

TESTIMONY OF REBECCA FRICKE

Senate Bill 2249 – Step Therapy Protocol Exceptions

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 2249, which relates to step therapy protocol exceptions. 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 2249 does the following:

- Adds new section to NDCC 19-02.1 for “step therapy protocol” and “step therapy protocol exceptions”
- Sets criteria & timeframe for review and approval of a request for a step therapy protocol exception
- 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.

A possible amendment that we 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 2249 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 and federal legal analysis provided to the committee is included as an attachment in my testimony (please note this was draft bill 138 during the interim session).

Madame 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. 2249

Introduced by

Senators Barta, Sickler

Representatives Bahl, Karls, McLeod

1 A BILL for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota
2 Century Code, relating to step therapy protocol exceptions; to provide for a report to the
3 legislative assembly; to provide for application; and to provide an expiration date.

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

5 **SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Step therapy protocol exceptions.**

8 1. As used in this section:

9 a. "Step therapy protocol" has the same meaning as in section 19-02.1-16.3.

10 b. "Step therapy protocol exception" means a step therapy protocol is overridden in
11 favor of coverage of the prescription drug selected by a health care professional
12 as provided in subsection 2.

13 2. A health carrier, health benefit plan, pharmacy benefits manager, or utilization review
14 agent, shall approve a request for a step therapy protocol exception if:

15 a. The prescription drug required under the step therapy protocol is contraindicated
16 according to the drug manufacturer's prescribing information for the drug.

17 b. Due to a documented adverse event with previous use or a documented medical
18 condition, including a comorbid condition, the prescription drug is likely to:

19 (1) Cause an adverse reaction to a covered individual;

20 (2) Decrease the ability of a covered individual to achieve or maintain
21 reasonable functional ability in performing daily activities; or

22 (3) Cause physical or mental harm to a covered individual.

- 1 c. The prescription drug required under the step therapy protocol is expected to be
2 ineffective based on the known clinical characteristics of the covered individual,
3 including the individual's adherence to or compliance with the plan of care, and:
4 (1) The known characteristics of the prescription drug regimen as described in
5 peer-reviewed literature or in the manufacturer's prescribing information for
6 the drug;
7 (2) The health care professional's medical judgment based on clinical practice
8 guidelines or peer-reviewed journals; or
9 (3) The covered individual's documented experience with the prescription drug
10 regimen.
11 d. While under the covered individual's current or previous health benefit plan, for a
12 period of time to allow for a positive treatment outcome, the covered individual
13 had a trial of a therapeutically equivalent dose of the prescription drug under a
14 step therapy protocol, and that trial was discontinued by the covered individual's
15 health care professional due to lack of effectiveness.
16 e. While under the covered individual's current or previous health benefit plan, the
17 covered individual received a positive therapeutic outcome on a prescription drug
18 selected by the covered individual's health care professional for the medical
19 condition under consideration.
20 3. A health carrier, health benefit plan, pharmacy benefits manager, or utilization review
21 agent, shall:
22 a. If the prescription drug is a covered prescription drug under the covered
23 individual's health benefit plan, upon approval of a request supporting a step
24 therapy protocol exception, authorize coverage for the prescription drug selected
25 by the covered individual's health care professional.
26 b. Except as provided in subdivision c, within five calendar days after the receipt of
27 a request supporting a step therapy protocol exception, make a determination to
28 approve or deny the request.
29 c. Within seventy-two hours after the receipt of an emergency or urgent care
30 request supporting a step therapy protocol exception, make a determination to
31 approve or deny the request.

1 4. If a health carrier, health plan, pharmacy benefits manager, or utilization review agent
2 fails to respond to a request supporting a step therapy protocol exception as provided
3 in subdivisions b or c of subsection 3, the request is deemed approved.

4 5. This section does not apply to the Medicare Part D prescription drug coverage plan.

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

6 **PROTOCOL EXCEPTIONS - REPORT TO LEGISLATIVE ASSEMBLY.** Pursuant to section

7 54-03-28, the public employees retirement system shall prepare and submit for introduction a

8 bill to the seventieth legislative assembly to repeal the expiration date for this Act and to extend

9 step therapy protocol exception requirements to all group and individual health insurance

10 policies. The public employees retirement system shall append a report to the bill regarding the

11 effect of the step therapy protocol exception requirements on the system's health insurance

12 programs, information on the utilization and costs relating to the requirements, and a

13 recommendation regarding whether the coverage should be continued.

14 **SECTION 3. APPLICATION.** This Act applies to health benefits coverage that begins after

14 June 30, 2025, and which does not extend past June 30, 2027.

15 **SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2027, and after that

16 date is ineffective.

Memo

Date: June 14, 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 25.0138.01000**

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 would create and enact a new section to chapter 19-02.1 of the North Dakota Century Code relating to step therapy protocol exceptions. The legislation does the following:

- Defines "step therapy protocol" and "step therapy protocol exception"
- Regulates that health plans will approve an exception for step therapy if:
 - The drug required by the step therapy program would cause a contraindication
 - Comorbidities would render the recommended drug to be ineffective or cause harm
 - The recommended drug is discontinued by provider
 - The recommended drug has been tried and tested but with no positive outcomes
- Establishes the timeline for how step therapy programs shall authorize drugs and appeals
 - Sets up automatic triggers for approval if timeline is not maintained

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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.

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