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John Hoeven, Governor
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North Dakota Department of Human Services
 Information for the:
 Employee Benefits Program Committee
 Considerations Regarding Bill No. 38

September 21, 2010

I am unable to be here today because I am attending a meeting on the implementation of the federal health care reform legislation.

The following considerations are offered by the Department of Human Services with regard to Bill No. 38 "Powers and Duties of the Department of Human Services".

In preparing the following list of considerations, I consulted with the Centers for Medicare and Medicaid Services. If requested, I would be available for the October 26, 2010 meeting of the Employee Benefits Programs Committee to address any questions that you may have.

Bill No. 38 would require the Department of Human Services to negotiate with state and federal entities to purchase public employees retirement system health insurance coverage for each medicaid-eligible person in lieu of medicaid coverage.

CONSIDERATIONS

If a State chooses to participate in the Medicaid program to receive Federal Financial Participation (FFP), a State must at least provide a set of mandatory services to at least a group of mandatory eligibility groups. Section 1905(a) of the Social Security Act and federal regulations at 42 CFR 440, specify a list of services that states must cover in Medicaid.

Sections 1905(a)(4)(B) and 1905(r) of the Act and federal regulations at 42 CFR 441 subpart B, prescribes that states must provide Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for individuals under age 21. Therefore any limit or restriction on a public employees plan may not be applied to Medicaid children. Because of the EPSDT provision, Medicaid children must receive all medically necessary services.

In order for the state to use one single delivery system that limits Medicaid eligible individuals' freedom of choice required in section 1902(a)(23) of the

Act, a state would need a 1915(b) waiver or a special managed care authority pursuant to section 1932(a) for State Plan authority. In order to grant this authority, CMS would have to review the State's proposal and assess whether it meets all requirements for this type of waiver/State Plan authority (access, quality, enrollee rights and protections, provider assurances, etc).

The Deficit Reduction Act of 2005 added a new flexibility for states to provide a Benchmark Package. Under the authority of section 1937 of the Act, states can provide a more reduced benefit package to certain populations. The groups of Medicaid clients that may not be enrolled into a Benchmark package are: mandatory pregnant women, blind or disabled individuals, nursing home patients, hospice patients, special needs/medically fragile individuals (such as those individuals enrolled in the Children with Disabilities or Workers with Disabilities programs), or foster care children. Additionally, children covered in this authority must be provided all EPSDT services as a wrap-around package.

Medicaid has requirements related to cost sharing that would not necessarily match the cost sharing in the Public Employees Retirement System insurance coverage. For example, Medicaid copayments cannot be applied to children, pregnant women, and others. In addition, cost sharing cannot exceed certain limits, based on family income.

Designing and implementing this arrangement will take no less than one year; however, with the extra effort underway in the Department of Human Services to implement the Medicaid Management Information System (MMIS) in June 2012 and to implement the requirements of the Medicaid Expansion for health care reform, one year is likely not enough time to accomplish all of the necessary tasks to implement such a significant change. Also, because not all of the Medicaid population would be able to enroll in the Benchmark coverage (public employees retirement system insurance coverage), the Department does not expect the administrative requirements of the Medical Services Division to decrease if this bill were to become law.

Again, I would be available, if needed, to attend the October 26, 2010 meeting to answer questions.

Sincerely,


Maggie D. Anderson, Director
Medical Services Division