

## TESTIMONY

**Presented by:** Rebecca Ternes  
Deputy Commissioner  
North Dakota Insurance Department

**Before:** Health Care Reform Review Committee  
Representative George Keiser, Chairman

**Date:** July 22, 2015

Good morning Chairman Keiser and members of the Committee. My name is Rebecca Ternes and I am the Deputy Insurance Commissioner. I was asked to present the history of the Essential Health Benefits selection process to you today; to provide you with information on making this selection for plan years beginning after January 1, 2017; and to provide you with information on the state's plan choices.

### **History of the Essential Benchmark (EHB) Selection Process**

The Affordable Care Act through the inclusion of Essential Health Benefits (EHB) requires individual and small group plans in and out of the Marketplace to offer items and services in 10 specific coverage areas without specifying the level of coverage required.

States were given the option to recommend one plan to serve as the EHB benchmark plan. The benchmark plans were recommended to the U.S. Health and Human Services Department (HHS) Secretary for approval as the minimum benefit requirements for all plans in the state for policy years 2014 and 2015. We now know this benchmark will also apply to 2016 plans as well.

The benchmark plans were recommended from the following health insurance plans based on the enrollment as of the first quarter of 2012:

1. The largest plan by enrollment in any of the three largest small group insurance products in the state's small group market;
2. Any of the largest three state employee health benefit plans by enrollment;
3. Any of the largest three national FEHBP plan options by enrollment; or
4. The largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state.

Once chosen, that plan and all other nongrandfathered small group and individual plans (those sold after March 23, 2010) must include the benchmark provisions and all required EHB categories from the following list:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder services, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including dental and vision care

The Insurance Department testified at the 2011-12 interim Health Care Reform Review Committee several times, providing a description of the state's choices, the advantages and disadvantages of the choices and an external consultants' review of the plan options. The Committee also heard from the insurance companies and interested parties.

A straw vote was taken during the September 6, 2012, meeting and the majority of legislative members agreed that recommending a benchmark plan with fewer benefits was appropriate for North Dakota. Choosing a plan richer in benefits would have forced higher premiums for coverage that all North Dakotans may or may not have wanted.

The Committee also discussed the option for the state to add additional benefits beyond the existing state mandated benefits found in Title 26.1. The first EHB federal regulations specified that any added benefits not mandated in health insurance plans as of December 31, 2011, and in excess of the EHB, would have to have been paid for by the state. Therefore, the Committee did not suggest adding any other mandated benefits.

The Insurance Department forwarded the selection of the Committee to the HHS Secretary. The Sanford Health Plan became the state's EHB benchmark. The pediatric benefits in the state's Children's Health Insurance Program (CHIP) were selected as the supplemental benchmark coverage for the pediatric dental and vision benefits required.

### **2017 EHB Benchmark Selection Process**

For health insurance plans beginning January 1, 2017, all states have a chance to choose a new benchmark plan. The selection will be for at least the plan year of 2017 and all original 10 categories of benefits must remain in the selection.

States can choose a benchmark plan from the following health insurance plans based on the enrollment in the first quarter of 2014:

1. The largest plan by enrollment in any of the three largest small group insurance products in the state's small group market;
2. Any of the largest three state employee health benefit plans by enrollment;
3. Any of the largest three national FEHBP plan options by enrollment; or

4. The largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state.

Selections were due to HHS on June 1, 2015, with some states receiving extensions to July 1. North Dakota informed HHS that it had passed House Bill No. 1378 in the 2015 Legislative Session which required a study be completed by an interim legislative committee to review its benchmark choices and, therefore, would not be making the deadline.

HHS is currently working on the proposed rule for the EHB selection which will include a list of other states that have chosen their plans and states that are currently defaulted. North Dakota will be listed as a defaulted state at this point. However, should we make a valid selection prior to HHS publishing the final rule, we have been told by HHS that selection would likely be accepted and be published in the final rule.

Should we choose to not make a selection or remain a default state, HHS would choose the EHB default plan for us. Our default plan would be the state's largest plan by enrollment in the small group insurance product which is Blue Cross Blue Shield's small group exchange plan which had 3,222 enrolled as of March 31, 2014.

Once again, should we choose to add mandated benefits, the state would again have to pay for any benefits over the EHB required amount. However, should we choose a benchmark from the 10 choices that has more benefits than the existing EHB benchmark plan, it would not be considered an additional mandate for the new benchmark and the state would not have to pay.

One example of this would be choosing the PERS plans which cover fertility benefits that are not covered by any of the other plans. Should North Dakota choose one of these plans as its benchmark, the additional coverage would not be considered an added state mandate.

However, choosing a plan with richer benefits, depending on the cost of those benefits, could increase the premium cost for all North Dakota health insurance buyers.

On the contrary, should the state choose an EHB with different or fewer benefits, insurance companies could scale back benefits as long as the EHB plans were substantially equal to the new benchmark plan and contained all of the state coverage mandates. Again, depending on the coverage change, this may impact premiums.

### **Plan Comparison Chart**

Attached to this testimony is a chart of the 10 benchmark plan choices for North Dakota. The chart is modeled on the chart prepared for this committee during the 2011-12 interim. As you can see, the three major carriers all have plans included.

The Insurance Department prepared the chart based on the companies' form filings and sent it to all companies several weeks ago. Since then, the Department has had numerous conversations with all of the carriers to ensure its accuracy. Specific questions about the coverage should be answered by the insurers themselves.

An "X" indicates coverage of the particular benefit and "NC" indicates the benefit is not covered. You will note there is only one grandfathered plan on the list and it is the grandfathered PERS plan. The other PERS plans are the nongrandfathered plan and the high deductible nongrandfathered plan.

A couple of important points to make about this chart include the fact that this was coverage provided in these plans as of March 31, 2014, not today, and that some of the benefits marked as "NC" in one category may be found as covered in another category. For example, under Category 5, Mental Health and Substance Use Disorder, the Sanford column indicates "NC" for detoxification. Now that benefit is covered in this plan.

Also, you will note under the grandfathered PERS plan, several preventive services in Category 9 are listed as “NC.” Grandfathered plans are not required to cover these services; however, some of these benefits may be found in another category, such as maternity.

At the end of the chart is the list of state-mandated coverage as required by law. Where there is a number referenced by a particular coverage on the chart, the number corresponds to the numbered mandate on this list.

The chart at this level, and considering the notes above, does not indicate many differences in the plans’ coverage except for the already mentioned fertility treatment benefits. There are a few specific coverage areas that we looked at because they are often used or we have received more than a normal amount of questions on in recent EHB discussions. The following are some differences in the details of coverage that would be in place if the plan was chosen as the EHB benchmark for 2017 that stand out.

#### Habilitative and Rehabilitative services:

- Several plans have combined habilitative and rehabilitative visit limits on speech, occupational therapy, and physical therapy (30-90 days) which are allowed until 2017.
- The PERS plans have limits on the length of days of speech treatment.
- Several plans exclude hearing aids or hearing aids for individuals over the age of 18 for rehabilitative services only. This may depend on medical necessity.

#### Chiropractic services:

- Plans limit visits from 12-20 and the PERS grandfathered plan has no limit on visits.

Nutritional Counseling:

- Several plans have different visit limits for different types of conditions (ex. anorexia, diabetes, hypertension, obesity).
- Some benefits are required coverage under preventive services according to medical necessity.

I should reinforce again, all insurance benefits must be medically necessary and medical providers and insurers will apply benefits differently. I encourage you to question the insurers directly about the specific differences in the application of the coverage benefit in their plan.

That concludes my testimony and I am happy to answer any questions. Thank you.





Major Benefit Category	Benefit Subcategories	Small Group Plans			ND Employee Health Plans			Federal Health Benefit Plans			HMO
		BCBS	Sanford	Medica	NDPERS PPO GF	NDPERS NGF	NDPERS HDHP NGF	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
2). Emergency Services	Physician Charges	X	X	X	X	X	X	X	X	X	X
	Facility Charges (Room, Imaging, Testing and Supplies)	X	X	X	X	X	X	X	X	X	X
	Ambulance										
	Ground	X	X	X	X	X	X	X	X	X	X
	Air	X	X	X	X	X	X	X	X	X	X

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		BCBS	Sanford	Medica	NDPERS PPO GF	NDPERS NGF	NDPERS HDHP NGF	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
3). Hospitalization	Inpatient Hospital (includes anesthesia, bed, board, general nursing, diagnostic services and surgery)	X	X	X	X	X	X	X	X	X	X
	Inpatient Medical	X	X	X	X	X	X	X	X	X	X
	Bariatric/Obesity Surgery	X	X	X	X	X	X	X	X	X	X
	Medical services related to suicide	X	X	X	X	X	X	X	X	X	X
	Medical services related to intoxication	X	X	X	X	X	X	X	X	X	X
	Reconstructive Breast Surgery - #11	X	X	X	X	X	X	X	X	X	X
	Skilled Nursing	X	X	X	X	X	X	X	X	NC	X
	Organ Transplants										
	Surgery	X	X	X	X	X	X	X	X	X	X
	Delivery of donor organ	X	X	X	X	X	X	X	X	X	X
	Removal of donor organ	X	X	X	X	X	X	X	X	X	X
	Transportation of recipient	NC	X	X	X	X	X	NC	NC	X	X
Lodging	NC	X	X	NC	NC	NC	NC	NC	X	X	

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		BCBS	Sanford	Medica	NDPERS PPO GF	NDPERS NGF	NDPERS HDHP NGF	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
4). Maternity & Newborn Care	Medically necessary abortion	X	X	X	X	X	X	X	X	X	X
	Elective abortion	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
	Birthing centers	X	NC	X	X	X	X	X	X	X	NC
	Delivery by Mid-wife in home	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
	Circumcision	X	X	X	X	X	X	X	X	X	X
	Complications of pregnancy - #5	X	X	X	X	X	X	X	X	X	X
	Delivery	X	X	X	X	X	X	X	X	X	X
	Post-delivery (mothers & newborn) - #9	X	X	X	X	X	X	X	X	X	X
	Neonatal Intensive Care	X	X	X	X	X	X	X	X	X	X
	Newborn Child Coverage -	X	X	X	X	X	X	X	X	X	X
	Normal pregnancy, newborn nursery & care	X	X	X	X	X	X	X	X	X	X
	Post Partum Care	X	X	X	X	X	X	X	X	X	X
	Prenatal Care	X	X	X	X	X	X	X	X	X	X
	Contraceptives										
Implanted	X	X	X	NC	X	X	X	X	X	X	
Injectable	X	X	X	NC	X	X	X	X	X	X	
Oral	X	X	X	NC	X	X	X	X	X	X	

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		BCBS	Sanford	Medica	NDPERS PPO	NDPERS NGF	NDPERS HDHP	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
5). Mental Health & Substance Use Disorder Services including Behavioral Health Treatment	Inpatient Mental Health - #3	X	X	X	X	X	X	X	X	X	X
	Outpatient Mental Health - #3	X	X	X	X	X	X	X	X	X	X
	Inpatient Substance Abuse - #2	X	X	X	X	X	X	X	X	X	X
	Outpatient Substance Abuse - #2	X	X	X	X	X	X	X	X	X	X
	Partial Day Hospitalization - #2,#3	X	X	X	X	X	X	X	X	X	X
	Residential Treatment - #3	X	X	X	X	X	X	NC	NC	NC	X
	Supervised Living	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
	Applied Behavior Analysis	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
	Group therapy	X	NC	X	X	X	X	X	X	X	NC
	Learning Disorders/Behav.Issues	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
	Psychiatric services	X	X	X	X	X	X	X	X	X	X
	Psychological Testing	X	X	X	X	X	X	X	X	X	X
	Detoxification	X	NC	X*	X	X	X	X	X	X	NC
	Autism Services										
Habilitative Therapies	X	X	X	X	X	X	NC	NC	NC	X	
Rehabilitative Therapies	NC	X	X	NC	NC	NC	NC	NC	NC	X	

\* Covered if medical services are needed



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		BCBS	Sanford	Medica	NDPERS PPO GF	NDPERS NGF	NDPERS HDHP NGF	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
8). Rehabilitative & Habilitative Services & Devices	Cardiac Rehabilitation	X	X	X	X	X	X	X	X	X	X
	Habilitation for congenital or birth defect	X	X	X	X	X	X	X	X	X	X
	Rehab/Habilitation for disability from medical condition	X	X	X	X	X	X	X	X	X	X
	Occupational Therapy due to surgery, injury, or illness	X	X	X	X	X	X	X	X	X	X
	Outpatient Physical Therapy	X	X	X	X	X	X	X	X	X	X
	Pulmonary Rehabilitation	X	X	X	X	X	X	X	X	X	X
	Respiratory Therapy Services	X	X	X	X	X	X	X	X	X	X
	Speech Therapy due to surgery, injury, or illness	X	X	X	X	X	X	X	X	X	X
	Speech Therapy to correct speech impediments	X	NC	X	X	X	X	X	X	X	NC
	Medical Equipment & Supplies										
	Breast Prosthesis	X	X	X	X	X	X	X	X	X	X
	Cochlear implants	X	X	X	X	X	X	X	X	X	X
	Diabetes (blood glucose monitors, testing, etc.)	X	X	X	X	X	X	X	X	X	X
	Hearing Aids (less than age 18)	NC	NC	NC	X	X	X	X	X	X	NC
	Hearing aids (18 +)	NC	NC	NC	NC	NC	NC	X	X	X	NC
	Orthotics & special footwear (medically approp. & necessary)	X	X	X	X	X	X	X	X	NC	X
	Ostomy Supplies	X	X	X	X	X	X	X	X	X	X
	Oxygen	X	X	X	X	X	X	X	X	X	X
	Prosthetics	X	X	X	X	X	X	X	X	X	X
	Replacement or repair of DME (durable medical equipment)	X	X	X	X	X	X	X	X	X	X
Wigs & Scalp Prosthetics for hair loss due to chemotherapy	NC	NC	NC	NC	NC	NC	X	X	NC	NC	

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		BCBS	Sanford	Medica	NDPERS PPO GF	NDPERS NGF	NDPERS HDHP NGF	FEHBP-BCBS Standard	FEHBP-BCBS Basic	FEHBP GEHA	Sanford Health Plan
9). Preventive & Wellness Services & Chronic Disease Mgmt	Colorectal Cancer Screening	X	X	X	X	X	X	X	X	X	X
	Diabetic Education	X	X	X	X	X	X	X	X	X	X
	Mammography - # 4	X	X	X	X	X	X	X	X	X	X
	Osteoporosis screening	X	X	X	NC	X	X	X	X	X	X
	Preventive Health Mandated by ACA (immunizations, well child and adult care)	X	X	X	X	X	X	X	X	X	X
	Prostate Specific Antigen (PSA) -#7	X	X	X	X	X	X	X	X	X	X
	Smoking/Tobacco Cessation Services	X	X	X	NC	X	X	X	X	X	X
	Preventive Care for Women (8/1/2012)										
	Minimum one well-woman preventive visit (gynecological exam) annually	X	X	X	NC	X	X	X	X	X	X
	Screening for gestational diabetes between 24 and 28 wks	X	X	X	NC	X	X	X	X	X	X
	Screening for gestational diabetes at 1st prenatal visit at high risk for diabetes	X	X	X	NC	X	X	X	X	X	X
	HPV testing > 29 y/o every 3 years if normal pap	X	X	X	NC	X	X	X	X	X	X
	Annual counseling on sexually transmitted infections for all sexually active women	X	X	X	NC	X	X	X	X	X	X
	Annual screening for HIV for sexually active women	X	X	X	NC	X	X	X	X	X	X
	Contraceptive methods and counseling	X	X	X	NC	X	X	X	X	X	X
	Lactation support and counseling by a trained provider	X	X	X	NC	X	X	X	X	X	X
Rental of Lactation Equipment	X	X	X	NC	X	X	X	X	X	X	
Screening & counseling for interpersonal and domestic violence	X	X	X	NC	X	X	X	X	X	X	



## Explanation of ND state mandates

1. §26.1-36-06.1 - coverage for off-label uses of prescription drugs cannot be denied if the drug is recognized for the particular treatment in standard medical reference materials or literature
2. §26.1-36-08 - substance abuse coverage (Applies pursuant to Mental Health Parity Act)
3. §26.1-36-09 -mental disorder coverage (Applies pursuant to Mental Health Parity Act)
4. §26.1-36-09.1 - Mammogram examination coverage. One baseline mammogram examination for each woman who is at least thirty -five but less than forty years of age. One mammogram examination every year, or more frequently if ordered by a physician, for each woman who is at least forty years of age.
5. §26.1-36-09.2 – coverage for involuntary complications of pregnancy
6. §26.1-36-09.3 – TMJ mandate. FEHBP does not have dollar limits.
7. §26.1-36-09.6 - Annual digital rectal examination and prostate -specific antigen test coverage. Male aged fifty and over, a black male aged forty and over, and a male aged forty or over with a family history of prostate cancer
8. §26.1-36-09.7 - coverage for medical foods and low -protein modified food products determined by a physician to be medically necessary for the therapeutic treatment of an inherited metabolic disease (e.g., maple syrup urine disease or phenylketonuria) ( FEHBP does not have a dollar limit).
9. §26.1-36-09.8 - post-delivery coverage for mothers and newborns (e.g., 48 hours following normal vaginal delivery and 96 hours following caesarean section) requires dental anesthesia and hospitalization.
10. §26.1-36-09.9 - coverage for anesthesia and hospitalization for dental care for covered individual who is under age nine, is severely disabled or has a medical condition and FEHBP covers to age 22.
11. §26.1-36-09.11 - breast reconstruction surgery coverage