

ANNUAL REPORT

Joint Health Care Reform Oversight Committee

HB 601, Chapter 264, Laws of 2011

RSA 420-N

December 1, 2013

MEMBERS

Rep. Edward A. Butler, Co-Chairman
Rep. John B. Hunt, Co-Chairman
Rep. Cindy Rosenwald, Clerk

Sen. Jeb Bradley
Sen. Andy Sanborn
Sen. Peggy Gilmour

BACKGROUND AND CHARGE

The 2010 Health Insurance Reform Oversight Committee was established with the adoption of SB 455 (Chapter 243, Laws of 2010; RSA 420-L). Pursuant to this chapter, the Insurance Commissioner was required to make periodic reports to the initial Oversight Committee relative to the department's federal insurance reform implementation plans and initiatives. This committee met in September and in October of 2010, but did not issue a report. A sunset clause included in the 2010 law repealed the oversight committee on July 1, 2011.

A new Joint Health Care Reform Oversight Committee ("the Oversight Committee") was established in 2011, effective July 1, 2011, with the adoption of HB 601 (Chapter 264, Laws of 2011; RSA 420-N). Pursuant to RSA 420-N:3, III, the Oversight Committee is responsible for providing legislative oversight, policy direction, and recommendations for legislation with respect to the Patient Protection and Affordable Care Act of 2009 (the ACA), as it determines appropriate. The Oversight Committee is also required to review existing rules, bulletins, or policies adopted pursuant to Chapter 243, Laws of 2010 and may require the repeal of such rules, bulletins, or policies. Annual reports were filed in 2011 and 2012 describing the activities of the committee.

The Oversight Committee has continued to meet with representatives from the state Departments of Insurance and Health and Human Services to receive reports on ongoing developments on both the state and federal levels with regard to the ACA. This report summarizes the discussions and actions taken by the Oversight Committee this year.

SUMMARY

The Oversight Committee met eight times in 2013 prior to filing this report. Through the course of the year, the committee received reports from the state Insurance Department relative to New Hampshire's compliance with the ACA deadlines and requirements. In accordance with federal requirements, the New Hampshire Health Insurance Marketplace was opened on October 1 and plans purchased under the marketplace will take effect on January 1, 2014. Anthem Blue Cross/Blue Shield is the only insurer in New Hampshire participating in the Marketplace in 2014. It is anticipated that at least one additional plan will be available in the future.

Two major aspects of preparation for the implementation of the ACA involved developing guidelines and plans for plan management and consumer assistance. In February, the Oversight Committee approved a letter from Governor Hassan to US Health and Human Services Secretary Kathleen Sebelius outlining the proposed plan management and consumer assistance partnership between New Hampshire and the federal government. Grant funds were approved for plan management in March and a consumer assistance grant was awarded to the New Hampshire Health Plan (NHHP) in late September, after being initially approved for the Insurance Department. The Department provided the committee with information on plans for the use of these grant funds.

Commissioner Roger Sevigny, Deputy Commissioner Alex Feldvebel and Legal Counsel Jennifer Patterson from the New Hampshire Insurance Department provided invaluable assistance to the committee throughout the course of the year.

MEETINGS

February 4 -

Rep. Ed Butler and Rep. John Hunt were unanimously elected to serve as co-chairs of the committee for the 2013-2014 biennium. Members agreed that the co-chairs would share the task of chairman by presiding over alternating meetings. Rep. Butler presided over the first meeting.

Commissioner Sevigny and Insurance Department staff presented information to the committee on two areas in which the state could partner with the federal government – these areas are plan management and consumer assistance. The Commissioner recommended entering into both types of partnership. The department had applied for a plan management grant and will need approval from the Governor and Council to accept the funds if awarded.

The Oversight Committee discussed the relative merits and potential pitfalls of entering into either or both types of partnership. Members raised questions about who has the ultimate authority to authorize a partnership and how a partnership could be dissolved once initiated.

The committee decided to contact the Governor's office to ask to see the contents of a letter of intent and an MOU between the Governor and the federal Department of Health and

Human Services. Members would seek more information from legal counsel concerning the question of who has the ultimate authority to approve these documents.

February 12 –

The Oversight Committee continued the discussion of plan management and consumer assistance partnerships with the federal government. Representatives from the Insurance Department noted that it will be important for the department to regulate navigators in part to ensure that they maintain a neutral role and do not steer consumers to a particular plan. If no federal partnership is formed, the federal government would preempt the state in the regulation of navigators. A member requested the specific ACA cite that permits the states to regulate and expressed concern about any possibility of the state incurring additional costs for regulation.

Commissioner Toumpas, Department of Health and Human Services addressed the committee and commented that New Hampshire should keep its options open for both plan management and consumer assistance partnerships.

Lucy Hodder, Legal Counsel to Governor Hassan, discussed a letter drafted by the Governor that had to be submitted by February 15, 2013 in order to preserve any state authority over the exchange. The letter formalized New Hampshire's intent to enter into a federal partnership for plan management and consumer assistance. After some discussion about whether the vote of the committee was necessary, members voted 4-2 to approve the letter. Rep. Hunt noted that his vote to approve the letter was predicated on the ability of the committee to review and approve an MOU with the US Department of Health and Human Services.

April 9 –

The committee approved requests from the NH Department of Health and Human Services to proceed with administrative rulemaking for rules addressing non-covered services and durable medical equipment.

Representatives from the Insurance Department presented information summarizing the roles of the state and the federal government in the New Hampshire Partnership Exchange for both plan management and consumer assistance.

The plan management partnership will address the phase-out of the New Hampshire's pre-existing conditions insurance plan and the state high risk pool (HB 526) and the certification of qualified health plans (QHPs). In March 2013, the Joint Legislative Fiscal Committee and the Governor and Executive Council approved the use of the establishment grant for plan management.

Under the consumer assistance grant application, the department outlined how it would oversee navigators, develop and manage an in-person assistance program and educate consumers about the exchange. It was anticipated that a media plan would be developed by June 15. The department's application for a consumer assistance grant was approved on April 8, 2013. It was

also noted that the federal government prefers in-person assistance over navigators. New Hampshire will have at least two navigators as required by law.

The department also described proposed Insurance Department Bulletin INS 413-007-AB. This bulletin details the process that insurers must follow to have non-grandfathered individual and small group plans certified as QHPs that will be eligible to be offered in the NH Health Insurance Marketplace for October 1, 2013 open enrollment and effective on January 1, 2014. The committee approved the bulletin, vote 4-2.

Governor Hassan's Legal Counsel informed the committee that the federal government did not require an MOU and that the letters outlining the anticipated scope of the partnership between the state and the federal government provided sufficient detail. She commented that a formal MOU could lead to additional requirements being imposed on the state.

May 14 –

Staff from the Insurance Department provided the Oversight Committee with an update of recent activity relative to preparations of the implementation of the ACA. The department issued a survey to insurance producers in the state to collect information on their knowledge and level of interest in working with participants in the exchange. They held a meeting with producers on May 6 and planned on holding another meeting later in the month. Staff also discussed the plans under development for a consumer assistance program and described the areas in which grant money could be spent.

Tricia Brooks from the Health Policy Institute spoke to the committee about outreach to the hard to access and underserved population in the state using her experience as the Executive Director of NH Healthy Kids. She stressed the importance of training and certification for navigators and the use of in-person assisters.

Scott Baetz, co-chair of the Health Exchange Advisory Board discussed the work of the board and noted the importance of accepting grant funds to enhance the success of implementing the ACA in New Hampshire.

Bob Nash, President of the NH Association of Insurance Agents represented the views of brokers and advised the committee not to limit options available to brokers. He noted that some producers are interested in working with the low-income uninsured population and others are not. All should be able to make their own business decisions about the level of participation they would like to have. He also recommended that navigators should be certified rather than licensed.

June 11 -

Staff from the Insurance Department reviewed their draft consumer assistance plan and the proposed allocation of the grant funds. Under the proposal, grant funds would be used to hire

a project manager, develop an outreach and education program, regulate navigators and establish a temporary in-person assistance program.

Oversight Committee members discussed HB 668 (relative to group and individual health insurance market rules) and the consequences of not passing the bill. This discussion focused largely on two letters written by Commissioner Sevigny to members of the state Senate and especially these statements: “the failure to pass HB 668 will result in the federal government taking over the regulation of New Hampshire’s entire individual and small group markets” (May 24 letter) and “if HB 668 does not pass, there will be significant disruptions in the small group health insurance market in New Hampshire, including the probability of a sudden shift to pure community rating as of 2014.” (June 4 letter) The Senate had found HB 668 inexpedient to legislate on June 6, five days prior to this meeting.

September 4 –

Staff from the Insurance Department reviewed timelines for the implementation of the ACA with the committee. The department had reviewed the Anthem plan to be offered on the Marketplace and found it to be in compliance with state laws. The plan was being reviewed by the Centers for Medicare and Medicaid Services (CMS). Oversight Committee members expressed concern about reports that the proposed plan did not include all of the hospitals in the state in its network. Insurance Department staff could not discuss the specific plan features until they were offered for sale on October 1 because such information was proprietary.

Representatives from Anthem addressed the concerns of committee members and described the narrow network of 14 New Hampshire hospitals included in the proposed plan. They noted that the plan complied with network adequacy requirements and would likely be slightly expanded to ensure improved obstetrical coverage in the North Country. They explained that the narrow network had been carefully constructed and was in part designed to keep premium rates down.

Staff from the Insurance Department provided information on the consumer assistance program. The department had originally applied for a consumer assistance grant but had relinquished the application to the NHHP. The application was under review, and if accepted, grant funds would be allocated by the NHHP board.

October 2 –

Staff from the Department of Insurance provided information to the Oversight Committee relative to the implementation of the ACA and the regulation of navigators at the federal level.

Representatives from Anthem addressed the committee on the narrow network (also referred to as Pathway) and the rationale used for developing it. The cost increases incurred by the required benefits in the marketplace plan were largely offset by the savings derived from the Pathway provider network.

A representative from NHHP discussed the history of the high risk pool in New Hampshire. He noted that 2,820 people were enrolled in the high risk pool at that time.

November 5 –

Representatives from Anthem addressed concerns about people adversely affected by the network of hospitals included in the Pathway network. They also responded to questions about the number of enrollees in the marketplace since the October 1 opening date and the problems with the federal website. In addition, they explained that a number of New Hampshire policy holders had received letters informing them that their policy will be discontinued due to lack of compliance with the ACA. These letters did not inform policyholders that they had the option to renew such policies early and therefore extend them for another year. Committee members also expressed concern about potential fraud and insufficient consumer education on issues relating to the ACA.

Action taken in 2013

1. approved letter from Governor Hassan to US Health and Human Services Secretary Kathleen Sebelius outlining the proposed plan management and consumer assistance partnership between New Hampshire and the federal government, vote 4-2, *February 12, 2013*
2. approved pursuit of DHHS rules for proceed with administrative rulemaking for: He-W 530.05 Non-covered Services; which incorporates §6505 of the ACA and He-W 571.08 Durable Medical Equipment; which incorporates §6407 of the ACA, vote 6-0, *April 9, 2013*
3. approved Insurance Department Bulletin INS 413-007-AB, certification of QHPs, vote 4-2, *April 9, 2013*