

TESTIMONY OF REBECCA FRICKE

Senate Bill 2248 – Step Therapy Protocol Limitations for Metastatic Cancer

Good Morning, Madame 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 Senate Bill 2248, which places limitations on step therapy protocols for metastatic cancer. 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.

Senate Bill 2248 does the following:

- Adds definition of “associated condition” for step therapy protocols, along with limitations
- States that health plans may not require a step therapy protocol for coverage of a recommended prescription drug if approved by the US FDA if prescribed to treat the individual’s diagnosis of metastatic cancer or an associated condition
 - Expands previous language which prohibited step therapy solely to the treatment of metastatic cancer
- Complies with NDCC section 54-03-28(3) that health insurance plan mandates first apply to NDPERS.

Our consultant estimates that the bill would not have a financial impact on the NDPERS health insurance plan and therefore, a fiscal note is not provided. Currently, the plan does not have any step therapy protocols in place that require members to use a certain formulary before moving to a provider’s recommendation.

A possible amendment that I ask be considered is to exclude the NDPERS Medicare Part D Plan. This amendment is attached to my testimony. Medicare Part D Plans are regulated by the Centers for Medicare and Medicaid Services and have specific step therapy protocols that must be adhered to.

Senate Bill 2248 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 (please note this was bill draft 124, and then rewritten as bill draft 547, during the interim session).

Madam 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.

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2248

Introduced by

Senators Barta, Dever, Lee

Representatives D. Ruby, Weisz, Louser

1 A BILL for an Act to amend and reenact section 19-02.1-16.3 of the North Dakota Century
2 Code, relating to step therapy protocols; to provide for a report to the legislative assembly; to
3 provide for application; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 19-02.1-16.3 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **19-02.1-16.3. Pharmacy benefits managers - Step therapy protocols - Limitations.**

8 1. As used in this section:

9 a. "Associated condition" means a symptom or side effect associated with
10 metastatic cancer or its treatment and which, in the judgment of the health care
11 practitioner, further jeopardizes the health of an individual if left untreated.

12 b. "Metastatic cancer" means cancer that has spread from the primary or original
13 site to lymph nodes, nearby tissues, or other parts of the body.

14 ~~b.c.~~ "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.

15 ~~e.d.~~ "Step therapy protocol" means a protocol requiring an individual use a drug, or
16 sequence of drugs, other than the prescription drug, or sequence of prescription
17 drugs, the individual's health care provider recommends for the individual's
18 treatment, before the pharmacy benefits manager or health plan allows coverage
19 for the recommended prescription drug, or sequence of prescription drugs.

20 2. A pharmacy benefits manager or a health plan may not require a step therapy protocol
21 for coverage of a recommended prescription drug, or sequence of prescription drugs,
22 approved by the United States food and drug administration if:

- 1 a. The recommended prescription drug, or sequence of prescription drugs, is
2 prescribed to treat the individual's diagnosis of metastatic cancer or an
3 associated condition; and
- 4 b. The use of the recommended prescription drug, or sequence of prescription
5 drugs, is consistent with the United States food and drug administration-approved
6 indications or is supported by peer-reviewed medical literature.
- 7 3. This section does not require coverage of a nonformulary prescription drug.
- 8 4. This section does not apply to the Medicare Part D prescription drug coverage plan.

9 **SECTION 2. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STEP THERAPY**

10 **PROTOCOLS FOR ASSOCIATED CONDITIONS OF METASTATIC CANCER - REPORT TO**

11 **LEGISLATIVE ASSEMBLY.** Pursuant to section 54-03-28, the public employees retirement
12 system shall prepare and submit for introduction a bill to the seventieth legislative assembly to
13 repeal the expiration date for this Act and to extend step therapy protocols for associated
14 conditions of metastatic cancer to all group and individual health insurance policies. The public
15 employees retirement system shall append a report to the bill regarding the effect of the step
16 therapy protocols for associated conditions of metastatic cancer on the system's health
17 insurance programs, information on the utilization and costs relating to the coverage, and a
18 recommendation regarding whether the coverage should be continued.

19 **SECTION 3. APPLICATION.** This Act applies to health insurance benefits coverage
20 provided by the uniform group insurance program under chapter 54-52.1 which begins after
20 June 30, 2025, and which does not extend past June 30, 2027.

21 **SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2027, and after that
22 date is ineffective.

Memo

Date: June 12, 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 25.0124.01000**

Deloitte Consulting LLP (Deloitte 'I') 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 amends and reenacts sections 19-02.1-16.3 and 26.1-36.6-03 of the North Dakota Century Code relating to step therapy protocols and self-insurance health plans. The amended legislation does the following:

- Amends section 19-02.1-16.3 to include the definition of an "associated condition"
- Restates the definitions of "metastatic cancer", "pharmacy benefits manager", and "step therapy protocol"
- Amends current regulation on step therapy that prohibits the use of step therapy protocols for any member seeking prescription drugs to treat metastatic cancer or an associated condition
 - Previous language limited to prohibition of step therapy solely to the treatment of metastatic cancer

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Date: June 12, 2024

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ESTIMATED FINANCIAL IMPACT

Based on the current offerings and the stipulations within the current legislation, it is anticipated the proposed legislation will have no impact on the Uniform Group Insurance Program. The Uniform Group Insurance Program currently does not have any step therapy protocols in place that require members to use a certain formulary before moving to a provider's recommendation.

OTHER CONSIDERATIONS

The Uniform Group Insurance Program's healthcare vendor, Sanford Health, currently does not have any step therapy protocols in place. However, Sanford does partner with a specialty vendor, Eviti, to assist cancer patients in navigating their care. Eviti utilizes up-to-date clinical and medical oncology guidance or evidence to assist oncology patients in their care journey. This includes collecting prescription drug data and providing recommendations on effective medications to support cancer diagnoses. However, Eviti is not a step therapy vendor; the objective of Eviti is to assist in the care plan, not navigate to less costly treatments.

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