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September 10, 2010  
Representative Bette Grande, Chair  
Legislative Employee Benefits Committee  
State Capital  
600 East Boulevard  
Bismarck, North Dakota 58505-0360

Dear Representative Grande:

**RE: REVIEW OF PROPOSED BILL 10036.0200 EXPANDING THE UNIFORM "GROUP INSURANCE PROGRAM" TO ALLOW PARTICIPATION BY PRIVATE SECTOR EMPLOYEES AND CERTAIN PRIVATE CITIZENS BETWEEN THE AGES OF 50 AND 65**

The following summarizes the proposed legislation as well as our assessment of the financial and technical impacts of the bill.

**OVERVIEW OF PROPOSED BILL**

As proposed, this bill would modify the State Century Code relating to the expansion of the uniform group insurance program as follows:

- Extend the benefits of the uniform group insurance program to allow permanent employees, between the ages of 50-65, of private sector employers to participate in the uniform group insurance program.
- Extend the benefits of the uniform group insurance program to allow temporary employees, between the ages of 50-65, of private sector employers to participate in the uniform group insurance program.
- Extend the benefits of the uniform group insurance program to allow certain private citizens, between the ages of 50-65, to participate in the uniform group insurance program.
- Allow licensed agents to sell the uniform group insurance and receive commissions for sales.
- Authorize NDPERS Board to add up to three full-time equivalent positions and appropriate up to \$300,000 to implement the proposed changes to the uniform group insurance program.
- Requires the Board apply for and receive exempt status under the Employee Retirement Income Security Act to allow expansion of the uniform group insurance program. Further the board must determine that the utilization of medical underwriting requirement and risk-adjusted premiums does not violate the Health Insurance Portability and Accountability Act (HIPAA) and enter a contract with an insurer to provide coverage.

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### **EXPECTED FINANCIAL IMPACT**

The bill expands the uniform group insurance program which is currently fully insured with Blue Cross Blue Shield of North Dakota ("BCBSND") for medical and hospital coverage. As outlined the uniform group may be divided into separate subgroups at the discretion of the board. If the separate subgroups would be allowed to have stand alone premiums based on their expected costs, the financial impact to the existing PERS plan would be limited to the additional administrative costs to oversee the plan, operate much like an insurance company, and any required changes to comply with the new legislation (e.g. loss of grandfathered status).

The board has the authority to have one subgroup for all private sector employee and private citizen group medical and hospital benefits coverage. Each of these distinct categories has unique underwriting and legal standards with regards to medical underwriting requirements and risk adjusted premiums. This complexity will make it very difficult to combine all three categories into one subgroup for premiums and find an insurer willing to cover the risk.

#### Permanent Employees of Private Sector Employers

Section 4 of the bill would allow private sector employers to extend the benefits of the uniform group insurance program to a subset of its permanent employees who are at least 50 but not reached the age of 65, with a minimum participation period of sixty months. The employer may determine the amount of the employer's monthly contribution and the board may apply medical underwriting requirements and risk-adjusted premiums to an employer seeking to obtain coverage. As discussed below, HIPAA essentially eliminates the ability for a group health plan to use any individual underwriting for evaluating individual prospective plan participants. However, group underwriting and risk adjusted premiums are permitted.

#### Temporary Employees of Private Sector Employers

Section 5 of the bill would allow private sector employers to extend the benefits of the uniform group insurance program to a temporary employee who is at least 50 but not reached the age of 65. Temporary employees are traditionally excluded from group coverage due to the potential adverse selection. The temporary employee shall be responsible for premiums and the board may deny coverage if the risk of the individual is undesirable for the program. HIPAA portability and non-discrimination standards do not apply to individual coverage. However, insurance carriers can individually underwrite all applicants for underlying risk characteristics and to evaluate individuals for acceptance into the program. This requirement would be labor intensive and require the uniform group insurance program to operate much like a traditional insurance company.

#### Participation by Private Citizens

Section 6 of the bill would allow an individual who is at least 50 but not reached the age of 65 to participate in the uniform group insurance program. The temporary employee shall be responsible for premiums and the board may deny coverage if the risk of the individual is undesirable for the program. Once again, HIPAA portability and non-discrimination standards do not apply to individual coverage. However, individual insurance carriers can individually underwrite all applicants for underlying risk characteristics and to evaluate for acceptance into the program. This requirement would be labor intensive and require the uniform group insurance program to operate much like a traditional insurance company.

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The bill did appropriate the sum of \$300,000 and authorized three additional full-time positions to implement this act. It should be noted that administrative costs for individual plans are significantly higher than for group plans. Without a study to determine if the additional funding and staff allocations would be adequate to cover the added administrative services required due to the expansion of the program, it is difficult to determine if this funding level is adequate. An additional study is suggested to estimate the administrative requirements to PERS if this bill progresses.

For the biennium beginning July 1, 2011, PERS group health insurance plan intends to be a "Grandfathered Plan". Section 1251 of the Patient Protection and Affordable Care Act ("PPACA") exempts from certain of the PPACA's group health plan reforms any group health plan in existence on March 23, 2010 ("grandfathered plans"). Losing grandfather status means losing the benefit of the exemption and subjecting the plan to additional requirements, such as mandatory coverage for certain preventive services, nondiscrimination rules for fully-insured plans, and special claims procedure requirements.

Interim final regulations (dated June 17, 2010) state that if the principle purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

If PERS were to lose its grandfathered status the following additional mandates may apply (subject to final rules and regulations):

1. Meet the rules on deductible maximums and out of pocket maximums

We believe that this will have little or no impact since the maximums would most likely align with the levels associated with HSA qualified plans.

2. Required coverage of preventive services with no cost sharing (BCBS has indicated that complying with this could cost between \$10 – \$14 per contract per month)

As we understand it, the plan would need to cover additional amounts beyond the \$200 limit currently in place for this benefit. We believe that this will have a cost impact. We don't have the level of claim detail that BCBS has to develop such an estimate at this time. We would be happy to review the information and cost development by BCBS.

3. Internal and external appeal process

We believe that this should be of minimal cost impact, but would increase administrative costs for PERS.

4. No prior authorization for ob-gyn visits

Based on our experience with clients that allow ob-gyn visits without prior authorization, we suspect that this would have minimal cost impact.

5. Emergency care must have same payment in and out of network, authorization

Again, we suspect that the cost impact will be minimal given that it is for emergency care only.

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6. Nondiscrimination in both insured and self-insured plans

Should not be an issue for the PERS plan.

7. Coverage of treatment for those in clinical tests

We would expect that this would have some cost impact, but depends upon the future guidance on clinical trial qualification and coverage levels.

**ADDITIONAL FINANCIAL IMPACTS**

Adverse risk selection is an issue that must be considered when changing eligibility requirements. Adverse risk selection results when individuals or employer groups choose to participate in a plan based upon the knowledge that their individual or group claims will be high. These claims, especially for older and temporary workers, are generally higher than that of the average covered PERS population. The adverse selection is further fueled when individuals or groups can enter and depart from the plan.

The proposed bill provides for a number of safeguards against adverse risk selection:

☐ Minimum requirements as established by the PERS Board

The Board is permitted to establish minimum requirements to reduce the potential for adverse selection. These would likely follow established insurance practices such as experience rating, medical underwriting and the authority to deny coverage to private employers or individuals who exceed the risk profile of the existing PERS group.

☐ Minimum participation period of 60 months for private sector employer groups

Eligible employer groups would be expected to participate for a minimum of 60 months. However, if a group withdraws from the plan prior to completing the 60-month period, the employer would be liable for additional premium payments to cover expenses incurred by the program exceeding the premium income received. This safeguard will make the PERS plan financially “whole” for those employers attempting to leave in a “deficit” position. However, this safeguard does not protect the PERS plan from the risk of premature withdrawal by better-than-average cost employers. In other words, “healthy” employer groups could leave for lower premiums elsewhere.

☐ Health Insurance Portability and Accountability Act (HIPAA)

We do not feel this bill will have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional members will not increase the overall risk profile of the existing plan. The bill as written states that employers/employees/uninsured individuals may participate in the uniform group insurance program “subject to minimum requirements established by the board” and “apply medical underwriting requirements and risk-adjusted premiums.

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However, in 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, the nondiscrimination rules severely restricted the use of medical underwriting and risk-adjusted premiums for group healthcare coverage. Therefore, the State needs to understand whether HIPAA prohibits PERS from using medical underwriting and risk adjusted premiums when adding the new groups to the uniform group insurance program.

Due to the participation requirement of age 50 to 65 years of age for private employees and private citizens, the risk status of the proposed new participants in the uniform group program is likely to be significantly greater than the current program's risk status requiring higher premiums. Typically a 50-65 year old employee will incur claims expenses 50-70% higher than an average employee. The result will be an increase in the total risk of the program, which translates into an increase in average claims cost and potentially administrative fees. In other words, you can expect that premiums for this 50-65 year old group will be 50-70% higher than the existing NDPERS premiums and could require a significant increase in administrative fees.

#### **TECHNICAL COMMENTS**

The proposed bill includes a provision for the Board to operate the group insurance program as a governmental plan provided that the Board applies to the federal government and receives exempt status under the Employee Retirement Income Security Act (ERISA) for the uniform group insurance plan. Such a waiver would be required to allow a governmental plan to cover non-governmental entities and private citizens without losing its status as a governmental plan. ERISA section 3(32) and Internal Revenue Code section 414(d) define a governmental plan as one established by a governmental unit for its employees. If PERS is unable to get a waiver it is our interpretation that the provisions of this bill would not be effective.

Section 3 of the bill proposes providing "private sector employees and private citizens medical and hospital benefits coverage", however there is no mention of prescription drug, dental or vision coverage. This should be clarified with the bill's sponsor.

Section 10 of the bill requires the board to enter a contract with an insurer to provide coverage pursuant to this Act. This act requires the uniform group insurance program to basically act as an insurance carrier, with underwriting responsibilities for private employers, temporary employees and individuals. We believe it will be a challenge to find an insurer willing to provide the necessary coverage pursuant to this Act.

With the recent enactment of PPACA, State-based health exchanges will become available for individuals and small groups to purchase health insurance by 2014. It is unclear how a group product for groups and individuals between the ages of 50-65 would co-exist with the products that may be offered on the exchanges. This should be considered as this bill moves forward.

Finally, we have one last technical comment regarding state premium taxes. We would expect that premiums for private sector employees would not be exempt from Section 26.1-03-17 NDCC. This should be clarified within the bill.

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Sincerely,

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Patrick L. Pechacek, CEBS  
Director

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Peter Roverud  
Senior Manager

CC: Sparb Collins, NDPERS

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