

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HEALTH CARE REFORM REVIEW COMMITTEE

Wednesday, July 25, 2012
Roughrider 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, Donald L. Clark, Robert Frantsvog, Eliot Glasheim, Nancy Johnson, Lee Kaldor, Jim Kasper, Lisa Meier, Ralph Metcalf, Marvin E. Nelson, Karen M. Rohr, Robin Weisz, Lonny B. Winrich; Senators Spencer D. Berry, Dick Dever, Jerry Klein, Judy Lee, Tim Mathern

Member absent: Representative Gary Kreidt

Others present: Senator Joan Heckaman, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Senator Mathern, seconded by Representative Clark, and carried on a voice vote that the minutes of the April 11, 2012, meeting be approved as distributed.

CHAIRMAN'S COMMENTS

Chairman Keiser recognized that Senator Joan Heckaman, member of the Legislative Management, is sitting at the table with the committee.

AFFORDABLE CARE ACT

Chairman Keiser called on Committee Counsel to present the memorandum [Summary of the United States Supreme Court Decision on the Federal Affordable Care Act - NFIB v. Sebelius](#). Committee Counsel presented the memorandum and stated the decision is significantly more complicated than the single-page memorandum; however, the purpose of the memorandum is to be a resource to assist the committee in understanding the outcome of the case.

In response to a question from Senator Dever, Committee Counsel said the United States Supreme Court (SCOTUS) determined that the requirement under the Affordable Care Act (ACA) that all states participate in the Medicaid expansion or lose all federal Medicaid funding was coercive, and therefore the states now have the option of whether to participate in the Medicaid expansion. However, she said, in applying that portion of the decision to future cases, the decision may leave the door open for a law that withholds a portion of federal Medicaid funding.

Representative Kasper said he thinks Congress overstepped its taxing authority in enacting the ACA because the revenues collected under the ACA are not being used for the benefit of the federal

government, as required under Congress's enumerated powers under Article 1, Section 8, of the United States Constitution.

Representative Winrich said the federal government regularly collects taxes and uses them as appropriate to pay for the cost of running the government. He said he does not see any problem with the use of the taxes collected under the ACA.

Mr. Adam W. Hamm, Insurance Commissioner, Insurance Department, stated the tax consequence under the ACA is effective if an individual violates the individual mandate requirement and then it is only recognized by the taxpayer if the taxpayer has a tax liability.

In response to a question from Senator Mathern, Committee Counsel said the opinion of the SCOTUS is final, and there will not be any additional SCOTUS opinions on this case further explaining or clarifying the decision.

Chairman Keiser called on Mr. Hamm to provide the committee information regarding the ACA, including:

- An update on the status of the ACA external review process application for approval;
- A presentation of a report comparing the essential health benefits (EHB) benchmark plans;
- A review of the EHB deadlines and options; and
- A review of health benefit exchange deadlines, the status of states' implementation of the health benefit exchange requirements under the ACA, and the state's options for administration of the state's health benefit exchange.

Mr. Hamm distributed written testimony ([Appendix B](#)).

In response to a question from Representative Keiser, Mr. Hamm said the benchmark plan type of the three largest small group products would likely be the category of benchmark plan that would require the least amount of change to comply with the 10 federally mandated coverages, and of these three plans, the two Blue Cross Blue Shield of North Dakota (BCBSND) plans likely would require less change than the third plan.

In response to a question from Senator Mathern, Mr. Hamm said the scope of work for the consultant the Insurance Department contracted with to review the state's benchmark insurance products was set out in the request for proposal (RFP). He said the scope

of work did not include public comment because time is of the essence.

In response to a question from Senator Berry, Mr. Hamm said if the state recommends a benchmark plan for the EHB, he would suggest the evaluation include consideration of the cost to the state and the cost to the policyholders. Additionally, he said, he would recommend the plan that required the least amount of change.

In response to a question from Representative Glasheim regarding what will happen to the state employees' plan under the Public Employees Retirement System (PERS) if a benchmark plan other than PERS is selected, Mr. Hamm said the draft work of the consultant indicates the initial analysis shows the PERS plans are missing some of the 10 required benefits, and therefore he would expect the cost of the new PERS plan that complies with the EHB requirements under the ACA will be more expensive than the current plan. However, he said, he wants to be clear that he is not saying that the PERS plan has less coverage than is required under the EHB, only that the PERS plan has different coverage than required under the EHB. Additionally, he said, the PERS plan would not be required to comply with the EHB provisions of the ACA until after the PERS plan loses its grandfathered status.

In response to a question from Senator Dever, Mr. Hamm said the EHB requirements under the ACA apply regardless of whether the state has a state-administered health benefit exchange or a federally administered health benefit exchange.

In response to a question from Representative Nelson, Mr. Hamm said he is not certain how the federal government will deal with benchmark plans that include dollar limits for services, such as fertility services. He said he hopes to have this information at the next meeting.

In response to a question from Representative Weisz, Mr. Hamm said the EHB will apply to all plans, both inside and outside the health benefit exchange, except for those plans that maintain their grandfathered status.

In response to a question from Senator Lee regarding how the federally administered health benefit exchange will be funded and how the funding options differ under state administration and federal administration, Mr. Hamm said regardless of whether the health benefit exchange is federally administered or state-administered, the health benefit exchange needs to be self-sustaining by January 1, 2015.

In response to a question from Representative Keiser, Mr. Hamm said if a state with a federally administered health benefit exchange chose to work in partnership with the federal government, it is his understanding the parties would enter a memorandum of understanding. He said these memorandums of understanding may vary from state to state.

Committee Counsel distributed a document ([Appendix C](#)) entitled *Table 1: Roadmap for Completing the Exchange Application*.

Senator Mathern said it appears as though Mr. Hamm's objections to the state entering a partnership with the federal government for administration of the health benefit exchange is based on fiscal implications. Senator Mathern asked why the memorandum of understanding could not essentially require that both parties have skin in the game and each party pay for its own activities.

Mr. Hamm said if the state were to enter a partnership with the federal government for administration of the health benefit exchange, the financial issues would need to be settled to the satisfaction of both parties, and given the history and ongoing uncertainty, he does not think this is likely.

Representative Glasheim said North Dakota policyholders will be paying the price if the federally administered health benefit exchange is not a success. He said he thinks the state could do a better job than the federal government.

Mr. Hamm agreed that the state likely could administer the health benefit exchange better than the federal government; however, the state would be bound by the requirements of the ACA. He said it would be preferable for the state to create its own health benefit exchange that is not governed by the federal government. Additionally, he agreed that the state will be paying for the health benefit exchange regardless of who administers it; however, he has a real concern about who would be financially responsible if the health benefit exchange has a financial shortfall. He said he does not want state general funds to pay for administration of the health benefit exchange. He said he would prefer that the federal government be on the hook if there is a shortfall.

Representative Keiser said one thing to remember is that if the Legislative Assembly would have gone forward with a state-administered health benefit exchange, 100 percent of the costs associated with building the exchange would have been funded by the federal government. He said now if at a later date the state wants to take over administration of the federally administered health benefit exchange, there is no guarantee there will be any federal funds available for the state to build a new system.

Representative Kasper said he finds Mr. Hamm's testimony very compelling, and he has changed his position on the issue of the health benefit exchange. He said he now supports federal administration.

Senator Lee said if the federal government is paying for development of the health benefit exchanges, that money is coming from taxes and that means we are paying for it either way.

In response to a question from Senator Berry, Mr. Hamm said if the state were to administer the health benefit exchange, the state could opt-out and after a 12-month notice, the federal government would administer the health benefit exchange.

Mr. Hamm reviewed Kaiser State Health Facts ([Appendix D](#)) regarding the status of states creating health benefit exchanges.

In response to a question from Senator Heckaman, Mr. Hamm said the federal government has not yet clarified whether the federal government will pool the costs of the federally administered health benefit exchanges or whether the costs will be kept separate from state to state.

Representative Keiser said he expects the federal government would not distribute the financial risk of administering the health benefit exchanges over all the states, but instead would require that each state be responsible for its own expenses.

In response to a question from Senator Dever regarding whether Mr. Hamm has been taking actions to seek a federal injunction to prohibit implementation of the ACA, Mr. Hamm said he has been in contact with Representative Rick Berg's office and Senator John Hoeven's office. He said he has learned at the federal level there has been some talk about amending the ACA to push back the January 1, 2014, deadline for the health benefit exchanges, but he is not sure whether there is support for this.

Senator Mathern said the benefits of the health benefit exchange include transparency, access, and equity. He said he hopes the legislators keep in mind what is for the common good.

In response to a question from Senator Mathern, Mr. Hamm said the Insurance Department has sought consumer input regarding the ACA and has used its website to keep the public informed.

Representative Keiser recognized this is a very complicated issue. He said even a repeal of the ACA would take several months to accomplish.

In response to a question from Representative Keiser regarding his concern that the federally administered health benefit exchanges may evolve to provide for an active purchaser model, Mr. Hamm said although he is not certain what risk we take, the state can take over administration at any time.

Representative Keiser said he is concerned the federally administered health benefit exchange may not protect our agents and brokers; whereas, the committee's proposed health benefit exchange would have provided this protection. Mr. Hamm said at a future date he can provide the committee with the most up-to-date information regarding how the federal government will address the issues of navigators, agents, and brokers.

In response to a question from Representative Nelson, Mr. Hamm said it is likely some states are not following the law as it relates to child-only policies. He said that under a strict reading of the ACA he does not think there are open enrollment periods for child-only policies; so in theory, a person could buy the policy on the way to the hospital.

In response to a question from Representative Keiser, Mr. Hamm provided the following deadlines under the ACA:

- November 16, 2012 - Deadline for states to submit health benefit exchange application;

- January 1, 2013 - Federal government certification of health benefit exchange applications;
- October 1, 2013 - Open enrollment period begins under the health benefit exchange;
- January 1, 2014 - Health benefit exchange needs to be up and running; and
- January 1, 2015 - Health benefit exchange needs to be self-sustaining.

Mr. Hamm said if the deadline for health benefit exchange grants is extended, he thinks all the state would need to prove is that the state is moving forward. He said it is still unknown whether the federal government would grant funds to states to change from a federally administered to a state-administered health benefit exchange.

Chairman Keiser called on Ms. Tami Ternes, Governor's office, for comments ([Appendix E](#)) regarding the Governor's position on the state's implementation of the ACA.

In response to a question from Representative Keiser, Ms. Ternes said she would try to get a copy of the questions the Republican Governors submitted to the federal government.

In response to a question from Senator Mathern, Ms. Ternes said the Governor continues to monitor and communicate with state agencies and the Insurance Commissioner regarding the status of the ACA.

Chairman Keiser called on Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, for comments ([Appendix F](#)) regarding the status of the department's implementation of the ACA and the issues related to the state's option to expand Medicaid under the ACA.

Ms. Anderson said that of the questions submitted to the federal government regarding the expansion of Medicaid, the Congressional Budget Office has taken the position that if a state does not expand Medicaid beyond 100 percent of the federal poverty level (FPL), those individuals who are between 100 and 133 percent FPL would be eligible for cost-sharing subsidies and tax credits to purchase coverage through the health benefit exchange.

In response to a question from Representative Kaldor, Ms. Anderson said the Department of Human Services is in the process of reviewing a proposal that would allow a modified adjusted gross income (MAGI) equivalent system for the state's children's health insurance program (CHIP)--using either an average disregard formula or a same number method. She said the state will need to amend the law to reflect whatever approach is pursued.

In response to a question from Representative Kasper, Ms. Anderson said the questions submitted to the federal government by the Department of Human Services were submitted via a telephone call; however, virtually the same questions were submitted by the Medicaid directors, and she will provide the committee a copy of these questions.

In response to a question from Senator Berry, Ms. Anderson said each state uses its own formula in determining Medicaid eligibility so it is difficult to compare one state to another.

Senator Lee voiced concern about the pending change to the MAGI. She said North Dakota has taken years to carefully develop its income disregards, such as child care expenses.

Ms. Anderson said effective January 1, 2014, all states will change to use the MAGI.

In response to a question from Representative Keiser, Ms. Anderson said as it relates to Medicaid expansion, whether to expand the Medicaid program is a legislative decision, and no action will be required before the 2013 legislative session. She said the department will be prepared to come to the 2013 legislative session with information regarding Medicaid expansion to assist the legislators in making these public policy decisions.

Chairman Keiser called on Ms. Jenny Witham, Director, Information Services Division, Department of Human Services, for comments ([Appendix G](#)) regarding the status of the computer-related and technology-related elements of the ACA.

Representative Keiser called on Committee Counsel to present information regarding the authority of the state's executive branch to obligate the state to administer any portion of the ACA's health benefit exchange in a partnership with the federal government or to select an EHB benchmark plan under the ACA.

Representative Keiser noted that from his perspective, the Legislative Assembly has spoken on the issue of the health benefit exchange. When the committee's health benefit exchange bill was killed during the 2011 special legislative session, he said, it seemed to support the federally administered approach. However, he said, the federal government has reported that it will accept a state's health benefit exchange and the EHB decision from a state's Insurance Commissioner or Governor.

Committee Counsel reviewed the constitutional and statutory authority of the legislative branch and the executive branch--specifically, the Governor and the Insurance Commissioner. She said the legislative branch is unique in that it has plenary power, which means it has broad power to set public policy and is generally only limited by the state constitution, federal constitution, congressional acts, and treaties of the United States. Whereas, she said, the Governor's and Insurance Commissioner's authority is limited to those powers established under the North Dakota Constitution and those powers granted by the North Dakota Century Code.

Committee Counsel said for purposes of those ACA issues that have a deadline before the January 2013 legislative session, such as the November 16, 2012, health benefit exchange deadline and the September 30, 2012, deadline for selection of the state's EHB, if state action is desired to take some

action different from the default options, there are limited options. She said:

- One option may be for the committee to recommend a bill or resolution for introduction in the 2013 legislative session. However, she said, this approach would not have any legal impact but instead would make a policy statement to the public, state government, and the federal government.
- Another option may be for the committee to seek the approval of the Chairman of the Legislative Management for the committee to make a recommendation. She said this option may be subject to challenge based on a select few making a decision for the entire legislative body.
- Finally, the Legislative Assembly may call itself into special legislative session and enact a resolution stating the Legislative Assembly's position, or the Governor could call the Legislative Assembly into legislative session to enact legislation.

Committee Counsel said she is not aware of any specific statutory provision granting the Governor express authority to address the EHB or health benefit exchange issues related to the ACA; however, Article V, Sections 1 and 7, of the Constitution of North Dakota, set out the constitutional authority of the Governor, including the power to "transact and supervise all necessary business of the state with the United States" However, she said, Section 26.1-02-29 and Chapter 26.1-54 do specifically grant the Insurance Commissioner express power to take action related to the ACA. She said as counsel for the legislative branch, she would read this authority narrowly and point out if the Insurance Commissioner took action and obligated the state in matters related to the health benefit exchange or the EHB, she would question whether those actions were "necessary" and therefore appropriate given the federal law provides a default option if the state fails to act.

In response to a question from Representative Kasper, Committee Counsel said in determining whether the Insurance Commissioner or Governor is authorized to contract with the federal government and obligate the state, she would once again be protective of the legislative branch's plenary authority. She said the executive branch's duty is to execute the laws and public policy established by the legislative branch. She said the legislative branch is the policysetting branch and as such that power is exclusive.

In response to a question from Senator Mathern, Committee Counsel said if hypothetically, an executive branch actor attempted to obligate the state by entering a partnership blueprint for the health benefit exchange, the legislative branch's recourse may be to bring a legal action to stop or to invalidate that executive branch actor.

In response to a question from Representative Keiser, Committee Counsel agreed that short of being

called into special legislative session, the state likely will use the default options for the EHB and the health benefit exchange. She said that although legal counsel for the executive branch could take the position that an executive branch actor has legal authority to obligate the state, this may be problematic on a couple levels, including the concern that the obligation with the federal government would likely result in the need for appropriations of state and federal funds, and it is possible the state obligations would require legislative authority for the state agencies to hire necessary manpower.

Chairman Keiser clarified that in his conversations with Committee Counsel, she made it clear to him that her legal opinion is not binding. He said if the committee would like to submit specific questions to the Attorney General, that can be done.

Chairman Keiser said if the committee wishes to act as a supercommittee and make a recommendation to the Governor or Insurance Commissioner, he can speak to Representative Al Carlson, Chairman of the Legislative Management, to receive permission. However, he said, he expects such permission would be granted only after careful consideration.

The following panel discussed the insurance industry's perspective of issues and concerns relating to implementation of the ACA:

- Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota ([Appendix H](#));
- Mr. Geoff Bartsh, Medica ([Appendix I](#));
- Mr. Norbert Mayer, Association of Insurance and Financial Advisors - North Dakota (NAIFA-ND);
- Mr. John Vastag, Sanford Health ([Appendix J](#)); and
- Mr. Jack McDonald, America's Health Insurance Plans (AHIP) ([Appendix K](#)).

Mr. St. Aubyn said he is concerned a federally administered health benefit exchange may evolve to use an active purchaser model.

In response to a question from Senator Mathern, Mr. St. Aubyn said whether to have a state-administered health benefit exchange is a public policy decision for the legislature to address. He said if a state-administered health benefit exchange or a health benefit exchange administered through a partnership of the state and the federal government is desired, perhaps it could be pursued through a special legislative session or through a committee recommendation approved by the Chairman of the Legislative Management.

In response to a question from Senator Dever, Mr. St. Aubyn said he does not know how far along the federal government is in creating the health benefit exchanges.

Representative Glassheim asked Mr. St. Aubyn to provide the committee with data regarding the number of new policyholders anticipated under the ACA. Mr. St. Aubyn said he could only speculate the

number of new insureds under BCBSND, Medicaid, and CHIP.

Representative Glassheim said he expects BCBSND may get thousands of new policyholders under the ACA, and this increase should work to offset any cost increases.

In response to a question from Senator Lee, Mr. Bartsh said the ACA will put new limits on the out-of-pocket costs allowed and will set the parameters of the precious metal plans. However, he said, the ACA will allow catastrophic plans to be sold and will also allow grandfathered plans to be sold. He said the incentive to purchase a plan from the health benefit exchange is that only those plans are eligible for subsidies.

In response to a question from Representative Kasper, Mr. Bartsh said although the federal laws and rules apply to a health benefit exchange regardless of whether state-administered or federally administered, the states do have the authority to make some very important decisions, such as whether to allow an open market.

Mr. St. Aubyn said some elements of the health benefit exchanges are set out in law, which would require legislation to amend, whereas other elements are set out in administrative rule, which can be changed more easily.

In response to a question from Representative Johnson, Mr. Bartsh said he thinks it will be a challenge for insurers to maintain grandfathered plans for any significant period of time.

Representative Keiser said he takes issue with the insurers objecting to the premium tax under the ACA because the insurers agreed to these provisions when the ACA was being developed. Mr. St. Aubyn said he is not aware of the insurers ever agreeing to the tax. Senator Lee said the pharmaceutical companies and doctors agreed to these tax provisions, hoping to receive a reimbursement fix in exchange.

Representative Keiser said he expects the amount of uncollected medical bills is increasing. He questioned who is paying for these unpaid services and speculated it was the small employer who was incurring this cost.

Mr. Bartsh said everyone is paying for the unpaid medical bills. He said one promise of the ACA is that it is supposed to address these uninsured and unpaid services.

Mr. Mayer said one thing he would like addressed in the health benefit exchange through a partnership with the federal government is the issue of navigators and providing consumer assistance. He said insurance agents are an integral part of consumers selecting health insurance. He said insurance agents help insureds consider both costs and benefits.

Mr. Mayer said the NAIFC-ND supported the committee's bill to provide for a state-administered exchange.

In response to a question from Representative Keiser, Mr. St. Aubyn said he was not aware of the

possibility of a "soft date" to allow states to select the EHB until today.

Representative Winrich said it is necessary to expand the risk pool in order to get health care costs under control. He said he would like to receive suggestions from the industry instead of hearing from them how it is necessary to keep the status quo.

Mr. Bartsh said arguably, the risk pool is large enough now. He said increasing EHB may be good for our health, but increasing EHB also has the effect of increasing the cost of the policy. He said the real issue is how to address the increasing cost of medical services. He said possible approaches may include payment reform.

Mr. St. Aubyn said he supports the individual mandate, but some parts of the ACA are counterproductive, such as the fact, costs for the young and healthy will increase. Additionally, he said, it will be necessary to increase the penalty for failure to comply with the individual mandate. He said the tax penalty is not enough of an incentive for the young and healthy.

Representative Winrich posed the question if the ACA is not going to work, what will. Mr. Mayer said he would suggest more incentive for individuals.

Representative Kasper recommended BCBSND consider putting the cost of medical services online so an insured can consult this data before treatment. He said he is concerned the ACA does not do enough to incentivize wellness.

Senator Lee said she is concerned about the age-band restrictions under the ACA, how those under 100 percent FPL will be addressed, and how guaranteed issue will impact us.

Representative Glassheim noted the ACA does address wellness, and it allows for pilot projects on alternate fees for services.

The following panel discussed the medical provider's and consumer's perspectives of issues and concerns relating to the implementation of the ACA:

- Mr. Scot Graff, CEO, Community Health Care Association of the Dakotas (CHAD);
- Mr. Josh Askvig, North Dakota AARP ([Appendix L](#));
- Mr. Tim Blasl, North Dakota Hospital Association ([Appendix M](#)); and
- Ms. Courtney Koebele, North Dakota Medical Association ([Appendix N](#)).

In response to a question from Representative Kasper, Ms. Koebele said she will try to get the committee additional information regarding the Independent Payment Advisory Board.

Mr. Graff stated North Dakota has five community health center (CHC) sites. He said a CHC is a nonprofit entity that exists in areas where health care is scarce. He said CHCs are governed by county boards.

Mr. Graff said approximately 31 percent of the North Dakota CHC patients are uninsured. He said under the ACA, CHCs received funds to expand the program.

Senator Lee said one benefit of a CHC is that it can treat both tribal and nontribal patients.

In response to a question from Representative Keiser, Mr. Graff said the five CHC sites in the state are Migrant Health Services, Fargo Family Health Center, Valley Community Health Center, Coal County CHC, and Northland CHC.

In response to a question from Representative Keiser, Mr. Graff stated the CHC program has been around for almost 50 years. He said the ACA provision relating to CHCs have the potential to add 20 million new CHC patients.

Senator Lee asked Mr. Blasl to provide the committee with a breakdown of data regarding the frontier amendment.

Mr. Blasl said the definition of charity care varies from hospital to hospital.

In response to a question from Senator Mathern, Mr. Blasl said he supports the concept of a health benefit exchange, but he does not have an opinion on whether it should be state-administered or federally administered. He said the most important factor is that the health benefit exchange increase the number of insured.

Representative Keiser said he would like an accurate breakdown of 2011 data on charity care and written-off accounts receivable.

In response to a question from Representative Winrich, Ms. Koebele said as the medical providers are moving away from charging fee for services, it is possible the consumer will not even realize there has been a change.

Chairman Keiser called on Mr. Greg LaFrancois, Prairie St. John's, Fargo. Mr. LaFrancois provided written testimony ([Appendix O](#)).

In response to a question from Representative Glassheim, Mr. LaFrancois said Prairie St. John's is a member of the North Dakota Hospital Association, and the services provided through his facility are covered under the ACA as one of the 10 federally established EHB.

In response to a question from Representative Winrich, Mr. LaFrancois said chemical dependency treatment and mental illness treatment are covered as EHB; however, there is value to discussing the depth of the coverage. He said inadequate coverage will increase other medical and prescriptive costs.

In response to a question from Representative Rohr, Mr. LaFrancois said Prairie St. John's has 91 acute beds and has an average daily census in the 80s.

Chairman Keiser called on Ms. Cheryl Rising, North Dakota Nurse Practitioner Association, for comments ([Appendix P](#)) regarding the ACA. She raised four points:

1. Use provider-neutral language so it will include medical doctors, nurse practitioners, and physical therapists.
2. Allow an insured the option of selecting a nurse practitioner as a primary provider.
3. Fully implement provider nondisclosure.

4. Establish requirements for accountable care organizations.

Chairman Keiser recognized Ms. Carol K. Olson, Executive Director, Department of Human Services. Ms. Olson said she will be retiring August 17, 2012. Representative Keiser thanked Ms. Olson for her years of service. Senator Lee recognized Ms. Olson's work in establishing a relationship of trust between the Department of Human Services and the legislature. Ms. Olson said it was a top priority to establish credibility with the Department of Human Services.

COMMITTEE DISCUSSION

Representative Kasper distributed two documents--a letter from Ms. Twila Brase, Citizens' Council for Health Freedom, and a case research paper - *Taxation Without Representation: The Illegal IRS Rule to Expand Tax Credits Under the PPACA*. These documents are on file in the Legislative Council office.

Senator Mathern said he expects the federal government would give North Dakota a waiver from the ACA if we were to cover all North Dakotans with the PERS health policy. He said a legislative resolution may send the message.

Representative Nelson said if there is truth to the claim that a federally administered health benefit exchange would not allow subsidies, this would be very serious. If this claim is accurate, the state may need to reconsider state administration.

Senator Dever questioned whether this committee should be considering the MAGI legislation. Senator Lee said perhaps the committee should allow the

Department of Human Services to work through this issue and perhaps prepare a bill draft when we are closer to the legislative session.

Representative Glassheim said he would like more information regarding how much it cost Massachusetts to create its health benefit exchange and how much the health benefit exchange cost the consumer, the number of people who have refused coverage, and the cost of running the health benefit exchange. Representative Keiser requested similar information on the Utah health benefit exchange.

Representative Keiser asked for data from BCBSND regarding the impact of covering 26-year-olds, preexisting conditions, lifetime limits, and community ratings (from five to three).

Representative Kaldor said there seems to be a contrast between the industry and providers wanting a state-administered health benefit exchange and the Insurance Commissioner wanting a federally administered health benefit exchange. He said he would like more information from the industry regarding what steps are being taken to address this division.

No further business appearing, Chairman Keiser adjourned the meeting.

Jennifer S. N. Clark
Committee Counsel

ATTACH:16