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LEGISLATIVE PROCEDURAL REQUIREMENTS FOR ANALYZING MANDATED HEALTH INSURANCE COVERAGE

INTRODUCTION

North Dakota Century Code Section 54-03-28, enacted during the 2001 legislative session:

1. Prohibits any committee of the Legislative Assembly from acting on any legislative measure mandating health insurance coverage of services or payment for specified providers of services unless the measure is accompanied by a cost-benefit analysis provided by the Legislative Council;
2. Prohibits any amendment that mandates health insurance coverage of services from being acted on by a committee of the Legislative Assembly unless the amendment is accompanied by a cost-benefit analysis provided by the Legislative Council;
3. Requires the Legislative Council to contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide the cost-benefit analysis required by the section;
4. Requires the Insurance Commissioner to pay the costs of the contracted services; and
5. Provides that 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.

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) provide 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 employee 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.

Workers' Compensation Bill Procedure

Section 54-03-25 was originally enacted in 1991. As enacted, the section provided a legislative measure affecting workers' compensation benefits or premium rates "may not be prefiled for introduction or introduced" in either house of the Legislative Assembly unless the measure had been reviewed by the Workers Compensation Bureau and the bureau had determined whether the measure would have an actuarial impact on the workers' compensation fund. If the bureau determined that the measure would have an actuarial impact on the fund, the measure could not be prefiled or introduced unless accompanied by an actuarial impact statement prepared by the actuary employed by the bureau. The section also provided that no amendment affecting workers' compensation benefits or premium rates "may be attached to any legislative measure" unless the amendment is accompanied by either a statement prepared by the bureau stating the amendment is not expected to have any actuarial impact on the fund or an actuarial impact statement prepared by the actuary employed by the bureau.

This prohibition against legislators prefilming or introducing bills or attaching amendments unless they were first reviewed by the Workers Compensation Bureau was replaced in 1995. Rather than prohibit the introduction of bills, the current procedure allows legislators to introduce bills and the bureau must review any legislative measure affecting workers' compensation benefits or premium rates to determine whether the measure would have an actuarial impact on the workers' compensation fund. If the bureau determines that a measure will have an actuarial impact on the fund, the bureau is to submit, before the measure is acted upon, an actuarial impact statement prepared by the actuary employed by the bureau. The bureau is also to review any amendment affecting workers' compensation benefits or premium rates and is to submit, before the amendment is acted upon, either a statement stating the amendment is not expected to have any actuarial impact on the fund or an actuarial impact statement prepared by the actuary employed by the bureau. Thus, under the current section, a measure may be introduced and an

amendment may be considered, but neither may be acted upon until the bureau has reviewed the measure or amendment and has determined whether an actuarial impact is present.

Employee Benefits Programs Committee Procedure

Section 54-35-02.4 requires the Employee Benefits Programs Committee to consider and report on legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, retirement programs of state employees or employees of any political subdivision and health and retiree health plans of state employees or employees of any political subdivision. The committee is also to take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee is authorized to contract with an actuarial firm and provides that the retirement, insurance, or retiree insurance program is to pay from its funds the cost of any actuarial report required by the committee which relates to that program. The committee is authorized to solicit draft measures and proposals from interested persons during the interim between legislative sessions and may study measures and proposals referred to it by the Legislative Assembly or the Legislative Council.

A copy of the committee's report concerning any legislative measure, if that measure is to be introduced for consideration by the Legislative Assembly, must be appended to the copy of the measure which is referred to a standing committee. A measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be introduced in either house unless accompanied by a report from the 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. These procedures also apply to any amendment made during a legislative session to a legislative measure affecting a public employees retirement program, health insurance program, or retiree health insurance program.

The committee has established a procedure whereby legislators and agencies with the bill introduction privilege are requested to submit their proposals to the committee before April 1 of the year preceding the legislative session, e.g., April 1, 2002. The committee determines whether to take jurisdiction over the proposals. With respect to these proposals, the committee directs the affected retirement, health insurance, or retiree health insurance program to have an actuarial review conducted. The committee reviews the reports during the interim and gives its recommendations. The reports and the committee's recommendations are then attached to those bills which are introduced. Even though measures are submitted by April 1, the committee usually does not receive reports from the

actuary until the July 1 actuarial review of the program is completed, usually early November.

LEGISLATIVE PROCEDURE CONSIDERATIONS

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 section also provides that the sole authority to determine whether a legislative measure mandates coverage of services is a majority of the members of the legislative committee, acting through the chairman. The section implies that the request for a cost-benefit analysis is by motion approved by a majority of the committee. Thus, the committee must take action before a report is requested. If the committee does not request a cost-benefit analysis on every bill that appears to have an impact on any of the factors that a cost-benefit analysis must address, an issue could be raised that, as a result of the committee determining the bill does not mandate coverage of services, the bill does not have an impact on the total cost of health care (one of the factors a cost-benefit analysis must address).

The statutorily outlined procedure may not allow sufficient time for preparation of an accurate cost-benefit analysis on every measure or amendment that mandates health insurance coverage of services or payment for specified providers of services. The 2003 legislative session deadlines could result in the following scenario:

1. On Monday, January 27 (the 15th legislative day) a bill is introduced in the Senate; the bill is referred to the Industry, Business and Labor Committee.
2. On Wednesday, January 29, the chairman reviews all bills referred to the committee for purposes of scheduling hearings the following week (as provided by Senate Rule 506) and determining whether a bill might be within the purview of Section 54-03-28; the chairman sets aside the bill for committee discussion when the committee meets on the following Monday.
3. On Monday, February 3, the committee discusses the bill and votes to request a cost-benefit analysis; this request is immediately taken to the Legislative Council office.
4. By Tuesday, February 4, the Legislative Council staff refers the request for a cost-benefit analysis to the entity under contract to provide the cost-benefit analysis.
5. On Thursday, February 6, Senate Rule 329 would need to be suspended if the bill would otherwise be rereferred to the Senate Appropriations Committee, because the committee cannot take "action" on the bill and rerefer it to the Appropriations Committee (the deadline for rereferral of bills to the Appropriations Committee is the 23rd legislative day--February 6).
6. By Wednesday, February 12, the chairman must schedule the bill for hearing.

7. By Tuesday, February 18 (the 31st legislative day), the bill must be reported out of committee.

Under this scenario, the actuary has 12 calendar days to prepare and deliver the cost-benefit analysis to the committee--assuming the actuary receives the request on midday on Tuesday, February 4, and returns the cost-benefit analysis midday on Monday, February 17, for a hearing on the 18th, on which day the bill must be reported out of committee.

Possible Legislative Rule

The timeframe described in the preceding section illustrates the limited time available for requesting, preparing, and receiving a cost-benefit analysis, as well as for scheduling a hearing on the measure, if the analysis is not requested until the committee has reviewed the bill. Presumably, a hearing would not be held until after the cost-benefit analysis is received. This time factor may be addressed during the 2003 session through a joint legislative rule to establish a procedure similar to that for measures requiring fiscal notes. The rule could provide that every measure mandating health insurance coverage of services or payment for specified providers of services must have a cost-benefit analysis attached. Every committee to which such a measure would be referred would be deemed to have requested a cost-benefit analysis on the measures that the Legislative Council staff determine should have cost-benefit analyses. If the cost-benefit analysis has not been provided by the Legislative Council, the committee, acting through the chairman, could determine whether a legislative measure mandates coverage and then request a cost-benefit analysis. This would at least allow additional time for preparation of the cost-benefit analysis because the initial request to the entity preparing the analysis would be when the measure is prefiled or is introduced. This procedure would require the Legislative Council staff to review all measures introduced to determine which ones would appear to mandate health insurance benefits, and this procedure would require expertise in an area in which the staff has not previously had experience. The proposed joint rule could read:

HEALTH COVERAGE MANDATE

ANALYSIS. The committee to which a measure mandating health insurance coverage of services or payment for specified providers of services will be referred upon introduction is deemed to have requested preparation of a cost-benefit analysis as determined by the Legislative Council. The committee, through the chairman, to which a bill has been referred shall determine whether a cost-benefit analysis is to be prepared for a bill not having a cost-benefit analysis provided by the Legislative Council. The committee, through the chairman, shall determine whether a cost-benefit analysis must be prepared for an amendment mandating health insurance coverage of services. The committee shall determine

whether the cost-benefit analysis must be prepared before final action on the amendment by the committee, before consideration of the amendment on sixth order, or before second reading of the amended bill. If the cost-benefit analysis is not prepared before final action on the amendment by the committee, the Secretary of the Senate or the Chief Clerk of the House, whichever the case may be, shall read the analysis at the time of consideration of the amendment or the reading of the title of the bill to be voted on.

Possible Statutory Change

The procedure for determining actuarial impact on the workers' compensation fund appears to have worked well since 1995. The Workers Compensation Bureau has the expertise to know which measures affect workers' compensation, to determine which measures could have an actuarial impact on the workers' compensation fund, to contract with its actuary to provide actuarial services, and to provide the actuarial report on measures that would have an actuarial impact on the workers' compensation fund.

Section 54-03-28 could be amended to provide a similar procedure, except that the Insurance Commissioner would appear to be the appropriate official with expertise over health insurance issues. A proposed amendment is:

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

1. ~~A~~ The insurance commissioner shall review any 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 to determine whether the measure should be 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~~ The commissioner shall review 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 to determine whether the amendment should be accompanied by a cost-benefit analysis provided by the legislative council that includes the considerations listed in subsection 1.

3. If the commissioner determines that a measure or an amendment should be accompanied by a cost-benefit analysis, the commissioner shall submit, before the measure or amendment is acted upon, the cost-benefit analysis to the appropriate legislative committee.

~~4. The legislative council commissioner 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.

SUMMARY AND CONCLUSION

Section 54-03-28 places the burden of determining which bills mandate health insurance coverage on standing committees and chairmen of those committees. Under current rules and deadlines during legislative sessions, there may not be sufficient time for preparation of appropriate cost-benefit analyses.

A legislative rule could be adopted creating a procedure similar to the current joint rule requiring fiscal notes. A disadvantage to that procedure is that it would require the Legislative Council staff to review all measures to identify which ones appear to mandate health insurance coverage, and that procedure would require expertise in an area in which the staff has not previously had experience.

Another option would be to enact legislation amending Section 54-03-28 to establish a procedure similar to that followed under current law on bills affecting workers' compensation legislation. Under this option, the Insurance Commissioner would be required to determine which measures mandate health insurance coverage. However, if the option of changing the law is selected, procedures will be required during the 2003 legislative session to handle this subject until the bill amending Section 54-03-28 is enacted.