

TESTIMONY OF REBECCA FRICKE

House Bill 1216 – Out-of-Pocket Expenses for Prescription Drugs

Good afternoon, Mr. Chair and members of the committee. My name is Rebecca Fricke and I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I appreciate the committee taking the time to analyze House Bill 1216, which limits the maximum amount that an enrollee can be charged for prescription drugs. I am here today on behalf of the NDPERS Board to provide information in a neutral capacity so the policy makers are able to make an informed decision regarding the bill.

House Bill 1216 requires that when calculating an enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing requirement for a prescription drug under a health benefit plan, that it must include any amount paid by the enrollee, or on behalf of the enrollee by another person. The plan may not vary the out-of-pocket maximum or cost-sharing requirement, or otherwise design benefits in a manner that considers the availability of a cost-sharing assistance program for a prescription drug and stipulates that high-deductible health plans that qualify for health savings account are exempt from this cost-share limit until a member reaches their minimum deductible.

Our consultant estimates that the bill would have a financial impact on the NDPERS health insurance plan and estimates a 1.1% increase in premium, or \$8,697,000, in the 2025-2027 biennium. The main driver of this additional premium is that under our current grandfathered health plan, copayments do not go towards meeting out-of-pocket maximums and this bill would require these copayments to go towards meeting the out-of-pocket maximum. The majority of NDPERS members participate in this plan.

House Bill 1216 was a bill introduced during the interim, with the analysis provided to the Employee Benefits Programs Committee, which gave the bill a favorable recommendation. The consultant analysis provided to the committee is included as an attachment to the end of my testimony (this was bill draft 68 during the interim).

Mr. Chair, I appreciate the committee taking the time to learn more about the impact this bill will have to our state. This concludes my testimony, and I'd be happy to answer any questions the committee may have.

Memo

Date: June 7, 2024

To: Rebecca Fricke - Executive Director, North Dakota Public Employees Retirement System
Representative Austen Schauer - Chair, Legislative Employee Benefits Programs
Committee, North Dakota State Government

From: Tim Egan, Dan Plante, Ford Edgerton, and Karno Sarkar - Deloitte Consulting LLP

Subject: **FINANCIAL REVIEW OF PROPOSED BILL 25.0068.01000**

Deloitte Consulting LLP (Deloitte ¹) was engaged to review the proposed legislation and the potential financial impact to the Uniform Group Insurance Program (Program) administered by the North Dakota Public Employees Retirement System (NDPERS), as well as other considerations that may contribute to the evaluation of the legislation.

The information included in the review relies on data provided by NDPERS, as well as publicly available data and industry studies. From the data provided by NDPERS, some of these data sources were developed by NDPERS, while others were prepared or created by third parties and delivered to NDPERS.

As part of the review, all data was reviewed for reasonableness, but an audit was not performed on the data. To the extent the data contains errors or anomalies that were unknown at the time the data was provided, the analysis may be affected by those issues.

OVERVIEW OF PROPOSED BILL

The Bill creates and enacts a new section to chapter 26.1-36 of the North Dakota Century Code relating to out-of-pocket expenses for health care services. The legislation does the following:

- Defines "cost-sharing", "enrollee", "health benefit plan", and "prescription drug"
- Regulates that an insurer cannot offer a prescription drug plan unless all costs paid by a member or on behalf of a member accrue towards a member's out-of-pocket maximum calculations. This includes any amount paid by any cost-sharing assistance program
- Stipulates that high-deductible health plans that qualify for health savings accounts are exempt from this cost-share limit until a member reaches their minimum deductible

ESTIMATED FINANCIAL IMPACT

Based on the analysis, it is anticipated the proposed legislation will have a financial impact on the Uniform Group Insurance Program. It is estimated the financial impact of the proposed legislation on the Uniform Group Insurance Program is approximately \$8,697,000 in the 2025-2027 biennium ending 6/30/2027.

The current health plans offered by the uniform group insurance program include a "grandfathered" health plan (PPO/Basic Grandfathered Plan) and two "non-grandfathered" health plans (PPO/Basic Non-Grandfathered Plan and High Deductible Health Plan (HDHP)). A health insurance plan earns a "grandfathered" status under the Patient Protection and Affordable Care Act (PPACA) if it retains the plan provisions that existed at the time of PPACA's enactment in 2010. Consequently, "grandfathered" plans may not include certain plan provisions or consumer protections required by the PPACA for plans enacted or amended post-2010.

In the PPO/Basic Grandfathered Plan, an enrollee's pharmacy copayment currently does not accumulate towards their out-of-pocket maximum. The proposed Bill, however, seeks to revise this aspect, requiring that copayments count towards an enrollee's out-of-pocket maximum. It is anticipated this amendment would lead more enrollees to reach their out-of-pocket maximum, thus shifting any additional claim liability to the Uniform Group Insurance Program, which can lead to higher costs.

A majority of the active and pre-Medicare membership resides in the PPO/Basic Grandfathered plan and could be impacted by this change. The non-grandfathered plans already include copayments in the out-of-pocket maximum; as a result, there would be no anticipated change or financial impact to those plans.

The financial impact estimate is based on the expected change to the percentage of prescription drug claims paid by enrollees under the current plan design that does not include copayments in the out-of-pocket maximum and the proposed design (per the proposed Bill) that would include copayments in the out-of-pocket maximum.

The development of the estimated claims impact utilized an internal Medical Rate Model, which includes medical and pharmacy benefit designs and is based on over 40 million active/non-Medicare retiree claims. The Medical Rate Model functions as a claims repayment model, applying detailed input plan provisions against the claims record database, effectively repricing the claims, and producing the expected plan claim payments versus allowed charges.

As a result of the modeling, it is estimated the plan design changes required as a result of the proposed Bill would produce a 1.1% increase to the expected total costs paid by the Uniform Group Insurance Program. This anticipated change to the expected claims costs was applied to the estimated biennium claims cost for actives and pre-Medicare retirees enrolled in the PPO/Basic Grandfathered plan, as developed during the 2022 biennial renewal process and trended to the 2025-2027 biennium.

It is estimated the financial impact of the proposed legislation on the Uniform Group Insurance Program is approximately \$8,697,000 in the 2025-2027 biennium ending 6/30/2027, assuming a 9.4% annual prescription drug trend.

OTHER CONSIDERATIONS

The proposed Bill defines "cost sharing" as any coinsurance, copayment, or deductible under the policy. There may be some payments that would meet the definition that are excluded from the out-of-pocket accumulation. Examples of such are:

- costs for a service or supply furnished by a Preferred Care Provider in excess of such provider's negotiated charge for that service or supply;
- costs related to not pursuing required prior authorization;
- costs for services and supplies determined to be not medically necessary, as determined by the Claims Administrator, for the diagnosis, care, or treatment of the disease or injury

involved. This applies even if they are prescribed, recommended, or approved by the person's attending physician or dentist;

- costs for care, treatment, services, or supplies that are not prescribed, recommended, or approved by the person's attending physician or dentist;
- costs to the extent they are not reasonable charges, as determined by the Claims Administrator

Since the definition of "cost sharing" includes the term "under a health benefit plan" it is assumed that member liabilities for non-covered services as described above would not be required to be included in the out-of-pocket accumulation, and therefore would not constitute a change or result in additional financial impact.

In general, changes to plan design provisions for grandfathered health plans results in the loss of grandfathered status. Since the proposed change increases the value of the PPO/Basic Grandfathered Plan, it would not forfeit its grandfathered status.

Another factor to consider when assessing the proposed Bill's financial impact is the role of cost-sharing assistance programs. A Prescription Drug Copayment Assistance Program is a type of patient assistance program designed to help patients afford the out-of-pocket costs associated with their prescription medications. These programs are typically funded by pharmaceutical companies or non-profit organizations. Examples of these assistance programs include GoodRx, SaveOn, WellRx, among others.

The estimated financial impact did include an estimate of expenses covered by copayment assistance programs, as their management falls outside the purview of the Program. According to the proposed legislation, costs absorbed by cost-sharing assistance programs will also contribute towards a member's prescription drug out-of-pocket maximum. Consequently, a member might experience reduced costs at the point of service when filling a prescription. However, this reduction would not affect the costs incurred by the Program.

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