



MINUTES

Health Insurance Issues Interim Study Committee

First Meeting
2005 Interim
Friday, June 17, 2005

LCR 1&2
State Capitol Building
Pierre, South Dakota

The first meeting of the Health Insurance Issues Interim Study Committee was called to order by Representative Don Van Etten, Chair, at 10:00 a.m. on Friday, June 17, 2005, in Legislative Conference Rooms 1 and 2 of the State Capitol Building in Pierre, South Dakota.

A quorum was established with the following members answering the roll call: Senators Jerry Apa, Mike Broderick, Jason Gant, Gil Koetzle, and Dan Sutton; and Representatives Pat Haley, Jeffrey Haverly, Gary Jerke, Deb Peters, Tim Rave, Tim Rounds, Bill Thompson, and Don Van Etten (Chair). Senator Tom Hansen (Vice-Chair) and Representatives Jamie Boomgarden and Elaine Roberts were excused.

Staff members present included Jacquelyn Storm, Principal Legislative Attorney, and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

Opening Remarks

Chair Van Etten commented that where the committee goes depends on the input from the committee, the public, and the industry. Comments from Vice Chair Tom Hansen were distributed (**Document 1**). Chair Van Etten commented that the federal legislation that Senator Hansen referred to in his comments would allow insurance companies to write policies in any state if the policy was approved in their home state. He stated it would take away the ability for states to regulate the insurance business within their own state.

Historical Perspective and Coverage Currently Available, including the Risk Pool

Mr. Randy Moses, Division of Insurance, gave a presentation on the historical perspective and coverage currently available in South Dakota. A copy of Mr. Moses' presentation was distributed to the committee (**Document 2**) and is also available at the Division of Insurance's Web site <http://www.state.sd.us/drr2/reg/insurance/LHRatesForms/Hi2004.ppt>.

Historical Perspective

Mr. Moses stated that the trend for insurance companies to exit the major medical market started in the 1980's. South Dakota enacted individual market guaranteed issue to help people access insurance. In 1996, HIPPA was enacted and had a major impact on the market. Some group carriers chose to exit South Dakota and do business only in high volume states due to administrative costs. Mr. Moses stated that the division did exit interviews with all the companies that left. They all stated that the state needed a risk pool. By 2003, a number of carriers had exited the individual market, two companies had filed notices of intent to cease marketing, and one announced its intent to begin nonrenewals effective August 1. In response, Governor Rounds called a special legislative session and the Legislature enacted a risk pool.

Risk Pool

The Risk Pool legislation was passed on June 27, 2003, and became operational on August 1, 2003. Mr. Moses explained the eligibility requirements, costs, and funding. The pool is administered by a seven member board and advisory panel. Mr. Moses stated the number of covered individuals in the risk pool is 590, well below the original expectations. They expect a modest trend from this date forward.

Uninsured Data

In 2004, the uninsured rate for adults in South Dakota was approximately 8.5%, compared to 19.2% nationally for 18 to 64 year olds, 14.5% for all ages. South Dakota's uninsurable rate is 1.06% or approximately 6,020 individuals.

Comparison of Markets 2003-2005

Individual Market

There are currently 8 individual carriers in the state. Since 2003, three companies have entered the market and three have left.

Small Group Market

There are currently 16 small group carriers in the state. Four companies have entered the market and none have left since 2003.

Large Group Market

There are currently 11 large group carriers in the state. Two companies have entered the market and none have left since 2003.

Long-Term Care Market

There are about 56 carriers in the long-term care market in the state. Since 2003, four companies have entered the market and eight have left.

Other Health Insurance Policies

Since 2003, four companies offering coverage for one of the following: blanket accident, group credit accident, stop loss, and cancer, have entered the state. Three companies that offered either Medicare supplement or disability policies have left the state.

Pooling Type Arrangements

Mr. Moses explained that there were different types of pooling arrangements: 1) Purchasing Cooperatives/Alliances; 2) Multiple Employer Trusts; 3) Multiple Employer Welfare Arrangements; and 4) Fully Insured Association Plans.

There are three types of alliances: single, regional, and private. South Dakota's law is based on the private model which allows for the formation of such an alliance by the private sector. Enacted in 1994, there are currently no alliances operating in the state; however, Mr. Moses stated there is an active application on file with the Division of Insurance. Alliances are nonprofit corporations owned by the participants. They are rated as a small group. Their primary purpose is to get a discount in premiums for fully insured plans. Nationally, the success of alliances have been mixed because 1) they require a lot of people, 2) they have overly restrictive regulatory requirements, which makes them less competitive, 3) adverse selection, and 4) agent receptivity.

Multiple Employer Trusts (METs) have been in existence since the 1960's. Senate Bill 163 (2005 Session) allows for variations for both fully insured and self-funded METs.

Association health plans have been in existence for many decades in South Dakota. The association must have been formed for a purpose other than insurance and have the authority to act on behalf of the individuals.

Health Insurance Mandates

According to the Council on Affordable Health Insurance (CAHI), South Dakota has 28 mandates. Eleven are provider mandates, five are mandates to cover certain persons, and twelve are coverage mandates. Effective July 1, 2005, South Dakota will have 27 mandates because the mandate for a "conversion to nongroup" was repealed. As of July 1, 2005, there are ten states with fewer mandates than South Dakota. In a comparison to neighboring states, South Dakota is equal to or lower than the other states, except Iowa, which has 22 mandates.

Fast Track

Mr. Moses related that the Division of Insurance makes every effort to ensure that licensees have speedy access to services and to reduce any unnecessary barriers. Fast track items that the division has implemented are in the areas of agent licensing, rate and form approval, electronic access, company admissions, and consumer-friendly access and service.

National Issues

Mr. Moses informed the committee about several issues at the national level. The SMART Act would require all the states to join an interstate compact. The compact would dictate what is offered regarding benefits, not the state law. If the Health Care Choice Act is passed, the laws of the home state would apply, not the laws of the state where the individual was living. If the Optional National Charter Act is passed, federal requirements, not state requirements, would apply. If the Association Health Plans Act is passed, a self-funded organization could set up in one state and then be authorized to sell in all fifty states but only be regulated by the one state. Mr. Moses stated that all of these proposals would preempt South Dakota laws particularly in the area of benefit mandates.

Mr. Moses also stated that he is a member of the Rate and Form File Working group. Their next meeting will be held in September. He stated he would provide an update to the committee following that meeting.

In response to Representative Haverly's question on how employers are made aware of the ability to form a MET, Mr. Moses stated that it requires a large number of people (at least 100,000 according to a Wake Forest study) to be a potential cost saver. He noted that the pending application group is not that large. Mr. Moses also stated that maybe the Division of Insurance needs to do more outreach.

In response to Representative Rounds' question on where did the 300 to 400 Mutual of Omaha enrollees go if they did not enroll in the risk pool, Mr. Moses stated that some qualified for a spouse enrollment, some turned 65 and enrolled in Medicare, and some did not continue with health insurance.

Representative Jerke stated that the rising cost of health insurance is hitting the farm population. He asked if there was anything the state could do to help. Mr. Moses replied that the rising medical costs are due to utilization and inflation. The minimum loss ratio for the percentage of claims paid to premiums received is 65%. The division's data is showing the loss ratio is running higher, between 70 and 90%.

In response to several questions if it was possible for other groups to join the state's health insurance group, Representative Peters expressed her concern. She explained that because of the federal accounting principles, every entity would have to remain in a separate pool. By adding other groups to the state's plan, a large level of bureaucracy would be added.

In response to a question on the Children's Health Insurance Program, Mr. Moses stated that the Department of Social Services handles that program. The Division of Insurance considers those individuals as covered by insurance.

In response to a question on how the premium is determined for the risk pool, Mr. Moses stated it is 150% of the average premium of the three largest carriers in the state.

Senator Sutton inquired if companies are marketing a product with a health savings account (HSA). Mr. Moses stated that the division has approved policies that are HSA qualified.

Senator Sutton inquired if the risk pool board had considered broadening the scope of coverage. Mr. Moses stated that an actuarial study showed that adding the guaranteed issue group would cost about \$4 million over three years and the board was not recommending that at this time.

In response to a question on the Health Care Choice Act, Mr. Moses stated that he foresees a problem in that a company can utilize the weaker laws of another state; hence an individual is not protected by the laws in South Dakota.

In response to a question on whether we know why companies decided to leave the state, Mr. Moses stated that the reasons for leaving have been centralizing operations, low percentage of business, the guarantee issue requirements, and financial reasons.

Staff distributed background information entitled "Frequently Asked Questions... Insurance and Managed Care" from the Forum for State Health Policy Leadership sponsored by the National Conference of State Legislatures (**Document 3**).

Public Testimony

Ms. Janet Griffin, Sioux Falls, Vice President, Public Policy and Government Relations, Wellmark Blue Cross and Blue Shield of South Dakota (Wellmark), distributed a brochure entitled "Understanding Health Insurance, A Guide for State Legislators" (**Document 4**). She stated that Wellmark is one of the few carriers that are active in all of the health insurance markets, individual, small and large groups, and self-funded. They insure one out every three South Dakotans. She stated that Wellmark's average paid out benefit is \$.85 of every dollar in premiums collected. The minimum loss ratio allowed is \$.65. They see the underlying driver of the increased costs as the rising costs of health care. With all of the technology and medical advances today, consumers have higher expectations. She stated that this issue is not unique to South Dakota. Ms. Griffin also expressed concerns with the increasing federal regulations. She encouraged everyone to contact their representatives in Washington, D.C. regarding the undermining of the state's authority to regulate the insurance market at the state level. Ms. Griffin also stated that she is a member of the South Dakota Risk Pool Board.

In response to Representative Peters' question if Wellmark publishes their prices to providers, Ms. Griffin stated that they do. It is a Web site service that providers have to sign up for. Representative Peters inquired if providers raised their fees to match the posted prices. Ms. Griffin responded that she was not aware that they did; however, she would check on it.

Representative Rave asked how high the deductible would have to be raised to make a dent in helping to contain costs. Ms. Griffin responded that she would have to check with Wellmark's actuarial staff. She stated that from her experience on the Risk Pool Board, they offer a \$10,000 deductible and they have had very little interest. Less than fifty persons of the approximately six hundred covered under the risk pool have selected the \$10,000 deductible.

In response to a question on the options available for deductible amounts, Ms. Griffin stated many options are available. They are seeing small groups raise their deductibles and large groups

increase their co-insurance and deductibles, which also creates dissatisfaction with their employees.

Representative Haverly asked if we had mirrored laws in the small populated states, would that have stopped some of the companies from exiting the state. Mr. Moses stated he did not think having a common benefit design would have made a difference nationwide.

Senator Gant commented that Iowa has 22 mandates, whereas South Dakota has 27. He asked Ms. Griffin if South Dakota would have a better presence if we had less mandates. Ms. Griffin stated that the two biggest differences in the mandates between Iowa and South Dakota are treatment for alcoholism and mental health; however, Iowa is implementing mandates on mental health. She noted that South Dakota has been fairly prudent in not adopting mandates.

Ms. Griffin stated that another factor that companies look at is the thin margin of business.

In response to a question if premiums are higher in Minnesota, Ms. Griffin stated she did not know. South Dakota's premiums are below the national average and premiums in Iowa are slightly lower.

In response to a question on grants that Wellmark has given to various communities, Ms. Griffin stated that the grants are funded through their foundation. They have seen tremendous results in the treatment of childhood asthma through education and alternative treatments.

Mr. Thomas Scheinost, Pierre, Executive Director, South Dakota Association of Community Based Services, spoke on behalf of the nineteen not-for-profit community based Adjustment Training Centers (ATCs). The ATCs work closely with the Department of Human Services to provide services to persons with developmental disabilities. The ATCs receive over 70% of their revenue from the state. Their concern is that they cannot afford employee health insurance. In 2004, overall, the ATCs saw an increase of 16.67% in their health premiums. They have increased co-pays, premiums, and deductible amounts and the rates continue to grow. Mr. Scheinost asked if there was any possibility for the Division of Insurance to provide special efforts and guidance in trying to resolve the issue of trying to keep costs down for non-profits. He also requested that the non-profits be allowed to join the state's employee health insurance plan. Mr. Schienost distributed a copy of his presentation (**Document 5**).

In response to questions regarding other groups joining the state's health insurance plan, **Mr. Eric Hales**, Bureau of Personnel, stated that an agency contributes approximately \$4,888 per employee per year for their benefits. In order for another group to join, three areas would need to be discussed: 1) cost neutrality for the state, 2) the pooling issue, and 3) how the state rigorously manages the program. Currently only state employees and retired state employees are covered under the state's plan. Other groups have also expressed an interest in joining. He stated that the state rigorously manages the plan through cost control mechanisms such as co-payments, deductibles, prior authorization, three-tier drug program, disease management, and direct contracts with hospitals.

Representative Peters stated that if we start pulling other business and non-profits out of other pools, there may be further ramifications on other insurance companies in the state.

Representative Rounds stated that it is not this committee's charge to look at the state employee health program and how to add people to it. We need to know why premiums of groups like the ATCs are rising at a rate of 15 to 20%.

Mr. Hales stated that the state employee health plan is not immune to nationwide trends. The state has made substantial changes in trying to control costs; for example, emergency room co-payments increased from \$100 to \$150. By doing so, an insured makes the decision if it is truly an emergency.

Senator Apa asked Mr. Hales if the state must maintain reserve ratios the same as private industries do. Mr. Hales did not know. Senator Apa requested that Mr. Hales bring in a theoretical number for what premium rates would be if the state had to follow the same regulations as private insurance.

Senator Sutton stated that so much hinges on the demographics of the groups. As people age, they have more health needs. Because some employers have dropped their health insurance benefits, individuals have had to purchase their own policies and some of them end up in the risk group. He stated that individuals in the risk pool have to do certain things or their benefits are reduced. He would like the impact on these requirements clarified as to how they impact the different markets. Another issue he would like clarification on would be how ERISA employers have different regulations and what they are.

In response to who administers the state health insurance plan, Mr. Hales responded that the Bureau of Personnel manages the plan, Dakotacare, who is a third party administrator, pays the claims. The state is self funded.

Mr. Joe Dobbs, Rapid City, President of First Administrators, Inc., stated that First Administrators administers self-insured group health plans. He asked the committee to support tort reform.

As far as mandates in South Dakota, Mr. Dobbs stated South Dakota is very reasonable. Most of the private employers are not required to follow state mandates because of ERISA. Mr. Dobbs stated that 95% of the private employers have the state mandates in benefits because that is what their competition offers. As far as the state employee plan, there is nothing magic about it. Disease management is pretty common. The rates depend on the experience of the group.

Mr. Dobbs informed the committee that worker compensation claims have become a new line item for many health insurance plans. First Administrators are seeing many workers comp claims being denied. The denied claims are then submitted to the health plan. South Dakota law states that medical plans have to pay if workers comp denies the claim. Mr. Dobbs stated that usually an attorney becomes involved and then negotiates reimbursement for less than 100% of the claim payment.

Senator Koetzle commented that there is no easy fix. The intent of the law is that the injured party is taken care of. Mr. Dobbs agreed, but it is a larger expense than it used to be.

Senator Apa asked that at the next meeting the committee hear the history of how this came about.

In response to Senator Apa's request, Representative Rounds stated that the Department of Labor oversees workers comp. The department determines whether or not it is a work related injury. He stated that some companies would deny first and pay later. Legislation was passed that required the claims be paid within 30 days.

Mr. Moses stated that the rationale was the situation stated by Representative Rounds. Both workers comp and the health plan would deny the claims. He stated he was unaware of the problems Mr. Dobbs discussed.

Senator Apa stated the explanation was sufficient for him.

Committee Discussion

Senator Broderick commented that the overview was great. He was aware of others in the insurance industry that would like to testify but were unable to prepare on such short notice. He asked that the next meeting be scheduled at least six weeks out. He also requested that all of the companies that have left South Dakota in the past ten years be notified of the purpose of this summer study.

Chair Van Etten stated that thirty-five companies had been notified of the summer study and that there will be more opportunity for public testimony.

Chair Van Etten stated that until the federal legislation is passed, we should not be concerned with them. He commented that the mandates have had vigorous debate in both chambers already and since the insurance companies do not think they are a problem, the committee should not be concerned with mandates.

Senator Koetzle commented that the workers compensation issue would be like opening up a can of worms.

Representative Haley expressed interest in the rigorous management idea. He would like to have more information on how preventive medicine and other ideas help lower costs.

Chair Van Etten stated that would be good information and staff was directed to find a speaker for the next meeting.

Representative Peters stated that people are not always responsible for their health care. The committee needs to look at how people can get access to information on the costs before the point of service.

Senator Sutton asked staff to find out if school districts, ATCs, and other groups that receive funding from the state are implementing rigorous disease management programs. He stated that if the state was giving them money, the state could direct them to participate in such programs.

Senator Broderick stated that Senator Sutton's idea was good for those agencies that the state is funding. He asked how we can educate the population on disease management. He thought it benefited the health insurance companies by cutting costs.

Representative Thompson stated that more of South Dakota needs to be insured. He stated that some of the choices are so complex that people do not know what to choose. More information may be needed so that people can make a wise decision.

Chair Van Etten stated that is the agent's duty when selling the policy. The primary question is what do they want to pay.

Representative Jerke stated that he has a lot of complaints from constituents that the rates are excessive. Many of them are mom and pop operations. He would like to see if there is a way of doing a self-insured plan, without the state's involvement.

Senator Gant asked for more information on the pooling arrangements – how they work, how effective are they, are there any road blocks to their use, etc.

In response to a question if alliances were the same thing, Mr. Moses stated that alliances are a form of pooling arrangement. Currently South Dakota has no alliances; however, there is one in the works. Mr. Moses will inquire to see if they are interested in talking to the committee about it.

The next meeting was set for Thursday, September 1, 2005, at 9 a.m.

The chair adjourned the meeting at 3:14 p.m.



