Gallagher Benefit Services, Inc.
A Subsidiary of Arthur J. Gallagher & Co.

July 28, 2008

Representative Bette Grande, Chair
Employee Benefits Program Committee
State of North Dakota
Bismarck, North Dakota

DRAFT

Re: North Dakota Senate Bill 90033.03

Dear Representative Grande,

Introduction

The North Dakota Public Employees Retirement System (NDPERS) has directed Gallagher Benefit Services (GBS) to review and analyze Senate Bill 90033.03 (the Bill). Our analysis is to be limited in scope to only the potential financial, administrative and technical compliance impacts to NDPERS. We are not to assess the impact of the Bill on the State of North Dakota, private insurers, employers, individuals or medical providers. Evaluating the potential impact to those constituencies is beyond the scope of our engagement and would require extensive additional consulting, financial, legal and actuarial resources.

Bill Summary

As drafted, the Bill includes the following key provisions.

- It would add a new subgroup under the Uniform Group Insurance Plan for "Healthy North Dakota insurance coverage." (Section 1)
- It would establish a Healthy North Dakota Authority, Board and Executive Director. (Section 2)
- The Healthy North Dakota Authority would offer coverage to every eligible individual in North Dakota under the age of 65 with some very limited exceptions. (Section 4)
- It would establish a funding mechanism from employers, employees, the self employed and all other eligible individuals. (Section 11)

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- It would establish a standard Healthy North Dakota health benefit plan design (including prescription drugs) for all covered plan participants. (Sections 6 and 7)

- It would establish mandated individual health care provider and network selection and reimbursement methodologies. (Section 8)

- It would establish an Office of Outreach, Enrollment and Advocacy under the Authority. (Section 5)

Financial Impact

Projecting the overall monetary impact to NDPERS and its plan participants cannot accurately be done without additional detailed analysis. However, we do point out the following areas where the Bill is likely to affect NDPERS and its plan participants from a direct or indirect financial perspective.

- The Bill does not exempt the State or local governments from required funding of the Authority. As written, it appears that the State would need to continue its required funding of the existing NDPERS health plan while providing the required employer funding to the Healthy ND plan. Consequently, the State would be required to make double health plan payments for its employees.

- State employees currently do not contribute towards the cost of their medical/Rx benefit plan. The Bill does not appear to exempt State employees from the Authority's funding requirements. If required to participate in the Healthy ND plan, State employees would then be required to contribute towards the cost of coverage, which would be a dramatic change from the current state.

- Local governments can currently voluntarily elect to participate in the NDPERS health plan. Their premiums help support the administrative overhead costs of NDPERS. Also, their added participant volume assists NDPERS by adding leverage for its carrier's negotiations with medical providers The Bill appears not to exempt governmental employers from the Authority's funding requirements. If the Bill was enacted, local governmental plans would likely withdraw from NDPERS to avoid double premium payments. This would result in a reduction in premium income for NDPERS with a potential negative impact in financial support for administrative functions and reduced leverage with providers.

- Eligible State retirees receive a health care credit to subsidize their health care premiums. The Bill would require pre-Medicare retirees to fund the Healthy ND plan in addition to having to pay premiums to NDPERS. To avoid double payments, these retirees would likely drop the NDPERS plan and therefore forfeit their earned health care credit. Under current NDPERS rules, they could re-enroll in that plan when they reach age 65 and no longer eligible for Healthy ND.

- To the extent pre-Medicare retirees drop NDPERS coverage, its GASB 45 implicit subsidy liability would decrease. However, the liability would likely transfer to the Healthy ND plan if, as it appears, the retirees would pay the same blended premium rates as active employees and individuals.

- Benefits contained in the Bill are much richer than those currently offered under the NDPERS health plan. If the State is required to offer the Health ND plan rather than NDPERS, its costs (less required employee contributions) may increase. Further actuarial study would be required to confirm this possibility. Total mental health parity, the mandated no-cost benefits and an enhanced prescription drug plan all could cause the Healthy ND plan to cost more than NDPERS. If the Bill allowed State and local governments the option to remain in the NDPERS plan without having to fund Healthy ND, this potential cost differential would provide an incentive for more local governments to join NDPERS due to its relative lower costs.

Technical Compliance and Administrative Impact

In Section 1.12, the Bill addresses any concerns that the Health North Dakota plan would jeopardize NDPERS governmental status under the federal ERISA law, by stating "the [NDPERS] board shall apply to the federal government to receive exempt status under that Act [ERISA] or other applicable federal law." Therefore the Bill would not be enacted without federal confirmation that the Healthy North Dakota subgroup would not change the current governmental status of the NDPERS health plans.

The ERISA issue above aside, the Bill would create administrative and technical compliance challenges for NDPERS, including:

- If State and local governmental employers did have to fund Healthy ND, they would have little financial choice but to withdraw from the current NDPERS health plans (to the extent allowed by law). NDPERS would still have a role in administering existing ancillary coverages such as life insurance, voluntary dental, voluntary vision and voluntary long term care insurance. It would also continue to have the responsibility to oversee health benefits for over age 65 retirees. NDPERS's reduced scope of responsibility would likely require a reassessment of staffing and other resources needed to administer a diminished operation.

- Under the Bill, State and local governmental employers and employees would be required to interact with two separate governmental agencies administering employee benefits, NDPERS and the Authority. The Authority would oversee medical/Rx benefits and NDPERS all other coverages. Not only would this increase the administrative complexity for public employees and employers, it could increase administrative expenses as dual eligibility, customer service and payroll functions could be necessary.

- The proposed implementation schedule in the Bill is extremely aggressive. If approved, the Bill would become effective January 1, 2009. NDPERS and the Authority would have until January 1, 2010 to fully implement the Healthy ND plan, select the insurance carrier(s), negotiate with and establish provider networks. It is questionable to us whether this timeline is realistic.
- Because the Bill creates the Healthy ND plan as a sub-group of the existing Uniform Group Insurance Plan operated by NDPERS, it is our assumption that the plan would need to be insured rather than self-funded. If this assumption is correct, then the offering of the plan is contingent upon one or more insurance companies willing to underwrite the plan. As designed, finding an insurer willing to underwrite the plan, especially considering its relative richness and its universal availability, may prove very problematic.

Summary and Conclusions

From a strictly NDPERS perspective, the Bill would create a number of financial and administrative challenges. By far the most critical financial issue would be the impact on PERS from the Bill's apparent requirement that State and local governments must participate in the funding of the new Healthy North Dakota plan. If so, the State would have to make dual payments for employee health care, one to NDPERS as currently required by statute and another to the new Authority. Clearly, this would untenable for the State. Local governments would be forced to withdraw from the NDPERS uniform group health plan to avoid dual payments for their employees. The loss of these non-State health plan participants could have a financial impact on the overall operations of NDPERS.

For State employees, the Bill would also have a profound financial impact. It would introduce mandatory employee funding contributions for employees that currently do not pay any of their medical/Rx plan premiums. This could create employee morale, not to mention recruitment and retention, challenges for the State.

Pre-Medicare retirees, under the Bill, would be faced a similar financial dilemma. Either they participate in the Healthy ND plan, which they are required to fund, and lose their earned retiree credit. Or, they stay in the NDPERS plan and use their earned retiree credit while continuing to contribute to Healthy ND.

A large unknown to NDPERS if the Bill passes is the financial impacts on its benefit operations if its responsibilities are scaled back to only include ancillary and Medicare retiree coverages. Organizational changes would likely occur.

Administrative costs for Medicare retirees and ancillary plan participants probably would increase as fixed expenses are spread over a smaller participant population.

Financial concerns aside, the Bill's implementation schedule is extremely aggressive. A January 2009 effective date would give NDPERS little time to plan and prepare for the many complex organizational and administrative changes that it would need to make to accommodate the Bill's requirements. Further, having the new Healthy ND plan and networks in place and fully operational for January 2010 would be challenging, to say the least and subject existing NDPERS plan participants to any transitional difficulties that may occur with such an aggressive timeline.

Although, as stated, the scope of our Bill analysis is limited to direct and indirect impacts on NDPERS, it would have a profound effect on the State's private sector insurance market and medical providers as well. Because this Bill touches so many different constituencies in North Dakota, a January 2009 effective date may not be at all practical. Much more time is needed to thoroughly assess the financial, social and administrative consequences of the Bill.

GBS is not licensed to practice law. Nothing in this memo should be construed as legal advice. As with all matters regarding complex legislation, qualified legal counsel should be consulted.

Thank you for the opportunity to review this Bill. Please let us know if we can provide any additional information or assistance.

Sincerely,

William F. Robinson, Jr.

William F. Robinson, Jr.
Area Senior Vice President