

UNIFORM GROUP INSURANCE PRESCRIPTION DRUG BENEFITS - EMPLOYEE BENEFITS PROGRAMS COMMITTEE - BACKGROUND MEMORANDUM

INTRODUCTION

Section 3 of House Bill No. 1374 (2019) directs a study of the feasibility and desirability of the Public Employees Retirement System (PERS) entering a separate contract for prescription drug coverage under the uniform group insurance program. The Legislative Management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carveout for prescription drug coverage under the uniform group insurance program.

LEGISLATIVE HISTORY

As introduced, House Bill No. 1374 would have required the PERS uniform group insurance program to receive its pharmacy benefits management services through the Department of Human Services medical assistance program. As amended by the House, the services would have been permissive instead of mandatory and as amended by the Senate, the bill no longer addressed PERS. However, the conference committee adopted amendments ([Appendix A](#)) to address PERS prescription drug coverage.

Section 1 of the bill requires the Department of Human Services to establish a pharmacy management program for Medicaid Expansion prescription drug coverage. This section does not address PERS.

Section 2 of the bill addresses PERS, providing:

- Except for Medicare Part D, PERS may not enter or renew a contract for prescription drug coverage unless the contract authorizes PERS to conduct a performance audit of the prescription drug coverage and related pharmacy benefits manager (PBM) services. This provision also specifies required contract provisions.
- PERS shall use an independent auditor and provides the auditor, the Insurance Department, and the Employee Benefits Programs Committee may access any information PERS may access.
- If PERS contracts directly with a PBM or provides prescription drug coverage through a self-insurance plan, the contract must require the PBM to disclose to PERS all rebates and any other fees that provide the PBM with sources of income under the contract.

BACKGROUND

North Dakota Century Code

The PERS uniform group insurance program is created under North Dakota Century Code Section 54-52.1-02. This law provides the program must provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage. Although prescription drug coverage generally is considered part of medical benefits coverage, the law does authorize the program to include multiple subgroups of benefits, including prescription drug coverage.

In bidding for uniform group insurance, Section 54-52.1-04(1) provides, the PERS Board may receive bids separately for all or parts of the prescription drug benefits coverage component of medical benefits coverage. In accepting a bid, the board is required to act to best serve the interests of the state and the state's eligible employees, including consideration of the economy to be effected, the ease of administration, the adequacy of the coverage, the financial position of the carrier, and the reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Under Section 54-52.1-04(3), the health benefits coverage may be provided through a traditional health insurance plan, a health maintenance organization, or a self-insurance health plan. Furthermore, Section 54-52.1-04.2(1) makes it clear PERS may carve out prescription drug benefits coverage and provide coverage through a traditional health insurance plan or through a self-insurance health plan.

Uniform Group Insurance Program Health Benefits Coverage

History

Senate Bill No. 176 (1963), codified as Chapter 52-12, authorized a state agency, alone or in conjunction with another state agency, to enter a group hospitalization and medical care plan and group life insurance. The intent was "to promote the economy and efficiency of employment in the state's service by making available hospitalization and medical care and group life insurance protection to state employees and their families, thereby enabling the employees to care for themselves and their dependents in times of accident or illness, and which by its protection will improve state employment within the state, reduce excessive personnel turnover and offer suitable attraction to high grade men and women to enter the service of state employment."

House Bill No. 1093 (1971) repealed Chapter 52-12 and created Chapter 54-52.1, which created the PERS uniform group insurance program, the basis for the current program. Beginning in the mid-1970s and continuing until 1983, PERS contracted for a fully insured health plan. From 1983 to 1989, PERS provided the health care benefits through a self-insurance health plan. From 1989 to the present, PERS has contracted for a hybrid fully insured health plan. The hybrid plan provides for profit sharing and until 2015 provided for loss sharing.

The PERS health benefits contract last went out to bid in 2014, at which time PERS entered a 2-year contract for the 2015-17 biennium. The Public Employees Retirement System renewed the contract for the 2017-19 and 2019-21 bienniums. The contract will go out to bid in 2020 for the 2021-23 biennium.

Pharmacy Benefits

Historically, under the PERS uniform group insurance health benefits, pharmacy benefits have been bundled with medical benefits. However, in preparation for the 2014 health benefits plan request for proposal, PERS considered unbundling the pharmacy benefits, providing the pharmacy benefits under a self-insurance health plan. In the course of researching the concept of unbundling, PERS concluded it was unclear as to whether Section 54-52.1-04.2 authorized PERS to unbundle the pharmacy benefits from the medical benefits.

As a result of PERS interpretation of Section 54-52.1-04.2, House Bill No. 1028 (2019), introduced by the Health Care Reform Review Committee, and Senate Bill No. 2045 (2019), introduced by PERS, were passed. These bills amended section 54-52.1-04.2 to clarify pharmacy benefits may be unbundled and provided through a self-insurance health plan and the circumstances under which PERS may move to a self-insurance health plan.

Pharmacy Benefits

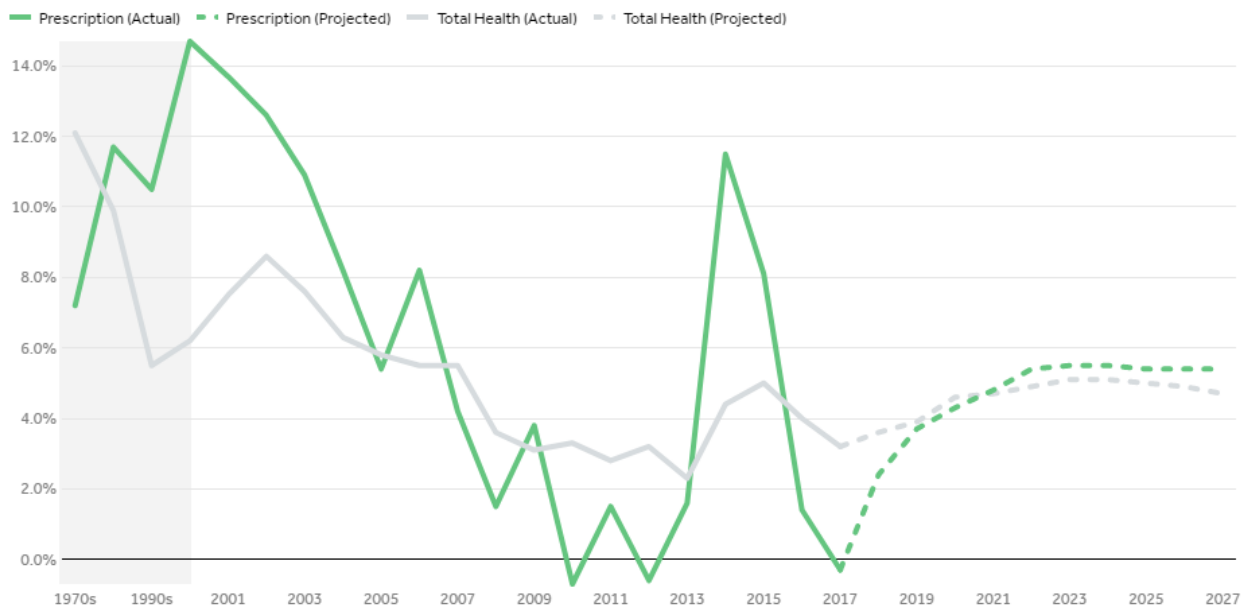
Prescription Drug Costs

The Kaiser Family Foundation reports the "cost of prescription drugs has become a hot-button issue with consumers and policy makers. One in four people taking prescription drugs report difficulty affording their medication and recent Kaiser Family Foundation opinion polling has found bipartisan support for government action to lower prescription drug costs."

The following charts regarding prescription drugs are from the Kaiser Family Foundation:

Growth in prescription spending has slowed again in 2017, after increasing rapidly in 2014 and 2015

Annual change in per capita prescription drug spending, 1970 - 2017; projected 2018 - 2027

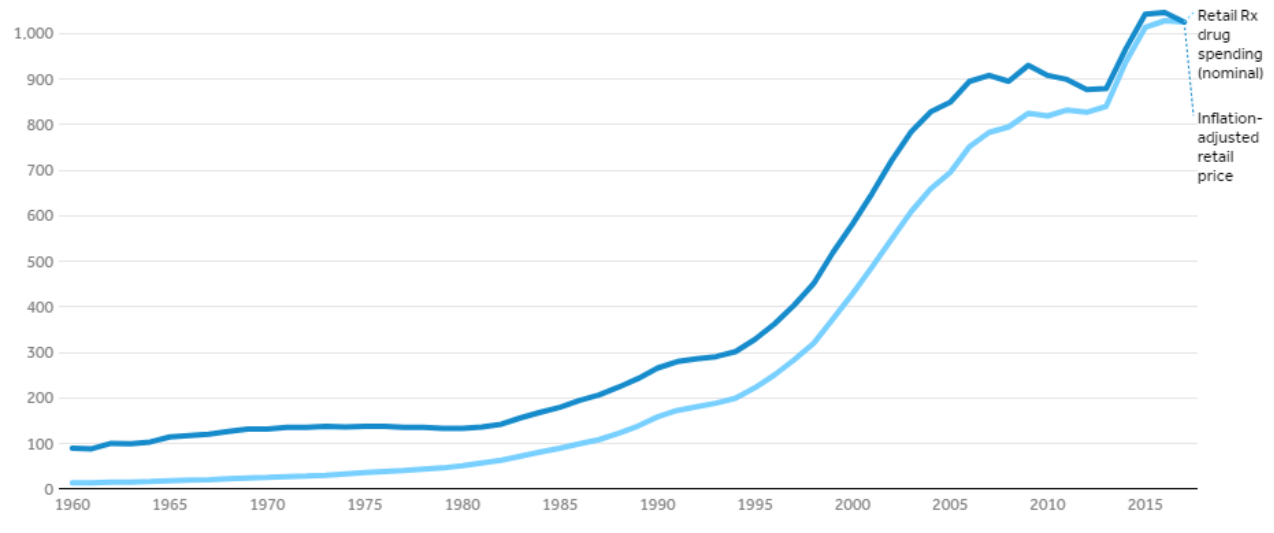


Grey region represents average growth within decade.

Source: KFF analysis of National Health Expenditure Accounts (NHEA) • [Get the data](#) • [PNG](#)

Spending on prescription drugs has risen rapidly over past decades

Nominal and inflation-adjusted per capita spending on retail prescription drugs, 1960-2017

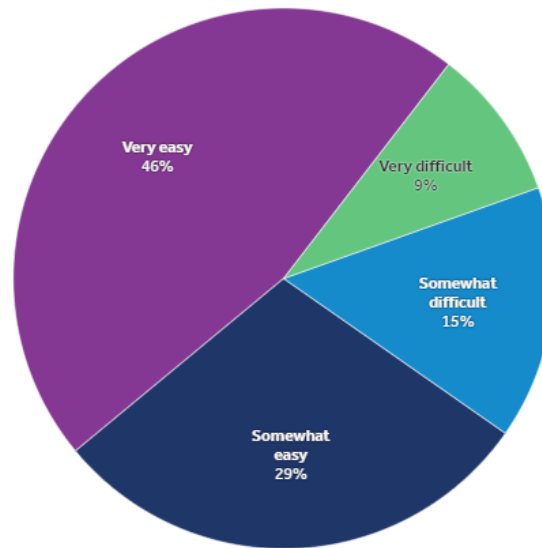


Source: Kaiser Family Foundation Analysis of National Health Expenditures Account • Get the data • PNG

Peterson-Kaiser
Health System Tracker

Most people taking Rx drugs say they can afford their treatment, but about 1 in 4 have a difficult time affording their medicine

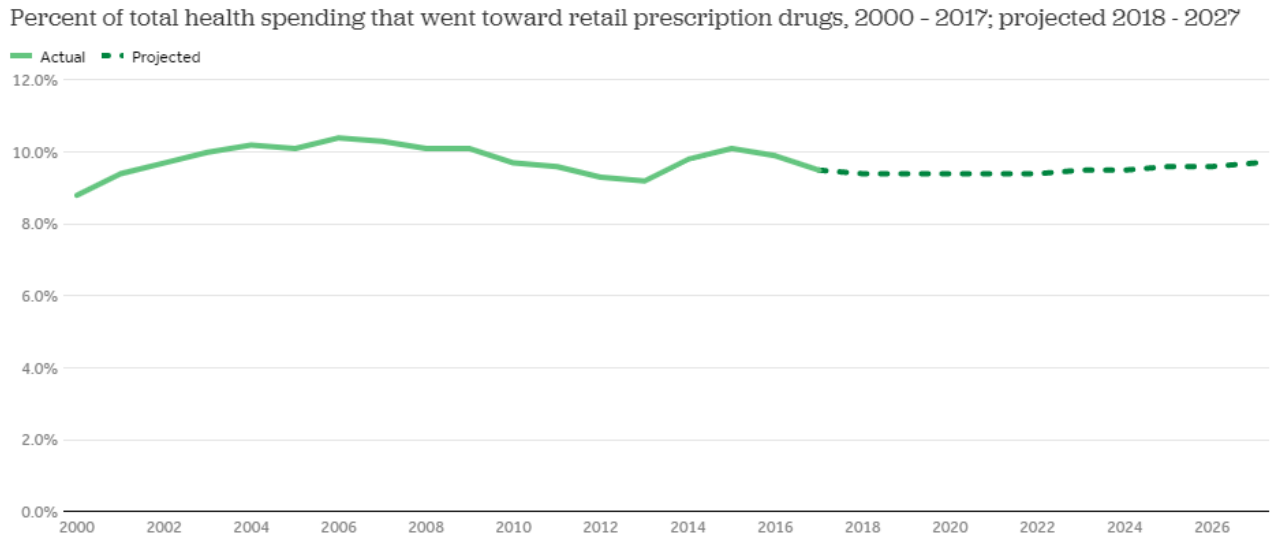
Among adults who currently take any prescription medicine, percent who report ease or difficulty affording to pay the cost of their prescription medicine



Source: KFF Health Tracking Poll (conducted Feb 14 – 24, 2019) • Get the data • PNG

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Estimates suggest Rx drugs will represent a similar portion of overall health spending over time

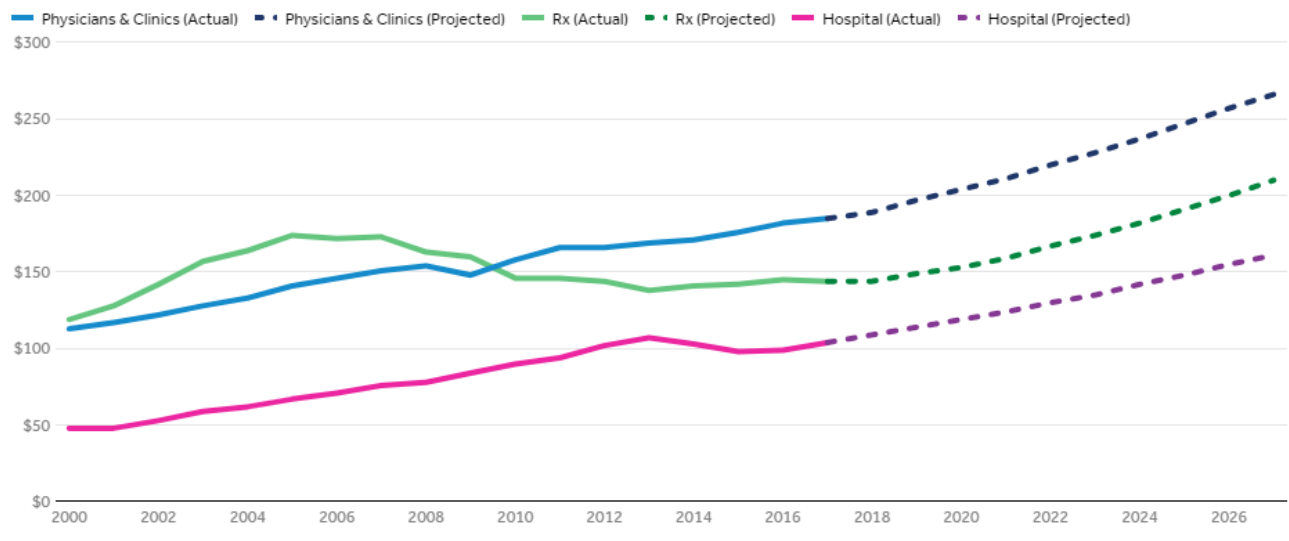


Source: KFF analysis of National Health Expenditure Accounts (NHEA) • [Get the data](#) • PNG

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Out-of-pocket spending for Rx drugs remained flat in 2017, while out-of-pocket spending on hospital and physician services grew

Per capita out-of-pocket health spending on hospitals, physicians and clinics, and retail prescription drugs, 2000 - 2017; projected 2018 - 2027

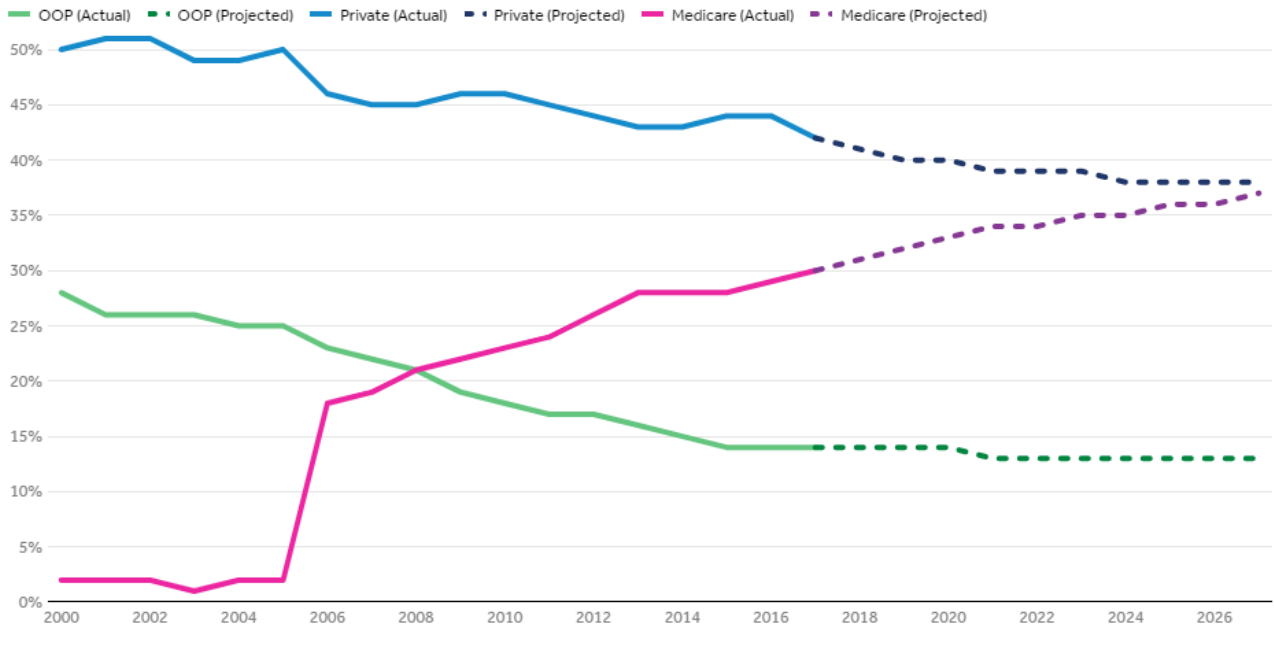


Source: KFF analysis of National Health Expenditure Accounts (NHEA) • [Get the data](#) • PNG

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Out-of-pocket costs for Rx drugs are expected to increase, but will likely represent a smaller portion of overall Rx spending

Share of total Rx spending funded out-of-pocket vs. by private insurance and Medicare, 2000 - 2017; projected 2018 - 2027



Source: KFF analysis of National Health Expenditure Accounts (NHEA) • [Get the data](#) • PNG

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Health Care Reform Review Committee

During the 2017-18 interim, by Legislative Management directive, the Health Care Reform Review Committee studied the public employee health insurance plan, including the feasibility and desirability of transitioning to a self-insurance plan. The study was required to include a review of the current plan and consideration of the costs and benefits of the current plan compared to the costs and benefits of a self-insurance plan.

Pharmacy Benefit Consultants

As part of this study, the committee received testimony ([Appendix B](#)) from a representative of Pharmacy Benefit Consultants (PBC) regarding pharmacy benefits coverage under the PERS health benefits program. The presentation addressed why health plans do not control their prescription coverage costs and how to fix this problem.

Pharmacy Benefit Consultants testified PERS provides pharmacy benefits for its main plan through a bundled plan. Pharmacy Benefit Consultants testified virtually all bundled contracts:

- Are entirely devoid of specific drug pricing terms and guarantees or meaningful rebate guarantees;
- Are entirely devoid of specific terms related to core matters that impact drugs' costs, such as the formulary and prior authorization, step therapy, and quantity limit programs;
- Allow the medical provider and drug provider to arrange their own structure, with potential hidden fees and "profit spreads" for both entities; and
- If the medical provider is integrated vertically with subsidiary hospitals or pharmacies, allow the medical provider to steer use to its own subsidiaries, which may be higher cost.

Additionally, PBC testified most bundled contracts allow the medical provider and drug provider to move drugs between the medical side and the PBM sides. The same drugs can have very different costs based on whether the drug is invoiced on the medical side or the PBM side. On the medical side, drugs costs often are entirely unknown;

whereas, on the PBM side payers can determine the list price of each drug and if payers obtain claims data, can determine the discount provided.

Pharmacy Benefit Consultants testified virtually all carved out coverage is self-insured coverage provided by PBMs. Pharmacy Benefit Consultants testified unless PERS can obtain a bundled contract that pins down drug pricing terms and guarantees, and gives the state real control over numerous other core matters that impact cost, which is highly unlikely, PERS should carve out its prescription drug coverage.

Pharmacy Benefit Consultants testified to control drug costs, a health plan must ensure it has a PBM contract free of all loopholes and then take control of all matters. After obtaining a loophole-free PBM contract, PERS needs to exercise its contract rights by:

- Obtaining net cost information for key drugs;
- Customizing its formulary;
- Customizing its programs;
- Exercising its rights to renegotiate retail and mail guarantees on an annual basis, and specialty drug guarantees on a quarterly basis; and
- Exercising its carveout right for any specialty drugs if the PBM is overcharging for any specialty drugs.

Additionally, PBC testified once PERS has a loophole-free PBM contract, PERS needs to monitor and respond to marketplace changes to:

- Analyze and determine which new-to-market drugs to cover;
- Track brand drugs that lose patent protection and require plan beneficiaries to use chemically identical generic drugs when they become available;
- Track new biologic drugs, compare the net costs of the brands and biologics, and steer use to the lowest-cost drugs; and
- Track large increases in drugs prices and stop covering those with alternative lower-cost replacements.

To accomplish the PBC recommendations, PBC suggested PERS either retain a clinical and financial expert in house or retain third-party consulting with the necessary expertise.

Committee Recommendations

Although the committee did not make any specific recommendations regarding whether PERS should unbundle its prescription drug benefits or transition to a self-insurance health plan, the committee recommended House Bill No. 1028, which updates the PERS self-insurance health plan law and clarifies the Insurance Department has regulatory authority over a self-insurance health plan. The updates in the law include clarification prescription drug benefits may be unbundled and provided through a self-insurance health plan and provides PERS may transition to a self-insurance health plan if PERS determines the self-insurance health plan best serves the interests of the state and the state's eligible employees.

STUDY APPROACH

The study charge provides in conducting the study, the Legislative Management may contract with a private third party to assist in conducting the study and identifying pros and cons relating to a carveout for prescription drug coverage under the uniform group insurance program.

The committee may wish to consult with PERS, the Insurance Department, the Department of Human Services' Medical Assistance Division, health insurance carriers, PBMs, and the North Dakota Pharmacists Association.

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