

## Memo

**Date:** January 5, 2023

**To:** Scott Miller  
Executive Director, North Dakota Public Employees Retirement System

**From:** Tim Egan & Dan Plante & Drew Rasmussen, Deloitte Consulting LLP

**Subject:** **ACTUARIAL REVIEW OF PROPOSED BILL 23.0547.02000**

The following summarizes our review of the proposed legislation as it relates to the financial impact to the uniform group insurance program administered by NDPERS as well as other considerations that may contribute to the evaluation of the legislation.

### OVERVIEW OF PROPOSED BILL

The bill modifies coverage of telehealth services. The bill updates definitions and provisions related to telehealth services, and in so doing, aligns the North Dakota Century Code to accommodate current technology, health plan and provider operations, and developing market practices.

### ESTIMATED FINANCIAL IMPACT

Section 1 of the bill updates the language in the legislation in the following provisions. Deloitte does not expect a financial impact on the uniform group insurance program as a result of the updates to the language as updates are primarily providing more specificity around telehealth visits and the technology used to enable such services.

- The term "E-visit" and corresponding definition is removed (page 1, lines 10-11). The updated definition of Telehealth is inclusive of the "E-visit" and the term "E-visit" is removed from the text of the proposed legislation.
- The term "Nonpublic facing product" and corresponding definition is removed (page 1, lines 20-21). The term is removed from the text of the proposed legislation.
- The term "Secure connection" and corresponding definition is removed (page 2, lines 3-6).
- The term "Store-and-forward technology" is clarified to be "asynchronous electronic transfer or transmission of a patient's medical information or data from an originating site to a distant site for the purpose of diagnostic and therapeutic assistance in the care of a patient" (page 2, lines 7-14).
- The definition of Telehealth:
  - is clarified to mean "delivery of health services or consultations through the use of real-time two-way interactive audio and visual communication to provide or support

To: Scott Miller, Executive Director, North Dakota Public Employees Retirement System  
Subject: REVIEW OF PROPOSED BILL 23.0547.02000  
Date: January 5, 2023  
Page 2

health care deliver and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care" (page 2, lines 16-24)

- is clarified to include "the application of secure video conferencing, store-and-forward technology, and synchronous interactions between a patient located at an originating site and a health care provider located at a distant site" (page 2 line 25-30)
- is clarified to include "audio-only communication between a health care provider and a patient" (page 3, line 1-2) however section 2e. on page 4, lines 7-9 specify that audio-only communication is not required to be covered unless the communication was a scheduled appointment and the standard of care for that service can be met through the use of audio-only communication
- is clarified to not include "communication between health care providers (or patient) which consists solely of a telephone conversation, electronic mail, or facsimile transmission" (page 3, line 3-8)
- is clarified to not include telemonitoring services (page 3, line 9). A definition of "Telemonitoring" is added (page 3, lines 13-18) and includes remote monitoring of clinical data.
- The term "Virtual check-in" and corresponding definition is removed (page 3, lines 10-12). The term is removed from the text of the proposed legislation.

Section 2 clarifies the role of the insurers and health care providers with respect to telehealth services (page 3, line 23-30 and page 4, line 1-11). Deloitte does not expect a material financial impact on the uniform group insurance program as a result of the clarifications. The use of medical management techniques or other administrative requirements may have some effect on program cost if they result in changes to in-person utilization.

- A health care provider is not required to provide telehealth services if the provider determines the delivery of a health service through telehealth is not appropriate or if a patient chooses not to receive a health care service through telehealth (2a., page 3, lines 23-26)
- An insurer may establish criteria a health care provider is required to meet to demonstrate safety or efficacy of delivering a health care service through telehealth if the insurer does not already reimburse other health care providers for delivery of that health service through telehealth (2b., page 3, line 27-30)
- An insurer may establish reasonable medical management techniques if a particular technique is not unduly burdensome or unreasonable for a particular health service (2c., page 4, lines 1-3)
- An insurer may require documentation or billing practices designed to protect the health insurer or patient from fraudulent claims if the practices are not unduly burdensome or unreasonable for a particular health service (2d., page 4, lines 4-6)
- An insurer may not require a patient to pay a fee to download a specific communication technology or application (2f., page 4, lines 10-11)

To: Scott Miller, Executive Director, North Dakota Public Employees Retirement System  
Subject: REVIEW OF PROPOSED BILL 23.0547.02000  
Date: January 5, 2023  
Page 3

Section 4 is added to require parity for behavioral health services provided through in-person means and telehealth. The section will likely have a small financial impact on the uniform group insurance program.

- Section 4, page 4, lines 17-22 says "An insurer may not deliver, issue, execute, or renew a policy that provides health benefits coverage for behavioral health unless that policy provides the same coverage and reimbursement for medically necessary health services for behavioral health services delivered by means of telehealth which is the same as the coverage and reimbursement for covered medically necessary behavioral health services delivered by in-person means". Deloitte estimates a 0.1% cost increase if reimbursement of telehealth services for behavioral health is required to be no less than in-person visits.
- Section 4c., page 5, lines 1-5 allows for health insurers and providers to enter into a value-based reimbursement arrangement for the delivery of covered behavioral health services delivered through telehealth. The financial impact of any future value-based reimbursement arrangements would need to be evaluated to determine a financial impact on the uniform group insurance program. It is not likely that there will be enough participants or claims volume in a value-based reimbursement arrangement to have a material impact on cost.

Section 5 is expanded to clarify that "Coverage under this section may be subject to deductible, coinsurance, and copayment provisions that are no different from the provisions for in-person means" (page 5, lines 12-13). On December 23, US Congress approved a year-end omnibus legislative package, Consolidated Appropriations Act, 2023 (CAA 2023). The healthcare provisions of CAA 2023 extend the temporary telehealth safe harbor for High Deductible Health Plans (HDHP) first-dollar coverage through December 31, 2024. The temporary safe harbor permits HDHPs to cover telehealth on a first-dollar basis without requiring them to first meet the minimum required deductible, with the goal of increasing access to telehealth.

NDPERS offers state employees the option to enroll in a HDHP with a Health Savings Account (HSA). The requirement that deductible, coinsurance, and copayment provisions are the same for telehealth and in-person visits could be inconsistent with the CAA 2023 safe harbor extension that allows HDHP participants to receive telehealth services prior to the application of the deductible. The CAA telehealth safe harbor extension is not a requirement, and the uniform group insurance program may choose not to allow first-dollar coverage for telehealth in the HDHP.