

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Thursday, February 4, 2010
Rooms 1185/1186, Clinical Education Center
University of North Dakota School of Medicine and Health Sciences
Grand Forks, North Dakota

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

Members present: Representatives George J. Keiser, Bill Amerman, Rick Berg, Donald L. Clark, Mark A. Dosch, Kathy Hogan, Jim Kasper, Scot Kelsh, Dan Ruby, Mike Schatz, Elwood Thorpe, Don Vigesaa, Steven L. Zaiser; Senators Arthur H. Behm, David Hogue, Dave Oehlke, Tracy Potter, Terry M. Wanzek

Member absent: Representative Tracy Boe

Others present: Eliot Glassheim, State Representative, Grand Forks

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

It was moved by Representative Clark, seconded by Representative Vigesaa, and carried on a voice vote that the minutes of the November 3, 2009, meeting be approved as distributed.

Chairman Keiser thanked the University of North Dakota School of Medicine and Health Sciences for hosting the committee. He said the committee scheduled a meeting in Grand Forks with the idea of inviting a physician from Canada to provide the committee with information regarding the delivery of medical services in Canada. He said a representative of a physicians' association in Manitoba considered participating in the meeting but opted to keep from being entangled in American politics. He said the committee likely will have a Canadian physician who is practicing in this state attend the next meeting of the committee to provide information regarding why the physician is practicing in this country.

Chairman Keiser distributed a copy of correspondence from Representative Al Carlson, Chairman of the Legislative Management, regarding the expansion of the scope of the committee's study to include the monitoring of federal health care reform legislation, including its effect on North Dakota citizens and state government; the related costs and state funding requirements; related tax or fee increases; and the impact on the Medicaid program and costs, other state programs, and health insurance premiums, including the Public Employees Retirement System. He said the implications of additional taxes and fees are significant and can be reviewed in depth at *Kaiser.org*.

Chairman Keiser called on Ms. Lynette Dickson, Program Director, University of North Dakota Center

for Rural Health, Grand Forks, for comments ([Appendix B](#)) relating to the Center for Rural Health. Ms. Dickson said each state has an office for rural health, 36 of which are part of state health departments. She said 11 states house the office of rural health at a university and three states operate through a nonprofit organization. She said the Center for Rural Health at the University of North Dakota is a very active and progressive program that is well-connected.

In response to a question from Representative Keiser, Ms. Dickson said officials from the Center for Rural Health have been working with the state's Congressional Delegation to ensure that federal funding for the center is not reduced. She said the goal is to at least maintain the current funding level. However, she said, the recently released proposed executive budget includes some proposals to increase funding for certain line items.

In response to a question from Representative Berg, Ms. Dickson said there are gaps in the state with respect to primary care. She said there are some shortages of primary care physicians and a maldistribution of nurses within the state. She said there is a need for more nurse practitioners and physician assistants in rural areas and a lack of radiological technicians in certain areas of the state.

In response to a question from Representative Keiser, Ms. Dickson said in 2009 the Legislative Assembly provided funding for the hiring of a health information technology director. She said the Health Information Technology Advisory Committee has applied for matching federal funds to facilitate an exchange for health information technology. She said the development of standardized health information technology records has not progressed very far, especially in rural areas. Although there is federal funding available for the use of electronic health records, she said, there is not much funding available for health care providers to buy the products to develop the electronic records. She said Medicare incentives are difficult to obtain for rural health care providers due to the definition of meaningful use. She said most critical access hospitals are not at the level that a hospital should be with respect to electronic records. She said the hospitals need upfront money to install electronic records systems and may be able

to work through that process as a result of a \$5 million low-interest loan program implemented by the state.

Representative Keiser said despite the requirement that states have an integrated medical records system, providers are significantly behind in implementing the system. He said implementation is especially a concern in rural areas and most hospitals are not likely to meet the federal implementation deadline which could result in Medicare reimbursement reduction penalties.

Ms. Dickson said the problems may be compounded in rural areas due to a shortage of information technology workforce available to rural health providers. She said rural providers have been encouraged to share workforce and resources.

In response to a question from Senator Oehlke, Ms. Dickson said the federal Department of Veterans' Affairs and Indian Health Services have medical records systems that are different from the systems being implemented in North Dakota hospitals. However, she said, officials from the Center for Rural Health have reached out to officials from Indian Health Services to attempt to work together with respect to electronic records. She said the difference among systems will pose another challenge with respect to integration.

In response to a question from Representative Keiser, Ms. Dickson said she is not certain whether the Department of Veterans' Affairs and Indian Health Services are exempt from the federal integration requirements.

In response to a question from Senator Oehlke, Ms. Dickson said the Center for Rural Health has conducted several research studies on issues relating to American Indians and tribal entities. She said the center is providing no direct services to tribal entities, but continues to try to work with tribal entities on projects, including conducting research on suicide prevention.

Chairman Keiser called on Dr. Boris Volkov, Center for Rural Health, Grand Forks, for comments ([Appendix C](#)) regarding the Center for Rural Health and the *Environmental Scan of Health and Health Care in North Dakota*.

In response to a question from Representative Zaiser, Dr. Volkov said he can provide the committee additional data regarding the percentage of the population that is unable to afford health care. He said there are many individuals who are unable to afford health care who go to an emergency room for services, which is much more expensive than receiving treatment in a clinical setting.

In response to a question from Representative Berg, Dr. Volkov said the percentage of individuals living in poverty is likely greater on the Indian reservations and in rural areas.

Representative Zaiser said the percentage of adults in North Dakota reporting fair or poor health may be lower than the national average because North Dakotans may not admit that they are not healthy because they do not show signs of weakness.

Dr. Volkov said the percentage of adults reporting health status is from self-reported data. He said hospital discharge data is not available to help determine the actual health of adults in the state.

In response to a question from Senator Potter, Ms. Dickson said she may be able to gather some data from national sources to compare how North Dakota ranks in terms of rural health.

Representative Keiser said a recent study indicated that the state was first in quality of health care and lowest in Medicare reimbursement rates.

In response to a question from Senator Behm, Dr. Volkov said although North Dakotans rank third nationally in life expectancy, the rate is low compared with other developed countries.

In response to a question from Representative Amerman, Dr. Volkov said binge drinking is defined as having five or more drinks at one time once or twice a week. He said statistics relating to binge drinking come from secondary sources.

In response to a question from Representative Zaiser, Dr. Volkov said low pay may be a factor in workforce shortages in the state, as well as other factors such as the climate and the rural nature of the state. With respect to the use of secondary sources and self-reporting, he said, additional funds are needed to conduct primary research.

Representative Keiser said he recently attended a presentation by the medical director of IBM who indicated that IBM uses the quality of health care in a community as a significant factor in locating a new facility. He said the health care costs for the company are the second largest cost next to salaries. He said IBM requires employees to be attached directly to a primary care physician which results in a significant reduction in health care costs. He said young people tend not to be attached to a single primary care physician, in part because of the movement toward a walk-in clinic model.

Chairman Keiser called on Mr. Adam W. Hamm, Insurance Commissioner, for comments ([Appendix D](#)) regarding the federal health care reform legislation and North Dakota requirements for new insurance companies.

In response to a question from Senator Potter, Commissioner Hamm said federal preemption with respect to guaranteed issue is a concern because the Comprehensive Health Association of North Dakota program essentially provides guaranteed issue in this state. He said the state should have regulatory authority in this area rather than be subject to federal regulatory authority.

In response to a question from Representative Hogan, Commissioner Hamm said the Medicare reimbursement amendments that were part of the bill the Senate passed are important to the needs of this state. He said it is questionable whether similar provisions will be included in any future federal legislation.

In response to a question from Representative Clark, Commissioner Hamm said he has concerns

regarding how the federal reforms would be funded. He said he prefers addressing the cost drivers in health care reform and then work toward other reforms. He said the focus shifted from lowering costs toward expanding access. He said some studies have shown that almost 50 percent of the amount spent on health care in this country is attributable to waste.

In response to a question from Representative Keiser, Commissioner Hamm said he has not seen any analysis that suggests that the federal reforms would be revenue-neutral after 10 years.

In response to a question from Representative Kasper, Commissioner Hamm said he is unaware of his office receiving any complaints regarding the ability to access health care in the state.

In response to a question from Representative Keiser, Commissioner Hamm said he would attempt to get additional information regarding the impact of the current Senate bill with respect to whether individual plans under the Public Employees Retirement System group insurance program would be taxed.

Commissioner Hamm said there are significant problems with the idea of allowing insurance sales across state lines. He said allowing an out-of-state company to do business in the state, but not be subject to the regulations of the state, would promote jurisdiction shopping by insurance companies. He said states with the least amount of regulations and lowest premium taxes would attract insurance companies and the insurance regulators from other states would have no ability to help consumers address problems with the out-of-state company. In addition, he said, insurance companies likely would offer basic policies to young and healthy consumers which would ultimately lead to increases in the cost of most policies. If insurance regulators in states that do not have regulatory authority over the out-of-state insurance companies are unable to help consumers, he said, the likely result would be a movement toward federal regulation. He said if an out-of-state insurance company does not have a provider network in the state, that company would have a difficult time competing in the state's market.

Senator Potter said he agrees that allowing insurance sales across state lines would be a bad idea. He said the health insurance market seems to operate contrary to most market forces in that increased competition may lead to higher insurance rates. He said a speaker at a previous meeting agreed that insurance competition likely would result in higher rates.

Commissioner Hamm said he believes that competition will lower premium rates. He said most states have a competitive market unlike the market in this state where one insurer controls approximately 90 percent of the market. He said the plan design and products offered also affect premium costs. In addition, he said, a focus on the consumer impacts competition. He said the automobile insurance

market in this state is competitive and that is a positive factor in premium rates. He said many states with competitive markets have demonstrated that costs can be reduced.

Senator Potter said Blue Cross Blue Shield of North Dakota has an enviable loss ratio but is able to exert monopoly power over providers. He said claims drive costs in the health insurance market in the state.

In response to a question from Senator Hogue, Commissioner Hamm said although competition in the health insurance market is desired, it is important to look at whether a new entrant in the market is financially healthy, whether the company offers a wide variety of products, and whether the company is in the market for the long term.

Representative Kasper said health care providers in the state essentially have prevented competition. He said insurers seeking to enter the market have gone to providers seeking reimbursement rates similar to those provided to Blue Cross Blue Shield of North Dakota and have not been successful in negotiations with the providers. If Blue Cross Blue Shield of North Dakota is allowed by providers to reimburse at a lower rate, he said, other insurers are not able to be competitive in the market. He said it is vital that insurers have the same or very similar reimbursement levels as Blue Cross Blue Shield of North Dakota has with providers. He said he has had many discussions with providers regarding this issue and he has made it clear that the providers hold the key to competition in the insurance market.

In response to a question from Representative Keiser, Commissioner Hamm said the process of reviewing an application to engage in the insurance business in the state typically takes 60 days to 90 days. He said it is a very detailed process during which the financial condition of the company is examined, the claims handling process is reviewed, and the agency system and market conduct of the company are taken into consideration.

In response to a question from Representative Kasper, Commissioner Hamm said his department will monitor the impact of the Sanford Health System entering the insurance market in the state and the impact on competition.

Senator Wanzek said although the insurance industry seems to receive a lot of the blame for the cost of health care, consumers need to be aware of the impact of utilization on the overall cost.

In response to a question from Senator Hogue, Commissioner Hamm said he is not sure of the potential impact of a law that would require health care providers in the state to provide the same rates to all insurers. He said the idea could foster competition, but would also likely result in some unintended consequences.

Representative Zaiser said such a proposal could raise antitrust concerns and contract issues.

Representative Dosch said consumers with health insurance do not pay attention to the cost of health care services. He said it may make more sense to

have health insurance only for catastrophic events and place a greater emphasis on medical savings accounts.

Commissioner Hamm said the National Association of Insurance Commissioners has a committee looking at innovative solutions to health insurance issues. He said consumers need to be more involved in the system and patients and doctors should have a greater knowledge of the cost of health care services and how the costs are determined.

Representative Kasper said two companies doing business in the state list the prices of medical procedures on the Internet.

Chairman Keiser called on Mr. Michael Fix, Life and Health Division Director and Actuary, Insurance Department, for information ([Appendix E](#)) relating to insurance company form and rate filings and mandated benefits.

In response to a question from Representative Keiser, Mr. Fix said although the existing reserve requirements for nonprofit companies are working fine, the risk-based capital requirements could work for nonprofit insurance companies as well as for for-profit companies.

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

Mr. St. Aubyn said the bill adopted by the Senate likely would result in an \$11 million tax on Blue Cross Blue Shield of North Dakota. In addition, he said, claims relating to medical devices would be taxed which would result in an increase in cost to insurance companies. He said a total reform package is necessary, not just piecemeal reform, which could result in significant unintended consequences. He said the majority of hospital costs in the state are paid through Medicare funding. He said the underfunding of Medicare affects the rates of insurers. Therefore, he said, if Medicare were fully funded, providers and insurers would feel the impact.

Chairman Keiser called on Mr. Mike Schwab, Executive Vice President, North Dakota Pharmacists Association, for comments ([Appendix G](#)) relating to the federal health care reform legislation.

In response to a question from Representative Keiser, Mr. Schwab said he does not anticipate that the Section 1151 provisions would have a significant impact on pharmacies.

In response to a question from Representative Kasper, Mr. Schwab said he would try to provide the committee with information showing the 10 or 15 largest pharmacy benefit managers and the revenues of those entities over the last 10 years.

In response to a question from Representative Clark, Mr. Schwab said addressing fraud, waste, and abuse could reduce some health care costs. However, he said, he does not know how significant that impact would be with respect to the health care reform legislation.

Chairman Keiser called on Ms. Melissa J. Olson, Director, Healthy North Dakota, State Department of Health, for comments ([Appendix H](#)) regarding wellness programs and Healthy North Dakota.

In response to a question from Representative Keiser, Ms. Olson said she will provide the committee with information relating to determining an individual's body mass index.

In response to a question from Representative Kasper, Ms. June Herman, Senior Advocacy Director, American Heart Association, Jamestown, said new high school graduation requirements mandate that a student must have successfully completed one unit of physical education. Ms. Herman said physical education classes in the elementary schools are generally good. However, she said, there has been a trend toward eliminating recess, which reduces the amount of physical activity of elementary school students.

Representative Schatz said the movement in the 1980s to reduce physical education requirements in schools has led to too many obese children. He said it is necessary to go back to the basic physical education requirements and require physical fitness testing.

Ms. Olson said wellness and nutrition programs are often competing with federal No Child Left Behind Act requirements. She said it is vital that wellness programs address lifetime fitness.

In response to a question from Senator Oehlke, Ms. Olson said the issue of removing vending machines from schools is complex because questions arise regarding the compromising of health and wellness at the expense of generating additional revenue for the schools. She said parents must be involved at the local school district level in discussions regarding shifting vending sales to healthy options. She said the goal is to create healthy choices in vending machines.

In response to a question from Senator Hogue, Ms. Olson said the initiative to address special populations and special geographic and demographic issues is simply to identify priorities on which to work. She said she can provide the committee with additional information in the future regarding that initiative.

In response to a question from Representative Keiser, Ms. Olson said the data mentioned in her report will be updated after more recent survey results are analyzed.

Chairman Keiser called on Mr. Pete Seljevoll, Worksite Wellness Director, Healthy North Dakota, State Department of Health, Fargo, for comments ([Appendix I](#)) regarding worksite wellness.

In response to a question from Senator Hogue, Mr. Seljevoll said the health club credit is the most popular wellness incentive. He said another program gaining popularity is a worksite "biggest loser" challenge.

Chairman Keiser called on Mr. Michael Carlson, Director of Wellness, Blue Cross Blue Shield of North

Dakota, Fargo, for comments ([Appendix J](#)) regarding wellness programs.

In response to a question from Representative Keiser, Mr. Carlson said Blue Cross Blue Shield of North Dakota is collecting data regarding participation in the health club wellness benefit, including determining whether a health club incentive is encouraging new participants or only benefiting individuals who were already using the health clubs. He said Blue Cross Blue Shield of North Dakota will analyze data to determine the effectiveness of wellness programs and what changes can be made to address specific problems.

Chairman Keiser called on Ms. Debbie Thompson, Grand Forks YMCA, Grand Forks, for comments ([Appendix K](#)) regarding wellness programs.

Ms. Thompson said the YMCAs in Grand Forks, Fargo, Jamestown, Bismarck, and Minot are collectively the largest provider of child care in the state and offer wellness programs in those communities. She said chronic diseases are the leading cause of death in the United States and are largely attributable to preventable behaviors. She said the Grand Forks YMCA formed a Healthy Greater Grand Forks Coalition and has worked with partners, including the city park district, to better address wellness. In addition, she said, the YMCA has partnered with schools and the local health department as well as a hospital to address wellness issues. She said the YMCA is working with the United States Department of Agriculture's Human Nutrition Center in Grand Forks on a program to work with individuals who have been inactive. She said the Activate America program is working under a two-year federal grant.

Ms. Thompson said the Fargo YMCA has developed a program to work with cancer survivors through a 12-week exercise program. She said the program is offered at no charge to the survivor and a support individual. She said the Grand Forks YMCA and the Jamestown YMCA have partnered with the military to provide a support program for military families.

In response to a question from Senator Oehlke, Ms. Thompson said the YMCAs offer swimming programs for adults and children. She said the Grand Forks YMCA child care program includes a daily swimming time. In addition to the swimming programs for infants and children, she said, the YMCA has offered a prenatal swimming program for pregnant women.

In response to a question from Senator Hogue, Ms. Thompson said when the Grand Forks YMCA began participation with the Blue Cross Blue Shield of North Dakota health club incentive, the YMCA saw an initial increase of about 200 members. Of those new members, she said, approximately one-half had never been members before. She said two other insurance companies have a similar health club incentive.

Chairman Keiser called on Mr. Curtis Volesky, Director of Medicaid Eligibility, Department of Human

Services, for comments ([Appendix L](#)) regarding Medicaid eligibility.

In response to a question from Senator Oehlke, Mr. Volesky said the Medicaid asset levels have not changed since about the mid-1980s. He said the levels are established legislatively. Because he does not work directly with clients, he said, he is not sure how the clients feel about the asset levels. He said the county employees may be able to share more comments with respect to asset levels.

In response to a question from Senator Wanzek, Mr. Volesky said farm property is not counted as an available asset against the farmowner.

In response to a question from Representative Kasper, Mr. Volesky said a new resident to the state is eligible for Medicaid. He said federal law provides that the state may not have any residency durational requirements.

In response to a question from Representative Clark, Mr. Volesky said federal law sets minimum asset levels that the state must meet.

In response to a question from Senator Hogue, Mr. Volesky said the Department of Human Services is required to check the legal immigration status of applicants. He said the department has the ability to check with the United States Citizenship and Immigration Services to confirm residency status.

In response to a question from Representative Hogan, Mr. Volesky said the medically necessary income level was increased during the last legislative session. He said that change made a significant difference in providing full coverage or at least a larger share of coverage for recipients.

In response to a question from Representative Kasper, Mr. Volesky said if an individual has access to health insurance through an employer but is unable to pay a premium, the individual is not disqualified for Medicaid. He said the Medicaid program may be able to help cover the insurance premium. He said he would provide the committee with copies of Medicaid applications.

Representative Hogan said this state is the only state that has a seamless application process.

In response to a question from Senator Potter, Mr. Volesky said he will try to provide the committee with additional information regarding eligibility standards and the federal funding that may be available, but not received, due to the state not adopting the highest eligibility levels.

Representative Keiser said the budget of the Department of Human Services is the fastest growing budget in the state.

At the request of Chairman Keiser, committee counsel distributed a bill draft relating to the disclosure of accident and health insurance loss ratios [[10019.0100](#)] and a bill draft relating to exempting nonprofit health insurance companies from the insurance premium tax [[10022.0100](#)].

Chairman Keiser requested committee counsel to ask the Insurance Department for an estimate of the fiscal impact of the bill draft that would exempt

nonprofit health insurance companies from the insurance premium tax.

Senator Potter said the premium tax should be eliminated across the board on major medical policies.

Representative Kasper requested committee counsel to ask the Insurance Department for a list of companies that would be exempted from the insurance premium tax under the proposed bill draft.

Senator Oehlke said in his 40 years in the insurance business he has never had anyone ask about an insurance company's loss ratio.

Senator Potter said the point of the bill draft is that the customer should ask and know a company's loss ratio. He said Minnesota has a law that requires a sticker on the policy which generally will prompt a customer to ask what it means. He said the loss ratio can help the consumer determine what policy is a good buy.

Representative Kasper said the loss ratio will vary by the type of policy with the coverage of the policy and several other factors. In addition, he said, a new company will have a different loss ratio due to a lag in claims.

Senator Potter said he agrees with Representative Kasper and the bill draft should be revised to address anticipated loss ratios that are determined by an actuary.

Chairman Keiser requested committee counsel to request the Insurance Department to provide additional information regarding the availability of wellness benefits for small group plans. He said employers should have the ability to provide

incentives or credits for behaviors that will reduce medical costs.

Representative Kasper said the United States Department of Labor nondiscrimination measures probably prohibit that kind of incentive. In addition, he said, some of the federal health care reform proposals may result in the elimination of wellness incentives.

In response to a question from Senator Hogue, committee counsel said the request from the last meeting to draft a letter to the Congressional Delegation has not been completed. He said members of the committee had a number of comments regarding the content of a draft of the letter and the letter has been forwarded to the chairman of the Legislative Management.

Representative Dosch requested committee counsel to provide the committee with information regarding the number of physicians graduating from the University of North Dakota School of Medicine and Health Sciences, the number of students who are North Dakota residents, and the fields in which the students are working.

There being no further business, Chairman Keiser adjourned the meeting at 3:00 p.m.

John Bjornson
Committee Counsel

ATTACH:12