2015 HOUSE HUMAN SERVICES

HB 1378

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1378
2/2/2015
Job #22982

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Provide a legislative management study, decisions, and directive regarding the federal Affordable Care Act.

Minutes: See Testimony #1

Chairman Weisz opened the hearing on HB 1378.

Rep. George Keiser: From District 47 introduced and supported the bill. We worked with the Governor's office and the Insurance Dept. in crafting this legislation. This is a positioning piece of legislation. In 2010 the Affordable Care Act (ACA) became law and began a process that led to various stages of implementation. Each state was required to define what is referred to as EHB, essential health benefit plans and ND did do that. In the process of doing that you had to identify the ten highest volume plans in your state. We did that. These were plans in the small group and/or individual group market. Not Medicaid or ARITHA plans, but only the private insurance market. We developed a profile of the 10 plans that qualified. We made a list of most enriched to least enriched plans. The most benefits plans were available in the most enriched plan and fewer benefits in the least enriched plan. We had a deadline. The insurance commissioner was left with the responsibility to make a significant policy decisions relative to the ACA. He asked the interim committee what they thought. The interim committees have no authority to make a policy decision. ND made the selection of the least enriched of the ten plans. New York did the same thing as us and they went in the middle. We went with the least enriched because it would be the most affordable. It would be a base plan and then other plans would be developed by the insurance providers and then there would be base plans and enhanced plans. Adverse selection is when in the insurance industry you start offering a unique benefit, the only people who are going to subscribe to that benefit will be those people that need it and I will be very costly. Whether it was NY that shot in the middle or ND that went at the bottom base line plane; all others plans went there. And there was no diversity that was thought would develop. We are at the crossroads. 2017 is a huge year. States will be able to start taking back part of the responsibility within the ACA or making adjustments based on the rules promulgated in the ACA. However, EHB is on the block. We have had rules promulgated and they have been distributed for comment. They have not been formulized yet. The rules that were promulgated will be amended somewhat.

The date is January 1, 2017 that is when the EHB has to be implemented. It has to be done by July so the insurance companies have time to develop their products and get them approved by the Insurance Dept. (Walked through the bill.)

15:55
Chairman Weisz: The fact that infertility wasn't part of our bench mark plan didn't stop the other nine from offering it, correct?

Rep. Keiser: You are right, but they don't because of adverse selection. If you offer that in your plan than the only people who will buy it are those who want it and you can't afford it.

Chairman Weisz: One of the reasons we didn't put it in is because we couldn't limit the cost on it.

Rep. Keiser: We can limit. We can't do it cost, but in terms of service.

Rep. Fehr: Looking at page 1, item 2, line 15, where it begins. I understand we have got this date January 1, 2017 which either things happen in this session or they don't happen before that date. You created a way to have an interim study and this is authorizing them to issue a directive to the Governor which by passes the next legislature because it would be too late. Have I got that right?

Rep. Keiser: That is correct. Traditionally the interim committees are not given the authority to go forward with legislation. Without this the Governor or Insurance Commissioner will have to make that decision without legislative input.

Rep. Rich Becker: The interim committee authorized to go with the least cost of the ten plans. Are there a big gaps between the plans?

Rep. Keiser: There is not a big gap. We thought that would be the base plan and companies could offer an enriched plan. Throughout the U.S. that has not happened. Whatever your essential health plan was, that is what everybody went with.

20:59
Jack McDonald: I'm here representing AHAN and they support this bill. We encourage a Do Pass.

22:05
Jerry Jurena; President of the ND Hospital Association testified in support of the bill. (See Testimony #1)

22:45
Rebecca Ternes: Assistant Director to the State Insurance Dept. When the ACA was passed in 2010 there was a quick rush and some of the rules impacted carriers and regulators within 90 days of the signing of the bill. This particular decision had to be made by the fall of 2012 and the final rules were not even done until the following 2013. We hope that won't be the case with this set of rules. The problem is everyone says this is an

important decision and not one to be rushed. You can only choose from the 2014 plans. There isn't a lot of difference for us in the 2014 plans.

24:43
Chairman Weisz: Prior to us signing the bench mark plan there was a difference in the plans. It didn't appear adverse selection was an issue so why when we picked the plan that became an overriding decision for the insurance companies?

Ternes: When plans had more variations they could also underwrite based on a lot of different things. They could price their products in a way that made them cover their risks better so they could offer different types of benefits and price accordingly, Now we are down to very few factors that they can price on.

NO OPPOSITION

Chairman Weisz closed the hearing on HB 1378.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1378
2/3/2015
Job #23125

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz took up HB 1378. I've heard some comments on this that this bill was opening up a state run exchange. It has nothing to do with a state run exchange. It is only the EHB and the bench mark plan we have to establish again by July 1, 2016.

Rep. Porter: I motion a Do Pass.

Rep. D. Anderson: Second.

Rep. Damschen: Is that the normal wording in lines 7 and 8? It sounds like it is directing legislative management to assign a committee specifically for the purpose of...

Chairman Weisz: And you are. That is what it is doing.

ROLL CALL VOTE: 13 y 0 n 0 absent

Bill Carrier: Rep. B. Anderson

Date: 2-3-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1378

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Porter Seconded By Rep. D. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. B. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1378: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1378 was placed on the Eleventh order on the calendar.

2015 SENATE HUMAN SERVICES

HB 1378

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1378
3/25/2015
25403

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Donald Mueller

Explanation or reason for introduction of bill/resolution:

A bill for a legislative management study, decisions, and directive regarding the federal Affordable Care Act and the state's benchmark plan and state-based essential health benefits package for the 2017 plan year and beyond.

Minutes: No attachments

Representative George Kieser, district 47, introduced HB 1378 to the Senate Human Services Committee. It was stated on the radio that the Affordable Care Act is five years old. When the Affordable Care Act was enacted, it required states to determine and define their essential health benefits plan. The federal government gave us a process that was to be used state-by-state, and in the State of North Dakota, there were 10 plans that qualified, and we ranked them from the most enriched to least enriched. Because we were not in a legislative session, the states still had a requirement to select an essential health benefit plan, and that burden was placed on the insurance commissioner. During the interim, we had an interim health committee that met, reviewed the plans, and Insurance Commissioner had to make a decision. They would have preferred that the legislature define the essential benefit plans. One of the outcomes is that federal Health and Human Services (HHS) believed that states might very well take a less enriched plan, but that doesn't preclude carriers from oferring a more enriched plan. Regardless of where states went, New York did something similar to us, and they went with a middle enriched plan. North Dakota took the least enriched plan. Regardless, whatever a state did, that became the plan for that state. The companies did not offer enriched plans because of the issue of adverse selection. Our plan didn't have fertility coverage, where other plans did. Adverse selection will work against you on an issue such as fertility, as not all people need that coverage. All plans went to the essential health benefits. The reason for the bill is the federal Department of Health and Human Services is in the process of writing a new rule relative to essential health benefits, and there is potential opportunity for states to make an adjustment in their essential health benefit plan. We would have liked that they completed their work before the end of the session, but they will not make our deadline in our legislative session. If there is an opportunity for our state to address the essential health benefit rather than putting this on the Insurance Department, it brings it back into the decision making process with the legislature. Representative Keiser read from the bill, section 1. The initial rules have been distributed. States have time to respond. Final rule

will likely not be written until June or July. Representative Keiser continued reading from the bill, section 2. We will be back in session in 2017, but if we were to change, insurance carriers will need to know in early 2016. Plans would be implemented in 01/01/2017. We did put limitations on the legislation, page 1, line 22, the committee can only consider benefits that were not in one or more of the state's benchmark plan options. We are limited to go back to those ten plans that we had, and only consider adjustments that were already available in one of those ten plans. This is supported by Governor, Insurance Commissioner, and Legislative leadership. If something was not covered in one of those plans, it cannot be considered. Representative Keiser continued reading from Section 3 regarding the possible repeal of the Affordable Care Act. Subsection 4 requires reporting requirements. It is attempting to set up a procedure to allow legislature to have some role in the policy making decision.

Senator Warner asked if Representative Keiser could address the expansion for mental health issues. The plan chosen may have short.

Representative Keiser indicated that some of the other more enriched plans had mental health that were not under the selected Sanford plan, and those would be under consideration.

Senator Warner asked if that was mostly in-patient treatment. **Representative Keiser** confirmed yes, residential treatment.

Senator Warner commented on the possibility of an alliance with other states. If subsidies can only be allowed in state run exchanges, that would be very expensive for the state of North Dakota. Are there any benefits or impediments to partner with other states?

Representative Keiser offered his opinion, the impediment is the money is not available. In the original act, if you went with a state or with a group of states, the funding for the information technology piece, that money was provided as a grant, costing as much as $80,000,000. That money is no longer available and will not be available. If a state decides to do that, they will absorb the cost of technology.

Senator Warner asked are there impediments with insurance, reluctant to form alliances with states with shared services. Are there any legal impediments?

Representative Keiser answered not to his knowledge and in fact it would be encouraged. But we have a tough time deciding within our own state versus multiple states. From a political standpoint, states would have to give up a lot of authority.

Chairman Judy Lee commented that it sounds good to partner with border states, but the departments of insurance in each state lose their ability to make sure that the companies are providing properly the services they say they are going to provide. Right now if you have a complaint, you can call your state's insurance department. If we have cross-state selling, it becomes a barrier. It might be Omaha or Dover, Delaware, and public would find less quick response.

Representative Keiser concurred, that is correct. The Affordable Care Act does have a provision for multi-state plan. They are not regulated by state insurance departments, but regulated by office of employee services at the federal level. They are available, but did not materialize.

Senator Howard Anderson, Jr. commented that his understanding is the software developed with federal money is in the public domain. Could we get that?

Representative Keiser responded true, but not sure you want it. The states that did a state exchange have been very successful (Kentucky) to the least successful (Oregon, Hawaii). The federal program, not sure we could afford the cost to maintain the software.

Senator Dever understands the intent. Senator Dever read from the bill, section 2 - directing the Governor. Do we direct the Governor as an equal branch of government?

Representative Keiser responded with policy, when we pass a law, the Governor does have to follow it.

Senator Dever continued, is the full legislature assigning the authority to make that decision?

Representative Keiser stated that is what the bill is doing, in the interim, giving some authority. There are checks and balances. The committee doesn't get to do anything other than make a recommendation back to legislative management, who would provide the directive to the Governor.

V. Chairman Oley Larsen stated with the ruling of the supreme court on hold until June, if that holds up that the feds will not allow a federally run exchange to get the subsidy, and then we are going to make ourselves a state-run exchange, will that then allow us to come back and able to get the subsidies for the people of North Dakota.

Representative Keiser stated the question is beyond his paygrade. The federal Health and Human Services would have to answer. There were clear definitive standards set up for state-based exchanges. You can't simply declare that we will be a state-based exchange. For state base exchanges, they were required to submit an application and a pro-forma of what their program was, what their information technology was, what the support mechanisms, a whole array of issues. If the state of North Dakota quickly decides they want to be a state based exchange, he assumes it would have to be approved by the federal Health and Human Services prior to becoming active, and the standards that were required were really significant. We do have a bill on the shelf that sets up a state based exchange for North Dakota, that most people who read it said it was a great concept, but they opposed it because they opposed the Affordable Care Act. We are not starting from zero, not that wouldn't amend the legislation, but at least we have a bill that has gone through where people said if we have to do it, this is what we would do. Getting certified for most states takes six months, or longer.

V. Chairman Oley Larsen commented regardless if we have our own state exchange, we can still never go back under the essential benefits. Every time we put another additional rider on a policy, it adds costs.

Representative Keiser indicated that 95% of the people had these in their plans previously. The frequency was relatively low, while severity was high. It was easy to spread them and didn't make a major difference in total premiums. If you redefine the essential health benefit, that impacts every plan. Currently, if the State of North Dakota were to direct that all insurance plans cover fertility treatment, that then would be a mandate and it would not be in the plan, but a state mandate, and the State would pay for it.

Chairman Judy Lee commended the committee that Representative Keiser had worked on in developing the state-based exchange proposal, which we don't have. There was a lot of hard work, thoughtful participation from all points of the political persuasion line, and came out with something that a lot of folks liked.

V. Chairman Oley Larsen asked if this study continues, will there ever be a discussion that our state of North Dakota will embrace the Affordable Care Act part of it. That citizens can continue to do that or that citizens can opt out and go back to the way it was, to solicit their own insurance.

Representative Keiser stated that is an important issue. From day one in the Affordable Care Act, the year 2017 is a critical year. It is a year where states could develop their own state plan. If it were approved by the federal Health and Human Services, you could opt out. There is coming an opportunity for every state if Affordable Care Act remains in play, you can remain in Affordable Care Act or go to a state plan. The downside is there won't be much difference - you'll have to follow similar standards and regulations. State based exchanges have more flexibility in some areas than those under the federal system. They can set different standards right now. There would be options for the state that would be advantageous to be state-based, but getting approval, and making a lot of changes will be minimal.

V. Chairman Oley Larsen the state of North Dakota could have the marketplace, or they could not have a state-based exchange, and could go to a single policy.

Representative Keiser said they could have a state plan, but 95% must be in the state plan.

Rebecca Ternes, Deputy Insurance Commissioner, testified IN FAVOR of HB 1378. They did make the final decision in September 2012. The insurance department was put in a unique position to select a plan that defined the states mandate, which has always been the legislatures prevue in the past. It does mean an increase in cost to every insurance plan in the state. We wrote a letter to the federal health and human services agency asking for a delay so the next legislative session in 2013 could make the decision and that was not allowed. There was a proposed rule when we wrote the legislation, and now a final rule was issued in February. Unfortunately, the rule has some things in it that we are still unclear of. It will be a selection for January 1, 2017, and it will still require the benchmark

plan have the ten general categories of health, such as mental health, substance abuse, rehabilitative services, all those major areas including pediatric dental and pediatric vision, which are two of the new categories for most of the plans that we had in 2014. The choices that we will have for the new selection will be from 2014 plans, both grandfathered and non-grandfathered. This is important, because of the choice we made before, we could actually go back and choose one of those grandfathered plans, if they met the ten criteria. The largest health plan by enrollment in any of the three largest small group insurance products, by enrollment, any of the largest three employee health benefit plan options, and we do have a grandfathered and a non-grandfathered state health plan, any of the three largest federal employee health benefit plans by enrollment, and again the coverage plan with the largest insured commercial non-Medicaid HMO operating in the state. Those will be our choice of ten that we get to choose from. We think there should be some analysis again, to allow stakeholders to represent their views on this choice. We were thinking we would have a lot more time into the fall, but the rule puts the deadline as June 1, 2015. The states have expressed great concern about this date. We expect them to finalize the plans by the fall of 2015, which would be nice for insurers. They will start January 1, 2017. We expect the grandfathered plans to rise as one of the choices. The feds will give them the list of choices. We may see some of those plans with enriched services. There may be a chance to increase the benefits and benchmark without increasing mandates, which would have to be paid for by the state.

V. Chairman Oley Larsen referred to the richness of the plans. The person who is going to be paying the premiums will be paying more and more. It will not be less expensive, which it should be.

Ms. Ternes agrees that prices are not going down. The utilization trends is staying at a level that they have not seen stay at this level for so long, between 3% and 6%. Something of the law has made people think about over utilization, at least in the state of North Dakota. Rates are still going up. In 2012, the commissioner asked a straw poll of the interim committee, and the vast majority thought we should pick a floor that does not increase costs to everyone and allow insurers to believe whether or not there would be additional options that would be richer. It didn't happen. Instead, everyone went to the floor and removed benefits to the minimum. But you can't blame the carriers. There are a lot of unknowns.

V. Chairman Oley Larsen asked do you have the total number of folks on the marketplace.

Ms. Ternes answered as of today, we don't trust the federal numbers, we look at 12,000. It has gone up slightly. She thinks 10,300 at the end of 2014. 85% do get the subsidy. There is no reason to go to the marketplace unless getting the subsidy.

Chairman Judy Lee stated that is why the supreme court decision on subsidy is a big deal to the states.

Ms. Ternes agrees - we will have to make quick decisions.

V. Chairman Oley Larsen asked do you think he (supreme court justice) will rollover and everyone gets the subsidy.

Ms. Ternes will never try to guess what the Supreme Court will do. You can find people in both camps. The language of the law is very clear, but the intent is the opposite. If they do decide that there shouldn't be subsidy, do the people have to pay them back, how do you do that, and what do you do with those people - do they become uninsured but still have the mandate, so they would be penalized through their taxes. No one knows.

Chairman Judy Lee stated this is only a study here.

OPPOSITION TO HB 1378
No opposing testimony.

NEUTRAL to HB 1378
No neutral testimony

Chairman Judy Lee closed public hearing.

Senator Axness moved the Senate Human Services Committee DO PASS HB 1378. The motion was seconded by **Senator Warner**. No discussion.

Roll Call Vote to DO PASS
5 Yes, 1 No, 0 Absent. Motion passes.

Chairman Judy Lee will carry HB 1378 to the floor.

Date: 03/25 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1378

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Axness Seconded By Sen Warner

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)		✓	Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1378: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1378 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1378

#1

North Dakota Hospital Association

Vision
The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.

Mission
The North Dakota Hospital Association exists to advance the health status of persons served by the membership.

Testimony: HB 1378
Legislative Management Study
Regarding Affordable Care Act
House Human Services Committee
February 2, 2015

Good morning Chairman Weisz and Members of the House Human Service Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here today in support of HB 1378 and ask that you give this bill a **Do Pass.**

I believe it is essential that the Legislature in the State of North Dakota does their due diligence on monitoring the Affordable Care Act. This Act is too important to not have our legislature monitoring it; state budgets, healthcare providers, third party payers and consumers are all linked together under this one act. If changes occur we cannot wait until the 65th Session to alter what we are doing in the State.

I ask that you give this bill a **Do Pass.** Thank you.

Respectfully Submitted,

Jerry E. Jurena, President
North Dakota Hospital Association

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