

Memo

Date: March 1, 2021

To: Rep. Mike Lefor, Chairman
Employee Benefits Programs Committee

From: Josh Johnson and Drew Rasmussen, Deloitte Consulting LLP

Subject: **ACTUARIAL REVIEW OF PROPOSED BILL 21.0147.01005 (HB1233)**

The following summarizes our review of the proposed legislation as it relates to actuarial impact to the uniform group insurance program administered by NDPERS.

OVERVIEW OF PROPOSED BILL

The proposed bill specifies that NDPERS may not enter or renew a contract for prescription drug coverage, whether contracting directly with a pharmacy benefits manager, providing prescription drug coverage through a self-insurance plan, or contracting with a carrier, unless the contract authorizes the board during the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services. Also, the performance audit must be conducted directly through the pharmacy benefits manager providing the prescription drug coverage.

The proposed bill would not apply to Medicare Part D, which would exempt the NDPERS retirees that have prescription drug coverage through the NDPERS Employer Group Waiver Plan (EGWP).

ESTIMATED ACTUARIAL IMPACTS

PBM audits can uncover processing errors, missed financial guarantees, claim coding errors, etc. that can result in recoupment of funds from the PBM to the plan. Whether there are audit findings and the corresponding magnitude of the financial recoupments or penalties is specific to each separate audit. Due to this, the potential actuarial impact to the uniform group insurance program cannot be quantified in advance of the audit.

Regarding the cost to conduct the audits required by this bill, additional information will be necessary to accurately estimate the costs. The audits described in the bill are more extensive, and may include more parties, than a typical PBM performance audit performed by a plan sponsor. Fulfilling the scope may also require different types of audits. The estimated fee ranges below for different PBM audit components are based on input from Deloitte experts and market knowledge of what other firms might charge.

To: Employee Benefits Programs Committee
Subject: REVIEW OF PROPOSED BILL 21.0147.01005
Date: March 1, 2021
Page 2

That said, these are estimates, the scope would need to be clarified, and bids from consultants and/or PBM audit firms would need to be received to confirm cost estimates.

- Claims/eligibility audit: \$100,000 - \$200,000
- Performance guarantee audit: \$50,000 - \$200,000
- Clinical audit/ fraud waste and abuse audit: \$100,000 - \$250,000
- Rebate audit: \$75,000 - \$150,000
- Validation of Benefits (VOB): \$50,000 - \$75,000

TECHNICAL COMMENTS

NDPERS currently provides prescription drug benefits coverage through two fully-insured insurance arrangements, one for employees and other eligible non-Medicare enrollees and a separate plan for Medicare eligible retirees.

For employees and other eligible non-Medicare enrollees the coverage is provided through the combined medical and prescription drug insurance program insured by Sanford Health Plan (SHP). NDPERS does not have a contract with the PBM that provides pharmacy claims adjudication for this program but rather contracts with SHP who subcontracts with OptumRx for PBM services. Due to this contract arrangement, the following considerations may be consequential to the proposed bill:

- 1) Under the fully-insured contract, NDPERS and SHP agreed to a fixed monthly premium. The contract does not include specific prescription drug pricing terms like a self-insured contract, so an audit of the prescription drug claim adjudication would not be measured against financial guarantees in the contract.
- 2) The proposed bill requires that the contract terms between the carrier (SHP) and the PBM (OptumRx) are provided to the Board. SHP may not be willing to provide this information on the basis that NDPERS is not a party to the contract with OptumRx.
- 3) The proposed bill requires that claim level data be provided that shows the total dollars paid to the PBM by the carrier and the Board. SHP may not be willing to provide this information on the basis that NDPERS is not a party to the contract with OptumRx.
- 4) The proposed bill requires claim level detail that splits out reimbursement components to the pharmacies from the PBM. OptumRx may not be willing to provide this information on the basis that NDPERS is not a party to the contracts they have with network pharmacies.
- 5) The proposed bill requires an accounting and explanation of any recoupments made by the PBM from the pharmacies. OptumRx may not be willing to provide this information on the basis that NDPERS is not a party to the contracts they have with network pharmacies.

To: Employee Benefits Programs Committee
Subject: REVIEW OF PROPOSED BILL 21.0147.01005
Date: March 1, 2021
Page 3

- 6) The proposed bill requires a review of medical prescription drug claim rebates at the national drug code level and verify who retained the rebates for such drugs. Medical drug rebates may be contracted, collected, and administered by the carrier rather than the PBM and it is unclear if the proposed bill would require an audit of the carrier in addition to the PBM.
- 7) The provisions of the proposed bill were not included in the procurement for health insurance services for the biennium starting 7/1/2021. SHP and/or OptumRx may object to the requirements.

