate of coverage to the private market. She said this bill draft was presented to the Employees Benefits Program Committee at its June 2014 committee meeting, and the committee took jurisdiction of that bill draft.

Senator Mathern questioned whether it might make sense to expand this mandate to the private market in order to address the health care provider needs in the western portion of the state.

Chairman Keiser said one concern he has with this bill draft is the language on page 2, lines 14 through 19, providing the insurance coverage needs to be the same for both in-person and telemedicine services. He said this bill draft language is based on our traditional health care delivery system, and he thinks this system is outmoded. Additionally, he said, in theory, remote services should cost less than traditional face-to-face services. He said the reimbursement rates should be set at a contract rate, not a parity rate.

Senator Lee said typically the discussion of health care delivery does not focus on costs, it focuses on access. She said she fully expects the standing committees will give in-depth consideration to this matter.

Representative Rohr questioned who would be performing the cost-benefit analysis on this bill draft.

Representative Becker questioned whether there have been any studies to show there is underutilization of telemedicine in the state.

Chairman Keiser stated representatives of Avera Health testified at the committee's November 2013 meeting and followed up with a letter recommending a bill draft to provide for insurance coverage of telemedicine. He said this testimony from Avera Health focused on rural needs, but there are also facilities in larger communities which are using telemedicine. He said he does not think there is a source of accurate data regarding utilization of telemedicine in the state.

Senator Larsen said he supports limiting the mandate to the PERS uniform group insurance plan for the first two years.

Representative Fehr said he thinks there is a need to address telemedicine, but he is not sure this bill draft is the correct approach.

**It was moved by Senator Lee, seconded by Representative Johnson, and carried on a roll call vote that the bill draft relating to PERS uniform group insurance reimbursement parity for services provided by telemedicine be approved and recommended to the Legislative Management.** Representatives Keiser, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyesen, and Rohr and Senators Berry, Larsen, Lee, and Mathern voted "aye." Representative Becker voted "nay."

### **Involuntary Commitment**

The committee considered a bill draft [[15.0133.01000](#)] related to the scope of practice of professionals in involuntary commitment proceedings.

Chairman Keiser called on Dr. Andy McLean, Medical Director, Department of Human Services, to comment regarding the bill draft. Dr. McLean stated advanced practice registered nurses are often primary care providers, and this bill draft helps address the scope of practice for these practitioners. He said the Department of Human Services supports this bill draft. He said as this bill draft moves through the process, it may be appropriate to address statutory issues related to the recent revisions of the *Diagnostic and Statistical Manual of Mental Disorders*. Additionally, he said, there may be additional providers that could be included in the involuntary commitment proceedings.

Chairman Keiser called on Dr. Constance Kalanek, Executive Director, State Board of Nursing, for comments regarding the bill draft. Dr. Kalanek said the board did review this bill draft and does support it. Additionally, she said, the board's legal counsel agreed that the language of the bill draft is consistent with the scope of practice of advanced practice registered nurses.

Chairman Keiser called on Dr. Cheryl D. Ulven, North Dakota Academy of Physician Assistants, for comments regarding the bill draft. Ms. Ulven requested that physician assistants be added to the bill draft. She said there are unmet needs in rural communities which the physician assistants are integral in providing.

Representative Fehr stated one way a physician assistant differs from an advanced practice registered nurse is that the physician assistant is required to practice under a physician.

Senator Lee said she is hesitant to add physician assistants to the bill draft at the last minute, but she is not adverse to getting additional information regarding this matter.

**It was moved by Senator Lee, seconded by Senator Mathern, and carried on a roll call vote that the bill draft relating to the involuntary commitment proceedings be approved and recommended to the Legislative Management.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyesen, and Rohr and Senators Berry, Larsen, Lee, and Mathern voted "aye." No negative votes were cast.

### **COMMITTEE DISCUSSION**

Representative Fehr requested a bill draft to create a pilot project to pursue an outcome-based versus fee-for-service delivery system. He said perhaps the pilot program could be limited to PERS or could focus on chronic conditions. Chairman Keiser said this seems like a good idea.

Representative Becker requested a bill draft based on a bill enacted in Michigan which provides for a copayment for Medicaid Expansion.

Representative Kasper discussed whether the committee might be interested in drafting legislation that would address pharmacy reimbursement for Medicaid Expansion. He said he recognizes there may be several unknowns, but that with careful drafting, the legislation should be able to address these "what ifs."

Chairman Keiser said he trusts the Department of Human Services will make the changes it has proposed without the need for legislation.

Representative Kasper requested a bill draft to provide the Medicaid Expansion pharmacy reimbursement mirror the Medicaid structure. He said the bill draft should also address the possibility of the federal government decreasing Medicaid pharmacy reimbursement; provide that if the Department of Human Services uses a pharmacy benefits manager for the programs, the services must be fully transparent and have audit requirements; and provide that pharmacists have access to information regarding what other medications the patients are prescribed.

Committee Counsel said it will be important for the committee to consider effective dates for any proposed legislation that revises the Medicaid Expansion program. For example, she said, it is possible that the soonest the

changes could be effective would be Sunday, January 1, 2017. Representative Kasper said he understands there may be limitations, but perhaps the bill draft could provide for a Friday, January 1, 2016, effective date or as soon as possible thereafter.

Senator Lee said carving out pharmacy reimbursement may be a slippery slope. Representative Kasper said he is not seeking a sweetheart deal, but he is just seeking reimbursement that is the same as that provided under Medicaid. Senator Lee said Medicaid is different from Medicaid Expansion. She said the Medicaid Expansion is designed to be a private policy, and if we do this for pharmacy, we may be faced with requests to do the same for other providers.

Representative Hogan proposed a change in the involuntary commitment law to extend the amount of time allowed to perform the required evaluation. Dr. McLean said he does not know enough about this topic to comment, but Dr. Rosalie Etherington, Clinical Director, State Hospital, may be better situated to comment at a future meeting. Chairman Keiser said there is a risk of adding to a bill draft that has full support.

Representative Hogan requested a bill draft to extend the amount of time for involuntary commitment proceedings in accordance with recommendations from Dr. Etherington.

Chairman Keiser questioned whether the committee might be interested in a bill draft to make more uniform the health care provider loan repayment programs and to provide flexibility in repayment extensions. Senator Lee requested a bill draft be prepared to address these issues.

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

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Jennifer S. N. Clark  
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ATTACH:11