

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**HEALTH CARE REFORM REVIEW COMMITTEE**

Wednesday, October 1, 2014  
Harvest Room, State Capitol  
Bismarck, 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, Kathy Hogan, Nancy Johnson, Jim Kasper, Alex Looyesen, Karen M. Rohr; Senators Oley Larsen, Dave Oehlke

**Members absent:** Representative Eliot Glassheim; Senators Tyler Axness, Spencer Berry, Judy Lee, Tim Mathern

**Others present:** See [Appendix A](#)

**It was moved by Senator Oehlke, seconded by Representative Johnson, and carried on a voice vote that the minutes of the July 23, 2014, meeting be approved as distributed.**

**HEALTH CARE SYSTEM AND AFFORDABLE CARE ACT STUDIES**  
**Blue Cross Blue Shield**

Chairman Keiser called on Ms. Kim Holland, Vice President, State Affairs, Blue Cross Blue Shield Association, to give a presentation ([Appendix B](#)) regarding the current status of the federal Affordable Care Act (ACA) and some of the related legislative and regulatory challenges.

In response to a question from Senator Oehlke, Ms. Holland said although all of the state-administered health benefit exchanges are experiencing challenges, Kentucky and Connecticut have state-administered exchanges that are doing well. Additionally, she said, the state-administered exchanges in California, New York, and Rhode Island are coming along nicely. She said Oregon's state-administered exchange is experiencing significant problems.

Ms. Holland said the big challenge the state-administered exchanges are all facing is how to mesh the new exchanges with the existing Medicaid information technology systems. She said there has been more growth in the number of state-administered exchanges than there has been a decline in state participation. In general, she said, it is fair to say there was a general underestimation of the information technology complexity related to creating and administering these exchanges.

In response to a question from Chairman Keiser, Ms. Holland said the single most important factor in determining whether a state would be successful in creating and administering a state-administered exchange is whether that state set reasonable expectations. She said in the case of Kentucky and Connecticut, they stuck to the basics when creating the plan, with the expectation they would build additional features into the exchange over time. She said the states that have struggled seem to have taken on too much all at one time.

In response to a question from Representative Hogan, Ms. Holland said the two main reasons people have not sought individual health policies is that they are unable to afford the premiums or they are not eligible for the policies. She said the early enrollment figures under the ACA seem to reflect that these previously uninsured people who have low incomes and who are interested in having insurance took advantage of the opportunity and enrolled.

In response to a question from Chairman Keiser, Ms. Holland said she does not know yet whether the Medicaid Expansion enrollment through the exchanges is meeting the states' expectations. She said as it relates to Medicaid Expansion, the states have experienced some administrative, operational, and governance challenges. She said she thinks some of these problems are resulting because the state agencies that administer the Medicaid Expansion programs are not very familiar with the private insurance market.

Additionally, Ms. Holland said the rate of increase in medical costs seems to have tempered some, and it is possible this trend is related to the economy. However, she said, when considering demographic data, it appears medical costs will continue to increase. She said for 2015, the initial data on medical costs shows that competition may be helping to hold down medical prices.

In response to a question from Senator Oehlke, Ms. Holland said the primary ways the federal government is using the funds collected as taxes under the ACA are to provide premium subsidies and to provide grants to states to assist with implementation of the ACA.

### **Department of Human Services**

Chairman Keiser called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, to report ([Appendix C](#)) on the status of Medicaid Expansion, to provide an overview of cost-sharing under the Medicaid Expansion program, and to briefly review the Michigan Medicaid Expansion program and how it compares to the North Dakota Medicaid Expansion program.

In response to a question from Representative Hogan, Ms. Schwab said because the state's transition from being an "assessment state" to being a "determination state" just occurred July 1, 2014, the Department of Human Services does not have enough data yet to access the impact of the change. However, she said, the applicants will not experience much change related to this transition.

In response to a question from Representative Fehr, Ms. Schwab said the Medicaid Expansion enrollment numbers have increased by approximately 1,000 enrollees per month, and she expects this increase to continue until the enrollment nears 20,000 by the end of the 2013-15 biennium.

In response to a question from Representative Becker, Ms. Schwab said the amount of the current Medicaid copayment amounts is set by the Department of Human Services, based on federal regulations. She said in 2003, as a result of a directive in the department's appropriation bill, the department set copayment rates. She said if the department changes these copayment rates, it is likely the federal government will require that the new rates comply with the new federal regulations relating to copayment rates.

In response to a question from Representative Becker, Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said the department has been hesitant to adjust the copayment rates because the new federal regulations will require the state to track family income as part of the rate computations. She said the department's information technology system is not yet ready to accommodate this income tracking. She said the new information technology system should be ready for launch in 2015.

In response to a question from Representative Kasper, Ms. Schwab said in preparing this presentation, she did not reach out to Michigan to research the details of the health behavior incentives Michigan uses. She said it is not uncommon for states to track wellness behaviors. She said she is not certain whether the department would require legislation in order to implement wellness incentives for the Medicaid Expansion program.

Chairman Keiser called on Ms. Anderson to provide an update on the status of Medicaid Expansion pharmacy reimbursement. She said since the committee's September meeting, the working group that has been addressing the issue of pharmacy reimbursement under the Medicaid Expansion program has continued to hold meetings. She said in addition to working on the pharmacy reimbursement component, the department has been busy working with Centers for Medicare and Medicaid Services to revise the state's Medicaid Expansion contract to address how the contract addresses medical service reimbursement for the three-month lookback period and for the first month of eligibility. She said this issue is resolved and the changes go into effect October 1, 2014. She said the next change to the contract will go into effect January 1, 2015; over the next 90 days, the department will be working on this new contract revision.

Ms. Anderson said the new Medicaid Expansion pharmacy reimbursement rates will be effective January 1, 2015, and during the first quarter of the year, Sanford Health Plan will be recontracting with the pharmacies in the state, applying the new rates. She said under this new contract, none of the pharmacies in the state will be paid less than the configured rates.

In response to a question from Representative Kasper, Ms. Anderson reviewed the risk corridor component of the Medicaid Expansion program. She said the risk corridor will apply for the first three years of the contract, and after that time, the insurance company will move to a full risk contract. She said in mid-2015, the department will reevaluate the pharmacy risk.

In response to a question from Chairman Keiser, Ms. Anderson said at this time, the pharmacists do not know the exact dollar amount or reimbursement rate that will be effective January 1, 2015, so she said it is difficult to say whether the pharmacists will be happy with the new rates. However, she said, the new rates will be increased from the current rates and there will be increased transparency.

### **Workforce**

#### **University of North Dakota School of Medicine and Health Sciences**

Chairman Keiser called on Dr. Joshua Wynne, Dean, University of North Dakota School of Medicine and Health Sciences, to present the preliminary results ([Appendix D](#)) of the University of North Dakota School of Medicine and Health Sciences Advisory Council's biennial workforce survey.

In response to a question from Representative Hogan, Dr. Wynne said when the advisory council prepares the final report, he expects it will include additional analysis of the data as well as followup material.

In response to a question from Representative Frantsvog, Dr. Wynne said the the best predictor of where a student will work after graduation is the community from which the graduate came; therefore, the University of North Dakota (UND) is being proactive in the admissions process.

Dr. Wynne said with the increase in the number of people who are insured or who have health care coverage through Medicaid or Medicaid Expansion, it comes as no surprise the health care delivery system is experiencing an approximate 1 percent increase in workforce needs.

In response to a question from Representative Johnson, Dr. Wynne said under the health care workforce initiative, a focus to train more health care providers includes increasing resident slots by 17 slots per year over a three-year to five-year period, to result in approximately 130 resident slots. He said there is a focus on improving the ratio of available slots versus increasing the number of graduates.

In response to a question from Representative Becker, Dr. Wynne said the RuralMed program does distinguish between rural surgery and urban surgery. However, he said, as it relates to hospitalists and geriatrics, these specialties are acquired through one additional year of residency. He said if a resident changes course mid-cycle during the RuralMed program, UND does not penalize the student for this change, as it does not make sense to keep a doctor in a program the doctor does not want to be in.

Additionally, Dr. Wynne said he does not think completion of a RuralMed program would ill-equip a resident for other nonrural opportunities. He said after completing the RuralMed residency, the doctor would be eligible for credentialing in nonrural opportunities.

In response to a question from Representative Hogan, Dr. Wynne said his initial research indicates some other states do offer tax credits for medical school instructors.

In response to a question from Representative Fehr, Dr. Wynne said the new School of Medicine and Health Sciences will offer opportunities for multiple medical professions to train together. He said even in the case of disciplines that will not physically be working in the same building, the program is working to be more inclusive of other professions.

Representative Becker said for purposes of the RuralMed program, instead of using an expansive definition of "rural," it might make sense to be more narrow and not allow micropolitan communities to qualify. Dr. Wynne said it was an affirmative decision to use that more expansive definition of rural at the front end of this new program. He said the program is being closely monitored, and over time it may turn out the program definition needs to be revised. He said as data becomes available these considerations will be applied.

#### **Loan Repayment Programs**

Chairman Keiser called on Ms. Mary Amundson, Assistant Professor, Department of Family and Community Medicine, University of North Dakota School of Medicine and Health Sciences, representing the State Department of Health, to give a presentation ([Appendix E](#)) regarding utilization of the state's loan repayment programs for health professionals.

In response to a question from Chairman Keiser, Ms. Amundson said one way the federal loan repayment programs are more favorable than the state loan repayment programs is that under the state programs the money is distributed at the end of each year, whereas under the federal programs the money is provided in a lump sum at the beginning of the program. She said the amount of the funds offered under the state programs are competitive with the federal programs, but the state programs might be improved by allowing the opportunity for continuation for additional years.

### **Insurance Department**

Chairman Keiser called on Ms. Rebecca Ternes, Deputy Commissioner, Insurance Department, to report on the status of implementation of the ACA ([Appendix F](#)).

Ms. Ternes briefly reviewed the history of the federal Mental Health Parity and Addiction Equity Act of 2008, which became effective for plan years beginning after October 3, 2009. She said the final rules for this law were published November 2013, and became effective for plans years beginning on or after July 1, 2014.

In response to a question from Chairman Keiser, Ms. Ternes said the number of health insurance plans filed for 2015 is very similar to the number filed in 2014.

In response to a question from Representative Kasper, Ms. Ternes said the North Dakota Century Code allows the Insurance Commissioner to keep certain portions of insurance filings private if these parts are determined to be highly confidential. Additionally, she said, not all the rates for 2015 plans are final.

In response to a question from Chairman Keiser, Ms. Ternes said for last year's open enrollment period, the Insurance Department reminded navigators of the state's insurance laws and what is allowed and what is not allowed of navigators. She said overall, the navigators had a good year in 2014, and the Insurance Department did not receive many complaints. She said the Insurance Department refers ACA enrollment questions from the public to agents and to the navigators.

In response to a question from Representative Hogan, Ms. Ternes said the Insurance Department does not participate in any marketing for the ACA. She said the federal government will likely conduct marketing for the upcoming open enrollment period. She said as it relates to the upcoming open enrollment period, she is concerned about the public being confused by the renewal notices they are receiving.

In response to a question from Chairman Keiser, Ms. Ternes said the Insurance Department website has a chart of all of the agents and brokers who are certified to assist customers with purchasing health insurance from the exchange.

Chairman Keiser said he is curious to know whether navigators are distributing lists of agents to consumers.

### **Behavioral Health**

Chairman Keiser called on Ms. Lisa Carlson, Director, Planning and Regulation, Sanford Health Plan, for comments regarding the implementation of federal mental health and substance abuse treatment parity laws. She said effective July 1, 2014, with the exception of grandfathered plans and small group plans, all health insurance plans are required to provide parity between physical health coverage and mental health and substance abuse treatment coverage. She said as part of this federal law, the definition of what qualifies as residential treatment has been clearly defined. She said the bottom line is that insurance policies will be required to cover residential treatment. Additionally, she said, effective January 1, 2015, Medicaid Expansion will include coverage of residential treatment for mental health and substance abuse treatment.

In response to a question from Chairman Keiser, Ms. Carlson said because insurance policies are not allowed to limit physical services based on age, these policies are not allowed to limit coverage of mental health and substance abuse services based on age.

Chairman Keiser called on Mr. Rod St. Aubyn, Steering Committee, Behavioral Health Stakeholders Group, to present information ([Appendix G](#)) regarding the activities of the Behavioral Health Stakeholders Group and the interim Human Services Committee.

In response to a question from Representative Johnson, Mr. St. Aubyn explained that in the Behavioral Health Planning Master List, the black print reflects the recommendations made by the interim Human Services Committee consultant--Schulte Consultants--and the blue print reflects the recommendations of the Behavioral Health Stakeholders Group.

In response to a question from Representative Rohr, Mr. St. Aubyn said the Behavioral Health Stakeholders Group has made these recommendations to the interim Human Services Committee and that committee will determine how to move forward with these recommendations. He said one recommendation has been to continue this behavioral health study during the 2015-16 interim.

Chairman Keiser said he has some reservations about changing professional licensing standards to require action within 30 days. He said he would suggest a longer period, such as 60 days.

## BILL DRAFTS

### Health Professional Assistance Programs Study

The committee reviewed a bill draft [[15.0301.01000](#)] that would direct the State Department of Health during the 2015-16 interim to evaluate state programs to assist health professionals, with a focus on state loan repayment programs for health professionals.

Representative Hogan said a request for a similar request was made by the Behavioral Health Stakeholders Group.

**It was moved by Representative Hogan, seconded by Representative Fehr, and carried on a voice vote that the health professional assistance program study bill draft be revised to clarify health professionals include behavioral health professionals.**

Representative Becker said he hopes that if a study is conducted under this bill draft that the study include consideration of the effectiveness of the loan assistance programs, including review of the number of participants who drop out of the loan assistance programs.

Chairman Keiser said the state's landscape is changing and projections and training need to reflect these changes.

**It was moved by Representative Hogan, seconded by Representative Fehr, and carried on a roll call vote that the bill draft relating to a health professional assistance program study, as revised, be approved and recommended to the Legislative Management.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyen, and Rohr and Senators Larsen and Oehlke voted "aye." No negative votes were cast.

### Medicaid and Medicaid Expansion Cost-Sharing Study

The committee reviewed a bill draft [[15.0300.01000](#)] that would direct the Department of Human Services during the 2015-16 interim to study options for implementing income-based cost-sharing provisions for the Medicaid and Medicaid Expansion programs. Committee Counsel explained an error was made in preparing the bill draft and that this bill draft should have been prepared with the committee as the sponsor instead of with Representative Becker as the sponsor.

**It was moved by Representative Becker, seconded by Representative Johnson, and carried on a roll call vote that the bill draft relating to the Department of Human Services study of implementing cost-sharing provisions for the Medicaid and Medicaid Expansion programs be prepared in the name of the Health Care Reform Review Committee and be approved and recommended to the Legislative Management.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyen, and Rohr and Senators Larsen and Oehlke voted "aye." No negative votes were cast.

### Medicaid Expansion Contracts

The committee reviewed a bill draft [[15.0303.01000](#)] that would amend the law that provides for the Medicaid Expansion program, providing contract requirements if the program is implemented through a private insurer.

In response to a question from Representative Fehr, Committee Counsel said under existing law, the Department of Human Services is not specifically authorized to conduct the pharmacy benefit management services in-house, but is directed to implement the program by bidding through a private carrier or utilizing the exchange.

In response to a question from Representative Hogan, Committee Counsel said she is not aware of any other states approaching Medicaid Expansion in the manner provided under this bill draft. Dr. Brendan Joyce, Administrator, Pharmacy Services, Department of Human Services, stated that although he does not know whether any Medicaid Expansion programs approach the program as would be directed under this bill draft, it is not uncommon under Medicaid for the managed care component to be provided in-house.

**It was moved by Representative Kasper and seconded by Representative Johnson that the bill draft relating to the Medicaid Expansion contract be approved and recommended to the Legislative Management.**

Chairman Keiser said he thinks the Department of Human Services could do what the the bill draft provides without legislation.

Representative Kasper said he has been participating with the working group addressing the pharmacy reimbursement component of the Medicaid Expansion program. He said the transparency provisions of this bill draft are especially important. The Medicaid and Medicaid Expansion programs deal with government funds, and it is wise stewardship of these funds for the state to know how the funds are being spent. He said under the existing Medicaid Expansion contract, neither the Department of Human Services nor Sanford Health Plan know exactly what the pharmacy benefit manager is doing or getting paid.

**The motion carried on a roll call vote.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyesen, and Rohr and Senators Larsen and Oehlke voted "aye." No negative votes were cast.

### **Health Insurance Substance Abuse Coverage**

The committee reviewed a bill draft [[15.0304.01000](#)] that would amend the health insurance mandated coverage for substance abuse coverage.

In response to a question from Chairman Keiser, Ms. Ternes said last interim when the Insurance Department evaluated the state's health insurance mandates, it was decided it might cause problems if the state repealed all of the existing health insurance mandates; therefore, the laws relating to mandates were not changed. She said because the ACA changes so often, it is hard to keep state law consistent with the ACA.

Ms. Ternes said it appears the mandate provided for under the bill draft would essentially reflect what the health insurance policies will be required to provide effective January 1, 2015. She said she is not in a position to make an official comment on behalf of the Insurance Commissioner, but her initial review leads her to believe he would not oppose the bill draft.

In response to a question from Representative Hogan, Ms. Ternes said the federal law has defined "inpatient treatment" to include "residential treatment," but our state definition is not as clear.

**It was moved by Representative Hogan and seconded by Representative Rohr that the bill draft relating to health insurance mandated coverage for substance abuse be approved and recommended to the Legislative Management.**

Representative Becker said he supports addressing health insurance coverage requirements through state law, instead of relying on federal law to set the requirements.

Representative Fehr said after the fall elections the status of the ACA may be more clear.

**The motion carried on a roll call vote.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyesen, and Rohr and Senators Larsen and Oehlke voted "aye." No negative votes were cast.

### **CLOSING REMARKS**

Chairman Keiser recognized Representative Johnson's service on this committee as well as her services as a legislator. He brought to the committee's attention that Representative Johnson will not be serving in the Legislative Assembly this coming session due to her move out of district.

**It was moved by Representative Johnson, seconded by Representative Kasper, and carried on a roll call vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.** Representatives Keiser, Becker, Fehr, Frantsvog, Hogan, Johnson, Kasper, Looyesen, and Rohr and Senators Larsen and Oehlke voted "aye." No negative votes were cast.

**It was moved by Representative Johnson, seconded by Senator Larsen, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Keiser adjourned the meeting sine die at 3:00 p.m.

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Jennifer S. N. Clark  
Counsel

ATTACH:7