TESTIMONY

Presented by: **Melissa Hauer**
General Counsel
North Dakota Insurance Department

Before: **Health Care Reform Review Committee**
Representative George Keiser, Chairman

Date: **October 20, 2011**

Good morning, Chairman Keiser and members of the Health Care Reform Review Committee. My name is Melissa Hauer and I am the General Counsel for the North Dakota Insurance Department. I appear before you to provide an update on the implementation of the federal health care reform law, the Patient Protection and Affordable Care Act (PPACA).

1. Update on Federal Activities

Community Living Assistance Services and Supports (CLASS) program.
The Obama administration cancelled the CLASS program because it was determined the program could not simultaneously meet three important criteria: be self-sustaining, financially sound for 75 years, and affordable to consumers. The CLASS program would have allowed working adults to pay for coverage that would provide up to $50 a day in cash benefits if they became disabled. The money could be used for services such as in-home assistance or nursing home care.

2. Contractor Work Update

Health Benefit Exchange Planning Grant Update

Exchange Consultant

The Department contractor, HTMS, continues its work to research issues regarding Exchange planning in North Dakota. A copy of the latest weekly status

report from HTMS is attached. We will continue to provide the committee with copies of the weekly status report as we receive them from HTMS.

3. Follow Up From Last Committee Meeting

Consumer Operated and Oriented Plan (CO-OP)

As requested at the last meeting, we requested written confirmation from the U.S. Department of Health and Human Services (HHS) regarding whether a Consumer Operated and Oriented Plan (CO-OP) will be established in each state. The response, a copy of which is attached, states that it is HHS's "...goal to establish at least one CO-OP in each state consistent with the statutory requirement to ensure funding for one CO-OP in each state. To the extent that there is not a candidate in a specific state, the statute allows [HHS] to use this funding to encourage CO-OP development in these areas where there are no prospective applicants."

Stakeholder Meetings

As requested at the last meeting, a copy of the consumer stakeholders list is attached. A survey was sent to the attached list and it was also distributed via news release.

Small Employer Definition

At the last meeting, a question arose as to whether the current definition of "small employer" in N.D.C.C. § 26.1-36.3-01 should be amended to be consistent with the definition contained in PPACA and federal regulations. The definition will need to change eventually but there is still uncertainty regarding the federal definition. The regulations are proposed and are still subject to comment and possible change. It is possible that the requirements for how employees are counted for purposes of determining the size of the employer may change. Because of this uncertainty, we do not feel a change to the state law is warranted at this time and would be better addressed during the 2013 legislative session.

Federal Planning Grant Balance

The federal planning grant balance is currently $768,106.19. The Department anticipates using approximately $10,000 more of the federal planning grant before December 1, 2011, and, therefore, expects to be able to transfer $758,106.19 to OMB.

4. Bill Draft Comments

Bill Draft 11.0806.0400 – Exchange Bill

a. Page 1, line 22, and page 26, starting at line 27, state the Exchange board would be given the authority to increase the premium tax on health insurers. This would result in uncertainty for insurers regarding their tax liability. There is no upper limit on the increase that could be levied and the amount of tax could change every year. Rather than risk this uncertainty and have to deal with the administrative burden of adjusting their tax reporting and payments, some companies may simply choose not to do business in North Dakota. In addition, it would be administratively difficult to collect a tax that is subject to such fluctuation each year. Forms and computer systems would have to be modified with each change in the tax rate. Companies, being used to paying one tax rate for a long period of time, would likely make errors in payment of tax which will require the state to devote time to following up with those companies and having to request and review corrected tax statements and impose penalties for late payment of tax. The bill provides that notice of the change would not have to be made until October of each year. This would not be enough time to make all of the changes necessary to the forms and computer systems and implement the new rate by January 1 and currently the Department does not have the staff to do this work.

b. Page 6, line 30, page 14, line 2, and page 26, line 13 provide that the Exchange must meet an obligation by a certain date specified "...or later as otherwise specified by the commissioner...". It is unclear what authority the Insurance Commissioner would have to modify the dates specified. If this language is

deemed necessary, perhaps the authority should be given to the Exchange board or OMB or some other agency or official.

c. Page 10, line 13 states that only voting members are exempt from the provisions of N.D.C.C. chapter 51-08.1 (the state Anti-Trust Act). It is unclear why the word "voting" was added to this sentence but it could mean that nonvoting members would not be exempt from that law. It is uncertain if that result was intended.

d. Page 10, line 24 states that the Exchange board shall consult with the Indian Affairs Commission. As noted at the last meeting, the federal regulations require Exchanges to consult with Indian tribes.

e. Page 20, line 14 creates a Navigation office within the Exchange division. Section 1311 of PPACA requires an Exchange to "...establish a program under which it awards grants to entities described..." to carry out navigator duties. The entities described are: "trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, [and] other licensed insurance agents and brokers...". The language of the bill does not provide for state grants to navigators nor does it require the state's navigators to be made up of any of the entities specified in PPACA.

f. Pages 29-32 provide for appropriations to the Office of Management and Budget, the Department of Human Services, and the Information Technology Department. Because there will be additional filings made by insurers wishing to do business in the Exchange and additional financial examination and analysis needed of the impacts of the Exchange the resources of the Insurance Department will need to be increased to deal with them as well. Rate and form filings are already backlogged in the Department currently. If rates and forms cannot be reviewed due to lack of resources, rate increases could be deemed approved before the Department gets a chance to review them. Equally

problematic will be that insurance plans will not get to the Exchange for sale to consumers if they cannot be reviewed and approved in a timely manner. There is a need for one additional actuary, one filing analyst, one financial analyst, and one financial examiner. In order to deal with this increase in filings, the Department is requesting the following appropriation clause be added to the bill:

> **APPROPRIATION.** There is appropriated out of any moneys in the special funds ~~general fund~~ in the state treasury, not otherwise appropriated, the sum of $642,350, or so much of the sum as may be necessary, to the insurance department for the purpose of defraying the expenses of implementation of the federal Affordable Care Act, for the period beginning December 1, 2011, and ending June 30, 2013. The insurance department is authorized four full-time equivalent positions for this implementation

Bill Drafts Regarding External Review

The committee is considering three bill drafts to modify the external review laws. It is our understanding that one of the bill drafts incorporates the provisions of 2011 House Bill No. 1127 essentially as introduced. The other two bill drafts were proposed by Blue Cross Blue Shield of North Dakota and are relatively short in that they modify only the external review law that applies to new health plans (non-grandfathered plans).

If the desire of the committee is to accept the bill draft that has the highest likelihood of securing approval from HHS as a sufficient claims, appeals, and external review process such that the state can oversee that process, the bill modeled on 2011 House Bill No. 1127 is the safest bet. For a state external review process to apply, the state process must include the 16 minimum consumer protection standards set forth in the federal regulations. The two other bills do not meet all of the 16 requirements.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to try to answer any questions you may have. Thank you.

ND HBE Planning Status Report

Status Date:	10/14/2011
Project owner:	Nancy Wise
Prepared by:	Jonathan Leonard

Schedule	Impact	Risks	Overall
			

Recent Accomplishments:

- Compiled the results of the Carrier survey
- Completed funding options research
- Completed analysis of implications of merging individual and small group markets
- Held two stakeholder meetings with small business groups
- Demographic models ready to review with client
- Kicked off consumer survey
- Met with State PERS Department
- Reached out to legislators for individual meetings

Current In-Process/On-Going Activities:

- Continued research on demographic and market data requests as identified in the RFP
- Continued to compile interviews
- Continued development of demographic models
- Continued schedule meetings with providers groups and legislators
- Continued research activities, specifically compiling research from other State HBE's.
- Continued developing operational model framework and modular components to costs including assumptions list
- Began coordinating model definitions and costs for the exchange with ITD
- On track for delivering Mid Stage findings October 18.

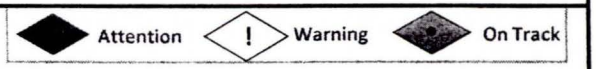
Milestones / Deliverables for this Phase:	*Due*	*Complete*
Project Initiation Project Planning Call Project Kick-Off Meeting in Bismarck	09.17.11	100%
Initial Research Findings Materials supplied in advance of the HB1126 bill deadline to introduce legislation – Oct 15	09.30.11	100%
Interim Deliverable Draft materials provided before the special legislative session scheduled to begin 11-7	10.31.11	
Project Packaging and Wrap-Up		
Final Deliverable to Client	12.02.11	

Issues and Risks

No known issues or risks at this time

Important Dates:

- September 30 - Preliminary findings due to client for legislative planning
- November 7 – Interim Deliverable for legislative session due.
- December 2 – Final deliverable due to client



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Hauer, Melissa A.

From: Bollinger, Anne M. (CMS/CCIIO) [anne.bollinger@cms.hhs.gov]
Sent: Monday, October 17, 2011 1:09 PM
To: Hauer, Melissa A.
Cc: Elrington, Meghan (CMS/CPC)
Subject: RE: CO-OP Program question

Hi Melissa,

I am sorry for the delay in getting back to you. Our goal is to establish at least one CO-OP in each state consistent with the statutory requirement to ensure funding for one CO-OP in each state. To the extent that there is not a candidate in a specific state, the statute allows us to use this funding to encourage CO-OP development in these areas where there are no prospective applicants. I hope this answers your question. Please let me know if you need anything else.

Thanks,
Annie

Anne Bollinger
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From: Hauer, Melissa A. [mailto:mahauer@nd.gov]
Sent: Thursday, October 06, 2011 3:24 PM
To: Bollinger, Anne M. (CMS/CCIIO)
Cc: Elrington, Meghan (CMS/CPC)
Subject: Re: CO-OP Program question

Anne

One more followup question. Given the language in section 1322 that says the Secretary shall ensure there is sufficient funding to establish at least 1 qualified nonprofit health insurance issuer in each State, wouldn't that mean one is supposed to be set up in each State?

From: Bollinger, Anne M. (CMS/CCIIO) <anne.bollinger@cms.hhs.gov>
To: Hauer, Melissa A.
Cc: Elrington, Meghan (CMS/CPC) <Meghan.Elrington@CMS.hhs.gov>
Sent: Thu Oct 06 13:23:56 2011
Subject: RE: CO-OP Program question

Hi Melissa,

Here is a link to section 1322 of the ACA: http://www.gao.gov/about/hcac/section1322.pdf and a link to our notice of proposed rulemaking: http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-18342.pdf.

The statute permits HHS to award loans to encourage the establishment of a CO-OP in each state in order to expand the number of health plans available in the Exchanges. However, this is not a "requirement" and we are permitted to fund more than one CO-OP in a single state.

I have also attached a slide deck presentation on CO-OPs to give you a more thorough overview of our program.

Thanks,
Annie

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From: Hauer, Melissa A. [mailto:mahauer@nd.gov]
Sent: Thursday, October 06, 2011 1:36 PM
To: Bollinger, Anne M. (CMS/CCIIO)
Subject: CO-OP Program question

Ms. Bollinger,

Can you please tell me if the Patient Protection and Affordable Care Act or its implementing regulations require establishment of a Consumer Operated and Oriented Plan (CO-OP) in each State? A member of our State Legislative Assembly is requesting this information. Thank you for your assistance.

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Consumer stakeholder list

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There are a range of funding options for HBE

Funding option	Description	Advantage	Disadvantages
Health carrier Exchange participation fee[1]	Applied to ***Qualified Health Plan(s)*** in HBE • Per member fee • Percentage of premium of Exchange members	• Applies to the products offered and paid by those receiving value from the Exchange	• Dependent on enrollment volume • May not be enough to fund startup and early years • Charge may ultimately be passed to consumer thus raising premiums
General health carrier fee[1]	Assessed for ***privately insured*** members in state • Per member fee • Percentage of premium of privately insured members	• Spreads cost of Exchange operations over a wider population	• May not be enough to fund startup and early years • Charge may ultimately be passed to consumer thus raising premiums
Employer fee	Paid by employer accessing QHP in HBE	• Applies to the products offered and paid by those receiving value from the Exchange	Might deter employers from the Exchange if total cost for Exchange plan premium + fee is higher cost overall

[1]At least 10 states mentioned in their legislation or planning documents considering the health carrier Exchange participation fee or the general health carrier fee or the combination of both as potential approaches for generating revenue for financial sustainability: CA, CT, IL, IA, MD, MT, NJ, NM, OH, and OR

There are a range of funding options for HBE *(cont)*

Funding option	Description	Advantage	Disadvantages
Member fee	Paid by member (either individual or small group employee) obtaining QHP in the Exchange	• Increases with HBE enrollment • Applies to the products offered and paid by those receiving value from the Exchange	Might deter employers and employees from the Exchange if total cost for Exchange plan premium + fee is higher cost overall
Broker fees	Paid by broker selling QHP in HBE	Additional revenue stream	Increase in overall QHP cost
General revenue	State funding	May provide reliable funding for start up and early years	• Subject to political and state priorities • May fall short if HBE cannot meet initial enrollment targets
Revenue diversion	Divert revenue from programs that are phased out due to health reform	Savings opportunity for state while supporting Exchange sustainability	Funding may not be available for start up or Y1-Y2 as transition from program needs to occur first
Targeted income tax	Income tax usually imposed on high income earners	High income earners better able to bear the tax	Political headwind
Public & private sources	Grants, endowments, contributions from public and private sources	Additional sources of income	• Grants require resources to apply and maintain • Exposure to political & special interests • Potential for jeopardizing Exchange credibility • May not be reliable source long term

There are a range of funding options for HBE *(cont)*

	Description	Advantage	Disadvantages
Funding from other programs	Fees from other programs for performing eligibility determination, referral, and enrollment for other governmental programs	Reimbursement from other programs	• Will require policies/ procedures/ service level agreements between Exchange and associated programs that can be complex • Tracking and financial reconciliation can be complex
Excise taxes	Special taxes on specified products or services associated with unhealthy lifestyles such as soda, tobacco, candy, alcohol, etc.	Unhealthy lifestyles taxes are targeted to product users linked to health care utilization	These types of taxes have been reversed
Provider fees	Fees for clinical services and products including elective procedures, pharmaceuticals, etc.	Targeted at users of health care services	• May be difficult to collect • May not be politically feasible • Those with health issues pay more than the healthy
ACA penalty	Penalty income for forgoing health insurance is paid to the Exchange	Additional revenue source	• Declines with increasing enrollment in HBE • Individual mandate still TBD