NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, September 4, 2013
Gransberg Community Room, Gorecki Alumni Center
3501 University Avenue
Grand Forks, North Dakota

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

Members present: Representatives George J. Keiser, Rick Becker, Alan Fehr, Robert Frantsvog, Eliot Glassheim, Kathy Hogan, Nancy Johnson, Jim Kasper, Alex Looysen, Karen M. Rohr; Senators Tyler Axness, Spencer Berry, Oley Larsen, Judy Lee, Tim Mathern, Dave Oehlke

Others present: Curtiss Kreun, State Representative, Grand Forks
See Appendix A for additional persons present.

WELCOME

Chairman Keiser welcomed the committee to the Gorecki Alumni Center and thanked the University of North Dakota President's staff and the School of Medicine and Health Sciences' staff for their work in helping to find a location for this committee meeting. He also thanked President Kelley for hosting the meeting.

Chairman Keiser said his plan is for the committee to move forward in considering whether to forward to the federal government an application for a state innovation waiver, allowing the state to implement its own health care reform as an alternative to the federal Affordable Care Act (ACA). He said at today's meeting, the committee will be focusing on state demographics, the provider workforce, and the state's strengths and gaps. He requested presenters focus on providing information that addresses the current situation and then the forecast for the short term (3 to 5 years) and the long term (10-plus years).

Chairman Keiser said at the committee's next meeting, he expects to follow up on the demographic information presented today as well as address what role technology will play in health care. He suggested the committee members and stakeholders read the book *The Creative Destruction of Medicine: How the Digital Revolution Will Create Better Health Care* by Eric Topol, M.D.

Chairman Keiser called on Dr. Robert Kelley, President, University of North Dakota, for welcoming remarks. Dr. Kelley thanked the committee for meeting at the University of North Dakota and welcomed the committee to the new Gorecki Alumni Center. He said it is a remarkable facility that is built and designed to be on the cutting edge of energy efficiency. Additionally, he recognized that thanks to the Legislative Assembly, the university will be building a new facility for the School of Medicine and Health Sciences.

INSURANCE DEPARTMENT

Chairman Keiser called on Ms. Adrienne L. Riehl, Insurance Department, for comments (Appendix B) regarding the status of the ACA, including rate approval for the state's health benefit exchange, which is now being referred to as the federally facilitated marketplace (FFM), and a report on the activities of the National Association of Insurance Commissioners.

In response to a question from Representative Kasper, Ms. Riehl said an insurance agent or broker who wants to operate within the FFM will need to complete online training, successful completion of which will result in that agent or broker receiving a certificate. Representative Kasper said he is a North Dakota insurance agent, and he has not been informed of this certification opportunity and requirement. Senator Larsen said he recently completed the online training and certification.

Representative Kasper said the list of major medical and dental insurers who have submitted filings is missing some major companies, especially in the area of dental insurance.

In response to a question from Representative Keiser, Ms. Riehl said the department has not received any specific information at the state level regarding the status of multistate plans.

DEMOGRAPHICS

Chairman Keiser called on Mr. Kevin C. Iverson, Manager, Census Office, Department of Commerce, to give a presentation (Appendix C) on North Dakota demographic data.

Representative Keiser stated in considering long-term demographic projections, it is important the calculations consider the increasing lifespans of the state's citizens.

Mr. Iverson said he expects a large out-of-state labor force plays a role in North Dakota's demographic data, and the big challenge related to this issue is a large percentage of this out-of-state labor force is not counted in the state's resident data.

In response to a question from Representative Keiser, Mr. Iverson said yes, the state is experiencing an interesting phenomena in which older residents are leaving the state. He said this is happening in the western part of the state as housing values increase. However, he said, the current projection is the state is gaining approximately 15,000 people per year, with an expected population of over 800,000 by the year 2020. He said with this growth in population, the state is becoming more racially diverse.

In response to a question from Representative Rohr, Mr. Iverson said the method used for reflecting rural income data is such that the data reflects a three-year period, which means it takes some time for that data to reflect recent changes.

In reviewing the data regarding the number of uninsured North Dakotans under 138 percent and the number under 400 percent of the federal poverty level (FPL), Senator Lee said for a single person, 138 percent FPL is $15,400 and 400 percent FPL is $44,866.

In response to a question from Senator Mathern, Mr. Iverson said the North Dakota Census Office gets data from a variety of sources, including the decennial census.

In response to a question from Representative Fehr, Mr. Iverson said he does not have data regarding the number of individuals with incomes between 138 to 400 percent FPL who are not employed. He said the data he has is a snapshot and is not longitudinal.

In response to a question from Representative Keiser, Mr. Iverson said there are discussions on how best to develop a model that reflects the evolution of jobs as oil development moves forward. He said it is recognized that the types of jobs offered in the oilfield will change as the stage of oil development matures.

SCHOOL OF MEDICINE AND HEALTH SCIENCES

Chairman Keiser called on Dr. Joshua Wynne, Dean, University of North Dakota School of Medicine and Health Sciences, for a presentation (Appendix D) regarding the status of the state's physician workforce, workforce issues related to providing health care in North Dakota, and steps the School of Medicine and Health Sciences is taking to address workforce issues.

In response to a question from Representative Kasper, Dr. Wynne said although the expectation in North Dakota is rural patients will need to travel to see specialists, such as psychologists, there are unmet needs in rural areas of the state.

In response to a question from Representative Keiser, Dr. Wynne said although statewide data is typically broken down on a county basis, there can be issues with looking at the data on a very granular level.

In response to a question from Senator Larsen, Dr. Wynne said as it relates to the possible increase in insured services due to the essential health benefits under the ACA, data supports the position that as insurance coverage expands, utilization increases.

In response to a question from Representative Kasper, Dr. Wynne said he is not aware of whether there is data that addresses the ability or inability to access health care based on Massachusetts' Medicaid reimbursement rates. Senator Lee said the architect of the Massachusetts' plan has indicated there are access issues that are resulting from an insufficient number of providers.

As Dr. Wynne reviewed data regarding Massachusetts' health care reform, he said if better coverage had not resulted in decreased utilization of emergency departments, something would have been wrong. However, he said, the Massachusetts data indicates it took longer than expected for the data to reflect a decrease in emergency department usage, and the decrease in usage was less dramatic than expected.

Representative Keiser questioned whether it might be feasible for a medical delivery system designed by North Dakota to request a waiver from the federal Emergency Medical Treatment and Active Labor Act (EMTALA) in order to allow emergency departments to refer patients to co-located walk-in clinics. He said data from Sanford West indicates 90 percent of the emergency department visits were for dental-only health issues. Dr. Wynne said such an approach seems to make sense as long as appropriate safeguards are taken to address the best needs of the patients.

In response to a question from Representative Kasper, Dr. Wynne said he supports physicians working with patients to make appropriate health care decisions. He said it is valuable for patients to be aware of and discuss the likely benefits versus downsides to treatments. He said he distinguishes this approach from rationing, which seems like an arbitrary limitation on services.

In response to a question from Senator Mathern, Dr. Wynne said data seems to support suicide rates are related to other health-related issues. He said if the system could better address unmet health care issues, there may be a decrease in the rate of suicide.

In response to a question from Representative Becker, Dr. Wynne said the data in his slides relating to the experience of Massachusetts is from *Health Affairs*, which is a peer-reviewed journal of health policy thought and research. He said he is not testifying in support or opposition to the ACA but is using the data on the Massachusetts experience to discuss what may occur under the ACA.

Representative Becker said the data regarding the experience in Massachusetts of decreased emergency department usage is only relevant when compared to the national trend.

Senator Berry said he agrees patients do not always know what situations require emergency care. He said society needs to work on deciding what care is appropriate, and this can be a thorny discussion. He said personal responsibility is a big part of this discussion, and the individual is the greatest determinant of the outcome.

NURSING AND ANCILLARY PROFESSIONS

Chairman Keiser called on Dr. Patricia Moulton, Executive Director, North Dakota Center for Nursing, to summarize the documents *2010 Snapshot of North Dakota's Health Care Workforce* and *Spotlight on the Past and Looking Forward to the Future of Nursing in North Dakota*, to review the status of the state's nursing workforce, and review steps the North Dakota Center for Nursing is taking to address workforce issues. Dr. Moulton gave a computer presentation (Appendix E).

In response to a question from Representative Keiser, Dr. Moulton said although the data shows there is not a shortage of registered nurses (RNs) in the state, the shortage that is actually being experienced may be a result of failing to keep these RNs in the workforce and working in the communities that have unmet nursing needs.

In response to a question from Senator Lee, Dr. Moulton said she can look for additional data regarding unemployed nurses and whether these nurses are taking an intentional break from nursing or if they are actively looking for work.

In response to a question from Representative Hogan, Dr. Moulton said there are no plans to update the data in the document *2010 Snapshot of North Dakota's Health Care Workforce*.

Chairman Keiser called on Mr. David Relling, North Dakota Board of Physical Therapy, to provide an overview (Appendix F) of the physical therapist workforce in the state.

In response to a question from Representative Rohr, Mr. Relling said he does not have North Dakota data regarding the number of physical therapists who are self-employed versus employed by an institution.

In response to a question from Senator Mathern, Mr. Relling said he is not certain why North Dakota does not have an educational program for physical therapy assistants. He said East Grand Forks does have a program, and Williston used to have a program.

Chairman Keiser called on Ms. Cheryl Rising, Legislative Liaison, North Dakota Nurse Practitioner Association, for a presentation regarding the status of the state's nurse practitioner (NP) workforce and issues related to providing health care in the state. Ms. Rising provided written testimony (Appendix G), and she provided a copy (Appendix H) of the document *The Role of Nurse Practitioners in Meeting Increasing Demand for Primary Care* by the National Governors Association.

In response to a question from Representative Keiser, Ms. Rising said although NPs can help address the unmet medical needs in rural communities, NPs are locating in larger communities because there are more jobs available in these communities.

Ms. Rising said the NP educational system is moving from a master's degree to a doctoral degree.

In response to a question from Representative Frantsvog, Ms. Rising said there are some tuition assistance programs for NPs.

Chairman Keiser called on Ms. Gwen Witzel, Regional Representative, American Association of Nurse Practitioners, for a presentation regarding provisions of the 2010 Institute of Medicine (IOM) report, *The Future of Nursing: Leading Change, Advancing Health*. Ms. Witzel provided written testimony (Appendix I), a copy of the IOM report (Appendix J), and a copy of the document *Nurse Practitioner Perspective on Health Care Payment* (Appendix K).

Ms. Witzel said she supports a team education approach, giving students an opportunity to work and learn together. She said an example of a team education approach may include NP students and medical students doing some educational elements together.

Ms. Witzel said she supports provider-neutral language and is opposed to additional regulatory barriers for practitioners.

In response to a question from Senator Oehlke, Ms. Witzel said in some areas NPs run into reimbursement issues with insurers. She said although North Dakota law does not require an NP to have a collaborative agreement with a physician, some insurance companies require this agreement.

Chairman Keiser called on Ms. Lynette Dickson, Associate Director, Center for Rural Health, University of North Dakota School of Medicine and Health Sciences, and Dr. Bill Krivarchka, Director, Eastern North Dakota Area Health Education Center (AHEC), for comments regarding health care provider workforce needs. Ms. Dickson provided written testimony (Appendix L), and Dr. Krivarchka provided written testimony (Appendix M).

In response to a question from Representative Rohr, Dr. Krivarchka said one way to address physician needs in rural areas is to increase clinical rotations in rural communities. He said possible reasons these rural communities are overlooked may include a shortage of preceptors and some rural communities may lack certain required areas of practice.

In response to a question from Senator Oehlke, Dr. Krivarchka said the AHEC program does work with the Indian reservations to provide information regarding health education opportunities as well as to help facilitate clinical rotations.

In response to a question from Senator Larsen, Dr. Krivarchka said the AHEC program tries to partner with the Department of Career and Technical Education to provide services; however, because this partnership may miss some communities in the state, AHEC also tries to contact career counselors.

In response to a question from Representative Keiser, Dr. Krivarchka said AHEC tries to identify and address shortages in the workforce in the medical profession as well as maldistribution problems.

In response to a question from Representative Fehr, Dr. Krivarchka said although AHEC is not directly involved in technology issues, it would likely be an advocate for using technology to increase access to care.

Senator Lee said the occupational boards may find value in figuring out how to better utilize retired professionals.

Representative Becker said he agrees there are maldistribution issues for providing primary care, but he does not think this same maldistribution issue exists for specialties. He said it is not necessary for specialists to be evenly distributed. He said he is concerned the ACA may have a negative impact on access to care.

Senator Mathern said as the ACA becomes fully implemented, it will be interesting to study the impact of the increase of insureds. He said it is possible some of the people who will be entering the system are already receiving medical care, but the providers are not being reimbursed for this care under the current system.

Representative Keiser said North Dakota's health care delivery system differs from the systems of other states because North Dakota has a huge outpatient component with patients traveling long distances following discharge.

NORTH DAKOTA MEDICAL ASSOCIATION AND NORTH DAKOTA HOSPITAL ASSOCIATION

Chairman Keiser called on Ms. Courtney Koebele, Executive Director, North Dakota Medical Association, for comments regarding North Dakota demographics relating to physicians. Ms. Koebele provided written testimony (Appendix N).

In response to a question from Representative Kasper, Ms. Koebele said she does not have data regarding trends in specialty areas or regarding the percentage of patients of Fargo area physicians who are Minnesota residents.

In response to a question from Representative Rohr, Ms. Koebele said she does not have data regarding the average age at which a physician retires. She said it is common for a physician to transition from a full-time practice to part-time practice as retirement nears.

Chairman Keiser called on Mr. Jerry Jurena, President, North Dakota Hospital Association, for comments (Appendix O) regarding the status and the current and future physical needs of hospitals in the state.

Representative Kasper said if Mr. Jurena is correct and the future of medicine is largely related to technology, we may need fewer physicians in the future, and any health care delivery system we design should take this into account. Mr. Jurena said although not every community in the state needs to have a hospital, each community does need access to health care. He said developments in technology may mean North Dakotans spend less windshield time in receiving medical care.

In response to a question from Representative Frantsvog, Mr. Jurena said the future is already here. He said there are some hospitals that no longer issue stethoscopes to physicians because of the technological changes. He said what will take time is for this new technology to move through the market and become commonplace.

In response to a question from Representative Fehr, Mr. Jurena said the medical reimbursement system will need to catch up with this evolving delivery system.

Representative Kasper said if this technology evolution is taking place, the ACA is already obsolete as it is based on the old delivery model.

Senator Oehlke said this new technology is exciting stuff. He said there are all kinds of examples of advancements in technology that have changed how things are done. For example, he said, the iron lung is no longer relevant and the development of the aviation industry has had a huge impact on transportation.

Senator Mathern said perhaps this advancement in technology is in part being driven by things like the ACA.

NAVIGATORS AND CERTIFIED APPLICATION COUNSELORS

Chairman Keiser called on Mr. Neil Scharpe, Program Director, North Dakota Center for Persons with Disabilities, Minot State University, for comments regarding ACA navigator grant awards and providing an overview of the North Dakota delivery system of enrollment services under the ACA. Mr. Scharpe said when the federal government posted the request for proposal (RFP) for navigator services, the North Dakota Center for Persons with Disabilities (NDCPD) reached out to determine whether there were organizations in the state that would like to work together to submit an application. He said the NDCPD worked with Family Voices of North Dakota and North Dakota Federation of Families for Children's Mental Health to submit the application to receive the navigator award of up to $600,000. He said the NDCPD was awarded $414,000, and the remaining $186,000 was awarded to the Great Plains Tribal Chairman's Health Board. He said the navigator grant is a one-year cooperative agreement, and after that time, there will likely be another RFP for these navigator services.

Mr. Scharpe said the NDCPD plan to provide navigator services in North Dakota will be based on providing navigator services through the eight social service regions; however, the navigator services will be separate from and are not expected to be offered at the social service centers.

Mr. Scharpe said in addition to navigators, the ACA allows for FFMs to designate organizations to certify application counselors who will perform many of the same functions as navigators, including educating consumers and helping them complete applications. He said many of these certified application counselors will be volunteers located in communities across the state.

In response to a question from Representative Hogan, Mr. Scharpe said although he was not involved in the Medicare Part D enrollment process, he is aware this resulted in a similar enrollment initiative. Representative Hogan said she expects the navigators could learn from the Medicare Part D enrollment model. Mr. Scharpe agreed there may be similarities between the Medicare Part D and ACA enrollment initiatives. He said, however, he expects--unlike the Medicare Part D enrollment--for the ACA enrollment there will not be an overwhelming rush to enroll. He said many North Dakotans still do not believe the ACA marketplace will come to pass.

In response to a question from Representative Kasper, Mr. Scharpe said the navigators will be trained and will convey this information to consumers. He said he has not yet had his training, and he will have a better understanding of the process once he has completed the training. He said his understanding is the marketplace software will make recommendations to the consumers. He said although he envisions the navigators directing applicants to make the decisions best for those particular applicants, he thinks applicants should consider whether to contact a licensed agent to make a final enrollment decision.

Representative Kasper said the legislation this committee recommended for the 2011 special session would have clarified that navigators are not allowed to give insurance advice. Mr. Scharpe said he expects the NDCPD and collaborative entities are like-minded in this respect.

Chairman Keiser said he expects there will be additional information regarding navigators at future meetings. Chairman Keiser called on Mr. Larry Shireley, Director of Policy and Community Planning, Community HealthCare Association of the Dakotas, for comments regarding enrollment for the ACA.

Mr. Shireley said in addition to the $600,000 in navigator grants awarded for navigator services in the state, the federal government has awarded funds to the four community health centers in North Dakota to allow the centers to employ certified application counselors. He said the certified application counselors will have less training than the navigators. As of this date, he said, the community health centers have not been certified, and therefore, no individuals have been certified.

In response to a question from Representative Becker, Mr. Shireley said the Community HealthCare Association of the Dakotas (CHAD) certified application counselors will be employees of CHAD and will be paid as such, and he expects the navigators will be paid on an hourly basis.

INSURERS

Chairman Keiser called on Ms. Lisa Carlson, Director of Planning and Regulation, Sanford Health Plan, and Mr. Brad Bartle, Vice President Actuarial and Membership Services, Blue Cross Blue Shield of North Dakota, for a panel discussion regarding the impact of the ACA on insurers in North Dakota, including trends, concerns, and recommendations. In addition, Mr. Jay McLaren, Director of Government Relations, Medica, was not present but provided the committee with written comments (Appendix P).

Mr. Bartle reviewed health insurance trends relating to the cost of health insurance, stating the trend is consistent in that it is always increasing. He said the historical average has been an 8 to 9 percent increase annually; however, recently this increase has been smaller. He said the cost of health insurance is impacted by expansion and contraction of utilization of health services and is impacted by unit cost.

Mr. Bartle said under the ACA, for nongrandfathered plans there will be 100 percent payment of preventative services, and there will be limited consumer out-of-pocket costs. He said these changes will likely result in increased utilization of health services because the services will be more affordable. He said Blue Cross Blue Shield of North Dakota's (BCBSND's) initial projection for 2014 indicates an increase in health services utilization of $50 million to $75 million. Additionally, he said, with Medicaid expansion, there is expected to be an increase in primary care utilization. He said utilization of urgent care and primary care are issues that may need to be considered as the ACA is implemented.

Ms. Carlson said health insurance trends include an increase in outpatient services and a decrease in inpatient services, in part because of changes in technology. She said there has been an increase in pharmacy costs as there has been an increase in what are known as lifestyle drugs or specialty drugs.

Ms. Carlson said as the ACA is implemented, she expects there will be a change in demographics resulting from the removal of preexisting conditions as a basis of denial and resulting from the expected increase in the utilization of health services that comes with increases in the number of people who have insurance. She said North Dakota is unique in its rural nature, and shortages in health care service providers cause increases in demand and increases in costs due to increased salaries.

Ms. Carlson said she does not know whether the ACA will result in decreases in emergency department usage. She said most rural communities are not going to be able to support both an acute care clinic and an emergency department and will likely just have the emergency department.

In response to a question from Senator Mathern, Ms. Carlson said the Sanford health insurance products will be online for consumers October 1, 2013. She said Sanford is training its insurance agents regarding the products that will be offered on the marketplace.

In response to a question from Senator Berry, Mr. Bartle said in order to assure quality of care, BCBSND has internal subject matter experts and works with provider partners to establish the best practices. He said related to quality of care, BCBSND is moving away from a fee-for-service model and moving toward an outcomes-based model. He said the ACA incentives and subsidies will make the purchase of individual health insurance policies more prevalent than it is today, and there will likely be a migration from group plans to individual plans.

In response to a question from Senator Axness, Ms. Carlson said the term "public health benefit exchange" is a marketing term. She said insurance companies will react to the public and private exchanges by offering consumers choices in products. Additionally, she said, she expects insurance companies will also react by offering products in the private exchange, which would be outside of the FFM.

In response to a question from Representative Glassheim, Mr. Bartle said with the implementation of the ACA, for 2014, BCBSND expects a total medical payout of approximately $1.5 billion. He said he expects BCBSND will experience an increase of health care spending of approximately 7 to 10 percent.

In response to questions from Representative Kasper, Ms. Carlson said Sanford has experienced a lifestyle drug or specialty drug spending increase of approximately 20 percent, whereas the other medications have only increased 10 to 12 percent. Mr. Bartle said BCBSND has experienced an increase in specialty drug spending like Sanford has; however, recently the utilization of generic and off-brand drugs has resulted in a zero to 5 percent increase for those drugs.

Ms. Carlson said the retention of grandfather status for health plans was more important pre-2014, and post-2013 this status may continue to be important only for small employers. Mr. Bartle said in grandfathered plans, there is a tradeoff between increased benefits and costs. He said preventative benefits attribute to 3 to 5 percent of the cost of a policy. He said BCBSND has made an affirmative decision to continue to offer grandfathered plans. He said for the near term, employers seem to want to hold onto their grandfathered plans. However, he said, in 5 years to 10 years, the cost pressures associated with maintaining these grandfathered plans will likely result in the plans fading out over time.

Representative Becker said he thinks the ACA goes the opposite direction from what he thinks should happen in providing health care services. He said the system should increase the patient buyin so the patients have skin in the game. He said under the ACA, as the cost of health insurance goes up there will be an increase in the number of people who are not insured.

Mr. Bartle said he agrees the ACA will decrease the exposure of the consumer to out-of-pocket expenses and, therefore, insulate the insurer from the cost of health care. He said there are many moving parts under the ACA, which will impact how people react. For example, he said, the age banding will negatively impact the cost of policies for younger consumers, but these same younger consumers will likely qualify for higher subsidies than older consumers.

Representative Keiser stated the deadline for filing and approval for sale of policies on the FFM has passed. He asked why the insurance companies are not sharing the policy rates with the public. Ms. Carlson said she does not know why the policy rates are being kept private. She said when Sanford made its filings with the Insurance Department, the Insurance Department asked if Sanford wanted to keep its rates confidential until a specified date, and Sanford chose to keep these rates confidential. She said this decision was made so Sanford would not be in the position of being the only insurer with rates made public. She said the rates have been made public in the other states, and North Dakota is the only state she is aware of that has kept the rates private.

Mr. Bartle said the complexity of purchasing health insurance is great, and the consumer's need for information is great. He said BCBSND would prefer to have all the policy and rate information public but does not want to be the only carrier with public data.

Representative Keiser said in other states, the Insurance Department has played a more active role in releasing health insurance policy and rate information. He said the Insurance Department's withholding of this information is unacceptable. He said he supports the insurance companies making this information public.

In response to a question from Senator Mathern regarding the increase in the number of insured through Medicaid expansion and through insurance policies, Ms. Carlson said with the ACA medical loss ratio limitations, health insurance rates will need to reflect the cost of providing the coverage. She said if the insurance companies experience a profit, this will need to be reflected in insurance rates or through rebates to policyholders. She said because Sanford does not have any grandfathered plans in North Dakota, all of its plans will be bumped into the FFM plan that is most similar. She said some insureds will experience a savings and some will pay more. She said under the new plans, smoking and age will play a large role in the cost of the plan. Mr. Bartle said under the ACA, the bad debt burden of insureds will decrease. He said the ACA subsidy provisions are the provisions that will have the greatest impact on affordability.

Chairman Keiser said at a future meeting, the committee will receive information regarding the status of Medicaid expansion. Ms. Maggie D. Anderson, Director, Department of Human Services, was not present but provided written testimony (Appendix Q) regarding the status of Medicaid expansion and the eligibility system.

No further business appearing, Chairman Keiser adjourned the meeting at 5:00 p.m.

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Jennifer S. N. Clark
Committee Counsel

ATTACH:17