



NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

Board Meeting Agenda

Location: WSI Board Room, 1600 East Century Avenue, Bismarck ND

By phone: 701.328.0950 Conference ID: 501 960 686#

Date: Tuesday, February 13, 2024

Time: 8:30 A.M.

[Click here to join the meeting](#)

I. MINUTES

- A. January 9, 2024 Regular Meeting
- B. January 10, 2024 Board Planning Meeting

II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

III. PRESENTATIONS

- A. Defined Benefit Investment Review – Scott Anderson, RIO
- B. Sanford Health Plan Updates
 - 1. 2023 Quarter 3 Executive Summary
 - 2. Value Based Care Arrangement
 - 3. Performance Guarantees Update

IV. DEFINED CONTRIBUTION PLAN IMPLEMENTATION

- A. House Bill 1040 Implementation Status – Rebecca (Information)

V. DEFINED BENEFIT

- A. Retirement Plan Services Request for Proposal (RFP) Update – Katheryne (Information)

VI. GROUP INSURANCE / FLEXCOMP

- A. Group Voluntary Dental PPO Benefits Request for Proposal (RFP) Update – Katheryne (Information)
- B. FlexComp Request for Proposal – Katheryne (Board Action)
- C. Insurance Updates – Lindsay (Information)
- D. Health Insurance Plan Renewal – Rebecca (Information)

VII. LEGISLATION / ADMINISTRATIVE RULES

- A. Proposed Administrative Rules – Rebecca (Information)

NDPERS BOARD MEETING AGENDA

TUESDAY, FEBRUARY 13, 2024

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VIII. OPERATIONS / ADMINISTRATIVE

- A. Mission/Vision Statement – Rebecca (Board Action)
- B. Annual Communication Plan – Rebecca (Information)
- C. Election Committee Appointment – Rebecca (Board Action)
- D. Executive Director Planning Discussion – Michelle (Board Action)
- E. Review of Interim Executive Director Compensation – Michelle (Board Action)
- F. Letter from ND Industrial Commission – Michelle (Board Action)
- G. Ethics Commission Request Update – Michelle (Information)
- H. Strategy Planning Topic Request from the Retirement and Investment Office – Michelle (Information)

IX. FINANCE

- A. Contracts Under \$10,000 – Rebecca (Information)
- B. Budget Status – Derrick (Information)

X. MEMBER *EXECUTIVE SESSION

- A. Retirement Appeal Case #841 MaryJo (Board Action)

*Executive Session pursuant to N.D.C.C. §44-04-19.2, §44-04-19.2(1) and/or §54-52-26 to discuss confidential records or confidential member information.



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Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: February 13, 2024

SUBJECT: Defined Benefit Investment Review

Scott Anderson, the Chief Investment Officer for the Retirement and Investment Office, will provide the Board with an update on the investment performance for the 2023 calendar year.

INVESTMENT PERFORMANCE REVIEW

Scott M Anderson, CFA – Chief Investment Officer
February 13, 2024

THE MARKET



Retirement & Investment

PERFORMANCE – BENCHMARK INDICES

Summary of Returns November 30, 2023					
Benchmark Indices (% change, annualized)	YTD	1 Yr	5 Yr	10 Yr	10 Yr Volatility
Russell 1000	20.6%	13.6%	12.2%	11.6%	17.9%
Russell 2000	4.2%	-2.6%	4.8%	6.1%	22.5%
S&P 500	20.8%	13.8%	12.5%	11.8%	17.7%
MSCI ACWI IMI Net	15.5%	11.1%	8.7%	7.4%	14.3%
MSCI World ex US	11.8%	11.3%	6.2%	3.9%	14.3%
MSCI Emerging Markets	5.7%	4.2%	2.3%	2.1%	15.7%
Bloomberg Aggregate	1.6%	1.2%	0.7%	1.4%	4.5%
Bloomberg Gov/Credit	2.0%	1.5%	1.1%	1.5%	4.9%
Bloomberg US High Yield	9.4%	8.7%	4.1%	4.3%	5.2%
NCREIF Property Index (09/30/2023)	-5.1%	-8.4%	5.3%	7.4%	3.7%

Source: Bloomberg

PERFORMANCE – BENCHMARK INDICES

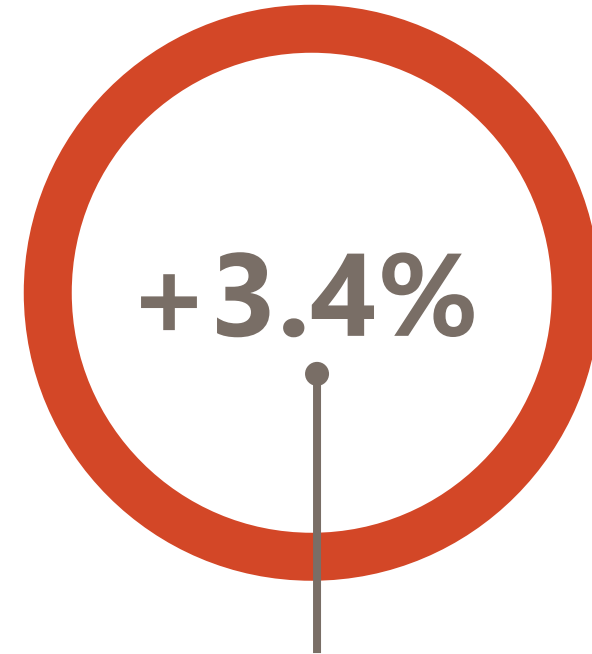
Summary of Returns February 02, 2024					
Benchmark Indices (% change, annualized)	YTD	1 Yr	5 Yr	10 Yr	10 Yr Volatility
Russell 1000	3.7%	19.8%	14.5%	12.6%	17.9%
Russell 2000	-3.1%	-0.4%	6.9%	7.1%	22.6%
S&P 500	4.1%	20.6%	14.8%	12.9%	17.7%
MSCI ACWI IMI Net	1.4%	12.3%	10.1%	8.3%	14.3%
MSCI World ex US	-0.6%	6.8%	6.8%	4.7%	14.3%
MSCI Emerging Markets	-3.4%	-3.0%	1.2%	3.0%	15.7%
Bloomberg Aggregate	-0.7%	0.9%	0.8%	1.6%	4.6%
Bloomberg Gov/Credit	-0.6%	1.3%	1.1%	1.8%	4.9%
Bloomberg US High Yield	0.0%	7.6%	4.4%	4.5%	5.2%
NCREIF Property Index (12/31/2023)	-7.9%	-7.9%	4.3%	6.8%	4.0%

Source: Bloomberg

HAS INFLATION PEAKED?¹



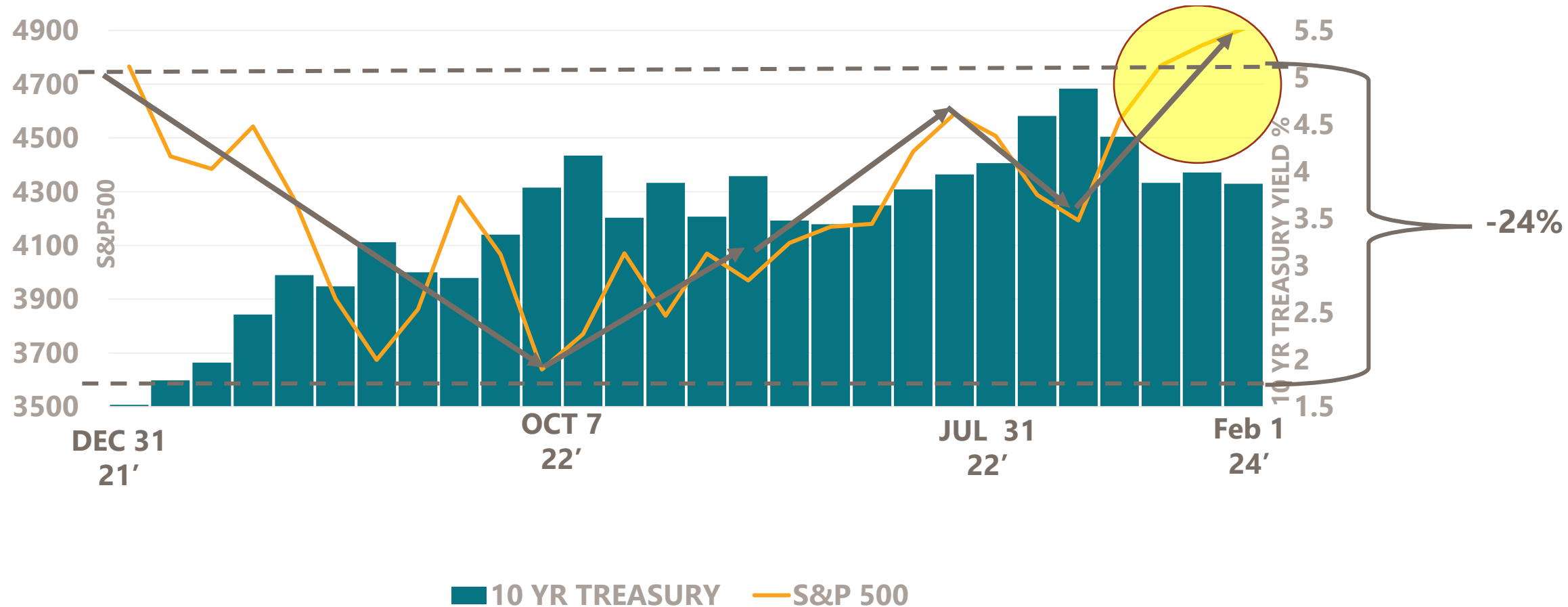
**ANNUAL INFLATION RATE
(June 2021 thru June 2022)**



**ANNUAL INFLATION RATE
(December 2022 thru December 2023)**
3.9% Ex Food & Energy

1. Bureau of Labor Statistics
Scott M Anderson, CFA – February 13, 2024

THE S&P500 HAS TRACKED INFLATION EXPECTATIONS¹



1. FRED

RECESSIONS AS FED LOWERS RATES

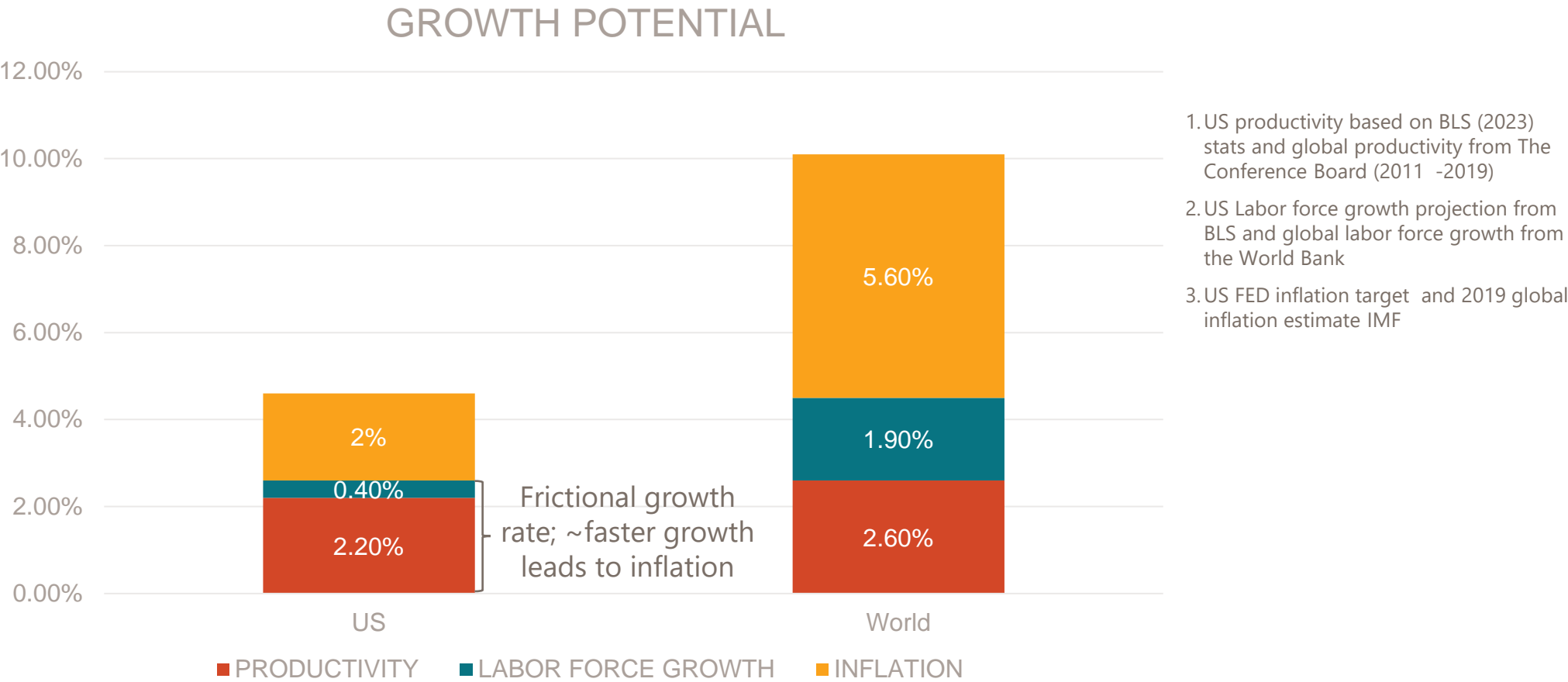


1. Fed Fed Fuds Effective Rate

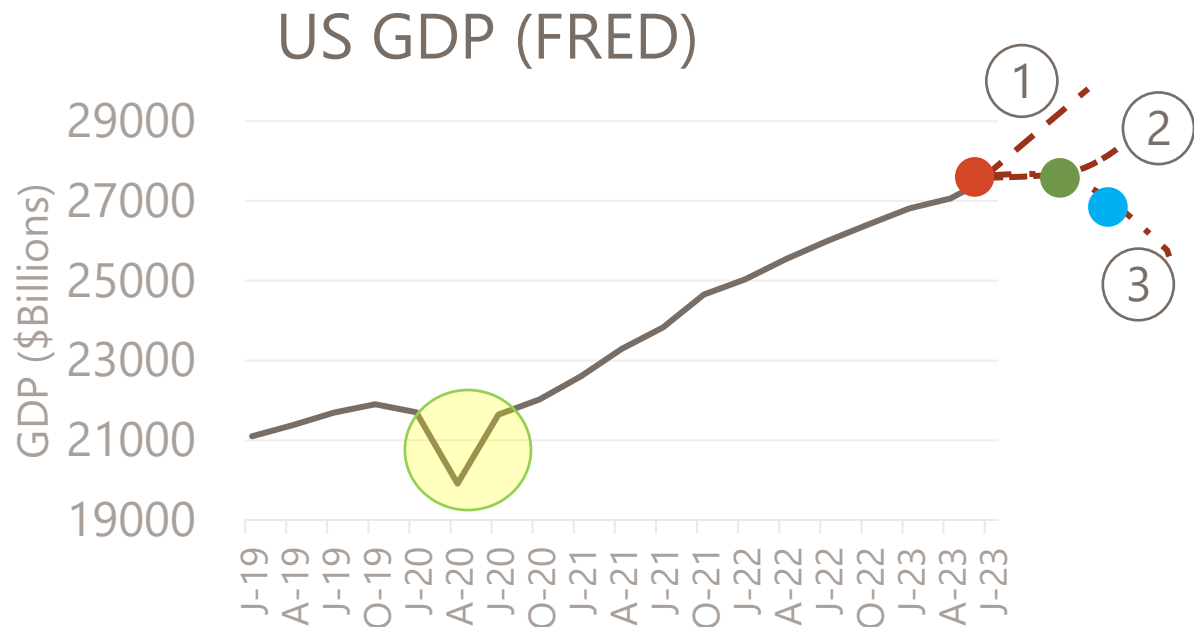
Scott M Anderson, CFA – February 13, 2024

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DRIVERS OF GDP GROWTH

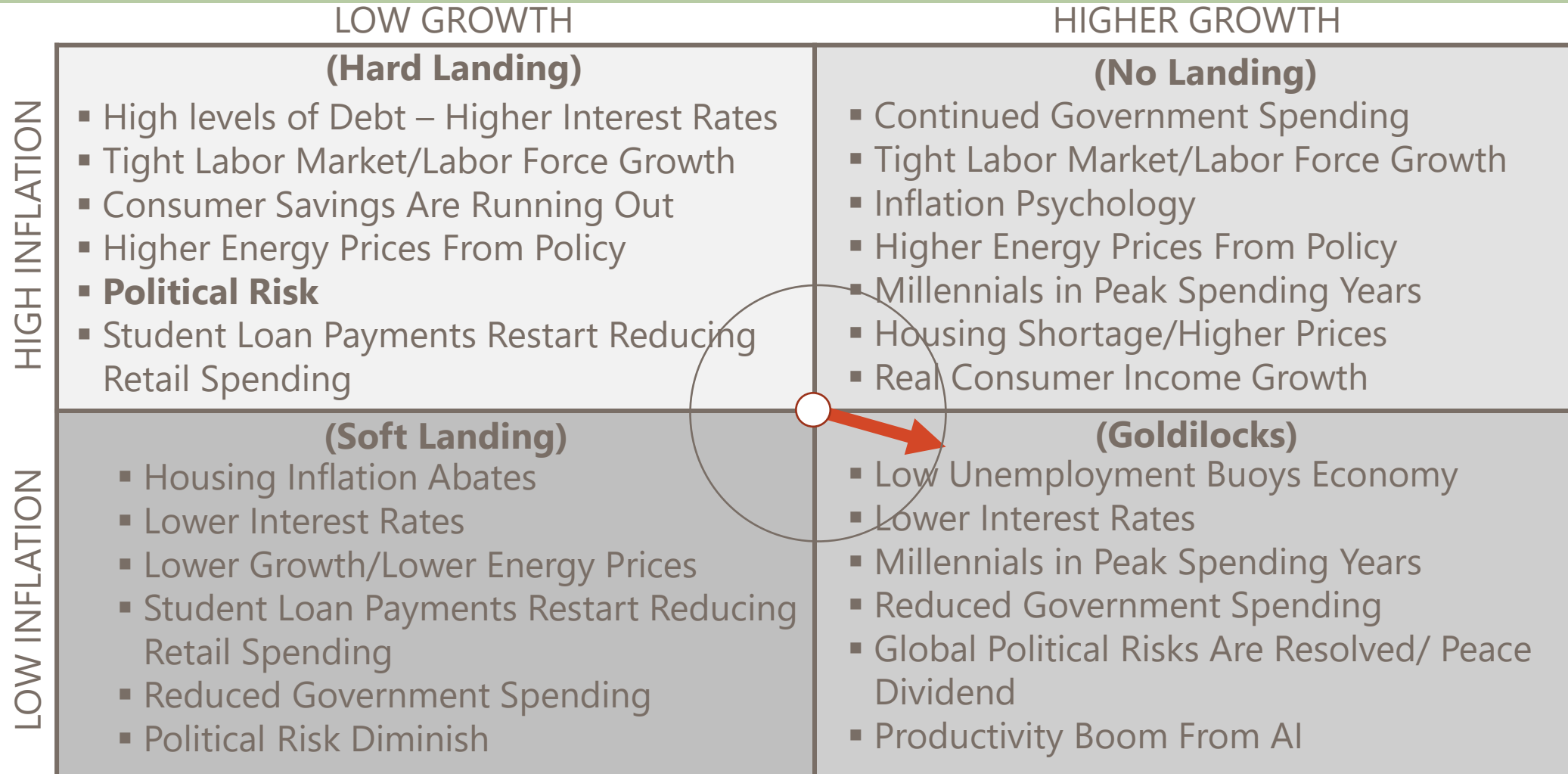


THE GOLDILOCKS NARRATIVE



- ① Fed Lowers Early – Too Hot ●
 - GDP growth too fast
 - Tight labor and fast growth cause inflation
 - Moderate equity growth, interest rates rise
- ② Fed lowers Just Right - Goldilocks ●
 - Reach growth capacity and control inflation
 - Moderate equity markets, normal fixed income markets, low defaults
- ③ Fed lowers too Late- Too Cold ●
 - Growth collapses into a recession
 - Equity markets perform poorly, fixed income performs poorly as defaults spike
 - Lower rates eventually potentially spur stagflation

COMPETING NARRATIVES



GOOD NEWS ¹

BLOOMBERG AGG YIELD¹: 4.67%



1. Fixed income benchmark; yields are the best estimate of future bond returns.

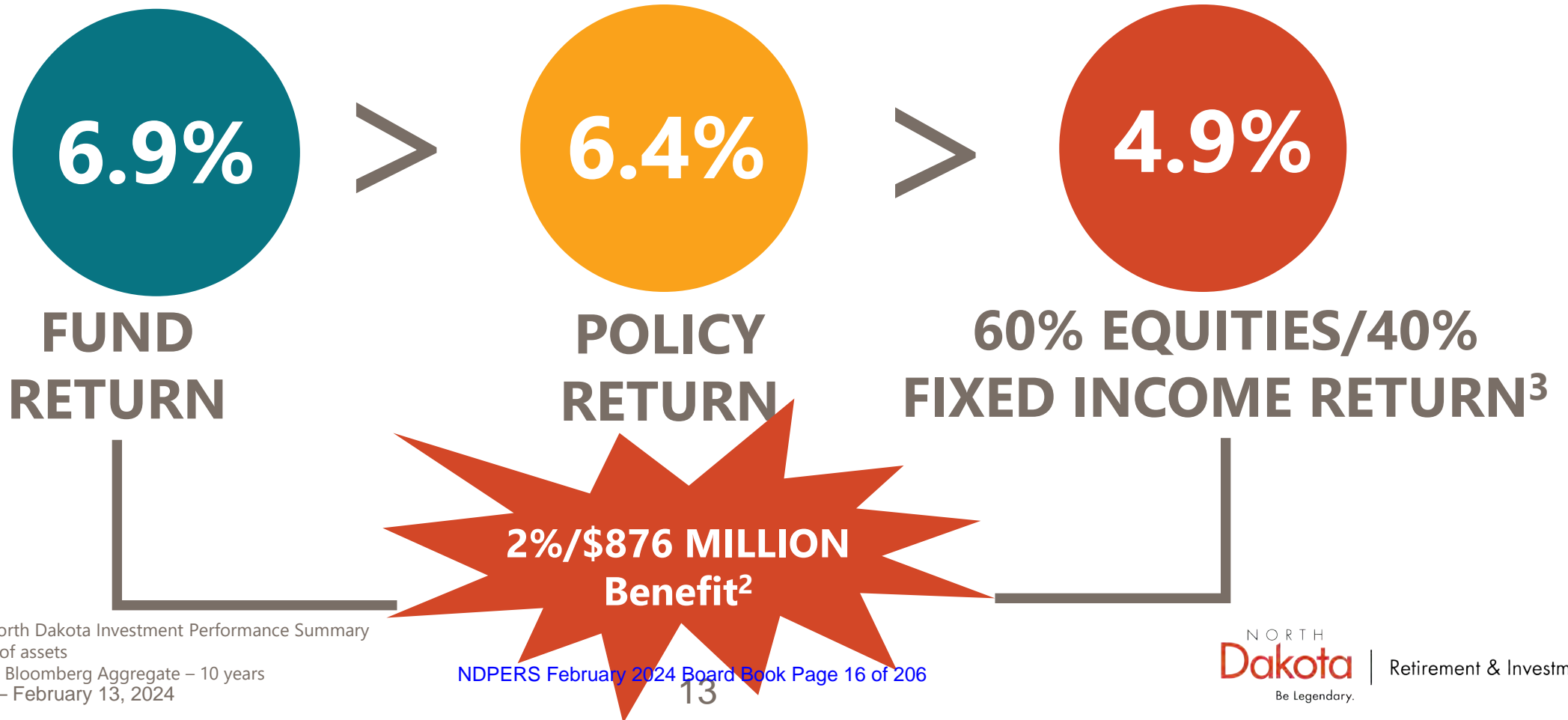
PERFORMANCE



Retirement & Investment

INVESTMENT MANAGEMENT BENEFITS

PERS TEN YEAR AVERAGE RETURN¹

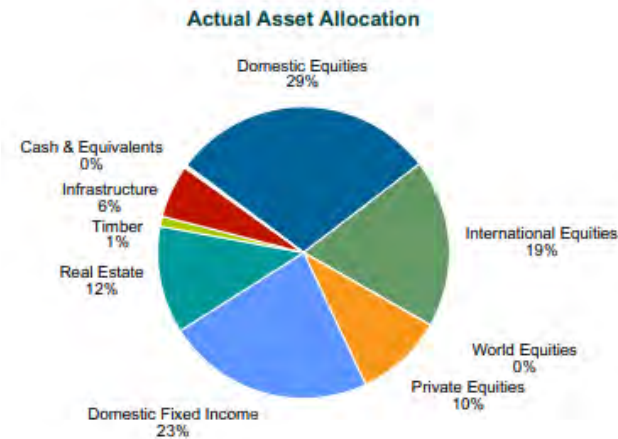


1. Thru September 2023; North Dakota Investment Performance Summary

2. Starting with \$4.0 Billion of assets

3. 60% MSCI ACW IMI/40% Bloomberg Aggregate – 10 years
Scott M Anderson, CFA – February 13, 2024

ASSET ALLOCATION¹



Asset Class	\$000s Actual	Weight Actual	Target	Percent Difference	\$000s Difference
Domestic Equities	1,156,791	29.4%	31.3%	(1.9%)	(74,562)
International Equities	736,346	18.7%	19.7%	(1.0%)	(37,358)
World Equities	25	0.0%	0.0%	0.0%	25
Private Equities	382,480	9.7%	7.0%	2.7%	107,276
Domestic Fixed Income	904,973	23.0%	23.0%	0.0%	732
Real Estate	466,823	11.9%	11.0%	0.9%	34,360
Timber	42,805	1.1%	1.1%	0.0%	5
Infrastructure	230,797	5.9%	6.9%	(1.0%)	(40,922)
Cash & Equivalents	10,443	0.3%	0.0%	0.3%	10,443
Total	3,931,482	100.0%	100.0%		

1. September 2023 values – Callan

PERS PERFORMANCE

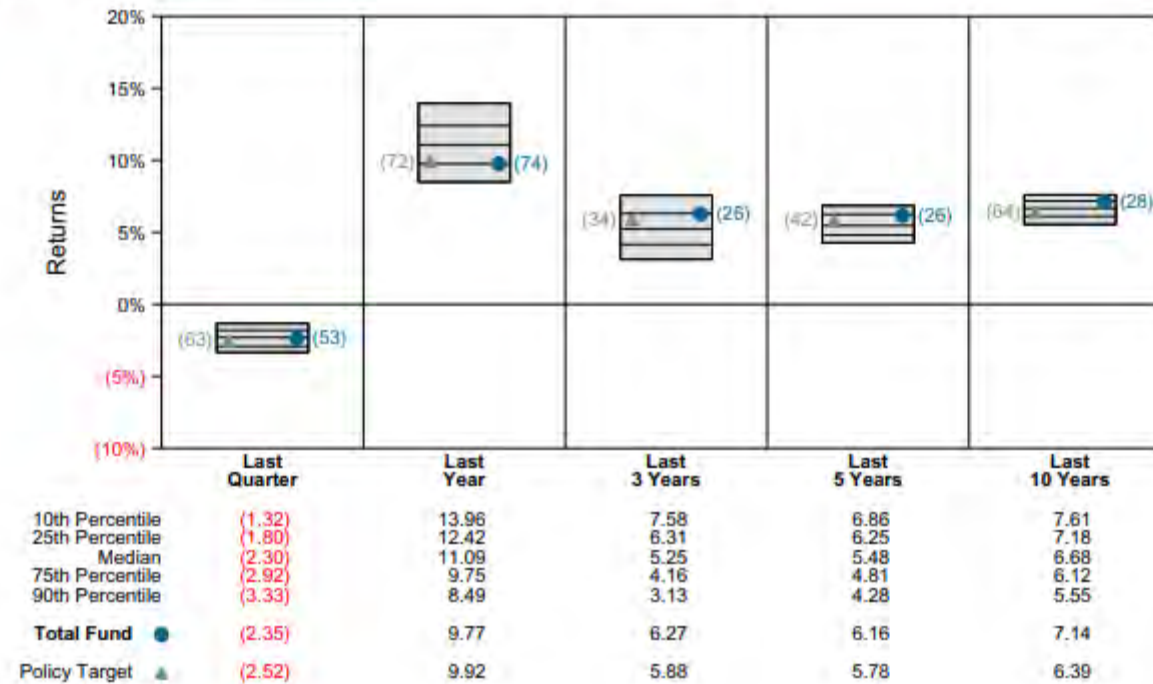
AS OF NOVEMBER 30, 2023
PERS \$4.0 Billion

	Year to Date	1 Year	3 year	5 Year ¹	Risk (5 Year)
Total Fund Return - Net	7.8%	5.3%	5.1%	7.4%	10.3%
Policy Benchmark Return	7.7%	5.2%	4.9%	7.2%	10.6%
Total Relative Return ¹	0.1%	0.0%	0.2%	0.2%	
Corridor <u>Difference</u> September	0.0%	0.8%	0.4%	0.4%	

1. Corridor benchmark applied only in year-to-date numbers

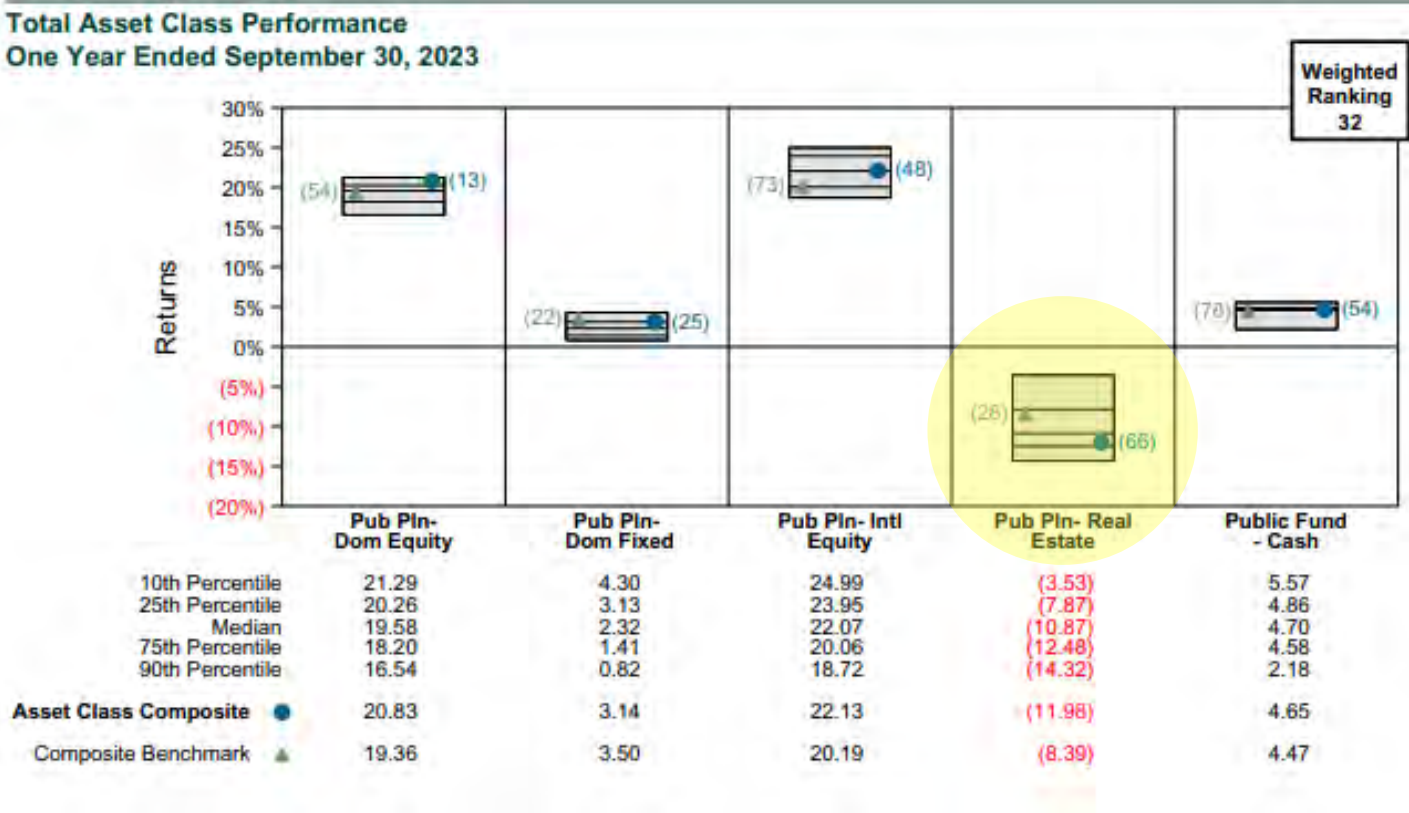
PERS PERFORMANCE

Callan Public Fund Sponsor Database



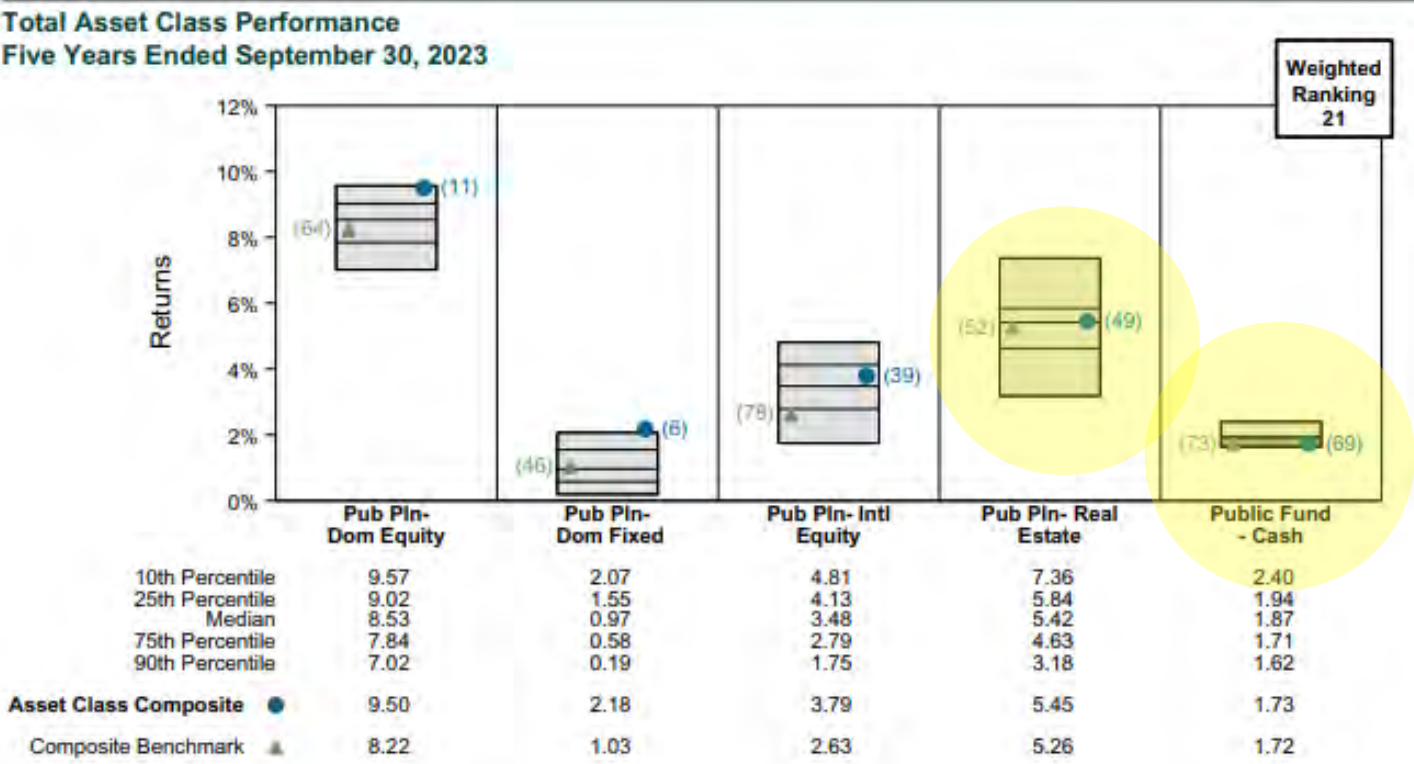
1. September 2023 values – Callan

ASSET CLASS PERFORMANCE



1. September 2023 values – Callan

ASSET CLASS PERFORMANCE

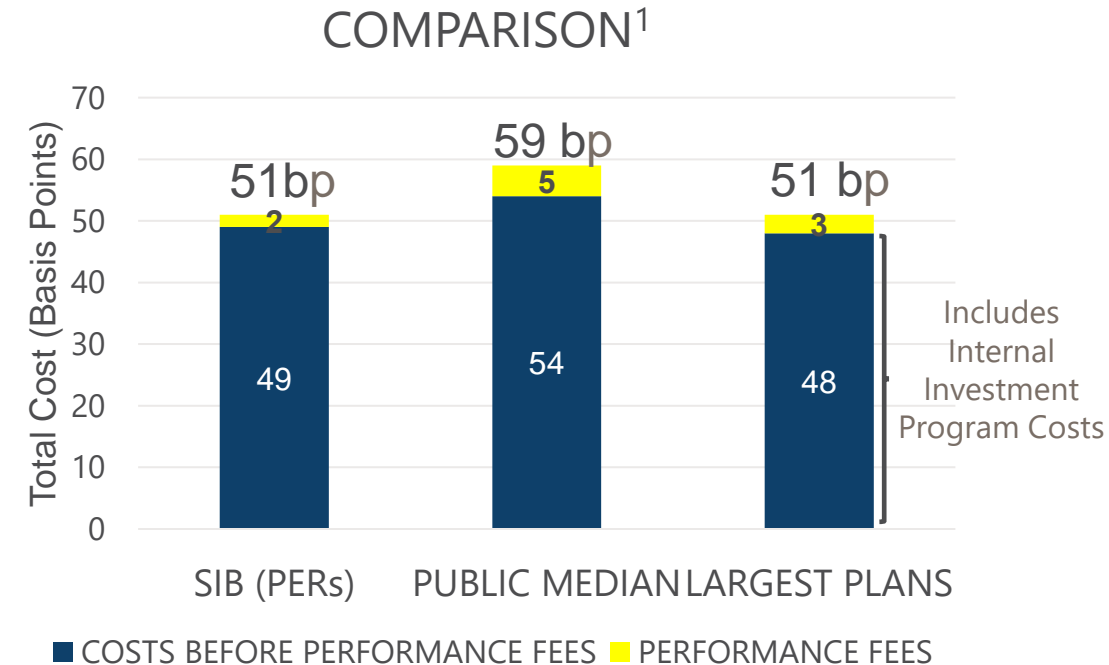


1. September 2023 values – Callan

* Current Quarter Target = 25.2% Russell 1000 Index, 18.7% MSCI ACWI xUS IMI, 17.1% Blmbg Aggregate, 10.1% NCREIF Total Index, 8.2% Private Equity, 7.4% Blmbg HY Corp 2% Iss Cap, 4.5% Russell 2000 Index, 3.6% CPI All Urban Cons lagged 3 months, 3.6% NCREIF NFI-ODCE Eq Wt Net, 1.2% NCREIF Timberland Index and 0.4% 3-month Treasury Bill.

PERs COST OF INVESTMENT MANAGEMENT

	FY 2023			
	Average Market Value	Fees in \$	Fees in %	Contribution to Total Fees
Investment managers' fees:				
Global equity managers	84,775,800	694,625	0.82%	0.02%
Domestic large cap equity managers	878,264,303	2,559,772	0.29%	0.07%
Domestic small cap equity managers	166,716,855	1,114,244	0.67%	0.03%
Developed international equity managers	553,220,281	1,522,068	0.28%	0.04%
Emerging markets equity managers	119,857,722	580,744	0.48%	0.02%
Investment grade domestic fixed income managers	559,245,670	1,183,703	0.21%	0.03%
Below investment grade fixed income managers	246,152,638	4,435,364	1.80%	0.12%
Real estate managers	501,636,214	(1,437,117)	-0.29%	-0.04%
Timber managers	44,176,808	289,956	0.66%	0.01%
Infrastructure managers	214,949,938	4,187,504	1.95%	0.11%
Private equity managers	352,251,311	2,794,994	0.79%	0.07%
Cash & equivalents managers	16,868,033	15,872	0.09%	0.00%
Total investment managers' fees	3,738,115,574	17,941,729	0.48%	
Custodian fees		313,590	0.01%	0.01%
Investment consultant fees		127,262	0.00%	0.00%
Administrative fees		761,904	0.02%	0.02%
Total investment expenses		19,144,485	0.51%	
Less Estimated Performance Fees			0.02%	
Total Investment Expenses Less Estimated Performance Fees			0.49%	



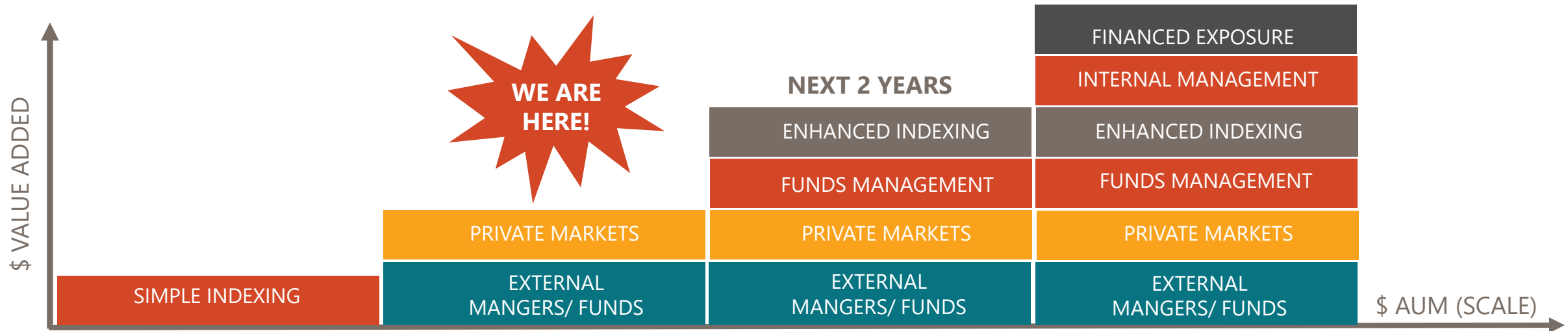
1. CEM Benchmarking, Inc.

PATHWAY TO STRATEGY

Scott M Anderson, CFA

February 13, 2024

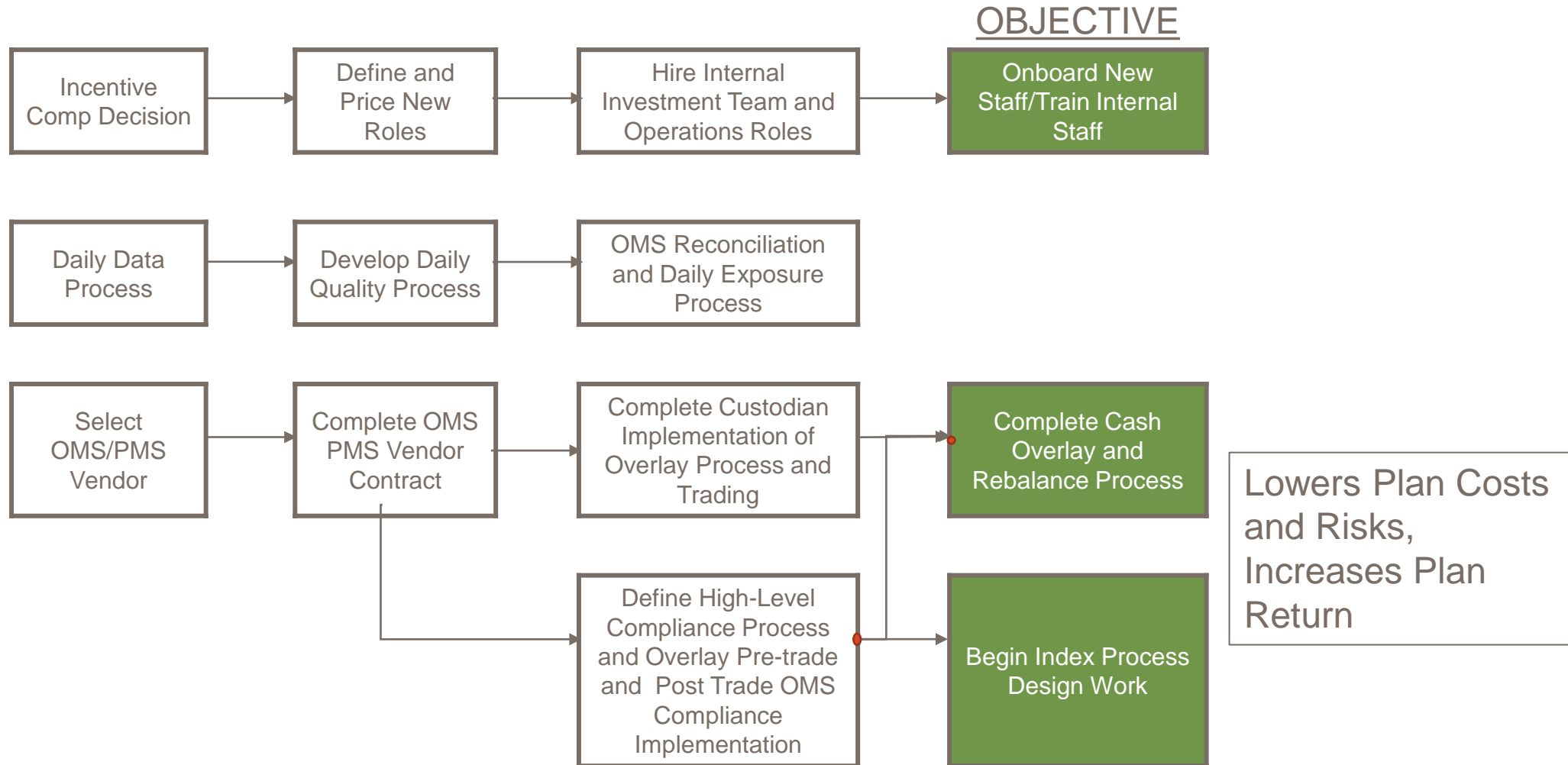
ROADMAP FOR SUCCESS



CAPABILITIES FOR SUCCESS

- DELEGATED AUTHORITY
- INCENTIVE COMP SYSTEM
- DIRECT INVESTMENT TEAM
- INDEPENDENT BENCHMARK CONSULTANT
- PRIVATE MARKETS BENCHMARK CORRIDOR
- FUND POOLING
- DAILY FUND VALUES AND RETURNS
- ADVANCED OPERATIONS
- AUDIT PROCESSES AND COMPLIANCE
- NEW INVESTMENT PROCESSES
- FUND AND LIQUIDITY MANAGEMENT
- DERIVATIVES OVERLAYS
- VALUATION AND EXPOSURE MANAGEMENT
- INVESTMENT DATA WAREHOUSE
- ORDER MANAGEMENT SYSTEM
- PORTFOLIO MANAGEMENT ANALYTICS
- INTEGRATED DATA AND MESSAGES
- KNOWLEDGE MANAGEMENT SYSTEM

CRITICAL PATHS OF SUCCESS





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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: Sanford Health Plan Updates

Sanford Health Plan will be at the meeting to provide three updates to the Board.

The first is to review the Quarter 3, 2023 Executive Summary (Attachment 1) and answer any questions you may have. Representatives from Humana are also available to discuss any questions related to the Medicare Part D Plan information, labeled as NDPERS EGWP, found on page 15 of the summary.

The second is to provide an overview (Attachment 2) and update on the Value Based Care Arrangement in place between NDPERS, Sanford Health Plan and a number of large providers within the State.

Finally, an update on the Performance Guarantees will be provided. Attachments 3 and 4 are provided for this item.

These updates are informational and do not require any action by the Board.

NDPERS Executive Summary



Quarter 3 | 2023

Presented February 2024



SANFORD
HEALTH PLAN

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Claims Analysis

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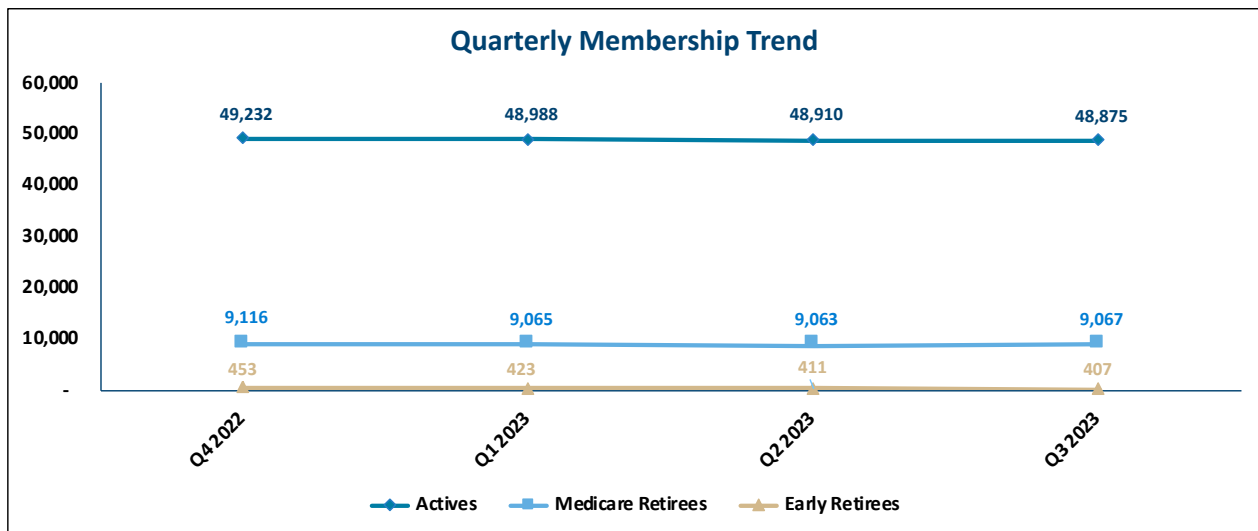
Performance Standards & Guarantees 2021-2023

Summary

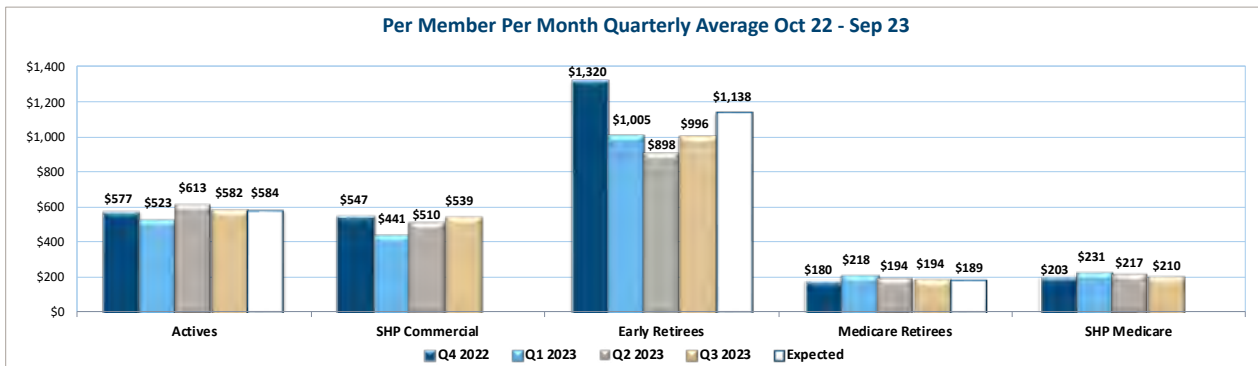
ANNUAL MEMBERSHIP SUMMARY

	MEMBERSHIP COMPARISON					PERCENT CHANGE
	Q3 2022	Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q3 2022 – Q3 2023
Actives	49,373	49,232	48,988	48,910	48,875	-1.0%
Medicare Retirees	9,121	9,116	9,065	9,063	9,067	-0.6%
Early Retirees	476	453	423	411	407	-14.4%

MEMBERSHIP TREND



PMPM SUMMARY

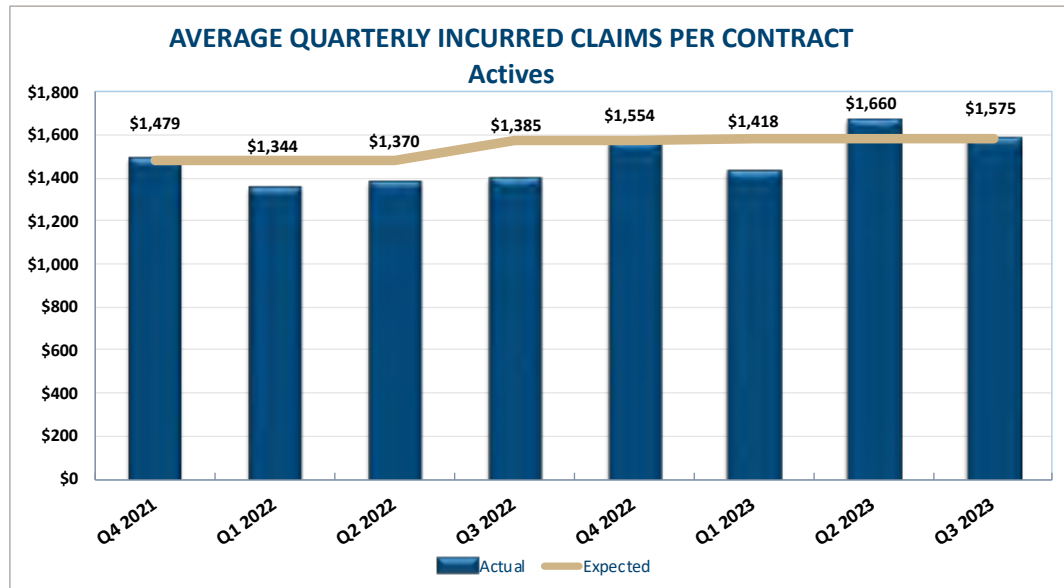


*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

*Medicare Retirees PMPM excludes prescription drug coverage (Medicare Part D).

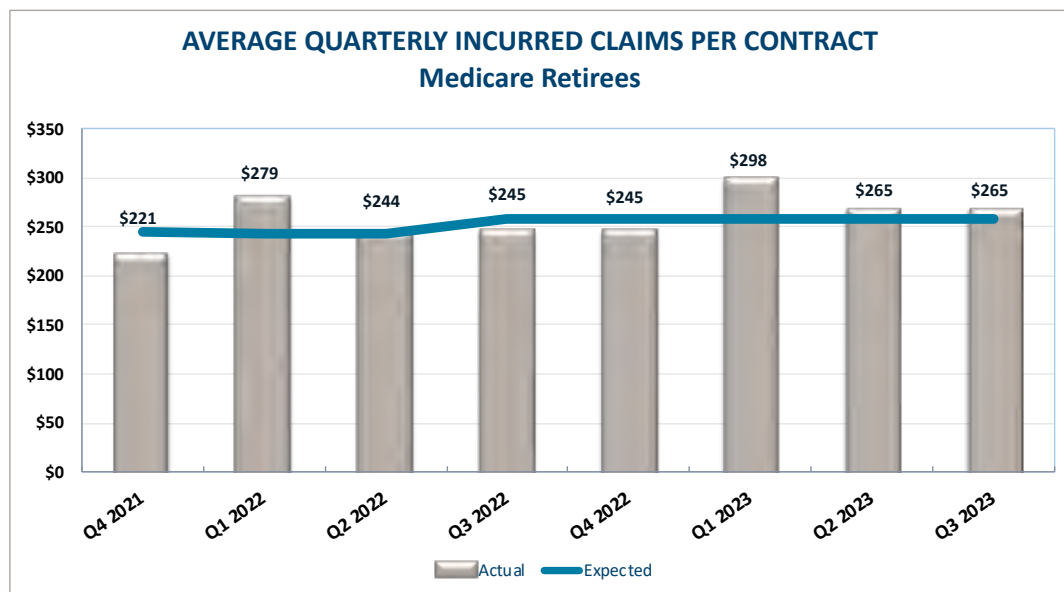
*Expected is October 1, 2022 – September 30, 2023.

PAID CLAIMS PER CONTRACT PER MONTH



*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

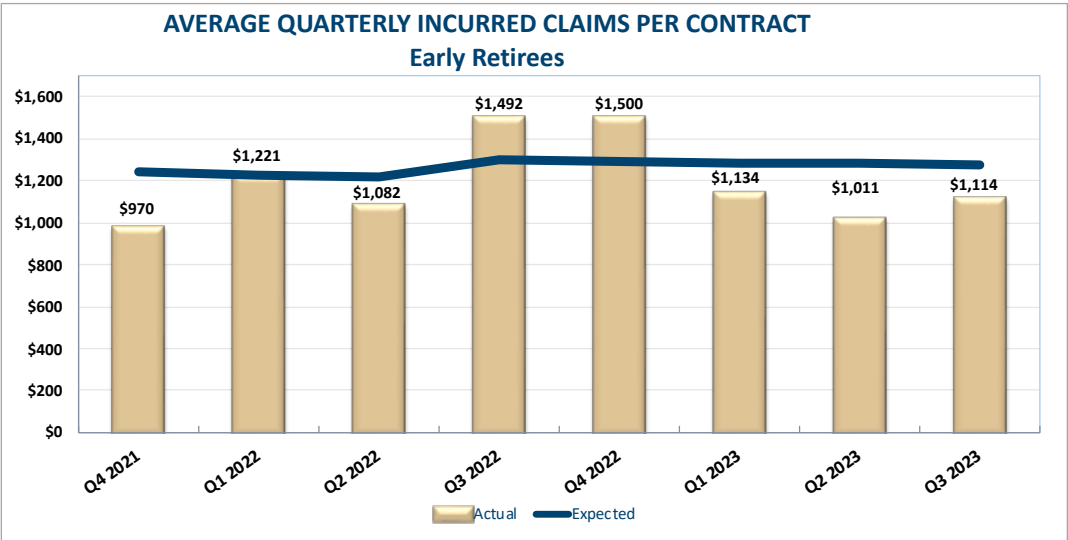
*NDPERS Active contracts have approximately 2.71 members per contract.



*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

*NDPERS Medicare Retirees contracts have approximately 1.37 members per contract.

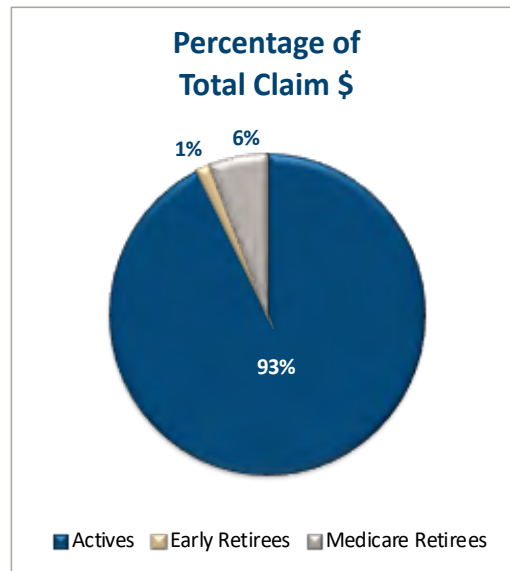
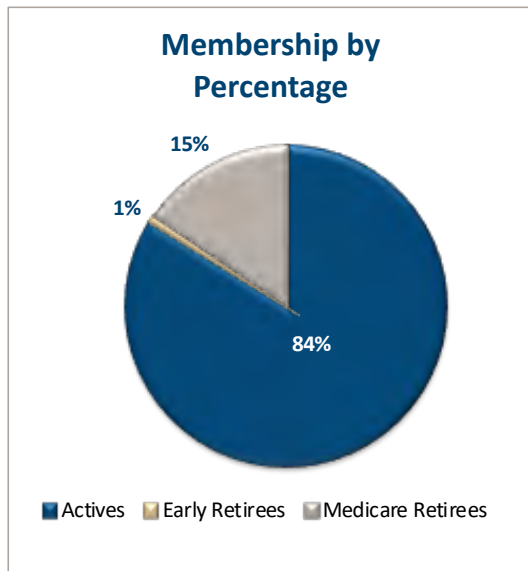
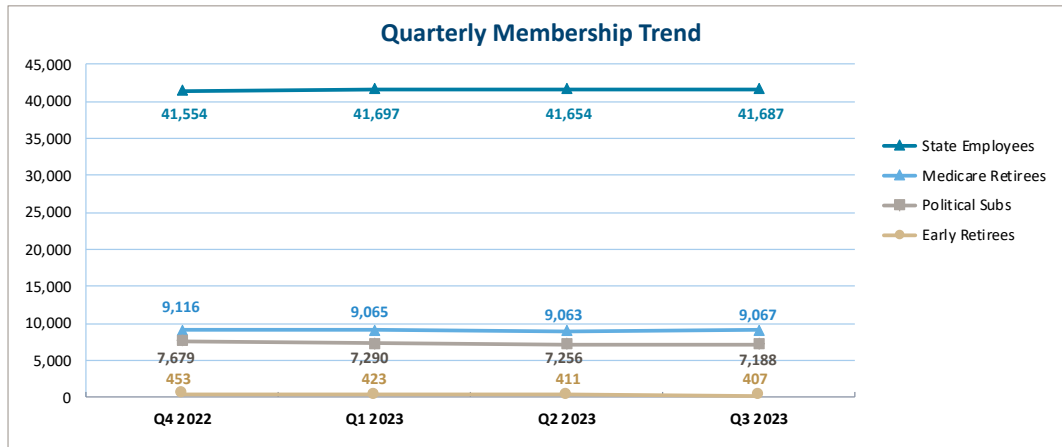
PAID CLAIMS PER CONTRACT PER MONTH



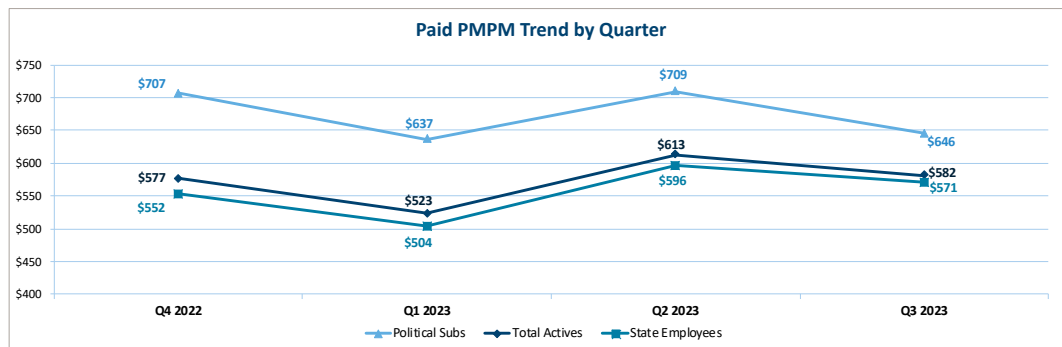
*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

*NDPERS Early Retirees contracts have approximately 1.12 members per contract.

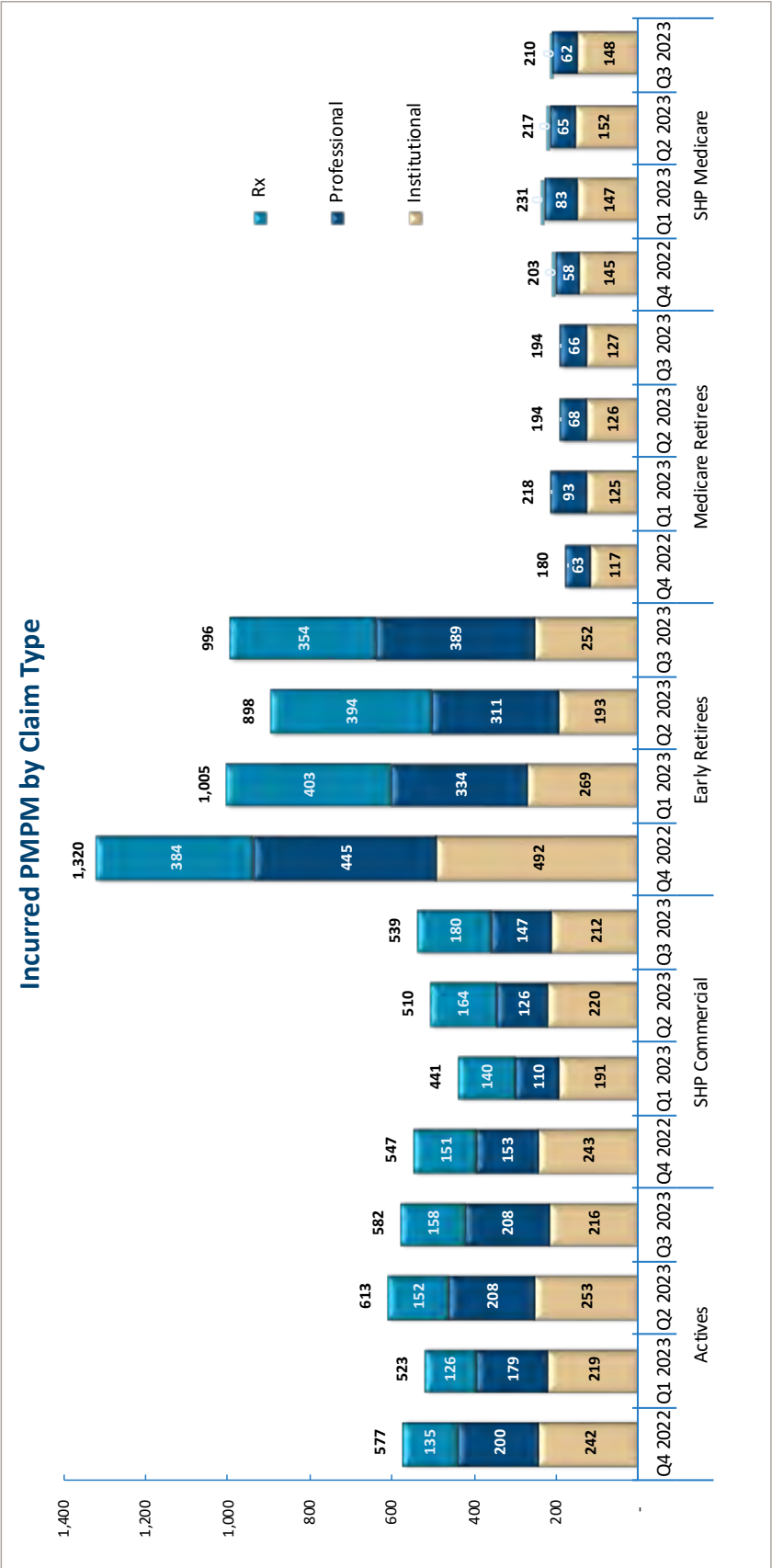
MEMBERSHIP PERCENTAGE

Membership
& Utilization

PAID PMPM TREND BY QUARTER

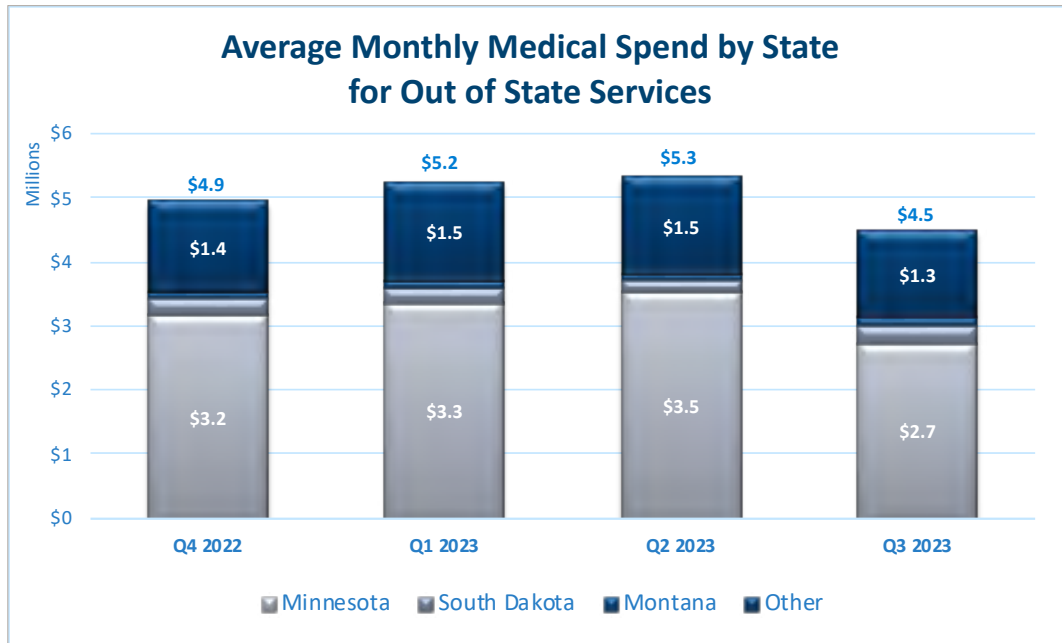


*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

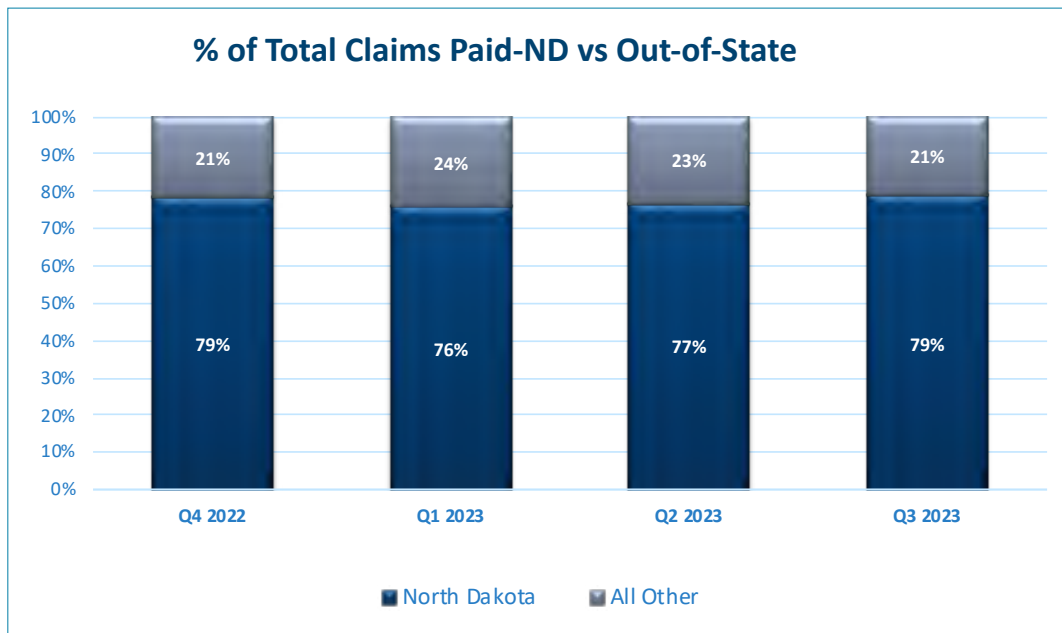


*Incurred between October 1, 2022 and September 30, 2023. Includes IBNR for October 1, 2022 through September 30, 2023, as of November 30, 2023.

PAID CLAIMS BY STATE

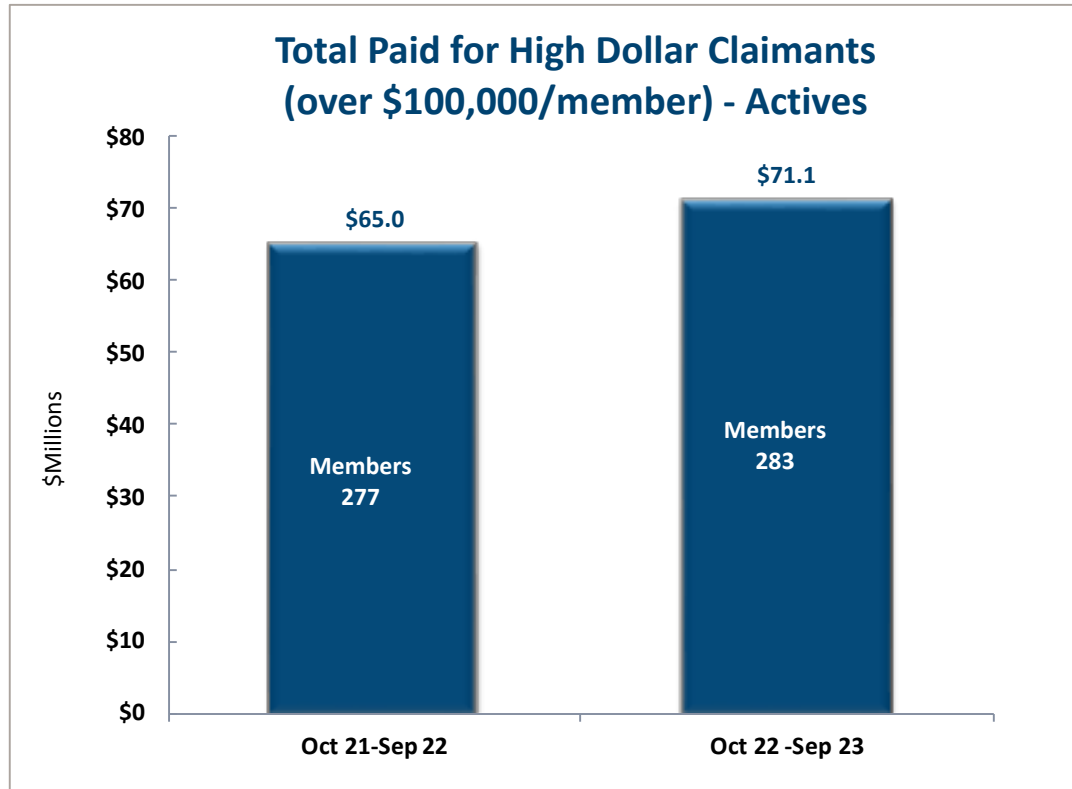
Membership
& Utilization

*Paid Claims by State charts include both active and retiree membership.

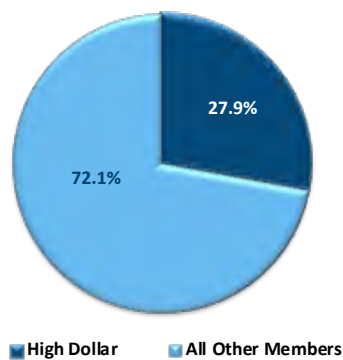


High Dollar
Cases

ACTIVES

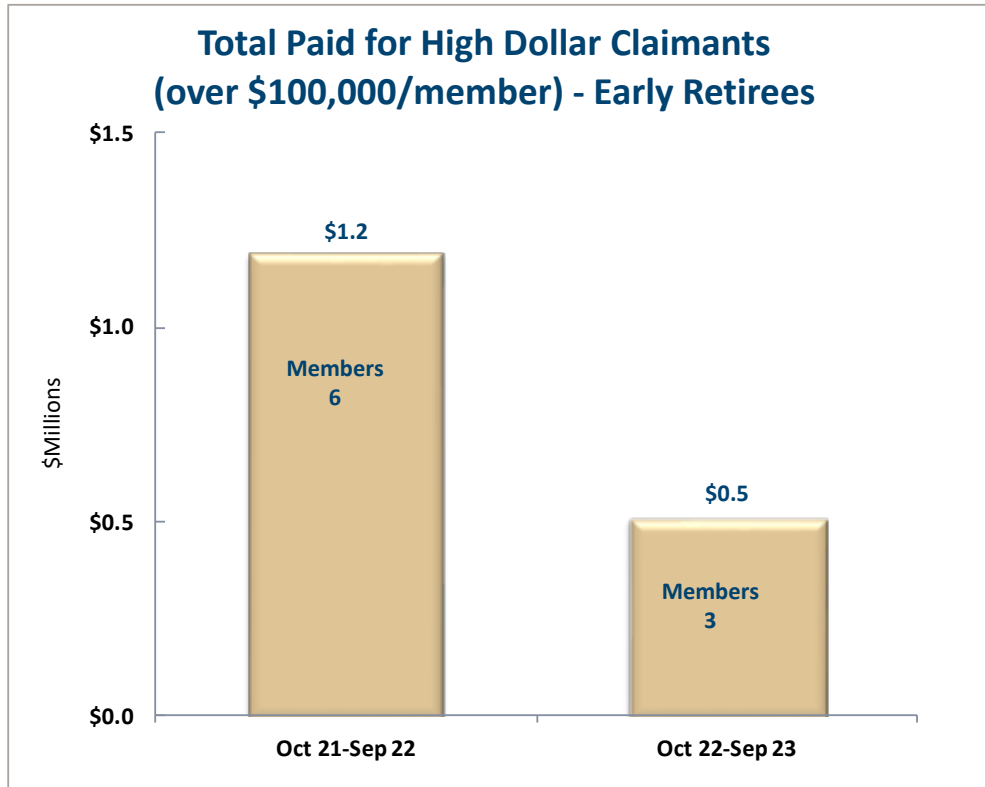


**High Claimant Actives as % of
Total Payments
Oct 21 - Sep 23**

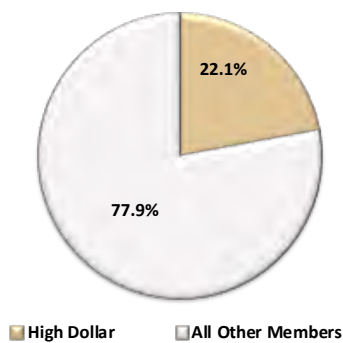


Avg. Paid/Claimant	\$251,227
% of Total Payments	27.9%

EARLY RETIREES

High Dollar
Cases

**High Claimant Early Retirees as
% of Total Payments
Oct 21 - Sep 23**

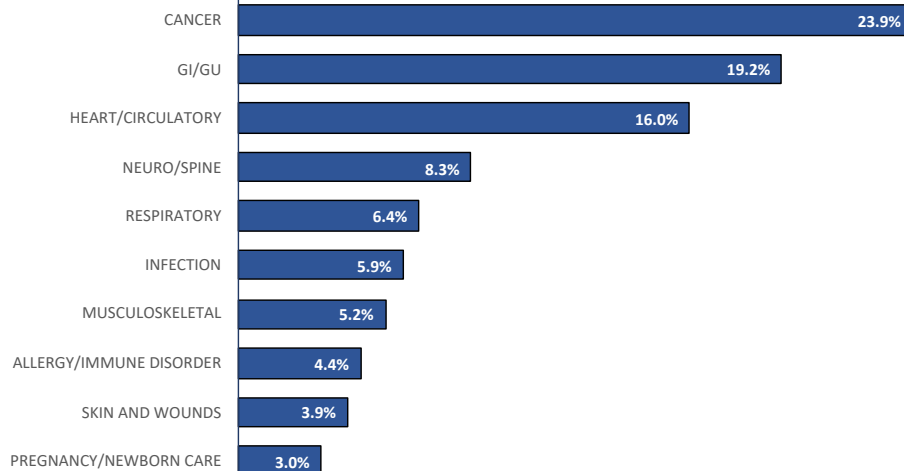


Avg. Paid/Claimant	\$169,435
% of Total Payments	22.1%

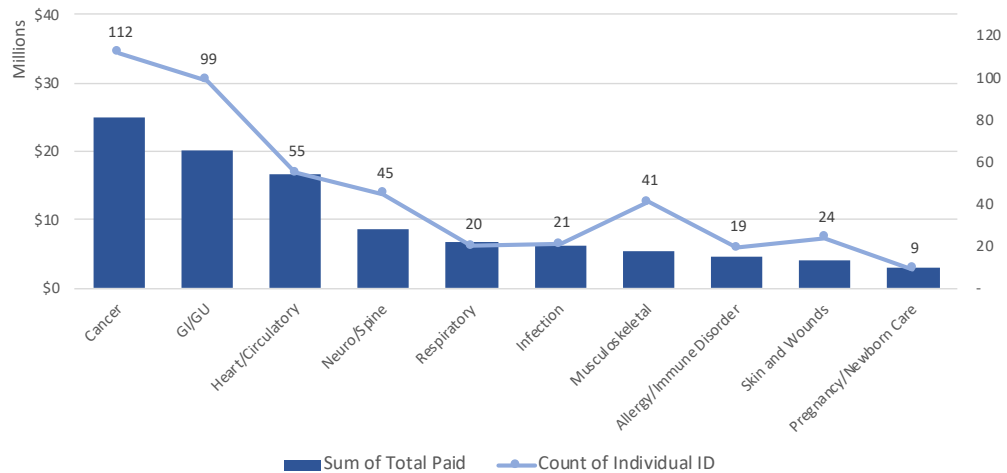
High Dollar Cases

PRIMARY DIAGNOSIS

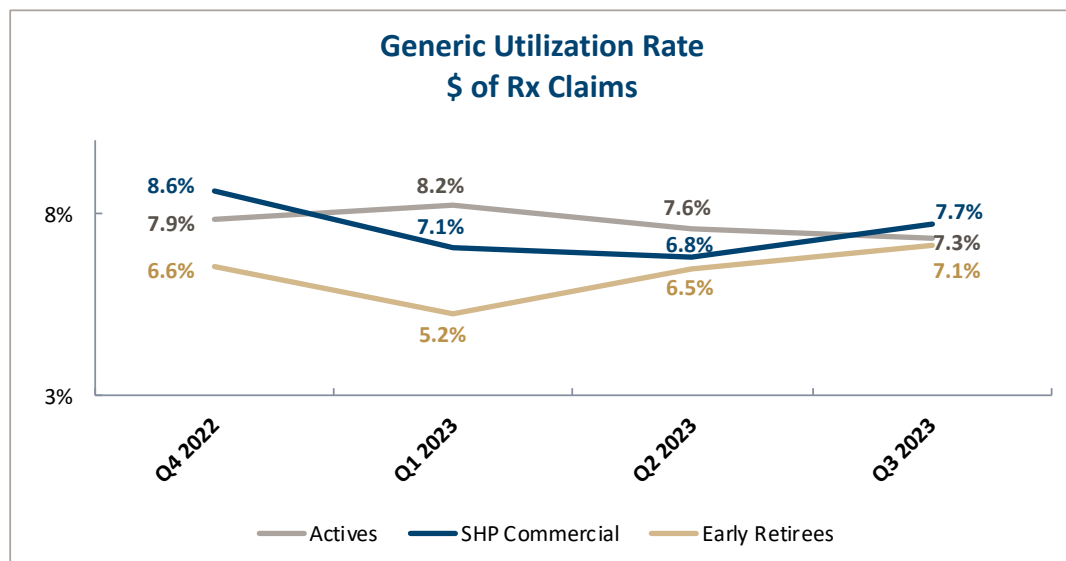
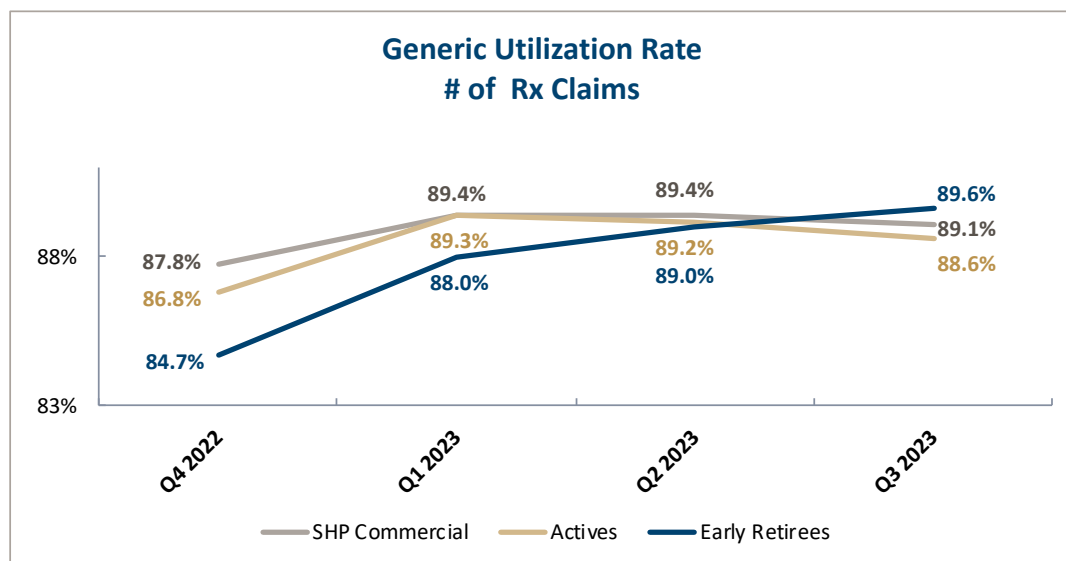
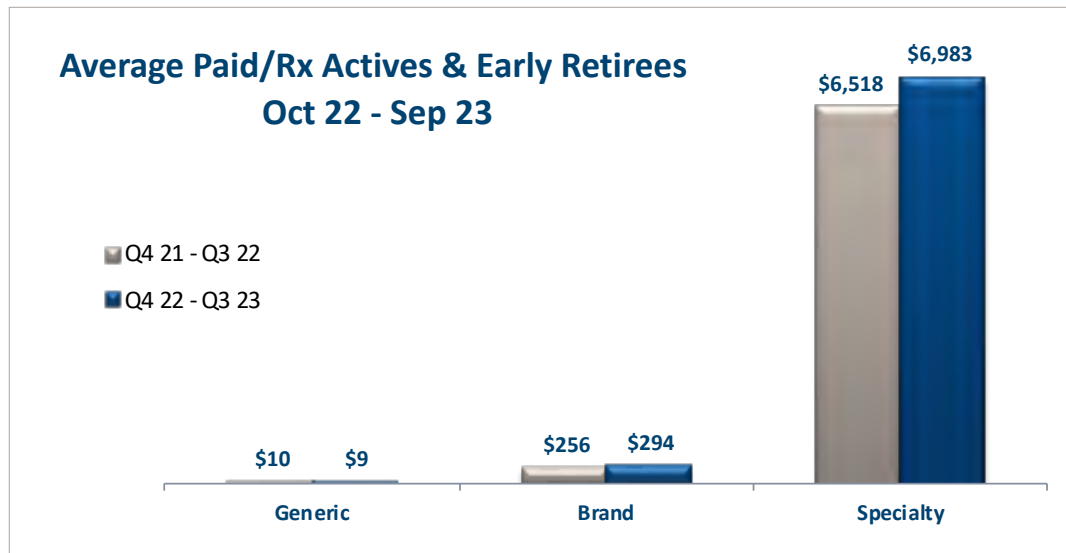
Top 10 Highest Paid Diagnosis Group Oct 2022 - Sep 2023



**Top 10 Highest Paid Diagnosis Group w/ Member Count
Oct 2022 - Sep 2023**

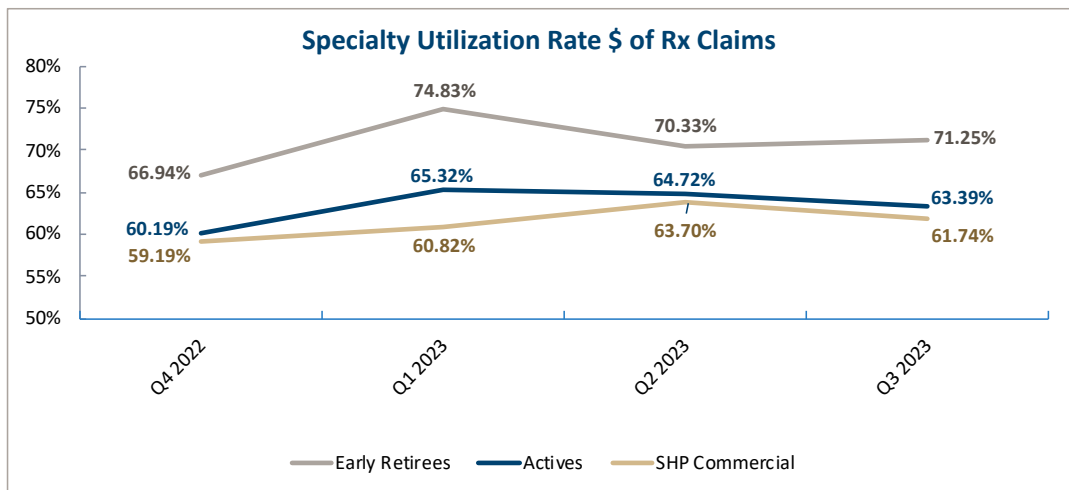
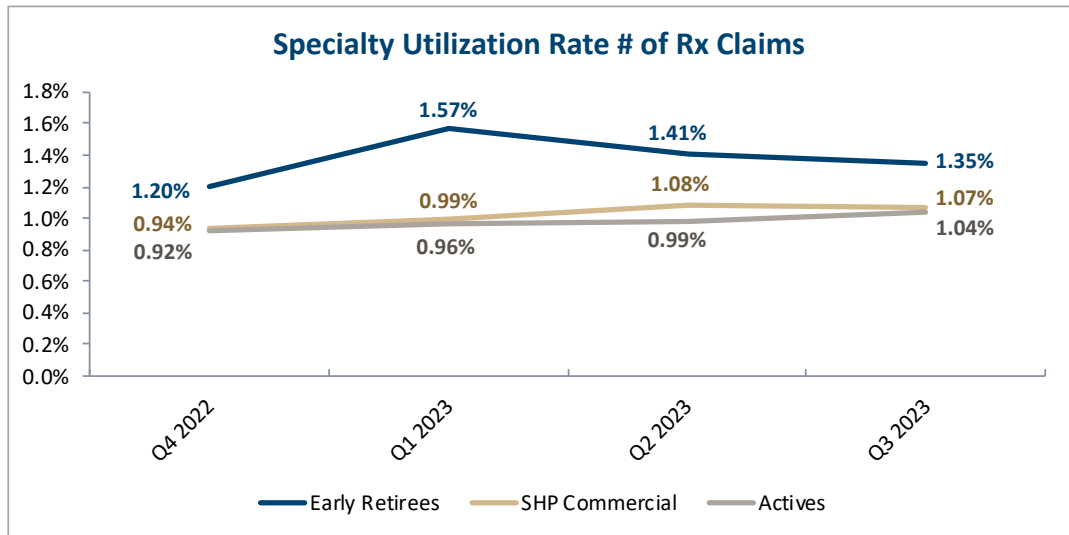


GENERIC UTILIZATION

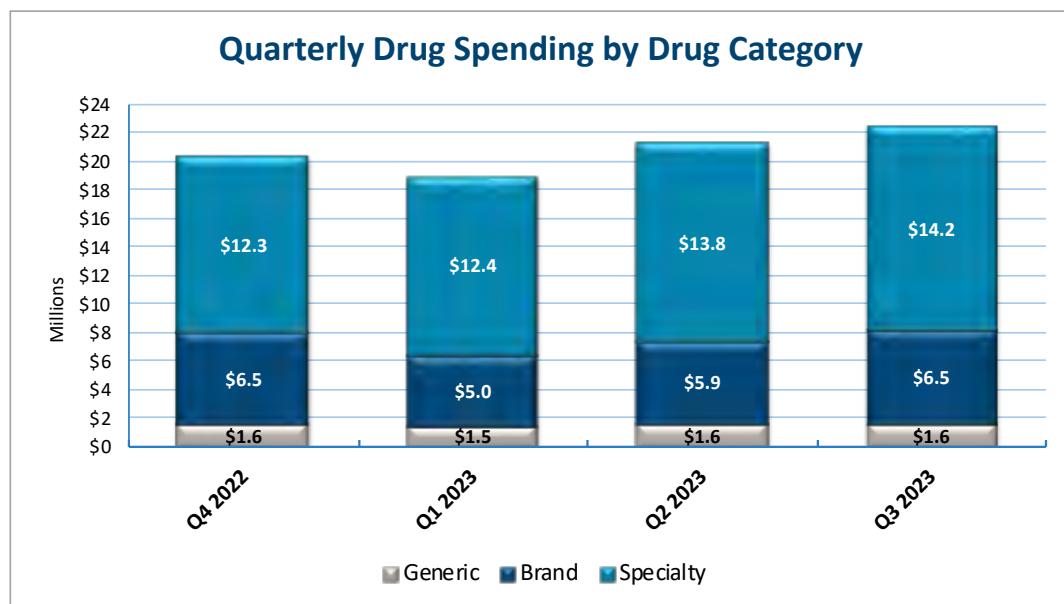
Prescription
Drugs

Prescription
Drugs

SPECIALTY PHARMACY



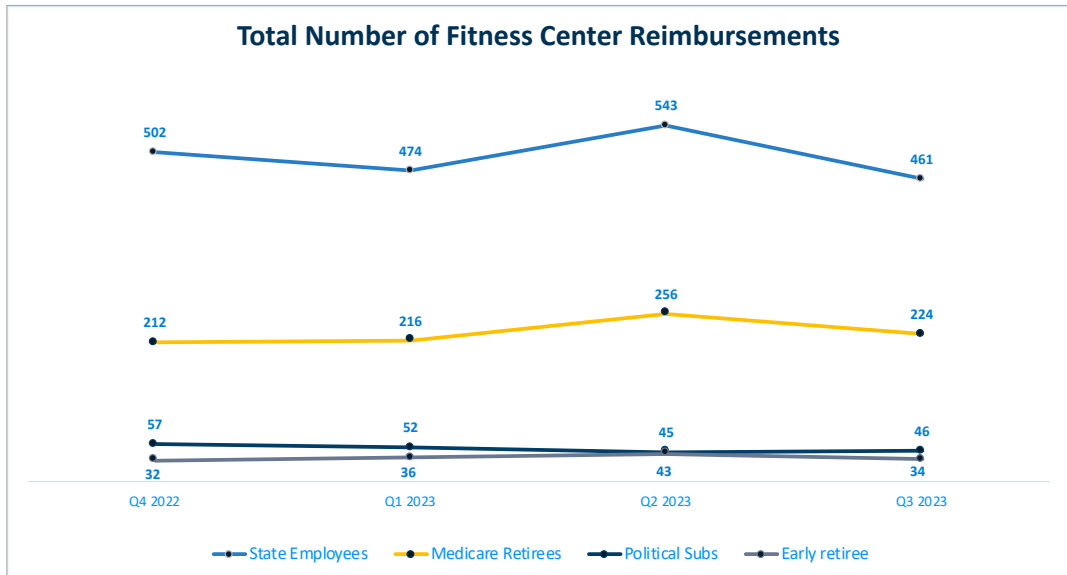
PHARMACY

Prescription
Drugs

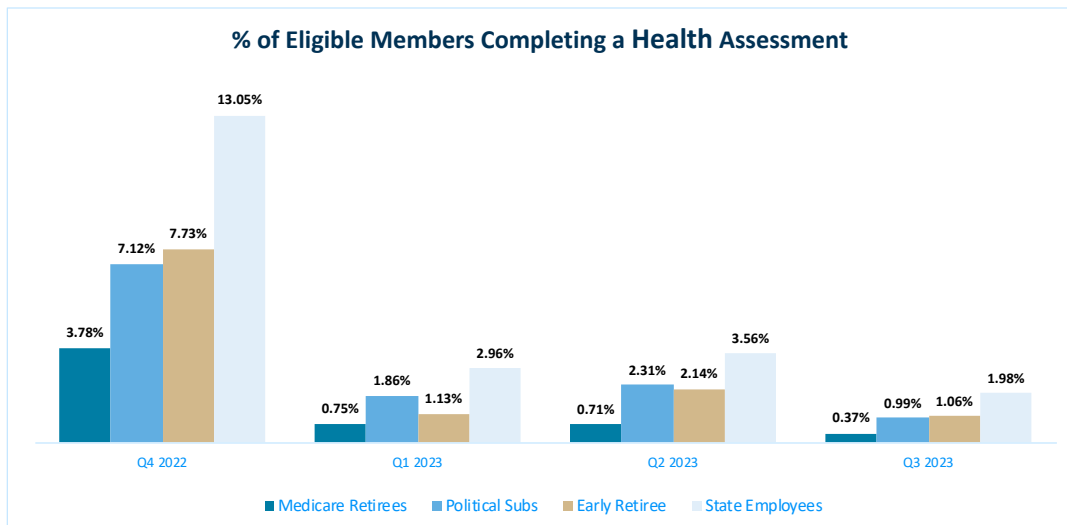
Humana – NDPERS EGWP			
Description	Q3 2022	Q3 2023	Change
Avg Members per Month	9,113	9,061	-0.6%
Average Member Age	76.5	76.8	0.4%
Members Utilizing Benefit	8,575	8,590	0.2%
% Members Utilizing Benefit	94.1%	94.8%	0.7%
Total Rx (30 day adjusted)	356,316	359,434	0.9%
Total Rx PMPM (30 day adjusted)	4.34	4.41	1.5%
Generic Fill Rate	90.5%	90.2%	-0.3%
Maintenance 90 Day Utilization	78.4%	79.3%	1.1%
Retail - Maintenance 90 Day Utilization	76.5%	77.5%	1.3%
Home Delivery - Maintenance 90 Day Utilization	1.9%	1.8%	-5.3%
Total Specialty Rx	959	833	-13.1%
Specialty % of Plan Paid	35.0%	28.1%	-19.7%

Dakota Wellness Program

FITNESS CENTER REIMBURSEMENT



HEALTH ASSESSMENT



LIFESTYLE MEDICINE PROGRAMS

Dakota
Wellness
Program



Center for Lifestyle Medicine

NDPERS members with qualifying conditions have access to ongoing visits with a Lifestyle Medicine Specialist to create an individualized Lifestyle Medicine plan.

Total NDPERS Participants that have completed the program: **56**

Outcomes among all program graduates

- ↓ **4%** (4.5%) decrease in BMI (38.4278 to 36.6885) in patients with an obesity diagnosis
- ↑ Graduates increased their physical activity from 112 to 200 minutes of physical activity minutes increased by **79%**
- ↓ Those with a diagnosis of DM II reduced their Blood glucose by **60** points



Exercise is Medicine (EIM)

Exercise has endless benefits to our health, including reducing obesity, improving sleep and our emotional well-being while reducing and reversing heart disease, diabetes, and high blood pressure.

Sanford Health patients who have a diagnosis of a BMI of 30 or greater, hypertension, hyperlipidemia, pre-diabetes, type 2 diabetes, metabolic syndrome or depression are eligible for this 12 week group exercise program. The goal of EIM is to increase confidence when it comes to making exercise a habit.

ALL TIME

175

Completed the full program

Pre Program Cardiovascular Minutes (N=319)	Post Program	6 Month Post Program Cardiovascular Minutes (N=122)
Average 67 minutes per week	Average 137 minutes per week	Average 106 minutes per week
104%	increase in moderate intensity physical activity minute post program	
58%	increase in moderate intensity physical activity minutes 6 months post program	



Diabetes Prevention Program (DPP)

1 OUT OF 3 American adults has prediabetes. Sanford Health Plan members have access to diabetes prevention offerings to help them make permanent lifestyle changes to reduce the risk for developing Type 2 Diabetes. Trained Lifestyle Coaches will help members learn to eat healthy, increase physical activity, manage stress, remove barriers and stay motivated. We offer virtual programming for DPP.

2023 Q3
Enrollees

30

2023
Enrollees

70

Dakota Wellness Program

MONTHLY WELLNESS THEMES

Monthly themes keep the wellness program fresh throughout the year and keeps members engaged in their individual wellness pursuit. Newsletters, e-blasts and worksite posters are used to introduce themes.



Dakota Wellness Program

Community and Social Well-being

In our pursuit of good health, we often focus on diet, exercise, and medical care, sometimes overlooking the essential role that community and social well-being play in our overall well-being. Here's how community and social well-being can contribute to our overall health and well-being.

- Emotional Support:** Having friends, family, or a community to lean on reduces stress, lowers the risk of mental health disorders, and enhances our ability to cope with adversity.
- Social Determinants of Health:** Strong community networks can advocate for better resources, services, and policies that address access to healthcare, education, and employment opportunities, lead to healthier environments and improved health outcomes for all.
- Healthy Behaviors:** Engaging in physical activities, such as group exercises or sports, becomes more enjoyable and motivating when done with others.
- Sense of Belonging:** Being part of a community provides a sense of belonging, which promotes positive mental health outcomes.

Learn more in the **Dakota Wellness Program Newsletter**.

NDPERS 008 Rev. 02/25

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM | **SANFORD HEALTH PLAN**



Dakota Wellness Program

Let's Play!

Many people know the benefits of exercise: improved cardiovascular fitness and strength, decreased anxiety and depression, weight control, and better overall health. Recent studies have also shown that "Students who are physically active tend to have better grades, school attendance, cognitive performance, and classroom behaviors". Unfortunately, less than 1 in 4 school-aged children meet the current recommendations for physical activity.

What should your child be doing to make sure they are getting the exercise they need?

- 60 minutes of physical activity every day:** This can be 1 hour all at once, or split into smaller chunks throughout the day. Fast walking, recreational bike riding, catching/throwing games, or yoga.
- Aerobic exercise:** 3 days per week, as part of your 60 minutes of activity. Team sports, running/chasing games, martial arts, or fast bike riding.
- Muscle strengthening:** 3 days per week, as part of your 60 minutes of activity. Climbing playground equipment or trees, gymnastics, tug of war.
- Bone strengthening:** 3 days per week, as part of your 60 minutes of activity. Jump rope, hopscotch, swimming, team sports.

Learn more in the **Dakota Wellness Program Newsletter**.

NDPERS 008 Rev. 02/25

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM | **SANFORD HEALTH PLAN**

Melissa Christensen, PT, DPT, LifeKeeper Physical Therapy, www.lifekeeperphysicaltherapy.com



Dakota Wellness Program

Career Growth & Development

Career development includes the support an organization provides to employee professional growth as well as steps employees can take regarding their own professional growth. Below are steps to consider regarding your career growth and development.

- Explore where you want to go next in your career**
Career development can include changing the type of work you do to developing within your current role to moving into a different and/or advanced role.
- Write your specific development goal and potential steps to meet it**
Your goal may be to gain a specific skill, to achieve a certification or to receive a promotion. Write down your goal(s).
- Create your development plan and define success**
Discuss your development plan with your manager or others aligned with your career goal.
- Request feedback and track your progress**
Be specific when requesting feedback and record the feedback. Look for patterns of strengths and areas of opportunity.
- Schedule regular check-ins**
Check-in with your manager or others aligned with your career goal to monitor your progress.

Learn more in the **Dakota Wellness Program Newsletter**.

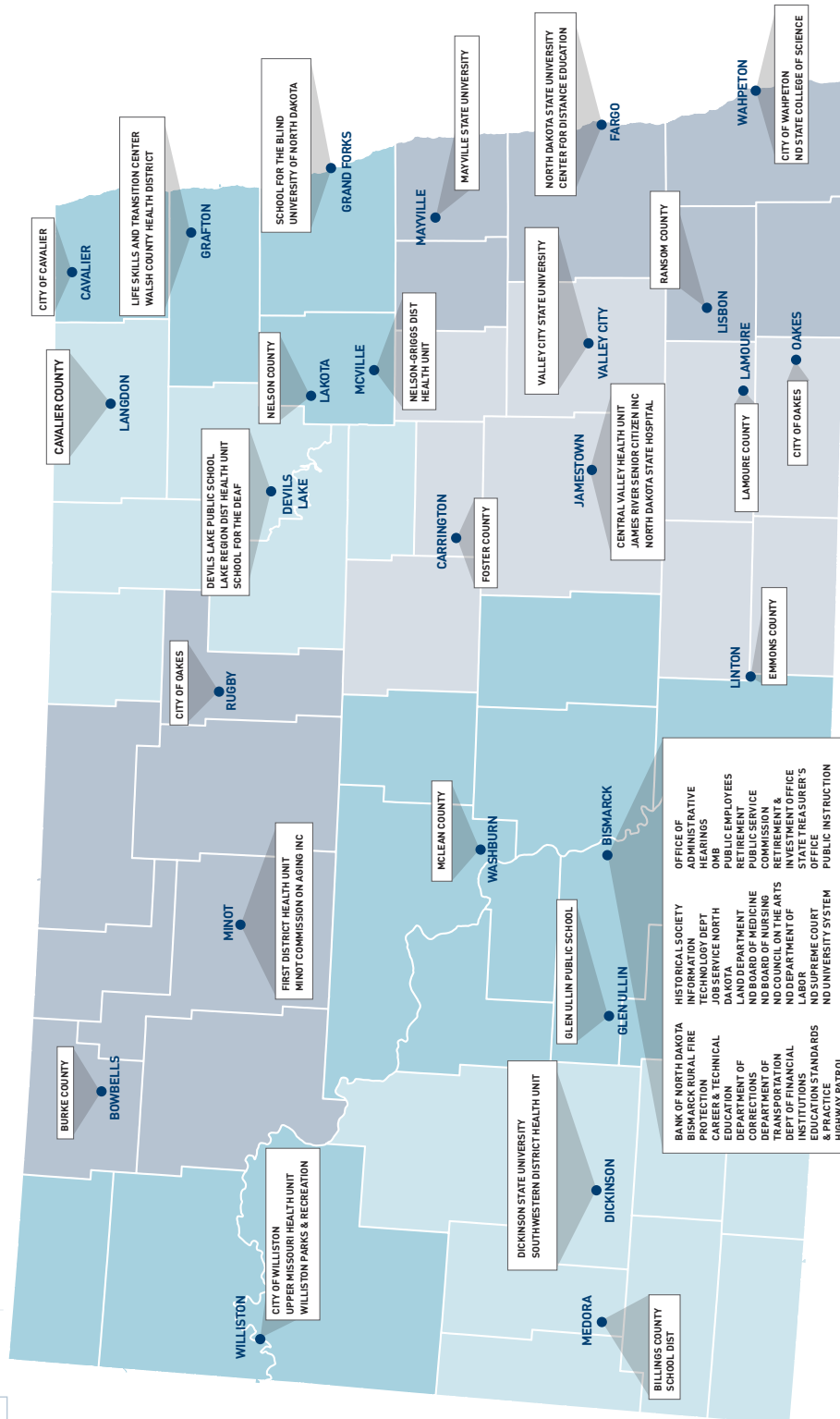
NDPERS 008 Rev. 02/25

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM | **SANFORD HEALTH PLAN**

EVENT ATTENDANCE BY AGENCY

The Sanford Health Plan NDPERS wellness team continues to engage members across the state, despite pandemic-related in-person restrictions. Wellness educators support agency wellness coordinators and provide worksite education and activities in a virtual format. This map shows where participants are from.

Dakota
Wellness
Program



TOTAL NUMBER OF
AGENCIES VISITED
(UNDUPLICATED)

62

WEBINARS/PRESENTATIONS/EVENTS:

- July: Community and Social Well-being
- August: Career Growth and Development
- September: Nutrition and Physical Activity for Kids
- Q3 wellness challenge: Rethink Your Drink
- Wellness Coordinator Recharge
- 3 workshops
- Wellbeing for Prevention
- Promoting Healthy Behavior with Positivity
- Exercise without Perfection
- Nutrition & Hydration
- Phase Out Fads
- Exercise without Perfection

TOTAL MEMBER
ATTENDANCE
THIS QUARTER:

1468

Dakota Wellness Program

Special Events

Wellness Coordinator Recharge Webinar

- The purpose of the Recharge Webinar was to provide an overview of the Dakota Wellness Program, well-being resources and chronic disease programs as well as how Sanford Health Plan can support agency and employer-based wellness programs.
- Three virtual webinars were provided in August.
- **Participation: 79**

Q3 Quarterly Wellness Challenge:

Rethink Your Drink

Members tracked their water intake for 21 of the 28 days between August 2 and August 29. Those that drank six or more glasses of water on at least 14 days earned 1,500 points towards their annual wellness benefit.

Participation:

- **Members enrolled: 1,129**
- **Total visits: 26,309**
- **Average visits per member: 23**

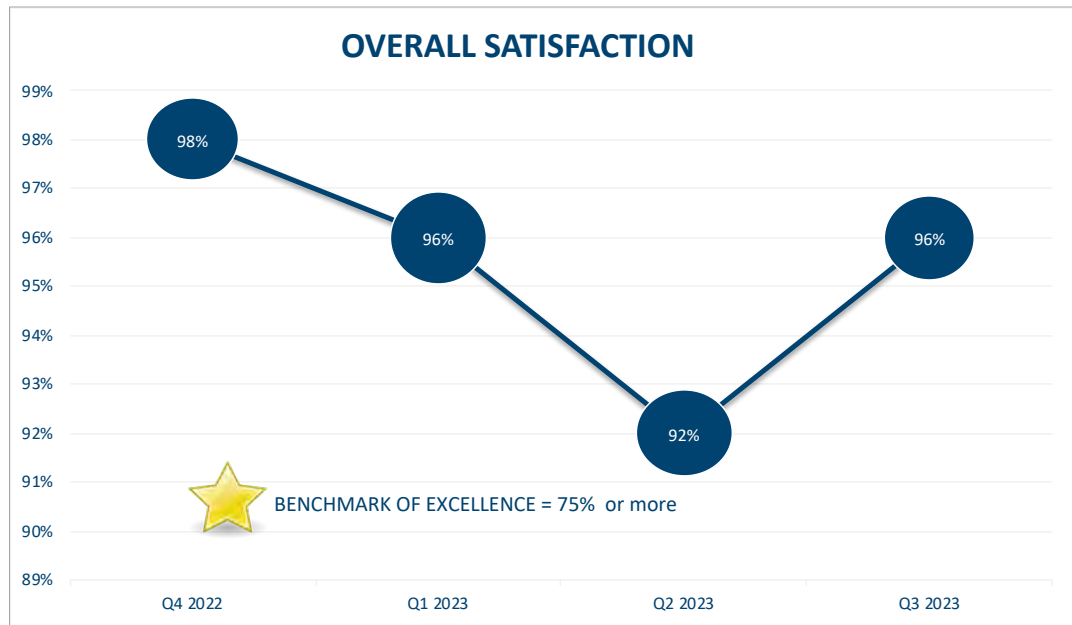


MEASURE	GOAL	MEASUREMENT PERIOD	Q3 2023 REPORTING PERIOD	CURRENT
WELLNESS:				
Health risk assessment completion	18%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	1.49%
Worksite interventions agency participation	75%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	35%
Fitness center reimbursement participation	5%	1.1.23 – 12.31.23	1.1.23 – 9.30.23	1.94%
Wellness redemption center payments	\$850,000	1.1.23 – 12.31.23	1.1.23 – 9.30.23	\$433,165
Wellness redemption center rate	9%	1.1.23 – 12.31.23	1.1.23 – 9.30.23	4.8%
HEALTH OUTCOMES:				
Healthy Pregnancy Program	+3%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	11.9%
Diabetes Prevention Program	5%	1.1.23 – 12.31.23	1.1.23 – 9.30.23	5.5%
Breast cancer screening rates	80%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	81.1%
Cervical cancer screening rates	85%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	77.6%
Colorectal cancer screening rates	60%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	64.2%
PROVIDER NETWORK/CONTRACTING:				
PPO network participation rate	Hospital, MDs & DOs: 92%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	100% Hospital 97% MD/DO
Par medical network minimum discount	30%	7.1.23 – 6.30.25	1.1.23 – 9.30.23	44.90%
CUSTOMER SERVICE & CLAIMS:				
Claims financial accuracy	99%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.98%
Claims payment accuracy	98%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.86%
Claim timeliness	95%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.62%
Claims processing accuracy	95%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.85%
Average speed of answer	30 seconds	7.1.23 – 6.30.24	7.1.23 – 9.30.23	35 seconds
Call abandoned rate	5%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	0.99%
First call resolution	95%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.52%
Written inquiry response time	95%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	99.51%
PHARMACY & FINANCIAL:				
Prescription drug turnaround times	98%	7.1.23 – 6.30.25	7.1.23 – 9.30.23	100%
Network Pharmacy Access	<5%	7.1.23 – 6.30.24	7.1.23 – 9.30.23	1%
About the patient program payment	5 days	7.1.23 – 6.30.24	7.1.23 – 9.30.23	100%
Interest Rate determined by PERS/SHP	Quarterly	7.1.23 – 6.30.25	7.1.23 – 9.30.23	100%

Performance Standards & Guarantees

2021-2023

Survey Score



CASE MANAGEMENT JULY 1, 2022 – JUNE 30, 2023				
Offered	Responded		Engaged	
2,923	1,394	47.5%	379	27.2%
Performance Metrics	Pre-enrollment	Post-enrollment	Difference	% Change
PMPM Medical Claims	\$8,133	\$7,941	\$192	2%
PMPM Pharmacy Claims	\$1,353	\$1,683	(\$303)	-24%
Inpatient Visits/1000	682	315	\$367	54%
Emergency Room Visits/1000	654	409	245	37%



Value Based Arrangement

North Dakota Public Employees Retirement System

Value Based Arrangement Overview
NDPERS Board Meeting – February 2024



NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

SANFORD
HEALTH PLAN

What is a Value-Based Arrangement?

VALUE-BASED ARRANGEMENTS

- Aligned arrangement, with associated incentives, aimed at managing the quality, cost, and equity of a defined population.

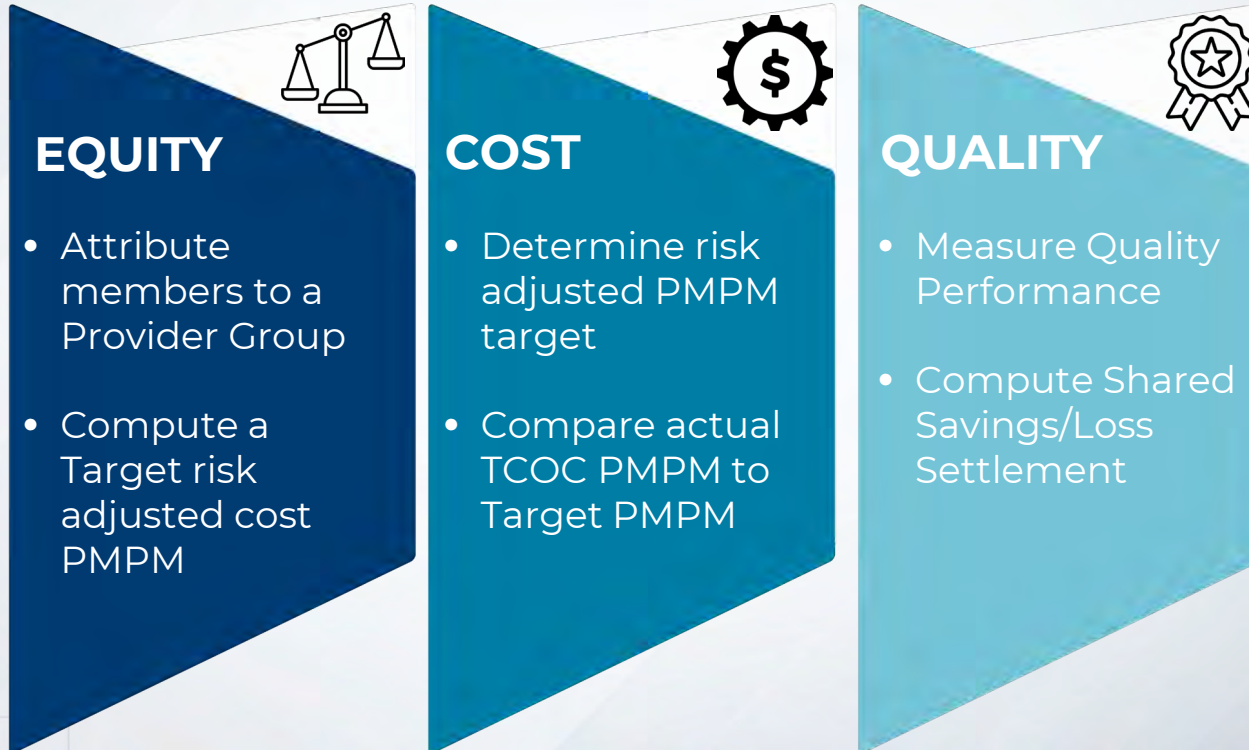
TRADITIONAL FEE FOR SERVICE MODEL

- Doctors and other health care providers are paid for each service performed

Where is the Market Going?

- CMS has announced the federal government's goal is for all of its Medicare and Medicaid beneficiaries be in an accountable care program for cost and quality by 2030
- In 2019, SHP introduced the **NDPERS Value Based Arrangement** model known as the **Total Cost of Care Model**

How does the TCOC Model work?



Risk Arrangement Example

TWO-SIDED RISK ARRANGEMENT		VALUE
1.	Attributed Members	8,113
2.	Base Period TCOC PMPM --- (YE 12/31/2021)	\$ 538.06
3.	Apply Target PMPM adjustment factor --- 3.0%	\$ 554.20
4.	Risk Adjusted Target PMPM -- (change in illness burden)	\$ 581.25
5.	Performance Period TCOC --- (YE 06/30/2023)	\$ 593.52
6.	PMPM (over)/under target	(\$12.28)
7.	Quality Metrics Points (5 pts are need to meet threshold)	7
8.	Performance Period Attributed Member Month	96,365
9.	Total Amount over Target	(\$ 1,183,362)
10.	Shared Loss	50%
11.	Shared Loss due from Provider to Health Plan/(NDPERS)	(\$ 591,681)

Two Types of Risk Models

Upside Only Risk Arrangement



Upside & Downside Risk Arrangement



Annual Settlements by Provider

	PROVIDER	TOTALS AS OF 6/30/23	RISK PROFILE
1.	Sanford Fargo	(\$592,000)	Upside & Downside
2.	Sanford Bismarck	(\$30,000)	Upside & Downside
3.	Altru	\$57,000	Upside Only
4.	Essentia	0	Upside Only
5.	Trinity	0	Upside Only
6.	Heartland Health Net	0	Upside Only

Performance Guarantee Update

January 26, 2024

Rebecca Fricke, Interim Executive Director
North Dakota Public Employees Retirement System
PO Box 1657
Bismarck, ND 58502-1657

Dear Rebecca,

The purpose of this letter is to provide a summary of the results of the 2023 Performance Guarantees described in Exhibit B of the 2021 -2023 and 2023-2025 Administrative Services Agreement. The results equated to meeting or exceeding thirty-four (34) of thirty-six (36) of the Performance Guarantees. For the two guarantees, a \$25,000 payment will be made to NDPERS. Below you will find a summary of payment due for the unmet guarantees.

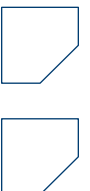
Measurement #	Requirement	Performance	Forfeiture Due
16	Cervical cancer screening rates will be at least 85% for the 2-year biennium.	78.8%	\$15,000
23	Average Speed of Answer will be 30 seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS.	35 Seconds	\$10,000
Total Payment Due			\$25,000

Upon review, please affirm the results and we will proceed to credit the NDPERS cash management account with SHP.

Sincerely,

Steve Webster
Sanford Health Plan

Enclosure: Exhibit B to the 2021-2023 Administrative Services Agreement
Exhibit B to the 2023-2025 Administrative Services Agreement
2023 Performance Guarantee Final Results



Health Plan Performance Guarantees 2023 Results

	Performance Guarantee	Requirement	Measurement	Value of Forfeiture	2023 Results
1	Plan Performance Review	Within ten (10) calendar days following delivery of performance reviews to NDPERS, vendor shall develop and submit a corrective action plan (CAP) of issues identified for approval by NDPERS, and implement such plan within the time prescribed in the approved CAP.	Measurement methodology shall be measured from date of delivery of the plan performance review in calendar days	\$1,000 per calendar day beyond the due date	MET
2	Customer Satisfaction Surveys	Member satisfaction surveys will be designed by the vendor and approved by NDPERS. Vendor will invite a random sample of members to participate in the survey to collect a statistically significant number of completed surveys. Using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied. SHP will meet or exceed a 90% satisfaction rate across all survey questions.	Vendor will provide annual survey results to confirm compliance with performance standard	<i>Biannually (every 2 years)</i> 8 of 10 @ 90% = 5,000 7 of 10 @ 90% = 10,000 >6 of 10@ 90% = 25,000	2024 Measurement
3	Team Meetings	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs.	Compliance to be monitored and assessed by NDPERS	\$5,000 for each meeting missed	MET
4	NDPERS board meetings	Vendor will participate in quarterly performance reviews to examine operational and financial performance.	Compliance to be monitored and assessed by NDPERS	\$5,000 for each quarter missed	MET
5	Electronic Eligibility	Eligibility files will be uploaded within eight (8) hours when received before 1:00 PM CST. All transactions within the file will be completed by SHP within eighteen (18) business hours from the time the NDPERS file has been received, excluding errors requiring corrective action taken by NDPERS before the data can be uploaded and completed. Files received after 1:00 PM CST will be considered off-schedule and completed within 24 hours of receipt.	Vendor will provide annual reports to confirm compliance with performance standard	\$500 for each missed file deadline	MET

6	Manual Eligibility	Manual eligibility will be loaded within eight (8) hours upon receipt or notification and must be applied and active in the vendor's system within one (1) business day, excluding transactions requiring information or corrective action to be taken by NDPERS to complete eligibility.	Vendor will provide quarterly reports to confirm compliance with performance standard	\$500 for each missed file deadline	MET
7	Error Reports	The error report identifying critical errors will be completed by SHP within eighteen (18) business hours from the time the NDPERS file received between before 1:00 PM CST. Files received after 1:00 PM CST will be considered off-scheduled and completed within 24 hours of receipt.	Vendor will provide quarterly reports to confirm compliance with performance standard	\$500 for each missed file deadline	MET
8	Data Files	Monthly data files (membership, medical, pharmacy) will be available by the 15 th of the following month.	Will be available to NDPERS upon request	\$1,000 for each month not met	MET
9	Health Risk Assessment	By June 30, 2023, at least 17% of eligible NDPERS members will have completed a Health Risk Assessment.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	16.99%-15% = \$2,500 14.99%-12.01% = \$5,000 12% or less = \$10,000	MET
10	Worksite Interventions	By June 30, 2023, at least 75% of participating employer-based wellness program agencies will have implemented a worksite intervention (i.e., wellness consultation, fruit program, break room assessment, wellness training, screening & prevention event, walking program, etc.).	Compliance to be monitored and assessed by NDPERS	\$5,000 if not achieved	MET
11	Diabetes Management	By December 31 of each year, SHP will have engaged at least 5% of diagnosed pre-diabetic and/or diabetic population of members in an intervention program that may include, but is not limited to: DPP, Livongo, Exercise is Medicine, Positively Me, Daily Habits, or Better Choices Better Health.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$5,000 for each year of the biennium	MET
12	Fitness Center Reimbursement	By Dec. 31, 2023, at least 5% of eligible members will receive the fitness center reimbursement in at least one month during the 2023 calendar year or will have tracked at least 150 minutes of exercise per week for three weeks in the wellness portal. By Dec. 31, 2024, at least 5% of eligible members will receive the fitness center reimbursement in at least one month during the 2024 calendar year or will have tracked at least 150 minutes of exercise per week for three weeks in the wellness portal.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	4.9-4% = \$2,500 3.9-3% = \$5,000 2.9 or less = \$10,000 For each year of the biennium	MET
13	Wellness Redemption Center (online and worksite activity only)	By Dec. 31, 2023, \$850,000 will be paid out in the wellness redemption center for the 2023 calendar year. By Dec. 31, 2023, 9% of eligible members will have processed a redemption for wellness activity during the 2023 calendar year.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$849,999-700,000 = \$2,500 \$699,999-600,000 = \$5,000 \$599,000 or less = \$7,500 For each year of the biennium	2023 MET

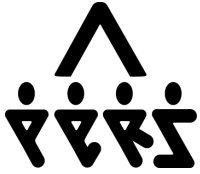
		<p>By Dec. 31, 2024, \$850,000 will be paid out in the wellness redemption center for the 2024 calendar year.</p> <p>By Dec. 31, 2024, 9% of eligible members will have processed a redemption for wellness activity during the 2024 calendar year.</p>			
14	Healthy Pregnancy Program	<p>By June 30th, 2024, the percentage of eligible NDPERS members enrolled will increase by a growth rate of 3% over the percentage of eligible NDPERS members enrolled from July 1, 2022 – June 30, 2023.</p> <p>By June 30th, 2025, the percentage of eligible NDPERS members enrolled will increase by a growth rate of 3% over the percentage of eligible NDPERS members enrolled from July 1, 2023 – June 30, 2024.</p>	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$15,000 for each year of the biennium.	2024 Measurement
15	HEDIS-like measures	Breast cancer screening rates will be at least 80%	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$15,000 for the 2-year biennium	MET
16	HEDIS-like measures	Cervical cancer screening rates will be at least 85%	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$15,000 for the 2-year biennium	MISSED 2021-2023 goal
17	HEDIS-like measures	Colorectal cancer screening rates will be at least 60%	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$15,000 for the 2-year biennium	MET
18	NDPERS PPO network	Vendor shall maintain ninety-two (92%) percent or more of hospitals, practicing MD's and DOs of the proposed network.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$75,000 for the 2-year biennium	MET
19	Claims Financial Accuracy	Claims Financial Accuracy will be 99% or greater, each year of the biennium. Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on quarterly internal audit of statistically valid sample.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
20	Claims Payment Accuracy	Claims Payment incidence Accuracy will be 98% or greater, each year of the biennium. Measured as the percent of Claims processed without financial payment error.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
21	Claims Processing Accuracy	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET

22	Claim Timeliness	Clean claims processing within 14 calendar days will be 95% or greater, each year of the biennium. Measured from the date the claim is received to the date the claim is processed.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
23	Average Speed of Answer	2021-2023 Goal: Average Speed of Answer will be 30 seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS.	Vendor will provide a quarterly Executive Summary report to confirm compliance with the performance standard.	\$10,000 for each year of the biennium.	MISSED 2023 goal
24	Call Abandonment	Call Abandonment rate will be 5% or less, each year of the biennium.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$10,000 for each year of the biennium	MET
25	Accuracy and Timelines/ First Call Resolution Written Inquiry Response Time	a.) 95% of inquiries must be resolved during the initial call, excluding appeals, billing errors, and escalations. b.) 95% of written inquiries must be responded to within 24 business hours of date stamp of receipt, excluding appeals, billing errors and escalations.	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	\$12,500 maximum for each year of the biennium.	MET
26	Over payment Recovery	One hundred percent (100%) of all confirmed overpayments identified from participating Sanford HealthPlan participating providers shall be recovered within 90 days when the overpayment can be deducted from the payment cycle. Refunds from nonparticipating providers will be deducted from future payments. A refund request will be submitted for nonpayment after 90 days.	Vendor will provide annual reports to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
27	Access Rate to Primary Care Physicians	Sanford Health Plan shall meet NDCC, 26.1-47-03 which defines appropriate access and availability for primary care providers as 50 miles for primary care physicians if eligible providers exist within 50 miles of the home ZIP Code.	Vendor will provide annual reports to confirm compliance with performance standard	\$5,000 for each full % below for each of the biennium.	MET
28	Access Rate to Pediatricians	Sanford Health Plan shall meet NDCC, 26.1-47-03 which defines appropriate access and availability for primary care providers as 50 miles for Pediatricians if eligible providers exist within 50 miles of the home ZIP Code.	Vendor will provide annual reports to confirm compliance with performance standard	\$5,000 for each full % below for each of the biennium.	MET
29	Access Rate to Specialists and OB/GYNs	Sanford Health Plan shall meet NDCC, 26.1-47-03 which defines appropriate access and availability for Specialists and OBGYNs if eligible providers exist within 50 miles of the home ZIP Code.	Vendor will provide annual reports to confirm compliance with performance standard	\$5,000 for each full % below for each of the biennium.	MET

30	Access Rate to Hospitals	Sanford Health Plan shall meet NDCC, 26.1-47-03, which defines appropriate access and availability for hospital if eligible providers exist within 50 miles of the home ZIP Code.	Vendor will provide annual reports to confirm compliance with performance standard	\$5,000 for each full % below for each of the biennium.	MET
31	Payment to NDPSC for the About the Patient Program	Payments will be made within 5 business days of approval to NDPSC for the About the Patient program.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$10,000 per year	MET
32	Interest rate on funds held by vendor under the fully insured contract	Rate as determined by NDPERS and vendor.	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$5,000 per occurrence	MET
33	Prescription drug turnaround time – clean prescriptions	98% within two (2) business days if no intervention required.	Vendor will provide quarterly reports to confirm compliance with performance standard	\$1,000 for each point below standard	MET
34	Prescription drug mail dispensing accuracy	99.9% Mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity, and prescriber name.	Vendor will provide annual reports to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
35	Prescription drug home delivery pharmacy intervention prescription turnaround.	<p>At least 95 percent of non-routine prescription orders will be shipped within five business days.</p> <ul style="list-style-type: none"> Measured in whole business days from the date a prescription order is received by Administrator (either by mail, phone, fax, or Internet) to the date the prescription order is shipped. Calculated by taking the number of intervention prescription orders shipped within five business days divided by the total number of intervention prescription orders. 	Vendor will provide annual reports to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
36	Prescription drug specialty pharmacy delivery	PBM Specialty Pharmacies guarantee on time delivery of Specialty Drugs by the Member “needs by” date at least ninety eight percent (98%) of the time.	Vendor will provide annual reports to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET
37	Network Pharmacy Access	Pharmacy network composition will not be reduced by more than 5% in North Dakota compared to the network submitted in the RFP.	Vendor will provide annual reports to confirm compliance with performance standard	\$12,500 for each year of the biennium	MET

38	Medical Network Discount	Vendor will guarantee a minimum provider discount from in-network providers of at least 30% be calculated as (1- (Allowed/Billed Charge)).	Vendor will provide a quarterly Executive Summary report to confirm compliance with performance standard	\$500,000 for the 2-year biennium	MET
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Forfeiture values are calculated on a calendar year basis. Any forfeiture that occurs during or at the end of a calendar year will be paid within 30 days of the run-out period required to calculate the Performance Guarantee criteria.



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: House Bill 1040 Implementation Update

As we have done since the end of the regular session, staff will provide ongoing updates to the Board as we continue to implement the provisions of House Bill 1040 with a January 1, 2025 effective date. House Bill 1548 passed during Special Session allows the Board to certify to Legislative Management an earlier date should the Board determine that the plan is ready to go. As things continue to progress with the implementation, staff will notify the Board if the plan is ready earlier.

The following activities have occurred since our last discussion at the October Board meeting:

- Implemented the additional 1% employer contribution effective January 1, 2024.
- Staff from Callan, NDPERS, Empower and legal counsel have begun contracting discussions.
- Implementation kick-off meetings have also been held between Callan, NDPERS and Empower. Ongoing weekly status meetings have been scheduled to review project timeline and ensure tasks are moving forward. Meetings will also be scheduled to include TIAA for discussion of the project timeline to obtain their acceptance of the conversion tasks.
- Granting NDPERS' request, the Office of Attorney General Office appointed a Special Assistant Attorney General, who has expertise in recordkeeping contracts. The SAAG has begun to work with our general counsel during the recordkeeper contract negotiation.
- Advertised the Marketing Intern position.
- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming, as vendor has questions.

- Continued review of necessary rule changes and draft Administrative Rules prepared by legal counsel. Requested Ice Miller review changes to ensure compliance with federal regulations. Draft rules and timeline for promulgation of these rules will be part of a discussion during a separate agenda item.
- Distributed “kick-off” presentation to political sub-divisions and state agencies. The videos are available on the NDPERS YouTube channel.
- Began identifying the employers that are on the defined benefit plan but not participating in the NDPERS 457 plan.
- Began modifications to the Defined Contribution Plan Document. Once staff have completed the review and identified necessary changes, the document will be provided to Dean and Ice Miller to review to ensure state and federal law compliance.
- Began an inventory of correspondence that may need revision.
- Reviewed SS HB 1548 to determine whether the statute provides for staggered implementation dates for state agencies and political subdivisions. Specifically, the law provides the following language:

SECTION 29. CONTINGENT EFFECTIVE DATE. Sections 1 through 27 of this Act become effective on the date which must be before January 1, 2025, identified in a certification by the retirement board, only if the board certifies to the legislative council that the public employees retirement system is prepared to close the main system defined benefit retirement plan on the day before the date identified by the board, and to open the new defined contribution retirement plan on the date identified by the board.

Staff’s understanding, confirmed by NDPERS’ legal counsel, is that the above language provides a single plan closure date for the Main defined benefit plan and a single plan opening date for the new defined contribution plan, upon the Board certifying to Legislative Council that PERS is prepared for this to occur.

Staff also discussed this matter with Ms. Jenn Clark, from Legislative Council, who confirmed a single implementation date was her understanding of the provision’s intent.

- Per recommendation made at January meeting, staff also reached out to Ms. Clark to discuss her input as the drafter of this section of the bill regarding the intent of Section 3 of SS HB 1547. Ms. Clark indicated that she believes the intent was to:
 - Ensure existing state employees understand that their retirement will not be changing
 - Ensure existing state employees understand that the change impacts new hires as of plan closure date only
 - Inform state employees with no more than 5 years of service of opportunity to transfer, including details on incentive to transfer
 - Funding of Main defined benefit plan, in form of actuarially determined employer contribution and cash infusions, was provided for in HB 1040
- Met with Majority Leader Lefor to discuss implementation timeline, seek input on informational campaign referenced above and answer questions related to concerns moving forward.
- Discussed special election window for eligible state employees, specifically discussing whether spousal signature was required as has been in all other defined benefit to defined contribution transfer election windows due to under NDCC 54-52.6-02(4). Upon review of language passed in HB 1040 under NDCC 54-52.6-02.2, there

is not a requirement for spousal signature. Guidance was sought by legal counsel to confirm and to determine if the Board desired, could an administrative rule be added to require this so election would be similar to past occurrences. Legal counsel determined this would exceed scope of rule-making process.

- Prepared an insert regarding the upcoming special election window to include in notices sent to newly hired non-classified state employees who are currently eligible to transfer from the defined benefit plan to the defined contribution plan within their first 6 months of employment to ensure they are notified of the upcoming election window and corresponding incentive.
- Presented at Retirement Committee meeting on February 7.

One area that we may need to seek clarification on relates to who is considered the “state” for determining eligible employees for the special window election, payment of the special election window incentive and paying the actuarially determined employer contribution. There are a number of boards, commissions, district health units and other governmental units that are required to participate in the retirement plan but may not be considered “state” employers. We intend to discuss this with the Retirement Committee to gain insight into legislative intent. Based upon this feedback, we will likely bring forward a proposed rule to provide clarification for the Board’s consideration at the March meeting.

Attached is the overview of work efforts and timelines identified.

House Bill 1040 Administrative Implementation

	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
HB 1040 Administrative Implementation																								
Job description preparation for new full time employees				★																				
Drafting of talking points for staff who are asked questions				★																				
Communication drafting of bills passing and impacting membership				★																				
Meeting to clarify the requirements of the transfer window				★																				
Clarify the emergency rule making process				★																				
Section-by-section analysis for administration					★																			
Section-by-section analysis for programming					★																			
Recordkeeper RFP drafting						★																		
Notification of 1% contribution increase to employers						★																		
Legislative council review of section by section analysis						★																		
Benefit counselor starts						★																		
Clarification on the calculation of the transfer							★																	
Recordkeeper RFP published							★																	
Clarification on how to treat temporary employees in the new DC plan								★																
Analysis of future political subdivision participation								★																
Defined Contribution Manager starts									★	★														
Marketing intern recruitment																								
1% employer contribution increase launched																								
Inventory the PERSLink correspondence updates																								
Targeted communications to subs in main but not public safety																								
Targeted communications to subs in main but not deferred comp																								
Recordkeeper transition																								
PERSLink correspondence testing																						★		
Plan document updates																						★		
Plan handbook updates																						★		
Form updates																						★		
Special election window education for eligible employees																							★	
Administrative rule making promulgation																								★
Employer training																								★
Website updates																								★
Revise new hire, transfer, termination guides																								★
Staff training																								★
Biweekly internal administrative implementation meetings																								★
Communication team biweekly meetings																								★
Education on new plan provision to members																							★	★
Education on new plan provision to employers																							★	★

KEY

★ Deadline

Task Completed

Work Effort

Deadline Missed

House Bill 1040 Programming Implementation Timeline

	Jul	Aug	Sep	Oct	Nov	Dec		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
HB 1040 Programming Implementation																			
Funding for development effective	★																		
HB 1040 section-by-section analysis to determine system enhancements		★																	
Meet with GRS to discuss the incentive, and get programming parameters		★																	
Biweekly meetings to discuss section-by-section coding												★							
NDPERS user acceptance testing of enhancements												★							
NDPERS updates file layout documentation for employers												★							
NDPERS develops sample file layouts for employers												★							
Determine final go-live date													★						
Three months prior to go live:																			
State PeopleSoft development															★			★	
Higher Ed PeopleSoft development															★			★	
Political sub development															★			★	
Employer file testing																★			★

KEY

★ Deadline

Task Completed

Work Effort

Deadline Missed

Tentative for October 1, 2024 Launch

Tentative for January 1, 2025 Launch



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Memorandum

TO: NDPERS Board

FROM: Katheryne Korom

DATE: February 13, 2024

SUBJECT: Retirement Plan Services (RFP)

The Retirement Plan Services RFP was issued on January 2, 2024. We received a total of 26 questions. The responses to these questions were posted on January 31, 2024.

Following are the key dates for the proposal process:

Date	Activity
January 2, 2024	RFP is issued.
January 12, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
January 31, 2024	NDPERS posts responses to all questions received.
February 14, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
Feb/March 2024	NDPERS review of proposals.
March 2024	Finalist interviews, if deemed necessary by the NDPERS Board
March/April 2024	Best and Final Offers due, if deemed necessary by the NDPERS Board
March/April 2024	Selection and award of contract by NDPERS.

If you have any questions, we will be available at the NDPERS Board Meeting.

This item is informational and does not require any action by the Board.



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Memorandum

TO: NDPERS Board

FROM: Katheryne Korom

DATE: February 13, 2024

SUBJECT: Dental Request for Proposal (RFP)

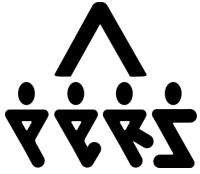
The Dental RFP was issued on February 1, 2024.

Following are the key dates for the proposal process:

Date	Activity
February 1, 2024	RFP is issued.
February 23, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
March 11, 2024	NDPERS posts responses to all questions received.
March 29, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
May 2024	NDPERS Board review of proposals.
June 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
End of August 2024	Selection and award of contract by NDPERS.
January 1, 2025	Effective Date of Coverage

If you have any questions, we will be available at the NDPERS Board Meeting.

This item is informational and does not require any action by the Board.



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Memorandum

TO: NDPERS Board

FROM: Katheryne Korom

DATE: February 13, 2024

SUBJECT: Administrative and Recordkeeping Services for Section 125
FlexComp Plan Request for Proposal (FlexComp RFP)

We have included for your review a draft copy of the FlexComp RFP (Attachment 1). Prior to the last RFP process NDPERS and the North Dakota University System (NDUS) decided to coordinate efforts, even though each entity administers their own FlexComp plan. Staff members from both NDPERS and NDUS have reviewed the RFP. Updates are included in the document. Proposers are required to submit a bid to provide administrative and recordkeeping functions for the NDPERS and NDUS FlexComp Plan.

Following are the key dates for the proposal process:

Date	Activity
March 4, 2024	RFP is issued.
March 22, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
April 8, 2024	NDPERS posts responses to all questions received.
April 30, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
June 2024	NDPERS Board review of proposals.
July 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board

July/August 2024	Selection and award of contract by NDPERS.
January 1, 2025	Effective Date of Coverage

If you have any questions, we will be available at the NDPERS Board Meeting.

Board Action Requested: Approve the FlexComp RFP and the timeline for the proposal process.



North Dakota Public Employees Retirement System

Request for Proposal

**Project Name:
Administrative and Recordkeeping Services
for Section 125 FlexComp Plan**

RFP Issue Date: March 4, 2024

Proposal Due Date: April 30, 2024

Proposed Effective Date: January 1, 2025

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**Request for Proposal
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SECTION 1 – INTRODUCTION

A. Scope of Work

This Request for Proposal (RFP) is issued for administrative and recordkeeping functions as described in this RFP relating to the North Dakota Public Employees Retirement System (NDPERS) FlexComp Plan. The Board is seeking proposals for a contractor to assist with the services identified in this RFP. The following is a sequence of activities for this RFP:

Date	Activity
March 4, 2024	RFP is issued.
March 22, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
April 8, 2024	NDPERS posts responses to all questions received.
April 30, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
June 2024	NDPERS Board review of proposals.
July 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
July/August 2024	Selection and award of contract by NDPERS.
January 1, 2025	Effective Date of Coverage

B. Fees

The Board is seeking a proposal on a per participant per month basis. This number should include full payment for all the services requested in this RFP. This is a fee-only contract, no product sales should be part of the pricing.

C. Rating

This proposal will be rated by a review team. Please submit your Technical Proposal and Cost Proposal separately. This evaluation will be submitted to the NDPERS Board for its consideration in determining if a contractor should be selected pursuant to this RFP. The Review Team will rate the proposals received and consider information received from all sources, including interview of top scoring vendor(s), in making an award decision.

In evaluating the proposals, price will not be the sole factor. The Board may consider any factors it deems necessary and proper, including but not limited to: price; quality of service; response to this request; experience; staffing, information from interviews and general reputation.

Staff will rate all proposals based on the following criteria:

Technical Proposal:

General Background (Questions Section IV, A.1 to A.4)	10 points
Scope of Work (Questions Section IV, B.1 to B.4)	35 points
Experience	
Firm (Questions Section IV, C.1 to C.4)	7 points
Staffing (Questions Section IV, D.1 to D.3)	8 points

Cost Proposal: 40 points

SECTION 2 – BACKGROUND

A. The Agency:

The North Dakota Public Employees Retirement System is responsible for the administration of the State's retirement, health, life, dental, vision, deferred compensation, flex comp, retiree health insurance credit, and EAP programs. This proposal is for assistance in the retirement programs.

Pursuant to 54-52-03, <https://www.ndlegis.gov/cencode/t54c52.pdf>, NDPERS is managed by a Board of Trustees.

NDPERS is a separate agency created under North Dakota state statute, and while subject to state budgetary controls and procedures, as are all state agencies, NDPERS is not a state agency subject to direct executive control.

B. FlexComp Plan:

The FlexComp Plan is authorized under Chapter 54-52.3 of the North Dakota Century Code (NDCC). Additional information on the FlexComp Plan including the plan document can be found on our web site at:

<https://www.ndpers.nd.gov/active-members/insurance-plans-active-members/flexcomp-plan> The Board is hiring a contractor to do the administrative services for this plan. The contract period will be for 2025 and 2026 calendar years with an option to renew the contract for the 2027 and 2028 calendar years and the 2029 and 2030 calendar years. Such renewals will be based upon the cost and the history of the services provided.

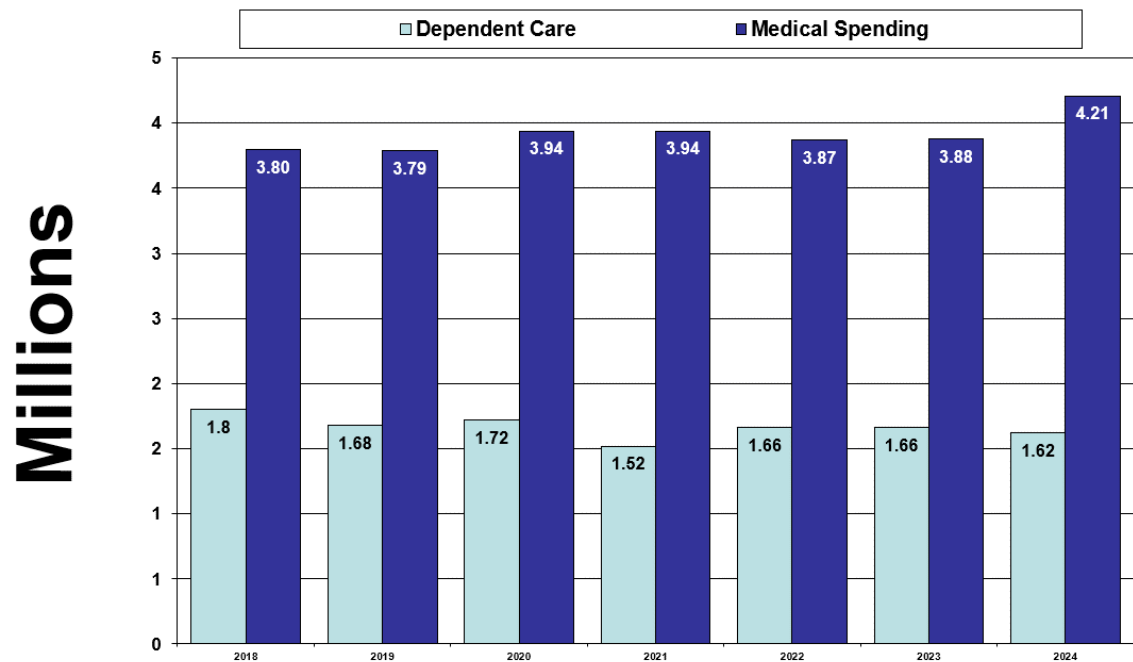
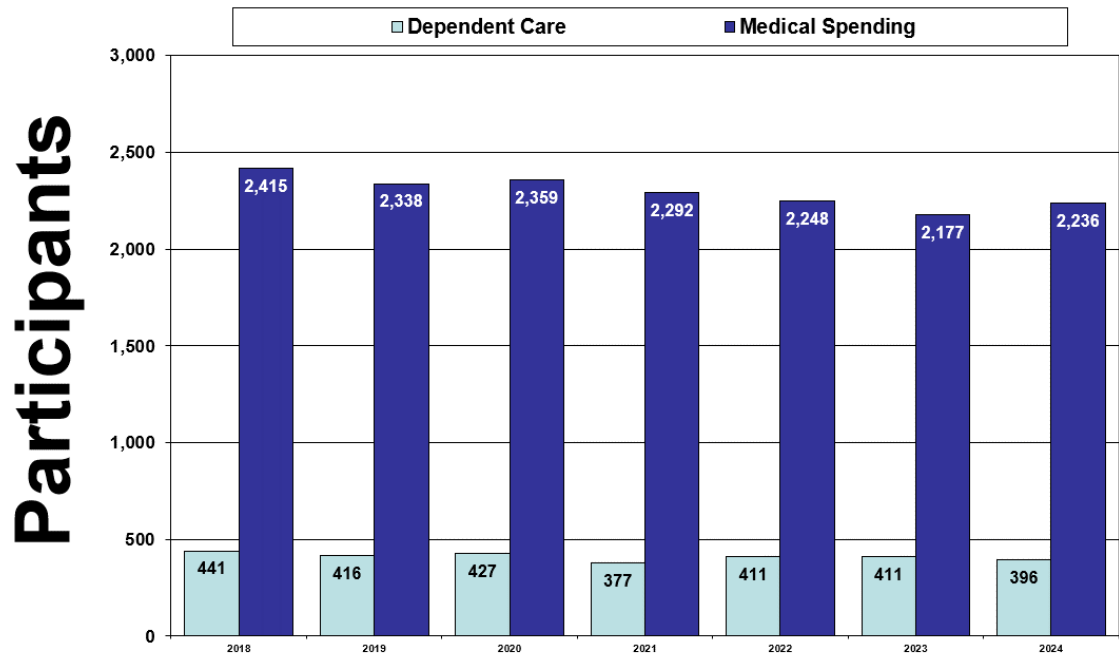
The NDPERS annual enrollment for the 2025 plan year is a three-week period beginning in mid-October 2024 and ending in November 2024. If selected, the contractor will need to provide the services under the scope of work sections.

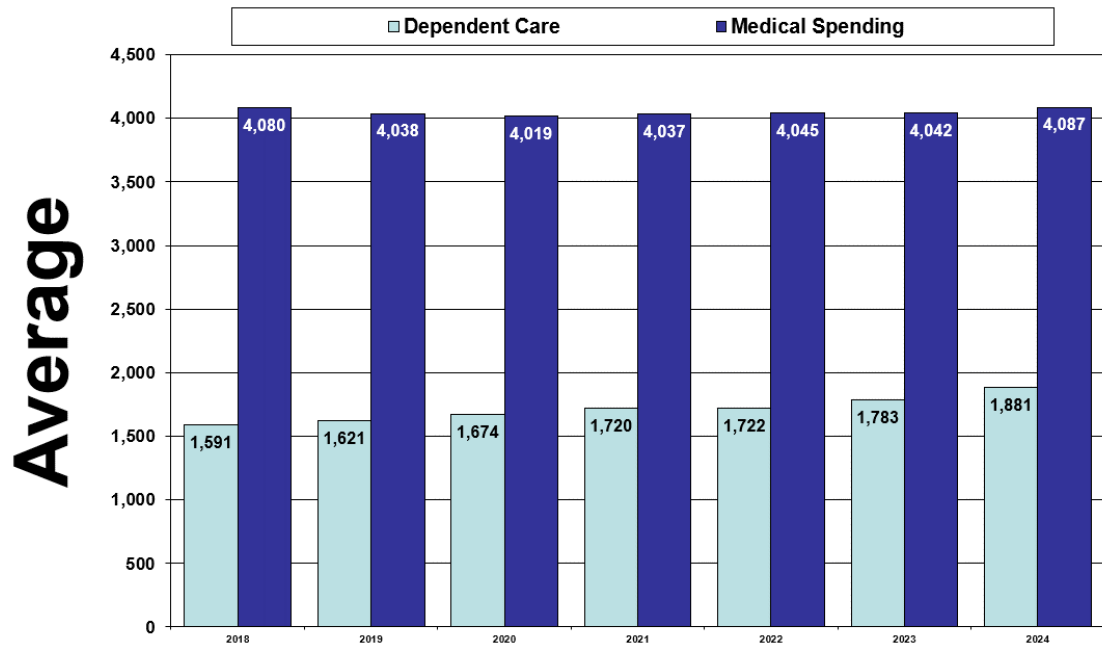
North Dakota University System Participation:

The NDPERS Flexcomp Plan contract allows for the North Dakota University System (NDUS) groups to participate with the contractor under the same terms. There are currently thirteen NDUS institutions with one plan document. Enrollment and billing by institution will be required of the contractor. A separate online enrollment website is required for NDUS. Open enrollment dates are October 14 through November 1. Administrator access is required for each institution.

FlexComp Plan:

The following information relates to the NDPERS FlexComp Plan participation and elections:





2024 North Dakota University System Flexcomp Information

	Medical Spending		Dependent Care	
	#Participants	Dollars	#Participants	Dollars
BSC	6	\$ 15,020.00	59	\$ 133,032.92
DSU	6	\$ 28,000.00	29	\$ 60,750.16
LRSC	2	\$ 9,992.00	35	\$ 80,780.08
MASU	2	\$ 4,972.00	24	\$ 55,429.92
MISU	9	\$ 30,324.92	68	\$ 155,568.16
MISUB			2	\$ 1,608.00
NDSCS	13	\$ 52,792.00	84	\$ 188,292.08
NDSU	117	\$ 504,815.92	707	\$1,579,631.88
NDUS	4	\$ 17,208.00	15	\$ 31,162.00
SITS	7	\$ 28,200.00	61	\$ 130,656.00
UNDO	120	\$ 504,642.12	675	\$1,532,400.52
VCSU	9	\$ 34,840.00	34	\$ 71,760.00
WSC0	5	\$ 18,700.00	20	\$ 46,740.00
Total	300	\$ 1,249,506.96	1813	\$4,067,811.72

SECTION 3 – SCOPE OF SERVICES

This Section outlines the scope of services.

A: BID SOLICITATION AND EVALUATION FOR THE FLEXCOMP PLAN

A.1 GENERAL REQUIREMENTS

The contractor selected by the NDPERS Board shall handle all administrative and recordkeeping functions, including processing enrollments, terminations and election changes, member correspondence, maintaining individual flexible spending accounts (FSA) accounts for participating employees, assistance with maintaining the plan document, processing reimbursement claims, and recovering/correcting any claim payment errors. Administrative services to be provided shall also include preparing informational plan materials and providing employer and employee training.

A.2 SPECIFIC REQUIREMENTS

The contractor shall be required to provide the following administrative services:

A.2.1 ENROLLMENT SERVICES

The contractor shall participate in the annual enrollment period for both NDPERS & NDUS for the 2025 calendar year that will run for a three-week period beginning mid-October ending in November 2024. Annual enrollment periods for subsequent years will generally be within the same time periods and communicated in advance. New members and members enrolling during the annual open enrollment will utilize the PERSLink business system or submit enrollment forms. NDUS is requiring a separate online enrollment website be set up by the contractor. All NDPERS enrollments will be forwarded to the contractor via an electronic file transfer for processing on the contractor's system. All required enrollment services shall be in place prior to the start of the annual enrollment period. The contractor shall meet with NDPERS and NDUS staff to discuss and organize the annual enrollments. The contractor shall conduct employer and employee training, as requested, during and around the annual enrollment periods. The contractor shall prepare communication/marketing materials for the flexible spending account (FSA) components of the plans.

At a minimum, the contractor must provide the following informational materials:

- Informational material that provides a general description of the flexible spending account plans, lists the major expenses covered by the accounts, stresses the advantages of participating in the program, covers important enrollment and claim filing deadlines, and lists available IVR, Mobile App, and internet services. The informational material will be put on the NDPERS website.
- Informational material containing a more detailed description of the plans, a comprehensive listing of eligible and ineligible expenses under each

plan, use-it-or-lose-it rule, change in family status requirement for election changes, important plan deadlines and cutoffs, procedures for filing claims and using the debit card, COBRA qualifying events, a comprehensive listing of available services, and a description of other important plan provisions. The informational material will be put on the NDPERS website.

- All required FSA forms with instructions. Please note the NDPERS enrollment forms should be used by the contractor (the contractor shall indicate what additional forms it proposes to use including an explanation for their use). If the contractor is unable to use the NDPERS enrollment forms, it shall so specify and indicate why.
- Reimbursement options brochure detailing various reimbursement options and details about submitting for reimbursement under each option.
- All materials must be co-branded with the contractor and NDPERS logo or NDUS logo.

For those enrolling in the FSA plans, the contractor shall provide a welcome kit which shall include the following information:

- An enrollment confirmation letter;
- An explanation of the debit card feature with instructions;
- Debit card(s) for medical spending accounts, preferably co-branded;
- Information regarding COBRA;
- Reimbursement options flyer that includes instructions on submitting claims through various options.

The contractor shall mail welcome kits/informational materials to the participant's home address.

A.2.2 ADMINISTRATIVE SERVICES

The contractor shall administer a debit card program. Debit card(s) shall be provided to each participant prior to the start of the plan year and, for new hires and other newly eligible employees, upon enrolling in the medical spending account. The contractor shall adhere to IRS substantiation rules applicable to the use of debit cards in FSA programs. Any fees associated with the issuance or use of debit cards should be included in the per participant/per month base cost and no cost shall be charged to the participant.

The contractor shall establish a website that employees can access to obtain account information and to utilize on-line services. The website shall include general information regarding the FSA plans. Desired internet services provided by the contractor shall include: (a) ability to download plan forms, (b) access to member account information, including claim payments, pending claims and account balances; and (c) ability to file reimbursement claim forms on-line and via mobile app.

The contractor shall provide a toll-free number that employees can call for general account information or to speak to a representative. Customer service representatives shall be available at a minimum Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. CDT.

A.2.3 CLAIMS PROCESSING SERVICES

NDPERS and NDUS maintain separate bank accounts, where deductions are deposited and contractor access to the accounts are authorized to make claim transactions. The contractor shall post contributions received from participating employers to individual participant accounts. Reimbursements for incurred expenses shall be made to employees upon the submission of a properly completed reimbursement claim form with required documentation. The contractor shall establish and maintain controls to ensure that only valid claims are processed and that proper documentation to substantiate incurred expenses accompany submitted claims. Participants shall be permitted to mail or fax claim forms to the contractor, and to file claim forms electronically via the contractor's internet site or through use of the vendor's mobile app.

If a filed claim is deemed to be invalid or if additional information is required to process a claim, notification must be sent to the claimant detailing the reason for the denial of the claim or the specific information needed in order to process the claim. The contractor shall process claim reimbursements on a daily basis during the work week. In accordance with federal rules and guidelines, the maximum amount of reimbursement in the medical spending account (MSA) shall be available at all times during the plan year. To ensure that dependent care spending account (DCSA) participants have immediate access to funds deducted for their DCSA coverage, payroll deductions received from NDPERS and NDUS shall be posted to the participant's account and available for reimbursement. The contractor shall detail their timelines for posting contributions.

A.2.4 ELECTRONIC FILE TRANSFER REQUIREMENTS:

The contractor shall provide a secure internet site from which enrollment and payroll deduction files can be safely transferred between the contractor and NDPERS or NDUS.

A.2.5 END OF YEAR SERVICES

The NDPERS and NDUS plan year runs from January 1 through December 31. The program's cut-off date for filing reimbursement claims is April 30, following the end of the plan year. The contractor shall be required to process reimbursement claims received from participants up through the April 30 cutoff date pursuant to applicable IRS guidelines.

The NDPERS and NDUS programs adopted the grace period extension rule for both FSA accounts, which allows participants to be reimbursed for qualifying expenses incurred between January 1 and March 15 following the end of the plan year from the prior year's election. Debit card charges for MSA participants shall be applied toward any prior year unused amount before charging expenses to the current year's election.

In the event a new vendor is selected, NDPERS is interested in options for NDPERS to consider related to how the 2024 grace period could be administered. The vendor should include details on how they typically see other clients handling this transition.

The contractor shall prepare and send a final reconciliation report of the individual member accounts to NDPERS and NDUS. This listing shall include the participant's name, NDPERS ID or NDUS EmplID number, and forfeiture amount. This must be accomplished within 60 days of the April 30 cutoff date.

A.3 REPORTS

The contractor shall compile, on a periodic basis, reports that summarize the claims activity and provide detailed member account information. At a minimum, the following reports shall be available to NDPERS and NDUS:

1. A report prior to the start of the plan year that lists the plan participants and their election amount.
2. A quarterly activity report which includes a detailed listing of participants, deposits to date, claims submitted, claims paid, and current account balances.
3. A preliminary forfeiture report prepared as of December 31 with member account detail.
4. A final forfeiture report with member account detail within sixty (60) days following the close of the plan year.
5. A year-to-year enrollment comparison to be provided in January of each year following annual enrollment.
6. Monthly call center activity and claims processing reports.
7. Monthly outstanding check report.
8. Quarterly performance standard reporting.

A.4 CONFIDENTIALITY & HIPAA

As a business associate of NDPERS, the Contractor must comply with the privacy, transactions and code set, and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as if it were a covered entity, as that term is defined by HIPAA, and the federal regulations implementing HIPAA. The Contractor will

be required to execute a business associate agreement, which will be an attachment to the Agreement, and abide by the terms of the business associate agreement throughout any contract term. The Contractor will also be required to comply with the security requirements of HIPAA and state's confidentiality requirements as set forth in NDCC 54-52.3-05.

A.5 PLAN DOCUMENT

The contractor shall review the NDPERS and NDUS plan documents. Unless noted in the proposal, NDPERS and NDUS will assume that your proposal agrees to follow all the provisions in our plan documents.

B: SEQUENCE OF ACTIVITIES

Following is a sequence of major activities:

- | | |
|-------------------------|--|
| August, 2024 | NDPERS Board selects a contractor. |
| August, 2024 | Contractor will begin work with the NDPERS and NDUS staff concerning the upcoming annual enrollment. |
| September, 2024 | Contractor will supply to NDPERS and NDUS the written informational material identified in A.2.1 and such other information identified in the August meeting. NDUS sends employee demographic data to contractor to set up enrollment website. |
| October 14, 2024 | NDPERS & NDUS Annual Enrollment starts (tentative). |
| November 1, 2024 | NDPERS & NDUS Annual Enrollment ends (tentative). |
| December, 2024 | NDPERS sends enrollment files to Contractor. Contractor sends enrollment files to NDUS. Contractor must start providing welcome kits to members enrolling pursuant to A.2.1. |
| January 1, 2025 | Contractor starts processing NDPERS and NDUS claims. |

C. MEETINGS

The consultant should plan on attending one meeting each year with the NDPERS Board. The contractor may be asked to participate in any annual enrollment meetings or informational meetings. The contractor will attend the 1-day NDPERS biannual payroll conference and annual wellness fair, if requested by NDPERS. Virtual options may be available for these meetings at the discretion of NDPERS.

D. ONGOING ASSISTANCE

The contractor shall assist NDPERS and NDUS with maintaining plan document and other plan compliance activities.

SECTION 4 – TECHNICAL PROPOSAL FORMAT

The proposal must contain your organization's response to the following requested information. Please respond by using the following format and answering each request by restating it followed by your response **(points will be deducted for proposals not following this format.)**

A. General Background:

1. Provide a brief description of the size, structure, and services provided by your organization.
2. Generally, provide your understanding of the services NDPERS and NDUS are requesting.
3. Describe your organization's approach to administrative and recordkeeping services for Section 125 flexible spending accounts.
4. Indicate your organization's depth of experience in each of the following areas:
 - ◀ FlexComp Plan Medical Spending Accounts
 - ◀ FlexComp Plan Dependent Care Spending Accounts
 - ◀ Preparation of Plan Documents
 - ◀ Preparation of Informational Materials
 - ◀ On-Line Claims Processing
 - ◀ Debit Cards
 - ◀ Mobile Apps
 - ◀ COBRA Administration
 - ◀ Annual Enrollment
 - ◀ Dispute Resolution
 - ◀ Appeals Process
 - ◀ Process for returning and correcting funds paid in error
 - ◀ Grace period claims
5. How would you increase participation and deferrals in the NDPERS and NDUS Flexcomp Plans? Provide an example of how you did this for another client.

B. Scope of Work

1. Detail your understanding of the work effort by restating each of the items in Section 3.A and discussing how you intend to provide services that respond to the work effort identified.
2. It is essential that the contractor move forward quickly upon notification of award. Therefore, the contractor must include as part of its proposal a mobilization and implementation plan, beginning with the date of notification of contract award. Such mobilization and implementation plan should include the following elements:
 - (a) A detailed timetable for the mobilization and implementation period. Such detailed timetable shall be designed to demonstrate how the contractor will have the contract up and operational following the notification of the contract award. In preparing the timetable, the following key elements should be taken into consideration:
 - All plan materials.
 - The timeline and a procedure for the importing and exporting of eligibility and payroll files must be established with NDPERS and NDUS. The contractor shall identify when this needs to be in place for a January 1, 2025, effective date.
 - All administrative services must be available and in place by the start of the plan year on January 1, 2025.
 - (b) The contractor's plan for the deployment and use of management, supervisory or other key personnel during the mobilization and implementation period. The plan should show all management, supervisory, and key personnel that will be assigned to manage, supervise, and monitor the contractor's mobilization and implementation of the contract.
3. The contractor should set forth a summary of any and all challenges/problems that the contractor anticipates during implementation or the term of the contract. For each challenge/problem identified, the contractor should provide its proposed solution.
4. In the event a new vendor is selected, NDPERS is interested in options for NDPERS to consider related to how the 2024 grace period could be administered. The vendor should include details on how they typically see other clients handling this transition.
5. The contractor should include the location of the contractor's office that will be responsible for managing the contract. The contractor should include the telephone number, email address, and name of the individual(s) to contact.

6. Provide any deviations to the following performance guarantees for this contract.

NDPERS		Fees at risk:	
Performance Guarantees		Results reported: Quarterly	
Contract Period: 1/1/23 - 12/31/23		Fees measured and paid: Quarterly/Annually	
Category	Guarantee	Measured/Reported	Refund
Final Implementation	The Final Implementation Plan, as described in AR-1 of Attachment A-3: Administrative Requirements will be submitted to NDPERS	Within 2 weeks of the contract award	\$100 per day for each day or partial day during which the Contractor is not in compliance with the Final Implementation Plan.
Turnaround time - All claims	Contractor will adjudicate at least 95% of all eligible claims which received by the Contractor within 14 calendar days.	The claim turnaround time is measured from the date received by the Contractor to the date adjudicated (paid, denied or pended). Adjudication is considered to be finalized upon the date the check or an Explanation of Benefits (EOB) is issued.	\$2500 per year
Telephone Response - Incoming Calls	80% of Incoming calls will be answered by an attendant within 30 seconds (ASIFlex- based on global measurements)	30 seconds or less	\$300 per quarter
Telephone Response - Abandonment Rate	The telephone abandonment rate will be 3% or less of calls (ASIFlex - based on global measurements)	3% or less	\$300 per quarter
Satisfaction Survey - Customer Service	At least once per year, the Contractor shall measure employee and retiree satisfaction through a customer satisfaction survey. Employees and retirees will indicate their level of satisfaction pertaining to customer service using a five-point scale with one being the lowest rating and five being the highest rating. NDPERS and the Contractor will mutually agree on the number and content of the questions to be included in the survey.	85% and higher	\$1200 per year
Total			

C. Experience of Firm

1. Provide a listing of references for similar projects your firm has worked on, including names of clients and contact individuals for each.
2. The contractor shall include an organizational chart showing the contractor's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the contractors overall organizational structure
3. Provide a listing and the experience your firm has with public sector clients and other clients, including contract information.
4. The contractor shall also discuss its business continuity planning procedures for its operations and their data security policies & procedures.

D. Staffing

1. Provide a list and resume of staff assigned to this project.
2. The contractor should also include a list of backup staff that may be called upon to assist or replace primary individuals assigned.
3. Provide the locations of where the work will be done on this project and its staff.

SECTION 5 – COST PROPOSAL FORMAT

Contractor's cost proposal shall be on a per participant per month fee. A participant may be in one or both FlexComp accounts. This fee will include all services identified in this RFP.

Separately, please identify the hourly rate for any services that NDPERS or NDUS may request that are outside the scope of the services requested herein.

THE COST PROPOSAL SHALL BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS. PLEASE PROVIDE AN ELECTRONIC COPY OF THE COST PROPOSAL.

SECTION 6 – SUBMISSION OF PROPOSAL

Proposals should be prepared in a straightforward manner to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Costs for developing proposals are entirely the responsibility of the proposer and shall not be chargeable to NDPERS.

1. Inquiries Regarding Specifications

Offeror will have until 5:00 p.m. (CDT) on March 22, 2024, to submit questions in writing regarding this RFP. All questions shall cite the specific RFP section and paragraph number(s) to which the question refers. Any questions received by NDPERS prior to the date and time above will be answered in a question-and-answer document issued by NDPERS. Only answers provided in writing by NDPERS will be considered official.

All query submissions must include the identity of the sender, the sender's title, firm name, mailing address, telephone number, and e-mail address.

Questions must be submitted by email to ndpersbids@nd.gov. NDPERS is not responsible for questions received after the submittal deadline.

Answers to questions will be made available on the NDPERS website at <https://www.ndpers.nd.gov/about/bid-opportunities> by April 8, 2024, at 5:00 p.m. CDT.

Only information in the materials constituting this RFP, including its attachments, exhibits, and forms, the question and answer document, and any RFP addendum shall be binding on NDPERS.

All inquiries regarding these specifications must be in writing and submitted by email to ndpersbids@nd.gov.

2. Rules and Regulations

Any Offeror submitting a proposal must be able to meet and comply with all applicable state and federal statutes and regulations.

3. Confidentiality of Trade Secret, Proprietary, Commercial, and Financial Information (NDCC Section 44-04-18.4(6))

All materials submitted in response to this RFP will become the property of NDPERS and upon receipt by NDPERS are subject to the North Dakota open records law.

PLEASE NOTE that proposals should follow the Confidential/Proprietary Information instructions in Section 7. Any provisions of the Responder's proposal that are desired to be confidential must be identified specifically on each page of the proposal and included in the table provided in Section 7.

4. Addenda, Amendments, and Clarifications to the RFP

NDPERS may issue any addenda, amendments, and clarifications regarding this RFP that NDPERS determines are necessary. All such addenda, amendments, and clarifications issued by NDPERS become part of the RFP. All addenda, amendments, and clarifications to the RFP will be issued in writing and added to the posting at: <https://www.ndpers.nd.gov/about/bid-opportunities>. It shall be **the responsibility of the Offeror** to recheck the RFP posting at: <https://www.ndpers.nd.gov/about/bid-opportunities> for any possible addenda prior to submitting a proposal. The Offeror must acknowledge all addenda, amendments, or clarifications by either signing and returning such document(s) or indicating receipt on the Signature Page of the proposal. Only written addenda, amendments, and clarifications signed or sent by authorized NDPERS personnel shall be binding. All oral and other interpretations or clarifications have no legal effect.

5. Order of Responses

Responses must be made in the same order as provided in the specifications. Unless a variation from the specifications of the RFP is specifically noted in a response, the Offeror is agreeing to meet all requirements, including the required contract provisions, stated in this RFP (See Section 9). No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

6. Submission of Proposals

To be considered for award, eight (8) printed and bound copies of the technical proposal, one (1) unbound copy of the Offeror's technical and price proposal, one (1) electronic, PDF redacted copy of the proposal on a separate USB flash drive labeled "REDACTED", and one (1) electronic, editable, PDF original copy of the proposal on a separate USB flash drive labeled "ORIGINAL" (note that the electronic redacted and original copies may not be a picture) must be received by NDPERS on or before 5:00 P.M. (CDT), April 30, 2024. The Request for Redaction chart in Section 7 MUST be completed and submitted with the proposal. The unbound copy shall bear original signatures and shall be marked as the "Master Copy". The unbound Master Copy shall contain no divider sheets or tabs, and shall be printed on one side only of 8-1/2 in. x 11 in. white paper to enable copying if needed. Colors must reproduce in a legible manner on a black-and-white copier. The unbound original, one (1) copy of the "REDACTED"

proposal on a USB flash drive, and one (1) copy of the "ORIGINAL" proposal on a USB flash drive shall be provided in separate sealed envelopes.

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to an open records request. Responder is also put on notice that, except for the information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota Open Records law, NDPERS must disclose to the public upon request any records it receives from Responder. If NDPERS receives a request for information that Responder has requested be kept confidential, NDPERS will review the information submitted by Responder and may also contact Responder for additional input regarding the nature of those records, but NDPERS will be solely responsible for making the ultimate determination of whether the materials submitted are open or exempt. All information that has not been clearly identified by Responder as being confidential and which NDPERS has determined constitutes confidential or exempt information under the North Dakota open records law will be disclosed as an open record. If, as a result of the position taken by Respondent regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Respondent shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Respondent as confidential, Respondent will be deemed to have consented to the release of the document or material and to have waived any cause of action against NDPERS resulting from the release of the documents or materials. NDPERS will not consider the prices submitted by the Responder to be confidential.

Copies of the proposal shall be delivered to:

**Katheryne Korom, Research & Project Manager
NDPERS
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502-1657**

- The base contract will be for a two-year period of January 1, 2025, through December 31, 2026. All rates and fees must be firm, fixed, and valid for the duration of the base period. Additionally, NDPERS is seeking two, two-year option periods for a potential total contract period of six years.
- Proposals and any other information submitted by organizations in response to this RFP shall become the property of NDPERS and will not be returned.
- NDPERS will not provide compensation to Offerors for any expenses that they incur as part of the proposal process, including but not limited to expenses incurred for preparing proposals, making demonstrations, responding to inquiries, and attending meetings and negotiations. Offerors submit proposals at their own risk and expense.

- The materials submitted must be enclosed in a sealed envelope, box, or container; the outside of the package must show clearly the submittal deadline, the organization name, and the return address of the organization. The package the proposal is delivered in must also be plainly marked "PROPOSAL TO PROVIDE FLEXCOMP PLAN SERVICES".
- A proposal shall be considered late if received at any time after the exact time specified for the return of proposals. Late proposals may be returned to the organization unopened at the organization's expense. Late proposals will not be considered unless the NDPERS Board determines otherwise.
- Proposals submitted via email or fax will not be accepted.
- Any award is contingent upon a contract acceptable to NDPERS being executed.

7. Conflicts of Interest List

Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The Conflicts of Interest List in Section 8 MUST be completed and submitted with the proposal. This list should indicate the name of the entity, the relationship, and a discussion on the conflict.

8. Acceptance of Proposals

NDPERS retains the right to reject all proposals submitted. NDPERS is not required to select the proposal with the lowest fees but will take into consideration statutory guidelines and any factors it considers relevant. It is the intent of NDPERS at this time to enter into a contract effective upon execution with services beginning January 1, 2025, through December 31, 2026. The Board at its discretion may extend the contract for up to two additional two-year periods. The premium and benefits structure of these extensions will be subject to negotiations prior to renewal. NDPERS has the right to discontinue the program if the legislature discontinues the program or for any other reason. The Offeror whose proposal is selected will be chosen with the goal of developing a long-term relationship.

9. Non-Responsive Proposals

NDPERS is not required to accept for consideration any proposal that does not comply with the criteria set forth herein.

10. References

Each Offeror must provide at least three references from other current and three references from other former public entities of similar size or larger.

NDPERS or its designated representative may ask these clients to provide information regarding the Offeror's overall record of service in providing services for their participants. Providing references in its proposal constitutes the Offeror's permission for NDPERS to contact these entities.

11. Waiver

By submitting a proposal, the Offeror submitting the proposal agrees to waive any claim it has or may have against NDPERS, NDPERS employees, NDPERS agents, and NDPERS attorneys, arising out of or in connection with (1) the administration, evaluation, or recommendation of any proposal; (2) waiver of any requirement under this RFP; (3) acceptance or rejection of any proposal; and (4) award of the contract.

12. Additional Information from Responding Organizations

NDPERS reserves the right to request additional documentation from responding organizations, and such information may vary by Offeror.

13. Interview with Responding Organizations

The NDPERS Board may request representatives of your organization to appear for interviewing purposes. Travel expenses and costs related to the interview will be the responsibility of the bidder.

14. Modification

No proposal may be changed after the deadline for submissions of proposals unless language within the proposal is needing clarification at NDPERS's request.

15. Solicitation

The selected Offeror shall not use lists of covered employees and other data for any purpose except to provide services to participants. Neither the selected Offeror nor its employees may disclose such information to any other party unless specifically authorized in writing in advance by NDPERS.

16. News Release

Written approval by NDPERS will be required for any news releases or other communications regarding a contract awarded to an Offeror.

17. Change Required by Statute, Regulations, Court Orders, or Program Appropriations

NDPERS recognizes that there are factors that could cause a change of condition with regard to NDPERS benefits and administration that are beyond the control of NDPERS or the Offeror submitting a proposal. Those factors that may affect the program include, but are not limited to:

- Federal and state statutes, regulations, court decisions, and administrative rulings.
- Funding appropriated by the North Dakota Legislature
- Opinions of the Attorney General of the State of North Dakota

NDPERS expects a good faith effort on the part of the Offeror that is selected to comply with additional responsibilities imposed by federal or state law without requiring mid-year fee increases. NDPERS reserves the right to negotiate with the Offeror as needed to comply with any changes required by statute, regulation, court order, administrative order, or official interpretation.

18. Contract Award

The policy of the NDPERS Board is to solicit proposals with a bona fide intention to award a contract. This policy will not affect the right of the NDPERS Board to reject any, or all, proposals.

In evaluating the proposals, price will not be the sole factor. The Board may consider any factors it deems necessary and proper, including but not limited to: price; quality of service; response to this request; experience; staffing; and, general reputation.

The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

19. Agreements

Section 9 – Offer (Agreements), must be signed by a partner or principal of the firm and included with your proposal.

Vendors must sign the attached agreements, including the agreement for services, business associate agreement, and confidential information memorandum of understanding. Vendors may choose to submit a red-lined version of the signed agreements.

SECTION 7 - CONFIDENTIAL/PROPRIETARY INFORMATION

Request for Redaction Chart

The Responder submitting a proposal to the attached RFP is **required** to complete the following.

Any provisions of the company's proposal that are desired to be confidential must be identified specifically on each page of the proposal and in a table format as provided below.

Information not identified in the table will be considered an open record by NDPERS, regardless of whether the information is marked confidential in the body of the proposal.

In response to the Request for Proposals entitled Administrative and Recordkeeping Services for Section 125 FlexComp Plan (please check one):

_____ Offeror asserts that the information noted in the table below constitutes proprietary, trade secret, commercial, or financial information as defined by North Dakota Century Code section 44-04-18.4, and desires that the information noted in the table below not be disclosed if requested pursuant to the North Dakota Open Records law. **Offeror has submitted a redacted copy of the proposal on a USB flash drive labeled "REDACTED" that accurately and completely redacts the information noted in the table below.**

_____ Offeror makes NO assertion that any information in its Proposal, in whole or in part, should be protected from disclosure under the North Dakota Open Records law.

Technical Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
Insert rows above as necessary				
Cost Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
Insert rows above as necessary				

The above information has been reviewed by Responder's legal counsel and is attested to by _____ (insert name of Responder representative who is authorized to contractually bind Responder), on this _____ day of _____, 2024.

_____ (Signature) _____ (Vendor)

SECTION 8 - CONFLICTS of INTEREST LIST

Conflicts of Interest List:
Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. This list should indicate the name of the entity, the relationship, and a discussion of the conflict.

SECTION 9 - OFFER (AGREEMENTS)

AGREEMENT FOR SERVICES BETWEEN (*Insert Name of Contractor*) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (STATE), and *Name of Business a type of business* [*Insert Business Name*] having its principal place of business at *principal business address* [*Insert Business Address*] (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR agrees to provide the service(s) as specified in the 2024 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).

3. COMPENSATION – PAYMENTS

a. Contractual Amount

NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

b. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to

reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

STATE will not make any advance payments before performance or delivery by CONTRACTOR under this Contract.

e. Payment of Taxes by STATE

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*.

4. TERM OF CONTRACT

This Contract term (Term or Initial Term) begins on *January 1, 2025*-and ends on *December 31, 2026*.

a. No Automatic Renewal

This Contract will not automatically renew.

b. Renewal Option

STATE may renew this Contract upon satisfactory completion of the Initial Term. STATE reserves the right to execute up to **2** options to renew this Contract under the same terms and conditions for a period of **24** months each (Renewal Term).

c. Extension Option

STATE reserves the right to extend this Contract for an additional period, not to exceed 24 months, beyond the current termination date of this Contract.

d. Renegotiation Option

If, during the initial Term, any renewal, or extension, STATE determines a realignment of the Term is needed (e.g. to align with STATE'S fiscal biennium), the parties may mutually agree, in writing, to a new Term with a termination date not to exceed the total available length of Contract including its initial Term, renewals, and extensions.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

c. Termination for Lack of Funding or Authority

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

d. Termination for Cause.

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services or goods required by this Contract within the time specified or any extension agreed to in writing by STATE; **or**
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

8. INDEMNIFICATION

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

9. INSURANCE

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of

contract entitling the State to terminate this agreement immediately.

- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

11. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

12. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses:

STATE	CONTRACTOR
Name: Rebecca Fricke	Name [Insert Name]
Title: Interim Executive Director	Title [Insert Title]
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address [Insert Address]
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip [Insert City, State, Zip]

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

13. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North

Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

15. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

16. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract, including any BAA and/or MOU (if applicable), as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.03-04-24,
- c. CONTRACTOR's proposal in response to RFP number 192.03-04-24.
- d. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

19. SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

20. APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

22. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing Party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten full-time employees.

24. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

25. COUNTERPARTS

This Contract may be executed in multiple, identical counterparts, each of which is to be deemed an original, and all of which taken together shall constitute one and the same contract.

26. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
<i>[insert business]</i>	Acting through its NDPERS
BY: <i>[Signature]</i>	BY: <i>[Interim Executive Director Signature]</i>
<i>[Printed Name]</i>	Rebecca Fricke
<i>[Title]</i>	NDPERS Interim Executive Director
Date:	Date:

Business Associate Agreement

This Business Associate Agreement, which is an addendum to the underlying contract, is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the **ENTER BUSINESS ASSOCIATE NAME, ADDRESS OF ASSOCIATE.**

1. Definitions

- a. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Privacy Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and E, and the HIPAA Security rule, 45 C.F.R., pt. 164, subpart C.
- b. Business Associate. “Business Associate” means the **ENTER BUSINESS ASSOCIATE NAME.**
- c. Covered Entity. “Covered Entity” means the **North Dakota Public Employees Retirement System Health Plans.**
- d. PHI and ePHI. “PHI” means Protected Health Information; “ePHI” means Electronic Protected Health Information.

2. Obligations of Business Associate.

2.1. The Business Associate agrees:

- a. To use or disclose PHI and ePHI only as permitted or required by this Agreement or as Required by Law.
- b. To use appropriate safeguards and security measures to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement, and to comply with all security requirements of the HIPAA Security rule.
- c. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security rule.
- d. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of the requirements of this Agreement.
- e. To report to Covered Entity (1) any use or disclosure of the PHI not provided for by this Agreement, and (2) any “security incident” as defined in 45 C.F.R. § 164.304 involving ePHI, of which it becomes aware without unreasonable delay and in any case within thirty (30) days from the date after discovery and provide the Covered Entity with a written notification that complies with 45 C.F.R. § 164.410 which shall include the following information:
 - i. to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach;
 - ii. a brief description of what happened;
 - iii. the date of discovery of the breach and date of the breach;

- iv. the nature of the Protected Health Information that was involved;
 - v. identity of any person who received the non-permitted Protected Health Information;
 - vi. any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - vii. a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - viii. any other available information that the Covered Entity is required to include in notification to an individual under 45 C.F.R. § 164.404(c) at the time of the notification to the State required by this subsection or promptly thereafter as information becomes available.
- f. With respect to any use or disclosure of Unsecured Protected Health Information not permitted by the Privacy Rule that is caused by the Business Associate's failure to comply with one or more of its obligations under this Agreement, the Business Associate agrees to pay its reasonable share of cost-based fees associated with activities the Covered Entity must undertake to meet its notification obligations under the HIPAA Rules and any other security breach notification laws;
 - g. Ensure that any agent or subcontractor that creates, receives, maintains, or transmits electronic PHI on behalf of the Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to the Business Associate.
 - h. To make available to the Secretary of Health and Human Services the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Privacy Rule, subject to any applicable legal privileges.
 - i. To document the disclosure of PHI related to any disclosure of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - j. To provide to Covered Entity within 15 days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - k. To provide, within 10 days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
 - l. Make amendments(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 C.F.R. § 164.526 or take other measures as necessary to satisfy the covered entity's obligations under that section of law.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, insurance membership data to conduct RFP vendor searches – provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2. Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use PHI and ePHI:

- a. For the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- b. To provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), but Business Associate may not disclose the PHI or ePHI of the Covered Entity to any other client of the Business Associate without the written authorization of the covered entity Covered Entity.
- c. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

4. Obligations of Covered Entity

4.1. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.
- c. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

4.2. Additional Obligations of Covered Entity.

Covered Entity agrees that it:

- a. Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may disclose PHI

- for Health Care Operations purposes.
- b. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to the Covered Entity for Business Associate and the Covered Entity to fulfill their obligations under the Underlying Agreement and this Agreement.
- c. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.
- d. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to Use or Disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.

4.3. Permissible Requests by Covered Entity

Covered Entity may not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administrative activities of Business Associate.

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of 01/01/2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.
- c. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- d. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and ePHI that is in the possession of subcontractors or

agents of Business Associate. Business Associate shall retain no copies of the PHI or ePHI.

2. In the event that Business Associate determines that returning or destroying the PHI or ePHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of Covered Entity that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and ePHI and limit further uses and disclosures of any such PHI and ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains that PHI or ePHI.

6. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy or Security Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5.c, related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- e. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.
- g. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this agreement required to conform the agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

7. Entire Agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** [CE] and **ENTER BUSINESS ASSOCIATE NAME** [BA] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

For Business Associate:

Interim Executive Director
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
AND VENDOR
RELATING TO MAINTAINING CONFIDENTIAL INFORMATION**

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and VENDOR relating to maintenance and destruction of NDPERS Confidential Information held by VENDOR and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with VENDOR to provide services related to administration of the NDPERS RFP (Contracts).

WHEREAS, the services provided by VENDOR under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ 54-52-26 and 54-52.1-11, 54-52.1-12 (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required VENDOR to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality.

WHEREAS, these Contracts have terminated and VENDOR has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time.

WHEREAS, VENDOR has provided and NDPERS has reviewed the VENDOR records retention policy (Policy) applicable to the Confidential Information and VENDOR has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy.

NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. VENDOR shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, VENDOR shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, VENDOR shall provide NDPERS a copy of any change to the Policy provided NDPERS on DATE.
4. NDPERS agrees these actions are consistent with VENDOR obligations under these Contracts.
5. This Memorandum of Understanding will terminate upon notice to NDPERS by VENDOR that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to VENDOR if NDPERS determines that the Policy has been modified in a manner that is

- inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____
Interim Executive Director
ND Public Employees Retirement System

Date: _____

VENDOR

BY: _____

Its: _____

Date: _____

Attach Contractor Records Retention Policy



**North Dakota
Public Employees Retirement System**
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

Rebecca Fricke
Interim Executive Director
(701) 328-3900
1-800-803-7377

Fax (701) 328-3920 Email ndpers-info@nd.gov Website www.ndpers.nd.gov

Memorandum

TO: NDPERS Board

FROM: Lindsay Schaf

DATE: February 13, 2024

SUBJECT: Insurance Updates

This memo is to provide the Board with updates on two efforts conducted this fall in relation to the NDPERS Insurance plans.

Flu Vaccination Clinics

From late September through early November, NDPERS offered eight flu vaccination clinics to members and dependents in the Bismarck/Mandan area who are covered by the NDPERS health insurance plan. As in previous years, the clinics were conducted by the UND Center for Family Medicine, both at their clinic and at the Capitol. Similar to last year, the UND Center for Family Medicine modified their registration process to require online pre-registration. A total of 635 individuals received their flu vaccination through this campaign, which is an increase from last year (484).

Annual Enrollment

Annual enrollment was conducted from October 16 – November 3, 2023. Members were able to provide their elections by supplying paper forms or by using Member Self Service (MSS).

Additional information regarding specific plan enrollments includes the following information:

FlexComp Plan:

	2023	2023	2024	2024
	Participants	Total Pledged	Participants	Total Pledged
Medical Spending	2,100	\$3,756,531.16	2,136	\$4,011,919.44
Dependent Care	397	\$1,612,396.92	376	\$1,548,569.92
Total	2,497	\$5,368,928.08	2,512	\$5,560,489.36

Dental & Vision Plans:

The following is the change in enrollment for subscriber contracts in the dental and vision plans:

	<u>2023</u>	<u>2024</u>
Dental	12,993	14,389
Vision	13,180	14,298

High Deductible Health Plan:

The enrollment change for the High Deductible Health Plan is:

<u>2023</u>	<u>2024</u>
818	1,023

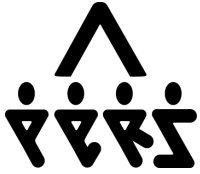
457(b) Deferred Compensation Plan:

Although Deferred Compensation is not normally included as part of the annual enrollment elections, based upon direction by the Board, an active choice enrollment option for this benefit was again offered as part of annual enrollment. The purpose was to incentivize members to enroll or increase their 457(b) Deferred Compensation contributions.

The following summary identifies *unique* members modifying their election.

Provider	Total Unique Members that modified their election	New	Increase	Decrease
TIAA (Companion Plan)	753	220	526	7
Other 457(b) Deferred Compensation Providers	84	2	74	8

This item is informational only and does not require any action by the Board. We will be available at the meeting to discuss any questions you may have.



**North Dakota
Public Employees Retirement System**
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

Rebecca Fricke
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(701) 328-3900
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Fax (701) 328-3920 Email ndpers-info@nd.gov Website www.ndpers.nd.gov

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: Health Insurance Renewal

As you will recall, our health plan contract with Sanford Health Plan (SHP) runs for two years (biennium), with two additional possible two-year renewals. The current contract, the second two years of the possible six years, runs through June of 2025. Because an RFP in the event we do not renew takes so much time, we need to begin the process to determine if the Board would like to renew with SHP for another two years.

The timeframe for this process is as follows:

- July/August – obtain renewal estimate from Deloitte
- August – receive and consider the proposed renewal and other required information
- September – determine whether to renew or issue an RFP

If the Board decides to issue an RFP, the timeframe for that is as follows:

- September – issue RFP
- November/December – receive RFPs
- February – award the plan for the 2023-2025 biennium

To expedite the RFP process in the event the Board goes that direction, staff are in the process of reviewing and updating the previous RFP, and will bring the final product to the Board for its approval should the Board opt to issue the RFP.

The statutory requirements for renewal are found in NDCC section 54-52.1-05(2):

2. The initial term or the renewal term of a uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.
 - a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations, the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.
 - b. In making a determination under this subsection, the board shall:
 - (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount.
 - (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance.
 - (3) Consider any additional information the board determines relevant to making the determination.
 - c. The board may determine the carrier's performance under the existing contract does not meet the board's expectations, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board therefore may decide to solicit a bid under section 54-52.1-04.

The proposed premium renewal amount has historically been the sticking point in the renewal process.

As we have in the past, we will have Deloitte prepare a renewal estimate for the Board's use in the negotiation process, as required by subsection 2(b)(1). SHP will also perform its usual customer survey, which satisfies some of the requirements in subsection 2(b)(2).

Also to assist with some of the requirements in 2(b)(2), Shawna Piatz goes to SHP every year to perform an audit of SHP claims processing, which typically goes very well. Current practice is for the findings of the audit and NDPERS management responses to be shared with the Audit Committee, as well as, the full Board. The results for the 2023 audit will be shared prior to the renewal discussions.

The “additional information” the Board has typically reviewed to comply with subsection 2(b)(3) includes the information required by NDCC section 54-52.1-04(1) for an RFP:

- a. The economy to be effected.
- b. The ease of administration.
- c. The adequacy of the coverages.
- d. The financial position of the carrier, with special emphasis on the solvency of the carrier.
- e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

Little has changed since the 2020 RFP process regarding subsections 1(a), 1(b) and 1(c). As such, we may not need additional information on these. SHP’s performance measures and the customer survey should satisfy subsection 1(e). To satisfy subsection 1(d), the financial position of the carrier, in the past we have requested a letter from the President of Sanford Health, the overarching legal entity, confirming the financial stability of Sanford Health and its willingness to financially support SHP if needed. We will also reach out to the Insurance Department to see what information they have.

We have typically asked for the following additional information from SHP, and staff would recommend it for this renewal, as well:

- the effect on the rates of losing our Grandfathered status
- a schedule from Sanford Health Plan of the effect of plan design changes (deductibles, co-insurance, etc.)
- the cost of coverage changes (ACA benefits, coverage for birth control without cost sharing, additional wellness incentives such as smoking deterrents and re-starting the tobacco cessation program, etc.)
- information on the PERS special programs including wellness, About the Patient, and the Healthy Pregnancy Program

Staff are seeking consensus from the Board regarding if they wish to follow the same process for the renewal. Also, are there additional items other than those identified by staff that the Board would like provided as part of the renewal for the Board’s consideration?



North Dakota
Public Employees Retirement System
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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: Proposed Administrative Rules

Staff have continued reviewing changes necessary in administrative rules. Given the Board's review in January, staff have consolidated the summary (Attachment 1) into one document, as well as, the updated administrative rule drafts (Attachment 2).

Since our January meeting, staff have provided the draft rules related to House Bill 1040 to Ice Miller to ensure the proposed rules do not create any federal compliance issues. Ice Miller provided some suggested changes, which were reviewed with staff and legal counsel. Overall, the suggested changes were minor in nature and did not change the intent of the previously proposed rules. Specifically, modifications were made to the rules under NDAC 71-08-08-01 (temporary employee participation), NDAC 71-08-10 (permanent employee participation), and NDAC 71-08-11 (contributions) and are reflected within Attachment 2. Staff can answer questions you may have on these updated versions.

Following the recordkeeper vendor interviews held in January, staff believe that two additional rule changes may be beneficial. Specifically, NDAC 71-04-03-01 and NDAC 71-04-03-03 could be modified to make the rule more general related to a member submitting their 457 plan deferral agreement to the office to include the NDPERS office or the Board's designated vendor. The suggested changes are within Attachment 2.

As mentioned during the House Bill 1040 Implementation Update, based upon feedback on legislative intent received by the Retirement Committee, staff will bring a rule change back for the Board's consideration to clarify who is a "state" employer for purposes of the incentive and payment of the actuarially determined employer contribution.

Are there additional rule changes we should be considering? Any areas identified will be reviewed by staff and legal counsel to bring forward suggestions at the March meeting.

As reported in January, the following is the tentative schedule:

2024 Proposed Administrative Rule Revision/Addition/Deletion Schedule

January 9	Initial Board review of proposed rules.
February 13	Second Board review.
March 12	Third and Final Board review.
March 18	(Week of) Post copy of proposed rules on NDPERS website, notify all employer groups that rules are on website, send formal notice and materials to Legislative Council.
March 18	(Week of) Notify North Dakota Newspaper Association (NDNA) of upcoming notice and verify timing of printed notice.
April 8	(Week of) Notice has been printed in all required newspapers and notice sent to any pertinent legislator with proposed rule changes.
April 29	Proposed date for Public Hearing.
April 29	Hearing held and comment period opened.
May 13	Comment period closed.
June 11	Board review of comments. Final approval of proposed rules.
June 12	Send to Attorney General's office for review.
September/ October	After receipt of AG review, send to Legislative Council.
October 31	Deadline to submit proposed rules to Legislative Council.
December TBD	Administrative Rules Committee Meeting held.
January 1	New rules take effect, provided there are no holds placed on them by the committee.

As you can see from the schedule, NDPERS will be seeking final approval of the proposed rules at the March meeting so that we may distribute the rules for public comment. However, if additional time is needed, approval would be necessary no later than the April meeting and the above schedule would need to be updated.

SUMMARY OF PROPOSED ADMINISTRATIVE RULE CHANGES:

Section	Description	Reason
71-01-01-01(2). Organization of public employees retirement board.	Modify language regarding board membership to be consistent with 54-52-03.	Comply with state law, HB 1547
71-01-02-02(2). Eligible voters.	Remove reference to retirees being eligible to cast a vote for a retiree member on the board.	Comply with state law, HB 1547
71-01-02-03(2). Candidate eligibility.	Remove reference of eligible voter for retiree member of the board.	Comply with state law, HB 1547
71-01-02-04(1). Election notification.	Clarify that communication of active members of active member vacancy and election will be provided twenty-one calendar days prior to the due date to file nomination petitions. Remove reference of retiree board member notice.	Comply with state law, HB 1547
71-01-02-05(1). Petition format.	Remove reference of nomination petition for the retiree member of the board.	Comply with state law, HB 1547
71-01-02-06(5). Procedure for completing and filing petitions.	Modified requirements for submitting a candidate photograph for board election.	Clarification
71-01-02-08(1). Election.	Remove reference to election of a retiree member of the board.	Comply with state law, HB 1547
71-01-02-11. Special elections.	Allows board option rather than requirement to hold special election	Clarification
71-01-02-13. Election voting.	Clarify that canvassing rules apply if electronic ballots used. Also, remove reference of retiree candidate.	Clarification and to comply with state law, HB 1547
71-02-03-06. Conversion of sick leave.	Modify language regarding the calculation of unused sick leave related to the final average salary to be used.	Clarification
71-02-05-03. Cancellation of disability benefits.	Repeal cancellation of disability benefit as new section added with additional detail on calculation of benefit.	Clarification

Section	Description	Reason
71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.	New section added regarding a member's eligibility to convert a disability benefit to a normal unreduced benefit, including clarification on interest accrual and benefit option factors.	Clarification
71-02-08-01. Participation.	Repeal as employer groups will no longer be able to join the Defined Benefit Plan as of closure date.	Comply with state law, HB 1040
71-03-03-01. Enrollment.	Ensure consistency to 71-03-06-01 between state agency employees and political subdivision employees.	Clarification
71-03-03-08. Continuation of life insurance after retirement.	Clarify eligibility to continue life insurance after retirement and that individual must have continuous coverage as they transition from active employment to retirement.	Clarification
71-03-05-01. Premium billing.	Simplify language to reference NDCC 54-52.1.	Clarification
71-03-06-01. Enrollment.	Ensure consistency to 71-03-03-01 between state agency employees and political subdivision employees.	Clarification
71-03-06-08. Employee contribution.	Clarify employee's responsible for paying part of insurance premium must pay premium to their employer.	Clarification
71-04-01-01. Definitions.	Updates number of members on board to eleven and adds definition of wages and salary for 457 plan to be consistent with other retirement definitions.	Comply with state law and clarification, HB 1547 & HB 1040
71-04-03-01. Enrollment.	Allows deferral election to be filed with NDPERS office of with the Board's selected vendor.	Clarification
71-04-03-03. Change in monthly deferral.	Allows deferral election to be filed with NDPERS office of with the Board's selected vendor.	Clarification
71-05-02-06. Cancellation of disability benefit.	Clarifies interest accrual ends and benefit option factors to be used for normal retirement benefit for highway patrol members.	Clarification
71-05-04-08. Conversion of sick leave.	Modify language for Highway Patrol Retirement System regarding the calculation of unused sick leave related to the final average salary to be used.	Clarification

Section	Description	Reason
71-08-01-01. Ability to elect to transfer into the defined contribution plan.	Repeal due to special enrollment window outlined in HB 1040 for state employees with no more than 5 years of service.	Comply with state law, HB 1040
71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.	Add clarification that calculation identified in rule expires as of closure date due to different calculation for special window outlined in HB 1040.	Comply with state law, HB 1040
71-08-01-07. Late election opportunity.	Repeal as late election opportunities are no longer needed.	Comply with state law, HB 1040
71-08-08-01. Temporary employee participation.	Add language regarding temporary participation after defined benefit plan closure to clarify new temporary employee must participate in new defined contribution.	Comply with state law, HB 1040
71-08-10. Permanent employee participation.	Add new section to rules related to permanent employee participation to specify additional contribution requirements due to federal restrictions. Allow NDPERS to auto enroll eligible employees. Clarify designation of beneficiary requirements.	Comply with state law, HB 1040 and IRC requirements related to governmental 401(a) plans and contribution elections
71-08-11. Contributions.	Add new section regarding employer reporting requirements to be consistent with reporting between defined benefit plan and defined contribution plan members, specifically related to bonuses, calculating contributions, employer payment of employee contributions, reporting for individuals working less than a forty hour week and employee incentive payments.	Comply with state law, HB 1040 and clarification

**ARTICLE 71-01
GENERAL ADMINISTRATION**

Attachment

Chapter

71-01-01	Organization of Board
71-01-02	Election Rules
71-01-03	Confidential Information Requests

**CHAPTER 71-01-01
ORGANIZATION OF BOARD**

Section

71-01-01-01.	Organization of Public Employees Retirement Board
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Subsection 2 of Section 75-01-01-01 is amended as follows

71-01-01-01. Organization of public employees retirement board.

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administering body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of ~~nine~~eleven members. ~~Two~~Four are members of the legislative assembly, appointed by the chairman of the legislative management. The majority leader of the house of representatives shall appoint two members of the house of representatives and the majority leader of the senate shall appoint two members of the senate. The members of the legislature shall serve a term of two years, at the pleasure of the appointing majority leader. ~~one member, the chairman, is~~ Four members of the board must be appointed by the governor to serve a term of five years, at the pleasure of the Governor. one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; tThree members are elected by the active membership of the system to serve a term of five years.~~and one member is elected by the retired public employees.~~
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director
Box 1657
Bismarck, North Dakota 58502

History: Amended Effective November 1, 1981, November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016;_____

General Authority: NDCC 28-32-02.1, 54-52-04

Law Implemented: NDCC 28-32-02.1, 54-52-03

CHAPTER 71-01-02 ELECTION RULES

Section

71-01-02-01	Election Committee
71-01-02-02	Eligible Voters
71-01-02-03	Candidate Eligibility
71-01-02-04	Election Notification
71-01-02-05	Petition Format
71-01-02-06	Procedure For Completing and Filing Petitions
71-01-02-07	Election Ballots
71-01-02-08	Election
71-01-02-09	Canvassing Rules
71-01-02-10	Notification of Election
71-01-02-11	Special Elections
71-01-02-12	Penalties
71-01-02-13.1	Election Voting

71-01-02-01. Election Committee.

1. The retirement board must appoint a committee of three, one of whom will be designated as chair, from its membership to oversee elections to the board.
2. Committee members, or their authorized representatives, are responsible for reviewing the election rules for the retirement board membership of the North Dakota public employees retirement system, for counting ballots, and for reporting the election results to the board.
3. Committee members will be appointed at the February meeting of the North Dakota public employees retirement system board to serve until the retirement board meeting for the following February.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 2 of Section 71-01-02-02 is amended as follows:

71-01-02-02. Eligible voters.

1. All active employees, eligible to serve as elected members of the board in accordance with subsection 4 of North Dakota Century Code section 54-52-03, are eligible to cast one vote for each active member vacancy on the retirement board.
2. ~~All persons receiving retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.~~ Persons participating in the uniform group insurance program, the deferred compensation plan for public employees, or the pretax benefits program but not in the retirement system are ineligible to cast votes in retirement board elections.

History: Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008; April 1, 2012; _____

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-03 is amended as follows and Subsection 2 of Section 71-01-02-03 is repealed:

71-01-02-03. Candidate eligibility.

1. Any active participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection 45 of North Dakota Century Code section 54-52-03, may become a candidate for election to the board. An department/agency or political division may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.
- ~~2. Any person, as of April fifteenth of the election year, who has accepted a retirement allowance, may become a candidate for the retiree member to the board.~~

History: Effective April 1, 1992; amended effective July 1, 1994; July 1, 2000; April 1, 2008; July 1, 2010; April 1, 2012; _____

General Authority: NDCC 54-52-04, 54-52-17(5)

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-04 is amended as follows:

71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least ~~three weeks~~ twenty-one calendar days in advance of a filing date for nomination petitions. ~~The director shall ensure that notification of the vacancy of a retiree member and the election is given to all persons who have accepted a retirement allowance through publication of a notice in the North Dakota public employees retirement system newsletter or any other method of communication as deemed appropriate by the director at least three weeks in advance of a filing date for nomination petitions.~~
2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014; April 1, 2020; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-05 is amended as follows:

71-01-02-05. Petition format.

- 1 The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters. ~~The nomination petition for the retiree member on the board must include the signatures of at least twenty-five persons receiving a retirement allowance.~~
- 2 The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate _____ for election to the North Dakota Public Employees Retirement System board.
- 3 The nomination petition must include a certification by the candidate, as follows: "I accept the

nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board.

- 4 If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992; amended effective May 1, 2004; April 1, 2008; April 1, 2012;_____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 5 of Section 71-01-02-06 is amended as follows:

71-01-02-06. Procedure for completing and filing petitions.

1. No period of time, on which an employee is entitled to receive wages or salary from the state of North Dakota or a political subdivision, may be used by the candidates to promote their election except as permitted by the employing agency. In addition, no public funds may be used for the purpose of promoting an election unless permitted by the employing agency.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the date provided in the election notice and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw that candidate's nomination petition up until one week after the date the nomination petition is filed with the North Dakota public employees retirement system. The notice must be in writing and duly witnessed.
5. Nomination petitions may be accompanied by a three-inch ~~[76.20-millimeter]~~ by five-inch ~~[127.00-millimeter]~~ photograph of the candidate and a narrative not to exceed two hundred words. The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates' information that accompanies the ballots.
6. The retirement board or its representative reserves the right to edit lengthy narratives to the two hundred word limit.
7. The board or its representative shall inform all candidates of the validation of their candidacy.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2020;_____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-07. Election ballots.

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information.

3. Ballots must first be arranged with the names of each candidate on the ballot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter
5. If there is no candidate, the board shall solicit at least two persons from the eligible pool of candidates to run for election to the board. The election will then be conducted in compliance with the provisions of this chapter.

History: Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Subsection 1 of Section 71-01-02-08 is amended as follows:

71-01-02-08. Election.

1. Ballots must be mailed by first-class United States mail to the address of all eligible active voters for an election of an active board member, ~~or all eligible retired voters for an election of a retired board member,~~ as determined by the North Dakota public employees retirement system's membership roles as of April fifteenth in the year of the election. Each eligible voter gets one ballot. Lost ballots may not be replaced.
2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the two weeks before the deadline for receipt of ballots.
3. Ballots must be returned to the North Dakota public employees retirement system office no later than four p.m. on the date provided on the election ballots.
4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

History: Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence on the date set for the election committee to do so and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.

3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.
5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.
8. If the committee should determine that the outcome of the election has been compromised for any reason, the committee may determine the election to be invalid. If the election is determined to be invalid, the committee shall call for a new election with a new election schedule.

History: Effective April 1, 1992; amended effective April 1, 2008; July 1, 2010; April 1, 2020.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-10. Notification of election results.

1. Election results must be presented to the retirement board following the canvassing of votes. Such report must include an itemization of the number of ballots returned, votes cast for each candidate, votes invalidated, and votes not counted due to late receipt.
2. All candidates will be notified of the election results no later than the business day following the June meeting of the retirement board.
3. Employers and the membership participating in the North Dakota public employees retirement system will be notified of the election results.

History: Effective April 1, 1992; amended effective April 1, 2008; April 1, 2020.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Section 71-01-02-11 is amended as follows:

71-01-02-11. Special elections.

A special election ~~will~~ may be called for by the retirement board in the event of a vacancy resulting from the death, resignation, or termination of North Dakota public employees retirement system membership by any elected board members.

1. Special elections must be conducted in accordance with the regular elections rules, except that the board will determine a new election schedule.

2. In the case of a special election, the term to be filled is the unexpired portion of the vacant board position.

History: Effective April 1, 1992; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-12. Penalties.

A violation of any provision under this chapter may result in one or more of the following penalties, as determined by the board:

1. A candidate's petitions may be declared void.
2. A candidate's nomination may be declared void.
3. A candidate's election may be declared void.
4. Within thirty days of beginning an elected member's term in office, the elected member may be removed.

History: Effective July 1, 2000.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

Section 71-01-02-13 is amended as follows:

71-01-02-13. Election voting.

In lieu of sections 71-01-02-07 and 71-01-02-08, and 71-01-02-09 the retirement board may allow for a process by which electronic ballots are submitted to elect an active ~~or retiree~~ candidate to the board.

History: Effective April 1, 2014; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

CHAPTER 71-02-03 SERVICE CREDIT

Section

71-02-03-01	Service Credit – General Rule
71-02-03-01.1	Noneligible Service Credit
71-02-03-01.2	Service Credit Given for Leave Taken
71-02-03-02	Military Credit [Repealed]
71-02-03-02.1	Purchase of Additional Service Credit and Repurchase of Past Service
71-02-03-02.2	Payment
71-02-03-02.3	Delinquent Payment
71-02-03-02.4	Crediting Purchased or Repurchased Service
71-02-03-02.5	Costs
71-02-03-03	Service After Age Sixty-Five [Repealed]
71-02-03-04	Cancellation of Credits
71-02-03-05	Coordination of Multiple Plan Membership
71-02-03-06	Conversion of Sick Leave
71-02-03-07	Employer Purchase of Service Credit or Sick Leave Program
71-02-03-08	Eligible Sick Leave

71-02-03-01. Service credit – General rule.

A member receives credit for each month a contribution is made. Service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for prior service employment as defined in North Dakota Century Code section 54-52-01. For employees employed prior to July 1, 2004, service credit shall be granted upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:

1. Probationary employment prior to July 1, 1979, that was previously excluded from eligible employment.
2. Eligible employment between the ages of eighteen and twenty-one that was previously excluded by the age limitation of twenty-one for participation in the retirement program.
3. Summer months for eligible school employees for the period July 1, 1979, to July 1, 1982.
4. Former members of the teachers' fund for retirement, job service North Dakota, or highway patrolmen's retirement systems will be granted credit for previous service in these funds if they received a lump sum refund prior to September 1, 1976.

History: Amended effective September 1, 1982; November 1, 1990; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

71-02-03-01.1. Noneligible service credit.

Service credit will not be granted for:

1. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.
2. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.
3. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased

by the member.

4. Service the member waived when transferring into the defined contribution retirement plan, including service not yet granted pursuant to section 71-02-03-01.

History: Effective November 1, 1990; amended effective April 1, 1992; July 1, 2000.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-05, 54-52-17, 54-52-19.2

71-02-03-01.2. Service credit given for leave taken.

A member may take leave pursuant to policies, rules, and statutes applicable to the member's employing unit. However, service credit may only be given for leave that is part of a participating member's continuous service. Service credit may not be given for isolated leave that is not part of continuous service.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

71-02-03-02.1. Military credit.

Repealed effective November 1, 1990.

71-02-03-02.1. Purchase of additional service credit and repurchase of past service.

In order to purchase additional credit or repurchase past service, a member must notify the office, in writing, of the service for which they wish to receive credit. In addition to the written request, the following information must be submitted if applicable:

1. Verification by the former employer of previous North Dakota or out-of-state public service, or service with the federal government.
2. Documentation of military service by submitting a DD214 or NGB22.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.
4. Statement from employee or former employer that service credits being applied for does not qualify for retirement benefits under another retirement system.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.2. Payment.

The total dollar amount for the purchase or repurchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the employee is employed by a participating employer but for no longer than a fifteen-year time period.

3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll deduction.
4. Payments may only be received until the fifteenth of the month following the month of the member's termination date with a participating employer.
5. Payments are due by the fifteenth of the month to be credited for the month.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of principal, and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.3. Delinquent payment.

If no payment is received within thirty days of the due date, the public employees retirement system shall send a letter to the member advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on closed accounts must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.4. Crediting purchased or repurchased service.

Service purchased or repurchased will be credited in the following manner:

1. For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.
2. Member acceptance of a service purchase contract extinguishes all pending service purchase cost estimates, excluding purchase of unused sick leave.
3. Service purchase contracts set up on a payment plan and only partially paid will have the remaining unpaid portion of service credit included when preparing the new service purchase cost calculation
4. For members converting service under the public employees retirement system to service under the judge's retirement system, each month of county judge service under the public employees retirement system will be converted to one month of judicial service credit. The account balance from the public employees retirement system will be transferred to the judges' retirement system account once the contract is paid in full or closed.

History: Effective November 1, 1990; amended effective July 1, 1994; June 1, 1996; May 1, 2004; July 1, 2010; April 1, 2020.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-02.5. Costs.

If purchasing under North Dakota Century Code section 54-52-02.6 or subdivision d of subsection 1 of North Dakota Century Code section 54-52-17.4, the cost will be the higher of the amount refunded to the member plus interest at the actuarial rate of return or the actuarial cost to provide the credit. All other types of service purchases must be actuarially determined. An actuarial cost must be calculated by applying actuarial factors to the amount of retirement and retiree health insurance credit being purchased by the member. The member's current age, average salary, current credited service, and actuarial factors on record and in effect with the North Dakota public employees retirement system in the month in which the member's written request is processed by the office must be used in the cost calculation. A member's written request must be processed by the office within sixty days of receipt. The amount of retirement and retiree health insurance credit being purchased must be calculated using the benefit formulas in place at the time the written request from the member is processed by the office. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The member's average salary shall be calculated as follows:

1. For members working full time with more than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17.
2. For members working full time with less than twelve months of service credit, by using the calculation found in subsection 2 of North Dakota Century Code section 54-52-17, but disregarding any month in which the member was paid less than a full-month salary. A full-month salary is the compensation the member and the member's employer agreed the member would be paid for working a full month.
3. For members who have not yet received a full-month salary, the member's average salary shall equal the member's full-month salary, as defined in subsection
4. For members working part time, by using the applicable calculations found in subsections 1 and 2, but using a monthly salary equal to the equivalent of the salary the member would have received if the member was working full time.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the member, and all required documentation, a written cost confirmation must be prepared and mailed to the member. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with a participating employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

History: Effective July 1, 1994; amended effective June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2018.

General Authority: NDCC 54-52-02.6, 54-52-04, 54-52-17, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17, 54-52-17.2, 54-52-17.4

71-02-03-03. Service after age sixty-five.

Repealed as the result of S.L. 1981, ch. 547, § 1.

71-02-03-04. Cancellation of credits.

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions shall be canceled.

History:

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-03-05. Coordination of multiple plan membership.

Upon providing proper documentation of retirement plan participation, a member who meets the following criteria may use service credit in the teachers' insurance retirement fund for the purpose of meeting the normal retirement date for vesting purposes under North Dakota Century Code chapter 54-52. The member:

1. Must have participated in both the teachers' fund for retirement and the teachers' insurance and annuity association of America-college retirement equities fund.
2. Must have elected to transfer the member's teachers' insurance retirement fund account balance to teachers' insurance and annuity association of America-college retirement equities fund in connection with the administrative coordination of the various state retirement plans as provided under chapter 133 of the 1973 North Dakota Session Laws.
3. Did not have a cash out since the time of the transfer of funds.
4. Did not relinquish such service credit in writing.

History: Effective June 1, 1996; amended effective July 1, 1998; April 1, 2020.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-01(11)(12)(16), 54-52-17

Subdivision c of Subsection 1 and Subdivision c of Subsection 3 of Section 71-02-03-06 are amended as follows:

71-02-03-06. Conversion of sick leave.

To convert unused sick leave to service credit, the member must submit an application to the office, no later than the end of the month in which the member is no longer eligible to accrue the sick leave hours, unless otherwise approved by the executive director. The member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member is no longer eligible to accrue sick leave hours. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer. One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The employer and employee contributions rates used to calculate the cost must be the rate of the retirement program of the member at termination.

1. Aftertax payments may be accepted from the member as early as six months prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. A notice of employment change has been provided to the public employees retirement system.

- b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.
 - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that the~~ date of calculation. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
2. The member's record must be updated with the additional service credit once payment is made in full.
3. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
 - a. A notice of employment change has been provided to the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date the member is no longer eligible to accrue sick leave hours, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. The sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer and the member's final average salary as of the date ~~the member is no longer eligible to accrue sick leave hours.~~ of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the date the member is no longer eligible to accrue sick leave hours will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month the member is no longer eligible to accrue sick leave hours.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
4. The member's record must be updated with the additional service credit once payment is made in full.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; July 1, 2018; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

71-02-03-07. Employer purchase of service credit or sick leave program.

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees, the employer must create a program and an employer must document

the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system and all unused sick leave purchases will be based upon the computation specified in the North Dakota Century Code. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased or sick leave to be converted, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased or sick leave converted, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies relating to an employer purchase program pursuant to North Dakota Century Code section 54-52-26.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.4, 54-52-29

71-02-03-08. Eligible sick leave.

An employer or a member may only purchase unused sick leave that has not been previously purchased by a former employer or the member.

History: Effective May 1, 2004; amended effective July 1, 2006.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-27

CHAPTER 71-02-05 DISABILITY

Section

71-02-05-01	Eligibility (Repealed)
71-02-05-02	Commencement of Benefit (Repealed)
71-02-05-03	Cancellation of Disability Benefits
71-02-05-04	Calculation of Disability Benefit (Repealed)
71-02-05-05	Conditions for changing to a Disability Retirement Benefit From, an Early Reduced Retirement Benefit
71-02-05-06	Determination of Disability Procedures
71-02-05-07	Optional Benefits
71-02-05-07.1	Judges' Retirement Plan Optional Benefits
71-02-05-08	Transitional Period
71-02-05-09	Interest Accrual on Accumulated Contributions for Disabled Annuitants

71-02-05-01. Eligibility.

Repealed effective January 1, 1992.

71-02-05-02. Commencement of benefit.

Repealed effective January 1, 1992.

Section 71-02-05-03 is repealed:

~~71-02-05-03. Cancellation of disability benefit.~~

~~When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefits and draw retirement benefits as specified in North Dakota Century Code section 54-52-17.~~

History: Amended effective January 1, 1992; May 1, 2004; July 1, 2006. Repealed effective _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-04. Calculation of disability benefit.

Repealed effective November 1, 1990.

71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. Upon receiving a disability determination, interest accrual shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated, and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective September 1, 1982; amended effective November 1, 1990; January 1, 1992; July 1, 1998; July 1, 2006.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-06. Determination of disability - Procedures.

1. Application.

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

2. Medical consultant.

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision h of subsection 3 of North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

3. Medical examination.

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.

- c. If determined to be eligible for disability benefits, the member must be reimbursed for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. Appeal.

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.
- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
- d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.

5. Payment of annuity.

If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

6. Redetermination and recertification.

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant unless proof of receipt of ongoing social security disability benefits is received. The executive director

may waive the necessity for a recertification, based on the recommendation of the medical consultant or upon proof of receipt of ongoing social security disability benefits.

- b. The public employees retirement system will send a recertification application and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification application has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. If the recertification application is not received within six months of the recertification date set in the recertification request unless an alternative date has been approved by the executive director, the member will no longer be eligible to receive disability benefits. Benefits suspended within six months of the recertification date set in the recertification request will be reinstated the first of the month following recertification by the medical consultant, or upon proof of receipt of ongoing social security disability benefits, unless an alternative date has been approved by the executive director. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. When the member has not provided proof of receipt of ongoing social security disability benefits, the medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2016; July 1, 2018.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17, 54-52-26

71-02-05-07. Optional benefits.

For the main system and national guard/law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during

the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012; April 1, 2016.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-06.4, 54-52-17

71-02-05-07.1. Judges' retirement plan optional benefits.

For the judges' retirement plan, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

2. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010; April 1, 2012.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-08. Transitional period.

For purposes of providing a transition period during the twelve-month application period provided under previous law, amendments to chapter 71-02-05 dated January 1, 1992, apply to disabled employees who terminated on or after July 1, 1991. However, the previous rules will continue in effect for disabled employees who terminated before July 1, 1991.

History: Effective January 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-09. Interest accrual on accumulated contributions for disabled annuitants.

Effective January 1, 1998, interest must accrue on accumulated contributions as defined in article 71-02 until the disabled annuitant reaches that person's normal retirement age, cancels the benefit in accordance with section 71-02-05-03, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

Section 71-02-05-10 is created as follows:

71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.

A member receiving a disability benefit will be provided a one-time irrevocable election to convert to an unreduced retirement benefit upon meeting normal retirement date, as defined in N.D.C.C. 54-52-17(3), if eligibility is met. A member receiving a disability benefit must begin receiving an unreduced retirement benefit upon meeting normal retirement age. Upon receipt of normal retirement benefits, interest accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

History: Effective

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17

CHAPTER 71-02-08 PARTICIPATION BY GOVERNMENTAL UNITS

Section

71-02-08-01	Participation
71-02-08-02	Withdrawal
71-02-08-03	Transfer of Funds [Repealed]
71-02-08-04	Transfer Date [Repealed]
71-02-08-05	Merger of Eligible Employer Groups

Section 71-02-08-01.1 is repealed.

~~71-02-08-01. Participation.~~

~~Any governmental unit not participating in the retirement system on July 1, 1977, may choose to participate in the retirement system and may elect to purchase past service in accordance with North Dakota Century Code section 54-52-02.1. If the governmental unit elects to purchase past service and prior to the governmental unit's governing authority contracting with the retirement board, the governmental unit must furnish the board with information concerning the permanent employees of the governmental unit. This information should contain, but is not limited to (1) name; (2) social security number; (3) date of birth; (4) date of employment; (5) current monthly salary; and (6) any previous public employment.~~

~~After receipt of this data, the retirement office will calculate the cost to the governmental unit to participate in the retirement plan as offered in North Dakota Century Code section 54-52-17. The governmental unit's governing authority will then decide whether or not to participate in the plan and whether or not to provide service credit for employment prior to the date of participation.~~

~~**History:** Amended effective September 1, 1982; April 1, 2012. Repealed effective~~

~~**General Authority:** NDCC 54-52-04~~

~~**Law Implemented:** NDCC 54-52-02.1~~

71-02-08-02. Withdrawal.

Any political subdivision may discontinue participation in the fund if the following requirements are met:

1. The political subdivision must provide the board with a copy of a resolution adopted by the governing authority authorizing the termination of participation in the fund.
2. Upon receiving a copy of the written resolution, an actuarial study must be done by the plan's actuary to determine the accrued benefit of all vested employees minus allocated assets from the date of participation. The interest assumption used must be two hundred basis points less than the plan's interest assumption used for funding purposes. The withdrawal liability must include an administrative expense assessment of five percent.
3. Any costs incurred by the fund, resulting from a political subdivision ceasing participation, including the actuarial fee study and the withdrawal liability, must be assessed against the political subdivision and paid in full before a political subdivision terminates its participation.
4. All employees of a political subdivision that has terminated participation in the fund must not be eligible for future benefit accruals or improvements granted to employees or former employees of participating governmental units after the date the employer's participation ceases.
5. An employee who is not vested at the time an employer ceases participation has the option of

taking a refund or rollover of the employee's contribution plus interest.

History: Effective September 1, 1982; amended effective June 1, 1996; April 1, 2019.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-2.1

71-02-08-03. Transfer of funds.

Repealed effective April 1, 2012.

71-02-08-04. Transfer date.

Repealed effective April 1, 2012.

71-02-08-05. Merger of eligible employer groups.

If a merger between two or more eligible employer groups occurs, the following requirements apply:

1. Written notification must be provided to the office no later than sixty days before the merger is final.
2. When two or more employer groups merge into one, and all do not presently participate in the public employees retirement system, the units merging must decide upon one of the following:
 - a. The participating employer or employers may elect to cease participation as of the date of the merger, subject to payment of any actuarial liabilities accrued. An actuarial study must be conducted at the cost of the exiting employer upon providing the public employees retirement system with written notice of the employer's election to cease participation.
 - b. Subject to executing a revised participation agreement, eligible employees who have not previously participated shall be given the opportunity to participate or waive participation effective the date of the merger. Any person hired in an eligible position after the consolidation date must participate.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17, 54-52-02.1

CHAPTER 71-03-03 EMPLOYEE RESPONSIBILITIES

Section

71-03-03-01	Enrollment
71-03-03-02	Late Enrollment
71-03-03-03	Early Enrollment [Repealed]
71-03-03-04	Open Enrollment [Repealed]
71-03-03-05	Special Enrollment for Certain Qualifying Events [Repealed]
71-03-03-06	Continuation of Health, Dental, Vision, or Prescription Drug Coverage After Termination
71-03-03-07	Continuation of Health, Dental, Vision, or Prescription Drug Coverage for Dependents
71-03-03-08	Continuation of Life Insurance After Retirement
71-03-03-09	Leave Without Pay
71-03-03-10	Employee Contribution

Subsection 2 of Section 71-03-03-01 is amended as follows:

71-03-03-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of receiving legal guardianship or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012; April 1, 2016; April 1, 2022. _____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

71-03-03-02. Late enrollment.

An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004; April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03, 42 U.S.C. 300gg-3

71-03-03-03. Early enrollment.

Repealed effective June 1, 1996.

71-03-03-04. Open enrollment.

Repealed effective June 1, 1996.

71-03-03-05. Special enrollment for certain qualifying events.

An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
 - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for Medicare.
 - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for Medicare.
 - c. The month in which the eligible employee terminates employment.
 - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
 - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
 - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred or under subdivision a or b of subsection 1 may become effective the month in which eligibility for Medicare occurs. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.
3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death if there is no lapse in coverage.
4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:
 - a. A former employee who received a refund of the employee's retirement account, including

individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.

- b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
- c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
- d. A formerly deferred retiree who received a refund of the retiree's retirement account.
- e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
- f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
- g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.
- h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for Medicare upon their retirement and completion of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for Medicare.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012; April 1, 2016; July 1, 2018.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

71-03-03-06. Continuation of health, dental, vision, or prescription drug coverage after termination.

An employee who terminates employment and is not receiving a monthly retirement benefit from one of the eligible retirement systems, and applies for continued coverage with the health, dental, vision, or prescription drug plan may continue such coverage for a maximum of eighteen months by remitting timely payments to the board. The employee desiring coverage shall notify the board within sixty days of the termination. Coverage will become effective on the first day of the month following the last day of coverage by the employing agency if an application is submitted within sixty days. An individual who fails to timely notify the board is not eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

71-03-03-07. Continuation of health, dental, vision, or prescription drug coverage for dependents.

Dependents of employees with family coverage may continue coverage with the group after their eligibility would ordinarily cease. This provision includes divorced or widowed spouses and children

when they are no longer dependent on the employee. Coverage is contingent on the prompt payment of the premium, and in no case will coverage continue for more than thirty-six months. Dependents desiring coverage shall notify the board within sixty days of the qualifying event and must submit an application in a timely manner. An individual who fails to notify the board within the sixty days, and who desires subsequent coverage, will not be eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02; Pub. L. 99-272; 100 Stat. 232; 42 USC 300 et seq.

Section 71-03-03-08 is amended as follows:

71-03-03-08. Continuation of life insurance after retirement.

An employee who is enrolled in the group life insurance program may continue the basic and supplemental life insurance coverage upon retirement or disability only if: 1) the employee is entitled to receives a retirement allowance from an eligible retirement system; and 2) by making application applying for life insurance coverage and remitting timely payments to the board. Life Insurance Coverage must be continuous from when active group life insurance ends and retired employee life insurance benefits coverage begins. Supplemental life insurance coverage can only be continued until age sixty-five.

History: Effective October 1, 1986; amended effective June 1, 1996; May 1, 2004; April 1, 2014;_____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-09. Leave without pay.

An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, health, dental, vision, or prescription drug coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work or eligibility for a special enrollment period, may enroll during the annual open enrollment. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997; July 1, 1998; May 1, 2004; April 1, 2012; April 1, 2022.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-02, 54-52.1-03

Section 71-03-03-10 is amended as follows:

71-03-03-10. Employee contribution.

An employee who selects a level of coverage which requires an additional amount of premium shall pay the amount due to the employing agency ~~in advance~~. The employee contribution may be paid via payroll deduction or any other means acceptable to the agency.

History: Effective October 1, 1986._____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

CHAPTER 71-03-05 BOARD RESPONSIBILITIES

Section

71-03-05-01	Premium Billing
71-03-05-02	Retiree Billing
71-03-05-03	Late Premium for Retirees [Repealed]
71-03-05-04	Late Premium for Terminated Employee [Repealed]
71-03-05-05	Appeal Process
71-03-05-06	Recovery of Benefit Payments
71-03-05-07	Erroneous Payment of Premiums – Overpayments
71-03-05-08	Erroneous Payment of Premiums – Underpayments
71-03-05-09	Erroneous Payment of Premiums – Appeals
71-03-05-10	Determining Amount of Premium Overpayments and Underpayments
71-03-05-11	Failure to Provide Notification and Errors

Section 71-03-05-01 is amended as follows:

71-03-05-01. Premium billing.

The board will maintain a monthly billing, and reconcile the moneys, for all agencies, individual retirees, employers, and other eligible individuals provided in N.D.C.C. 54-52.1 ~~terminated employees with continued coverage.~~

~~The board will reconcile the moneys received from each agency, retiree, and terminated employee to the billing.~~

History: Effective October 1, 1986. _____

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-02. Retiree billing.

Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check.

History: Effective October 1, 1986; amended effective November 1, 1990; April 1, 2008; July 1, 2018.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-05-03. Late premium for retirees.

Repealed effective April 1, 2008.

71-03-05-04. Late premium for terminated employees.

Repealed effective April 1, 2012.

71-03-05-05. Appeal process.

If a member's benefits have been denied in whole or in part by the board or its agent, the member will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the member may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentation. Should the member filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board or its designated appeals committee may schedule a hearing. The member filing the appeal will be notified in writing at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

History: Effective October 1, 1986; amended effective November 1, 1990; July 1, 2010; April 1, 2012.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-06. Recovery of benefit payments.

Whenever benefits are paid in noncompliance with the contract, the board retains the right to recover the payments from the party responsible. In case the claims payor is at fault, the amount of overpayment will be withheld from the administrative fees paid by the board. In case overpayments are made because of false or misleading information provided by a member, the claims payor shall attempt to recover the amount. Any moneys recovered shall be credited to the board. In case an overpayment is made because of a mistake or deliberate act by a health care provider, the claims payor shall collect the money from the provider and credit that amount to the board. In cases of suspected fraud, the board may turn the evidence over to the state's attorney or attorney general's office for possible prosecution.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-07. Erroneous payment of premiums - Overpayments.

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error. The payment may be made to any person insured under the policy.

History: Effective April 1, 2002; amended effective April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-08. Erroneous payment of premiums - Underpayments.

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.
3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:

- a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
 - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage may be canceled retroactive to the first day of the month following the month for which full premium payment was received.

History: Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010; April 1, 2016.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-09. Erroneous payment of premiums - Appeals.

1. A person not satisfied with the repayment arrangements made under this policy may appeal the executive director's decision in writing to the board. The written request must explain the basis of the appeal and must be received in the office within sixty days of the executive director's written decision.
2. The board may release a person from liability to repay an underpayment, in whole or in part, if it determines:
 - a. The underpayment is not the fault of the recipient; or
 - b. It would be contrary to equity and good conscience to collect the underpayment.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-10. Determining amount of premium overpayments and underpayments.

1. The amount of the health premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or July of the earliest contract period still open, whichever is more recent.
2. The amount of the life premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

3. The amount of the dental premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.
4. The amount of the vision premium overpayment or underpayment will be determined by calculating the difference between the premium that was paid and the premium that should have been paid, retroactively to the month the change in premium should have occurred, or the first day of the first month of the earliest contract period still open, whichever is more recent.

History: Effective April 1, 2002; amended effective April 1, 2008; April 1, 2014.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-11. Failure to provide notification and errors.

1. If the individual fails to notify the public employees retirement system of a change that affects the level of coverage in force, upon learning of the change, the guidelines for premium overpayment or underpayment will apply.
2. If an individual fails to notify the public employees retirement system to establish coverage, the guidelines for premium overpayment or underpayment will not apply. Coverage will only be established prospectively.
3. If the public employees retirement system makes an error that affects the level of coverage in force for the individual, upon learning of the error, the guidelines for premium overpayment or underpayment will apply.
4. If the public employees retirement system makes an error and does not establish coverage for an individual, upon learning of the error, the guidelines for premium underpayment will apply.
5. If an individual does not receive timely notification of COBRA continuation rights, premiums must be paid in full before continuation coverage is established retroactively.

History: Effective April 1, 2002.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

CHAPTER 71-03-06

PARTICIPATION OF POLITICAL SUBDIVISIONS EMPLOYEE RESPONSIBILITIES

Section

71-03-06-01	Enrollment
71-03-06-02	Late Enrollment
71-03-06-03	Special Enrollment for Certain Qualifying Events
71-03-06-04	Continuation of Hospital and Medical Coverages After Termination
71-03-06-05	Continuation of Health Benefits for Dependents
71-03-06-06	Continuation of Life Insurance After Retirement
71-03-06-07	Leave Without Pay
71-03-06-08	Employee Contribution

Section 71-03-06-01 and Subsection 3 and Subsection 4 are amended as follows:

71-03-06-01. Enrollment.

An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, unless otherwise noted below, if the employee submits an application for coverage within the first thirty-one days of employment, or within the thirty-one days of meeting eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health insurance plan.
2. Marriage. The enrollment of an employee's spouse. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of ~~birth, adoption, placement for adoption~~, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.
4. Addition of a dependent as a result of birth, adoption, or placement for adoption. Effective date of coverage is the first of the month in which the event occurred. An employee who previously waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

History: Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010; _____

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52.1-03.1, 54-52.1-03.4

71-03-06-02. Late enrollment.

Political subdivisions must follow the same late enrollment procedures as outlined in section 71-03-03-02.

History: Effective June 1, 1996; amended effective July 1, 1998; May 1, 2004; July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-03. Special enrollment for certain qualifying events.

Political subdivisions must follow the same enrollment procedures as outlined in section 71-03-03-05.

History: Effective June 1, 1996; amended effective July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-04. Continuation of hospital and medical coverages after termination.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-06.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-05. Continuation of health benefits for dependents.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-07.

History: Effective June 1, 1996; amended effective July 1, 2010.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-06. Continuation of life insurance after retirement.

Political subdivisions must follow the same continuation procedure as outlined in section 71-03-03-08.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

71-03-06-07. Leave without pay.

Political subdivisions must follow the same leave without pay procedures as outlined in section 71-03-03-09.

History: Effective June 1, 1996.

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-03, 54-52.1-03.1

Section 71-03-06-08 is amended as follows:

71-03-06-08. Employee contribution.

An employee who is enrolled in the group insurance plan and required by the ~~employing agency~~ employer to pay a part of the premium must pay the amount due to the ~~employing agency in advance of the employer's payment to the public employees retirement system~~ employer. The employee contribution may be paid via payroll deduction or any other means acceptable to the employer.

History: Effective June 1, 1996; amended effective July 1, 2010; _____

General Authority: NDCC 54-52-04, 54-52.1-03.1

Law Implemented: NDCC 54-52.1-02, 54-52.1-03.1

ARTICLE 71-04
DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES

Chapter

71-04-01	Definitions
71-04-02	Plan Design
71-04-03	Employee Responsibilities
71-04-04	Retirement Board Responsibilities
71-04-05	Employer Responsibilities
71-04-06	Provider Responsibilities
71-04-07	Benefits [Repealed]
71-04-08	Qualified Domestic Relations Orders
71-04-09	Uniform Services Employment and Retirement Rights Act

Chapter 71-04-01
Definitions

Section

71-04-01-01	Definitions
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Subsection 10 of Section 71-04-01-01 is amended as follows:

71-04-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.
9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.

10. Retirement board" or "board" means the ~~nine~~ eleven persons described in North Dakota Century Code chapter 54-52-03.
11. Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Subsection 14 of Section 71-04-01-01 is created as follows:

14. Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported pursuant to rules adopted by the board.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010; April 1, 2016; April 1, 2020; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

CHAPTER 71-04-03 EMPLOYEE RESPONSIBILITIES

Section	
71-04-03-01	Enrollment
71-04-03-02	Effective Date of Deferrals
71-04-03-03	Change in Monthly Deferral
71-04-03-04	Change in Beneficiary
71-03-04-05	Unforeseeable Emergency
71-04-03-06	Termination of Participation
71-04-03-07	Distribution of Assets

Section 71-04-03-01 is amended as follows:

71-04-03-01. Enrollment.

Public employees may enroll in the deferred compensation plan by completing and submitting a participant agreement to the office or the board's designated vendor.

History: Effective April 1, 1989; amended effective April 1, 2014; April 1, 2016; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03

71-04-03-02. Effective date of deferrals.

All deferrals are effective the payroll period ending in the month following the month in which the deferral is authorized. Deferrals cannot be requested or authorized for the month in which income is being earned.

History: Effective April 1, 1989; amended effective July 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

Section 71-04-03-03 is amended as follows:

71-04-03-03. Change in monthly deferral.

A participant may change the amount of deferral at any time, as long as a participant agreement is completed and submitted to the office or the board's designated vendor as set forth in section 71-04-03-01.

History: Effective April 1, 1989; amended effective April 1, 2016; _____

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03; IRC 457(b)(4)

71-04-03-04. Change in beneficiary.

The participant may change the primary or contingent beneficiary at any time by contacting the participant's designated provider representative.

History: Effective April 1, 1989; amended effective May 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

71-04-03-05. Unforeseeable emergency.

A participant who, prior to separation from service, experiences an unforeseeable emergency as defined in section 71-04-01-01 may apply for a distribution of the participant's deferred compensation in account to the extent reasonably needed to satisfy the financial need. The participant may make application by completing a financial hardship form and delivering it to the retirement board offices.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; July 1, 2010

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-06. Termination of participation.

Participation in the plan may be terminated at any time by completion of a participant agreement indicating a suspension of monthly deferrals.

History: Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010.

General Authority: NDCC 28-32-02, 54-52.2-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

71-04-03-07. Distribution of assets.

Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

History: Effective May 1, 2004; amended effective April 1, 2016.

General Authority: NDCC 28-32-02, 54-52-03.2

Law Implemented: NDCC 54-52.2-03, 54-52.2-03.2

CHAPTER 71-05-02 DISABILITY

Section

71-05-02.01	Disability Retirement Eligibility
71-05-02-01.1	Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-05-02-02	Determination of Disability – Procedures
71-05-02-03	Aggrieved Parties' rights [Repealed]
71-05-02-04	Optional Benefits
71-05-02-05	Interest Accrued on Accumulated Contributions for Disabled Annuitants
71-05-02-06	Cancellation of Disability Benefit

71-05-02-01. Disability retirement eligibility.

A member of the highway patrol retirement system, who has completed at least one hundred eighty days of employment, is eligible for disability retirement benefits if the member became permanently and totally disabled during the period of covered employment and otherwise complies with section 71-05-02-02. A member eligible for normal retirement date shall receive the normal retirement benefit if it exceeds the disability retirement benefit.

History: Effective November 1, 1990; amended effective July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-01.1. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit.

A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination or appeal. During this period, the member's account will be handled in the same manner as all early reduced retirement benefits. Upon receiving a disability determination, interest accrual on the member's account shall resume beginning the first of the month following notice of the determination, continuing to accrue on the annuitant's accumulated contribution until the annuitant reaches the annuitant's normal retirement date. The disability benefit will be calculated and a differential payment made retroactive to the first day of the month following the member's termination from covered employment.

History: Effective May 1, 2004; amended effective July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-02. Determination of disability - Procedures.

1. Application.

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

2. Medical examination.

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.
- c. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.

3. Medical consultant.

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability.

4. Decision and appeal.

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the plan administrator mailed the decision.
- c. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
- d. If the applicant has terminated employment, the plan administrator shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the plan administrator shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- e. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- f. If the initial board decision is adverse to the applicant, after exhausting the administrative procedure under subdivisions b and c, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.
5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment, minus any early retirement benefits that have been paid.
6. **Redetermination and recertification.**
 - a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The plan administrator may waive the necessity for a recertification based on the recommendation of the medical consultant.
 - b. The plan administrator will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first of the month that benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
 - c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the plan administrator.
 - d. The medical consultant will make the recertification decision. The executive director may require additional recertifications. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
 - e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The plan administrator shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to the date of suspension if the annuitant is subsequently found to meet recertification requirements.
 - f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective November 1, 1990; amended effective June 1, 1992; June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-03. Aggrieved parties' rights.

Repealed effective June 1, 1996.

71-05-02-04. Optional benefits.

An individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary supplies a marriage certificate and death certificate and is still living. Benefits must terminate in the month in which the death of the beneficiary occurs. If the designated beneficiary predeceases the member or, in the event of divorce, the member's benefit must be returned to the normal retirement amount. Payment of the normal retirement amount must commence on the first day of the month following the spouse's death if written notification of death, provided a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Twenty-year or ten-year certain option.** A member may receive the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

History: Effective July 1, 1998; amended effective May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

71-05-02-05. Interest accrued on accumulated contributions for disabled annuitants.

Effective January 1, 1998, interest shall accrue on accumulated contributions as defined in article 71-01 until the disabled annuitant reaches normal retirement age, cancels the benefit in accordance with section 71-05-02-06, the account is closed, or until benefit payments commence to the member's beneficiary.

History: Effective July 1, 1998; amended effective July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11.4(d)

Section 71-05-02-06 is amended as follows:

71-05-02-06. Cancellation of disability benefit.

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11. Upon receipt of normal retirement benefits, interest

accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

History: Effective May 1, 2004; amended effective July 1, 2006;_____

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

CHAPTER 71-05-04 SERVICE CREDIT

Section

71-05-04-01	Service Credit – General Rule
71-05-04-02	Military Credit
71-05-04-03	Repurchase of Service Credit and Purchase of additional Service Credit
71-05-04-03.1	Purchase of Additional Years of Service [Repealed]
71-05-04-04	Payment
71-05-04-04.1	Costs
71-05-04-05	Delinquent Payment
71-05-04-06	Crediting Purchased or Repurchased Service
71-05-04-07	Cancellation of Credits
71-05-04-08	Conversion of Sick Leave
71-05-04-09	Employer Purchase of Service Credit or Sick Leave Program

71-05-04-01. Service credit - General rule.

A member receives credit for each month a contribution is made.

History: Effective October 1, 1991; amended effective July 1, 1998.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-11

71-05-04-02. Military credit.

Eligible service credit may be granted as it pertains to the North Dakota highway patrol retirement system as established in chapter 71-02-11.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: 38 USC 2021-2026

71-05-04-03. Repurchase of service credit and purchase of additional service credit.

To purchase additional credit or repurchase past service, a contributor must notify the public employees retirement system, in writing, of the service for which the person wishes to receive credit. In addition to the written request, the following information must be submitted, if applicable:

1. Documentation of military service by submitting a DD214 or NGB22.
2. Certification of approval by the member's employer of any leave of absence and length of that leave.

History: Effective October 1, 1991; amended effective June 1, 1996; April 1, 2002; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-03.1. Purchase of additional years of service.

Repealed effective May 1, 2004.

71-05-04-04. Payment.

The total dollar amount for repurchase or purchase may be paid in a lump sum or on a monthly, quarterly, semiannual, or annual basis. Payments may be subject to contribution limitations established

under 26 U.S.C. 415. Payments must begin within ninety days of the date the written cost confirmation is prepared. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.
2. The installment schedule may extend while the member is employed by the participating employer but for no longer than a fifteen-year time period.
3. Installment payments may be made by a payroll deduction where available. However, it is the responsibility of the contributor to initiate and terminate the payroll deduction.
4. Payments are due by the fifteenth of the month to be credited for the month.
5. Payments may only be received from a contributor until the fifteenth of the month following the month of the member's termination date with a participating employer.
6. Payments must be greater or equal to fifty dollars per month, large enough to pay the current interest plus a portion of the principal and an amount necessary to complete the payment contract within the fifteen-year time period.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-04.1. Costs.

The cost to repurchase service credit must be calculated by applying actuarial factors to the amount of the retirement and retiree health insurance credit being purchased by the contributor or member of an alternative retirement system. The contributor's current age, average salary as calculated under subsection 2 of North Dakota Century Code section 39-03.1-11, and current credited service on record with the North Dakota public employees retirement system in the month in which the contributor's written request is received must be used in the cost calculation. The amount of retirement and retiree health insurance credit benefits being purchased must be calculated using the benefit formulas in place at the time the written request is received from the contributor. When calculating the cost, enhancements to the benefit formula must be considered to be in place at the time the law is signed by the governor.

The retirement board must adopt actuarial assumptions necessary to determine the actuarial factors for the cost calculation. The assumptions must be reviewed concurrently with the assumptions for the retirement program.

Upon receipt of the written request from the contributor, a written cost confirmation must be prepared and mailed to the individual. The cost stated in the confirmation letter is valid for a period of ninety days from the date of the letter unless the contributor terminates employment with the employer. If the contributor terminates employment, then the cost stated in the confirmation letter is valid only until the earlier of the end of the ninety-day period or the fifteenth day of the month following the month of termination.

History: Effective June 1, 1996; amended effective May 1, 2004; July 1, 2006.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-05. Delinquent payment.

If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due

date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-06. Crediting purchased or repurchased service.

For each month the system receives a payment toward a purchase contract, the member will earn a proportion of service credit.

History: Effective October 1, 1991; amended effective June 1, 1996; May 1, 2004; July 1, 2010.

General Authority: NDCC 39-03.1-06, 39-03.1-10.1, 39-03.1-14.1

Law Implemented: NDCC 39-03.1-08.1, 39-03.1-10.1, 39-03.1-14.1

71-05-04-07. Cancellation of credits.

If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions must be canceled.

History: Effective October 1, 1991.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.1, 39-03.1-14.1

Subdivision c of Subsection 1 is amended as follows:

71-05-04-08. Conversion of sick leave.

To convert unused sick leave to service credit, the member must notify the office, in writing, of the amount of unused sick leave to be converted and the member's employer must confirm the member's unused balance of accumulated sick leave as of the date the member terminates employment. For members transferring from one participating employer to another participating employer without terminating eligible employment, the public employees retirement system will record unused sick leave of a participating member if the new employer certifies that it will not transfer that leave. The certification must include documentation from the previous employer detailing the number of hours of sick leave. The public employees retirement system must receive the certification within sixty days after the member leaves employment with the former employer.

One month of service credit must be awarded for each one hundred seventy-three and three-tenths hours of unused accumulated sick leave. The cost to convert unused sick leave into service credit must be paid with after tax employee contributions.

1. Aftertax payments may be accepted from the member as early as six months prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.

- c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave, confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation.
- d. If there is a difference between the sick leave conversion payment amount and the amount the member has paid, any overpayment must be refunded to the member and any underpayment must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
- e. The member's record must be updated with the additional service credit once payment is made in full and the member has terminated employment.

Subdivision c of Subsection 2 is amended as follows:

- 2. Pretax rollover or transfer payments may be accepted from the member as early as sixty days prior to termination if the following requirements are met:
 - a. A notice of termination or application for monthly benefits form is on file with the public employees retirement system.
 - b. A written certification by the member's employer, as to the member's projected unused balance of accumulated sick leave no sooner than sixty days prior to the date of termination, is on file with the public employees retirement system. This certification must also include a certification by the employer of the projected salaries to be reported to the public employees retirement system during the final months of employment.
 - c. At termination, the sick leave conversion payment must be recalculated using the member's unused balance of accumulated sick leave confirmed by the member's employer, and the member's final average salary as of ~~that~~ the date of calculation. If there is a difference between the sick leave balance or conversion payment amount and the amount the member has paid, then only the amount of sick leave available as of the termination date will be added to the member's record. The member account balance will be credited with the full amount of funds from the rollover or transfer.
 - d. If an underpayment has occurred, then the remaining amount must be collected from the member by the fifteenth of the month following the month of the member's date of termination.
 - e. The retiree health credit portion must be paid as a personal aftertax payment.
- 3. The member's record must be updated with the additional service credit once payment is made and the member has terminated employment.

History: Effective June 1, 1996; amended effective April 1, 2002; May 1, 2004; July 1, 2006; April 1, 2008; _____

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-30

71-05-04-09. Employer purchase of service credit or sick leave program.

An employer may elect to purchase up to five years of service credit for an employee and purchase an employee's unused sick leave that meets the requirements of section 71-02-03-08. Before offering a purchase program to its employees the employer must create a program and document the program in writing and submit a copy to the public employees retirement system. The governing authority of the employer shall also submit to the executive director of the public employees retirement system a letter indicating:

1. The program meets all the requirements of the North Dakota Century Code.
2. The program meets all applicable federal requirements.
3. The employer agrees to remit to the public employees retirement system a lump sum payment of the cost of the purchase upon being billed.
4. The employer has not given the employee the option of a cash payment in lieu of the employer purchase.
5. The employer shall clearly specify who is eligible for the program and indicate if the program is intended to be permanent or will be for a specific time period only.
6. The employer agrees that all purchases for service credit will be based upon actuarial cost as determined by the public employees retirement system. The employer also agrees that all purchases will be completed no later than the fifteenth day of the month following the month of the employee's termination or sixty days from the date the employer and employee agree to the purchase, whichever comes first.
7. The employer agrees that in offering such a program the employer will direct each employee interested in the program to first apply to the employer's authorized agent who will then certify the eligibility of the member, the amount of service credit to be purchased, and send such certification to the public employees retirement system. The employer also agrees that the employer's authorized agent will coordinate the program, authorize all purchases in writing to the public employees retirement system, and be the focal point for communications between the public employees retirement system, the employer, and the employee.
8. The employer agrees that for each employee certified to be eligible to have service credit purchased, the employer will first obtain from the employee authorization for the public employees retirement system to share confidential information with the employer.
9. The employer certifies that in offering the program, the employer is making it available to all employees or a specified class of employees on a nondiscriminatory basis.
10. The employer agrees to provide information and policies pertaining to the employer purchase program pursuant to North Dakota Century Code section 39-03.1-28.

When an employer files the above letter with the public employees retirement system, it may offer the program to its employees. An employer may terminate this program at any time upon the governing authority of the employer sending to the executive director of the public employees retirement system a letter indicating when the program is to be canceled.

History: Effective May 1, 2004; amended effective July 1, 2006; April 1, 2008; July 1, 2010.

General Authority: NDCC 39-03.1-06

Law Implemented: NDCC 39-03.1-10.2

ARTICLE 71-08 DEFINED CONTRIBUTION RETIREMENT PLAN

Chapter

71-08-01	Election and Transfer
71-08-02	Membership in Defined Contribution Retirement Plan
71-08-03	Disability
71-08-04	Qualified Domestic Relations Order
71-08-05	Review Procedure
71-08-06	Uniformed Services Employment and Reemployment Rights Act
71-08-07	Additional Contributions
71-08-08	Temporary Employee Participation
71-08-09	Return to Service – Retired Member
<u>71-08-10</u>	<u>Permanent Employee Participation</u>
<u>71-08-11</u>	<u>Contributions</u>

CHAPTER 71-08-01 ELECTION AND TRANSFER

Section

71-08-01-01	Ability to Elect to Transfer Into the Defined Contribution Retirement Plan
71-08-01-02	Vesting in Transferred Accumulated Fund Balance
71-08-01-03	Spousal Signature Requirements
71-08-01-04	Transfer of Members With Qualified Domestic Relations Order on Their Accounts
71-08-01-05	Transfer Amount of Persons Transferring Into Eligible Employment After December 31, 1999
71-08-01-06	Public Employees Retirement System Retirees Not Eligible to Transfer Upon Return to work
71-08-01-07	Late Election Opportunity
71-08-01-08	Transfer of Funds

Section 71-08-01-01 is repealed.

~~71-08-01-01. Ability to elect to transfer into the defined contribution retirement plan.~~

~~Once a member of the public employees retirement system under North Dakota Century Code chapter 54-52 has declined or failed to elect to transfer into the defined contribution retirement plan, that member may not later elect to transfer unless one of the following applies:~~

- ~~1. The member is appointed or elected to a new office that is eligible for the defined contribution retirement plan.~~
- ~~2. The member leaves eligible employment and later reacquires eligible employment.~~

History: Effective July 1, 2000. Repealed effective _____

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

71-08-01-02. Vesting in transferred accumulated fund balance.

Vesting in that portion of the accumulated fund balance attributable to the employer's contribution which is transferred from the defined benefit public employees retirement system pursuant to North Dakota Century Code section 54-52.6-03 will follow the same schedule provided in North Dakota Century Code section 54-52.6-10.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-03, 54-52.6-10

71-08-01-03. Spousal signature requirements.

For purposes of the spousal signature requirements of subsection 4 of North Dakota Century Code section 54-52.6-02 and North Dakota Century Code section 54-52.6-11, extenuating circumstances alleviating the requirement of a spouse's signature are only present if the board determines the spouse is unavailable for the entire election period or the member has a power of attorney over the spouse which would legally allow the member to sign for the spouse.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02(4), 54-52.6-11

71-08-01-04. Transfer of members with qualified domestic relations orders on their accounts.

Members of the public employees retirement system under North Dakota Century Code chapter 54-52 who have a valid qualified domestic relations order on their account may only transfer to the defined contribution retirement plan if they obtain a new qualified domestic relations order from the applicable court. The account shall not be transferred unless both the participating member and the member's ex-spouse agree to transfer to the defined contribution retirement plan.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-12

Section 71-08-01-05 is amended as follows:

71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.

The amount the board shall transfer for persons beginning or transferring to eligible employment after December 31, 1999 and before January 1, 2025, shall equal the actual employer and employee contributions plus interest, as provided in subsection 2 of North Dakota Century Code section 54-52.6-03.

History: Effective July 1, 2000; _____

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-03

71-08-01-06. Public employees retirement system retirees not eligible to transfer upon return to work.

A member of the public employees retirement system defined benefit plan who has retired and received a retirement annuity and later returns to work in a position that is eligible for the defined contribution retirement plan is nonetheless ineligible to transfer into the defined contribution retirement plan and must remain a member of the public employees retirement system.

History: Effective July 1, 2000.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

Section 71-08-01-07 is repealed.

~~71-08-01-07. Late election opportunity.~~

~~An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:~~

- ~~1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.~~
- ~~2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.~~

History: Effective April 1, 2002.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 54-52.6-02

71-08-01-08. Transfer of funds.

Pursuant to subdivision a of subsection 4 of North Dakota Century Code section 15-10-7, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

1. Applicant must file a completed application for the teachers' insurance and annuity association of America - college retirement equities fund.
2. Notice of termination and verification of teachers' insurance and annuity association of America - college retirement equities fund eligibility must be filed by either the applicant or appropriate payroll officer.
3. A participating member is eligible to transfer that person's accumulated balance in the plan upon becoming a former participating member.

History: Effective April 1, 2012.

General Authority: NDCC 15-10-17

Law Implemented: NDCC 15-10-17

CHAPTER 71-08-08 TEMPORARY EMPLOYEE PARTICIPATION

Section

71-08-08-01 Temporary Employee Participation

Subsection 1 of Section 71-08-08-01 is amended as follows:

71-08-08-01. Temporary employee participation.

For each eligible employee who elects to participate as such in the defined contribution plan, the following applies.

1. Before January 1, 2025, A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

Subsections 6, 7, 8 of Section 71-08-08-01 are created.

6. All temporary employee contributions shall be made on an after-tax basis. An employer shall not enter into a pick-up arrangement under IRC 414(h) with any temporary employee.
7. A temporary employee first employed after December 31, 2024 may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary employee status. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional one, two, three, four, five or six percent. The election to contribute an additional percent is a lifetime election and will continue for as long as the temporary employee is employed by any participating employer.
8. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee. For a temporary employee that becomes a permanent employee, all provisions applicable to permanent employees shall apply upon eligibility as a permanent employee.

History: Effective July 1, 2006; _____

General Authority: NDCC 54-52-04, 54-52.6

Law Implemented: NDCC 54-52.6-01.3, 54-52.6-02.6, 54-52-02.9, 54-52.6-09.6

CHAPTER 71-08-10
PERMANENT EMPLOYEE PARTICIPATION

Chapter 71-08-10 is created as follows:

Section

71-08-10-01 Permanent Employee Participation

71-08-10-02 Contribution

71-08-10-03 Designation of Beneficiary

71-08-10-01. Permanent employee participation.

1. Under this section "eligible employee" means a permanent employee who:
 - a. Meets all the eligibility requirements set by NDCC 54-52;
 - b. Is at least eighteen years of age;
 - c. Becomes a participating member after December 31, 2024; and
 - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who first becomes a participating or deferred member under NDCC 54-52 before January 1, 2025, remains in the defined benefit retirement plan under NDCC 54-52, regardless of being rehired after December 31, 2024.
3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under NDCC 54-52.6 as provided under NDCC 54-52.6-02.1.
4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.
 - a. A participating or deferred member in the defined contribution retirement plan under NDCC 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection 4 shall cease participation in the defined contribution retirement plan under NDCC 54-52.6 and commence participation in the retirement plan enumerated under this subsection.
 - b. Unless subsection 2 applies, a participating member of a retirement plan enumerated under this section 4 who ceases participation in that plan and becomes an eligible employee under the defined contribution retirement plan under NDCC 54-52.6 shall participate in the defined contribution retirement plan under NDCC 54-52.6.
5. An eligible employee under section 1 must be enrolled in the plan within the first thirty days of employment.

71-08-10-02. Contribution.

1. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect, within thirty days of beginning employment, to contribute monthly to the defined contribution retirement plan up to an additional three percent of the monthly salary or wage paid to the participant. All additional contributions shall be in whole percentages.
2. An employee's election for additional contributions under section 1 is a one-time, irrevocable election as long as the individual is a participating member with any participating employer.

71-08-10-03. Designation of beneficiary.

A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

History: Effective

General Authority: NDCC 54-52-04, 54-52.6

Law Implemented: NDCC 54-52-02.15, 54-52.6-09

CHAPTER 71-08-11

CONTRIBUTIONS

Chapter 71-08-11 is created as follows:

Section

<u>71-08-11-01</u>	<u>Adjustment for bonuses, profit sharing, and contributions paid in a month other than earned</u>
<u>71-08-11-02</u>	<u>Basis for calculation contributions – Salary reduction – Salary deferral arrangements</u>
<u>71-08-11-03</u>	<u>Employer payment of employee contributions</u>
<u>71-08-11-04</u>	<u>Retirement contributions for individuals working less than forty-hour workweek</u>
<u>71-08-11-05</u>	<u>Individual employee incentive payments</u>
<u>71-08-11-06</u>	<u>Contributions transferred from defined benefit retirement plan</u>
<u>71-08-11-07</u>	<u>Employer paid incentive for transferees</u>

71-08-11-01. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.

Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for any month other than the month paid.

History: Effective

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-02. Basis for calculating contributions - Salary reduction - Salary deferral arrangements.

1. Amounts deducted from a member's salary at the member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan are part of wages or salary when calculating retirement contributions.
2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.
3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

History: Effective

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-03. Employer payment of employee contributions.

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 shall be reported to the board a minimum of thirty-one days prior to the effective date.

2. An employer may not discriminate in its contributions to eligible participating employees within the same plan under North Dakota Century Code section 54-52.6-09.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-09

71-08-11-04. Retirement contributions for individuals working less than a forty-hour workweek.

Retirement contributions must be made on wages paid to eligible permanent employees who are regularly scheduled for less than forty hours per week but who work at least twenty hours per week during a twelve-month period.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-09.6

71-08-11-05. Individual employee incentive payments.

Individual employee incentive payments received under North Dakota Century Code section 54-06-24 or similar programs are not considered to be salary and are not subject to retirement contributions.

History: Effective _____

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-01, 54-52.6-02

71-08-11-06. Contributions transferred from defined benefit retirement plan.

1. The lump sum amount to be transferred from the defined benefit retirement plan under NDCC 54-52.6-02.2 and NDCC 54-52.6-03 based on the actuarial present value of the eligible employee's accumulated benefit obligation includes an employee contribution portion and an employer contributions portion.
2. The employee contribution portion of the actuarial present value of the eligible employee accumulated benefit obligation means the employee's direct contribution to the defined benefit retirement plan plus the interest on the employee's contributions in the defined benefit retirement plan.
3. The employer contribution portion of the actuarial present value of the eligible employee's accumulated benefit obligation means the lump sum amount transferred minus the employee share. The employee shall vest in the employer contribution under the provisions found in NDCC 54-52.6-10.

History: Effective _____.

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-02.2, NDCC 54-52.6-03

71-08-11-07. Employer paid additional contribution for transferees.

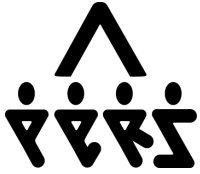
For eligible employees who transfer from the defined benefit plan to the defined contribution plan, the eligible employee's state employer, on January 1 of each year an additional contribution is due, will make the additional contribution under 54-52.6-02.2(3) no later than January 15 of the year in which the

additional contribution is required. Only eligible employees who are employed by a state employer at the time each additional contribution is required will receive the additional contribution.

History: Effective _____.

General Authority: NDCC 54-52.6-02

Law Implemented: NDCC 54-52.6-02.2, NDCC 54-52.6-03



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: Mission/Vision Statement

During the January Board Planning Meeting, we discussed the need to create a Vision Statement and possibly modernize our Mission Statement.

Current Mission Statement

Design, communicate and efficiently administer a viable employee benefits program within a framework of prudent risk-taking, applicable state and federal laws, and professional and ethical standards so as to provide an employee benefit package that is among the best available from public and private employers in the upper Midwest.

Board Chair Kommer proposed that NDPERS adopt the ND State Vision Statement.

Empower People.

Improve Lives.

Inspire Success.

In relation to the mission statement, Chair Kommer proposed the following language:

Our mission is to champion the health and financial security of members by providing comprehensive and innovative retirement and health benefit solutions and dedicated, personal support.

Board Member Tyler Erickson requested the word *collaborative* be added to the mission statement.

Updated Mission Statement Suggestion

Our mission is to champion the health and financial security of our members by providing comprehensive, ~~and~~ innovative retirement and ~~health~~ insurance benefit solutions ~~and~~ through collaboration and personalized ~~dedicated, personal~~ support.

BOARD ACTION REQUESTED

Officially adopt the ND State Vision Statement and finalize the NDPERS Mission Statement.



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Memorandum

TO: NDPERS Board

FROM: Aime

DATE: February 13, 2024

SUBJECT: Annual Communication Plan

We revise our communication plan annually to ensure we agree on a strategy to communicate with our employers and members. This gives our team the opportunity to reflect on the efforts that have worked and where we have opportunities to implement additional communication support.

Some of our recurring efforts include newsletters for employers, employees, and retirees. Additionally, we distribute the weekly member feedback online survey, as well as, the monthly financial wellness emails with counseling opportunities and webinars from TIAA. NDPERS also maintains and promotes our YouTube channel that can be accessed by employers and members. Sanford Health Plan also conducts virtual events throughout the year and distributes monthly newsletters to wellness coordinators and members.

This year, there will be numerous communication efforts supporting the implementation of HB 1040. Additionally, we are working with the Empower communications team to develop a communication plan for the transition from TIAA to Empower for the Defined Contribution Plan and the 457 Companion Plan.

In 2024, we are officially transitioning both the Financial Essentials Workshop (FEW) and the Pre-Retirement Education Program (PREP) as convenient one-hour events from Monday through Friday instead of half-day virtual events. We were able to test the concept with the FEW as daily lunch-hour events during 2023, and the attendance increased slightly. The format was also more convenient for speakers and NDPERS staff. Another exciting improvement this year is the alignment of the FEW and the PREP, with the popular national campaigns: *America Saves Week* and the *National Retirement Security Week*. Moving in this direction will provide members with more resources that emphasize the importance of financial planning.



Memorandum

TO: NDPERS Board

FROM: Aime/Rebecca

DATE: February 13, 2024

SUBJECT: Election Committee Appointment

The term of elected Board member Casey Goodhouse expires on June 30, 2024. In alignment with the election rules in ND Administrative Code, the Board must appoint a committee of three, one of whom must be designated as chair, to oversee the upcoming election process.

The Board Election Committee is responsible for validating the candidates' nomination petitions in May and canvassing the election results in June.

The timeline for the 2024 Board Election is as follows:

Date	Action Item
<i>April 15</i>	Announce and promote board vacancy to members
<i>May 10</i>	Deadline to receive physical nomination petitions forms at the NDPERS office
<i>Week of May 13</i>	Election subcommittee's virtual meeting to validate petitions
<i>May 17</i>	Deadline for candidate to withdraw from election
<i>May 20</i>	Electronic voting begins
<i>June 7</i>	Electronic voting closes
<i>June 10</i>	Election subcommittee's virtual meeting to canvass election results
<i>June 11</i>	Election results announced during Board meeting

BOARD ACTION REQUESTED

Appoint a three-member committee and designate one as chair to oversee the 2024 Board election and approve the proposed timeline.



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Memorandum

TO: NDPERS Board

FROM: Chairperson Kommer

DATE: February 13, 2024

SUBJECT: Executive Director Planning Discussion

This is a placeholder for discussions regarding the Executive Director position.



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Memorandum

TO: NDPERS Board

FROM: Chairperson Kommer

DATE: February 13, 2024

SUBJECT: Review of Interim Executive Director Compensation

At the December meeting, the Board approved the Interim Executive Director compensation as \$185,000 annually. The Board indicated that they would review this compensation rate after three months following the appointment, or at the February meeting.

Board Action Requested:

Review the rate of compensation for the Interim Executive Director.



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Memorandum

TO: NDPERS Board

FROM: Chairperson Kommer

DATE: February 13, 2024

SUBJECT: Letter from North Dakota Industrial Commission

This is a place-holder regarding a letter (Attachment 1) received from the North Dakota Industrial Commission that was discussed at the January Board meeting. Attachment 2 is the previous response provided to the Industrial Commission in May 2023.



Industrial Commission of North Dakota

Doug Burgum
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

January 4, 2024

To: North Dakota Public Employees Retirement System Board of Trustees

Re: Inquiry related to NDPERS Defined Benefit Plan Over-Contributions, IRC 401(a)(17)

Dear Chair Kommer and NDPERS Board Members,

In January of 2023, the Office of the Industrial Commission was made aware of an issue related to the calculation of retirement benefits for at least two Industrial Commission agency executives and was advised to contact the NDPERS Board of Trustees. A letter was sent to the NDPERS Board on March 29, 2023.

The original letter included numerous questions to which the North Dakota Industrial Commission was seeking answers. A request was made of the NDPERS Board to facilitate the gathering and communication of information that would then be reported to the Industrial Commission, which is made up of the Governor, the Attorney General, and the Agriculture Commissioner.

It is my understanding that the Board directed then Executive Director Scott Miller to respond to the inquiry, and his responses were presented at the May 2023 NDPERS Board meeting and subsequently sent to me.

The Industrial Commission members found the responses to be incomplete and directed the Office of the Industrial Commission to contract for the services of an employment and labor law specialist to conduct an inquiry and assess the impact of NDPERS operational and procedural conditions on Industrial Commission agencies and executives, and to make a report to the Industrial Commission.

While the services of an outside consultant with employment and labor law expertise are being pursued, it is my hope that the NDPERS Board will revisit this matter and the questions that were presented, and the NDPERS team will conduct a thorough analysis and work in a spirit of cooperation to develop a comprehensive response to a matter that has had serious, negative consequences for Industrial Commission agency executives.

To convey the magnitude of the problem, beginning in January of 2023, one agency executive's estimated monthly benefit dropped by approximately \$6,000 per month. Understandably, such

a dramatic and unexpected reduction in projected monthly retirement benefits has been exceedingly disruptive for this executive and his family.

Based on records related to Special Assistant Attorneys General (SAAG) appointments, it appears that in the 4th quarter of 2021 into January of 2022, NDPERS contracted with numerous SAAGs to “provide the North Dakota Public Employees Retirement System with legal advice and counsel regarding federal tax code compliance, employee benefits, and qualifications”.

Perhaps the results of this work can assist with the responses to the Industrial Commission’s questions, the development of an understanding of what transpired to create the current circumstances, and what retrospective and prospective solutions are appropriate.

I respectfully submit for your reconsideration the following summary of the matter and the questions to which the Industrial Commission seeks answers:

The Office of the Industrial Commission has received information indicating at least one former and one current Industrial Commission agency executive have been detrimentally impacted by procedures related to the administration of IRC Section 401(a)(17) annual compensation limits that affect plan contribution and distribution levels. The Industrial Commission would like to gain an understanding of the operational systems and/or procedural conditions that have led to a protracted period during which over-contributions to the NDPERS Defined Benefit Plan were allowed, resulting in the distribution of inaccurate information regarding retirement benefits to participants in the Plan, including inaccurate annual statements and inaccurate official benefit estimates, and potentially leading to current and future monetary damages.

The Office of the Industrial Commission respectfully requests answers to the following questions, which do not include any request for confidential financial information related to a specific plan participant:

- 1. When were the Section 401 (a)(17) annual compensation limits adopted and when, how, and with what frequency was this information communicated to state agency payroll administrators and participants that are enrolled in the NDPERS Defined Benefit Retirement Plan?**
- 2. When employees were provided the option to change from the NDPERS Defined Contribution Plan to the NDPERS Defined Benefit Plan, were the Section 401 (a)(17) annual compensation limits identified, communicated, and factored into the estimated benefit information provided to employees by NDPERS at that time?**
- 3. When employees have purchased years of service, have the Section 401 (a)(17) annual compensation limits been factored into the calculation of Final Average Salary that is used to determine the cost of the purchase by NDPERS?**
- 4. If years of service have been purchased based on inaccurate information and calculations that resulted in an overpayment by a plan participant, how have these transactions been corrected?**

5. When, how, and with what frequency has NDPERS communicated with non-central payroll agencies regarding 401(a)(17) limits to facilitate systems and procedural compliance?
6. It would appear that in the first half of 2021, leading up to the retirement of a former Industrial Commission agency executive, NDPERS was aware of a procedure condition that could result in over-contributions to the Defined Benefit plan. What communication was provided to the Industrial Commission and the agency payroll administrator at that time regarding the 401(a)(17) limits, as the issue could reasonably be expected to continue to impact the employing Industrial Commission agency and the retiree's successor?
7. In general terms, how did NDPERS correct this issue for the executive that has retired?
8. To the extent over-contributions were repaid to the retired executive and the Industrial Commission agency, how and by whom were those calculations determined?

The assistance of the NDPERS Board of Trustees in facilitating a thorough response to this inquiry would be greatly appreciated. The response and any questions can be directed to:

Karen Tyler, Interim Executive Director and Secretary, North Dakota Industrial Commission,
ktyler@nd.gov, 328-4702.

Sincerely,



Karen Tyler
Interim Executive Director
North Dakota Industrial Commission



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May 15, 2023

Ms. Karen Tyler
Interim Executive Director and Secretary
North Dakota Industrial Commission
State Capitol, 14th Floor
600 E. Boulevard Ave., Dept 405
Bismarck, ND 58505

RE: NDPERS Defined Benefit Plan Over-Contributions

Dear Ms. Tyler:

Thank you for your questions to the Board of Trustees for the North Dakota Public Employees Retirement System. At its meeting last week, the Board approved the following responses. Please reach out of you or the Industrial Commission have any additional questions.

1. When were the Section 401 (a)(17) annual compensation limits adopted and when, how, and with what frequency was this information communicated to state agency payroll administrators and participants that are enrolled in the NDPERS Defined Benefit Retirement Plan?

We do not know when the federal government enacted the section 401(a)(17) limits.

In 2022, we had our IRS consultant review our annual limit and bonus reporting policies. After the discussions with our consultant on best practices, we put additional restrictions on the ability for members to generate a benefit estimate in Member Self Service (MSS). This process has been in place for other identified members in MSS (members with bonus spreads, duals, etc.) if they may have a salary impacted or be over the IRS annual compensation threshold that will need a manual review/calculation by PERS staff. The calculations in MSS are restricted so inaccurate estimates are not provided online, and staff must review the reported monthly wages for accuracy. In these cases, the member must contact our office to process benefit estimates and service purchase calculations.

The State Mill is the only employer to whom this information needs to be communicated. PERS staff administers this effort on PeopleSoft for all other agencies.

2. When employees were provided the option to change from the NDPERS Defined Contribution Plan to the NDPERS Defined Benefit Plan, were the Section 401 (a)(17) annual compensation limits identified, communicated, and factored into the estimated benefit information provided to employees by NDPERS at that time?

The NDPERS Defined Contribution Plan and the NDPERS Defined Benefit Plan both fall under the Section 401(a)(17) annual compensation limits, so this would apply to both plans. NDPERS had an actuary review the DC to DB comparison spreadsheets prior to their distribution to update the worksheets for any limits that may apply. As such, this was factored into the estimates provided to employees.

3. When employees have purchased years of service, have the Section 401(a)(17) annual compensation limits been factored into the calculation of Final Average Salary that is used to determine the cost of the purchase by NDPERS?

Since 2022, Yes. A review was done for all purchases that may not have factored in 401(a)(17) limits in September 2022, and affected members were contacted and the necessary corrections made.

4. If years of service have been purchased based on inaccurate information and calculations that resulted in an overpayment by a plan participant, how have these transactions been corrected?

The employee would be notified of any overpayment or underpayment for the purchased service. If an overpayment should occur, NDPERS would return the funds in the same manner in which these funds were received (issued back to the member or issued back to the rollover company).

5. When, how, and with what frequency has NDPERS communicated with non-central payroll agencies regarding 401(a)(17) limits to facilitate systems and procedural compliance?

For state payroll agencies, the 401(a) limits are already incorporated into the PeopleSoft system. The Mill & Elevator is the only non-PeopleSoft state entity impacted by the 401(a) limit, and we only recently found out about the issue which is why we reached out to the Mill & Elevator last December to seek resolution. Limitations would need to be applied on the Mill's end prior to submitting payroll information to NDPERS for accuracy in the current year. If limits are not applied prior to submitting payroll to NDPERS, a correction of any over or underpayments would not take place until the member's retirement.

6. It would appear that in the first half of 2021, leading up to the retirement of a former Industrial Commission agency executive, NDPERS was aware of a procedure condition that could result in over-contributions to the Defined Benefit plan. What communication was provided to the Industrial Commission and the agency payroll administrator at that time regarding the 401(a)(17) limits, as the issue could reasonably be expected to continue to impact the employing Industrial Commission agency and the retiree's successor?

NDPERS became aware of the 401(a)(17) limit concerns in May 2021 and later became aware of the differences with payroll reporting between central payroll and non-central payroll employers (Mill and Elevator) in December of 2022. After an internal review of who was impacted, communication was sent to the Mill and Elevator in January 2023 seeking resolution for the coming calendar year.

7. In general terms, how did NDPERS correct this issue for the executive that has retired?

If this is regarding a specific individual, this individual's accounts would require NDPERS review and we cannot share confidential member information with the employer. If corrections are made to

a member's account, you'd see a payroll header in ESS and any credits or charges you and/or the member would be entitled to or would owe would be reflected in that invoice.

8. To the extent over-contributions were repaid to the retired executive and the Industrial Commission agency, how and by whom were those calculations determined?

If this is regarding a specific individual, this individual's accounts would require NDPERS review and we cannot share confidential member information with the employer. However, it is NDPERS' policy that accounts that may be affected by the 401(a)(17) limits be reviewed by NDPERS Benefits and Internal Audit staff prior to being released to a member.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Miller". The signature is fluid and cursive, with the first name "Scott" and last name "Miller" clearly distinguishable.

Scott Miller
Executive Director

From: Fricke, Rebecca D.
Sent: Tuesday, May 16, 2023 8:07 AM
To: -Info-NDPERS Document Imaging
Subject: FW: Response to Industrial Commission Questions
Attachments: Letter of Response - Highly Comp Members.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Org ID 040500
Industrial Commission

Thanks.

Rebecca Fricke



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From: Miller, Scott A. <scottmiller@nd.gov>
Sent: Monday, May 15, 2023 4:47 PM
To: Fricke, Rebecca D. <rfricke@nd.gov>; Hohbein, Derrick L. <dhohbein@nd.gov>; Anderson, MaryJo V. <msteffes@nd.gov>
Subject: FW: Response to Industrial Commission Questions

FYI

Scott

Scott A. Miller
Executive Director
North Dakota Public Employees Retirement System



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From: Miller, Scott A.
Sent: Monday, May 15, 2023 4:46 PM
To: Tyler, Karen J. <kt Tyler@nd.gov>
Subject: Response to Industrial Commission Questions

Good Afternoon –

Please see the attached response.

Let me know if you have any additional questions.

Scott

Scott A. Miller
Executive Director
North Dakota Public Employees Retirement System



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Memorandum

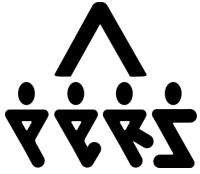
TO: NDPERS Board

FROM: Chairperson Kommer

DATE: February 13, 2024

SUBJECT: Ethics Commission Request for Opinion Update

This is a placeholder to provide the Board with an update on the Ethics Commission Request for Opinion.



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Memorandum

TO: NDPERS Board

FROM: Chairperson Kommer

DATE: February 13, 2024

SUBJECT: Strategy Planning Topic Request From the Retirement and Investment Office

This is a placeholder to provide the Board with information regarding a request from the Retirement and Investment Office to discuss a strategy planning topic. Attachment 1 includes the request from Jan Murtha, Executive Director of the Retirement and Investment Office, along with my response.

From: [Michelle Kommer](#)
To: [Murtha, Janilyn](#); [Fricke, Rebecca D.](#); [Hohbein, Derrick L.](#)
Cc: [Robert A Lech](#); [Kopp, Missy R.](#)
Subject: RE: Strategy Planning Topic
Date: Monday, February 5, 2024 2:16:53 PM
Attachments: [image001.png](#)

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Hi Jan,

Thank you for reaching out. Given my recent briefings with several SIB members who understood this path to be a much longer-term consideration, I am somewhat surprised by the timing of this request. That said, we would be happy to meet sometime in March to generally discuss possible duplicities, economies of scale, and other opportunities for synergy, including analyzing whether merging the administration of the Teacher's Fund for Retirement into PERS could result in operational savings and efficiencies. Due to the complexity of a complete analysis, and the consequential changes to both organizations since last studied, it would seem obvious that a new study is in order, most preferably during the next interim at the earliest, to ensure that the already-significant demands on NDPERS do not impact our members. I am in Bismarck March 12 for our regularly scheduled meeting and would be happy to connect following that meeting. Thank you, Michelle Kommer

From: Murtha, Janilyn <janilynmurtha@nd.gov>
Sent: Saturday, January 27, 2024 2:06 PM
To: Fricke, Rebecca D. <rfricke@nd.gov>; Hohbein, Derrick L. <dhohbein@nd.gov>; Michelle Kommer <mkommer@highroadpartners.com>
Cc: Robert A Lech <robert.lech@k12.nd.us>; Kopp, Missy R. <mikopp@nd.gov>
Subject: Strategy Planning Topic

Chair Kommer, Director Fricke, COO/CFO Hohbein

I'm writing in follow-up to the conversation between Director Fricke, COO/CFO Hohbein and myself this past November regarding a recurring question previously posed to both RIO and PERS.

During that conversation I indicated that RIO had begun its strategic planning process for the upcoming biennium. Part of this process involves bringing the question of long-term (ie multi-biennium) strategic goals to the governance and policy review (GPR) committees of both the State Investment Board (SIB) and the Teachers' Fund for Retirement (TFFR) Board, respectively.

I indicated that the SIB GPR committee met on November 9, 2023, and discussed many possible long-term goals, including whether there were opportunities to optimize benefit administration services through unification of RIO and PERS. As you know the question of unification has been raised periodically since RIO was created in 1989. The original version of the bill creating RIO proposed consolidation of program administration functions of the SIB, PERS and TFFR boards under one agency, which was RIO. The legislative history appears to indicate this consolidation was supported by all entities initially, though later in the session the proposal was amended to transfer only the investment function of PERS to the newly created RIO. Since that time the question of unification has periodically been raised, often when one or both agencies experience transition or transformation events. My understanding of the history of these discussions is that they have not progressed to a SWOT analysis or development of a business case.

My intent in reaching out was to inform PERS leadership that the question had been raised again, that it would likely be discussed at the November 17, 2023, SIB meeting, and to ask if PERS leadership would be willing to participate in a discussion with RIO leadership to evaluate the feasibility of such a partnership in order to provide feedback to the SIB on the question as part of the strategy review process.

Subsequent to that conversation the SIB did discuss this question at its meeting on November 17, 2023, and again at its meeting yesterday, on January 26, 2024. RIO staff has been asked by the board to prepare a response to this question as part of the strategic planning process.

Based upon the direction from my governing board I wanted to follow-up on our prior conversation and ask if the three of you would be willing to meet with myself and Dr. Lech (President of the TFFR Board and Vice-Chair of the SIB) to discuss the pros/cons/and costs of such a partnership? The purpose of the conversation would be to assist RIO in its analysis and development of a response to this question for the SIB.

I'm mindful that this request comes during a period of transformational change for PERS. RIO has undergone similar transformational changes during the last and current biennium and will continue to do so over the next biennium. I also understand that discussion does not equate to agreement; but have observed that the sharing of information will often promote understanding and resolution.

If you're amenable to participation in such a discussion, please let us know within the next few weeks. We would then look to schedule a meeting near the end of February to beginning of March. I will be out of the office next week and therefore am copying Missy

Kopp on this email to help us find a time if you respond during my absence.

I thank you in advance for your consideration of this request to meet.

Jan Murtha, J.D., M.P.A.P.

Executive Director

701.328.9895 • janilynmurtha@nd.gov • www.rio.nd.gov





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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 13, 2024

SUBJECT: Contracts under \$10,000

Attachment 1 is a document that shows the contracts under \$10,000 that have been signed since the last update. Attachment 2 is being provided in follow-up to discussion at the January meeting regarding the \$10,000 threshold. It provides details regarding the State Procurement competition thresholds.

This topic is informational only.

All Contracts Signed During 2024:

Vendor	Amount	Notes
CliftonLarsonAllen	\$ -	GASB 68 & 75 Representation Lettess
TIAA	\$ -	Termination notice due to recordkeeper award
BND	\$ 909.00	Staff Years of Service Awards (Gift Cards)

Attachment

State Procurement Competition Thresholds – Effective August 1, 2023

Purchase directly from [government source of supply](#) regardless of dollar amount. Does not apply to exempted goods and services.
Resources: STATE [OMB Website](#) [ND Team Connect](#) NDUS [SBHE Policies](#), [NDUS Procedures](#), [Core Technology Services \(CTS\)](#)

Questions? STATE contact infospo@nd.gov or 701-328-1728. NDUS contact [CTS Procurement Request](#). (Updated 8-1-23)

Level	Competition and Review Requirements
Information Technology (IT) Special Procedures	STATE: Initiative Intake required when IT business need identified. Guidelines to IT Procurement , Third Party Risk Management (TPRM) and IT Review requirements apply. State Contracts indicate if IT approval is required, See NDIT Services, Support, Equipment, Software NDUS: See SBHE Policies , NDUS Procedures , Contact CTS for assistance.
Printing ND Preference Law STATE agencies delegated Level 1	If practicable, printing must be awarded to a resident ND bidder. (N.D.C.C. § 46-02-15) STATE: Agencies delegated purchase authority for printing less than \$10,000. -May use Central Duplicating & Mail and State Contracts regardless of dollar value. -\$10,000 and over must submit Purchasing Work Request . See Print Procurement Guidelines NDUS: See Campus internal procedures
Fixed Assets \$5,000 and over	Equipment and software \$5,000 or greater must be reported as Fixed Assets. (N.D.C.C. § 54-27-21) STATE: See OMB Fiscal Policy 205 . NDUS: See NDUS Accounting Manual
Secretary of State Registration	Contractors with a Secretary of State registration requirement must be registered before the contract award and duration of contract period (N.D.C.C. § 54-44.4-09.1).
Level 1 Micro Purchases Less than \$10,000	-Obtain at least one fair and reasonable quote (N.D.C.C. § 54-44.4-11). -Rotate vendors solicited on an equitable basis. (N.D.A.C. § 4-12-08-02) -Use State Purchasing Card when possible. OMB Fiscal Policy 300 . -If competition obtained, document solicitation used, vendors solicited, any amendments, responses received, evaluation, basis for award. -Alternate Procurement (AP) not required if no competition.
Level 2 Small Purchases At least \$10,000 but less than \$50,000	-Solicit informal bids or proposals from at least three vendors. -May post to SPO Online and send to bidders list. May send to other potential vendors. -Document solicitation used, vendors solicited, any amendments, responses received, evaluation, basis for award. -Alternate Procurement is required if fewer than three vendors are solicited. STATE: Printing \$10,000 & over submit SPO Work Request if not using state source of supply.
Level 3 Informal Purchase At least \$50,000 but less than \$100,000	-Post informal bid or proposal to SPO Online and send to bidders list. May send to other potential vendors. -Alternate Procurement required if soliciting less than required level of competition. STATE: Printing \$10,000 & over submit SPO Work Request if not using state source of supply.
Level 4 Formal Purchases \$100,000 and over	-Post formal sealed Invitation for Bid (IFB) or Request for Proposal (RFP) to SPO Online and send to bidders list. May send to other potential vendors. -Document solicitation method used, vendors solicited, SPO Online email notice, any amendments, evaluation method, and basis for award. -Prohibition of Israel Boycott (N.D.C.C. § 54-44.4-15) (does not apply to contracts below \$100,000 and companies with fewer than ten employees). -Alternate Procurement required if soliciting less than required level of competition. STATE: Major IT Projects \$500,000. (N.D.C.C. § 54-59-32). OMB State Procurement will procure unless agency receives special delegation. NDUS: Major IT Projects \$500,000. (N.D.C.C. § 54-35-15.2 (11)) and NDUS Procedures 1201.1)
Alternate Procurements \$10,000 & over Noncompetitive and Limited Competitive	Alternate Procurements requests must provide justification and supporting facts. -Notice of Intent to Make a Limited or Noncompetitive Purchase posted on SPO Online to determine if AP is appropriate. See Template . (N.D.C.C. § 54-44.4-05 , N.D.A.C. § 4-12-09) STATE: Submit to OMB State Procurement using Purchasing Work Request . Information Technology require IT Procurement Procedures NDUS: See Campus internal procedures. NDUS APR Template



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Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: February 13, 2024

SUBJECT: Budget Status

Twice a year staff provides the Board with an update on the status of the current budget and answers any questions or concerns the Board may have. The expenses for the biennium through December 31, 2023, as well as our total appropriation, are summarized in the table below:

	2023-2025 Appropriation	Expenditures to Date	Remaining Appropriation	% Remaining
Salaries & Wages	9,064,289	2,190,371	6,873,918	76%
Operating	2,542,712	495,932	2,046,780	80%
Contingency	250,000	-	250,000	100%
DB Closure	372,027	26,042	345,985	93%
Total	12,229,028	2,712,345	9,516,683	78%

There is \$161,673 of salary appropriation available through the Vacant FTE pool that we can access in March 2025, if needed.

The biennium ends June 30, 2025.

Please let me know if you have any questions on the summary.

This is informational only.

X. MEMBER *EXECUTIVE SESSION
A. Retirement Appeal Case #841

*Executive Session pursuant to N.D.C.C. §44-04-19.2, §44-04-19.2(1) and/or §54-52-26 to discuss confidential records or confidential member information.

**Material for the Closed Session
will be sent under separate cover.**