

## REVIEW AND ANALYSIS OF LEGISLATIVE MEASURES MANDATING HEALTH INSURANCE COVERAGE

The interim Budget Committee on Health Care has been assigned the responsibility to study existing health insurance mandates, receive a report from the Insurance Commissioner regarding an evaluation of existing health insurance mandates, and recommend to the Legislative Council an entity for a contract to provide cost-benefit analyses of future legislative measures mandating health insurance coverage. North Dakota Century Code Section 54-03-28, effective July 1, 2001, requires that a cost-benefit analysis be completed for each legislative measure that mandates health insurance coverage of services or payment for specified providers of services. This memorandum summarizes Section 54-03-28, identifies issues that may require legislative action, and provides a description of possible courses of action for committee consideration.

### SECTION 54-03-28

Section 54-03-28, attached as Appendix A, provides that if a legislative measure mandates health insurance coverage, the measure may not be acted on by any committee of the Legislative Assembly unless accompanied by a cost-benefit analysis. The cost-benefit analysis is to be prepared by a private entity under contract with the Legislative Council and the Insurance Commissioner is to pay for the cost of the contracted services.

The cost-benefit analysis must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premiums paid by insureds.
4. The impact of the proposed mandate on the total cost of health care.

Section 54-03-28 does not prohibit or restrict legislators from introducing legislative measures mandating health insurance coverage but does prohibit any committee of the Legislative Assembly from acting on such a measure until a cost-benefit analysis is completed.

Section 54-03-28 provides that a majority of the members of the committee, acting through the chairman, has the authority to determine whether a legislative measure mandates coverage of services. The section also provides that any amendment to a legislative measure that mandates health insurance coverage may not be acted on by a committee of the

Legislative Assembly unless the amendment is also accompanied by a cost-benefit analysis.

### SIMILAR PROVISIONS RESTRICTING LEGISLATIVE ACTION

The Legislative Assembly has enacted three other self-imposed restrictions on legislative action until certain requirements are met.

Section 54-03-25 relates to a legislative measure or amendment affecting workers' compensation benefits or premium rates. The Workers Compensation Bureau must review every measure affecting workers' compensation benefits or premium rates. If the bureau determines that the measure or amendment will have an actuarial impact on the workers' compensation fund, the bureau is required to submit, before the measure or amendment is acted upon, an actuarial impact statement prepared, at the expense of the bureau, by the actuary employed by the bureau.

Section 54-35-02.4(5) and (6) provides a legislative measure or amendment to a measure during a legislative session which affects a public employees retirement program, public employees health insurance program, or public employees retiree health insurance program may not be introduced or considered in either house unless it is accompanied by a report from the Employee Benefits Programs Committee. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether any legislative measure affects a program.

Section 54-01-05.5 requires a written report and an opinion with regard to any bill introduced to authorize the sale or exchange of state land. The agency owning or controlling the land must prepare the report, and the commissioner of University and School Lands must review the report and then issue an opinion to the standing committee to which the bill was initially referred concerning the proposed sale or exchange and the highest and best use of the land.

### ISSUES WHICH MAY REQUIRE LEGISLATIVE ACTION

Several issues may need to be considered by the Budget Committee on Health Care to ensure that the review and analysis process for proposed health insurance mandates works in a timely and cost-effective manner. The issues are:

1. **The timeframe required for completion of the review and analysis process.**
  - a. The length of time between when a measure is introduced and when a

- cost-benefit analysis is requested and received may result in a delay in acting on such a measure.
- b. The length of time required between when a cost-benefit analysis is requested and when it is completed and received may result in a delay in acting on such a measure.
  - c. The length of time required between requesting and receiving a cost-benefit analysis on a proposed amendment may result in a delay in acting on the amendment.
  - d. If many bills are simultaneously referred to the contracted consultant for analysis, the length of time required for the consultant to complete its analysis may be extended.
2. **The cost of preparing a cost-benefit analysis for each proposed legislative measure mandating health insurance coverage.**
- a. Although the Budget Committee on Health Care has not recommended any particular company with which the Legislative Council may contract to perform cost-benefit analyses of legislative measures, a preliminary estimate by Milliman USA indicated a cost of \$5,000 to \$15,000 per analysis (presented to the committee by the Insurance Department at the committee's February 2002 meeting). House Bill No. 1407 (2001) provides a \$55,000 appropriation from the insurance regulatory trust fund to the Insurance Department for the purpose of paying for contracted cost-benefit analysis services required during the 2001-03 biennium. Section 54-03-28 provides that the Insurance Department will pay the cost of the contracted services but does not limit the department's liability for the cost. Consequently, if the total cost of the analyses required by Section 54-03-28 exceeds the appropriation provided to the Insurance Department, the department may need additional funding beyond the \$55,000 appropriated.
  - b. Although Section 54-03-28 allows the committee to determine if a measure is a mandate, the section also provides that any measure determined to include a health insurance mandate is required to include a cost-benefit analysis. The committee's discretion relates to determining if a measure includes a health insurance mandate. Once a measure is determined to include a health insurance

mandate, a cost-benefit analysis must be completed. It is questionable whether the committee could determine that a measure does not mandate coverage (if the measure obviously does mandate coverage) as a means to avoid the cost of an analysis. Such a decision could result in an argument that the measure has no cost because the committee so determined. As a result, a substantial amount may be spent for measures which the committee does not anticipate will ultimately be adopted by the Legislative Assembly because the cost of each analysis may be \$5,000 to \$15,000.

### **POSSIBLE LEGISLATIVE ACTION**

If legislative action is determined to be required to facilitate the health insurance mandate review and analysis process provided in Section 54-03-28, possible actions include the enactment of legislative rules or statutory changes or the inclusion of cost-limiting provisions in the proposed contract with the actuarial firm preparing the cost-benefit analyses.

#### **Legislative Rules**

Legislative rules could be adopted which would require the Legislative Council or the Insurance Department to review bills introduced, and if necessary request an analysis, before referral to a committee. This preliminary review may expedite the review and analysis process. However, such a preliminary review could result in an analysis being requested by the Legislative Council or the Insurance Department when the committee would not have requested such an analysis. Such a rule would also not address the financial responsibility of the Insurance Department to pay for all analyses requested. The Budget Committee on Health Care, at its April 30, 2002, meeting, approved proposed rules changes and the Legislative Management Committee considered these legislative rules changes to address health insurance mandate legislation at its June 2002 meeting, but deferred action until a later meeting. Attached as Appendix B is a copy of the proposed rules changes.

#### **Statutory Changes**

Statutory changes could be enacted to provide for a process similar to that used in other states or used in North Dakota for bills relating to the state employees retirement and health insurance programs or the workers' compensation fund. The committee, at its April 2002 meeting, asked the Legislative Council staff to prepare bill drafts for committee consideration that provide:

- Any health insurance coverage mandate approved by the Legislative Assembly shall apply only to the state public employees group health insurance program for a period of

two years. After the first year, the Public Employees Retirement System shall prepare a report on the mandate's actual costs and benefits for consideration by the Legislative Council in determining if the mandate should be amended or repealed before becoming effective for other health insurance programs.

- Any health insurance coverage mandate approved by the Legislative Assembly may not be implemented until studied by the Legislative Council.
- Any health insurance coverage mandate approved by the Legislative Assembly must include an expiration date.

The Legislative Management Committee, at its June 2002 meeting, discussed a bill draft, attached as Appendix C, that would require the Insurance Commissioner to review legislative measures mandating health insurance coverage. The committee deferred action on the bill draft.

#### **Cost-Limiting Provisions**

In order to limit the costs incurred by the Insurance Department for analyses of legislative measures

mandating health insurance coverage, it may be possible to include certain cost-limiting provisions in any contract between the Legislative Council and an actuarial consultant. Such provisions could provide for the preparation of a limited analysis, when determined appropriate by the committee. A limited analysis could provide only a general description of the measure's impact or a range specifying the potential fiscal impact. Such an analysis could be completed at a reduced cost compared to a more complete analysis for other measures.

#### **BUDGET COMMITTEE ON HEALTH CARE - DECISIONS**

The Budget Committee on Health Care needs to recommend to the Legislative Council a consultant to conduct the cost-benefit analysis of health insurance benefits and consider the bill drafts relating to the statutory changes to the cost-benefit analysis process for future legislative sessions.

ATTACH:3

**54-03-28. Health insurance mandated coverage of services - Cost-benefit analysis requirement.**

1. A legislative measure mandating health insurance coverage of services or payment for specified providers of services may not be acted on by any committee of the legislative assembly unless the measure is accompanied by a cost-benefit analysis provided by the legislative council. Factors to consider in this analysis include:

a. The extent to which the proposed mandate would increase or decrease the cost of the service.

b. The extent to which the proposed mandate would increase the appropriate use of the service.

c. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of insureds.

d. The impact of the proposed mandate on the total cost of health care.

2. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative measure mandates coverage of services under this section.

3. Any amendment made during a legislative session to a measure which mandates health insurance coverage of services may not be acted on by a committee of the legislative assembly unless the amendment is accompanied by a cost-benefit analysis provided by the legislative council.

4. The legislative council shall contract with a private entity, after receiving one or more recommendations from the insurance commissioner, to provide the cost-benefit analysis required by this section. The insurance commissioner shall pay the cost of the contracted services to the entity providing the services.

**Source:** S.L. 2001, ch. 471, § 1.

39327.0100

FIRST DRAFT:  
Prepared by the Legislative Council staff for  
the Legislative Management Committee  
June 2002

## PROPOSED AMENDMENTS TO SENATE AND HOUSE RULES 402

1       **SECTION 1. AMENDMENT.** Senate Rule 402 is amended as follows:

2       **402. WHEN INTRODUCED.**

- 3       1. No member other than the Majority and Minority Leaders may introduce more than  
4           three bills as prime sponsor after the tenth legislative day. No bill may be  
5           introduced after the fifteenth legislative day, and no resolution, except those  
6           resolutions described in subsection ~~3~~ 4, may be introduced after the eighteenth  
7           legislative day, except upon approval of a majority of the Delayed Bills Committee  
8           or upon two-thirds vote of the members of the Senate present and voting.
- 9       2. No bill introduced at the request of an executive agency or the Supreme Court may  
10           be introduced after December tenth before the ensuing regular session, except  
11           upon approval of a majority of the Delayed Bills Committee.
- 12       3. A bill mandating health insurance coverage of services or payment for specified  
13           providers of services may not be introduced after the fifth legislative day.
- 14       4. Resolutions that propose amendments to the Constitution of North Dakota and  
15           resolutions directing the Legislative Council to carry out a study may not be  
16           introduced after the thirty-first legislative day.

17       **SECTION 2. AMENDMENT.** House Rule 402 is amended as follows:

18       **402. WHEN INTRODUCED.**

- 19       1. No member other than the Majority and Minority Leaders may introduce more than  
20           five bills as prime sponsor after the fifth legislative day. No bill may be introduced  
21           after the fifteenth legislative day, and no resolution, except those resolutions  
22           described in subsection ~~3~~ 4, may be introduced after the eighteenth legislative day,  
23           except upon approval of a majority of the Delayed Bills Committee or upon  
24           two-thirds vote of the members of the House present and voting.
- 25       2. No bill introduced at the request of an executive agency or the Supreme Court may  
26           be introduced after December tenth before the ensuing regular session, except  
27           upon approval of a majority of the Delayed Bills Committee.

- 1           3.   A bill mandating health insurance coverage of services or payment for specified
- 2                   providers of services may not be introduced after the fifth legislative day.
- 3           4.   Resolutions that propose amendments to the Constitution of North Dakota and
- 4                   resolutions directing the Legislative Council to carry out a study may not be
- 5                   introduced after the thirty-first legislative day.

**NOTE:** The proposed amendments to Senate and House Rules 402 are as recommended by the interim Budget Committee on Health Care, which is studying mandated health insurance coverage of services. The earlier deadline for introducing a bill mandating health insurance coverage of services or payment for specified providers of services is intended to provide sufficient time to request and receive a cost-benefit analysis as required by North Dakota Century Code Section 54-03-28. Section 54-03-28 provides:

**Health insurance mandated coverage of services - Cost-benefit analysis requirement.**

1. A legislative measure mandating health insurance coverage of services or payment for specified providers of services may not be acted on by any committee of the legislative assembly unless the measure is accompanied by a cost-benefit analysis provided by the legislative council. Factors to consider in this analysis include:
  - a. The extent to which the proposed mandate would increase or decrease the cost of the service.
  - b. The extent to which the proposed mandate would increase the appropriate use of the service.
  - c. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of insureds.
  - d. The impact of the proposed mandate on the total cost of health care.
2. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative measure mandates coverage of services under this section.
3. Any amendment made during a legislative session to a measure which mandates health insurance coverage of services may not be acted on by a committee of the legislative assembly unless the amendment is accompanied by a cost-benefit analysis provided by the legislative council.
4. The legislative council shall contract with a private entity, after receiving one or more recommendations from the insurance commissioner, to provide the cost-benefit analysis required by this section. The insurance commissioner shall pay the cost of the contracted services to the entity providing the services.

The effectiveness of this earlier deadline depends on its enforcement, the time taken to determine whether a cost-benefit analysis is required, and the ability of the actuary to provide a cost-benefit analysis before consideration of the bill by the standing committee. This deadline does not address the procedure if an amendment proposes a

mandate. Presumably, legislators will be aware of the requirements as the result of becoming aware of the earlier deadline for such measures.

North Dakota Century Code Section 54-03-25 requires the Workers Compensation Bureau to review any legislative measure or amendment affecting workers' compensation benefits or premium rates to determine whether the measure will have an actuarial impact on the workers' compensation fund. If such a determination is made, the bureau is to submit an actuarial impact statement before the measure or amendment is acted upon. There is no special procedure or timeframe in the rules to address how action is to be delayed until the statement is received.

30103.0100

Fifty-eighth  
Legislative Assembly  
of North Dakota

FIRST DRAFT:  
Prepared by the Legislative Council staff for the  
Legislative Management Committee  
June 2002

Introduced by

1 A BILL for an Act to amend and reenact section 54-03-28 of the North Dakota Century Code,  
2 relating to review requirements for measures affecting health insurance coverages.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-03-28 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **54-03-28. Health insurance mandated coverage of services - Cost-benefit analysis**  
7 **requirement.**

- 8 1. ~~A~~ The insurance commissioner shall review any legislative measure mandating  
9 health insurance coverage of services or payment for specified providers of  
10 services ~~may not be acted on by any committee of the legislative assembly unless~~  
11 ~~the measure is~~ to determine whether the measure should be accompanied by a  
12 cost-benefit analysis ~~provided by the legislative council.~~ Factors to consider in this  
13 analysis include:
- 14 a. The extent to which the proposed mandate would increase or decrease the  
15 cost of the service.
  - 16 b. The extent to which the proposed mandate would increase the appropriate  
17 use of the service.
  - 18 c. The extent to which the proposed mandate would increase or decrease the  
19 administrative expenses of insurers and the premium and administrative  
20 expenses of insureds.
  - 21 d. The impact of the proposed mandate on the total cost of health care.
- 22 2. ~~A majority of the members of the committee, acting through the chairman, has sole~~  
23 ~~authority to determine whether a legislative measure mandates coverage of~~  
24 ~~services under this section.~~

- 1     ~~2.~~     ~~Any~~ The commissioner shall review any amendment made during a legislative  
2             ~~session to a measure~~ which mandates health insurance coverage of services ~~may~~  
3             ~~not be acted on by a committee of the legislative assembly unless the amendment~~  
4             is to determine whether the amendment should be accompanied by a cost-benefit  
5             ~~analysis provided by the legislative council~~ that includes the considerations listed in  
6             subsection 1.
- 7     3.     If the commissioner determines that a measure or an amendment should be  
8             accompanied by a cost-benefit analysis, the commissioner shall submit, before the  
9             measure or amendment is acted upon, the cost-benefit analysis to the appropriate  
10            legislative committee.
- 11    4.     ~~The legislative council~~ commissioner shall contract with a private entity, ~~after~~  
12            ~~receiving one or more recommendations from the insurance commissioner,~~ to  
13            provide the cost-benefit analysis required by this section. The insurance  
14            commissioner shall pay the cost of the contracted services to the entity providing  
15            the services.

**NOTE:** Section 54-03-28 prohibits a legislative committee from acting on any measure or amendment mandating health insurance coverage without a cost-benefit analysis. The Legislative Council is to provide the cost-benefit analysis through a contract with a private entity as recommended and paid for by the Insurance Commissioner. The proposed amendment addresses the issue of the appropriate expertise to determine whether a measure or amendment mandates health insurance coverage.

Section 54-03-25 relates to a legislative measure or amendment affecting workers' compensation benefits or premium rates. The Workers Compensation Bureau is required to review every measure affecting workers' compensation benefits or premium rates. If the bureau determines that the measure or amendment will have an actuarial impact on the workers' compensation fund, the bureau is required to submit an actuarial impact statement prepared by the actuary employed by the bureau. This procedure takes advantage of the expertise of the Workers Compensation Bureau in determining whether a measure affects workers' compensation. The bureau then has an actuarial impact statement prepared by the actuary employed by the bureau.

The proposed amendment to Section 54-03-28 establishes a procedure for reviewing measures affecting health insurance coverage of services or payment for specified providers of services similar to that in Section 54-03-25 for review of measures affecting workers' compensation benefits or premium rates. The Insurance Department, like most state agencies, receives a copy of every introduced bill. Presumably, the reason for receiving a copy of every bill is to identify the bills affecting the department. During its review of each bill, the department could rely on its expertise in health insurance matters to ascertain whether the bill mandates insurance coverage or payment for service. If that determination is made, the cost-benefit analysis would be prepared by the actuary under contract with the Insurance Commissioner.

Fifty-eighth  
Legislative Assembly

Although an emergency clause could be added so the bill would take effect upon filing with the Secretary of State, most of the legislation at issue in 2003 probably would have been introduced by the time this measure would take effect.