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Memo

Date: October 24, 2016

To: Senator Krebsbach, Chair
Legislative Employee Benefits Programs Committee

From: Josh Johnson, Pat Pechacek, and Jon Herschbach, Deloitte Consulting LLP

Subject: REVIEW OF PROPOSED BILL 17.0172.01000 REGARDING THE CONTRACT TERM FOR HEALTH BENEFITS COVERAGE

The following summarizes our review of the proposed legislation.

OVERVIEW OF PROPOSED BILL

The proposed bill would amend Section 54-52.1-05 of the North Dakota Century Code mandating that the term of a fully insured uniform group insurance contract for hospital benefits coverage, medical benefits coverage, or prescription drug coverage may not exceed two years. This would require NDPERS to solicit bids for coverage after each biennium contract.

EXPECTED ACTUARIAL IMPACT

We would not anticipate any material actuarial impact due to this amendment.

TECHNICAL COMMENTS

Although we don’t feel this amendment would cause any specific actuarial impact to the health insurance program we do feel that there are potential implications to the health plan marketplace in North Dakota which could impact the long term cost of coverage for NDPERS.

North Dakota is a relatively unique health plan market in that there has historically been one major health carrier. Without the leverage of the NDPERS group insurance program it is difficult for other carriers to negotiate competitive provider, facility and pharmacy contracts. As we have seen with the change to Sanford Health Plan in 2015, it takes time for a new carrier to negotiate improved discounts after being awarded the NDPERS business and many provider contract improvements are contingent upon continued coverage of the NDPERS program. Should a bid for the upcoming biennium result in NDPERS program returning to the prior carrier, the market may revert to a one carrier market. While requiring the program to solicit bids every biennium may seem to ensure the program is getting the most favorable financial terms due to frequent competition, it might actually result in the limitation or elimination of competition altogether. While having one major health carrier in the market may provide leverage to allow that carrier to negotiate favorable provider contracts, the lack of meaningful competition removes any pressure for that carrier to do so.

Another aspect to consider is the significant cost and effort of the carrier to implement a large client. We have found that health carriers are less likely to be aggressive with premium rates when they know that the program will go out to bid again in a short period of time. With the chance to retain the business assuming satisfactory performance and costs, carriers can be more willing to invest in the relationship i.e. be more aggressive on their rates and other guarantees. Through past experience we have found that groups who consistently bid out their coverage incur higher costs in the long run due to this. In addition, some carriers may be unwilling to bid at all knowing that the plan will go out to bid after two years.

In addition to our comments above we worked with NDPERS staff to develop additional comments relating to the statutory provisions of the bill, implementation timeframe, bid timeframe, mitigation options and history of the plan.

STATUTORY OBSERVATIONS

As presently drafted this bill has an emergency provision. In addition Section 2 of the bill specifies the Application of the bill. Read together they indicate that if the bill is passed with the emergency clause it would become effective immediately and the board could not sign an agreement to renew the existing contract, which it has already authorized, and instead require NDPERS to solicit bids. The following timeframes are required in the statute:

1. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract (54-52.1-04 NDCC)
2. Bids for a self-insurance plan are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board. (54-52.1-04.2 NDCC)
3. Bids must be solicited by advertisement in a manner selected by the board that will provide reasonable notice to prospective bidders (54-52.1-04 NDCC)

If this bill was to pass with the emergency clause NDPERS may not be able to meet the statutory requirements in #1 depending on the date the bill would be signed into law. In addition, regardless of when the bill would be passed in 2017 NDPERS would not be able to meet the requirements in #2 which could eliminate the possibility of bidding the plan on a self-insured basis for the 2017-2019 biennium.

There may also be concerns with the interpretation and application of Section 2 of this bill given the restriction in Section 18 of Article I of the North Dakota Constitution relating to the impairment of contracts which states, “No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed”.

IMPLEMENTATION TIMEFRAME

Given the size and complexity of the NDPERS plan, changing carriers is a significant effort. Attached is the implementation schedule from the recent transition. As this demonstrates, there are many variables that must be worked through to ensure that a transition does not create difficulties in the continuity of care or benefits for participating members. At a minimum, most carriers have indicated that 90 days is necessary, with the NDPERS preference being 120 days or longer, in order to ensure continuity of coverage during the course of the transition.

BID TIMEFRAME

An effective bid process must allow sufficient time for the following:

1. Preparation of the Request for Proposals (RFP)
2. Marketing the RFP
3. Allowing time for interested parties to review the RFP
4. Allowing interested parties to submit questions and receive responses
5. Allowing the interested parties sufficient time to prepare final proposals once questions have been answered
6. Time for review of the proposals by
    a. Consultant
    b. NDPERS Staff
    c. NDPERS Board
7. Allowing time to interview the bidders and get best and final offers.
8. Time for unexpected contingencies. (For example in 2014/15, NDPERS rejected all fully insured bids and rebid it for a second time)

The timeline for the last bid is below. This demonstrates that the process can take over 6 months in the event there is a rebid (this does not include the time to prepare the bid).

- July 9, 2014 – Fully-insured Bid issued
- August 13th – Self-insured Bid issued for medical and prescription drug plans
- September 4th – Fully-insured Proposals Due
- October 10^{th} – Self-Insured Proposals Due
- October 21^{st} – Staff interview with BCBS and Sanford (Fully-insured)

- October 23rd – Board Rejects Fully-insured Bids, and issues a new RFP.
- October 29th – Fully-insured RFP released
- November 19th – Fully-insured Proposals due
- November 24th – Staff interview with BCBS and Sanford (Self-Insured)
- November 25th – Staff interview of PBM vendors
- December 4th – approved sending PBM contracts
- December 18th – NDPERS Board reviewed the Health plan bids
- January 2, 2015 – Best and Final Offer (BAFO) responses due
- January 5th – NDPERS Board Interviews BCBS and Sanford (fully-insured)
- January 15th – NDPERS Board interviews PBM vendors
- January 19th – NDPERS Board members and staff conduct a site visit of Sanford Health Plan
- February 5th – NDPERS Board reviews proposals (fully-insured, self-insured, Rx)
- February 13th – NDPERS Board continues its review of proposals (fully-insured, self-insured, Rx)
- February 19th – NDPERS Board awards bid

FULL BIDS VS RENEWALS

Generally full bids occur later and are finalized by February after the development of the Executive Budget thereby allowing for several more recent months of claims data to be used in the premium projection. To the extent that the additional claims data is positive, it may reduce trend, and to the extent it is negative it can increase trend and premium. Also, since the final bid amount is not known until during the legislative session it may be higher or lower than the budget amount in the Executive budget thereby requiring adjustment during the session.

Renewals occur earlier and are finalized by September or October. As a result a final rate is included in the Executive Budget that is fixed as a maximum amount. However, since it is possible that claims data could result in a lower premium, the renewal agreements with BCBS (previous) and Sanford (current) provide(d) for a February re-projection and if the required premium is lower as a result of the additional months of experience, premiums can be reduced. If the amount needed is higher it stays as agreed in the September renewal.

MITIGATION OPTIONS RELATING TO IMPLEMENTATION AND BID TIMELINE

In recognition of the above timelines for implementation and bid process, if this bill did pass with the emergency clause, consideration should be given to providing for processes in order to meet the compressed timeline. For example the bill could provide:

1. An abbreviated bidding process

    a. Changing the notification process

b. Recognition that not all vendors will have adequate time to respond

c. Automatic certification of existing carrier and previous carrier or closing the process to only existing and previous carrier

d. Recognition that not all options can be bid and specifying what options will not be included in the RFP.

2. A mechanism to deal with a late implementation if necessary, such as extending the contract with the existing carrier on a self-insured basis or fully insured if the option to negotiate is available.

3. Funding and funding authorization for a delayed implementation as well as the recognition of potential risk that the extension of the contract with the existing carrier may not be an option on a fully-insured basis. If the contract were extended on a self-insured basis, funding would need to be available to cover claims during this period, taking into consideration that it may not be possible to acquire stop loss insurance for such a short duration or have adequate reserves.

HISTORY OF PAST RENEWALS AND BIDS

Briefly, the history of NDPERS Bids/Renewals is as follows:

- 2016 – Renewal
- 2014 – Full bid
- 2012 – Fully insured bid only (partial)
- 2010 – Fully insured bid only (partial)
- 2008 – Renewal
- 2006 – Renewal
- 2004 – Full bid
- 2002 – Renewal
- 2000 – Renewal
- 1998 – Full bid
- 1996 – Renewal

The following table provides additional detail of the history of the health plan. Please note that since 1994 the plan has had three full bids, two partial bids and seven renewals. Six of the renewals were with BCBS and one is with Sanford. Additionally, note that most years (except the current and upcoming biennium contracts) there were plan design changes or rate buy downs from the NDPERS reserves to reduce the cost of premiums.

History of Health Plan Bids/Renewals - fully insured Year	Consultant	State premum % increase	Plan Changes	Buydown*	Comments
2016 (2017-19) Renewal	Deloitte	17.40			Renewed with Sanford
2014 (2015-17) Full Bid	Deloitte	15.13			Self Insured Bid released August. Fully Insured b*ids released in July, decision in February (6-7 months).* Received two fully insured bids. One from BCBS (19-20% increase and the other from Sanford (15% increase). Self funded bid estimated to cost 14.9%. Sanford selected
2012(2013-15) Partial bid - Fully Insured Only	Deloitte	10.72		$5,772,000 ($20.04 per active contract)	*Bid was released in May, Award in Sept (4 months)* . Partial bid for fully insured product only due to ACA concerns. Received two bids. One from Sanford (25.49% Inc) and the other from BCBS (12.98% Inc). Selected BCBS
2010 (2011-2013) Partial Bid Fully Insured Only	Deloitte	7.40	Additional benefit requirements in the Health Care Reform Bill and the Mental Health Parity Act.		*Bid was issued in June, award in Sept (2-3 months).* Partial bid for fully insured product only due to ACA concerns. Received one bid from BCBS. Selected BCBS.
2008 (2009-2011) Renewal	GBS	25.50	Eliminated EPO	$40,000 ($.14 per active contract)	Renewed with BCBS. Plan design changes reduced the carrier rate by about 2%.
2006 (2007-2009) Renewal	GBS	19.00	Increased Cost Sharing		The carrier rate was reduced from 22.9% by approximately 3% in cost shift to members through plan design changes. First $3 million in risk deposit made.
2004 (2005-07)Full bid	GBS	13.00	Plan design changes added $1,000 RX coinsurance maximum	$7,062,000 ($24.52 per active contract)	*Bid was released in May and awarded in Oct (5 months).* Approximately $14.3 million was used to buy down the rate and the Feb reprojection reduced active state rates by about $5.20 PCPM
2002 (2003-05) Renewal	Deloitte	19.00	Plan design changes	$2,880,000 ($10.00 per active contract)	Premium was reduced for two reasons: 1) a gain in the Feb reprojection, 2) changes in the plan design and 3) utilizing reserves to buydown the premium
2000 (2001-2003) Renewal	Deloitte	17.00	Increased Cost Sharing	See comments	Rate was reduced by approx $7.47 as a result of setting up a reserve account with BCBS and changes in the plan design to increase member out of pocket expenses
1998(1999-2001) Full bid	Deloitte	16.00	Increased Cost Sharing	$2,693,000 ($9.35 per active contract)	*Bid was released in October and the award was in Feb (5 months)*
1996 (1997-1999) Renewal	Deloitte	14.00	Increased Benefits & Lifetime Maximum	$5,965,000 ($20.71 per active contract)	Rate was reduced by utilization of reserves

* - Estimated based on 12,000 State budgeted FTE's

EFFECT ON MEMBERSHIP

The effect on membership should be minimal as a result of bidding the plan more often. However if the result was changes in the carrier every two years this could have an effect on members since networks, formularies and other items may change even though there may not be any changes in the plan design.

OBSERVATIONS ON RENEWALS AND BIDS:

RFP Process (Full bids)

- RFP's for full bids were done in 1998, 2004 and 2014
- Full bid processes take about 5-7 months (after RFP's were developed). The last RFP took 7 months since more options are now requested in the NDCC.

RFP Process (Partial bids)

- Partial bids were done in 2010 & 2012.
- Partial bids were to continue the existing fully insured contract only and did not include any self-insured arrangements
- Partial bids were done due to the uncertainty of the regulatory environment due to the ACA
- Partial bids took about 3-4 months (after RFP's were developed)

Renewals

- Renewals were done in 1996, 2000, 2002, 2006, 2008 & 2016
- Renewals take about 2-3 months to complete.

NDPERS Reserves

- The existing fully insured contract has a return of premium provision if it is not needed to pay claims
- The existing contract structure with Sanford and previously with BCBS returns premium to NDPERS if expenses are less than premiums. These premium returns have contributed to the NDPERS reserves.
- These reserves have been used to buy down premiums in 97-99, 99-01, 03-05, 05-07 & 13-15 bienniums.
- Since the plan has no substantial risk of loss due to this type of contract, reserves can be used to buy down premiums. If the plan were self-insured the use of reserves would be limited by the requirements in NDCC 54-52.1-04.3 which requires maintaining a minimum reserve level between 2.5 & 4.5 months of claims for adverse risk. This would amount to approximately $20 million for each month or between $45 and $85 million. To the extent this level of reserves is not

available for a self-insured plan, the board would need to add this to the premium rates to establish the reserves at the required level.

OVERALL CONCLUSIONS AND OBSERVATIONS

- This bill would not have a material actuarial impact on the Health Plan
- This bill could affect the willingness of new carriers to bid on the plan and could have the unintentional effect of reducing future competition for the NDPERS plan
- Having a required two year bid process versus a six year process could result in carriers being less aggressive in the bids knowing that they would face another bid in two years. A six year process may encourage carriers to invest in the relationship by being more aggressive in pricing and other guarantees.
- The emergency provision is in conflict with other timelines in the statute.
- There may be concerns with Section 18 of Article I of the North Dakota Constitution relating to impairment of contract
- If the emergency provision is passed it may not be possible to bid and implement a new plan within the timeframes. Mitigating options may need to be considered and added to the bill.
- The history of the bid process shows that full bids, partial bids and renewals have been used during the past bienniums. It also shows the plan design has changed and NDPERS Reserves have been used to mitigate premium increases. As a result the history does not indicate if any one method is more effective than the others in achieving lower premiums.
- The modified fully insured method has allowed NDPERS reserves to be used to buy down premiums in past bienniums whereas if the plan were self-insured these funds may be needed to be maintained as plan reserves in compliance with the NDCC-54-52.1-04.3
- Timing of bids and renewals is different. Bids are generally not completed until February during the legislative session which can affect the budget process if premiums come in higher than projected. In the case of renewals the amount is determined in advance of the session and is a fixed maximum number. Consequently, renewals do not have an effect on increasing premiums during the budgeting process during the session whereas bids may.
- Since bids could benefit from additional months of claims data in determining the premium, the existing renewal process was modified several years ago to have a February re-projection to take advantage of any improvements due to additional months of actual claims data. If the data shows a need for additional funding the

September agreed amount is the maximum. The modified process captures the benefit of a later projection but eliminates the risk of higher premiums.

- The effect on membership should be minimal as a result of bidding the plan more often. However if the result is changes in the carrier every two years this could have an effect on members since networks, formularies and other items may change even though there may not be any changes in the plan design. During the transfer to Sanford even though the plan design did not change some members had the above adjustments.