

TESTIMONY

Presented by: Adam Hamm
Insurance Commissioner
North Dakota Insurance Department

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

Date: September 6, 2012

Good morning, Chairman Keiser and members of the committee. My name is Adam Hamm and I am the North Dakota Insurance Commissioner.

Although today my hope is for the committee to provide direction as to the state's essential health benefit (EHB) decision, I was also asked to update you on the status of states' implementation of the health benefit exchange requirements under the Patient Protection and Affordable Care Act (PPACA).

Exchanges and a New NAIC Working Group

As we know, many states are still trying to decide what to do regarding the Exchange issue and not much has changed since this committee met on July 25. At that point, the Kaiser Family Foundation indicated that 16 jurisdictions had established a state-run Exchange (that number includes the District of Columbia, as well as Utah and Massachusetts who had passed their own Exchange legislation prior to the passage of PPACA); 1 jurisdiction was planning for a Partnership Exchange; 17 jurisdictions were studying options; 10 jurisdictions had no significant activity; and 7 jurisdictions had decided not to create a state-run Exchange. The Kaiser Family Foundation's latest report dated August 1, 2012, indicates that 16 jurisdictions have established a state-run Exchange; 3 jurisdictions are planning for a Partnership Exchange; 16 jurisdictions are studying options; 9 jurisdictions had no significant activity; and 7 jurisdictions decided not to create a state-run Exchange.

Jurisdiction Status	July 25, 2012	August 1, 2012
Established State-Run Exchanges	16	16
Planning Partnership Exchange	1	3
Studying Options	17	16
No Significant Activity	10	9
Decision to Not Run State Exchange	7	7

At the NAIC's Atlanta national meeting, the Executive Committee voted to create a new Health Care Reform Regulatory Alternatives Working Group, which North Dakota has joined. The working group's charges are to:

1. Provide a forum for discussion of and guidance on the alternatives to implementing a state-based Exchange and the implications of such alternatives on state regulatory authority;
2. Identify and assist states in resolving open issues that need to be addressed with regard to non-state Exchange alternatives;
3. Analyze the impact of PPACA on existing state regulatory authority both inside and outside of a federal Exchange as well as the impact on NAIC Model Laws (Unfair Insurance Practices Act, Producer Licensing Model Act, Model Law on Examinations, etc.); and
4. Identify opportunities for states to continue to innovate and regulate outside of a federal Exchange.

Essential Health Benefits (EHB)

As I mentioned, today my request of the committee and stakeholders is to have a discussion of the “choices” available to the state in making an EHB decision. I would like to be able to tell you that we have all of the guidelines from HHS to make the best decision possible, but as of today we still do not have final regulatory guidance on EHB and were told by HHS last week there is no specific date we can expect it.

In other words, North Dakota and all of the other states are expected to make an extremely important “choice,” affecting almost all of our consumers and businesses as well as providers, without knowing the rules of the game. PPACA specifically says the HHS Secretary shall make this EHB decision but as I have told you in past meetings, the December 2011 Bulletin stated states were to make a “choice” from a list of plans prescribed by HHS even though none of those plans on the list meets the 10 benefit categories required in an EHB.

Also, since the December 2011 Bulletin HHS has made surprising unwritten clarifications as to the options for states and the deadline for a decision. We still do not know if our “choice” of an EHB will be accepted, rejected or modified by the HHS Secretary.

With that in mind, I want to take a little time to go through a reference document attached to my testimony that will remind you of the background of the EHB process and the potential impact of “choosing” a relatively basic or rich plan. Ultimately, that is the decision—does North Dakota want to “choose” a basic plan as a floor to which insurers can build upon; does the state want to “choose” a richer option to ensure all consumers have a more extensive set of benefits in their health insurance plans; or does the state, for all the reasons that I have discussed above, want to decline to make a “choice” and send this whole matter back to HHS, along with our consultant’s report (as we have previously discussed, if the state does not make a “choice” the default

option according to HHS would be the non-grandfathered small group plan with the largest enrollment in the state)?

I also want to point to another attachment, which is a chart of what we know at this point regarding other states and their decisions on EHB. To date, there is not much final activity by states.

Finally, the last attachments contain the final EHB analysis report and the comments submitted on the final draft. The final draft was sent to all stakeholders. We received three comments prior to the comment period deadline and made several changes and clarifications based on those comments. We received two additional sets of comments after the deadline.

Following my testimony and any questions you might have, I will introduce the consultant engaged by the Insurance Department to analyze the EHB choices in North Dakota and prepare this report. Joe Higgins is an Actuary with INS Consultants, Inc., from Pennsylvania. He is here to go through the analysis report and take additional questions.

Thank you and I would be happy to answer any questions.