TESTIMONY OF REBECCA FRICKE

House Bill 1282 – Fertility Treatment

Good Morning, Mr. Chairman 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 House Bill 1282, which requires a pilot program under the NDPERS health insurance related to public employee fertility health benefits. 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.

House Bill 1282 does the following:

- Adds definitions for fertility health care
- Requires coverage for diagnosis of infertility and fertility treatment services if recommended and medically necessary
- Requires the NDPERS health plan to expand its coverage of fertility treatment, removing the current lifetime maximum of $20,000 and lifetime deductible of $500, replacing these maximums with required coverage for specific services
- Requires coverage of third-party reproductive services, which may include gestational carriers.
    - Currently only enrolled members or eligible dependents of the health plan are eligible for coverage
- Restricts applying exclusions on coverage of fertility medication different from those imposed on other prescriptions
- States that coverage cannot be limited on certain areas, such as benefit maximums; may contradict other provisions of the bill that place limitations on coverage
    - An example of certain number of intrauterine insemination or completed oocyte retrievals
    - Does not clarify if limitations are per plan year or lifetime
- Requires coverage be available to those who obtain coverage during special enrollment windows or open enrollment
    - Effective date of coverage varies for special enrollment windows and open enrollment
        - Example: Open enrollment window in fall with coverage effective January 1

Under the provisions of NDCC 54-03-28, the bill applies to NDPERS health insurance plan for a pilot program during the 2025-2027 biennium.

Our consultant estimates that the bill would have a financial impact on the NDPERS health insurance plan and estimates an increase in premium of .05%, or $385,000, in the 2025-2027 biennium. The bill transitions coverage from a dollar limit to a service limit, intending to cover a fixed number of medically necessary infertility services, including medical and pharmacy benefit designs. They also note that it may reduce the predictability of cost estimation for fertility services, but may also allow greater flexibility in coverage.

An amendment, which is attached to this testimony, that we ask be considered is to exclude the NDPERS Medicare Part D Plan. Given retirees pay 100% of the premium, we ask that they be excluded from the pilot program under NDPERS by adopting this amendment.

House Bill 1282 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 legal analysis provided to the committee is included as an attachment to the end of my testimony (please note this was draft bill 69 during the interim session).

Mr. Chairman, 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.

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1282

Introduced by

Representatives Brandenburg, Hanson, Mitskog, Satrom, Schauer

Senators Axtman, Hogan

A BILL for an Act to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employee fertility health benefits; to provide for a report to the legislative assembly; to provide for application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Health insurance benefits coverage - Fertility health care.

1. As used in this section:
   a. "Diagnosis of infertility" means the services, procedures, testing, or medications recommended by a licensed physician which are consistent with established, published, or approved best practices or professional standards or guidelines, including the American society of reproductive medicine, the American college of obstetricians and gynecologists, or the American society of clinical oncology for diagnosing and treating infertility.
   b. "Fertility treatment" means health care services, procedures, testing, medications, monitoring, treatments, or products, including genetic testing and assisted reproductive technologies, including oocyte retrievals, in vitro fertilization, and fresh and frozen embryo transfers, provided with the intent to achieve a pregnancy that results in a live birth with a healthy outcome.
   c. "Infertility" means a disease or condition characterized by:
      (1) The failure to conceive a pregnancy or to carry a pregnancy to live birth after unprotected sexual intercourse;
      (2) An individual's inability to cause pregnancy and live birth either as a covered individual or with the covered individual's partner; or

(3) A licensed health care provider's findings and statement based on a patient's medical, sexual, and reproductive history, age, physical findings, or diagnostic testing.

d. "Medically necessary" means a health care service or product provided in a manner:

(1) Consistent with the findings and recommendations of a licensed physician, based on a patient's medical history, sexual and reproductive history, age, partner, physical findings, or diagnostic testing;

(2) Consistent with generally accepted standards of medical practice as set forth by a professional medical organization with a specialization in any aspect of reproductive health, including the American society for reproductive medicine or the American college of obstetricians and gynecologists; or

(3) Clinically appropriate in terms of type, frequency, extent, site, and duration.

e. "Monitoring" includes, ultrasounds, transvaginal ultrasounds, laboratory testing, and followup appointments.

f. "Third-party reproductive care for the benefit of the covered individual" means the use of eggs, sperm, or embryos donated to the covered individual or partner by a donor, or the use of a gestational carrier, to achieve a live birth with a healthy outcome.

2. The board shall provide coverage for the expenses of the diagnosis of infertility and fertility treatment services if recommended and medically necessary.

a. Coverage must include:

(1) Three completed cycles of intrauterine insemination, in accordance with best practices, including the standards and guidelines of the American society of reproductive medicine.

(2) Fertility treatment services necessary to achieve two live births, or a maximum of four completed oocyte retrievals with four fresh and frozen embryo transfers, in accordance with best practices, including the guidelines of the American society for reproductive medicine, and using no more than two embryos per transfer.

(3) Diagnosis of infertility and fertility treatment services, including third-party reproductive care for the benefit of the covered individual or partner.

(4) Fertility treatment, consisting of a method of causing pregnancy other than sexual intercourse which is provided with the intent to create a legal parent-child relationship between the covered individual and the resulting child in accordance with chapter 14-20.

(5) Medical and laboratory services that reduce excess embryo creation through egg cryopreservation and thawing in accordance with a covered individual's religious or ethical beliefs.

(6) Five years of cryopreservation services.

b. This section may not be construed to deny the included coverage in this section to an individual who forgoes a particular fertility treatment service if the individual's physician determines the fertility treatment service is likely to be unsuccessful.

3. To be covered under this section, the diagnosis of infertility and fertility treatment services must be performed at a facility that conforms to best practices, including the standards and guidelines developed by the American society for reproductive medicine, the American college of obstetricians and gynecologists, or the American society of clinical oncology.

4. Coverage under this section must be made available to all covered individuals, including covered individuals who have entered coverage during special enrollment or open enrollment.

5. Coverage under this section must be in accordance with best practices, including the standards or guidelines developed by the American society of reproductive medicine, the American college of obstetricians and gynecologists, or the American society of clinical oncology. If a carrier makes, issues, circulates, or causes to be made, issued, or circulated, clinical guidelines based on data not reasonably current or which do not cite with specificity, the act constitutes unfair or deceptive acts or practices in the business of insurance as prohibited by chapter 26.1-04.

6. Benefits under this section may not be limited based on:

a. A copayment, deductible, coinsurance, benefit maximum, waiting period, or other limitation on coverage different from maternity benefits provided under the health benefits;

b. An exclusion, limitation, or other restriction on coverage of fertility medication different from restrictions imposed on any other prescription medication;

c. A requirement that provides different benefits to, or imposes different requirements on, a class protected under chapter 14-02.4 than that provided to or required of other covered individuals; or

d. A pre-existing condition exclusion, pre-existing condition waiting period on coverage for required benefits, or a prior diagnosis of infertility, fertility treatment, or standard fertility preservation services.

7. This section does not apply to the Medicare part D prescription drug coverage plan.

SECTION 2. PUBLIC EMPLOYEES RETIREMENT SYSTEM - FERTILITY HEALTH BENEFITS - REPORT TO LEGISLATIVE ASSEMBLY. Pursuant to section 54-03-28, the public employees retirement system shall prepare and submit for introduction a bill to the seventieth legislative assembly to repeal the expiration date for this Act and to extend the coverage of fertility health benefits to all group and individual health insurance policies. The public employees retirement system shall append a report to the bill regarding the effect of the fertility health benefits requirement on the system's health insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should be continued.

SECTION 3. APPLICATION. This Act applies to health benefits coverage that begins after June 30, 2025, and which does not extend past June 30, 2027.

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

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Memo

Date: June 10, 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 25.0069.02000**

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 creates and enacts a new section to chapter 54-52.1 of the North Dakota Century Code relating to public employee fertility health benefits.

The proposal requires that state health plans must provide coverage for the diagnosis of infertility (page 1, lines 9-14) and fertility treatment (page 1, lines 15-19) if they are deemed medically necessary (page 2, lines 4-14). Coverage should include three completed cycles of intrauterine insemination, fertility treatment necessary for two live births or four completed oocyte retrievals, and five years of cryopreservation services.

ESTIMATED FINANCIAL IMPACT

Based on the analysis, it is anticipated the proposed legislation will have a financial impact on the Uniform Group Insurance Program. It is estimated the financial impact of the proposed legislation on the Uniform Group Insurance Program is approximately $385,000 in the 2025-2027 biennium ending 6/30/2027.

The health plans provided by the Program currently have a $20,000 lifetime limit for infertility benefits, which cover services, supplies, and medications related to artificial insemination (AI) and

assisted reproductive technology (ART). ART encompasses procedures like gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), intracytoplasmic sperm injection (ICSI), and in vitro fertilization (IVF). These benefits are subject to a $500 Lifetime Infertility Services Deductible Amount and a $20,000 Lifetime Benefit Maximum Amount per Member.

The proposed legislation will transition the infertility benefit from a dollar limit to a service limit. This means that the plan will cover a fixed number of medically necessary infertility services, irrespective of cost, rather than setting a fixed dollar limit for services. While this may slightly reduce the predictability of cost estimation for fertility services, it allows for potentially greater flexibility in coverage.

The financial impact estimate is based on the current health plans' fertility benefit utilization and claims cost over the past two years, and how these costs will shift under the proposed legislation. The development of the estimated claims impact utilized an internal Medical Rate Model, which includes medical and pharmacy benefit designs. The Medical Rate Model functions as a claims repayment model, applying detailed input plan provisions against the claims record database, effectively repricing the claims, and producing the expected plan claim payments versus allowed charges. Adjustments were made to the Rate Model to focus specifically on infertility services.

As a result of the modeling, it is estimated the plan design changes as a result of the proposed Bill would produce less than a 0.05% increase to the expected total costs paid by the Uniform Group Insurance Program.

While the utilization of infertility benefits under the Program is low enough that this proposed plan design benefit change is unlikely to be materially significant to total Program claims costs, it is important to note the estimated increase in infertility benefit costs on a per member basis.

Under the current infertility benefit, the biennial cost of services to the Program for each utilizer is approximately $4,845. This cost is anticipated to increase to approximately $7,196 for the 2025-2027 biennium under the new benefit, a 49% increase in cost. With only 164 individuals in the Program currently utilizing these benefits, this amounts to a total cost to the Program of approximately $385,500. However, this could rise if more individuals utilize the benefit.
