

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