



## Board of Directors Meeting

---

<b>Date:</b> Wednesday July 17, 2013	<b>Building:</b> MN Dept. of Revenue
<b>Time:</b> 1:00 – 4:15 pm	<b>Conference Room:</b> Skjegstad (room 2000)
<b>Attendees:</b> Thompson Aderinkomi, Pete Benner, Brian Beutner, Kathryn Duevel, MD, Thomas Forsythe, Commissioner Jesson, Phil Norrgard	
<b>Staff:</b> April Todd-Malmlov, Carley Barber	

---

### Topics:

#### **Welcome**

*Brian Beutner, Chair*

The meeting was called to order by Brian Beutner, Chair, at 1:03 p.m.

The purpose of the meetings this summer is to fully understand operations and develop policies and procedures required for the transition of authority.

Update: a revised meeting schedule was released.

On Monday July 22 the Legislative Oversight Committee is holding their first meeting at 10:00 a.m. in room 200 of the State Office Building.

#### **Customer story**

*Sam Johnson,  
Minneapolis*

Sam Johnson joined the meeting to share his story as a future customer of MNsure. Sam is a 28 year old college graduate, looking to go to graduate school. He spends a lot of his time doing internships, volunteering (with organizations such as AmeriCorps and a community garden) and working multiple part time jobs. As a result, his income is low. Neither of his jobs provide health insurance.

He was young, healthy and insurance on the individual market was out of Sam's budget so he went without. One day while biking, he hit a pothole and broke his arm. The doctor at the hospital suggested he apply for medical assistance, which he did. He then enrolled in MinnesotaCare.

Sam shared his thoughts around three themes.

**The transition to MNsure** – the MNsure website is nice and has a lot of pending information. He is curious about what the transition will look like.

MinnesotaCare does a good job of sending out notices with instructions and he is hopeful there will be sufficient notice given with MNsure and sufficient information provided to make the transition. He would like to be able to compare his current coverage with what is being offered through MNsure. He also wants to understand his responsibility in the transition. For example, what kind of paperwork will he need to fill out?

**Customer service** – He is hopeful about the promise of one on one service with MNsure, online chats and locations to receive help within the communities. He

is pleased with MinnesotaCare, but he has a hard time getting a hold of a person. He has experienced long wait times on the phone. He assumes MinnesotaCare's customer service plan was comprehensive at the time it was implemented, but they seem to have outgrown it. He would like MNsure to keep this in mind as the program grows.

**Preventative care** – Sam expressed his belief that coverage for preventative care is important. He is hopeful MNsure plans will contain some of the cost-reduction incentives currently offered by other plans, such as educational classes and improvements to exercise habits.

Phil Norrgard thanked Sam for his service in AmeriCorps and commented that we need people like him to advocate for our program among his peers, other students, etc.

Kathryn Duevel asked Sam what he has heard from his friends and peers regarding the benefit of having some sort of insurance. Most of Sam's friends understand the benefit and realize one hospital visit can cost a few months' rent. The difficulty is getting started in a program. He has a friend who was concerned about wasting time on paperwork only to find she did not qualify.

Kathryn also asked Sam where he and his peers would be likely to see messages. Sam suggested Facebook and possibly online ads before videos on youtube.com.

Commissioner Jesson noted that improvements were made to MinnesotaCare in the last legislative session.

**Approve June 26th  
meeting minutes**  
Brian Beutner, Chair

Pete Benner asked that we spell out acronyms going forward, for example, "API" on the bottom of page 3.

*Note: API lets different systems talk to each other. It stands for Application Programming Interface.*

Pete Benner moved to approve the minutes with that clarification. Phil Norrgard seconded and the minutes were approved.

**Minnesota  
Department of  
Commerce  
regulatory process  
overview and Q & A**  
Tim Vande Hey,  
Deputy  
Commissioner –  
Insurance Division  
and Valerie  
Ruttenberg,  
General Counsel

Tim Vande Hey presented an overview of the Department of Commerce regulatory process and answered questions from the Board.

**Q.** How will certification of products into the metal levels work? Will Commerce assign each product to a medal level?

**A.** Commerce reviews the actuarial values that will be used in making those determinations.

**Q.** Is solvency exclusively in the realm of Commerce or will the Board be involved in that?

**A.** Direct oversight of the financial solvency of an insurer would fall under purview of Commerce. Results would be public information available to the

Board.

**Q.** Other states experienced “rate shock” and insurers lowered rates for the plans in their Exchanges. Understanding information will not be available to MNsure consumers until October 1st, will there be summary information available in advance or some sort of assurance for consumers that rates will not be shocking here?

**A.** We may want to review how Minnesota conducts its rate review process. Any review should be transparent, deliberate, include all stakeholders and be focused on the goal of providing the most affordable coverage for our residents as possible. The Department of Commerce is actively working with the plans to try and come to a resolution to provide accurate and approved rate information prior to October 1st. Based on the number of plans willing to participate in the Exchange, Tim feels optimistic that the competition will provide benefit that will be seen in rates.

**Q.** Does Commerce have the authority to tell plans their rates are too high and must be lowered?

**A.** Commerce has the authority to object and reject, including calling for a public hearing to discuss them.

**Q.** Does Commerce’s rate review allow it to get into whether a carrier’s reserves are too high?

**A.** There is a strong correlation between the rates charged by a carrier and their reserve quality. Many of the regulatory capital measures are based on risk-based capital measures. When we used risk-based capital measures, we need to keep in mind the capital levels were established to determine the minimum reserve needed to operate safely, not to necessarily look at identifying excess capital. The Department of Health has a report due in February, required by the legislature, with consultation of DHS and Commerce, which is intended to be a detailed study into the potential of looking at reserve excesses in a non-profit company.

**Q.** It would help competition in the marketplace if more information was transparent before it was fixed. Do we have the ability, legally, to share with the carriers where their plans rank price-wise among the other plans?

**A.** Currently, as the statute reads, we do not believe summary business data can be released, but we have written to the Department of Administration to ask if that is a correct interpretation and expect to hear back in the next two weeks.

Brian Beutner asked that if summary data is able to be released that it not just be about rate, but also include other factors, such as access, offerings in every county, etc.

**Q.** Do you have a list of top 5 things (hurdles, opportunities, etc.) we need to put in front of the MNsure Board?

**A.** The course of Commerce and the establishment of the Board have been running in parallel. Once we get through this phase and have data we could

create a priority list for the Board to consider. It is also important to keep in mind that while the ultimate customers of MNSure are the residents of our state, that hopefully will benefit from the products being offered, the Plans that voluntarily participate are also customers and should be treated as such as you move forward.

Board members noted this was very helpful in understanding insurance regulation and suggested that, to the extent allowed by law, we should avoid working in siloes and bridge the gap between Commerce regulatory and the Board on a regular basis.

**MNSure  
presentation:  
oversight, privacy,  
security and  
appeals**

*April Todd-Malmlov,  
MNSure Executive  
Director*

April Todd-Malmlov, MNSure Executive Director, and Mike Turpin, MNSure General Counsel, presented on oversight, privacy, security and appeals. Presentation slides are available on the MNSure [website](#).

**Q&A:**

**Q.** Does the ruling of the administrative law judge come to MNSure, and is there action to take?

**A.** That depends on which path of appeals is taken. The contested case processes allows for judicial review and allows for an individual to appeal that within the judicial branch.

**Q.** If MNSure lost, would we have the ability to appeal?

**A.** It depends. There is some ability to appeal your own decision, though it is seldom invoked. There are logistical considerations.

**Action:** provide the Board with a copy of what future rulemaking will be needed.

**Q.** Will applicants or enrollees need attorneys or is this something they can do themselves?

**A.** The goal is that it be user friendly and can be done without assistance, but they certainly have the right to counsel. Working with DHS to provide such an experience so that pro se litigants have the ability to access the system in a meaningful way. We are also working with OAH (Office of Administrative Hearings) to develop new materials so if someone wants to handle things themselves they have all the information necessary.

**Q.** Can navigators/assisters help people with appeals?

**A.** The procedures have been modeled on DHS procedures. There is nothing barring them from bringing a person to help. Issues may arise when MNSure has paid for that person.

**Q.** We are doing more as a state than some other states that also opted for state based exchanges. How was that decided?

**A.** The initial decision was based on timeline and ease of filing an appeal. This is a customer service function that we felt it was important to do here, even though there is a cost involved.

**Q.** Does HHS provide us resources for taking on these responsibilities?

**A.** It's all covered with grant funds now. Starting in 2015 it will need to be covered by self-sustainability.

**Q.** If we turned some of these responsibilities back to HHS would we have to return resources?

**A.** It's not clear at this point what they would charge back.

**Q.** Is there any controversy with this process?

**A.** We involved stakeholders and there was general agreement this made sense and was a good option. The legislature has specifically requested a report on appeals because this is something they want to consider going forward to determine if there are changes they want to see made.

**Q.** How do fact issues get resolved? For example, a middle name was incorrect, which resulted in an incorrect determination.

**A.** We've accounted for that in our process. A staff member will see that on the initial submission.

**Q.** If a broker or navigator or assister is working with someone, will they be subject to the same privacy requirements as state staff?

**A.** The rule requires that any certified assistance partners must comply with all security policies and procedures of MNSure in order to be certified.

**Q.** Will there be user testing on this process? For example, with the Tennessee warning, they may have to click four times to acknowledge different information with similar wording and it will feel repetitive.

**A.** Yes, we do plan to do user testing to see what that user experience is like. We are also testing limited English proficiency to ensure people are understanding what they are reading.

**Q.** A question was asked about the methods of submitting appeals in addition to faxing and mailing.

**A.** The form is electronic and would be submitted online.

#### **Board policies and procedures**

*Brian Beutner, Chair  
and Mary Foarde,  
FriedmannFoarde  
Health Care Law*

#### **The Policy on Advisory Committees and the charters for the Health Industry and Consumer and Small Employer Advisory Committees**

Language was added to the Health Industry Advisory Committee charter, but not the Consumer and Small Employer Committee charter related to committees providing input to the Board prospectively and retrospectively. Mary will add it.

Pete Benner moved to approve the Consumer and Small Employer Committee charter with the change above, the Health Industry Advisory Committee charter as written and the Policy on Advisory Committees as written. Kathryn Duevel seconded and all were approved.

**Public Comment Policy**

Phil Norrgard moved to approve the Public Comment policy. Kathryn Duevel seconded and the motion carried.

**Procurement Policies and Procedures**

Overview: The idea was to try to build a responsible, transparent procure process that would also allow for efficiency especially given the tight timelines that MNSure is working under.

The Board itself needs clear guidance on what their authority is so they are consistent from protest to protest on how they are making decisions.

As we talk about awarding contracts and approving/denying protests we need to consider how being consistent with or more lenient than existing case law would impact the amount of litigation that results (which costs money). We will look at this policy more carefully with that lens. It could result in a new paragraph in section 10.6.

Section 8.4 – The role of the Liaison Officer was discussed. That would be part of an existing position.

**Q.** What are the differences between regular state contract laws and what we are proposing here? Why are these limits more appropriate for our work?

**A.** With regular state contract laws, the simplified mechanism is \$5000 or less. There is a moderate process between \$5000 - \$50,000 that does not require the RFP process. Anything above \$50,000 would require the full RFP process. We just had this conversation with the Department of Administration. In determining these limits, we looked in depth at our existing contracts. The vast majority are over \$250,000. The ones below that are “quick in need.” Given the financing mechanism that we have, this mechanism would allow us to respond quickly to our unique business needs, such as the need for quick consultation services and the ability to respond quickly to consumer and market needs and pressures.

With such a big difference, this needs more discussion and understanding. The need in a startup to be able to have rules turned around quickly and have more latitude early on is understandable. But to the extent that we have such higher numbers relative to the state’s normal process, maybe we ought to be doing that for a shorter amount of time. Perhaps we could revisit them in 12-18 months.

MNSure is open to scrutiny. One of our risks as a public entity is public criticism and lack of confidence.

Commissioner Jesson will discuss this with Commissioner Schowalter to see how comfortable he is with the thresholds.

Mary suggested we learn more about the conversation with the Department

of Administration. They acknowledged that our limits were different from state limits. They recommended lowering them (no recommended level). We explained how we have different needs and the need to be responsive. There were specific comments regarding moderate cost procurement. They asked that we include language that the solicitation be open to the public. It would not require a standard RFP process, but would at least be posted on the website and be made open to the public. That language should be added.

Commissioner Jesson asked that, in addition to that language, more detail be added to the moderate cost procurement section. Also look at and rethink maximums for moderate and low cost. We need to drive down cost.

Oral bids would not be the first choice. Responses should be in writing. Build in more process so there is good solid process behind decisions made.

At the point this data is available from the feds, given the news of the mandate being pushed back a year, Pete Benner would hope the companies to whom we'd award a contract are in compliance with the ACA. He would like to build that in. He would not want contracts awarded to employers who are not providing affordable healthcare to their employees. Mary will work on adding this language.

**Q.** Is "best value" a broadly held concept in state statute?

**A.** Yes, it was lifted directly from the statute (16.C).

**Q.** Is there anything to prevent us from giving preference to Minnesota companies?

**A.** There are ways to do it, but there are possible issues with trade agreement compliance for contracts above a certain amount. Mike Turpin will check.

**Q.** How much will this require MNsure to develop a capacity that it has not had to date?

**A.** We can contract with the Department of Administration for services.

When looking at the moderate and low cost procurement numbers, Tom Forsythe would like the Board to look at the contract modification number as well.

**Q.** How much of a procurement capacity will MNsure need to develop that it has not had to date?

**A.** Much of it happens within the agencies already. Admin. comes into play in the review and also in assisting with negotiations. We can continue to utilize them through interagency agreements.

We had language in the delegation of authority about combining or discombining related projects so we don't write different POs to fit under a threshold. We may want to use similar language here.

There is more work to do on this document. It will be reviewed again in next

week's meeting.

**Draft advisory committee member selection process**

**Q.** Why is compensation provided for the Consumer and Small Employer Advisory Committee but not the Health Industry Advisory Committee?

**A.** Serving on the Health Industry Advisory Committee would be considered part of their jobs so compensation would not be needed, whereas the members of the Consumer and Small Employer Advisory Committee would be leaving jobs to serve. Commissioner Jesson added that compensation would help gain participation from public program enrollees.

**Q.** A question was asked about the timing of the call for applications.

**A.** Appointments must be made after the transfer of authority, but we can ask for submissions prior to the transfer.

**Q.** A question was asked about the placement of the call for applications.

**A.** The call for applications will be posted on the MNSure website. (It was then requested that we also post on Secretary of State's website and send to councils of color as well.) *Note: clarification was made later in the meeting that the Secretary of State website was only mentioned as another mechanism for broad distribution. It was not a suggestion that we use the Secretary of State's process.*

**Q.** Are there unique ways we can open the call for applications to public program enrollees?

**A.** We can work with navigation services, county partners and tribes. We have multiple mechanisms we can use to reach out.

**Q.** Questions were asked about reaching out to rural areas of the state and reimbursing travel costs.

**A.** Travel reimbursement is set by the state and we will include that information in the call for applications.

**Q.** What is the timeline for getting the Advisory Committees in place?

**A.** Working backwards, appointments could be made at the 9/11 meeting, assuming transfer of authority happens before that date. The staff could collect applications and provide summary data at the 8/21 meeting. We need to allow a three week period for submissions.

**Q.** How many applications do we anticipate receiving?

**A.** We are not anticipating more than 1000, based on past experience.

**Q.** Is it a requirement that the committees meet in St. Paul?

**A.** No.

**Q.** Will there be a staff member assigned to facilitating the committee meetings?

**A.** Yes.

Mary Foarde suggested that in order to keep a clear governance line, if the staff will be screening the applications, the Board should, at a minimum, approve - if not design - the criteria. In the next meeting we will determine a list of relevant criteria on which to base decisions. For example, geographic locations.

The Board discussed that it would be helpful, in terms of timing, to move forward with this now. Phil Norrgard moved to approve the advisory committee selection process. Commissioner Jesson seconded and the motion carried.

**Wrap up and any  
new business**

Brian Beutner, Chair

The schedule past September (or at least an idea of what it might look like) was requested. A draft will be provided at the next meeting.

**Adjourn**

Pete Benner moved to adjourn. There were no objections and the meeting adjourned at 3:58 p.m.