

REVIEW AND ANALYSIS OF LEGISLATIVE MEASURES MANDATING HEALTH INSURANCE COVERAGE

The interim Budget Committee on Health Care has been assigned 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.

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.

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.

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 employee retirement and health insurance programs or the workers' compensation fund.

Other States

The states of Arkansas and Hawaii require that a report be presented before the legislative session indicating the fiscal impact of any proposed health insurance mandates. Consequently, it appears that those states have implemented a process requiring that health insurance mandate measures be prepared before the legislative session, a process which is similar to that used in North Dakota for interim consideration of public employee retirement and health insurance bills.

The state of Kansas provides that before the legislature considers a measure mandating health insurance coverage, the bill must be accompanied by a report on its fiscal impact. If any health insurance mandate is enacted, it is implemented on a trial basis for the state employee health plan for a one-year period.

Louisiana statutes provide that before considering a bill mandating health insurance benefits, the committee to which the bill is referred must receive a fiscal impact report. However, Louisiana statutes provide specifically that the committee may exempt a bill from these requirements. In order to expedite the analysis process, the sponsor of the legislation, the chairman of the committee to which the bill is referred, the secretary of the Senate, or the clerk of the House of Representatives may request the fiscal impact report as soon as the measure is introduced.

Employee Benefits Programs Committee

Section 54-35-02.4, attached as Appendix B, outlines the powers and duties of the Legislative Council's Employee Benefits Programs Committee. Section 54-35-02.4 provides that a legislative measure affecting the public employees retirement program, public employees health insurance program, or public employee retirement health insurance program **may not be introduced** in either house unless it is accompanied by a report from the Employee Benefits Programs Committee. Similarly, any amendment made during a legislative session to a legislative measure affecting a public employees retirement or health insurance program may not be considered by a standing committee unless it is accompanied by a report from the Employee Benefits Programs Committee (which meets during the legislative session to consider amendments). A majority of the members

of the interim committee, acting through the chairman, has authority to determine whether any legislative measure affects a public employees retirement or health insurance program.

To carry out its responsibilities, the committee may contract with actuarial firms for expert assistance and consultation. The public employees retirement or health insurance program affected by a bill pays for the costs of any actuarial report required by the committee. The committee reports its findings and recommendations, along with any necessary legislation, to the Legislative Council and the Legislative Assembly.

In comparison to the process for the review and analysis of legislative measures mandating health insurance coverage, the process provided for in Section 54-35-02.4 limits legislators' ability to introduce legislation but does not delay the legislative process for a bill by the need to wait for an actuarial analysis to be completed after it is introduced. Section 54-35-02.4 does, however, require an actuarial analysis to be completed for amendments. Consequently, the legislative process must allow for any required meetings of the interim Employee Benefits Programs Committee and for the preparation of an actuarial analysis on each amendment.

Workers' Compensation Fund

Section 54-03-25, attached as Appendix C, requires the Workers Compensation Bureau to review any legislative measure affecting workers' compensation benefits or premium rates to determine whether the measure will have an actuarial impact on the workers' compensation fund. If the bureau determines that a legislative measure will have an actuarial impact on the fund, the bureau shall submit, before the measure or amendment

is acted on, an actuarial impact statement prepared at the expense of the bureau. The bureau shall also review any amendment affecting workers' compensation benefits or premium rates and shall submit, before the amendment is acted on, either a statement prepared by the bureau indicating that the amendment is not expected to have any actuarial impact on the fund or an actuarial impact statement prepared at the expense of the bureau.

In comparison to the review and analysis process provided for in Section 54-03-28, Section 54-03-25 expedites the legislative process by providing that bills affecting the workers' compensation fund will be identified immediately upon their introduction. Costs to the Workers Compensation Bureau are limited in that measures which do not have an actuarial impact on the fund require a statement to that effect rather than a complete actuarial analysis.

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.

ATTACH:3