Prepared by the North Dakota Legislative Council staff for the Health Care Reform Review Committee

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IMPACT OF THE FEDERAL AFFORDABLE HEALTH CARE ACT ON THE COMPREHENSIVE HEALTH ASSOCIATION OF NORTH DAKOTA - BACKGROUND MEMORANDUM

INTRODUCTION

Senate Concurrent Resolution No. 4005 (2011) (Appendix A) provides for a study of the impact of the Patient Protection and Affordable Care Act (PPACA) on the Comprehensive Health Association of North Dakota (CHAND) and the statutes governing CHAND.

Committee Studies

The Legislative Management has charged the interim Health Care Reform Review Committee with performing three studies--this study, as well as monitoring the impact of the PPACA as provided under Section 1 of 2011 House Bill No. 1252 and studying the feasibility and desirability of developing a state plan that provides North Dakota citizens with access to and coverage for health care which is affordable for all North Dakota citizens, as provided by directive of the chairman of the Legislative Management.

Committee Updates

In addition to the committee's studies, the Health Care Reform Review Committee is charged with receiving these updates:

- Regular updates from the Insurance Commissioner during the 2011-12 interim regarding administration and enforcement of the PPACA, proposed legislation for consideration at a special legislative session, and proposed legislation by October 15, 2012, for the 2013 regular session (2011 House Bill No. 1125, Section 2);
- Regular updates from the Insurance Commissioner and Department of Human Services during the 2011-12 interim on planning and implementing an American health benefit exchange for the state and proposed legislation for consideration at a special legislative session, or proposed legislation by October 15, 2012, for the 2013 regular session (2011 House Bill No. 1126, Section 3); and
- Regular updates from the Insurance Commissioner during the 2011-12 interim with respect to steps taken to ensure health insurer procedures are in compliance with the PPACA, proposed legislation for consideration at a special legislative session if the commissioner is required by federal law to implement any requirement before January 1, 2013, and proposed legislation by October 15, 2012, for any requirement that must be implemented between January 1, 2013, and January 1, 2014 (2011 House Bill No. 1127, Section 6).

BACKGROUND

2011 North Dakota Legislation

No legislation in 2011 specifically addressed North Dakota Century Code Chapter 26.1-08--the law providing for CHAND. Although there was legislation enacted in 2011 which addresses the federal Affordable Care Act (ACA), which refers to the PPACA as amended by the federal Health Care and Education Reconciliation Act of 2010, this state legislation does not specifically address the ACA requirement for an interim high-risk pool, which is now named the Pre-existing Condition Insurance Plan.

CHAND

Background

North Dakota is one of 35 states that before 2010 implemented a high-risk health insurance pool. The National Conference of State Legislatures reports that as of 2010, more than 200,000 people were served by these state high-risk health insurance pools.

During the 1979-80 interim, the Legislative Management's interim Health Care Committee recommended House Bill No. 1058, which enacted what is now Chapter 26.1-08, which provides for CHAND--the state's high-risk health insurance pool. During the 1981-82 interim, the Legislative Management's interim Social Services Committee recommended 1983 House Bill No. 1068, which, along with 1983 House Bill No. 1054, amended Chapter 26.1-08, in order to address the problems that:

1. Premiums received by participating insurance companies did not cover the cost of required care; and
2. Premiums were too expensive for those individuals who required insurance.

The legislative history indicates the purpose for CHAND was to provide comprehensive major medical insurance to persons who were otherwise uninsurable.

Program

The Comprehensive Health Association of North Dakota offers health insurance to North Dakota residents who are unable to find adequate health insurance coverage in the private market due to medical conditions or who have lost their employer-sponsored group health insurance. An insurance carrier licensed to do business in North Dakota must inform individuals denied health insurance coverage by their company about CHAND.

Subject to benefit plan limitations and exclusions, CHAND covers major medical and prescription drug

expenses. An individual is eligible to receive up to $1 million in benefits from CHAND during that individual's lifetime. An individual who has received $1 million in CHAND benefits from enrollment in any combination of benefit plans is not eligible to obtain new coverage through CHAND.

Under CHAND, traditionally the premiums have funded approximately one-half to two-thirds of the program, not to exceed 135 percent of premiums charged in the state of North Dakota for similar coverage, with most of the balance covered by assessments to companies that write at least $100,000 in annual premiums on behalf of residents of the state. In recent years federal grants have also accounted for a portion of CHAND funding.

The Comprehensive Health Association of North Dakota is overseen by a board of directors that consists of the Insurance Commissioner; the State Health Officer; the director of the Office of Management and Budget; one senator appointed by the majority leader of the Senate; one representative appointed by the Speaker of the House of Representatives; and one individual from each of the three participating member insurance companies of CHAND with the highest annual premium volumes of health insurance coverage as provided by the Insurance Commissioner, verified by the lead carrier, and approved by the CHAND Board of Directors. Blue Cross Blue Shield of North Dakota is the insurance company the CHAND Board of Directors has selected to be the lead carrier to administer the CHAND benefit plans.

Under Section 26.1-08-12(5), the four ways an applicant can qualify for CHAND are:

1. Traditional applicant (waiting period);
2. Health Insurance Portability and Accountability Act of 1996 (HIPAA) applicant (no waiting period);
3. Federal Trade Adjustment Assistance Reform Act of 2002 (TAARA) applicant (no waiting period); and
4. Age 65 and older applicant or disabled supplement applicant (waiting period).

According to the CHAND website, an eligible traditional, HIPAA, or TAARA applicant has the option of choosing from the following coverage options:

	Deductible Amount Per Benefit Period	Coinsurance Maximum Per Benefit Period	Out-of-Pocket Maximum Per Benefit Period
Option 1	$1,000	$2,000	$3,000
Option 2	$500	$2,500	$3,000

These applicants are subject to a CHAND lifetime maximum of $1 million. An eligible supplement applicant has the option of choosing basic supplement coverage or standard supplement coverage. Detailed information regarding eligibility and coverage is available at the CHAND website--*www.chand.org*.

Affordable Care Act

Background

The ACA, which was enacted in 2010, contains various provisions with various effective dates. Title 1 of Subtitle B of Section 1101 of the ACA created the temporary high-risk pool program, which is now named the Pre-existing Condition Insurance Plan. The goal of the Pre-existing Condition Insurance Plan is to make health insurance quickly available to uninsured people who have preexisting conditions. This federal high-risk pool provision became effective June 21, 2010, with individual policies offered for sale in all states by September 2010. This program remains in effect until January 1, 2014, at which time it will be replaced by policies sold through the American health benefit exchanges, and preexisting conditions will no longer prevent people from qualifying for private health insurance coverage. An April 2011 report of the National Conference of State Legislatures summarizes the Pre-existing Condition Insurance Plan. A copy of this document is attached as Appendix B.

Each state had the choice of running its own high-risk pool that complied with the PPACA requirements or deferring to the federal government and allowing the federal government to run the new program. Twenty-seven states chose to run their own programs, and 23 states and the District of Columbia have the federal government run the program. North Dakota chose to have the federal government run its ACA high-risk pool. Because states are not allowed to reduce their current high-risk efforts, the 35 state-only high-risk pools continue to operate, using the states' established rules and funding mechanisms.

The National Conference of State Legislatures reports that as of February 1, 2011, North Dakota's federal high-risk pool plan had five people enrolled and as of December 31, 2009, CHAND had 1,422 people enrolled.

Program

The basic elements of the Pre-existing Condition Insurance Plan are:

1. Preexisting condition exclusions are prohibited.
2. The out-of-pocket limit may not be greater than the maximum amounts applicable to high-deductible health plans--$5,950 for single coverage and $11,900 for a family.
3. Premium rates may vary on the basis of age by a factor of not greater than four-to-one, and be established at a standard rate for a standard population.
4. Eligible individuals include individuals who:
   a. Are citizens or nationals of the United States;
   b. Have been uninsured for the last six-month or greater period; and
   c. Have a preexisting condition.

5. Participating states must agree to maintain funding levels at fiscal year 2009 levels for existing high-risk pools.

The federally administered Pre-existing Condition Insurance Plan has undergone changes since becoming effective in 2010. Initially, the Pre-existing Condition Insurance Plan provided for a single plan option; however, effective January 2011, enrollees may choose from among the following four plan options:

1. The standard plan has a $2,000 medical deductible and $500 drug deductible.
2. The extended plan has a $1,000 medical deductible and $250 drug deductible.
3. The health savings account option carries a $2,500 deductible. This option offers federal tax benefits when used with a health savings account.
4. Child-only rates allow families to enroll eligible children in the Pre-existing Condition Insurance Plan at a child-only premium rate for Pre-existing Condition Insurance Plan enrollees.

POSSIBLE STUDY APPROACH

In conducting the study, although it may be valuable to continue to monitor the federal legislation and rules affecting the Pre-existing Condition Insurance Plan program, as it appears the program may continue to undergo changes in order to increase participation, the focus of the study should be on what role if any CHAND should play after the Pre-existing Condition Insurance Plan expires in 2014. Therefore, it may be more valuable to monitor the federal legislation and rules affecting the health insurance coverage that will be provided through the health insurance exchange.

The legislative history of Senate Concurrent Resolution No. 4005 indicates the focus of the study was intended to determine what role CHAND should assume once the temporary Pre-existing Condition Insurance Plan expires in 2014 when the health insurance exchange becomes effective. The current role of CHAND is to provide health insurance coverage to North Dakotans with preexisting medical conditions who have reached a lifetime maximum under a private policy or who have ceased to be eligible for health insurance coverage under HIPAA or TAARA. Once the health insurance exchange is implemented, these unmet needs under the current health care system may have changed or may no longer exist, or there may be other unmet needs that could be addressed by a modified CHAND.

The committee may consider combining portions of this study with the committee's monitoring of the impact of the PPACA as provided under Section 1 of House Bill No. 1252 as well as consider this study as the committee receives updates from the Insurance Commissioner and the Department of Human Services.

ATTACH:2