

**2011 JOINT HEALTH CARE REFORM**

**HB 1474**

**2011 SPECIAL SESSION  
JOINT COMMITTEE MINUTES  
JOINT HEALTH CARE REFORM**  
Brynhild Haugland Room, State Capitol

HB 1474  
November 7, 2011  
Job Number 16939 (shared with HB 1475)

☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

To provide for appropriations for certain medical services, health insurance, economic assistance, and information technology programs and systems; and to provide an effective date.

**Minutes:**

Attachments

**Chairman Keiser:** Said they will be going through the bill in its entirety, covering each section and the various points in the bill. He said it is similar to what Jennifer presented to legislative management.

**Jennifer Clark, Legislative Council:** She went over the bill. She said the definition of small employer will have to go up to 100 employees in 2016. She said they have created the health benefit exchange division; it is a division under the office of management and budget. This is an administrative agency and it complies with the rule making as well as the administrative hearing provisions of chapter 2813. She went over the purpose and the rule of the new division. It is to administer the health benefit exchange and it does so in accordance with the laws of this chapter as well as the policies established by a brand new board we are creating in this bill. She addressed the purpose of the health benefit exchange which is to facilitate the purchase of qualified health plans, to assist small employers in a facilitating enrollment of their employees and qualified health benefit plans and to apply the eligibility and enrollment standards of individuals in our medical assistant and CHIPS program. The exchange will not replace the duties of the insurance commissioner or the department of human service as it relates to medical assistance and CHIPS. She referenced the time frames by which time frames in which things need to be accomplished. She said they must establish a policy and create an exchange that meets the requirements of the affordable care act. She said that agencies are directed to cooperate with the activities of the division and the board.

**Chairman Keiser:** Referring to page 5, subsection 3, line 23 and 24, he pointed out that although there are specific dates within the legislation that correspond to requirements within the federal law, that there is a qualifier that is always added. He said they have anticipated that if the federal law is ever changed, it will allow the director of the exchange to make an adjustment based on the change in federal law.

**Jennifer:** She continued to go over the bill. She went over the board that will be created; stating that it will have nine voting members and four non-voting members and gave the qualifications of the board members, the duties of the board and that they shall consult with each of the federally recognized Indian tribes in the state as well as consult with the Indian affairs commission and that they are directed to invite the executive director of the Indian affairs commission to each of the board meetings.

**Chairman Keiser:** Said that it is a requirement of the federal law.

**Jennifer:** She continues with explaining the duties of the board and the advisory groups that will be created. She discussed the policies that the board needs to establish. She said that they are designed to be very flexible in creating those policies and being able to act quickly in creating those policies. The division will be able to contract with eligible entities to carry out one or more of the functions. They may do it in house or contract out. She then went over the operation of the exchange.

**Chairman Keiser:** Asked if the board has the authority for the exchange to implement itself into a multi-state or regional exchange.

**Jennifer:** She said that would be her understanding.

**Representative Kasper:** Said that there are other states that have been a long way down the track on their exchanges, Wisconsin as an example gave the committee a presentation. He asked if this section would allow the board to contract with Wisconsin and maybe duplicate their exchange in North Dakota if they felt it would serve our needs to save our state a lot of money.

**Jennifer:** Said that flexibility is still opened. She then went over the premium rate filings. She said throughout the bill there would be several provisions addressing the topic of the competitive market place for insurance.

**Representative Kasper:** Asked Jennifer to explain the differences between the contributions and benefit plan options.

**Jennifer:** Said that is an area that differs. She said they based it off of a consensus bill draft that they had reviewed with several North Dakota health insurers as well as a representative from AARP, they worked together to come up with a consensus view on what to do with the NAIC and what might need to be added to it. She said this would be an area where it was added to it. A defined benefit being a policy where the employer offers a group health plan and it is the plan the employee receives verses a defined contribution where that employer would offer a set amount and then the employee would choose how to use that.

**Representative Kasper:** Said the point he wanted to make was there is some knowledge that employers have to have and employees have to have when these decisions are about to be made and we have made a resolution in the bill to give that employer some input on what he or she may want to do.



**Jennifer:** Said that there are decisions that need to be made by the employer and the employees in using the exchange. She continued with stating that the federal law provides that the states provide navigator grants. The federal law states that these grants need to be issued to at least two entities. It is an entity that is charged with helping consumers and employers, employees work through this health benefit exchange to help choose the policy that will fit them best. She stated that they have taken a little bit of a different spin on it and says that this bill provides that the two grants will be one and they will create a state office, a navigation office, within the new division and that office will act as a navigator. The office will be regulating who will provide the services to the members of the public to assist in working through the health benefit exchange. The regulation provides if you are going to charge a fee for assisting someone to work through the exchange that person will need to be certified by this office. She went through the requirements to be certified.

**Representative Glassheim:** Asked if a non-profit or anybody could get training by the navigator and assist people, if you are not a licensed broker and not charging a fee.

**Jennifer:** Said that is how she reads it.

**Representative Glassheim:** Said he was unclear how it reads and whether a licensed and certified agent can charge a fee for assisting people and also receive a commission if they sell a policy. He said that it appears that it states you can't do both.

**Jennifer:** Said the language wasn't written with that outcome expected. She said her understanding is that as a licensed insurance producer if you're acting as a consultant you can charge a fee and if you are acting as a consultant and charging a fee then you can't also receive a commission. It is under the existing insurance commissioner law. She then moved on to explaining the law on risk pools. She continues with other items in the bill. She went over the funding for this division. She discussed the reporting requirements and fees that will be charged.

**Representative Kasper:** Asked for her to address the authority of the insurance commissioner so they are clear about what she does.

**Jennifer:** She said that is another area in the bill where they are trying to not have dual regulation. She went over what the bill stated. She went over establishment grants which OMB would be applying for.

**Representative Kasper:** Asked for Jennifer to go over the deadlines that must be met so they do not lose the opportunity.

**Jennifer:** She said that she didn't know the exact deadline but that it was discussed during committee. They do have an effective date of November 14.

**Representative Keiser:** Said that the level one grant from the federal government for funding your exchange is December 30, 2011. The other deadline for level two funding is June 29, 2012. He stated that there always could be an extension of the deadlines but currently that is what in the law.

**Jennifer:** She continues going over the bill stating that OMB, ITD and the department of human services are to pursue any other federal funding opportunities that maybe available to help set up the exchange. She also goes over the appropriation dollars and what they are to be used for.

**Representative Kasper:** Asked for her to make clear the amount of 35,965,000 and that it would be federal funds and not state funds.

**Jennifer:** That is her understanding.

**Representative Kasper:** Asked if they applied for the 35.9 million and received 22 million from the federal government would that be all they would be authorizing IT to expend, only federal funds and not state funds.

**Jennifer:** Answered that was her understanding.

**Representative Kasper:** Asked of the 19 FTE's would that also be federal funds and not state funds.

**Jennifer:** Stated that was her understanding.

**Senator Mathern:** Said in the expenditures for the whole package they would be talking in addition to the new fees or taxes that would be established, they would be talking about a two million dollar expenditure in section and a 36 million dollar expenditure in section 7 and a five hundred thousand dollar expenditure in section 8 and 8.7 million dollar expenditure that relates to HB 1475 and a thirty three million dollar expenditure that is in HB 1475 and then a two hundred and fourteen thousand dollar expenditure and a six hundred and forty two thousand dollar expenditure. He said within that there is another appropriation of nineteen million to ITD which is in that but not an additional expenditure. He asked if that is approximately the sum of making this work.

**Jennifer:** Said she defers to him for the numbers he used and said she assumes he pulled the numbers out of the bill and to the extent that they reflect the numbers in the two bills that came out of this committee, then yes. She said for clarification when you talk about whatever assessments or fees are charged for implementation there will be very few this biennium.

**Representative Keiser:** Said that the numbers that were referred to are in a separate bill and they are not talking about that bill. He said they are interrelated but all they are hearing today is the exchange bill and the other bill has already been referred.

**Senator Matthern:** Said he agrees with him but he just wants to clarify that to make the exchange work we also need to do those other things.

**Representative Keiser:** Said no and we are not debating the two bills and we can certainly disagree relative to that statement. We are hearing this bill.

**Jennifer:** She talked about the grants that the insurance commissioner received and said that it provided for a transfer following the last regular session. She said that there is also some legislative intent language that says that it is the intent that the executive branch agencies not take any steps to try to work around legislative directives as it relates to the establishment of the health benefit exchange.

**Senator Matthern:** Asked about section 10, in clarifying the legislative intent that the agencies are not to take any action, how does that square with wording earlier in the bill where we give authorization for the entity to make some negotiations with the federal government to accommodate the exchange development if some changes happen between now and when a requirement goes into effect. He said his concern is that they don't create a situation where state employees in one section of the law are encouraged to try to figure out a solution to a dilemma and in another section by law they are essentially told not to. He asked Jen if she saw any tension there or does she see it as workable.

**Jennifer:** She said like any bill you need to be careful to read the two of them together. She said she can't anticipate every situation that may arise. What she can tell them is when you look at the language it indicates that they are not to work with the federal government to evade or otherwise circumvent legislative authority. She said that she's not saying there couldn't be a situation where there is not conflict.

**Representative Glassheim:** Asked if they adopt this if it means that everything in here is acceptable because it has legislative authorization to work with the federal government.

**Jennifer:** Said she thinks that is a reasonable interpretation. She continues going over the bill. She said that this body of law that is in this bill will expire on August 1 following the next regularly scheduled legislative session. So if something happens in 2012, August 1, 2013 this will expire and that would give the legislature time to address whether it is appropriate to amend this law, continue this law, or repeal this law.

**Chairman Keiser:** Said that he would also point out that the insurance companies that serve the state of North Dakota were the primary source of the request that we have that type of language in this section of the law. He said insurance contracts are usually written for a year. He said the other question is when we ask human services to come up with fiscal note and they generate that note they testified that they were taking a conservative approach that maybe they don't need 39 million dollars but that would be a maximum that would be needed. He asked if those dollars could be returned to the federal government if they find a more economical solution.

**Jennifer:** Said she remembers there being some discussion about funding and it is definitely a range of funding and it is difficult to know what it will cost to get it up and running. She said she would defer to the agencies themselves on how they came up with those numbers and she would also defer to what the terms are of that grant. She said it is her understanding that they are returnable.

**Paul von Ebers, President CEO of Blue Cross and Blue Shield of ND:** Testimony Attached (1).

**Senator Mattern:** Said he notes the possibility of the federal government excluding insurance providers from being on the exchange, on what criteria do you think that would be done and what would be the rationale for excluding an insurance provider?

**Paul von Ebers:** Said if you take a look at the Massachusetts's carriers can be excluded from the Massachusetts's exchange today and also under the California law that has been passed and they are in the process of implementing it and it also suggests that the California exchange will be able to exclude individual insurance companies. He said the way it works in Massachusetts's is through price negotiations, the state based exchange negotiates prices with the individual carriers and if they don't come to an agreement then the carrier is not allowed to offer its products on the exchange. There can be other criteria that may have to do with quality of service or the extent of provider networks and so on but as a practical matter the way carriers have been mostly excluded from the Massachusetts's exchange is through price negotiations that have broken down. He said he would imagine that now, as a matter of fact in the Medicare prescription drug program the bidding is process that takes place allows for individual carriers to be excluded on the bases of prices. He said we might say that is great to only allow lower price insurance products on the exchange but it will reduce choice that people may have.

**Senator Mattern:** Asked if it could be possible if it were federal exchange and ten or twenty states have the federal exchange could the federal exchange set up its own health insurance plan and quote the premiums for all the states or negotiate with a large national insurance company, subsidize premiums and drive the local companies out of business and create a higher federal debt.

**Paul:** Said it is at least a theoretical possibility. He said they know the law as it is written today, as it does not include a government option as it was originally designed into the law, it does include the option of selecting two national plans. So those national plans could become a vehicle to collapsing the health reform law into essentially a single payer system under contract with a limited number of health insurance carriers. He said it is a possibility.

**Representative Nelson:** Asked how he visualizes the licensed agents working in the exchange and said they have heard testimony that to be a licensed agent you have to have a relationship with an insurance company. He asked if the agreement with the licensed agents would allow them to go on the exchange and sell products of other companies. He asked how they should be compensated and if they would be paying a commission or should the exchange be paying a commission.

**Paul:** Said his question was good but he couldn't answer all of the details on how the licensed agents would be involved in the exchange, some of those rules still need to be set. He said the impression of the new market place under the exchange environment is historically Blue Cross and Blue Shield has been the primary health insurer for the people in the state of North Dakota. There has been some tension in the past with independent agents because they only have used independent agents in limited circumstances; it was partly to keep the cost of the sales down. As they look towards an exchange environment they see a totally different environment. Whoever runs the exchange will essentially be introducing additional competitors to people who are their customers today. He said they think people will need extra help, they will want to talk to someone and they don't think they

can staff across the state to meet those needs in a new competitive environment. He said it is highly likely that they will need to work with independent agents to make sure that people are aware of their products and how they work. He said they don't know yet how that will work with the exchange.

**Chairman Keiser:** Said that he knows that Blue Cross and Blue Shield nationally have been engaged on this issue. He asked him to share with the committee if the state begins with the federal exchange and at some point converts to a state based exchange, what that would mean and vice versa. He gave an example of how he was told it would work and asked if Paul understood it to be that way.

**Paul:** Said they did and that it does make sense. He said under federal law and regulation, it tends to be applied evenly across all states and so that is the normal way of going about regulation. He said in addition to that if you think about the mechanics of running a federal exchange that it would be much more difficult for the federal government to run exchanges in multiple different ways across multiple states. The notion that the states starts and turns it over to the federal government seems inconceivable that the federal government would continue the way the state wanted to do it originally and vice versa.

**Dave Middaugh, Insurance Agent, The National Association of Insurance and Financial Advisors, North Dakota Chapter:** Said they have about five hundred members and each has about five hundred clients and they represent a large portion of North Dakota's population. He said he specializes in group health insurance. He said all of them are in favor of some form of health care reform but the question is whether current legislation is proper form. He said the bill leaves the control in the hands of North Dakota. Their agents would prefer to deal with them rather than the folks in Washington, D.C. He said they take offense on being replaced with federal navigator when they have 3600 people being regulated by the state that are doing that job now and doing it well. He thanks them for coming up with the bill.

**Senator Matthern:** Asked about the service the agents provide and what he believes the proper per month payment that should be paid to an insurance to sell a product and maintain a product and would that be applicable to this product.

**Dave:** Said that it depends on the situation and the amount of work that is done and it can vary from situation to situation. He said on group insurance one company pays nineteen dollars per contract per month, another pays thirty five dollars a month. He said the correct answer is somewhere between those two numbers in most situations. He said the question about fee and commissions, as he read the bill that would be determined by the exchange board, whether an agent would get fees from the exchange or commission from the insurance company. He said current state regulation does prohibit an agent from receiving both fees and commissions and as agents they are comfortable with that. He said as an association they would be in favor of either or but not both.

**Representative Winrich:** Said he was trouble with the statement that Dave represents his clients with the notion that your compensation comes from the insurance producer.



**Dave:** Said that every good insurance agent understands that compensation does come from the insurance company but that the client pays the premium and the client is the one I primarily serve because the insurance companies are large enough to take care of themselves. He said that is his personal philosophy and is how he does his business by.

**Jerry Jurena, President of the North Dakota Hospital Association:** Testimony Attached (2).

**Rod St. Aubyn, Manager of Government Relations:** Testimony Attached (3).

**Senator J. Lee:** Said she was on the website and was wondering if Mississippi is missing because Governor Barber is putting it through the high risk pool at this point, so there is another state in which the Governor is moving in the direction of establishing a state exchange and she doesn't see it anywhere. (Handout)

**Rod:** Said that Mississippi did establish their exchange and identified their high risk pool.

**Chairman Keiser:** Adjourned.

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HB 1474  
November 8, 2011  
Job # 16947

☐ Conference Committee

Committee Clerk Signature

*Vicky Crabtree*

**Explanation or reason for introduction of bill/resolution:**

Create a North Dakota benefit exchange.

**Minutes:**

Testimonies and attachments 1-15

Continuation of HB 1474 Hearing.

**Chairman Keiser:** We will call the hearing to order and will continue with testimony.

**Courtney Koebele:** Executive Director for the North Dakota Medical Association testified in support of the bill. (See Testimony #1)

**Rep. N. Johnson:** Do you know of any physicians willing to serve on that board?

**Koebele:** Yes. I have been approached by a couple of physicians who are willing to serve.

**Sen. Dever:** It is my understanding that the compensation to serve on the board will be the same as legislators. Do you know any physicians crazy enough to work for that?

**Koebele:** Yes we can find a physician willing to serve for that compensation.

**Ch. Keiser:** Currently as the board is structured in the bill before us, we have with that Governor's appointment for consumer reps at least identified. This would reduce the number of consumer reps to three. Do you have any concern about that or what the federal law requires in terms of consumer representation?

**Koebele:** I offer that a physician is technically a consumer of health insurance themselves. However we suggest the Governor's choice is not technically a consumer rep, so we are not replacing those three consumer reps that are right now on the board.

**Josh Askvig:** AARP ND Associate State Director for Advocacy testified in support of the bill. (See Testimony #2)

**Sen. J. Lee:** I'm trying to fit your amendment into the bill. The amendment on the last page, if you remove lines 1-17 on page 8, you are removing from the middle of a sentence. It doesn't make sense to me.

**Askvig:** I am suggesting you remove lines 10-17. I'm sorry for the error in the testimony. It should just be for the establishing the policy and rules for conflict for interest. Thank you for catching that for me.

**Rep. Kaldor:** Let's go back to that particular amendment. Should there be any replacement language there above the underlined?

**Askvig:** The language we have right above that we took specifically from the consensus bill that we worked on that the chairman had asked us to work on. That is language that placed it under the board organization section and if you go back to page 7, line 29, number 9, you would just insert the language that is underlined on that page, right in front of where it says, "each boarding member shall file with the Secretary of State". We think that would cover say not only do you have to file that you have a conflict, you cannot vote on matters in which you have a conflict. Then you strike out the other language, lines 10-17.

**Rep. Kaldor:** It is clear on what you have to say on conflict for interest. But, does there not still remain as a board duty even in circumstances where we have concluded that everybody on the board has stated their potential or direct conflict of interest; that things can change and the board has responsibility over time to address that issue? Shouldn't there be some kind of guidance as how you approach it, other than saying categorically that you can't vote?

**Askvig:** If you have it clear of what the conflicts are because it has to be filed with the Secretary of State. What might be an option to look at is that you have a removal from the board if they don't file the conflict of interest statement. It is in there. I'm saying if you wanted to extend that to if they voted.

**Rep. M. Nelson:** I wasn't quite clear on your testimony concerning producers or agents selling outside and inside the exchange. Did you consider it a conflict? We don't want the agent to get paid both the inside and outside of the exchange on the same transaction. Did you say you were considering it basically a conflict if the producer sometimes sold policies off the exchange and other times inside the exchange? That he should only be on the exchange?

**Askvig:** I think you need to clearly state on how you deal with that. When they are functioning as a navigator they are and navigator and if they are compensated as a navigator, they are only being compensated for being a navigator. How you deal with that as functioning as a navigator on or off the exchange, I would have to dig into that a little more. In our opinion you need to make it extreme clear that they are not doing both in the same transaction in the same setting.

**Rep. Kasper:** I'd like to go to page 5 of your testimony and discuss the third paragraph. (Reads the paragraph from the testimony.) (See Testimony #2) What you are saying is if a person enrolls anybody as a licensed insurance agent inside of the exchange; that means they are prohibited from doing any business outside of the exchange. Is that what you are implying here?

**Askvig:** What I am implying here is that if you are going to function as a navigator in the exchange.

**Rep. Kasper:** Let's be clear where we are at because I think you may be confused about the navigator and the insurance agents. The navigators, the way the bill is written we have two navigators; one who is sort of the head of the exchange setting up the educational programs and the certification of the people and the agents of North Dakota. The second navigator is the head of the Indian Affairs Commission. Other than that there are no other navigators. So the enrollment of the bill is left to the insurance agents who are properly licensed and qualify to be certified by the exchange. We don't have a bunch of navigators running around out there so who is going to do the enrollment?

**Askvig:** You may have found a pass through to say, here are the navigators and that is certainly allowed and we have looked into that too. I think the federal regulations are pretty clear that if you have people helping people through the exchange that they are going to be classified as a navigator. If they are helping people through the exchange as a navigator, they shouldn't be compensated in both ways. That is our concern as we look at what the federal regulations say and how they are looking at it.

**Rep. Kasper:** I think the federal regs say you have to have at least two navigators and that it allows for insurance agents to be involved and be compensated. I think that is what the bill does and clearly delineates between what a navigator is, how he or she qualifies to be a navigator and what insurance agents and brokers are and how they qualify to help people to enroll in the exchange. We do not prohibit a navigator from giving advice to a person to be enrolled in the exchange. But, we do say a navigator is going to be compensated by grants or wages, but not by commissions. The insurance agents if they are enrolling and going to be paid; they will be paid commission, but they can't be paid fees or wages. I think we have clearly delineated the separation in the bill.

**Askvig:** I certainly agree with your first point that the federal regs certainly do say that insurance producers or agents can be navigators. Our concern is that when you submit this to be certified that it should be clear that if someone is serving as a navigator and if you are defining navigator as only the state office; when you are training other people to use that, it seems like a loop hole to us.

**Sen. Dever:** I'm still struggling with the idea of a hard and fast rule on conflict of interest. I just love the fact that we are a citizen legislature and we live by the laws that we pass. It seems to me that we quite often vote on bills that we all have an interest in. A sample of that is that today or tomorrow I'm going to be asked to vote against a bias that I acknowledged regarding the logo. Maybe that would be an approach, the constitutional majority could declare our conflict and we wouldn't have a vote. It seems to me that a lot of votes that would take place before this board; everybody as a consumer would have a conflict of interest.

**Rep. Keiser:** Committee, we do have to move this hearing along. We had the same basic amendment that was brought to the committee and we addressed it at length. I want this committee to consider this amendment. What we did do was on page 7 subsection 9; we said that anyone has to declare if they have any conflict that they perceive. If they don't,

they can't serve on the board. Then on line 10, we said that board will have to, much like the legislature, make a determination that it will have to be some flexibility. But, it will be done by rule. This board will have to go by the rule process. That does bring legislative oversight back in to make sure that what they are proposing as a rule is reasonable.

**Sen. J. Lee:** For the benefit of those who may not have been at that meeting, the verbiage that we used in here about conflict of interest kind of wraps around what we used for the CHAN board, our high risk pool. The insurance department had brought that forward and it was quite workable because in the same vein here are need for people with expertise in this industry in order to manage the business of CHAN. And it is the same thing with this board. If you don't have people who know something about it, you are not going to get a good product in the end.

**Askvig:** If you look at our definition of consumer; that eliminates the question of bias that you raised about everyone being a consumer. I think it is certainly laudable to have experts involved. That is why we support advisory boards where you can gain some of that as well. We haven't asked to take any of that expertise away in these amendments. We are making the point that if you serve on that board and you have something that is going to financially or directly impact you or who you are representing, it is not an appropriate place to vote.

**Rep. Keiser:** I think we will have some other amendments that will address some of the concerns you have raised as well.

**Rep. Kaldor:** I have one final question here for Josh. The thing I like about your language is that it defines what a conflict of interest is, but I still feel that even with that language it is consistent to have rules about how you deal with it. Are you adamantly in support of removing the language that addresses on how we deal with the conflict of interest or/and is that an absolute ingredient to this overall amendment? Or will you be supportive at least with this language that clearly defines what it is?

**Askvig:** I would tell you if you want to leave some of the language in there, I think you need to clean it up. What is most concerning about if you read on line 15 and 16 on page 8 and you read where, "a protocol the board will follow if an actual or possible conflict of interest arises. The rules may allow, limit, or prohibit participation in board deliberation"; you would probably have to strike that last sentence. If you add the other language the rest wouldn't be so troublesome.

**Deborah Knuth:** Director of North Dakota Government Relations Great West Division American Cancer Society Cancer action Network (ACS CAN) testified in support of the bill. (See Testimony #3)

**Connie Hofland:** A registered dietitian and attorney in Bismarck representing the North Dakota Dietetic Association testified in support of the bill. (See Testimony #4)

**Rep. Keiser:** Is there any opposition to the bill? (No Opposition) Is there any neutral testimony?



**Pam Sharp:** The Director of the Office of Management and Budget explained the fiscal note. For the remainder of the current biennium 2011-2013, you will see that the expenditures are about \$39 million. You will also notice that there is a difference of about \$300,000 between the expenditures and the appropriations. That is because there is not an appropriation section to fund the expenses for the board, but the requirement is in there. We would assume that we would just get some additional federal funding authority. We expect expenses for the board would be about \$321,000. OMB expenses and appropriations including 9 FTE's would be about \$2 million. ITD would be 19 FTE's and about \$36 million. Then you have \$500,000 to the navigation office and \$750,000 in transferring federal authority to from the Insurance Department to OMB for the planning grant. Going forward to next biennium we have a fiscal note of about \$10 million and this would be the assessment or tax that would be assessed to provide for the ongoing expenses of the exchange. We estimated the expenses for OMB would be about \$2.8 million. The expenses for ITD about \$7 million and the expenses for the board about \$436,000. What is not included in there because we don't know yet what the number is, is we have to give out navigation grants or anything for the navigation office. That would be on top of that. This \$10 million for the next biennium for the operational costs might be on the low end. HTMS did some research and talked to other states and the average estimate for operational expenses per year is \$28 million per year. I have a couple of clarifications on the bill and a couple of concerns I'd like to share with you. I'd like to preface that with stating that this really is a huge policy decision for you to make. OMB will do whatever our law is, and if we have a North Dakota exchange we will do our best to implement it. I do have some concerns. (See Testimony #5).

**Sen. J. Lee:** I want to make it quite clear that the NCSL map came from me not Rod St. Abyn from BC/BS. I called NCSL and asked them to provide copies of that map so that legislators would have a chance to view them. It is information that NCSL has gathered over a period of time and if someone wants to talk to me about that they can do that.

**Sen. Mathern:** I'm wondering about the timeframe in terms of if we take the anticipated federal appropriation \$35 million and how that relates to the certification process. Do you believe we could receive the \$35 million before the certification to develop the exchange and then it may or may not be certified? Or do you believe the certification has to be completed before the money is appropriated from the federal government or delivered to the state? How does that work?

**Sharp:** What I do know is that for the level 1 establishment grant, you just need a plan of how you want to spend that money and the fact that there is something regarding the exchange that you need to spend the money on. There is no commitment in the level 1 establishment grant. The big money comes from the level 2 establishment grant. In order to apply for a level 2 establishment grant you have to have a commitment from your governor and the legislature that you are going to create your own exchange. When they certify whether your plan is adequate or not, I don't know. Obviously you have to get the funding to get down the road before they would have something to look at. Maybe someone else would have more information on the certification process than I do.

**Sen. Berry:** You suggest a catch 22 in that the state would in your opinion endorsing a product we say is not constitutional and yet you also say that you think it is best if North

Dakota runs its own exchange. Based on how we meet biennially, and from a timeline standpoint I guess I disagree with that premise. I think it is clear and can even be based in statute that we in fact, the majority of this committee feels that what we are doing is in defense and trying to protect ourselves from the federal government. In this case it is felt by the majority of the committee that North Dakota will run its exchange better than the federal government. We are not saying we are supporting what they are doing. We are saying if we don't act now there will not be time based on our schedule of sessions here in North Dakota. We will miss timelines that we need to enact own. If we don't do this we may be left with a federal plan if that is what goes forward. I guess to call it a catch 22 and say we are endorsing this I don't think that is true. What we are trying to do is protect ourselves from the federal government in this situation. How do you square those?

**Sharp:** I did not say I think we should run our own exchange. Our task is to decide if we should run North Dakota's exchange or let the feds run it. The law right now says there will be an exchange. I do stand by my statement that we are in a lawsuit saying that this mandate is unconstitutional. I think that is hard to reconcile with us going ahead and passing legislation endorsing that when we are in a lawsuit.

**Sen. Berry:** I will again reiterate I don't think us going forward endorses it in any fashion. It is a matter of time and something we have been forced to do. It is essentially an insurance policy against what may happen to us. We will do a better job of it if we do it here in this state rather than have the federal government running it. I don't see the connection to that and the lawsuit.

**Rep. Kaldor:** You have made a couple of recommendations to the committee that we may want to consult with the attorney general. Has the attorney general made a recommendation to your office and governor's office?

**Sharp:** No.

**Rep. Kasper:** I'm wondering if the following amendment to the bill would give you a little more comfort. "Legislative intent. Creation of a state administered health benefit exchange is not intended to express the 62<sup>nd</sup> legislative assembly support of the Federal Affordable Care Act, but instead is intended to express the support of state control. Would that give you some comfort based on what you just said?

**Sharp:** It is truly not my person comfort. I just bring this out as discussions perhaps I think you want to have.

**Rep. Kasper:** According to your knowledge, the funding to set up an exchange whether it is to federal or state who will be providing the funds until June 1, 2015?

**Sharp:** The feds will.

**Rep. Kasper:** So therefore, whether we have a request in this bill for \$10, \$30, or \$47 million or \$80 million to fund our exchange based upon, you are totally different now about startup than you were a month or two ago. So I see you have had some revelation. But, whatever that number may be, it will be federal funding to set the exchange up until 2015,

not state funds. After June 1, 2015 you indicated that if it is a federal exchange, the federal government will bill the state of North Dakota or assess a fee to the state of North Dakota. We have to fund it after that date. So therefore, let's say the federal government set the exchange up and they sent us a bill for \$25 million because they say that is the cost for running the exchange in the state of North Dakota; where do you suggest we come up with the money?

**Sharp:** The feds will not send us a bill. They don't have the mechanism or authority to bill states. They are talking about establishing a user fee for an entity or a person, I don't know who, to use the exchange.

**Rep. Kasper:** Let's call it a user fee. Who then as your understanding of the federal law would be paying the user fee?

**Sharp:** I don't know that the feds know that. Apparently they are talking about a user fee would imply users of the system. I don't know if that is there intent.

**Sharp:** Based on your knowledge of state government and how the federal government works, who do you think runs a more efficient cost savings ship?

**Sharp:** No one is impressed with the feds and we do a great job at OMB. I do have concerns about hiring the high skill set of people required for this exchange. We have very good track record in North Dakota.

**Sen. J. Lee:** I think it is slightly misleading to say that state isn't going to be sent a bill by the feds. One way or another, citizens of North Dakota will be paying for this exchange whether it is a user fee or a policy fee of some sort. Ultimately the taxpayers of North Dakota are going to pay for the cost of running a federal exchange. As we move forward we always have the option of referring back over to the feds if we find we can't hire enough staff people. The majority of the people on this committee would just as soon that PPACA went away.

**Sharp:** It is going to cost North Dakota citizens money. The question is are the taxes going to be raised by the North Dakota Legislature or are the feds going to assess those taxes. The requirements are that the exchange be self-sustaining by 2015. The exchange has to generate enough income to continue its running.

**Sen. Dever:** I liked to focus on accountability and authority and your comments regarding the board's independent ability to access fees on page 23. Are we setting your agency up to be accountable for decisions over which you do not have authority to make? Or, do you see your role as administrative?

**Sharp:** That is my concern. OMB will do the leg work and the board would make the decisions on approving how much money is going to be required. As I read the bill I don't think the board is going to send out bills. OMB would have to figure out all the mechanisms.

**Chairman Keiser:** Committee members we do have an amendment to address that issue and will be taking up. Pam, you referred to the HTMF group and there projected annual average operating cost is \$28 million. Who is HTMF?

**Sharp:** HTMF is the consulting group that the Insurance Department hired with the funds from there planning contract. They do have a report and I took that out of their executive summary that they submitted.

**Chairman Keiser:** I think we can call them up and they can defend their position. I have grave concerns about that number. We have two states which have portals at least operational. Do you know what the operations cost of Massachusetts is annually.

**Sharp:** I do not know.

**Chairman Keiser:** It is approximately \$36 million and that includes an extensive marketing campaign. The buy advertising on Red Sox games and they will tell you that right up front. So when HTMF comes in and they are including Massachusetts in the projection, I have grave concerns. What is the cost of the UT exchange?

**Sharp:** I have the states that they included right here. For the operational they included Ohio, Illinois, Delaware, North Carolina, and Wyoming. You'll have to get details from them. I don't know what Utah's is.

**Chairman Keiser:** Massachusetts is as bad as it can get and Utah is as good as it can get. I recognize their exchange does not qualify completely, but they are moving forward on that. If anyone here thinks that North Dakota would come anywhere \$28 million, they don't understand North Dakota. I have strong objections to that number and they will be held accountable when they give their report to the legislature I can assure you. I do know about Massachusetts. You mentioned you are concerned that we are in affect granting to the board in a sense an open check book. And we are. The board will make a lot of decisions on what our exchange will look like. The North Dakota board will have to go through the rules process as they develop various parts of their plan. If we refer to the federal government, how open is that checkbook?

**Sharp:** Someone is going to pay no matter what. I don't know what the cost would be. I believe they hired a contractor, CGI, to build the exchange for the state.

**Chairman Kesier:** I am not talking about building, I'm talking about in 2015 when they are operational versus us. We would be granting the federal government an open checkbook to asses however they are going to do it. It is clear in the law that as of January 1, 2015, states will assume the responsibility for funding the exchange for their state, whether it is state or federal based. The real question isn't one of an open checkbook, but who holds the checkbook. I have concern with an open checkbook, but I can't believe we can have much concern with North Dakota holding that checkbook versus the federal government. Do have any reaction?

**Sharp:** Maybe the concern would be that our citizens would perceive that North Dakota actually increasing their taxes on behalf of the feds.

**Chairman Keiser:** Regarding FTE's and contractors etc., as I understand in previous testimony for this committee and I supported it; was that ITD came in and said, if we have design and exchange from scratch we are going to go forward and projecting a big amount of money. We all know the federal law which is in effect does require states with that innovation grant and I assume Wisconsin got an innovation grant; I am assuming the Wisconsin portal would meet the requirements of the exchange. Have we had any discussion with Wisconsin about purchasing that portal? My understanding that these products have to be available to other states. Have we done anything on that line?

**Sharp:** Lisa Feldner is here and I believe she has some information on that.

**Chairman Keiser.** Ok, we will wait on that question. I know Kansas started to do it and got so overwhelmed that they returned their money. The Wisconsin plan seem like a pretty good plan and could put North Dakota in the Wisconsin plan and we are off and running without hiring all of these people, but I do support leaving the fiscal note at the high end just in case. You made the comment that it is going to be a significant effort to maintain the exchange. Is equally true if it is a federal exchange beginning in 2015?

**Sharp:** I can't speak for the feds. The exchange is a big thing and going to be an effort.

**Chairman Keiser:** This is a critical point, the lawsuit. We are in our lawsuit and we joined Florida and many other states that the mandate is not constitutional. As I understand it our lawsuit deals with the mandate, it does not deal with the exchange. You can make the argument that without the mandate PPACA can't work, but the mandate is not the exchange. Is that correct or not?

**Sharp:** I'm not a constitutional lawyer.

**Chairman Keiser:** That is my understanding and it would be very nice as we go forward that we understand what the lawsuit is or isn't. Last, even though Wisconsin did it through executive order initially and they are still less than enthralled with the executive order, they do have an exchange portal. I don't know if they have repealed the executive order or modified it. Is that correct?

**Sharp:** If you could ask Lisa about the portal. I know they have something. Whatever they have been working on it is not something that will necessarily meet the requirements of the feds.

**Chairman Keiser:** On the fiscal note a couple of things. I noticed the fiscal note does not show \$750,000 transfer. Should that be in the fiscal note?

**Sharp:** It is in the fiscal note.

**Rep. Kasper:** Pam, I want to go back to your testimony where you said effort to maintain the exchange. You said 22 FTEs. Would you give us a breakdown of what each would do and how much you think they are going to cost? I think that is a high number, but would like to hear how you came up with those numbers and what they are going to be doing.



**Sharp:** Lisa will have to address what her FTE will be doing. ITD is estimating there will be 11 going forward. OMB estimated the 9 we had in there would continue and have to add 2 more for consumer representatives. In OMB we know we need a director and need someone with legal and insurance background. We know we need some filing analysts, project managers, IT coordinator and an actuary. We will need some administrative assistants.

**Rep. Kasper:** On the 11 FTEs for IT. After the exchange is built and it is running and we have paid all the fees and now all we have to do from my perspective is that somebody makes sure that software is runs and updates it. I suppose I have to ask Lisa how she comes up with 11 FTEs after it is already done.

**Sharp:** Yes, Lisa can fill you in on that.

**Sen. Mathern:** Thank you for your testimony. I would appreciate some sort of documentation or a memo on clarification on this issue on what the federal government would do after 2015. Is there a federal document or communication that you have that can be referred to?

**Sharp:** There is no document. I do have the name of a person at the federal level and an e-mail from them. I can share that with you.

**Rep. Glassheim:** Just so I'm clear on the fiscal note. Is it the case that in 2011-2013 there is no state funds in the fiscal note? Is it all federal dollars?

**Sharp:** It is all federal funds.

**Rep. Glassheim:** (Microphone off and inaudible.) ... in some manner, but it is not state appropriated funds. Is that correct?

**Sharp:** You are correct in that it is not general or federal funds. It would be funds generated off that. It would be considerate a special fund and it would be appropriated.

**Chairman Keiser:** That would be for 2013-2015? Those are federal funds.

**Sharp:** 2013-2015 are not federal funds. That is when it has to be self-sustaining.

**Chairman Keiser:** January 1, 2015 it has to be self-sustaining. So 2013 to January 1, 2015 would be federal dollars.

**Sharp:** You are right. It would be federal dollars up until then. Although the assessments would have to start in that biennium so there would be enough money to sustain it when it starts.

**Chairman Keiser.** That is correct. You would start to tax effective January 1. I do want to clarify that is not quite accurate. There is a \$500,000 state appropriation that is included for the navigator. Or you haven't put that in?

**Sharp:** That is in the fiscal note, but that is not general funds. \$500,000 of the \$39 million is special funds not federal funds.

**Chairman Keiser:** Those are really state dollars of some sort.

**Sharp:** It would have to be taxed to those insurance (drops sentence).

**Sen. Dever:** When we talk about maintenance costs in Massachusetts and other states, were those annually or biannual costs?

**Rep. Keiser:** Annual.

**Sen. J. Lee:** The director of the program in Utah tells me it is \$600,000 to maintain their (inaudible). He mentioned they have not met all their federal requirements yet, but that is what their current costs are for operating.

**Rep. Keiser:** I need to qualify that because UTAH is playing a little bit of a game. They have a lot of departments that are providing services to their exchange that are not included in their annual operating costs. I do believe it is more than that. What we have designed in this bill comes closer to the Utah plan than the Massachusetts plan.

**Rep. Glassheim:** If Massachusetts is ten times our population, then \$36 million divided by 10 is \$3.6 million. I know they won't go exactly that way, but we have to reach to people. We can advertise through UND games rather than the Red Sox. If that 10% is somewhat in the ball park then the \$3.6 million is close to the \$10 million for a biennium.

**Rep. Kasper:** I wonder if Pam would provide this committee with a copy of her written testimony.

**Sharp:** Yes.

**Rep. Nelson:** I'm a little confused about the navigator office and how it is fitting in OMB. How many of these full time positions are going to be basically customer service reps; basically answering the phone and helping people navigate the exchange and purchase their health insurance?

**Sharp:** At this time none of FTEs are identified as navigator positions. I know that \$500,000 is in there. But there are no FTEs associated with that. That is why I am assuming once it would be up and running we would have to hire some additional people for consumer assistance.

**Chairman Keiser:** Let us assume that HB 1474 passes that then creates everything in the bill. It seems to me that the first thing the division would be doing would be applying for the phase 1 grant. The deadline is the end of this year. Approximately a month and a half away. In subsequent to that we would be applying for phase 2 funding because without that you would have no dollars to operate. If we did not receive either of those grants, you would have no FTEs or program and there would be nothing. We have said you can only

use the federal dollars for that. Let's say we do get the grant dollars, then you would have funding, but really still have to wait for certification. We would not hire anybody or take any significant steps until our plan was certified or would we?

**Sharp:** As soon as we get the dollars we would start working on the implementation of it.

**Chairman Keiser:** January 1, 2013 the states have to be certified. I agree if you have the dollars you have to hire some minimal staff to begin phase 1, but does it make sense to hire 19 full time people? If they don't certify the plan, we don't again have an exchange.

**Sharp:** If we don't have anything working on certification we don't have a plan either.

**Chairman Keiser:** I understand that.

**Sharp:** I think Lisa could expand on the need to start building the exchange as soon as possible.

**Chairman Keiser:** There is a timing thing and have absolute confidence in you as the head of OMB and the department to do what is reasonable in terms of implementation. I just wanted to make it clear we need to get the money first before we hire.

**Lisa Feldner:** Chief Information Officer for the Information Technology Department. No prepared testimony. Just going to answer some of the questions that you brought up. There were questions about Wisconsin. There were innovative grants that were offered early on as part of PPACA and what they were to do was for states to apply early on and bring up systems so other states could use them. Seven grants were awarded. However, Oregon, Massachusetts and a consortium of Wisconsin, Maryland, New York, Kansas and Oklahoma. Kansas and Oklahoma gave theirs back because it was too expensive and they couldn't meet the deadline. New York has since then put theirs on hold. Oregon is not going to be done on time. We did not look at Maryland. Massachusetts has an exchange, but would not meet certification so they have to rewrite their system. We learned this morning that Wisconsin was they got an innovator grant. You saw the prototype that I showed you. They have done nothing since that time because they had a change in administration and everything is on hold. Right now their previous chart which showed when they would finish their system shows they wouldn't even complete user acceptance testing. That is a step you do before you go live. This testing won't be done until October of 2013. Their go live date will have to be sometime after October of 2013. For us to port their system makes no sense. They don't even know if they will continue with what they have started. As far as Utah, private industry the carriers provide the technology for that. That is why their cost is minimal because they aren't financing it through the state. We can't take that model over either. HB 1475 which is the eligibility bill has to be done first before we can do the exchange.

**Chairman Keiser:** Senator Mathern did raise the issue yesterday that these two bills have an interrelationship.

**Rep. Kasper:** I just heard you say that there really isn't any state out there that you can imitate, model or purchase on what they have done. So if you are going to do a state

exchange if this bill should pass, what are your steps, what are you going to do, and how long do you see it taking?

**Feldner:** This is difficult. The number of FTEs and contractors that would be required to do this is significant. We would have to something we would have to contract out because I don't think the department can build it from scratch. This is no different from what we are doing with MMIS right now. You know how long that is taking. In my opinion this is more complex. More moving parts in this than in a claims system. You are working with all kinds of entities when you talking about this exchange. The federal government, insurance and health carriers, plus individual agents and the public in general. This is going to take years.

**Sen. Mathern:** This fiscal note keeps referring to all of the federal dollars that we don't have yet. I see state staff testifying including yourself. I hear you saying between the time of this bill and when federal dollars flow, there will be people working to make this work. How do you account for that expenditure?

**Feldner:** During the session there was a small amount of money that was passed for us to study this. It was in the Human Services budget and that is what we are using right now. Carol would have to answer those questions because it is her budget, not mine.

**Sen. Dever:** I recall during session that we were told Human Services that it would 44 months to develop this. How much time do you expect it would take to develop?

**Feldner:** The eligibility system is the system where we determine if people are eligible for subsidies, Medicaid and those kinds of things. For the insurance exchange I don't think we have an estimate on how long it would take. Wisconsin's is taking around 3 years and that is with the innovator grant.

**Rep. Kasper:** Did I hear you correctly that it is going to take 44 months to do the Medicaid eligibility software from today?

**Feldner:** Correct.

**Rep. Kasper:** You also said that in order for the health exchange to work, it has to interface with the Medicaid software that you are going to take 44 months to get done with. How are we going to get our health exchange software done if the other project you have been working on for many years; how do we interface with the exchange at all based upon what your timeline said it is?

**Feldner:** Two different systems. MMIS has nothing to do with this. Eligibility determines if the person is eligible. We will do the components of the eligibility system that interface with the exchange first in that 44 month timeframe so we can run concurrently.

**Rep. Kasper:** I have been in contact with a gentleman named Kevin Conahan who represents a company called Choice Administrators in California. They build exchanges. As a matter of fact in his memo to me which I'd be happy to provide to you, he says they have five private exchanges and have been in this business of exchanges since 1996. They relish the opportunity to work with states to implement exchanges. In my discussion

with him it appeared that they are so far down the track on exchanges that they might just have exactly what we need. In California they have had exchanges for years. He did indicate there are other companies like his out there in the private sector that you could be visiting with or contracting with. Have you looked in the private sector to see if they might be able to help you at all?

**Feldner:** A little bit. We haven't done an extensive search because we figured we would have to wait until this was all finished and then actually do an RFT. And then you don't want to prejudice the RFT by (inaudible) to closely.

**Chairman Keiser:** We need to know as a committee. Have we or have we not talked to these private contractors out there and ascertained what the cost may be?

**Feldner:** No.

**Chairman Keiser:** I understand the situation in Wisconsin as described today, and I realize that their current portal is not completed. Can we access all of the information that they have and is there a cost associated with it? Would you recommend doing that with that portal or another portal and modifying the current work product expanding it to reduce costs?

**Feldner:** They are very reluctant to talk in Wisconsin about things. They don't want to talk about it until after the Supreme Court ruling. It has been difficult getting information. Their contractor is Deloitte and we did have them here to show us the portal. I don't have a great answer for you.

**Chairman Keiser:** I just want to confirm that the numbers in the fiscal note are the best numbers you could generate based on what you know at this time and that they may be conservative, but we may find a less expensive alternative from a private vendor or some other source.

**Feldner:** Yes.

**Chairman Keiser:** Any neutral position testimony? Seeing none we will close the hearing on HB 1474.

Chairman Keiser went right into the committee work

**Sen. Glassheim:** (Handed out amendment 07008.) Basically this is to clarify what I think is perhaps already there. On the basis that you are certified you can't get both a commission for selling something and a consulting or assisting fee. (Handed out amendment 07007) And also to clarify that people can help other people without being certified. If they don't charge money and aren't certified they can still help other people to get on the exchanges.

**Sen. Mathern:** I have two amendments. (Handed out two amendments.) 11.0806.07001 it is an amendment dealing with the board and clarifying the consumer control and how they represent consumers. The second amendment, 11.0806.07002 is to clarify the navigator section of the bill and each of these amendments are crucial to the certification of this bill.



**Rep. Kasper:** (Handed out amendments.) I have three amendments on one sheet (11.080607003) and one deals with providing written reports to this committee if we do pass this bill. Second limits the appropriation amount that could be spent by the agencies to 50% unless they go to the emergency commission to spend more than 50%. The third one is the quote I read on the legislative intent which says that by passing this bill this legislature is not supporting the Federal Affordability Act, but instead we are passing it to have state control of the exchange.

**Chairman Keiser:** I have one amendment to be distributed. (Handed out amendment 11.0806.07005.) This amendment is a result of a previous discussion I had with Pam Sharp. In that discussion, as the bill is currently structured we have either the division or the navigator assessing the fee to the carriers. There is no time or no place to my knowledge that the OMB is ever serving as the entity that would assess a fee. What this language attempts to do is to allow the division once it has determined its budget and it is approved, to send that number to the Insurance Department and have that department the Insurance Department assess and collect the fee or other sources of money much as we do with CHAND and other programs. They are currently doing are doing that sort of thing.

**Rep. M. Nelson:** (Handed out amendment 11.0806.07004.) I have one amendment and it is to tack on an eligibility for CHAND. Insurance companies are no longer selling insurance to individuals under 19 years of age in North Dakota. This is to ensure if a child cannot get insurance in any other way that they would be eligible for CHAND.

**Sen. Berry:** I have to offer one amendment which is on the back page of the Medical Association's testimony. (See back page of Testimony #1) Simply one line that has to do with the board. Replacing "as determined by the governor" with "who is a North Dakota physician". I felt the input coming from that direction would be helpful to the board.

**Chairman Keiser:** Let's take this in somewhat of the order in which the amendments were presented. The first amendment was through the ND Medical Association.

**Sen. Berry:** I move that we move and replace on page 6, line 19 "as determined by the governor" with the wording "who is a North Dakota physician". There are individuals who would be willing to serve on this board. (See attachment #6)

**Rep. Kasper:** Second the motion.

**Sen. Dever:** Seems to me that doctors are health care professionals and I thought in previous discussions in meetings that we would leave it broad like that. I guess I oppose the amendment.

**VOTE: 9 y and 10 n no absent**

**Motion Failed**

**Chairman Keiser:** Let's go to the AARP amendments. The first one is on page 6 of their handout which was to strike subsection e, "one member as determined by the governor; and" and replace it with "four members who represent consumers." (See attachment #7)

**Rep. Glassheim:** Moved the amendment.

**Rep. Winrich:** Second the motion.

**VOTE: 6 y 12 n 1 absent**

**Motion Failed**

**Chairman Keiser:** On the last page of the AARP handout this amendment was to address the conflict of interest. It reinstated the language that was in the original bill that the industry and AARP and other consumers participated in. (See attachment #8)

**Sen. Mathern:** Move the amendment.

**Rep. Nelson:** Second the amendment.

**Rep. Kasper:** Reading the amendment, I think it would prohibit any of the board members who were (inaudible) to be part of the board. It says "a conflict of interest means an association including an economic or personal association", you could argue insurance company executives have that association. Provider physicians do. Providers with the hospitals do, an insurance agent that is selling in or outside of the exchange and even some consumers could have some economic interests. I think the definitions we have now are just fine. I certainly hope we defeat this amendment.

**Sen. Mathern:** I would suggest that the rationale for the amendment is really not to eliminate all persons who have a potential conflict of interest. It appears to me the definition is to clarify that when matters come before the board for decision making that those people who have a conflict of interest recues themselves. So I would say it adds the dimension that this is a dynamic thing and people would make those decisions before that. I hope that we could support this.

**Rep. Glassheim:** This is a procedural question. Can I further amend by deleting one sentence from this or do I have to wait till later?

**Sen. Mathern:** That would be a friendly amendment for me.

**Chairman Keiser:** Let me clarify the mover has accepted as a friendly amendment.

**Rep. Glassheim:** The first sentence seems to me to be different from the second sentence. The second sentence is definitional and says what a conflict of interest is. The first sentence says "you cannot deliberate", and it runs into some of the problems that some of you have raised. I would like to delete the first sentence. Leave the definition and then still allow in the later thing we will talk about, the board, to decide how to handle it. I don't want

to preclude participation, but I want to keep the definition in and let the board decide how to handle recues or declare their conflict.

**Rep. Keiser:** Is that acceptable to the mover?

**Sen. Mathern:** Agrees.

**Chairman Keiser:** The chairman will consider it a friendly amendment and the amendment is modified. We will be striking the first sentence in the amendment and leaving everything else.

**Rep. Kaldor:** I have a question on that motion. Is it the intention to retain the language on page 8 of the bill.

**Rep. Glassheim:** That would be my intention.

**Chairman Keiser:** Let's go to the bill and look at page 7, line 29.

**Rep. Kaldor:** The reason I am asking this question; the AARP amendment which Sen. Mathern moved, includes if you look at page 7 in the AARP handout, it includes the removal of lines 10-17 on page 8. That is the policy where the board deals with these things. It is my understanding that Rep. Glassheim intended to retain that language. I want to clarify.

**Rep. Glassheim:** My amendment would also delete those words from page 7 of their testimony which is page 8, remove lines 10-17. I would delete that also.

**Chairman Keiser:** Does the mover and second understand that and is it acceptable?

Sen. Mathern and Rep. Nelson said yes. (Microphones not on.)

**Chairman Keiser:** Where do we insert the language that is being kept. On page 7, line 29, after 9?

(No microphone on. Someone said yes.)

**Chairman Keiser:** On page 7 of the AARP handout, the amendment would strike the removal of lines 10-17 so they would stay in the bill. An then it would strike in the language that was presented by AARP, the first sentence. Then it would insert on page 7, line 29 after 9, it would insert, "a conflict of interest means an association including an economic or personal association that has the potential" etc. Then it would continue with, "each voting member shall file with the Secretary of State". This would put into the bill this definition.

**Rep. Glassheim:** It defines conflict of interest, but does not tell the board how to handle it.

**Chairman Keiser:** I understand what the intent is, but perhaps you could help me understand what is meant by the potential to bias. That language is a little problematic to me.

**Rep. Glassheim:** I believe the board would have to define that.

**Rep. Winrich:** I would just point out, in the language we restored on page 8. It says that the board policy must include a definition of what constitutes a conflict of interest. So they will have to address that in their policy.

**Rep. Kasper:** The amendment says a conflict of interest means and it goes on to say what it says. Who knows about the potential or the appearance besides the person who is pointed to that says, this means you have a conflict. I like the way we have the bill and this creates more problems than it solves. I would hope we would defeat the amendment as amended.

**VOTE: 6 y 13 n**

**Motion Failed**

**Rep. Glassheim:** Amendment 07007 just guarantees anybody who does not charge a fee may assist employees and employers in making health care decisions through the exchange. These people could not seek certification under our bill because you have to be a licensed agent, but they could receive training from the navigator office. I move 07007. (See attachment #9)

**Sen. Mathern:** Second motion.

**Sen. J. Lee:** I'm wondering if we have a legislative blessing for the Shick Council for example or are they viewed as volunteers? If we legislatively enabled them then we should probably do it here.

**Sen. Berry:** There was a mention to reimbursement through the navigator's office. Was that the intention?

**Rep. Glassheim:** These could be individual volunteers or agencies that organize volunteers or agency employees or a church. They would not be receiving compensation or fees.

**Chairman Kesier:** Rep. Glassheim and myself met with our staff Jennifer Clark yesterday on this issue and we went through the legislation and there is no question in legal's mind nor in mine that this is included in our current language, but it is not specifically addressed. I think the advantage of having this specific clarification is that it removes any interpretation that people can help other people use the web portal, can assist them, give advice and they will not be in violation of any law. I believe we covered this, but did not directly address it. I would encourage the committee to consider the recommended amendment.

**Rep. Frantsvog:** Rep. Glassheim, even though I may be a volunteer, don't I in affect represent the exchange, even though there is no compensation?

**Rep. Glassheim:** It is my understanding that actually people can represent themselves and ask their friends to sit at the computer and help them. It is very broad and no liability if you don't hold yourself out to be a professional.

**Rep. Kasper:** I have a concern about this amendment. Where is the potential for misinformation to be given to a person or a group greater? By someone who is certified by the exchange, licensed insurance agent or a consumer trying to good and help somebody, but knows nothing about insurance and may not know anything about the penalties or IRS ramifications, Medicaid and Medicare eligibility. I'm concerned that we are saying in the bill it is ok if you don't know anything you can go out and help as many people as you want.

**Sen. Berry:** What you are saying is that we already have this in the bill. This is just an expressly written statement to that effect.

**Chairman Keiser:** Jennifer, do you want to answer that?

**Jennifer Clark:** From Legislative Council. My interpretation of the bill before you is that it would allow this. That it is an affirmative statement. And if somebody reads it differently then we ought to reconsider it. I'm on page 17, line 27 of the bill. "The navigation office shall regulate who will charge a fee or otherwise receive consideration to assist individuals who (inaudible) exchange". We go on to say, "that this regulation must include a requirement that an individual must be certified by the office if that person charges a fee or receives consideration.

**Sen. Berry:** (Asking Rep. Glassheim.) Are you concerned that that does not allow for what you are asking?

**Rep. Glassheim:** I just want to make it absolutely clear to people reading this if it is passed that they can do it. We address certification which is different from non-certified people helping other people. On page 16, I think it already says what I'm saying, but I want it clarified. Line 19, it says, "the navigator office shall provide training and education services to individuals and entities that have existing relationships or could readily establish such relationships with employers, employees, consumers, including uninsured and underinsured individuals and self-employed". So that tells me that the navigation office is able to train people to help other people who are not certified and not insurance agents.

**Sen. Berry:** If it is already in the bill, can you address Rep. Kasper's concerns about misinformation. Do you have a feeling one way or another as it relates to that.

**Rep. Glassheim:** I think you can misinform your neighbor if you choose too. I think if you say they can do it that they will get the training that is provided for on page 16.

**Rep. Kasper:** If we (inaudible) without being certified, I can see the potential if misinformation is given, although with the best intention, a person may be harmed. This might take away the ability for the harmed person to do anything about it as far as seeking (inaudible) from the courts or the individual. I think there is hidden ramifications by putting that phrase in here.



**Sen. J. Lee:** What does Jen have to say about that?

**Clark:** We know how to stay in law if someone is relieved of liability. My reading of this we haven't including that language in here. My recollection is in discussing a broader topic with individuals from the Insurance Commissioner's Office is under that Medicare volunteer program. I think they do address liability issues and it requires a certification. I think it statute we know how to address the situation where we want to release somebody of liability. I don't see it happening here. I can't tell you that if this was litigated somebody may not try claim that's the case. I don't see your granting that release of liability in this.

**Rep. Glassheim:** Many people who will be getting onto the exchange have no experience with agents and are not going to go agents. How bunch of other people might help them. The possibility for good information is greater and reaching more people. You could have misinformation with an insurance agent. We need more than just insurance agents to educate the public.

**Rep. Frantsovog:** I would suggest it would be more wise if they would get the education and certification prior to giving advice to somebody.

**VOTE: 12 y 6 n 1 absent**

**Motion Passed**

**Chairman Keiser:** Let's turn to amendment 07008. (See attachment #10)

**Rep. Glassheim:** This would say specifically that someone who is certified an agent mostly, may not simultaneously charge a fee and receive consideration for his work in enrolling somebody on the exchange. I move the amendment.

**Rep. Kaldor:** Second.

**Rep. Winrich:** I'm having a little trouble with the word, simultaneously in here. Maybe Jen could help us with this. That implies some sort of timing issue. If I charge a fee at the time I talk to the person and I get my commission a month later from the insurance company. I think we could just drop it and have it read, "a certificate holder may not charge a fee and receive consideration from a health insurance issuer in connection with an enrollment with a qualified individual". If that would be accepted as a friendly amendment and Jen agrees with me on my interpretation of the language.

**Clark:** Putting this amendment together this morning, we had that same conversation on how best to reflect the concept that I think you are trying to get at. In that same transaction you do not want to allow them to do both. I agree the word simultaneously refers to a timing issue. One of our options was to take out simultaneously entirely and saying, you can't do this and that. Because, that indicates you can't do them both.

**Rep. Kaldor:** I'm wondering if it could be addressed in a way where we are talking about providing services to an individual. For example, I'm guiding an individual and therefore

eligible for a fee, but if I guide that individual to the insurance product that I see and I can collect a commission; that would be inappropriate.

**Chairman Keiser:** In drafting HB 1474 we were extremely explicit and direct in identifying and recognizing that we did not want this bill to be in conflict with the insurance commissioner's, and Insurance Department's authority. It always makes me anxious if they have in their current authority this very thing and we put new language in a different section of the code; a little word like simultaneously or individual and group might reverse what the insurance code is. I would request that the Insurance Department come up and share with us exactly what the current regulatory code says relative to this issue.

**Rebecca Ternes:** Deputy Executive for the Insurance Department. We discussed this issue at length a couple of days ago and what we have in our code that might be helpful to you is 26.1-26-03. There is a provision that says a license is required for a consultant. That would be someone who is necessarily selling a specific product, but they go into a business and say, I'm going to help you look at all of these products and I'm going to advise you on what you should and shouldn't be buying. In 26.1-26-41 it says, "a consultant cannot be licensed as a consultant and a producer". They can't hold licenses to do both of those things at the same time. That is separate from a volunteer person.

**Rep. Glassheim:** To help somebody on the exchange you have to be a consultant? Would that apply to someone helping someone get on the exchange?

**Ternes:** A consultant license is a difficult area for us in general. We don't have that many licensed in North Dakota. I would offer that with our Schick volunteers, for part B plan, we have a network of volunteers and the commissioner has that authority to have that program and apply for that grant. What we do with our Schick volunteers is that we train them. We don't certify them. We have them sign an agreement that they are not going to represent anyone company or product. They are immune from liability for their recommendation.

**Sen. J. Lee:** I think the consultant would be getting paid so that is another thought. If we delete the word, "simultaneously" and say instead, "a certificate holder may not in a single transaction charge a fee or receive consider".

**Rep. Glassheim:** I accept that as a friendly amendment.

**Chairman Keiser:** Is that acceptable to the mover and second? It would then read, "a certificate holder may not in a single transaction charge a fee and receive consideration from a health insurance issuer in connection with the enrollment of a qualified individual or a qualified employee in a qualified health plan".

Rep. Glassheim and Rep. Kaldor agreed.

**Rep. N. Johnson:** If you send him a bill for his consulting and then send him a bill later for the product, is that consider a single or two different transactions?

**Sen. J. Lee:** Where I'm going with this is the transaction between the purchaser of the insurance and the provider of the insurance.

**Rep. Kasper:** I think a single transaction means the event and so therefore it does not have to do with timing of the compensation. If it is a single transaction event you cannot get a fee and a commission regardless when it might be paid in the future.

**VOTE: 15 y 3 n**

**Motion Carried**

**Chairman Keiser:** Let's take Sen. Mathern's amendments. (See attachment #11)

**Sen. Mathern:** Amendment 07001. This amendment addresses the question of the board keeping all of the board members as five who represent consumers, one representing small employers and three representing the insurance industry and medical community. Another piece of this is clarifying how one gets nominated as a consumer. The governor would identify three consumer groups who would each recommend three names. The governor would get nine names for the five appointments or he could ask for more from other consumer groups or could deny names saying their qualifications are missing and get additional names. I move this amendment.

**Rep. Winrich:** Second.

**Chairman Keiser:** What are requirements for certification relative for public participation for the board?

**Sen. J. Lee:** I recall a discussion about consumer representation, but does not require a majority.

**Chairman Keiser:** Legal council says that is correct.

**Sen. Mathern:** I think that is in the context of a continuing evolution of federal requirements. I believe that will be a crucial feature.

**Sen. J. Lee:** I plan on resisting this motion for reasons we have already discussed.

**VOTE: 6 y 12 n 1 absent**

**Motion Failed**

**Chairman Keiser:** We will now go to 07002. (See attachment #12)

**Sen. Mathern:** I move the amendment.

**Rep. M. Nelson:** Second.

**Sen. Mathern:** This is an amendment that deals with the navigators. Two main points, one is it does accept the two navigators that are in the bill and beyond that the office will provide grants to at least three of the following eligible public or private entities to become

navigators. It lists these possibilities. It continues to clarify that they would have to have some expectations. Under 4 and 5 there is an explanation of those expectations. I believe it is important that we create a broad of field as possible to make this navigation program and exchange work and I think this would do that. The considerations here that are listed are taken directly from the federal guidelines on terms of exchanges. I did not change that at all. The other thing that it does is it eliminates the requirement that are noted in page 17, line 25-31 that the person who does this be a licensed agent.

**VOTE: 6 y 12 n 1 absent**

**Motion Failed**

**Chairman Keiser:** We will take up Rep. Kasper's amendments. We will take them separately. First 07003. (See attachment #13)

**Rep. Kasper:** On the first amendment, page 25, line 12 after the word interim we would insert, "which must include monthly written reports on the status on the state and federal funds received and the status of state and federal funds expended. What this is asking is that the entities of ITD, the Insurance Dept. and the Dept. of Human Services, when these receive these grants that they give a written report on the funds to the legislative branch of government. I move that amendment.

**Sen. J. Klein:** Second.

**Chairman Keiser:** I would just question, would there be rather than monthly written reports would there be an advantage to twice a year or quarterly?

**Rep. Kasper:** We are under a timeline to get an exchange establish which is about a year. We are talking about \$33-34 million so I think this committee and legislative management ought to be informed on what is happening because it is going to move fast. Think we should have more oversight.

**VOTE: 17 y 1 n 1 absent**

**Motion Carried**

**Chairman Keiser:** Let's go to second amendment. Page 27, line 12.

**Rep. Kasper:** There has been discussion from fellow legislators about the dollar amounts of money that is going to be appropriated to set up the exchange and spent. This amendment simply says, "appropriations and continuing appropriations of state and federal funds provided for under this Act before February 1, 2013 and until February 1, 2013, the agency receiving the funds may not spend or incur any expense or liability from such appropriation in any amount that exceeds fifty percent of amount appropriated unless the agency has received prior authorization from the emergency commission". I believe the emergency commission is part of the executive branch. Jen?

**Clark:** I think it is considered officially an executive branch. However, there is legislative representation on that.

**Rep. Kasper:** It is a reporting mechanism and a requirement that consent be given because there is a lot of money involved. I motion the amendment.

**Rep. Meier:** Second.

**Sen. Mathern:** I resist this motion. I think this cobbles the departments when they need to make decisions.

**Rep. Kaldor:** The concern I have about this is not so much that it is an effort for some restraint and committing to expending funds. I do have a concern about the date the presumption that at that point and time we should be only at 50%. It may not be so much percent per month. They may need more frontend loaded than that. It is hard to put a percentage which you should be at that point and time. I also get concerned about requiring that the emergency commission authorize it. There is no question that they will most likely have to go to the emergency commission for the request. We need to give them the latitude to be able to utilize the funds in the most appropriate way and trust that they will do that. They will have to report how the funding will be available for what they are doing throughout the interim. I don't think this is really necessarily productive.

**Sen. Dever:** This is related to it, but a little bit different. Since we have a contingent expiration date we will be needing contract to spending a lot of money over time. If there should be some provision for here that would nullify these contracts if the act is declared unconstitutional.

**Chairman Keiser:** This would be giving the executive branch the authority to stop spending if they so chose. Therefore, I am going to oppose this. I think this is a legislative prerogative.

**Rep. Kreidt:** I believe there could be a conflict here with the 50% that is included in here. Maybe we would like to get some interpretation on that.

**Sheila Peterson:** From Office of Management and Budget. I am assuming that OMB or anyone else could not sign a contract for more than 50% of the appropriation.

**VOTE: 1 y 17 n 1 absent**

**Motion Failed**

**Chairman Keiser:** Let's go to the third amendment. (3<sup>rd</sup> part of 07003)

**Rep. Kasper:** The third amendment section 11 creates a new part of the bill. "Creation of a state-administered health benefit exchange is not intended to express the sixty-second legislative assembly's support of the federal Affordable Care Act, but instead is intended to express its support of state control". I think that is an important statement. I move this amendment.

**Rep. Frantsvog:** Second.

**Sen. Mathern:** I would oppose this motion. I think it has a certain amount of emotional feel. However, we are asking the federal government for some \$80 million dollars and spending it by our actions if these bills are passed. I think this places the approval process into jeopardy.

**Sen. Berry:** I would disagree with the premise previously stated. It is not a matter of us bad mouthing somebody that we are asking money from, it is quite the other way around. We were told what was going to have to happen and then it was left up to us to decide how we wanted it to happen to us. Therefore, in this situation I see no problem in expressly stated that if it passes that the majority of this committee does not support the concept that we are being forced to consider.

**Sen. J. Lee:** I was wondering if the sponsor of the amendment would be willing to have the whole name of PPACA.

**Chairman Keiser:** I think that makes sense.

**Rep. Kasper:** That would be great.

**Chairman Keiser:** That is affirmed by the mover and the second.

**Rep. Kaldor:** I too will vote against this amendment. I think what this comes down to, this looks to me like a CYA amendment and I don't know if it has a place in legislation like this. If you can't defend your vote on this particular exchange legislation, maybe you don't like the federal law. But the exchange as Rep. Kasper has said earlier, there are states in the union that have had exchanges for quite some time. I feel this is up to each individual legislator to explain their intent. The minute we put this into legislation it changes the scope of debate and issue in front of the entire assembly in a very major way. I hope that as a committee we would resist this amendment.

**Rep. Kasper:** I have been here since 2001 and I can't recall the number of bills that we have had that had legislative intent expressed in the bill. I don't see this as a major change from anything that we have done in the past or will continue to do in the future. I do want to correct what I see as an inaccurate assumption by Sen. Mathern about the \$80 some million that this bill is working with a little over \$2 million and a little over \$35.9 million. We are asserting that we have sovereignty in the State of North Dakota. It is an important statement we are telling the federal government.

**VOTE: 14 y 4 0**

**Motion Carried**

**Rep. Keiser:** Amendment 07005 has my name on the top of it. On Section 54-66-14 on page 22, beginning on line 20 and forward the funding for the exchange beginning in January 1, 2015. Once the budget and cost have been determined the Insurance Dept. in

consultation, the insurance commission will be consulting in designed the source of the funds. And then, the collection of funds based on insurance the board shall consult with the commissioner and then in consultation with the commissioner. These are just corrections in the language to make the section on page 23, line 12 work. On page 23, line 12 says, "If the board's funding plan includes the collection of funds that are based on insurance, upon request of the board the commissioner shall charge and collect such funds and shall deposit such funds in the health benefit exchange fund."

**Sen. J. Klein:** I move the Keiser amendment. (See attachment #14)

**Rep. N. Johnson:** Second.

**VOTE: Voice Vote**

**Motion Carried**

**Chairman Keiser:** Now amendment 07004. (See attachment #15)

**Rep. M. Nelson:** This is an add on bill as a transition to the Affordable Care Act that is created when in September there is no pre-existing conditions in health insurance for those of 19 years of age anymore. At that time all of our health insurance companies quit offering child only health insurance policies. They did offer them before that. This is an attempt to provide a net underneath by using CHAND to make it clear that being under 19 becomes a criteria under which somebody can buy into CHAND. For most this would be the place of last resort. I'd like to see this option for children to buy.

**Sen. J. Lee:** I tried to catch up with administrator of CHAND who happens to be out today. We had interchanges of messages about this after Rep. Nelson brought it to my attention. I don't want children not to have insurance, but I think it is important to just note quickly. The only children under 18 policies available would be Medicaid, Healthy Steps, the federal high risk pool or sick kids who can be covered through our own high risk pool. Policies are offered to children 18 and under through our CHAND that meet the criteria. Rep. Johnson and I are on that same board and this won't be a big niche as most kids are covered by their parents' insurance or by Medicaid or Healthy Steps. I would suggest that we know whether or not it is going to make a difference in the assessment. Maybe Rod St. Abyn could comment on this.

**Rod St. Abyn:** Representing BC/BS. We do administer the CHAND program for the State of North Dakota. It is impossible for me to say I do not anticipate there is going to be a lot of people that are going to request this. There is a kind of a potential gap that someone could fall through the gaps and there is nothing available for them.

**Chairman Keiser:** I think Rep. Nelson has an important part of the health care coverage addressed here. This is an issue that I would suggest would be brought up and recognizing that there may be a problem for some young people between now and the next general session. This is indirectly an exchange related piece of legislation not directly related. This is a CHAND issue.



**Rep. M. Nelson:** I did bring this as a delayed bill to the delayed bills committee and they specifically suggested that it belonged here on the exchange.

**Chairman Keiser:** They have been wrong before.

**Sen. Mathern:** I think this is an opportunity to address a niche issue. The cost of those children will help the pool versus hurt the pool. I would hope we would support this motion.

**Rep. Kaldor:** As a member of the delayed bills committee, I probably couldn't agree with you more. If this committee had been in front of the delayed bills committee and explained why this bill is important in light of the other work we are doing, maybe the delayed bills committee would have approved it.

**Sen. J. Lee:** Maybe Maggie Anderson might have a thought to offer and could we enable the CHAND board to consider this group rather than do it this way?

**Chairman Keiser:** I don't know. Is Maggie here? Do you want to comment? (Maggie shook her head no.)

**Sen. Berry:** Are children currently being left out? Is there something about this that is going to change anything that we are missing at this point?

**Rep. Kasper:** When this might apply is when you have parents with no insurance and you have a 19 year old or younger who like to get insurance. In some cases the parents may not want the children on their insurance. This allows the individual to obtain insurance.

**Sen. Berry:** What would be the best case that someone could make for not adding this amendment?

**Chairman Keiser:** It really is not germane to this basic bill.

**VOTE: 9 y 9 n**

**Motion Failed**

**Chairman Keiser:** I am willing to keep you here to move on the bill if you so desire.

**Rep. Kasper:** I move to adopt the amendment.

**Rep. Frantsvog:** Second

**Chairman Keiser:** We have a motion for adoption as amended for HB 1474.

**Sen. Dever:** Is that with referral to Appropriations.

**Chairman Keiser:** Yes. The motion will include a re-referral to Appropriations.

**Sen. Mathern:** I plan to vote no on the motion. I think it is important to have the exchange. I believe there are features in here that are crippling to get approval of a state exchange.

**Rep. Kasper:** It would be nice to have our cake and eat it too. I support the state exchange, but will vote against the bill. That is not the issue before us. We are either going to vote to pass the state exchange bill or vote against it and let the federal government do it. I hope you will support the bill.

**VOTE: 15 y 3 n 1 absent**

**MOTION Carried**

**Chairman Keiser:** Thanked everyone and closed the meeting.

**FISCAL NOTE**  
Requested by Legislative Council  
11/04/2011

Bill/Resolution No.: HB 1474

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						\$10,175,783
Expenditures				\$39,596,372		\$10,175,783
Appropriations				\$39,275,128		\$10,175,783

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Creates a state health benefit exchange division and board; provides funding to develop and implement a state operated health benefit exchange system.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1: Allows board and committee compensation of per diem, and reimbursement for mileage and travel expenses. Allows the board to charge assessments and user fees to support board, division and exchange operations.

Section 6: Provides an appropriation of \$2,060,378 of federal funds and 9.00 fte for the office of management and budget health benefit exchange division to establish and operate the division.

Section 7: Provides an appropriation of \$35,964,750 of special funds and 19.00 fte for the information technology department to establish and implement the health benefit exchange.

Section 8: Provides an appropriation of \$500,000 of special funds to the office of management and budget health benefit exchange division for operations of the navigation office.

Section 9: Provides a transfer of \$750,000 from the Insurance Department to the office of management and budget health benefit exchange division for the purposes of planning, establishing and administering the North Dakota health benefit exchange.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Section 1 of the bill provides that the board may charge assessments or user fees to generate funding for board, division and exchange operations. Assessments or fees would be collected to cover the projected operating expenditures of \$10,175,783.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

2011-2013: \$39,596,372

\$3,310,378 to the Office of Management and Budget for the purposes of operating the health benefit exchange division

\$321,244 to the Office of Management and Budget for the expenditures of the board and advisory and technical committees.

\$35,964,750 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

2013-2015: \$10,175,783

\$3,229,103 to the Office of Management and Budget for the expenditures of operating the health benefit exchange division and for the expenditures of the board and advisory and technical committees.

\$6,946,680 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

2011-2013: \$39,275,128

\$3,310,378 to the Office of Management and Budget for the purposes of operating the health benefit exchange division

\$35,964,750 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

2013-2015: \$10,175,783

\$3,229,103 to the Office of Management and Budget for the expenditures of operating the health benefit exchange division and for the expenditures of the board and advisory and technical committees.

\$6,946,680 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

<b>Name:</b>	Lori Laschkewitsch	<b>Agency:</b>	OMB
<b>Phone Number:</b>	701-328-2685	<b>Date Prepared:</b>	11/07/2011

✓  
11/8/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 18, line 5, after the underscored period insert "A person that does not charge a fee or otherwise receive consideration may assist employers, employees, and consumers in making health coverage decisions through use of the exchange without being certified under this subsection."

Page 18, after line 15, insert:

"c. A certificate holder may not in a single transaction charge a fee and receive consideration from a health insurance issuer in connection with the enrollment of a qualified individual or qualified employees in a qualified health plan."

Page 22, line 30, after the underscored period insert "To the extent the division's proposal includes the collection of funds that are based on insurance, the division shall consult with the commissioner in designing the proposal."

Page 22, line 31, after the underscored period insert "To the extent the board's plan includes the collection of funds that are based on insurance, the board shall consult with the commissioner."

Page 23, line 9, remove ", in consultation with the commissioner,"

Page 23, line 12, after the underscored period insert "If the board's funding plan includes the collection of funds that are based on insurance, upon request of the board the commissioner shall charge and collect such funds and shall deposit such funds in the health benefit exchange fund."

Page 25, line 12, after "interim" insert "which must include monthly written reports on the status of state and federal funds received and the status of state and federal funds expended"

Page 27, after line 21, insert:

**"SECTION 10. LEGISLATIVE INTENT.** Creation of a state-administered health benefit exchange is not intended to express the sixty-second legislative assembly's support of the federal Patient Protection and Affordable Care Act, but instead is intended to express its support of state control."

Renumber accordingly

Date: 11-8-11  
Roll Call Vote #:

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House HEALTH CARE REFORM Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do PASS

Motion Made By Sen. Berry Seconded By Rep. Kasper

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever		✓	Representative Kaldor	✓	
Senator Lee		✓	Representative Kasper	✓	
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier		✓
			Representative Metcalf	✓	
			Representative M. Nelson.		✓
			Representative Rohr		✓
			Representative Weisz		✓
			Representative Winrich	✓	

Total (Yes) 9 (No) 10

Absent 0

Floor Assignment

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

*NO Medical Association  
Amendment.  
(change wording on pg 6, line 19)  
Failed*

Date: 11-8-11  
Roll Call Vote #: 2

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Glassheim Seconded By Rep. Winrich

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim	✓	
Senator Berry		✓	Representative N. Johnson		✓
Senator Dever	A		Representative Kaldor	✓	
Senator Lee		✓	Representative Kasper		✓
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier		✓
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	
			Representative Rohr		✓
			Representative Weisz		✓
			Representative Winrich	✓	

Total (Yes) 6 (No) 12

Absent 1

Floor Assignment \_\_\_\_\_

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

Failed



Date: 11-8-11  
Roll Call Vote #: 3

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen. Mathern Seconded By Rep. Nelson

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim	✓	✓
Senator Berry		✓	Representative N. Johnson		✓
Senator Dever		✓	Representative Kaldor	✓	✓
Senator Lee		✓	Representative Kasper		✓
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier		✓
			Representative Metcalf	✓	✓
			Representative M. Nelson.	✓	✓
			Representative Rohr		✓
			Representative Weisz	✓	✓
			Representative Winrich	✓	

Total (Yes) 6 (No) 13

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

2nd  
amend  
AARP  
Failed

Date: 11-8-11  
Roll Call Vote #: 4

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES 1474  
BILL/RESOLUTION NO.

House Health CARE Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. GLASSHEIM Seconded By Sen. Mathern

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever		✓	Representative Kaldor	✓	
Senator Lee	✓		Representative Kasper		✓
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	
			Representative Rohr	✓	
			Representative Weisz	✓	
			Representative Winrich	✓	

Total (Yes) 12 (No) 6

Absent 1

Floor Assignment \_\_\_\_\_

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

*Glassheim  
amended  
07007*

*Motion  
CARRIED*

Date: 11-8-11  
Roll Call Vote #: 5

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Glassheim Seconded By Rep. Kaldor

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark	✓	
Vice Chairman Klein		✓	Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever		✓	Representative Kaldor	✓	
Senator Lee	✓		Representative Kasper	✓	
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	
			Representative Rohr	✓	
			Representative Weisz	✓	
			Representative Winrich	✓	

Total (Yes) 15 (No) 3

Absent 1A

Floor Assignment \_\_\_\_\_

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

07008  
Rep. Glassheim's  
amendment  
delete word  
simultaneously

Date: 11-8-11  
Roll Call Vote #: 6

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen Mathern Seconded By Rep. Winrich

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim	✓	
Senator Berry		✓	Representative N. Johnson		✓
Senator Dever		✓	Representative Kaldor	✓	
Senator Lee		✓	Representative Kasper		✓
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier		✓
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	
			Representative Rohr	A	
			Representative Weisz		✓
			Representative Winrich	✓	

Total (Yes) 6 (No) 12

Absent 1

Floor Assignment \_\_\_\_\_

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

07001  
Sen Mathern Amend.

Motion  
Failed

Date: 11-8-11  
Roll Call Vote #: 7

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE

ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Mather Seconded By Nelson

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
		✓	Representative Glassheim	✓	✓
Senator Berry		✓	Representative N. Johnson		✓
Senator Dever		✓	Representative Kaldor	✓	✓
Senator Lee		✓	Representative Kasper		✓
Senator Mather	✓		Representative Kreidt		✓
			Representative Meier	✓	✓
			Representative Metcalf	✓	✓
			Representative M. Nelson.	✓	✓
			Representative Rohr	✓	✓
			Representative Weisz	✓	✓
			Representative Winrich	✓	✓

Total (Yes) 6 (No) 12

Absent 1

Floor Assignment \_\_\_\_\_

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

*Sen. Mather's  
amend.  
07002*

*Motion  
Failed*

Date: 11-8-11  
Roll Call Vote #: 8

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Kasper Seconded By Sen. J. Klein

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark	✓	
Vice Chairman Klein	✓		Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever	✓		Representative Kaldor	✓	
Senator Lee	✓		Representative Kasper	✓	
Senator Mathern	✓		Representative Kreidt	✓	
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	✓
			Representative Rohr	A	
			Representative Weisz	✓	
			Representative Winrich	✓	

Total (Yes) 17 (No) 1

Absent 1

Floor Assignment \_\_\_\_\_

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

07003  
amendment  
Rep. Kaspers

Date: 11-8-11  
Roll Call Vote #: 9

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Kasper Seconded By Sen. J. Klein

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark	✓	
Vice Chairman Klein	✓		Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever	✓		Representative Kaldor	✓	
Senator Lee	✓		Representative Kasper	✓	
Senator Mathern	✓		Representative Kreidt	✓	
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.		✓
			Representative Rohr	A	
			Representative Weisz	✓	
			Representative Winrich	✓	

Total (Yes) 17 (No) 1

Absent 1

Floor Assignment \_\_\_\_\_

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

Rep. Kasper's amendment 07003  
Motion Passed



Date: 11-8-11  
Roll Call Vote #: 10

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. Kasper Seconded By Rep. Meier

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog		✓
			Representative Glassheim		✓
Senator Berry		✓	Representative N. Johnson		✓
Senator Dever		✓	Representative Kaldor		✓
Senator Lee		✓	Representative Kasper	✓	
Senator Mathern		✓	Representative Kreidt		✓
			Representative Meier		✓
			Representative Metcalf		✓
			Representative M. Nelson.		✓
			Representative Rohr	A	
			Representative Weisz		✓
			Representative Winrich		✓

Total (Yes) 1 (No) 17

Absent 1

Floor Assignment \_\_\_\_\_

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

Rep. Kasper's amendment  
07003 (part 2)  
Motion failed

Date: 11-8-11  
Roll Call Vote #: 11

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DO PASS

Motion Made By

Rep. Kasper

Seconded By

Rep. Frantsvog

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark	✓	
Vice Chairman Klein	✓		Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever	✓		Representative Kaldor		✓
Senator Lee	✓		Representative Kasper	✓	
Senator Mathern		✓	Representative Kreidt	✓	
			Representative Meier	✓	
			Representative Metcalf		✓
			Representative M. Nelson.	✓	
			Representative Rohr	✓	
			Representative Weisz		
			Representative Winrich		✓

Total (Yes) 14 (No) 4

Absent 1

Floor Assignment \_\_\_\_\_

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

Sec. 11  
Rep. Kasper  
07003 amend.  
put whole name  
of ~~PPACA~~ written out

Motion  
Carried

Date: 11-8-11  
Roll Call Vote #: 12

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen. J. Klein Seconded By Rep. N. Johnson

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Clark		
Vice Chairman Klein			Representative Frantsvog		
			Representative Glassheim		
Senator Berry			Representative N. Johnson		
Senator Dever			Representative Kaldor		
Senator Lee			Representative Kasper		
Senator Mathern			Representative Kreidt		
			Representative Meier		
			Representative Metcalf		
			Representative M. Nelson.		
			Representative Rohr		
			Representative Weisz		
			Representative Winrich		

Total (Yes) \_\_\_\_ (No) \_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Rep. Keiser's  
Amendment  
07005

Voice Vote  
Motion Carried

Date: 11-8-11  
Roll Call Vote #: 13

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Health Care Reform Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. M. Nelson Seconded By Rep. Kaldor

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Clark		✓
Vice Chairman Klein		✓	Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson		✓
Senator Dever		✓	Representative Kaldor	✓	
Senator Lee		✓	Representative Kasper		✓
Senator Mathern	✓		Representative Kreidt		✓
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.	✓	
			Representative Rohr	A	
			Representative Weisz		✓
			Representative Winrich	✓	

Total (Yes) 9 (No) 9

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Rep. Nelson's  
amendment  
07004

Motion  
Failed

Date: 11-8-11  
Roll Call Vote #: 14

2011 SPECIAL SESSION JOINT HEALTH CARE REFORM COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Health Care Reform Committee  
☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep. KASPER Seconded By Rep. FRANTSVOG

Senators	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Clark	✓	
Vice Chairman Klein	✓		Representative Frantsvog	✓	
			Representative Glassheim	✓	
Senator Berry	✓		Representative N. Johnson	✓	
Senator Dever	✓		Representative Kaldor	✓	
Senator Lee	✓		Representative Kasper	✓	
Senator Mathern		✓	Representative Kreidt	✓	
			Representative Meier	✓	
			Representative Metcalf	✓	
			Representative M. Nelson.		✓
			Representative Rohr	A ✓	
			Representative Weisz	✓	
			Representative Winrich		✓

Total (Yes) 15 (No) 3

Absent 1

Floor Assignment Rep. Kasper

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

Re. Refer to Appropriations

**REPORT OF STANDING COMMITTEE**

**HB 1474: Joint Health Care Reform Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (15 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1474 was placed on the Sixth order on the calendar.

Page 18, line 5, after the underscored period insert "A person that does not charge a fee or otherwise receive consideration may assist employers, employees, and consumers in making health coverage decisions through use of the exchange without being certified under this subsection."

Page 18, after line 15, insert:

"c. A certificate holder may not in a single transaction charge a fee and receive consideration from a health insurance issuer in connection with the enrollment of a qualified individual or qualified employees in a qualified health plan."

Page 22, line 30, after the underscored period insert "To the extent the division's proposal includes the collection of funds that are based on insurance, the division shall consult with the commissioner in designing the proposal."

Page 22, line 31, after the underscored period insert "To the extent the board's plan includes the collection of funds that are based on insurance, the board shall consult with the commissioner."

Page 23, line 9, remove ", in consultation with the commissioner."

Page 23, line 12, after the underscored period insert "If the board's funding plan includes the collection of funds that are based on insurance, upon request of the board the commissioner shall charge and collect such funds and shall deposit such funds in the health benefit exchange fund."

Page 25, line 12, after "interim" insert "which must include monthly written reports on the status of state and federal funds received and the status of state and federal funds expended"

Page 27, after line 21, insert:

**"SECTION 10. LEGISLATIVE INTENT.** Creation of a state-administered health benefit exchange is not intended to express the sixty-second legislative assembly's support of the federal Patient Protection and Affordable Care Act, but instead is intended to express its support of state control."

Renumber accordingly



**2011 HOUSE APPROPRIATIONS**

**HB 1474**

**2011 SPECIAL SESSION**  
**HOUSE STANDING COMMITTEE MINUTES**  
**House Appropriations Committee**  
Brynhild Haugland Room, State Capitol

HB 1474  
11/9/11  
16959

☐ Conference Committee

Committee Clerk Signature

*Shirley Branning*

**Explanation or reason for introduction of bill/resolution:**

A BILL for an Act relating to creation of a North Dakota health benefit exchange; to the insurance commissioner's and department of human services' duties to establish a health benefit exchange and provide updates to the legislative management; to provide a statement of legislative intent; to provide for reports to the legislative management; to provide an appropriation; to provide a continuing appropriation; to provide a transfer; to provide an effective date; and to provide for a contingent expiration date.

**Minutes:**

**Chairman Delzer:** Opened the hearing on HB 1474. This hearing is different in that we take information from the policy committee. Anyone having questions will go to the podium.

**Representative Keiser, District 47:** I'll try to focus primarily on the appropriations associated with this bill and related sections. If you turn to the end of the bill...Patient Protection and Affordable Care Act (PPACA) is the law, and that law has presented the opportunity to states to decide whether or not they want a state based exchange or if they want the federal government to implement a federal exchange in their state.

On page 28, section 10, we have added an amendment that is a statement of legislative intent and it is at the creation of a state administered health benefit exchange and is not intended to express the 62<sup>nd</sup> legislative assembly support of the PPACA. Instead it is intended to express its support of state control. Next, page 28, section 11 and reading from the bill. The most important section is also on page 28, section 13, and the contingent expiration date. Our committee was concerned about what would happen should the supreme court reverse the act in part or in full or should congress, through the process of election and the 60 membership criterion that must be met in the Senate of the United States. There must be a change in the membership in support or opposition to this act. Continuing to read P. 28, Section 13. We have recognized the potential for that within the state and the federal government has not dealt with that in the original legislation. If the Supreme Court were to reverse it, it is unclear what would be decided relative to the dissolution of the PPACA and the exchanges that would be established. The reason for the delay date is insurance policies are contracts.

Moving next to page 26, we get into the appropriations section. Section 5 deals with federal grants, continuing appropriation and legislative management. We have amended the bill so that any grants received and distributions would be reviewed on a monthly basis and information provided to the legislative management committee.



Moving on to Section 6, there is an appropriation for \$2.06M or such sum as may be necessary in establishing and operating the health benefit exchange. It has nine full time employees (FTE).

Section 7 has an appropriation of \$35.96M to be given in effect to Information Technology Department (ITD) for the development of the portal that is required to be developed with the exchange whether federal or state. There are 19 FTE.

Section 8 has a \$500,000 appropriation coming from the Health Benefit Exchange fund and it would be used to fund the navigators. We have created the two required navigators; one within the division and one to the Indian Affairs Commission.

We have met the minimum standards. We have attempted to minimize the involvement of the health exchange in ways that we could.

Section 9. The Health Department was allowed to apply for a \$1M from the funds in the PPACA funding. The insurance department has spent approximately \$250,000 of that leaving \$750,000. This is to be used for planning and implementing the Health Benefits exchange. All of the FTEs in this legislation up until January 1, 2015 are funded. If there are no federal dollars, there are no FTEs. That was part of the agreement in the PPACA, that funding would come from the federal government. Those FTE must be reauthorized.

I also want to point out to you as our committee dealt with this and the associated costs, we asked OMB if, under which the state exchange would be located with a separate bill, and also the ITD and Human Services were appropriate. We asked them to be reasonable and conservative in their cost estimates, and by conservative I mean high, so hopefully there wouldn't be surprises later.

There are no portals available for purchasing off the shelf, but there are some with some work done on them. Utah is working night and day to get their portal ready, and we have also been trying to work with private vendors.

That concludes my comments relative to the fiscal part of the bill, and I would be happy to answer any policy or fiscal questions.

**Chairman Delzer:** We will take any questions about the appropriations; we'll have to come back in tomorrow to discuss it further. A number of funds you were talking about, are they already set up, or set up in this bill? Representative Keiser, I have questions about the funds. Are they already set up?

**Representative Keiser:** We have established in legislation a health exchange fund into which the federal dollars would be transferred as well as any dollars generated to operate the fund after January 1, 2015.

This is a very complicated piece of legislation. I can appreciate that members are struggling with this. Our committee has been working on this every other or every third week since we went into recess. One of the significant financial issues raised was that these dollars are not available in Washington, to fund through the grant process, any of the grant applications that might be forthcoming from states. This is a rumor.

I immediately looked into this, and in section 13.11 it is stated that these funds fall in the mandatory spending category, not the discretionary spending category.

I have a contact in to Congressional Budget Office (CBO) and asked for an explanation of mandatory spending. This includes social security, Medicare, Veteran's pension, rehab services, member's, judge's pay, etc. They are funded for whatever bills are submitted. It's an open checkbook.

**Representative Pollert:** The appropriation is approximately \$39 M and 28 FTE.

**Representative Keiser:** That is what is in the bill as the conservative number. That is what you are appropriating. And again, these are federal dollars, and if they are not used, they must be returned.

**Representative Pollert:** Do the federal dollars go away after a certain date or are there extensions?

**Representative Keiser:** The federal dollars are to be used for establishing and setting up the exchange. The exchange has to be online and prepared for open enrollment by October 2013. If you are not ready and fully operational, then the federal government is prepared.

The Request for Proposal (RFP) for the federal exchange has been issued and the contract awarded. They are moving very quickly and have hired a large number of people to create their exchange.

**Representative Skarphol:** Addressing **Allen Knudson, Legislative Council Representative**, Reading from the bill page 27 lines seven, eight and nine, does that allow for you to hire contractors for those positions, does that allow enough flexibility?

**Knudson:** Affirms.

**Vice Chairman Kempenich:** Is there more money available for this? If this is a new portal, this isn't enough. Usually you need to double the numbers and time to get it to work.

**Representative Keiser:** I am not qualified to tell you how much we should be requesting. We went to our departments and asked for an appropriate number. There are some states that already have these portals in operation, and ND simply needs to modify what's already working.

**Representative Monson:** This money being spent this biennium is to set it up with 28 or 29 FTE. Are we going to have to pay their salaries in future years?

**Representative Keiser:** What we were told was that the 19 were for the establishment. There will clearly need to be people retained for maintenance and adjustment. The design of this portal is a significant undertaking. However, if you've ever rented a car online, you've gone to a portal. This is clearly more complicated, they are not similar, but the expertise already exists. If you think the numbers should be increased, I wouldn't oppose it.

**Representative Dahl:** So these monies are to implement this entire project until 2013, but the money is available until 2015?

**Representative Keiser:** That is correct. When we receive money in the form of a grant, we have to put it in the fiscal period of the biennium we're addressing, but there are cases when the dollars can be carried into the next biennium and the intent can be referenced.

**Chairman Delzer:** That is the last line of Section 7 of the bill.....

**Representative Dahl:** After 2015, who pays to maintain this technology portion of the project? Are there any cost projections for that?

**Representative Keiser:** We have a projection that was developed by Office of Management and Budget (OMB) for the operation of the exchange. In the division. Their projection is \$10 M on an annual basis. Consultants have suggested that number is considerably inadequate. In Utah, however, where they created a portal before there was any PPACA law, they operate it for \$2-3 M. Massachusetts, at the opposite end of the spectrum, is around \$36-39 M a year. They also have a huge advertising budget. That's not what would happen in ND.

**Representative Dahl:** Asking for clarification, you are saying it would cost about \$20M per biennium to maintain.

**Representative Keiser:** As of January 1, 2015 if this law stays in effect, whether you have a federal or state-based exchange, the citizens in some way will be paying the expenses.

**Representative Pollert:** If we don't do this do the federal dollars go away.

**Representative Keiser:** Let me give you some history. There are a lot of dates built into this legislation. When the bill was passed but before it was signed into law, they made some amendments through the process of budget reconciliation, where you cannot change the dates. They anticipated passing it 6 months earlier than passed, so the dates have been a problem since day one. None of the dates so far have been extended. The last date to apply for the first phase grants are December 31, 2011. The phase two grants are at the end of June 2012.

**Representative Pollert:** Can you give me a brief history why Kansas and Oklahoma were looking at doing the health care exchange, and then backed away?

**Representative Keiser:** I can on Kansas. They got \$41 M for their innovation grant, to design the portal. After they did an RFP and started developing their portal, every group you could think of in the state added things and added things. They lost control of the project, and the best option was to give the money back. I have no information on Oklahoma.

**Senator Bowman:** When you talk to the federal government, they are trying to figure out how to cut \$4 T. If they don't it automatically triggers a lot of spending cuts. Where will the government find money to pay us anything?

**Representative Keiser:** The total expense of healthcare is being covered at some point along the line by somebody. The problem is becoming epidemic in terms of access, availability, and affordability. Look at our own Human Services budget. What these health care exchanges need to do is enroll people in the right programs, get them insured, if you can and spread the risk. People think of PPACA ...the exchange is about 1/10<sup>th</sup> of PPACA. Very shortly, if our hospitals have a higher than average 30 day readmission rate, they will receive a reduction of 1% of Medicare reimbursement. If they have hospital, nursing home

induced problems it will not be funded. Those savings in PPACA are in the current budget that is already out of control. Preventable issues will not be funded. The notion that you're going to eliminate all of PPACA, you may have legal action that takes away the mandate. Yesterday, the circuit court in Washington ruled the entire law was constitutional. This was unexpected.

**Representative Pollert:** Didn't Wisconsin start to do their program by executive order, but the legislature held it back?

**Representative Keiser:** I can speak to that. I have used the Massachusetts and Utah portals and they are dynamite; I have not used the WI portal. They will be under the federal exchange if they do not meet that deadline.

**Representative Bellew:** Looking at the Fiscal Note and reading Section 1, where do the user fees come from?

**Representative Keiser:** Starting January 1, 2015, whether it's state or federal program the state will become responsible. We don't know how the feds are going to bill it. The law is clear, their funding goes to January 1, 2015. Initially, we were going to add a factor to the premium tax. It became unreasonable. We put in a statement that we could have user fees or other fees that can be assessed. Once the budget is set for the exchange, the language, in consultation with the insurance department, then the assessment is sent out to the insurance companies. If Blue Cross Blue Shield has 83% of the assessment, that will be added to your premium. However, if you have a federal exchange in 2015 the federal government may be sending the assessment to the insurance companies.

**Representative Monson:** Often a bill with an appropriation section doesn't trigger a Fiscal Note. When I add up the appropriations in the bill, it appears to add up to \$39.2M. Are these appropriations sections included or are they in addition to?

**Knudson:** The amounts on the note are the appropriations shown in the bill. The reason there is a Fiscal Note on this bill is because of the assessment division and the estimates for the 2013-2015 biennium.

**Representative Pollert:** Wisconsin is backing off, as are Kansas and Oklahoma. Are they saying they are willing to use state taxpayer dollars to pay for a system or they thinking the federal government is going to come forward with something that is amenable? Should we be going forward when other states are having problems?

**Representative Keiser:** We will get into the policy side of this on the floor. If this law stays in play, you will have a state based system or federal a federal based system. When our committee went to develop a policy portion of this legislation, one of our guidelines was flexibility. We wanted flexibility to maximize the number of plans, inside and outside of the exchange to eliminate the need to write two underwriting pools. We designed a plan for North Dakota. Now that the federal government is designing their exchange it will be a one size fits all, that it will not be flexible, that it will have a lot of provisions in it if implemented in your state. We may wish we had done this.

**Representative Nelson:** I think you can add South Dakota to the list of states that are backing off.

**Representative Keiser:** I don't know anything about SD. I will suggest to all of you, and I saw this as the president of the National Conference of Insurance Legislators standing before you, that most states have legislative session coming up. Ask this question four months after January 1. Right now, what is starting to occur, is the 'oh' factor.

**Representative Nelson:** You make a strong case for going forward as a state. And yet we see a number of legislators reluctant to go forward with this. One reason not to is our standing in court, being we are a litigant against this bill in federal court. What's your opinion as to our standing if we pass this bill? Does this hurt, help, or not affect our standing in the court case?

**Representative Keiser:** I recommend you bring the Attorney General in to truly answer that question. From my perspective, you can follow a law that is on the books and still take that law to court.

**Chairman Delzer:** We'll close this hearing and discuss it further in the morning.

**Knudson:** Representative Monson had asked about the Fiscal Note, you will notice the expenditure amount is slightly higher than the appropriated amount, that relates to the \$21,000 to OMB for expenditures of the board and advisory and technical committees. the appropriation at this point does not cover the expenses so that would have to be provided either from another grant or some other source.

**Representative Keiser:** Representative Kasper just brought up the amount he confirmed with OMB, it is \$10M per biennium for the operational costs projected at this point in time, although it may be higher. That is what the fiscal shows.

**Chairman Delzer:** We'll come back to this. Meeting adjourned.

**2011 SPECIAL SESSION  
HOUSE STANDING COMMITTEE MINUTES**

**House Appropriations Committee**  
Brynhild Haugland Room, State Capitol

HB 1474  
11/10/11  
16963

☐ Conference Committee

Committee Clerk Signature

*Meredith Traeholt*

**Explanation or reason for introduction of bill/resolution:**

A BILL for an Act relating to creation of a North Dakota health benefit exchange; to the insurance commissioner's and department of human services' duties to establish a health benefit exchange and provide updates to the legislative management; to provide a statement of legislative intent; to provide for reports to the legislative management; to provide an appropriation; to provide a continuing appropriation; to provide a transfer; to provide an effective date; and to provide for a contingent expiration date.

**Minutes:**

You may make reference to "attached testimony."

**Chairman Delzer** called the committee back to order. Discussion or comments on HB 1474?

**Vice Chairman Kempenich:** I think this bill is grossly underfunded. These things always cost more than expected, especially when starting from scratch.

**Senator Holmberg:** We're focusing in this bill on the FTEs and the dollar amounts, and I would like some information from Pam Sharp and Lisa Feldner on the implementation of this and its impact on those agencies. Pam, what is the impact on ITD and OMB?

**Pam Sharp, Director, Office of Management and Budget:** The impact on OMB is trying to figure out what it would take to form a new division of OMB and get it up and running. We figure it will take 9 FTEs, or about \$2 million; the cost for the board expenses would be about \$321,000; that's about \$2.3 million for OMB for the current biennium. For ITD, it's about \$36 million and 19 FTEs, which includes funding for at least 20 contractors to build the exchange. Going forward to the next biennium, there is a \$10.1 million Fiscal Note for that, based on an assessment to insurance companies. I would direct you to page 23, line 14 of the bill. These two subsections are what allows the authority for an assessment to insurance companies to fund the exchange. That's what would need to generate about \$10 million per biennium.

**Chairman Delzer:** Is there any legislative oversight to that assessment tax?

**Sharp:** It's just in these numbers 3 and 4, that is the only language about the assessment.

**Representative Nelson:** Have you done an analysis as to how many policies are in effect in ND and what increase would be required to raise \$10 million?

**Sharp:** No. I believe the insurance department would have the number of policies.

**Senator Christmann:** I hear if we don't do this, the federal government does and then bills us for it. I don't remember in appropriations bills seeing any invoices from the federal government. How do they bill us for them doing the project?

**Sharp:** I think it's a misunderstanding about how things would work if the feds do run the exchange. They don't have any authority or mechanism to bill the states. If the feds are running the exchange, they would charge some kind of user fee. They would determine how the fee applies, whether it's to insurance companies, or per policy, or access to the system. They would not be sending the state a bill.

**Representative Kreidt:** The fund generated by the assessment on policies looks like it will generate about \$10 million. Is that a comfortable figure for the operation?

**Sharp:** The \$10 million was based on assuming we had 9 to 11 FTEs in OMB, which would be about \$2.8 million. The board would cost about \$450,000, and then about \$7 million to ITD to fund their FTEs. HTMS, the consultant the insurance department hired with the planning dollars, looked at a few states and got estimates of what they thought the operational cost would be, and the average is about \$28 million per year. That ranged from a low of \$4 million in Wyoming to \$40+ million per year in some other states. It really be hard to tell until it is up and running.

**Representative Monson:** Almost all of this money is federal funds, correct?

**Sharp:** All of the implementation dollars are federal dollars.

**Representative Monson:** What is the absolute last date we could apply for these federal funds? If we don't pass it now, what is the last date it would be available for us?

**Sharp:** I'm not an expert on the establishment grants, but my understanding is for level 1 grants, December 30, 2011. For level 2, it is the end of July 2012.

**Representative Dosch:** I'm trying to understand the total cost of this. Right now the cost is roughly \$40 million plus \$10 million ongoing costs. We know the costs of some of the DHS system costs. Do you have a total dollar amount that we should be looking at here? What is the cost of the actual insurance to the state as a result of the expansion that is required under Obamacare?

**Sharp:** I'm not sure I have what you're asking for. I know the total of HB 1475 to the cost of this bill, HB 1474.

**Representative Dosch:** They anticipate that under Obamacare we'll have 50% more people on it. What is the state's portion of that cost?

**Sharp:** I think that is a question for Maggie (Anderson, Department Human Services), and it would be impacted by our FMAP reimbursement rate.

**Representative Pollert:** I asked questions of Representative Keiser about other states starting and then pulling away from this. It seems SD has said they will not address health care exchanges in the 2012 legislative session for them, so they will be on the same time schedule as us for 2013 at the earliest. It seems that SD has to be thinking that they're going to be spending state general fund dollars for their exchange, or they're thinking that the federal government is going to have to extend the guidelines, but there are no rules for extensions. Your thoughts?

**Sharp:** One of the issues is the information is very slow in coming from the feds as to how they will handle certain things, will they or won't they extend certain dates, what are the rules, what are the regs. I think the feds really do want the states to do it, in the meantime, they are working on their hub. It is very unknown. A lot of states are in the same position we are in, where they don't know what they are doing. I don't know if at some point the federal government would take that into consideration and give the states more time or not.

**Senator Holmberg:** This body has wrestled with the MMIS system for a long time, and I know this is a different system. That was a complex project from the standpoint of the interface, consultants, etc. This program will be worked through ITD. Can you give us an idea of the complexity and challenges you will face implementing this bill?

**Lisa Feldner, Chief Information Officer, Information Technology Department:** This is very complex, perhaps more complex because the rules aren't set. Pam referenced a federal hub, which is just now being undertaken in Washington. It's a data hub that our systems will have to connect to, and right now we have no idea what we're connecting with. The estimate is our best guess at what it will look like. We will also need to interface with the eligibility system in HB 1475, insurance carriers and brokers, the public, etc. Kansas was what was called an early innovator state. They started out with an RFP to the vendor community and it looked to them like it would cost \$3 million per month to operate. They said, we can't afford that, so they stopped. That's why they gave the grant back, they said there's got to be a better way. Have we gone out to the vendor community? No, we didn't really have the time, so we just did our own estimate.

**Senator Bowman:** If the rules haven't been established, how can you even make an educated guess? Rules can change cost really fast. This is sounding more and more like a nightmare. To make a good decision on this, how do we do that without knowing exactly what it's going to cost?

**Feldner:** It is very difficult to build something without the rules in place, so it was our best estimate.

**Senator Christmann:** Do you recall, when we entered into the MMIS project, what was the original finish date and cost projection?

**Maggie Anderson, Department of Human Services:** The department entered into the contract in 2006. The original go live date was July 2009, and the cost was \$62.5 million.



That budget amount has not changed to date. Our current projected finish date is summer 2013.

**Representative Kreidt:** If we knew all the rules, what type of time frame would it take to get things up and running?

**Feldner:** In our estimate of \$35.9 million, we have 19 FTEs and 20 contractors, using a deadline of October 2013. But it is very difficult when you don't know the rules.

**Representative Monson:** One of the states had found out it would cost \$3 million per month to operate so they shut it down and had to send back federal funds. If we do something like that, where we put it on hold or on the shelf, if we don't go ahead with it, are there federal funds that we have accepted that we would have to turn back?

**Feldner:** I believe the insurance department accepted a \$1 million planning grant, but I believe that's the only federal money, and we don't have to return that.

**Representative Nelson:** I don't think it's fair to compare MMIS and this project. I think your deadline schedules have been more accurate than ACS. If the rules are set and we go into this project, do you have any concern about your ability to put this together and acquire the staff you need?

**Feldner:** Yes we do. Part of the reason we have that concern is that, in theory, 50 states are doing this, and they will all need to get contractors as well. It's more difficult to get contractors here than in some states.

**Representative Nelson:** Would that be one reason why maybe we should be one of the first states to do this?

**Chairman Delzer:** If we go into this and it costs considerably more for the implementation of development, it is an open-ended federal monetary system? Or is whatever we have in our list here as much as we could get from the feds?

**Feldner:** I believe you're referring to the establishment grants. The second phase is an unlimited checkbook, we've been told. Anything you ask for, within reason, they will award.

**Representative Kroeber:** The states that began work on this and then returned the money, did they return the unused portion of the grant, or did they also have to come up with the money they used and take it out of state funds?

**Feldner:** Those were innovator grants to build an IT system ahead of other states. When they got into it, and they realized the system they wanted to build was very fancy and they couldn't afford it, they gave back the federal money they hadn't spent.

**Representative Pollert:** Regarding the hub from the federal government, the federal government is setting the rules. In HB 1474, the state is not setting the rules for how their system will connect to the federal government. Is the federal government going to tell the states how to run their state exchange no matter what?

**Feldner:** Whether it's a state or federal exchange, they set the rules on how the data is transferred and interfaced with the federal systems and hub. They are going to build the hub, and then they will say, the hub has these rules, these fields, that we are going to send to you, and you have to accept them this way. They are setting the rules on how the systems interact.

**Representative Pollert:** Are these rules in place now?

**Feldner:** No they are not.

**Representative Glassheim:** There are two aspects to running the exchange, the technical connections, and the policies. I think Lisa is just talking about the technical ITD things.

**Representative Kreidt:** I'm very familiar with the bill, it's a good piece of legislation, but I have a few concerns. Number one, we are in a federal lawsuit against this act right now, with several other states. I believe there will probably be a decision about the constitutionality sometime after the election next fall. By going ahead with this now, we are to some degree affecting that lawsuit. Secondly, last session we passed a bill that said we, as a state, will not mandate our residents to purchase health insurance, and we're in conflict with that if we pass this. There are timelines to meet, but this doesn't go into effect until January 1, 2013. I still feel we have time after that lawsuit has reached a decision that we could come back in and pass this. We've got the bill ready if we decided to go with a state plan. The other option is we can let the feds take it over. I feel if every state would have ceded the exchange set up to the federal government, it would have never happened, because they just couldn't have handled that. We could come in in one day in a special session, or even during our organizational session at the end of next year, and possibly still pass this bill. We could probably still accept the grants and put that money aside and still have our plan accepted.

**Representative Hawken:** On the mandate portion, the state of ND has fewer mandates within our health insurance than some states. If we set up our own exchanges, do we do our own mandates, and if the federal government is doing it do we have to accept all the mandates? Does it make any difference?

**Senator Judy Lee, District 13:** My understanding is we would still have to abide by the essential federal mandates that are in place for the insurance products that are in the exchange. As long as the state is including the policies in the exchange which have the essential benefits, which have not yet been entirely determined, that's the difference. We would have more control over what happens with mandates and such, but it a lot of it hinges, in the exchange, on whether or not it's a federally determined essential mandate.

**Representative Kreidt:** With the state run exchange, on the low side, right now per year we'd be assessing on every health care policy in the state of ND about \$730. That's a concern I have, too. If the feds would be less than that, I don't know. I'm not happy with assessing this to the residents of the state.

**Vice Chairman Kempenich:** I think Ms. Sharp hit it on the head, the rules are being made up as we go. I don't know how we can have control on a state side when the people that are making the rules haven't even written them yet. I move Do Not Pass on HB 1474.

**Representative Brandenburg:** Second.

**Representative Glassheim:** I think we're misleading ourselves if we talk about some of the costs. The feds certainly are not going to do it cheaper than we can. We've always held that we can do it better and cheaper. What are you paying a federal employee in Washington as opposed to what are you paying a state employee in Bismarck? We're going to get billed one way or the other. We're voting on either/or. We're not voting on whether to have exchanges. There's going to be an exchange. It's going to cost. The feds are paying for all of this now because they understood it would take a few years to get things up and running. You're blaming the feds for not having rules in place, but they are spending a lot of time getting reactions from the states. It takes time to get responses and do rules, but they're paying for it. If the rules change and it's more costly, they'll be paying for it. The other thing we have not talked about in this discussion is, how much money did the affordable care act save rural hospitals because the Medicaid payment expansion? Has anybody figured that in? How much money is coming to the state to small businesses to help them insure their employees? This is significant money into the state. Yes, we'll have increased costs, but more money is coming into the state to be spent in the state.

**Chairman Delzer:** These are issues for the overall PPACA bill, not this bill. A number of those numbers have been discussed in the health care committees over the years. We understand both sides of that. But the bill we have before us is simply whether we start an exchange now or not. Those dollars, if the law stays in place, that's going to be there whether we have the exchange or they do. But the cost of the exchange is different, whether we do it or they do it.

**Representative Glassheim:** I believe the cost of the feds running it will be much greater than if we run the exchange, and clearly we can have much more impact on policies and complaints. Do you want to go to Washington to get things smoothed out, or to Bismarck?

**Vice Chairman Kempenich:** If the feds really were serious about this, they would have had things in place before they gave it to the states. The timelines are unrealistic. They would have tried to actually make it work if they were serious about it.

**Senator Kilzer:** I would like to approach it from a long-term angle. I've dealt with the federal government for over 40 years. We've been through the HSAs, RMPs, and HMOs. Programs come and go, and this is the latest in the approach to the nationalization of healthcare. If you think the state governments and political subdivisions have a hard time dealing with this, you should see the people dealing with the forms. Overall, it doesn't make a lot of difference if we choose to have a state run exchange or whether we go to the federal exchange. The feds are holding back information by design, it's a delaying program. Half of the deadlines by the feds have not been met. In 10 years the differences between state run and federally run will be unrecognizable. There's not a lot of wiggle room for the state in the long term.

**Chairman Delzer:** Further discussion? The question has been called. A roll call vote was done. Motion carried 15 Yays, 5 Nays, 1 Absent. Representative Monson will be the carrier. I would like to state that from the House's standpoint, we made a recommendation on the appropriations side of this. There will be a lot of discussion when this hits the Floor. It came out of the other committee with a pretty strong Do Pass recommendation. Nobody is held in any way, shape or form to their vote here on the Floor. What you do after you listen to the discussion is up to you. I would also like to recognize that the interim committee has done an enormous amount of work. I think the piece of legislation is pretty good. The issue for myself is whether or not it was worth the amount of money that would be tied up in it and whether or not the timelines could be met.

**Senator Holmberg:** The Senate Appropriations Committee will take this measure up after the House has had their debate and referred and not referred it to us. If it doesn't come to us it's a moot point.

**Chairman Delzer:** That finishes HB 1474.

**FISCAL NOTE**  
Requested by Legislative Council  
11/04/2011

Bill/Resolution No.: HB 1474

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						\$10,175,783
Expenditures				\$39,596,372		\$10,175,783
Appropriations				\$39,275,128		\$10,175,783

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Creates a state health benefit exchange division and board; provides funding to develop and implement a state operated health benefit exchange system.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1: Allows board and committee compensation of per diem, and reimbursement for mileage and travel expenses. Allows the board to charge assessments and user fees to support board, division and exchange operations.

Section 6: Provides an appropriation of \$2,060,378 of federal funds and 9.00 fte for the office of management and budget health benefit exchange division to establish and operate the division.

Section 7: Provides an appropriation of \$35,964,750 of special funds and 19.00 fte for the information technology department to establish and implement the health benefit exchange.

Section 8: Provides an appropriation of \$500,000 of special funds to the office of management and budget health benefit exchange division for operations of the navigation office.

Section 9: Provides a transfer of \$750,000 from the Insurance Department to the office of management and budget health benefit exchange division for the purposes of planning, establishing and administering the North Dakota health benefit exchange.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Section 1 of the bill provides that the board may charge assessments or user fees to generate funding for board, division and exchange operations. Assessments or fees would be collected to cover the projected operating expenditures of \$10,175,783.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

2011-2013: \$39,596,372

\$3,310,378 to the Office of Management and Budget for the purposes of operating the health benefit exchange division

\$321,244 to the Office of Management and Budget for the expenditures of the board and advisory and technical committees.

\$35,964,750 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

2013-2015: \$10,175,783

\$3,229,103 to the Office of Management and Budget for the expenditures of operating the health benefit exchange division and for the expenditures of the board and advisory and technical committees.

\$6,946,680 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

2011-2013: \$39,275,128

\$3,310,378 to the Office of Management and Budget for the purposes of operating the health benefit exchange division

\$35,964,750 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

2013-2015: \$10,175,783

\$3,229,103 to the Office of Management and Budget for the expenditures of operating the health benefit exchange division and for the expenditures of the board and advisory and technical committees.

\$6,946,680 to the Information Technology Department for the purposes of establishing and implementing the health benefit exchange.

<b>Name:</b>	Lori Laschkewitsch	<b>Agency:</b>	OMB
<b>Phone Number:</b>	701-328-2685	<b>Date Prepared:</b>	11/07/2011

Date: 11/10/11  
Roll Call Vote #: 1

2011 SPECIAL SESSION HOUSE APPROPRIATIONS COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1474

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Kempenich Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim		X
Representative Bellew	X		Representative Kaldor		
Representative Brandenburg	X		Representative Kroeber		X
Representative Dahl	X		Representative Metcalf		X
Representative Dosch	X		Representative Williams		X
Representative Hawken		X			
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 15 (No) 5

Absent 1

Floor Assignment Rep. Monson

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

motion carrier

**REPORT OF STANDING COMMITTEE**

**HB 1474, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)**  
recommends **DO NOT PASS** (15 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1474 was placed on the Eleventh order on the calendar.



**2011 TESTIMONY**

**HB 1474**



## Testimony on HB1474 November 7, 2011

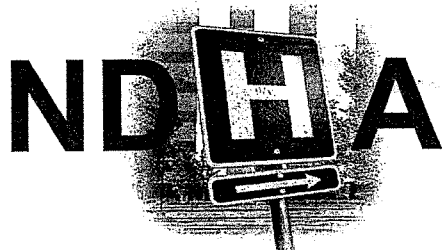
Paul von Ebers

President CEO

- ND Company representing over 306,000 residents having our coverage
- We strongly support HB 1474 and thank this committee for all your hard work and research
  - In particular we support a state-based exchange vs Federal Exchange
  - We understand the political pressures ND legislators face regarding the unpopularity with PPACA in our state.
  - Immaterial of how you may feel about PPACA, it is the law and we must determine how to most effectively function within its parameters
- Common misconceptions
  - “It will likely be repealed or ruled unconstitutional”
    - Repeal is possible but requires new president & 60 votes in Senate
    - Latest appeals court ruling suggests only mandate may be ruled unconstitutional
  - “We can wait until next year”
    - Access to Federal grants expire in July, 2012
    - Exchange must be functional by Oct 2013
  - “We can let the Fed’s build it and we can take it over later”
    - ND would need to adopt a rigid federal exchange
  - “Will the Fed’s have the money to construct a federal exchange?”
    - Already Federally appropriated
  - “We would be the first state to adopt the exchange”
    - According to National Conference of State Legislators (NCSL): 39 other states are in the process to create state exchanges
    - states have a limited opportunity to act or allow the feds to create and fund an exchange with state money
- Why not just allow the federal government to run our state’s exchange?
  - Potential for dual regulation – thus added cost
  - Potential for limitation of insurance products available for state residents
  - Feds would likely create an active purchaser instead of open marketplace
  - North Dakota has 3600 residents licensed as life and health agents
    - under a federal exchange these agents would likely be pre-empted and replaced with a large cadre of navigators

- HB1474 will allow ND to continue using these professionals by creating a Navigator office that will facilitate enrollment by educating and certifying our existing agent workforce on how to enroll their customers through the exchange
- The state can use Federal grants to build our exchange. The state will be responsible for operational costs immaterial if it is a state or federal exchange
  - Make no mistake North Dakotans will pay for an exchange. Do you want them to pay for a federal exchange or a state exchange? Federal employees or state employees?
  - The state will have no control how the Federal government will operate the exchange. It would be like giving the Federal Government a blank check written on the state's bank account
  - More than likely it will be a "one size fits all" approach when designing a federal exchange
  - Human Services will be required to coordinate with federal agencies instead of ND OMB
  - Constituents must deal with federal agencies – think EPA & IRS
- A state-based exchange provides for flexibility to provide for North Dakotans and not something that the Federal government may design to accommodate states much different than ND
- North Dakotans will pay for an exchange regardless and we feel the ND legislature can provide:
  - a cost-conscious solution
  - with options selected by the HCR committee
  - tailored for North Dakotans
  - with local control

#2



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.*

**Joint Health Care Reform Committee**  
Chairman Representative George Keiser

Monday November 7, 2011

Chairman Keiser and members of the Joint Health Care Reform Committee; I am Jerry Jurena, President of the North Dakota Hospital Association.

Before you today is the Health Benefit Exchange bill. You must decide what is best for the citizens of North Dakota in regards to the oversight and operations of the Exchange. At this point in time the exchange is inevitable, so the decision is to have the state develop and run the exchange or have the federal government set it up and operate it. I have polled the Hospital CEO's and the consensus is to have a state run exchange.

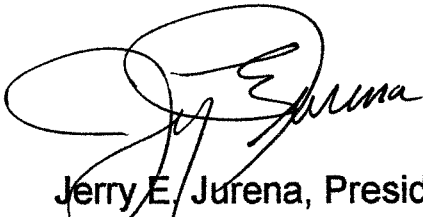
When we look at the fairness/equity of the Medicare program there is no doubt which we would like to run the program. Attached is the Dartmouth Medical School's scatter-gram which shows North Dakota in the top eight for quality and at the bottom for reimbursement while states that have the lowest quality have some of the highest reimbursement. We do not believe that a federally run exchange would be of benefit to the people of North Dakota.

The options are pretty straight forward; a vote in favor of the proposed bill would mean that the state would develop and operate an exchange. A vote against the bill would mean that the Legislature is in favor of having the

state develop and run the exchange for North Dakota. Therefore there are two yes; the first is yes I agree we can do a better job for the people of North Dakota or yes we want the federal government to come in and run the exchange for us. If you like the fairness/equity of Medicare reimbursement in North Dakota you should like how they will treat us in the exchange.

We believe the state will create a better program for the citizens of North Dakota. I encourage you to vote for the state to develop an exchange instead of having the federal government develop and operate our exchange.

Respectfully,

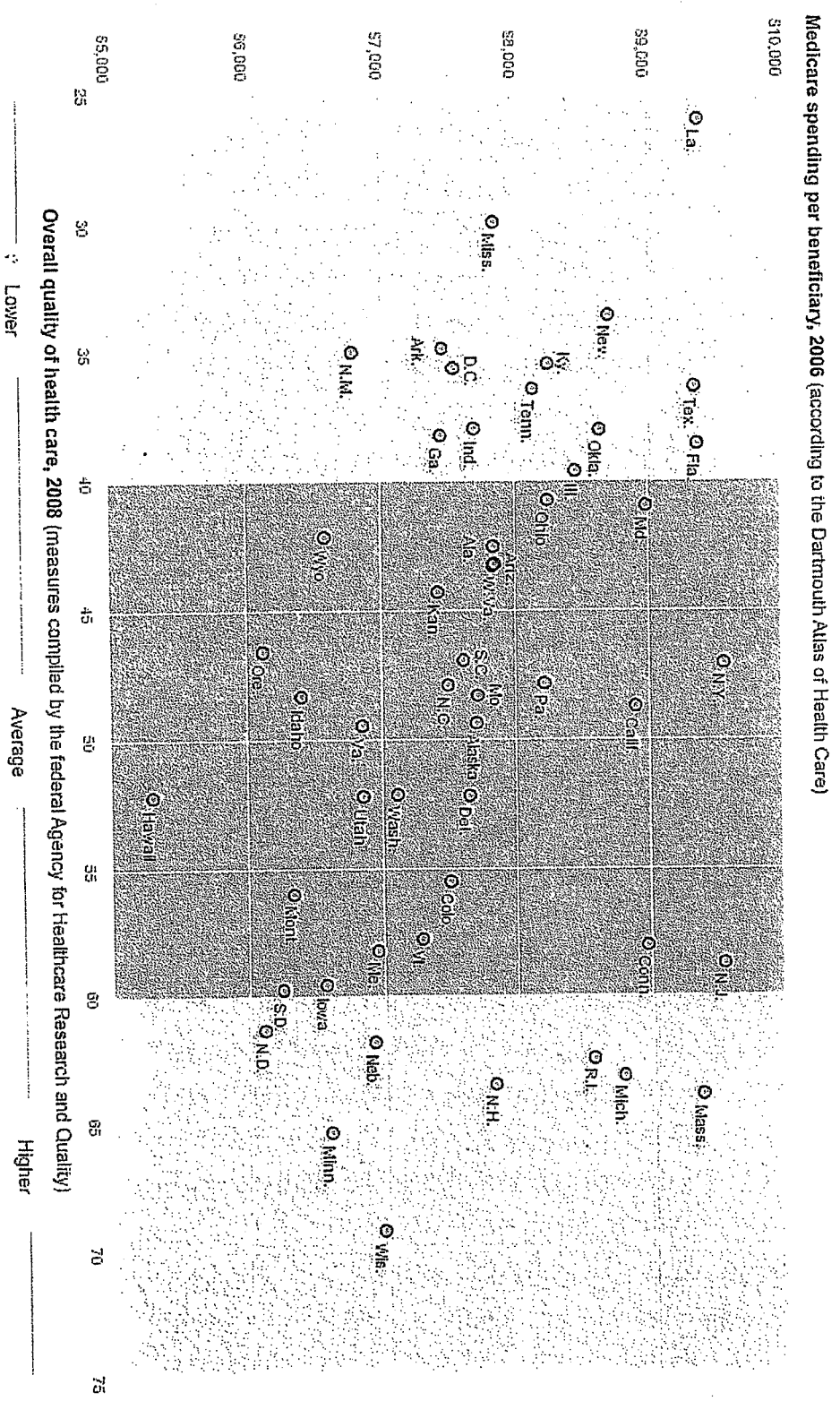
A handwritten signature in black ink, appearing to read "Jerry E. Jurena". The signature is stylized with a large, looping initial "J" and a cursive "E".

Jerry E. Jurena, President  
North Dakota Hospital Association



# Comparing Cost and Quality of Health Care Across the Country

Researchers at Dartmouth Medical School have found huge geographic variations in Medicare spending per beneficiary, but areas that spend the most do not always produce better quality of care. Some point to the disparity as evidence of inefficiency; others say higher spending often reflects higher cost of living and sicker population.



<http://www.nytimes.com/interactive/2009/09/08/us/cost-scatterplot.html>

#3

## Rod St. Aubyn

---

**From:** Rod St. Aubyn  
**Sent:** Sunday, November 06, 2011 6:58 PM  
**To:** Rod St. Aubyn (rodstaubyn@cableone.net)  
**Cc:** Rod St. Aubyn (rod.st.aubyn@noridian.com)

### *Exchange Establishment Grants*

*Level One Establishment* is open to States that received Exchange Planning grants. —Early Innovator|| States are also eligible to apply. These cooperative agreements provide up to one year of funding to States that have made some progress under their Exchange Planning grant but are not yet able to meet the eligibility requirements of *Level Two Establishment*, defined below.

*Level Two Establishment* is open to States that received Exchange planning grants. —Early Innovator|| States are also eligible to apply. Level Two Establishment awards will provide funding through December 31, 2014. This category is designed to provide funding to applicants that are further along in the establishment of an Exchange and that can demonstrate achievement of specific eligibility criteria outlined below. *Level One Establishment* grantees are eligible to apply for *Level Two Establishment* after making sufficient progress in *Level One* and once they are able to meet the *Level Two* eligibility criteria defined below:

- A. Has the necessary legal authority to establish and operate an Exchange that complies with Federal requirements available at the time of the application.
- B. Has established a governance structure for the Exchange.
- C. 1) Submits a complete budget through 2014; 2) Submits an initial plan discussing financial sustainability by 2015; and 3) Submits a plan outlining steps to prevent fraud, waste, and abuse.
- D. Submits a plan describing how capacity for providing assistance to individuals and small businesses in the State will be created, continued, and/or expanded, including provision for a call center.

Rod St. Aubyn  
Manager - Government Relations  
4510 13th Avenue S.  
Fargo, ND 58121-0001  
701-282-1847

## Exchange Fact or Fiction

There is a lot of misinformation that has been distributed by e-mail, blogs, and talk radio. I wanted to give you some of the facts.

- **Should North Dakota race to become the 1<sup>st</sup> state to implement the ObamaCare Healthcare Law?**

**FACTs:** Whether we like it or not, the Affordable Care Act (ACA) **IS** the current law. In fact many provisions of this law have already been implemented. For example insurers have had to already comply with many near-term market reforms. In addition, the legislature has already passed HB 1127 dealing with PPACA mandated external and internal appeal requirements mandated by the ACA. If the state does not build its own State Exchange, the Federal Government will build and operate one for the State and we will have no say how it is designed or operated. In addition, beginning in 2015 the State will be billed for the cost of operations for a Federal Exchange. The state will have no control over those operational costs. It is not unlike handing the Federal Government a blank check written on the State's bank account. Regarding the health insurance exchange, according to the National Conference of State Legislatures (NCSL), many states have already enacted exchange laws and secured federal grants to begin the process of designing their state exchange. They provide a wonderful interactive website that goes through the details of each states exchange. <http://www.ncsl.org/default.aspx?tabid=21388> Make sure you read all the information within each state and the material after the map. Among the states that have passed laws to establish a state exchange by legislative action are:

- Massachusetts
- Utah
- California
- Colorado
- Connecticut
- Hawaii
- Maryland
- Nevada
- Oregon
- Vermont
- Washington
- West Virginia

Besides ND, the following states have passed legislation with the intent to establish a STATE-BASED exchange:

- Illinois – Received \$5,128,454 Level 1 Establishment Grant
- North Carolina – Received \$12,396,019 Level 1 Establishment Grant



- Virginia – Received \$1,000,000 planning grant. Requests Gov. to make recommendation
- Wyoming – Received \$800,000 planning grant. Legislation established the Wyoming Health Insurance Exchange Steering Committee to study whether to create a state or regional exchange. The report was due on 10/1/11.

The following states have pending legislation to do a STATE BASED exchange.

- DC
- Michigan
- New Jersey
- New York
- North Carolina (see above)
- Pennsylvania

The following states have proceeded to study and/or establish a STATE-BASED exchange through executive order:

- Alabama – Established an Exchange Study Commission and \$1,000,000 planning grant
- Arkansas - Directs Insurance Dept. to lead planning efforts for establishment of an exchange and includes \$1,000,000 planning grant
- Arizona – Establishes the Office of Health Insurance Exchanges to organize the state's implementation efforts and includes the \$1,000,000 planning grant.
- Delaware – Delaware Health Care Commission serves as the planning group and includes the \$1,000,000 planning grant
- Georgia – Established the Georgia Health Insurance Exchange Advisory Committee and includes the \$1,000,000 planning grant
- Indiana – Gov. Mitchell Daniels Jr., established the Indiana Health Benefit Exchange and includes the \$1,000,000 planning grant and \$6.9 million Level 1 establishment grant
- Iowa – Established an Interagency Planning Workgroup and the \$1 million planning grant
- Kansas – Created planning workgroups and included \$1 million dollar planning grant, \$31.5 million Early Innovator IT Grant, however the grant was returned in August 2011.
- Minnesota – Established the Health Insurance Exchange Advisory Task Force and included the \$1 million planning grant and \$4,168,071 Level 1 Establishment Grant
- Rhode Island – Established the Rhode Island Health Benefits Exchange and includes the \$1 million planning grant, \$5.2 Level 1 Establishment Grant and Rhode Island earlier received a \$35,591,333 Early Innovator grant
- South Carolina – Gov. Nikki Haley established the South Carolina Health Exchange Planning Committee which will provide the detailed recommendations regarding the structure, governance, etc. of the exchange if they recommend an exchange. It includes the \$1 million planning grant.

- South Dakota – The Governor developed a large taskforce to deal with the long term care delivery system to focus on areas such as operations and financing an exchange. It includes the \$1 million planning grant.
- Tennessee – Tennessee’s Benefits Administration and the Dept. of Finance has taken the lead on planning for the state’s exchange and includes the \$1 million planning grant.
- Wisconsin – Gov. Scott Walker established the Office of Free Market Health Care and includes the \$1 million planning grant, and \$37,757,266 Early Innovator grant.
- **Why rush into this? We have time to wait for the Supreme Court to make a decision on the constitutionality of the ACA and we can wait until after the 2012 elections.**

**FACTS:** The deadline to apply to the Federal government for certification of a state exchange is January, 2013. It will take many, many months of planning and IT design and development to build an exchange. The exchange must be operational for the open enrollment period in October, 2013. The Supreme Court’s decision is not expected until probably late next spring, if they officially take the case. Legal scholars have debated the outcome of that case. However, most feel that the primary issue about the constitutionality is that of the individual mandate. There hasn’t been a challenge regarding the exchange. Many legal scholars are predicting that if the Supreme Court were to rule that the individual mandate is unconstitutional, the rest of the ACA is “severable”. Granted no one knows for certain, but there is a slim possibility that IF the Supreme Court takes the case, and IF they rule that the individual mandate is unconstitutional, and IF they rule that the act is not severable, then the exchange requirement would go away. This bill has a provision to repeal this law should that occur. The same holds true if Congress were to repeal the Exchange provision. Just as important is the funding issue. The exchange can be designed and built using Federal grants. These grants are called Establishment Grants. There are two levels. The Level I grant application deadline is 12/30/2011. The Level II grant application deadline is 6/29/2012. There are several requirements that have to be met to apply for the Level II grants (ie. legal authority to establish and operate an exchange, established governance structure, etc.) I have provided information on these grants for your review. If the state waits until after the Supreme Court makes a possible decision on the ACA or if the state decides to wait until after the 2012 elections, they will be forfeiting the opportunity to build the exchange using federal grant dollars. Instead the state would have to utilize state dollars to build their state exchange.



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## Cooperative Agreement to Support Establishment of State Operated Health Insurance Exchanges

[Synopsis](#)[Full  
Announcement](#)[Application](#)

The synopsis for this grant opportunity is detailed below, following this paragraph. This synopsis contains all of the updates to this document that have been posted as of **01/20/2011**. If updates have been made to the opportunity synopsis, update information is provided below the synopsis.

If you would like to receive notifications of changes to the grant opportunity click [send me change notification emails](#). The only thing you need to provide for this service is your email address. No other information is requested.

*Any inconsistency between the original printed document and the disk or electronic document shall be resolved by giving precedence to the printed document.*

Document Type:	Modification to Previous Grants Notice
Funding Opportunity Number:	IE-HBE-11-004
Opportunity Category:	Discretionary
Posted Date:	Jan 20, 2011
Creation Date:	Jan 20, 2011
Original Closing Date for Applications:	Jun 29, 2012 States have multiple opportunities to apply for funding under level I and Level II. Cut off dates for level I: March 30, 2011; June 30, 2011; September 30, 2011, December 30, 2011. Cut off dates for level II: March 30, 2011;
Current Closing Date for Applications:	Jun 29, 2012 States have multiple opportunities to apply for funding under level I and Level II. Cut off dates for level I: 3/30/2011; 6/30/2011; 9/30/2011, 12/30/2011. Cut off dates for level II: 3/30/2011; 6/30/2011; 9/30/2011; 12/30/2011; 3/30/2012, 6/29/2012
Archive Date:	Jul 29, 2012
Funding Instrument Type:	Cooperative Agreement
Category of Funding Activity:	Health
Category Explanation:	
Expected Number of Awards:	51
Estimated Total Program Funding:	
Award Ceiling:	\$0
Award Floor:	\$0
CFDA Number(s):	93.525 -- State Planning and Establishment Grants for the Affordable Care Act (ACA)-s Exchanges
Cost Sharing or Matching Requirement:	No

**Eligible Applicants**

State governments

**Additional Information on Eligibility:****Agency Name**

Ofc of Consumer Information &amp; Insurance Oversight

This Funding Opportunity Announcement (FOA) provides States, the District of Columbia, and consortia of States with financial assistance for the establishment of State-operated health insurance Exchanges (Exchanges). States may choose whether to apply for Level One Establishment or Level Two Establishment based on their progress. States can also choose at what point to apply for grant funding based on their own needs and planned expenditures. Throughout this announcement, States, the District of Columbia, and consortia of States will all be referred to as "State(s)." If there are any activities that are distinct for the District of Columbia or consortia, these will be identified separately. This cooperative agreement funding opportunity is designed to give States multiple opportunities to apply for funding as they progress through Exchange establishment, which helps support their progress toward the establishment of an Exchange. States may initially apply in this announcement for either Level One or Level Two Establishment grants. Level One Establishment grantees may reapply for another year of funding in the Level One Establishment category. Level One Establishment grantees may apply for Level Two Establishment awards once sufficient progress has been made in the initial Level One Establishment project period and they are able to satisfy the eligibility criteria for Level Two Establishment defined in Section III.1.

## Cooperative Agreement to Support Establishment of State Operated Health Insurance Exchanges

Grants.gov Contact Center  
Phone Number: 1-800-518-4726

Hours of operation are Monday-Friday from 7:00 a.m. to 9:00 p.m. Eastern Standard Time  
support@grants.gov  
Grants.gov Customer Support

The following files represent the modifications to this synopsis with the changes noted within the documents. The list of files is arranged from newest to oldest with the newest file representing the current synopsis. Changed sections from the previous document are shown in a light grey background.

File Name	Date
Modification #3	Jan 20, 2011
Modification #2	Jan 20, 2011
Modification #1	Jan 20, 2011
Original Synopsis	Jan 20, 2011

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Issues & Research » Health » State Actions to Implement the Health Benefit Exchange

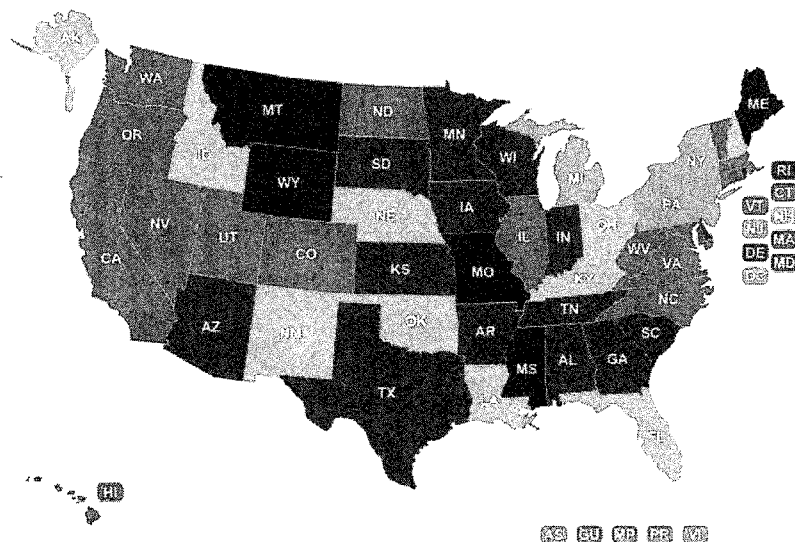
Go 21388

[GO](#) [Comment](#)

## State Actions to Implement Health Insurance Exchanges

Updated October 2011

Health Insurance Exchanges are, for most states, new entities that will function as a marketplace for buyers of health insurance, giving them choices for health coverage. They will offer a variety of certified health plans and provide information and educational services to help consumers understand their options. The 2010 Affordable Care Act (ACA) gives states the option to establish one or more state or regional exchanges, partner with the federal government to run the exchange, or to merge with other state exchanges. If a state chooses not to create an exchange, the federal government will set up the exchange(s) in the state. Massachusetts and Utah passed laws prior to the enactment of the Affordable Care Act in March 2010.



- Enacted Establishment Legislation
- Legislation Pending
- Legislative Action Not Taken or Did Not Pass in 2011
- Legislature Created Study Entity
- Executive Branch Action

If unable to see the map, refer to the [table](#) below.

### Contents

- [Summary of 2011 State Legislative Action](#)
- [Legislative Actions](#)
- [Executive Branch Actions](#)
- [Additional Resources](#)

NCSL Staff Contact

[Martha Salazar](#)

## Summary of 2011 State Legislative Action

Compiled using NCSL's Federal Health Reform: 2011 State Legislative Tracking Database, powered by StateNet.

ENACTED EXCHANGE ESTABLISHED IN 2010 OR 2011 --14 STATES	DID NOT PASS IN 2011***-- 16 STATES	PENDING***--5 STATES + D.C.
<a href="#">California</a> **, <a href="#">Colorado</a> , <a href="#">Connecticut</a> , <a href="#">Hawaii</a> , <a href="#">Maryland</a> , <a href="#">Nevada</a> , <a href="#">Oregon</a> , <a href="#">Vermont</a> , <a href="#">Washington</a> , <a href="#">West Virginia</a>	Alabama, Alaska*, Arizona, Arkansas, Georgia, Indiana, Iowa*, Maine*, Minnesota*, Missouri, Montana, New	District of Columbia, Michigan, New Jersey, New York, North Carolina, Pennsylvania



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Executive Director

**Leann Benson**  
Chief Operating Officer

**Annette Weigel**  
Administrative Assistant

**HEALTH CARE REFORM REVIEW COMMITTEE  
2011 Special Legislative Session  
November 8, 2011**

Chairman Keiser and Committee Members, I'm Courtney Koebele and I serve the North Dakota Medical Association as executive director. NDMA is the professional membership organization for North Dakota physicians, residents and medical students.

NDMA supports a state run exchange. NDMA believes that a state run exchange would best serve the citizens of North Dakota. If the federal government is allowed to run the exchange, there are so many unanswered questions as to how it would run and how it would affect the citizens of North Dakota.

However, NDMA has one request. Exchanges will be best served with patients and practicing physicians in their governance structures. Giving physicians a voice in the establishment and operation of an exchange will help to identify problems with the exchange, allowing them to be rectified as quickly as possible. Including physicians will be essential in numerous aspects of exchange implementation, including, but not limited to: benefit structures, Qualified Health Plan (QHP) certification and marketing practices. Physicians will be able to offer frontline feedback once the exchange is operational, including helping them to change course as needed.

Therefore, NDMA requests that a physician be placed on the Board. An amendment is attached to my testimony. We suggest that the governor's choice nominee be replaced by a North Dakota physician of the governor's choice.

Mr. Chairman, thank you for the opportunity to provide information on NDMA's view of the health benefit exchange law.

#2



**Testimony to North Dakota Special Session  
Joint Health Care Reform Review Committee  
Josh Askvig, AARP ND Associate State Director for Advocacy  
[jaskvig@aarp.org](mailto:jaskvig@aarp.org) or 701-355-3642  
November 7, 2011**

Chairman Keiser and members of the Committee, I appreciate this opportunity to offer AARP's priorities with respect to the establishment of a health insurance exchange for North Dakota.

First, on behalf of AARP we want to thank the committee for the work you all have done during the Interim. You allowed us to be an active part of the process and while we do have some concerns which I will be expressing later, your tremendous time, effort, and thoughtful commitment to crafting important legislation in a fairly short time frame is to be commended.

As you know, AARP strongly believes that establishing a strong health insurance exchange is one of the most crucial aspects of implementing the Patient Protection and Affordable Care Act (ACA). AARP believes the mission of the exchange is to create a well-functioning health insurance marketplace, offering an array of affordable, high-quality health insurance plans to individuals and small businesses, and providing the opportunity to access Medicaid and federal subsidies as appropriate for each individual consumer. AARP is a strong advocate for an exchange that is accessible and consumer friendly for all individuals but especially for those between the ages of 50-64.

Nearly half of the AARP's members in North Dakota are under the age of 65. The 50-64 year old population is at greater risk for being uninsured or underinsured than their younger or older counterparts for a number of reasons. It is estimated that approximately 12,000 North Dakotans age 50-64 are uninsured. These individuals are not yet eligible for Medicare and typically do not qualify for retiree health benefits. Yet, this population can also be at increased risk for changes in their personal health status, such as the onset of chronic health conditions or disabilities and therefore may have increasing need for medical care. In addition, people in this age group are sometimes impacted by organizational downsizing which often results in the loss of employer-based health care coverage.

With that general background let me highlight specifics of the bill, our positions and suggested changes.



## **Board Governance**

Regardless of where the exchange is placed, it is critical that the entity be accountable, its actions transparent, and its governing board act in the best interests of consumers, both individuals and small employers.

As the ultimate beneficiaries of the exchange, consumers should be well represented in its governance and management. While other stakeholders have a role, the governing structure should assure that the consumer voice is central and not secondary to others.

That is why we suggest changes to the governing Board make-up in Section 54-66-03 on page 6 of this bill. The Board currently has 13 members, 4 ex-officio non-voting members and 9 voting members. Of the 9 voting members, only 4 are CERTAIN consumers, the 3 specified consumers and the small business representative. The other positions are either not consumers i.e. insurers, insurance agents, and medical providers or uncertain, that is the Governors appointee, who may or may not be a consumer.

The Governing Board of the exchange should be comprised of a majority of consumers. I have attached an amendment for your consideration. The amendment would keep the size of the Board at 13 with the same 4 ex-officio board members. It would simply ensure that all of the Governor's "at-large" appointees are consumers. Since all of the consumer appointees are already "at-large" and appointed by the Governor, and since the bill and federal regulations specifically state that appointees to the board must have a background in health insurance or health care, this change just ensures a consumer majority. It makes sense to ensure that a consumer driven exchange is ensured a consumer majority. We certainly hope you make this change and would be happy to work with the committee to make sure it fits correctly within the legal framework of the bill.

## **Conflict of Interest**

We also continue to be concerned about conflicts of interest or appearance of conflicts that insurers and insurance agents might have serving on the Board. We suggest that those who sell insurance not be allowed to serve on the board. We strongly support the creation of the two advisory groups as the appropriate mechanism whereby the Governing Board would receive ongoing input and expertise. The creation of such advisory groups could also help to avoid conflicts of interest, as the governing board should not include insurers or health care providers who would be subject to regulation and oversight by the exchange.

Preventing conflicts of interest builds public confidence and trust, provides an ethical standard, and is sound business practice. That is why it is important to have strong and clear conflict of interest provisions in the exchange bill. No matter what the committee decides about who is allowed or not allowed to serve on the governing board, the language contained in section 54-66-04 on page 8 raises concerns. The idea of letting the Board decide how it will deal with conflicts of interest sounds good in concept. However, under the current draft those with conflicts (i.e. insurers and insurance agents) would be serving on the Board and setting up the rules to determine whether or not they should vote on conflict of interest matters. It does not make sense to us to allow those with conflicts to decide whether or not they should vote on conflicted issues.

As we stated above, members of the board should not have a direct financial interest in Board decisions. Specifically, AARP supports a standard that members of the board not be employed by or a consultant to a member of the Governing Board, or otherwise a representative of or lobbyists for an entity in the business of, or potentially in the business of, selling items or services of significant value to the Exchange. This could include but not be limited to carriers or insurers that provide coverage of health benefits, producers, vendors and health care providers selling services directly to the Exchange. Consumers and employers whose only interest is to purchase products from the Exchange should not be defined as having a conflicting financial interest.

At a minimum, the proposed standard for implementing procedures for disclosure of financial interests by members of the Exchange Governing Board should require that those with a financial interest, or whose family members have a financial interest in a matter before the Exchange, be required to remove themselves from discussion and voting on matters in which they have a financial interest. Having a conflict of interest policy that states it "...may allow... participation in board deliberation or voting by a board member with a disclosed conflict of interest," violates consumer trust.

We have attached a proposed amendment that clearly states that anyone on the governing board who faces a conflict of interest would be required to remove him or herself from voting on that matter. This amendment reinstates language that was contained in the "consensus" bill draft that was worked on by us and representatives from various health insurers including BCBS-ND, Sanford, and Medica. We encourage the committee to adopt this amendment and would be happy to work with the committee to make sure it fits correctly within the legal framework of the bill.

## **Navigators**

To make the exchange more accessible to individuals buying coverage, an emphasis must be placed on ongoing education and outreach. This outreach should focus on understandable consumer information about coverage options, plan benefits and costs. People need to be made aware of the exchange and what it is offering, which will require a major communications and marketing campaign. In our view, states that have undertaken reform efforts experience a much more successful result when planning includes the allocation of resources for marketing and outreach initiatives.

The Navigator program will be a critical part of the effort to enroll previously uninsured or underinsured individuals. The Navigator program will play an important role in reaching out to hard to reach groups including those who may have a lack of familiarity with health insurance. The outreach efforts need to be sustained through reenrollment as well.

The Navigator program begins on page 16 of the bill and is a good start towards outreach and education about the exchange. However, we believe certain sections of this language need to be clarified to ensure it fits with the federal regulations and avoid any potential hang ups with certification.

Starting on page 16 line 19 "Shall provide training and education services to individuals and entities...." In the items that must be included missing is the requirement that navigators are trained on the availability of premium tax credits and cost sharing reductions. We believe that those trained to help navigate the exchange should be educating people about the range of programs, plans, and financial assistance that may be available to consumers through the exchange.

On page 18 starting on line 1 "The navigation office shall provide for at least the following two levels of certification: certification to allow a certificate holder to assist in navigating the entire exchange and certification limited to allowing a certificate holder to assist in navigating the medical assistance and children's health insurance program elements of the exchange. The certification requirements must include successful completion of an education program provided by the navigation office."

While it does fall under the Navigators section, it is not clear that this relates to Navigators or folks working outside of Navigator office or a grantee. Additionally, we believe that the federal regulations would not allow anyone to be Navigator who does not have expertise in both areas – qualified health plans (QHPs) and state programs - and this is consistent with the ACA's emphasis on a single point of entry, no wrong door approach. We believe there should be a single certification standard for all Navigators that meets all the requirements

of the federal regulations in terms of expertise in insurance, Medicaid, CHIP, etc. eligibility and enrollment.

Additionally, further down on that page starting on line 8: "a. In order to be certified under this subsection, an individual must be: (1) A licensed insurance producer; or (2) An individual identified by the department of human services as being knowledgeable regarding the state's medical assistance program and children's health insurance program."

We believe that to fit with the federal regulations, there would need to be language that prohibits insurance producers from receiving compensation from insurance companies (okay if they only receive compensation from wages as employees/contractors for a Navigator), and they have no conflicts of interest, i.e. they don't receive commissions from sales of products outside the Exchange.

Finally, on line 13 where it states: "b. The exchange may provide information regarding such certified individuals on the exchange website for the convenience of consumers seeking insurance through the exchange." We believe that you should add requirements to provide full disclosure as to any costs to the individual, direct or through increased premiums, from using certified individuals.

## **Conclusion**

Establishing an exchange that will meet the needs of North Dakotans, while balancing the need for fiscal prudence and encouraging robust competition amongst plan providers is a challenging task. Recognizing the value and encouraging the active participation of all stakeholders, particularly the consumer, reflects the belief that building the best possible exchange is in the best interest of us all. AARP appreciates the opportunity to share our thoughts and insights we look forward to working with you the coming days to develop an exchange that reflects the values and meets the needs of North Dakotans.

## AARP Governing Board Structure

### Proposed Amendments to House Bill NO. 1474

Starting on page 6 line 19 after "e." remove the remainder of the line

line 20 remove f. Three

line 20 add Four

e. One member as determined by the governor; and

f. ~~Three~~ Four members who represent consumers.

AARP conflict of interest language

Proposed Amendments to House Bill NO. 1474

Page 7, line 29, after 9. Insert:

A voting board member may not participate in deliberations or vote on any matter before the board if the director has a conflict of interest. A conflict of interest means an association, including an economic or personal association, that has the potential to bias or have the appearance of biasing a board member's decisions in matters related to the exchange.

Page 8, remove lines 1 through 17

Renumber accordingly

Testimony to North Dakota Special Session  
Joint Health Care Reform Review Committee  
Deborah Knuth, North Dakota Government Relations Director  
Great West Division  
American Cancer Society Cancer Action Network (ACS CAN)  
[Deb.knuth@cancer.org](mailto:Deb.knuth@cancer.org)  
701.250.1022, ext 106

November 7, 2011

Chairman Keiser and members of the Committee, I appreciate this opportunity to speak to ACS CAN's concerns with respect to the health care exchange legislation.

First, we would like to thank the committee for the work you have done on the health care exchange prior to the special session. Your hard work and time spent, the effort to secure public opinion and commitment to the development of a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens is to be commended.

The American Cancer Society Cancer Action Network is dedicated to ensuring that quality care is available to all Americans. Meaningful reform must include adequate, available, affordable, and administratively simple health insurance coverage for all Americans without regard to health status or risk.

Let me now voice our concerns regarding the health care exchange bill.

#### **Governance Board**

The governance board will make the critical management and policy decisions that determine the direction and success of the exchange. It is important that consumers be represented and that the board is not industry weighted. Five consumers and no insurers would be ideal.

#### **Navigators**

On page 18, line 8, the bill clearly states that a navigator would be in good standing if "licensed as a producer". We believe this is clearly tilting the field toward agents/producers/brokers.

An additional concern is that navigators could be compensated by selling a specific insurer's product. No one should stand to benefit financially by

directing consumers to certain products over others and all navigator compensation should come from the exchange, NOT insurers operating in it.

### **Conflicts of Interest**

All attempts should be made to eliminate conflicts of interest whenever possible.....and I would add that those who had a professional or financial relationship with the industry "in the past" also be eliminated due to potential conflicts.

### **User Fees and assessments**

We also believe that the exchange should require a common fee on all insurers operating in ND, both inside and outside the exchange. The fee should NOT be a lesser percentage for larger insurers. This would discourage new markets from coming into North Dakota.

If anyone has any questions, I would be happy to answer them. Thank you for this opportunity to share my testimony today.

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The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, dedicated to eliminating cancer as a major health problem. ACS CAN works to encourage lawmakers and candidates to support laws and policies that will make cancer a top national priority. Through ACS CAN, ordinary people can achieve extraordinary results in the fight against cancer.



**Testimony in Support of HB 1474**  
**Joint Health Care Reform Committee**  
**November 7, 2011**

Good afternoon Chairman Keiser, Vice Chairman Klein, and committee members. My name is Connie Hofland. I represent the North Dakota Dietetic Association. I am an attorney in Bismarck and am also a registered dietitian. I am here today to speak in support of a state-run health exchange.

The North Dakota Dietetic Association represents about 300 registered dietitians in North Dakota; we are the state affiliate of the American Dietetic Association, the largest organization of food and nutrition experts with 70,000 members.

Registered dietitians have the combination of health and nutrition knowledge that uniquely qualifies us to deliver medical nutrition therapies for **preventative and wellness services and chronic disease management**, one of the essential health benefits included in the Affordable Care Act.

We think prevention, wellness and chronic disease management for North Dakotans can be best accomplished through the establishment of a North Dakota health exchange. We urge a do pass for HB 1474.

Neutral Testimony

Fiscal Note

Whether the state lets the federal government establish an insurance exchange or create our own insurance exchange is a Policy decision for the legislature to make.

As we have said, of course, we will comply with the legislature's decision to do the best possible job implementing a North Dakota insurance exchange if that is the wish of the legislature. However, I do have some concerns:

1. A tax increase is required in this bill. Approximately \$10 million a biennium.
  - a. Page 23, lines 5 – 11
  - b. Open checkbook for this tax
  - c. Is this an improper delegation of authority?
  - d. \$10 million does not include the navigation office or navigation grants
  - e. According to HTMS, the average state estimates for operations is \$28 million – we might be low
2. The effort to implement the exchange will take the equivalent of 48 FTEs (28 FTEs and at least 20 contractors). We do not think that number will go down. According to HTMS, other states have estimated an average of \$47 million for start up costs – we might be low on this too.

The effort to maintain this system will take a minimum of 22 FTEs between OMB and ITD. That is a lot of FTEs to commit to in an environment with a lot of uncertainty as to whether this will be permanent. I am concerned about our ability to hire a large staff with a high skill set amidst uncertainty.

3. I do agree that the current lay of the land is such that federal law requires an insurance exchange. The decision to be made, is not whether North Dakota will have an insurance exchange or not, it is whether to let the feds implement their own law, or to create one ourselves.

Clarification - There has been talk that if the feds implement the exchange for North Dakota; they will send us a bill at some point and expect payment. We have learned that the feds have no mechanism, and no authority to send states a bill for the exchange. What they are talking about is a user fee or assessment for insurance companies using the exchange, not a bill to the state.

The distinction should be made that the federal government would be imposing the tax on their own system, not the State.

4. One more concern. North Dakota is part of a lawsuit claiming it is unconstitutional to require citizens to purchase health insurance. We have to questions whether we should do anything that endorses a program we already claim to be unconstitutional. Suggest you discuss with the Attorney General.

5. Clarification on the NCSL Handout

- a. Look at North Dakota – portrayed as having enacted Establishment Legislation – we all know we have not enacted establishment legislation
- b. Mr. St. Aubyn held up Wisconsin as a state that is considerably down the road with an exchange. This chart shows that Wisconsin has taken Executive Branch action.

This morning I spoke with the Policy Director for the governor of Wisconsin and I found out that

- Their direction changed significantly when the administration changed
- there has been no executive action taken
- no legislation has been introduced and there are no plans to do so
- there has been significant pushback by Republican Legislators
- They are waiting to see what happens with the lawsuit.

I have not personally checked the other states depicted on here, but the two that I know something about, North Dakota and Wisconsin are wrong

#6

North Dakota Medical Association Amendment

Sen. Berry  
amendment

Page 6, line 19, replace "as determined by the governor" with "who is a North Dakota physician"

#7

## AARP Governing Board Structure

### Proposed Amendments to House Bill NO. 1474

Starting on page 6 line 19 after "e." remove the remainder of the line

line 20 remove f. Three

line 20 add Four

e. One member as determined by the governor; and

f. Three Four members who represent consumers.

#8

AARP conflict of interest language

Proposed Amendments to House Bill NO. 1474

Page 7, line 29, after 9. Insert:

A voting board member may not participate in deliberations or vote on any matter before the board if the director has a conflict of interest. A conflict of interest means an association, including an economic or personal association, that has the potential to bias or have the appearance of biasing a board member's decisions in matters related to the exchange.

Page 8, remove lines 1 through 17

Renumber accordingly

# 9

11.0806.07007  
Title.

Prepared by the Legislative Council staff for  
Representative Glassheim  
November 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 18, line 5, after the underscored period insert "A person that does not charge a fee or otherwise receive consideration may assist employers, employees, and consumers in making health coverage decisions through use of the exchange without being certified under this subsection."

Renumber accordingly

#10

11.0806.07008  
Title.

Prepared by the Legislative Council staff for  
Representative Glassheim  
November 8, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 18, after line 15, insert:

"c. A certificate holder may not simultaneously charge a fee and receive consideration from a health insurance issuer in connection with the enrollment of a qualified individual or qualified employees in a qualified health plan."

Renumber accordingly



November 4, 2011

#11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 6, replace lines 15 through 23 with:

- "a. Five members who represent consumers;
  - b. One member who represents small employers; and
  - c. Three members, at least one of whom represents the health insurance industry and at least one of whom represents the medical community.
2. When the governor appoints the board members who represent consumers, the governor shall select each of the five members who represent consumer interests from a list of nominees created by submission of three nominees from at least three statewide consumer entities identified by the governor. If the names submitted are unacceptable because the nominees do not meet the requirements of subsection 3, the governor shall clarify the missing qualification, shall request additional nominees, and shall select the member from the list of qualified nominees."

Page 7, line 5, remove "one consumer"

Page 7, line 6, replace "representative's term" with "two consumer representatives' terms"

Renumber accordingly

#12

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 17, remove lines 25 through 31

Page 18, replace lines 1 through 15 with:

- "3. In addition to the grants awarded under subsection 2, the navigation office shall award navigator grants to at least three of the following eligible public or private entities:
- a. Community and consumer-focused nonprofit groups;
  - b. Trade, industry, and professional associations;
  - c. Ranching and farming organizations;
  - d. Chambers of commerce;
  - e. Unions;
  - f. Resource partners of the small business administration;
  - g. Licensed producers; and
  - h. Other public or private entities that meet the requirements of this section which may include the department of human services and county social service agencies.
4. To receive a navigator grant under subsection 3, an applicant must demonstrate the applicant:
- a. Has existing relationships or could readily establish relationships with employers and employees, consumers, uninsured and underinsured consumers, and self-employed individuals likely to be eligible for enrollment in a qualified health plan;
  - b. Does not have a conflict of interest during the term as a navigator;
  - c. Is not a health insurance issuer; and
  - d. Does not receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any qualified individuals or qualified employees in a qualified health plan.
5. A recipient of a navigator grant under subsection 3 shall:
- a. Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the exchange;
  - b. Provide information and services in a fair, accurate, and impartial manner, including providing information acknowledging other health programs;
  - c. Facilitate enrollment in qualified health plans;

- d. Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the federal Public Health Service Act, or any other appropriate state agency, for any enrollee with a grievance, complaint, or question regarding the enrollee's health plan, coverage, or a determination under such plan or coverage; and
- e. Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327; 42 U.S.C. 12101 et seq.] and section 504 of the federal Rehabilitation Act of 1973 [Pub. L. 93-112; 87 Stat. 394; 29 U.S.C. 701 et seq.]."

Renumber accordingly

*13*

11.0806.07003  
Title.

Prepared by the Legislative Council staff for  
Representative Kasper  
November 4, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 25, line 12, after "interim" insert "which must include monthly written reports on the status of state and federal funds received and the status of state and federal funds expended"

Page 27, after line 21, insert:

**"SECTION 10. APPROPRIATION LIMITATION - EMERGENCY COMMISSION**

**APPROVAL.** This section applies to appropriations and continuing appropriations of state and federal funds provided for under this Act which are received before February 1, 2013. Until February 1, 2013, the agency receiving the funds may not spend or incur any expense or liability from such appropriation in an amount that exceeds fifty percent of the amount appropriated unless the agency has received prior authorization from the emergency commission. The emergency commission may authorize an agency to spend more than fifty percent of the appropriation amount before February 1, 2013, if the agency establishes the additional funding is necessary to properly perform the agency's duties and functions.

**SECTION 11. LEGISLATIVE INTENT.** Creation of a state-administered health benefit exchange is not intended to express the sixty-second legislative assembly's support of the federal Affordable Care Act, but instead is intended to express its support of state control."

Renumber accordingly

#14

11.0806.07005  
Title.

Prepared by the Legislative Council staff for  
Representative Keiser  
November 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 22, line 30, after the underscored period insert "To the extent the division's proposal includes the collection of funds that are based on insurance, the division shall consult with the commissioner in designing the proposal."

Page 22, line 31, after the underscored period insert "To the extent the board's plan includes the collection of funds that are based on insurance, the board shall consult with the commissioner."

Page 23, line 9, remove ", in consultation with the commissioner."

Page 23, line 12, after the underscored period insert "If the board's funding plan includes the collection of funds that are based on insurance, upon request of the board the commissioner shall charge and collect such funds and shall deposit such funds in the health benefit exchange fund."

Renumber accordingly

#15

11.0806.07004  
Title.

Prepared by the Legislative Council staff for  
Representative M. Nelson  
November 4, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1474

Page 1, line 2, after the semicolon insert "to amend and reenact paragraph 1 of subdivision a of subsection 5 of section 26.1-08-12 of the North Dakota Century Code, relating to qualifying for coverage under a comprehensive health association;"

Page 1, after line 9, insert:

**"SECTION 1. AMENDMENT.** Paragraph 1 of subdivision a of subsection 5 of section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

- (1) An individual who has been a resident of this state and continues to be a resident of the state who has received from at least one insurance carrier within one hundred eighty days of the date of application, one of the following:
  - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
  - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
  - (c) Written evidence that an insurer has offered to issue comparable insurance at a rate exceeding the association benefit rate.
  - (d) Written evidence that the applicant has reached the lifetime maximum coverage amount on the most recent health insurance coverage.
  - (e) Written evidence of rejection or refusal to issue substantially similar insurance by an insurer which is based on a determination the individual is under nineteen years of age.

Page 28, line 6, replace "1" with "2"

Renumber accordingly