



# Board Meeting Agenda

**Location:** WSI Board Room, 1600 East Century Avenue, Bismarck ND  
By phone: 701.328.0950 Conference ID: 618 133 974#  
**Date:** Tuesday, February 14, 2023  
**Time:** 8:30 A.M.

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## I. MINUTES

- A. January 10, 2023
- B. January 19, 2023, Special Meeting

## II. PRESENTATIONS

- A. Health Plan 2022 Executive Summary Quarter III

## III. GROUP INSURANCE

- A. Life Insurance Plan Vendor Evaluation – Katheryne (Board Action)  
**\*EXECUTIVE SESSION**
- B. Vision Plan Request for Proposal (RFP) Update – Katheryne (Information)
- C. Employee Assistance Program (EAP) Request for Proposal (RFP)  
– Katheryne (Board Action)
- D. Insurance Updates – Rebecca (Information)

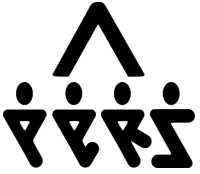
## IV. RETIREMENT

- A. Disability Consultant Contract – MaryJo (Board Action)

## V. MISCELLANEOUS

- A. Appoint Board Election Subcommittee – Aime (Board Action)
- B. Annual Communication Plan – Aime (Information)
- C. Member Experience Annual Report – Aime (Information)
- D. Budget Status – Derrick (Information)
- E. IT Consulting Contract – Derrick (Board Action)
- F. Legislative Relations – Scott (Board Action)

\*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2 when the Board holds executive session to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator. A motion is needed to go into Executive Session.



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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax: (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website <https://ndpers.nd.gov>

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               February 14, 2023

**SUBJECT:**           SHP 2022 Quarter 3 Executive Summary

Sanford Health Plan (SHP) will be at the meeting to review the 2022 Quarter 3 Executive Summary (Attachment 1) and answer any questions you may have. Representatives from Humana are also on to discuss any questions related to the Medicare Part D Plan information, labeled as NDPERS EGWP, found on page 16 of the summary.

Also attached is information provided by SHP related to the performance guarantees with measurements as of December 31, 2022. Attachment 2 provides details on the guarantees that were missed, along with the monetary amount that will be paid to NDPERS. Attachment 3 is a summary of all the performance guarantees that were measured.

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



# NDPERS Executive Summary



Quarter 3 | 2022

Presented February 2023





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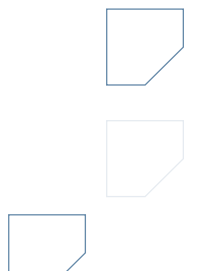
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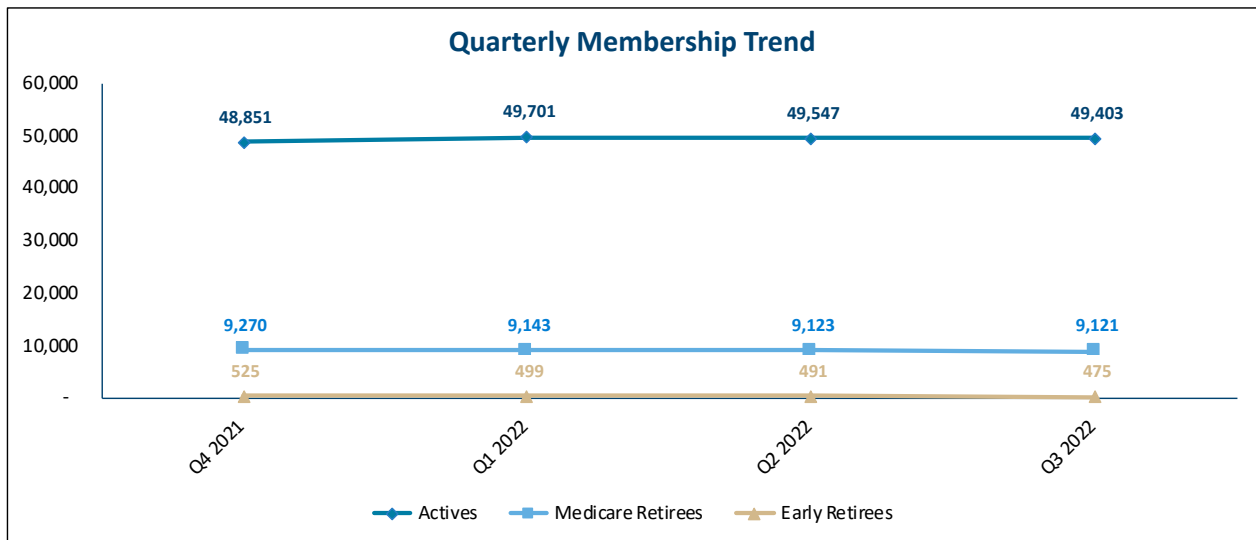


Summary

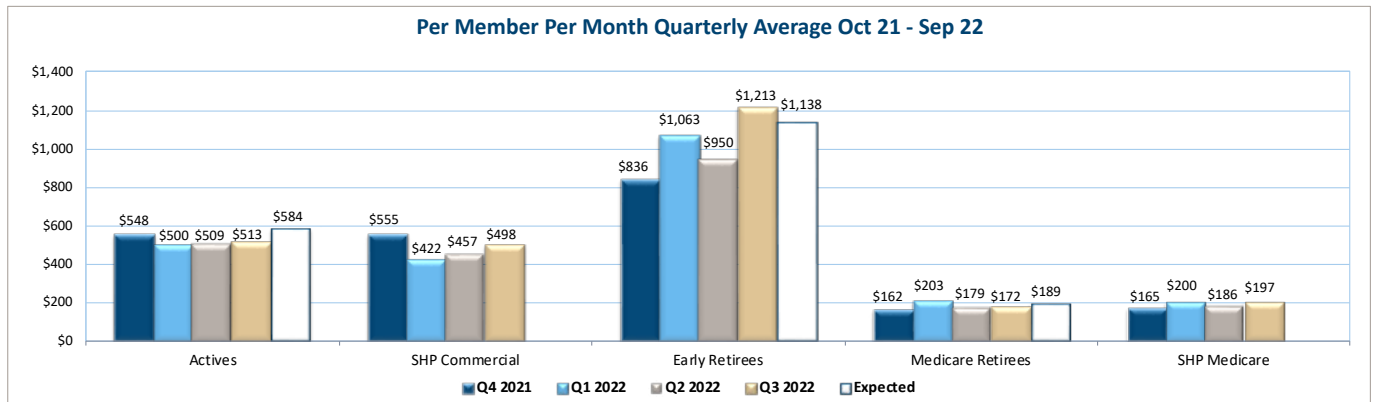
# ANNUAL MEMBERSHIP SUMMARY

MEMBERSHIP COMPARISON						PERCENT CHANGE
	Q3 2021	Q4 2021	Q1 2022	Q2 2022	Q3 2022	Q3 2021 - Q3 2022
Actives	48,911	48,851	49,701	49,547	49,403	1.0%
Medicare Retirees	9,232	9,270	9,143	9,123	9,121	-1.2%
Early Retirees	525	525	499	491	475	-9.5%

## MEMBERSHIP TREND



## PMPM SUMMARY

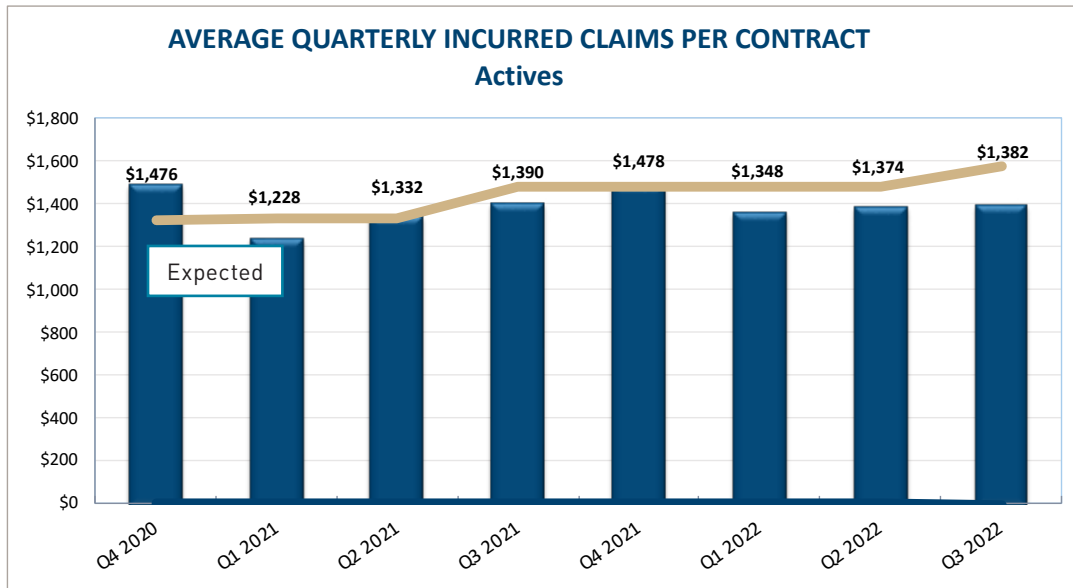


\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

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

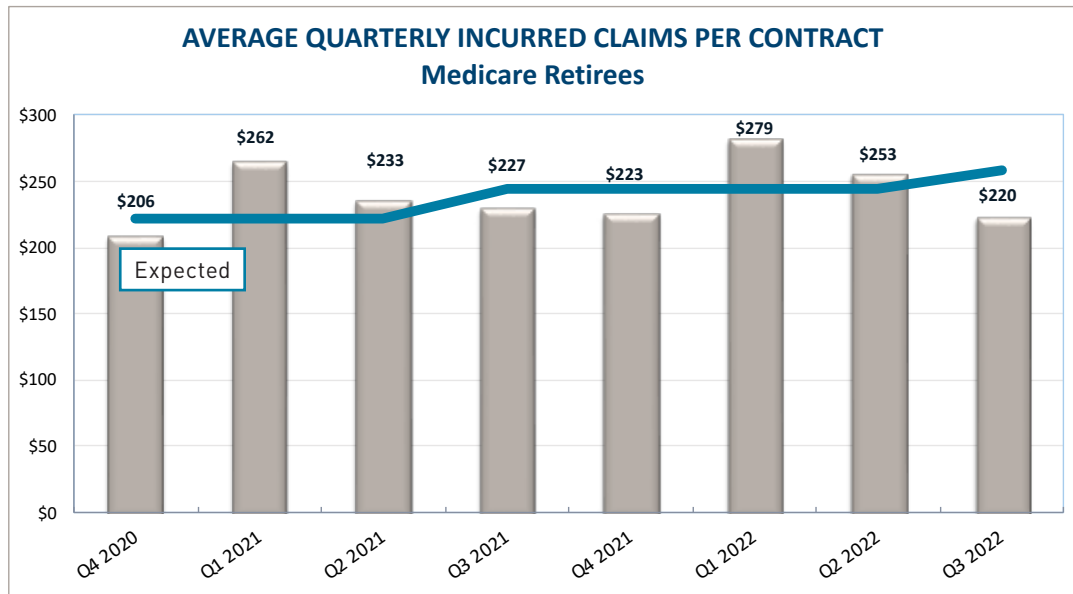
\*Expected is October 1, 2021 - September 30, 2022.

# PAID CLAIMS PER CONTRACT PER MONTH



\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

\*NDPERS Active contracts have approximately 2.69 members per contract.

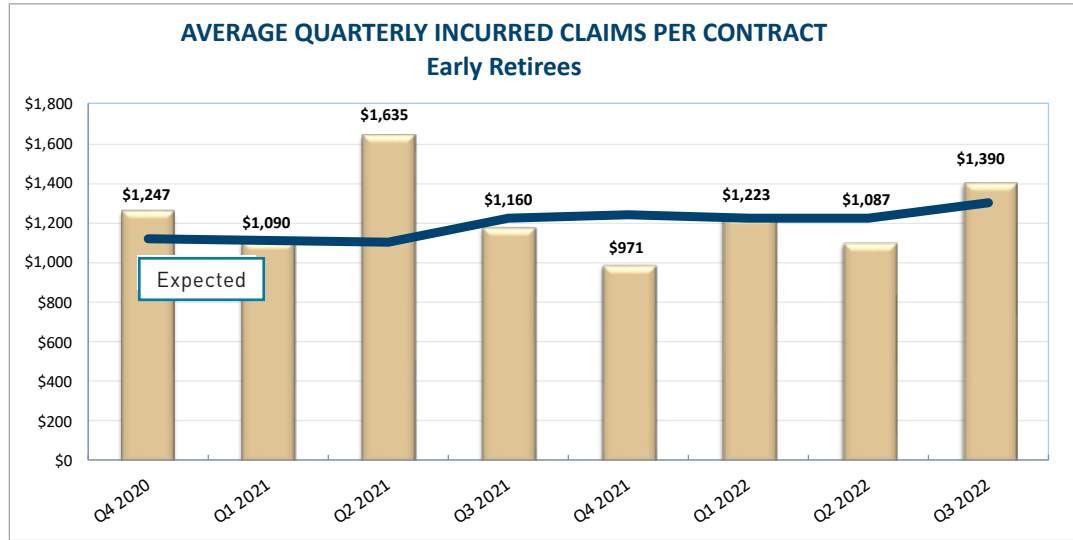


\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

\*NDPERS Medicare Retirees contracts have approximately 1.36 members per contract.

Claims Analysis

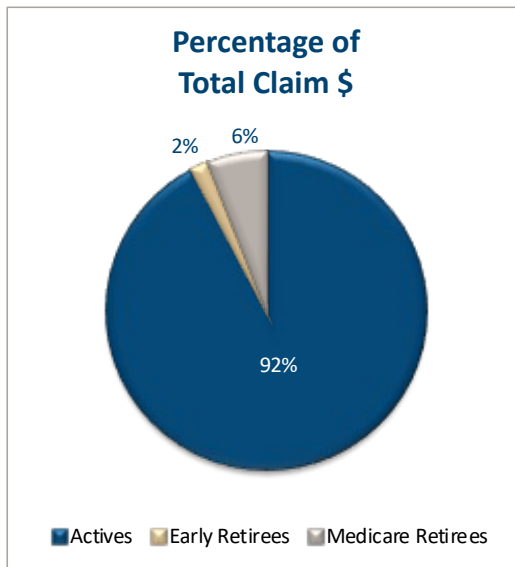
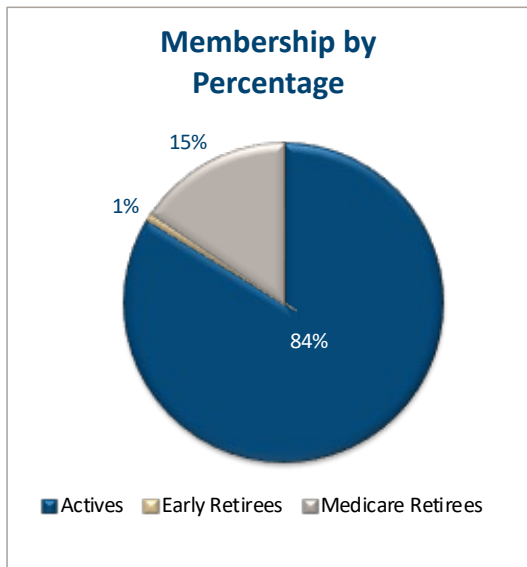
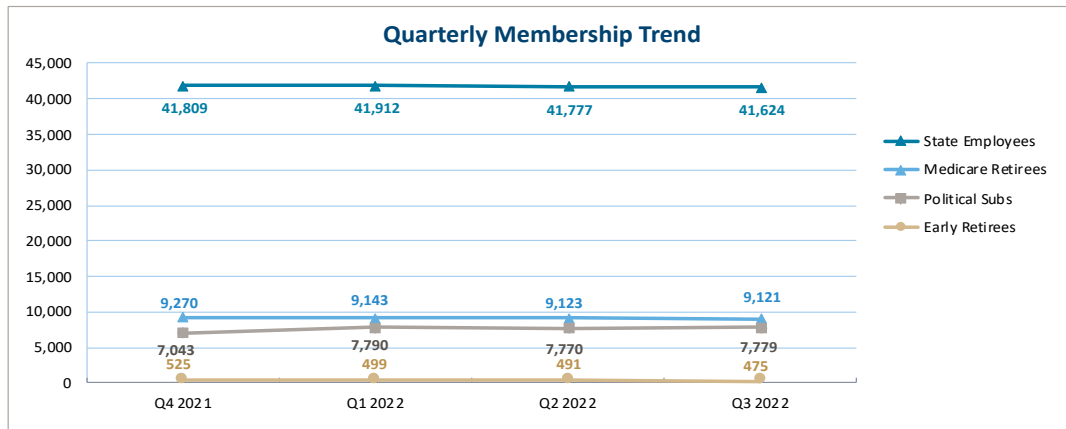
## PAID CLAIMS PER CONTRACT PER MONTH



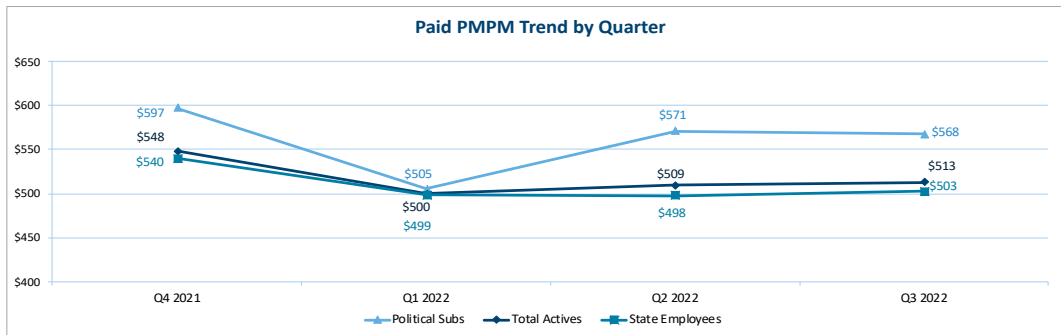
\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

\*NDPERS Early Retirees contracts have approximately 1.15 members per contract.

## MEMBERSHIP PERCENTAGE



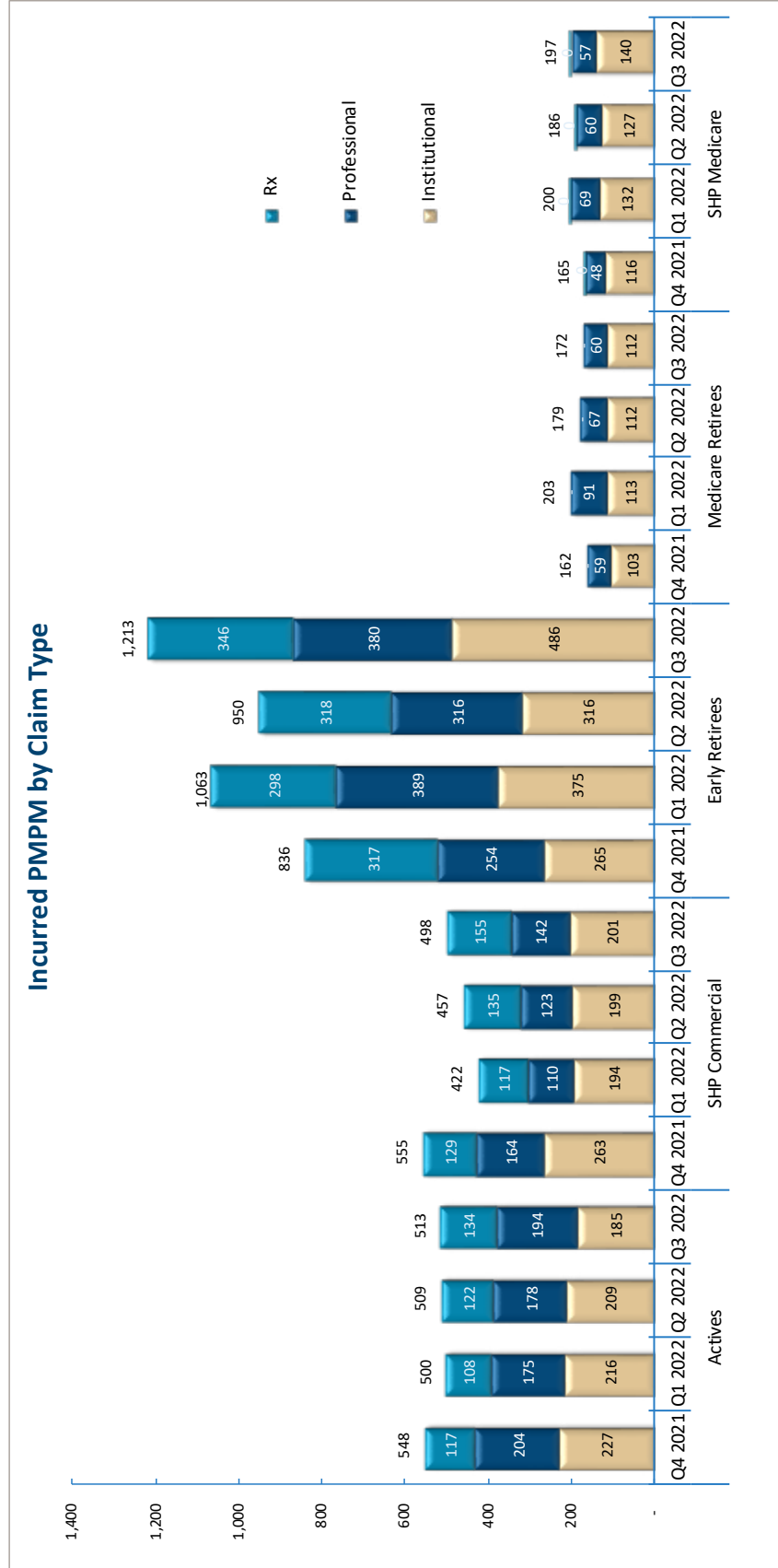
## PAID PMPM TREND BY QUARTER



\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

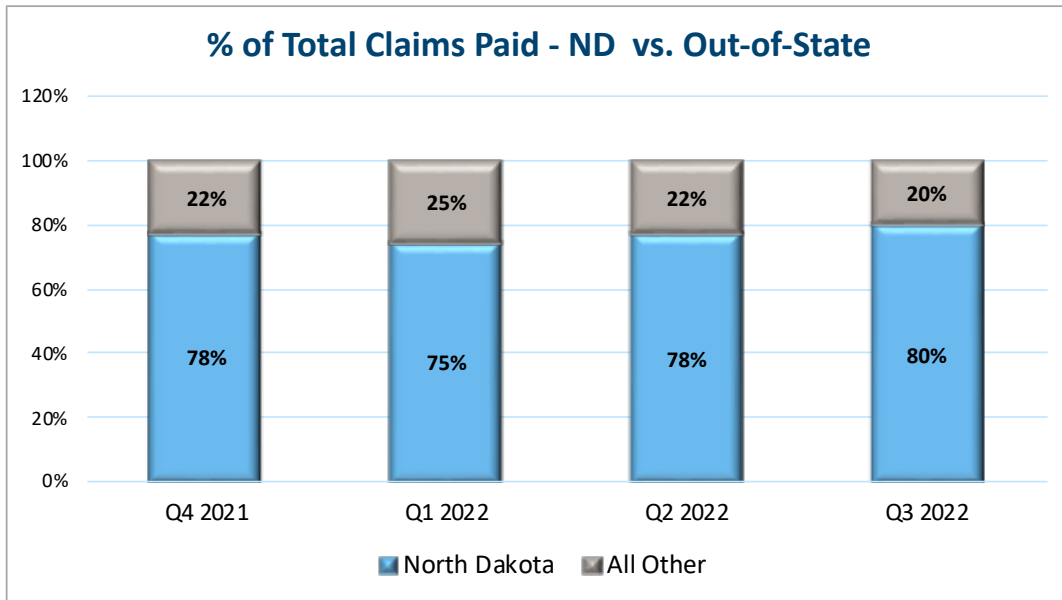
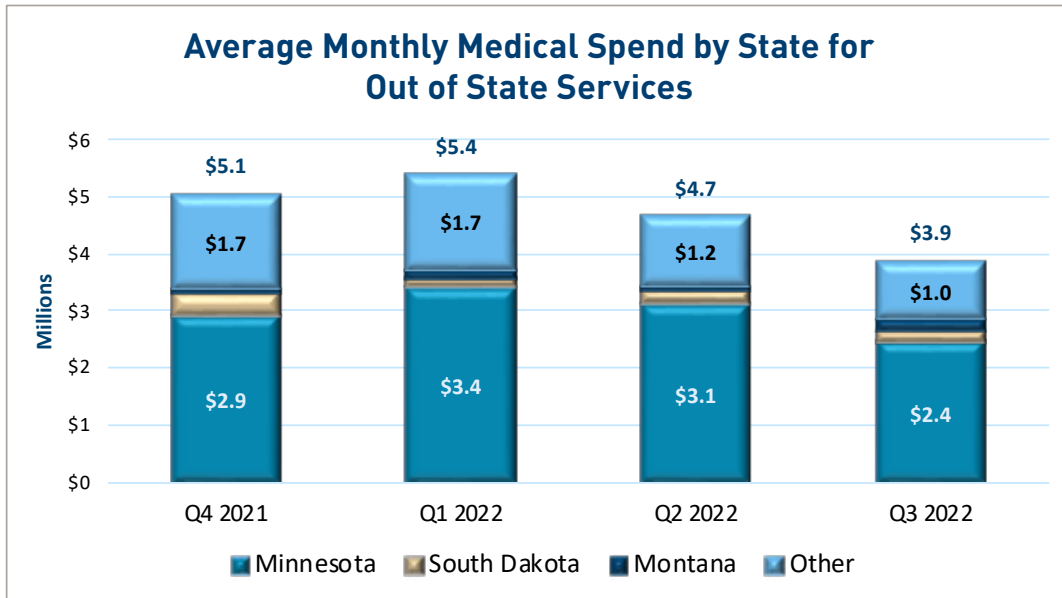


Membership & Utilization



\*Incurred between October 1, 2021 and September 30, 2022. Includes IBNR for October 1, 2021 through September 30, 2022, as of November 30, 2022.

## PAID CLAIMS BY STATE



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

\* Does Not include IBNR

## MEMBER RISK PROFILE &amp; UTILIZATION

	NDPERS	SHP Commercial
Average Age	34	33
% Male (Current)	49	47
Average Care Gap Index	1.05	0.75
Inpatient Days Per 1000	187	257
Total Admissions Per 1000	47	60
ER Visits Per 1000	184	169
Total Office Visits Per 1000	3,988	3,804
Pharmacy Scripts Per 1000	8,887	9,020

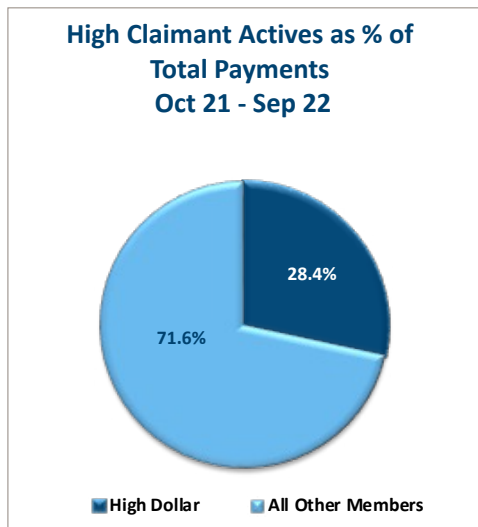
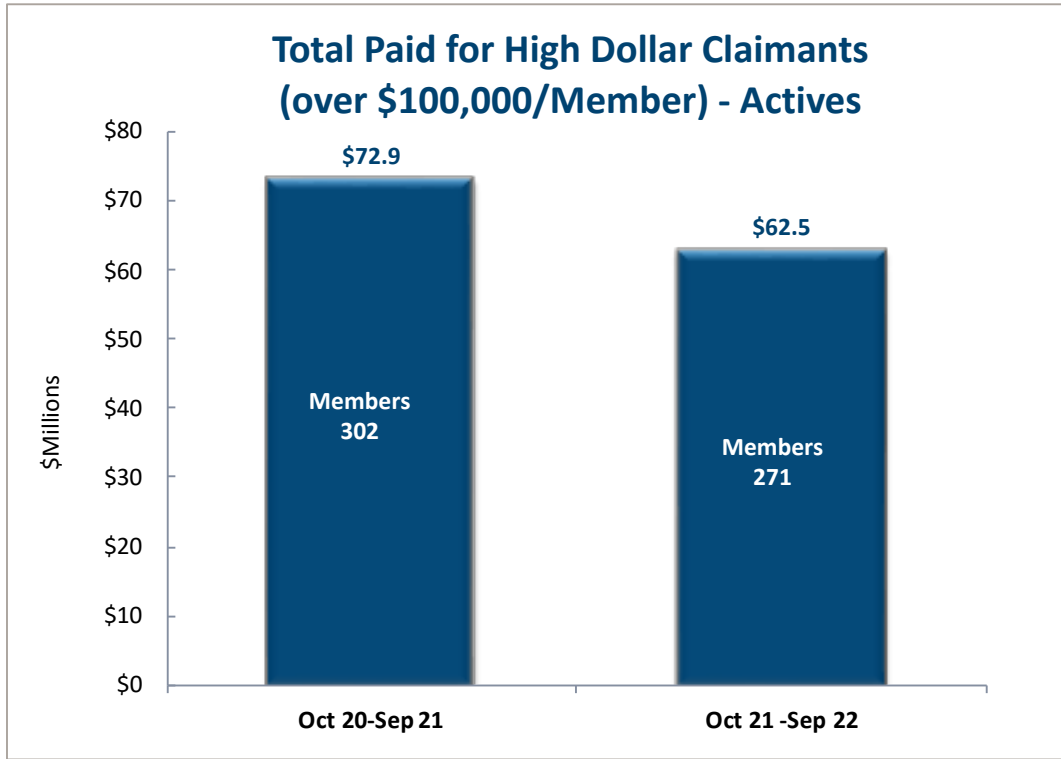
\*Incurred between October 1, 2021 and September 30, 2022.

\*All data was normalized using Cotiviti's methodologies and algorithms.

\*NDPERS includes Political subdivisions, Early (Pre-Medicare) Retirees and State employees.

# ACTIVES

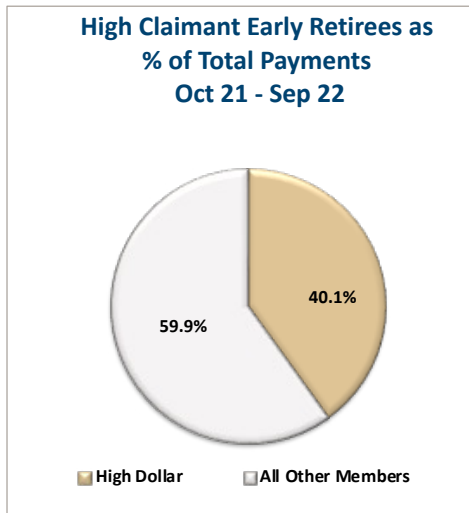
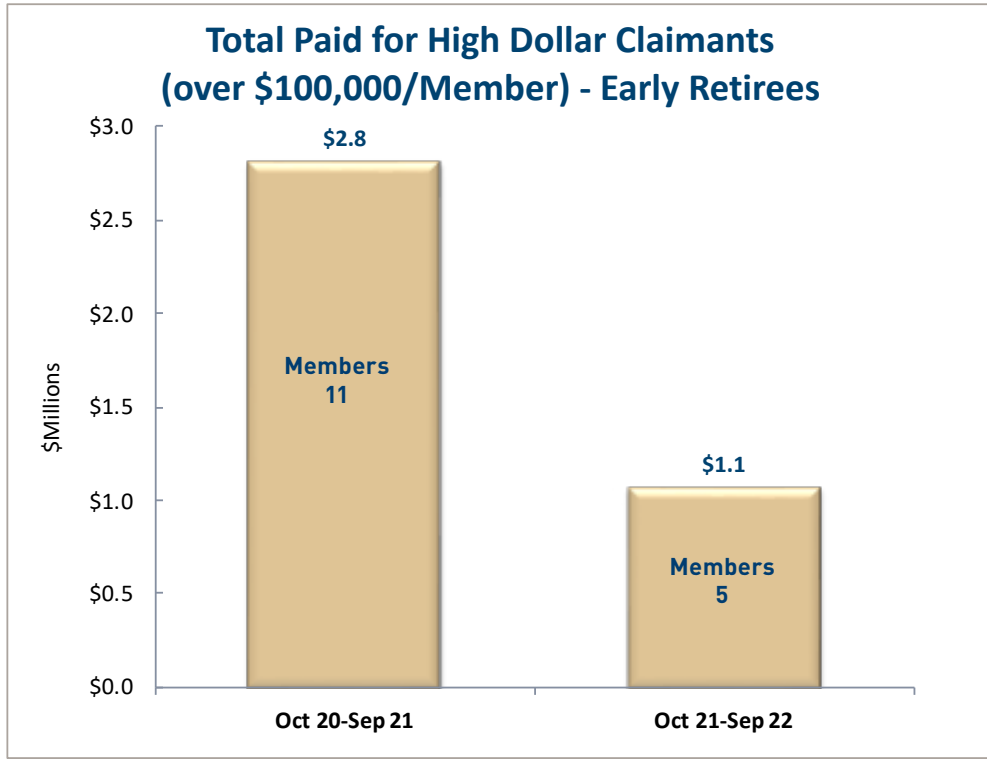
## High Dollar Cases



Avg. Paid/Claimant	\$230,723
% of Total Payments	28.4%

High Dollar Cases

EARLY RETIREES

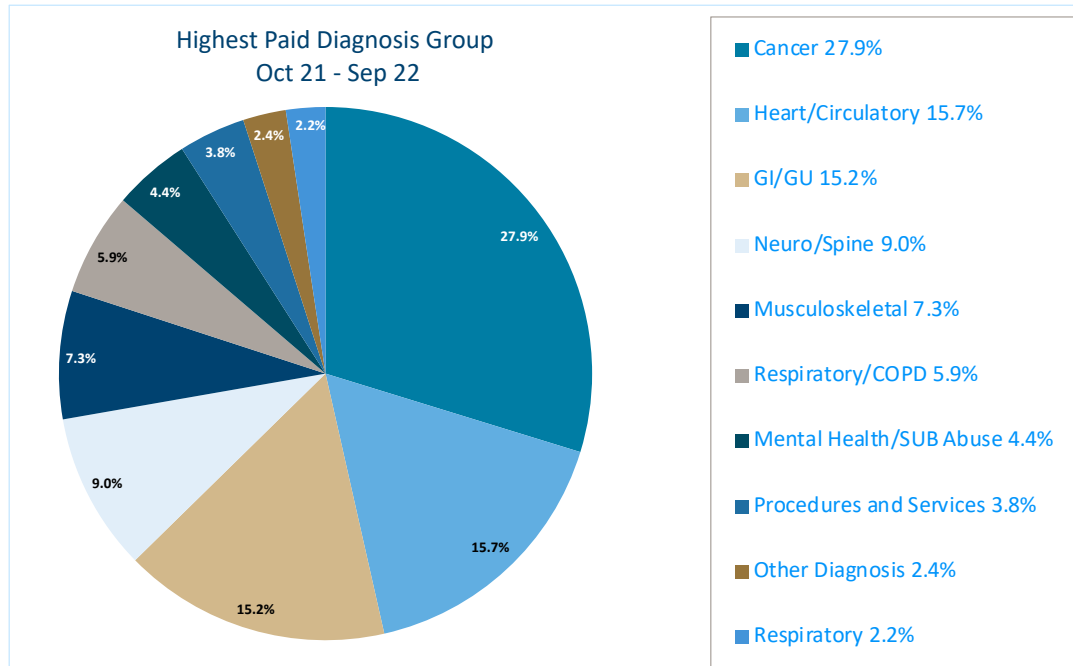


Avg. Paid/Claimant	\$212,709
% of Total Payments	40.1%

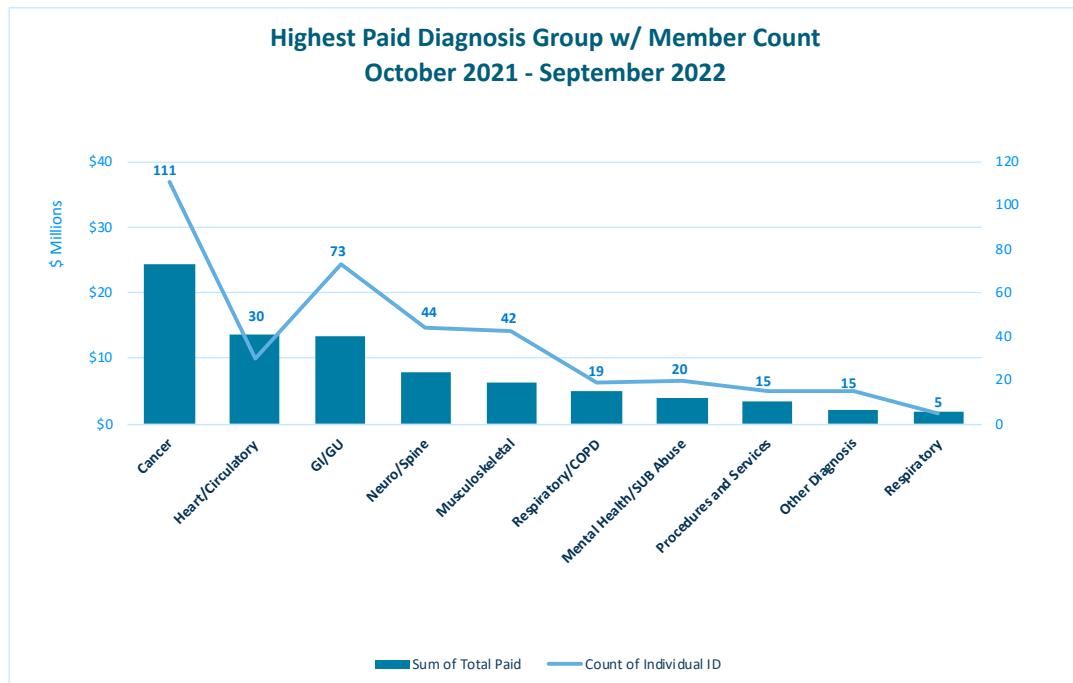


# PRIMARY DIAGNOSIS

High Dollar Cases



\*The remaining 6.2% represent 7 diagnosis groups accounting for less than 2% each.

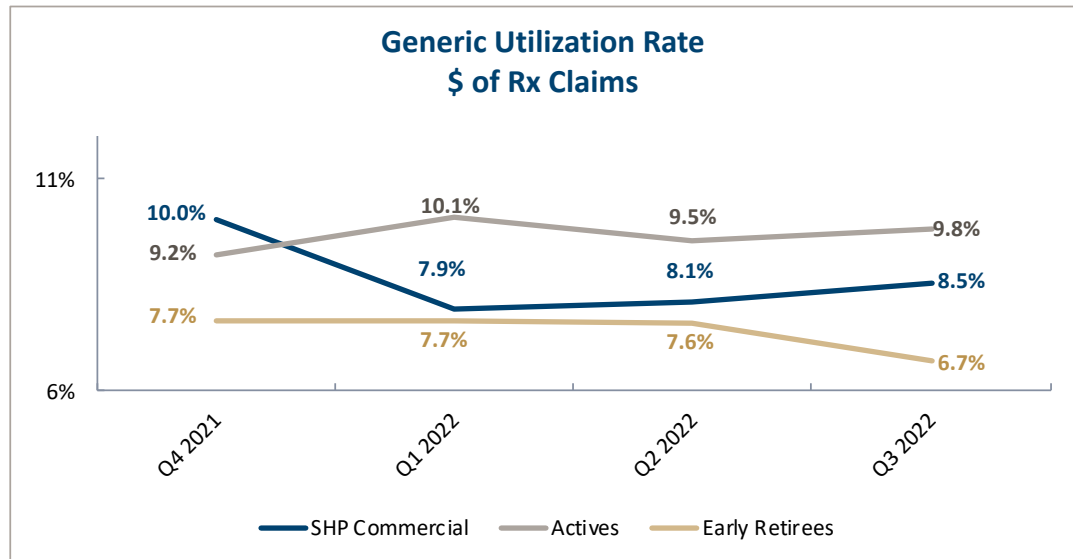
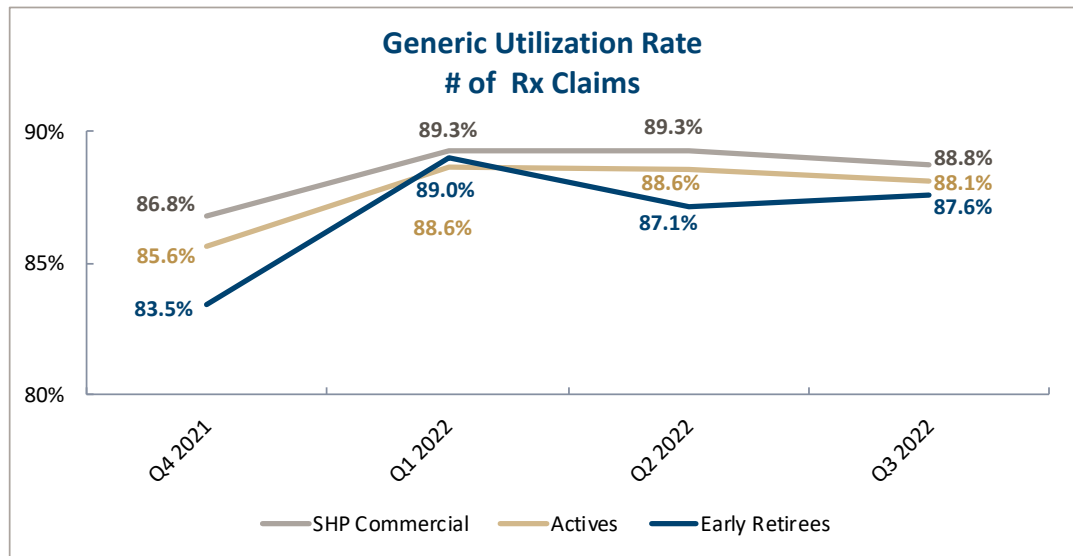
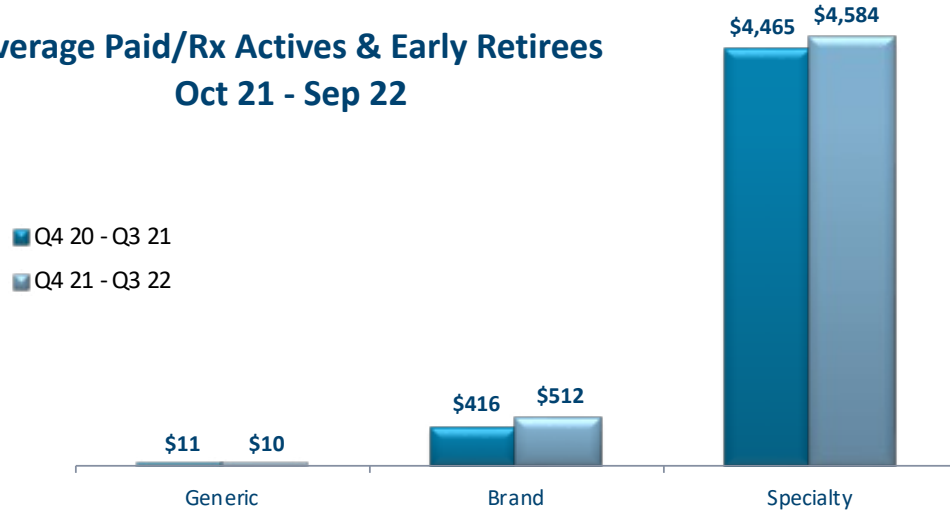


\*High dollar cases consist of claims with a total over \$100,000.

Prescription  
Drugs

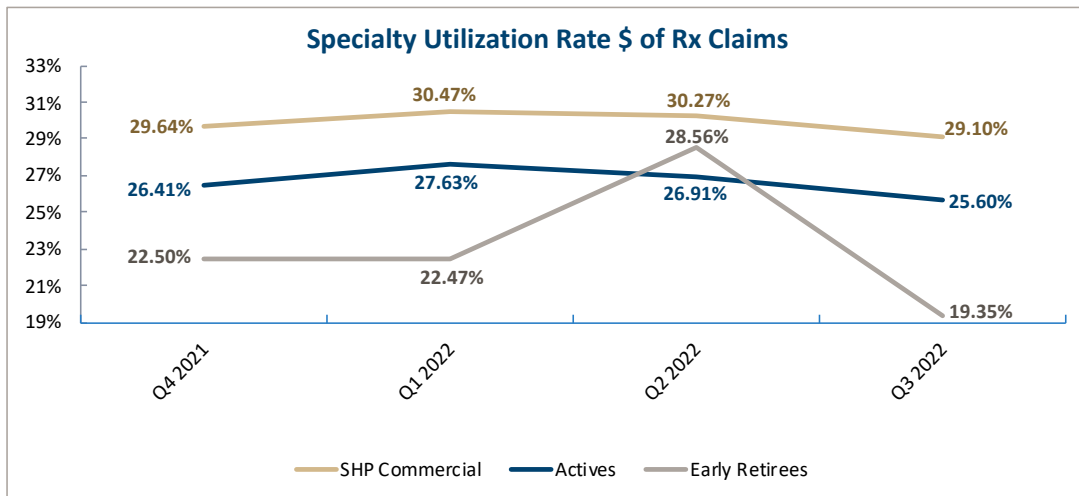
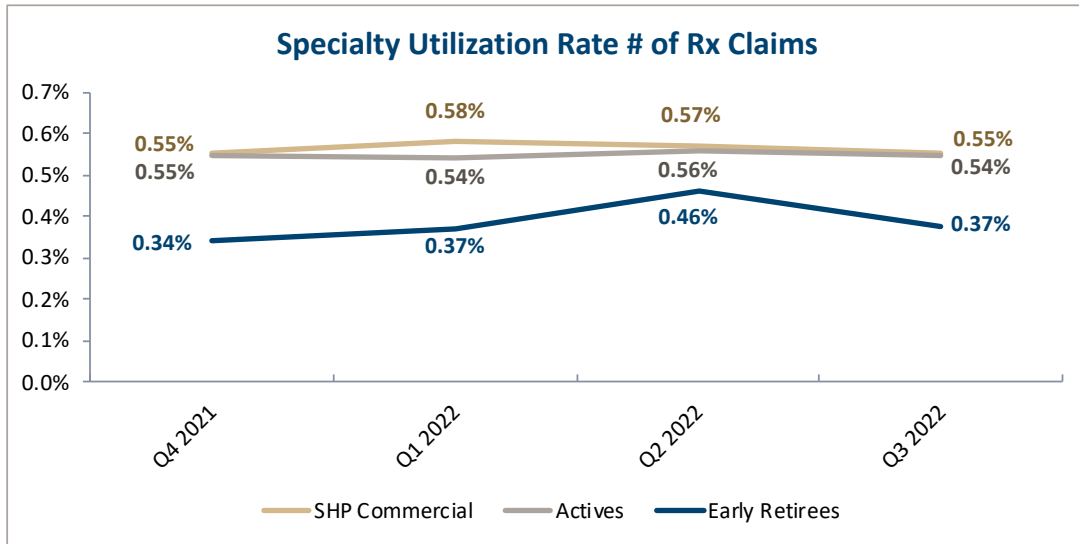
# GENERIC UTILIZATION

**Average Paid/Rx Actives & Early Retirees  
Oct 21 - Sep 22**



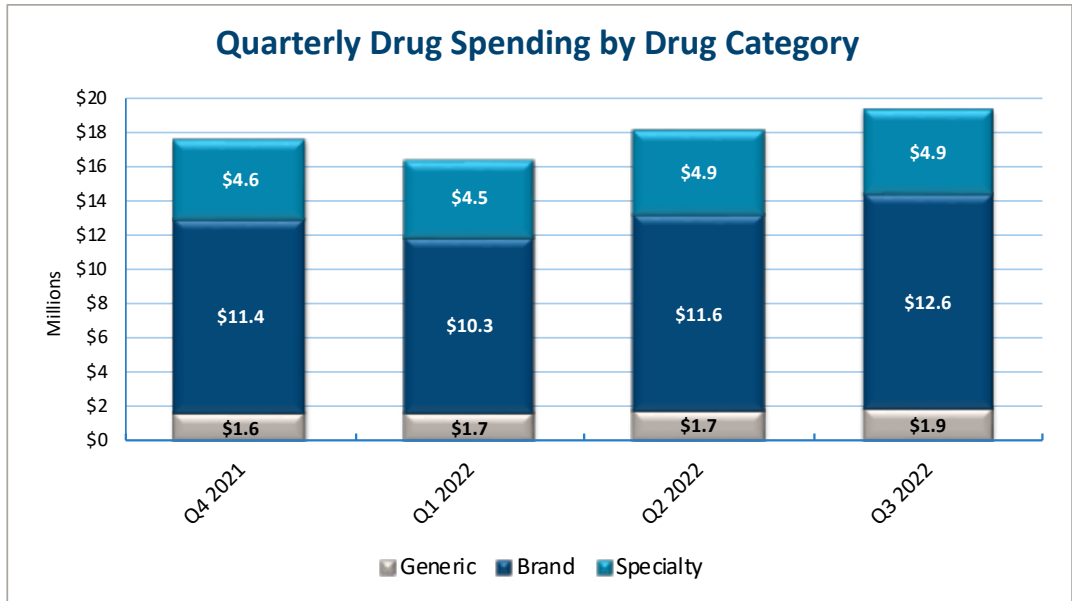
# SPECIALTY PHARMACY

Prescription  
Drugs



Prescription  
Drugs

PHARMACY

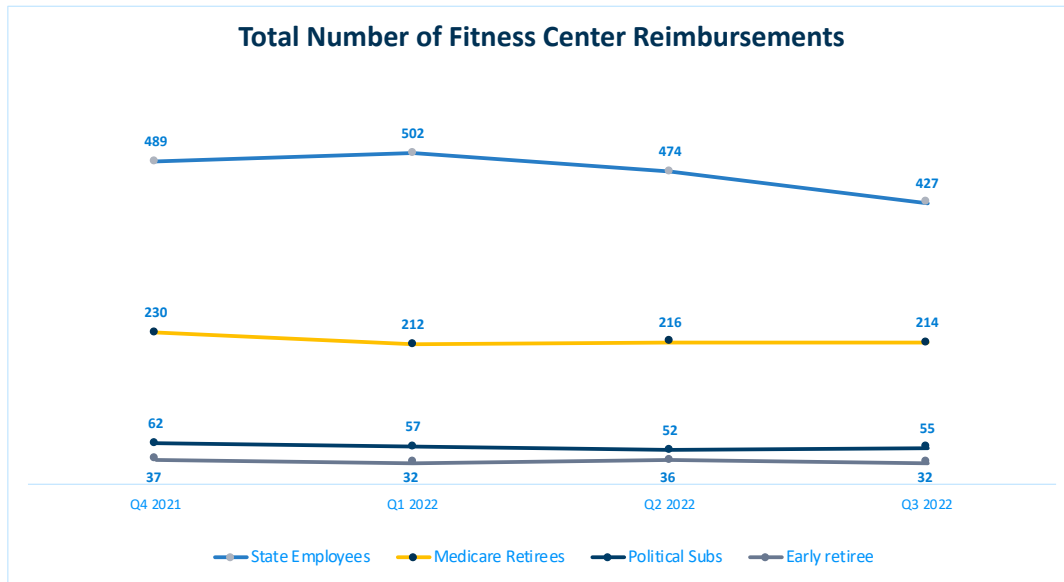


Sanford Health Plan – NDPERS EGWP			
Description	Q3 2021	Q3 2022	Change
<b>Avg Subscribers per Month</b>	9,163	9,113	-0.6%
<b>Avg Members per Month</b>	9,163	9,113	-0.6%
<b>Number of Unique Patients</b>	8,937	8,595	-3.8%
<b>Pct Members Utilizing Benefit</b>	97.5%	94.3%	-3.3%
<b>Total Days</b>	10,563,913	10,700,502	1.3%
<b>Total Adjusted Rx's</b>	381,019	356,683	-6.4%
<b>Average Member Age</b>	75.8	76.4	0.8%
<b>Nbr Adjusted Rx's PMPM</b>	4.62	4.35	-5.8%
<b>Generic Fill Rate</b>	92.2%	90.5%	-1.8%
<b>90 Day Utilization</b>	66.7%	51.9%	-22.2%
<b>Retail - Maintenance 90 Utilization</b>	64.6%	50.6%	-21.7%
<b>Home Delivery Utilization</b>	2.0%	1.3%	-35.0%

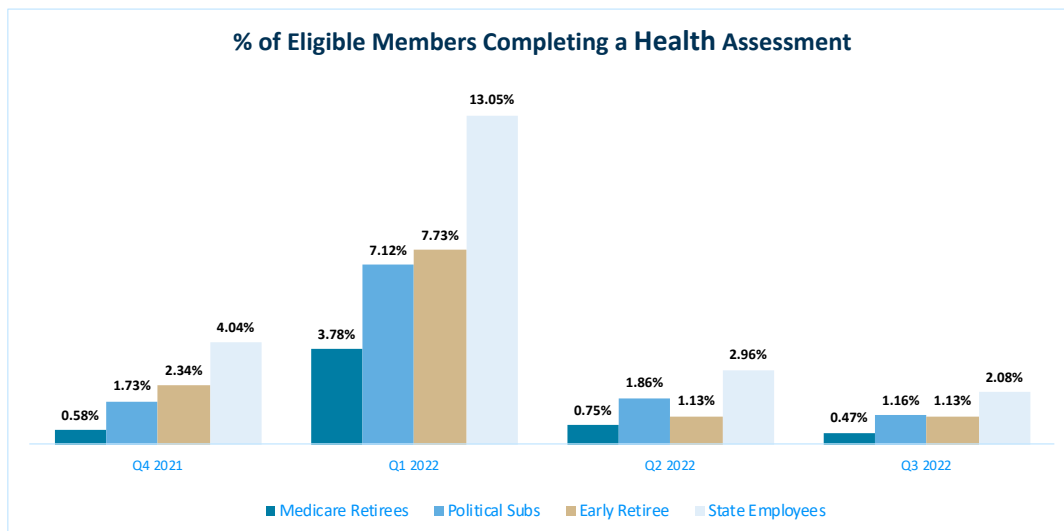
\*Q3 2021 provided by ESI

\*Q3 2022 provided by Humana

## FITNESS CENTER REIMBURSEMENT



## HEALTH ASSESSMENT





## LIFESTYLE MEDICINE PROGRAMS



### 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.

2022 NDPERS Q3 Participants: 43

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

#### Outcomes among all program graduates

- Graduates with an obesity diagnosis experience an average of a **4.5%** BMI decrease
- Graduates increased their physical activity by **79%** on average from 112 to 200 minutes per week
- Graduates with a Type 2 Diabetes diagnosis reduced their blood glucose on average 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.

**Q3**  
**9**  
Completed the full program

**ALL TIME**  
**169**  
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
<b>104%</b>	increase in moderate intensity physical activity minute post program	
<b>58%</b>	increase in moderate intensity physical activity minutes 6 months post program	



### Diabetes Prevention Program (DPP)

We offer virtual programming for DPP.

**Weight loss %**  
**4.79%**

**Number of Participants**  
**249**

# 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**

## Happiness

Along with internal influences, happiness also depends on environmental factors, such as physical home and workspaces, quality of nutrition, exercise and social connection. In order to improve happiness experts recommend more exercise, a varied diet, and having friends and family close.

**Check out these recommendations:**

- Double Dip** Plan social events around healthy behaviors, host a healthy potluck or a group hike.
- Travel** Getting out of our day-to-day routine can improve your outlook, give you memories to enjoy, and makes us appreciate our routines at home.
- Eat well** Take the time to make a plan for your nutrition and enjoy your food with ambience. Try having a picnic or eating at a café by the water.
- Declutter** Make a place for all things that tend to get left around the house – shoes, papers, toys, objects – and put them back in their place at the end of each day.

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




**Dakota Wellness Program**

## Self-talk

We all have an inner voice – even if we don't think we listen to it very often. This voice can be both positive and negative and often depends on our personality. Take a minute to think about what you have said to yourself today – when you looked in the mirror this morning or after a work meeting. What were your immediate thoughts – were they critical or helpful?

**Work on your personal self-talk:**

- Work to speak to yourself as you would speak to another person – how would you calm or comfort a friend telling you their story?**
- Use the tool of thought stopping by saying "Stop" out loud when you start to have a negative voice**
- Turn a self-limiting statement like "I can't do this" into a question like "How can I do this?"**

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




**Dakota Wellness Program**

## Kids Health

As parents and role models, we want the children in our lives to be healthy and take care of their bodies. However, we often overlook the importance of how we talk about health.

**Here are some tips to keep in mind when you talk about what it means to be healthy:**

- BE OBJECTIVE** Instead of, "Ice cream is bad" or "Exercise is good for you" try, "Ice cream gives you fast energy and helps your bones" or "Exercise can give you energy."
- ASK QUESTIONS** If your child asks you, "Is ice cream healthy?" or "My friend at school says \_\_\_ is unhealthy." Ask your child questions to help them think critically. "What do YOU think it means to be healthy?" or "How does your body FEEL when you eat ice cream?"
- USE POSITIVITY TO MOTIVATE, NOT FEAR** Teach your child what they can look for with healthy behaviors, instead of instilling fear of a negative outcome. "I love riding bike with you, it gives us a good time to tell stories!" instead of "We should exercise otherwise we won't be healthy."

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





## Special Events

### 2022 Wellness Coordinator Recharge Workshop

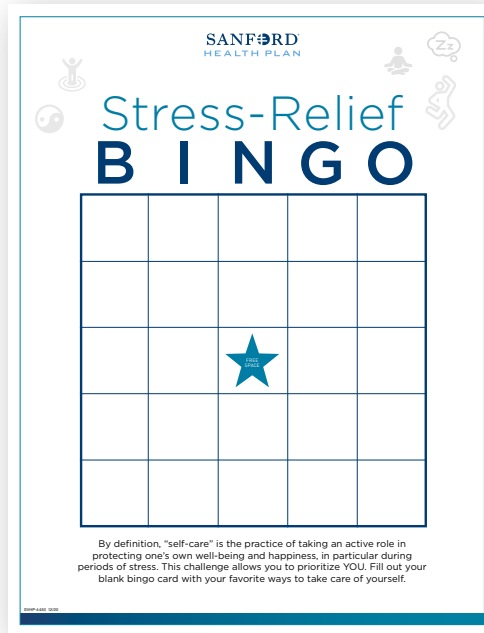
- 102 agencies represented

Dakota  
Wellness  
Program

### Q3 Quarterly Wellness Challenge

#### Stress Relief BINGO

- Total participation: 75 agencies
- “Stress Relief BINGO has been a hit so far for getting employees to sign up! Whether it is the last little push for the end of the year with earning 6,000 point voucher or the title of Stress Relief BINGO” – McLean County wellness coordinator



### Annual Employee Appreciation Month, sponsored by the Council of State Employees (COSE)

- Dakota Wellness Program (Sept. 8) **Total attended: 12**
- Mindful Eating (Sep.15) **Total attended: 15**
- Cooking Demo (Sept.22) **Total attended: 12**
- Deskercise (Sept. 29) **Total attended: 16**

Performance  
Standards &  
Guarantees

## 2021-2023

MEASURE	GOAL	OUTCOME REPORTING DATES	CURRENT
<b>WELLNESS:</b>			
Health risk assessment completion	17%	June 30, 2023	16.52%
Worksite interventions agency participation	75%	June 30, 2023	72.4%
Fitness center reimbursement participation	5%	Dec. 31, 2022	Missed
Wellness redemption center payments	\$800,000	Dec. 31, 2022	\$940,606.00
Wellness redemption center rate	8%	Dec. 31, 2022	10.43%
<b>HEALTH OUTCOMES:</b>			
Healthy Pregnancy Program	2.5%	June 30, 2022	4.4%
Diabetes Prevention Program	3%	Dec. 31, 2022	Missed
Exercise is Medicine Program	3%	Dec. 31, 2022	6%
Breast cancer screening rates	80%	June 30, 2023	80.3%
Cervical cancer screening rates	85%	June 30, 2023	76.9%
Colorectal cancer screening rates	60%	June 30, 2023	On Track
<b>PROVIDER NETWORK/CONTRACTING:</b>			
PPO network participation rate	Hospital, MDs & DOs: 92%	June 30, 2022	Met
Par medical network minimum discount	30%	June 30, 2022	Met
<b>CUSTOMER SERVICE &amp; CLAIMS:</b>			
Claims financial accuracy	99%	June 30, 2022	99.3%
Claims payment accuracy	98%	June 30, 2022	99.48%
Claim timeliness	99%	June 30, 2022	99.12%
Claims procedural accuracy	95%	June 30, 2022	99.20%
Average speed of answer	30 seconds	June 30, 2022	Missed
Call abandoned rate	5% or less	June 30, 2022	4.02%
First call resolution	95%	June 30, 2022	98.79%
Written inquiry response time	95%	June 30, 2023	98.92%
<b>PHARMACY &amp; FINANCIAL:</b>			
Prescription drug turnaround times	98%	June 30, 2022	Met
About the patient program payment	5 days	June 30, 2022	Met
Interest rate corrections	5 days	June 30, 2022	Met

\*Results affected by the COVID pandemic







## Attachment 2

January 31, 2023

Scott Miller, Executive Director  
North Dakota Public Employees Retirement System  
PO Box 1657  
Bismarck, ND 58502-1657

Dear Scott,

The purpose of this letter is to provide a summary of the results of the 2022 Performance Guarantees described in Exhibit B of the 2021 -2023 Administrative Services Agreement. The results of Performance Guarantees equate to meeting or exceeding twenty-seven of the thirty-two guarantees. For those five that were not met, a \$50,500.00 payment will be made to NDPERS. Below you will find a summary of payment due for the unmet measures.

Measurement #	Description	Performance	Forfeiture Due
#2	Customer Satisfaction Survey	Partially Met	\$25,000.00
#5	Electronic Eligibility Files	Predominately Met	\$500.00
#11	Diabetes Prevention/ Exercise is Medicine	Partially Met	\$5000.00
#12	Fitness Center Reimbursement	Unmet	\$10,000.00
#23	Average Speed of Answer	Unmet	\$10,000.00
Total Payment Due			<b>\$50,500.00</b>

Sincerely,

Steve Webster  
Sanford Health Plan

Enclosure: Exhibit B to the 2021-2023 Administrative Services Agreement  
2022 Performance Guarantee Results  
Summary of how Performance Guarantee #5 was measured.



## Health Plan Performance Guarantees July 2021-2023 Final Results

	Requirement	Value of Forfeiture	Results
1	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.	<i>Semi- annually</i>  \$1,000 per calendar day beyond the due date	<b>MET</b>
2	<p><b>Measurement Missed: Promised follow-up reached 84%; Answers clear and complete reached 87%; and three survey questions requiring 90% were not met: 89%, 88%, and 87% respectively.</b></p> <p>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.</p> <p>Using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied, the following member satisfaction rates will be met as follows:</p> <ul style="list-style-type: none"> <li>• <i>Promised follow- up and EOB understanding</i> will meet 87% or higher.</li> <li>• <i>Representative answers were clear and complete</i> will meet 88% or higher.</li> <li>• The remaining survey results will meet 90% or higher.</li> </ul> <p>Final survey questions and methodology will be agreed upon by vendor and NDPERS.</p>	<i>Biannually (every 2 years)</i>  <span style="color: red;">\$25,000</span>	<b>MISSED</b>
3	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs.	<i>Monthly</i>  \$5,000 for each meeting missed	<b>MET</b>
4	Vendor will participate in quarterly performance reviews to examine operational and financial performance.	<i>Quarterly</i>  \$5,000 for each quarter missed	<b>MET</b>
5	<p><b>Measurement Missed: One file was not completely completed within 18 business hours.</b></p> <p>Eligibility files will be uploaded within eight (8) hours of regularly scheduled NDPERS file submission date and time. All transactions within the file will be completed by SHP within eighteen hours (18) of the regularly scheduled date/ time, excluding errors requiring corrective action taken by NDPERS before the data can be uploaded and completed. Off- schedule file sends will be completed upon mutual agreement of NDPERS and SHP.</p>	<i>Measured quarterly, reported annually.</i>  <span style="color: red;">\$500</span> for each missed file deadline	<span style="color: red;">One file did not meet 18 business hours totaling \$500.00 due</span>

Amended March 15, 2022

	Requirement	Value of Forfeiture	Results
6	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.	<i>Measured quarterly, reported annually.</i> \$500 for each missed file deadline	MET
7	The error report will be completed by SHP within eighteen hours (18) of the regularly scheduled file submission date and time.	<i>Measured quarterly, reported annually.</i> \$500 for each missed file deadline	MET
8	Monthly data files (membership, medical, pharmacy) will be available by the 15 <sup>th</sup> of the following month.	<i>Monthly</i> \$1,000 for each month not met	MET
9	By June 30, 2023, at least 17% of eligible NDPERS members will have completed a Health Risk Assessment.	<i>Executive Summary (Quarterly)</i> 16.99%-15% = \$2,500 14.99%-12.01% = \$5,000 12% or less= \$10,000	2023
10	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.).	<i>Executive Summary (Quarterly)</i> \$5,000 if not achieved	2023
11	<b>Measurement Missed: 3% increase over CY 2021 was not met by December 31, 2022</b> By December 31, 2022, the Diabetes Prevention Program participation will increase by 3% over the Per Member Per Year (PMPY) from January 1, 2021– December 31, 2021.  <b>Met:</b> By December 31, 2022, the Exercise is Medicine Program participation will increase by 3% over the PMPY from January 1, 2021 – December 31, 2021.	<i>Executive Summary (Quarterly)</i> \$5,000 if not achieved	MISSED
12	<b>Measurement Missed: 2.9% of members received fitness reimbursement.</b>  By Dec. 31, 2022, at least 5% of eligible members will receive the fitness center reimbursement in at least one month during the 2022 calendar year.	<i>Executive Summary (Quarterly)</i> 4.9-4% = \$2,500 3.9-3% = \$5,000 2.9 or less = \$10,000	MISSED
13	1. By Dec. 31, 2022, \$800,000 will be paid out in the wellness redemption center for the 2022 calendar year.  2. By Dec. 31, 2022, 8% of eligible members will have processed a redemption for wellness activity during the 2022 calendar year.	<i>Executive Summary (Quarterly)</i>  \$799,999-700,000 = \$2,500 \$699,999-600,000 = \$5,000 \$599,000 or less= \$7,500	MET
14	By June 30th, 2022, the percentage of eligible NDPERS members enrolled will increase by a growth rate of 2.5% over the percentage of eligible NDPERS members enrolled from July 1, 2020 – June 30, 2021.	<i>Executive Summary (Quarterly)</i>	MET

Amended March 15, 2022

	Requirement	Value of Forfeiture	Results
		\$15,000 if not achieved	
15	Breast cancer screening rates will be at least 80%	<i>Executive Summary (Quarterly)</i> \$15,000	2023
16	Cervical cancer screening rates will be at least 85%	<i>Executive Summary (Quarterly)</i> \$15,000	2023
17	Colorectal cancer screening rates will be at least 60%	<i>Executive Summary (Quarterly)</i> \$15,000	2023
18	Vendor shall maintain ninety-two (92%) percent or more of hospitals, practicing MD's and DOs of the proposed network.	<i>Calculated Semi- Annually</i> <i>Executive Summary (Quarterly)</i> \$75,000	MET
19	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.	<i>Executive Summary (Quarterly)</i> \$12,500 for each year of the biennium	MET
20	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.	<i>Executive Summary (Quarterly)</i> \$12,500 for each year of the biennium	MET
21	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	<i>Executive Summary (Quarterly)</i> \$12,500 for each year of the biennium	MET
22	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 claim is processed.	<i>Executive Summary (Quarterly)</i> \$12,500 for each year of the biennium	MET
23	<b>Measurement Missed: The result was 96 seconds.</b>  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.	<i>Executive Summary (Quarterly)</i>  \$10,000 per year	<b>MISSED</b>
30	Call Abandonment rate will be 5% or less, each year of the biennium.	<i>Executive Summary (Quarterly)</i> \$10,000 for each year of the biennium	MET

Amended March 15, 2022



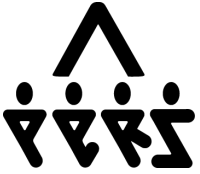
	<b>Requirement</b>	<b>Value of Forfeiture</b>	<b>Results</b>
<b>24</b>	a.) 95% of inquires must be resolved during the initial call, excluding appeals, billing errors, and escalations.  b.) 95% of written inquires must be responded to within 24 business hours of date stamp of receipt, excluding appeals, billing errors and escalations.	<i><b>Executive Summary (Quarterly)</b></i>  \$12,500 per year	<b>MET</b>
<b>25</b>	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.	<i><b>Annually</b></i>  \$12,500 per year	<b>MET</b>
<b>26</b>	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.	<i><b>Annually</b></i>  \$5,000 for each full % below	<b>MET</b>
<b>27</b>	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.	<i><b>Annually</b></i>  \$5,000 for each full % below	<b>MET</b>
<b>28</b>	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.	<i><b>Annually</b></i>  \$5,000 for each full % below	<b>MET</b>
<b>29</b>	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.	<i><b>Annually</b></i>  \$5,000 for each full % below	<b>MET</b>
<b>30</b>	Payments will be made within 5 business days of approval to NDPSC for the About the Patient program.	<i><b>Executive Summary (Quarterly)</b></i>  \$10,000 per year	<b>MET</b>
<b>31</b>	Funds Held by Vendor. Rate as determined by NDPERS and vendor.	<i><b>Executive Summary (Quarterly)</b></i>  \$5,000 per occurrence	<b>MET</b>

Amended March 15, 2022

	Requirement	Value of Forfeiture	Results
32	98% within two (2) business days if no intervention required.	<i>Executive Summary (Quarterly)</i> \$1,000 for each point below standard	<b>MET</b>
33	99.9% Mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity, and prescriber name.	<i>Annually</i> \$12,500 for each year of the biennium	<b>MET</b>
34	Vendor is required to report the volume of prescription orders delayed and the volume of communication made to the affected member of said delay.	<i>Annually</i> \$12,500 for each year of the biennium	<b>MET</b>
35	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.	<i>Annually</i> \$12,500 for each year of the biennium	<b>MET</b>
36	Pharmacy network composition will not be reduced by more than 5% in North Dakota compared to the network submitted in the RFP.	<i>Annually</i> \$12,500 for each year of the biennium	<b>MET</b>
37	Vendor will guarantee a minimum provider discount from in-network providers of at least 30% be calculated as (1- (Allowed/Billed Charge)).	<i>Calculated Semi Annually</i> <i>Executive Summary (Quarterly)</i> \$500,000	<b>MET</b>

Forfeiture values are over the entire biennium and any forfeiture will be paid within 30 days of the run-out period required to calculate the Performance Guarantee criteria.

Amended March 15, 2022



# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** February 14, 2023

**SUBJECT:** Group Life Insurance Plan Request For Proposal (RFP)

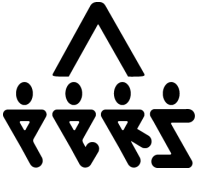
Rebekah Ferstadt and the team at Buck have completed their proposal review process. They will be available at the NDPERS Board meeting to review their findings and answer any questions.

Following are the key dates for the proposal process:

Date	Activity
November 01, 2022	RFP is issued.
November 22, 2022	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
December 06, 2022	NDPERS posts responses to all questions received.
December 22, 2022	Proposals must be received by 5:00 p.m. (CDT).
February 2023	Begin finalist interviews and Best and Final Offers if deemed necessary by the NDPERS Board.
March 2023	Selection and award of contract by NDPERS.
July 1, 2023	Effective Date of Coverage.

If you have any questions regarding the Group Life Insurance Plan RFP, we will be available at the NDPERS Board Meeting.

**Board Action Requested:** Select the vendors to interview at the March Board meeting.



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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

Fax (701) 328-3920 Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov) Website [www.ndpers.nd.gov](http://www.ndpers.nd.gov)

# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** February 14, 2023

**SUBJECT:** Group Voluntary Vision Benefits Plan Request for Proposal (RFP)

The Group Voluntary Vision Benefits Plan RFP was issued on February 1<sup>st</sup>.

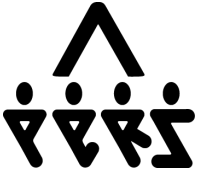
Following are the key dates for the proposal process:

Date	Activity
February 1, 2023	RFP is issued.
February 24, 2023	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
March 10, 2023	NDPERS posts responses to all questions received.
March 31, 2023	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
May 2023	NDPERS Board review of proposals.
June 2023	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
End of August 2023	Selection and award of contract by NDPERS.

Buck Consultants will analyze the proposals and narrow them down to 3 or 4 for NDPERS to review.

If you have any questions, additions or changes to the Group Voluntary Vision Benefits Plan RFP, we will be available at the NDPERS Board Meeting.

This update is informational.



# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** February 14, 2023

**SUBJECT:** Employee Assistance Program (EAP) RFP

Here is a draft of the RFP for the EAP renewal for 2023-2025. We issue the EAP RFP every two years. There are currently four active EAP contracts:

CHI St. Alexius Employee Assistance Program  
The Village Family Service Center EAP  
Live Well Solutions EAP  
eni NexGen EAP

Following are the key dates for the proposal process:

Date	Activity
March 1, 2023	NDPERS will issue RFP
March 31, 2023	Proposals are due
May 9, 2023	NDPERS Board will select vendors
May 22, 2023	List of vendor information will be given to agencies
June 2023	NDPERS virtual Employer Conference (tentative)
June 21, 2023	Agencies select vendors
June 28, 2023	NDPERS enters into contract with selected vendors
July 1, 2023	EAP contract effective date



The methodology that PERS has adopted for providing EAP services is called an “agency based” approach. Pursuant to this method, each agency is the focal point for the decision on which EAP vendor would be the most appropriate for their employees. To implement this approach, the PERS Board establishes through the RFP process a list of qualified vendors. EAP vendors that are able to successfully meet the requirements in the RFP, and provide the service at or below the specified price, are placed on a list of qualified vendors. Each agency is offered the list and is allowed to select one vendor from that list to provide services for that agency.

As in the past, for the existing EAPs we are proposing that they be allowed to file a renewal instead of having to do an entirely new proposal. This renewal would indicate the price and an indication that all services offered in the original proposal still apply or specify any deviations. If they continue to be able to meet the minimum requirements, we would continue to allow them to offer their services (please note minimum requirements are on page 9 of the RFP). We plan to post the RFP to our web site and the State procurement SPO system.

We will be available at the NDPERS Board meeting to discuss any questions you may have.

**Board Action Requested:** Approve the EAP RFP and renewal process.

# **REQUEST FOR PROPOSAL**

**Enrollment in the State of North Dakota's  
Employee Assistance Program 2023-2025**

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**Prepared by:**

**North Dakota Public Employees Retirement System  
P.O. Box 1657  
Bismarck, ND 58502-1657**

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## I. BACKGROUND

The 1995 Legislature authorized an Employee Assistance Program (EAP), for employees of state agencies and higher education. This program allows permanent employees to receive confidential assistance in many areas without accessing the health care system.

EAP coverage applies to approximately 115 agencies. These agencies have about 15,000 employees with about 25,000 dependents. Residence of these members is mainly in North Dakota and bordering cities, but potentially includes remote workers located outside of the state. Eligibility for a dependent is the same as the NDPERS Group Medical Plan.

**ELIGIBLE DEPENDENT** - a dependent of the employee who qualifies for membership under this Benefit Plan in accordance with the requirements specified below:

- A. The employee's spouse under a legally existing marriage
- B. The employee's or the employee's living, covered spouse's children under the age of 26 years. Children are considered under age 26 until the end of the month in which the child becomes 26 years of age. The term child or children includes:
  - 1) Children physically placed with the employee for adoption or whom the employee or the employee's living, covered spouse has legally adopted.
  - 2) Children living with the employee for whom the employee or the employee's living, covered spouse has been appointed legal guardian by court order.
  - 3) The employee's grandchildren or those of the employee's living, covered spouse if:
    - a) Be the natural child of the Subscriber's Dependent child, a child placed with the Subscriber's Dependent child for adoption, a legally adopted child by the Subscriber's Dependent child, a child for whom the Subscriber's Dependent child has legal guardianship, a stepchild of the Subscriber's Dependent child, or foster child of the Subscriber's Dependent child. These same definitions apply to dependents of the Dependent child(ren) of the Subscriber's living, covered Spouse; and
    - b) The Subscriber's Dependent child must be a Covered Dependent under this Certificate of Coverage for the dependent of the Dependent child to be eligible; and

- c) The Subscriber's Dependent child must be chiefly dependent on the Subscriber for support as determined by N.D.C.C. §26.1-36-22 (3)(4) .
- 4) Children for whom the employee or the employee's living, covered spouse are required by court order to provide health benefits.
- 5) Children beyond the age of 26 who are incapable of self-sustaining employment by reason of a disabling condition and chiefly dependent upon the Certificate holder/Subscriber for support and maintenance. If the Plan so requests, the Subscriber must provide proof of the child's disability within *thirty-one (31)* days of the Plan's request. Such a request may be no more than annually following the two year period of the disabled dependent child's attainment of the limiting age [N.D.C.C. §26.1-36-22 (4)]. If a person has a disabled dependent that is over the limiting age but was never previously covered by the Plan, they are eligible for coverage if the disability occurred prior to reaching the limiting age of 26. If for any reason, Subscriber drops coverage for a disabled dependent prior to age 26, then wishes to cover the child again, coverage must be added prior to the child turning age 26. If the disabled child has reached age 26, the child must be continuously covered under the Plan in order to maintain eligibility.

## **II. ADMINISTRATION**

The Public Employees Retirement System (NDPERS) administers the EAP. The NDPERS EAP is an agency-based program with each individual agency choosing an EAP vendor. NDPERS does all agency billing and Vendor payments. Enrollment, orientation, services, and reporting is the responsibility of the vendor. Individual agency reports are supplied on at least an annual basis. Overall reporting on utilization shall be reported back to NDPERS on a quarterly basis. Reporting shall include but not be limited to Cases, Services, Treatments, Referrals, and Management Training.

## **III. EAP PROGRAM FORMAT, SOLICITATION PROCESS, AND TIME FRAMES**

NDPERS has adopted a methodology for providing EAP services that is called an Agency Based Approach. Pursuant to this method, each agency is the focal point for the decision on which EAP vendor would be the most appropriate for their employees. To implement this approach the NDPERS Board establishes a list of qualified vendors based upon this bid process and a renewal procedure for existing Vendors. EAP vendors that are able to successfully meet the minimum requirements are placed on a list of qualified vendors. Each agency is offered the list and allowed to select one vendor from that list to provide services to that agency's employee base. An agency may select multiple vendors for geographical reasons.

In recognition of the above, this solicitation process involves two steps. First, each new vendor must complete this RFP and be approved by the NDPERS Board. The approved vendors will be placed upon a list of qualified vendors that will be sent to each agency. Along with the list will be information on the vendor's EAP and pricing. Second, each agency will review the list of qualified vendors and select a vendor to provide services to that agency for the upcoming biennium. NDPERS will then finalize a contract with each of the selected vendors for services. The initial selection by NDPERS to place a vendor on the list of qualified vendors does not guarantee the vendor will be selected by any of the agencies. If not selected by any agency, the vendor will not have a contract with NDPERS for services.

The estimated time frames for this solicitation and agency selection process are as follows:

Date	Activity
March 1, 2023	NDPERS will issue RFP
March 31, 2023	Proposals are due
May 9, 2023	NDPERS Board will select vendors
May 22, 2023	List of vendor information will be given to agencies
June 2023	NDPERS virtual Employer Conference (tentative)
June 21, 2023	Agencies select vendors
June 28, 2023	NDPERS enters into contract with selected vendors
July 1, 2023	EAP contract effective date

**IV. SCOPE OF WORK**

NDPERS is seeking a vendor(s) to provide the following services:

**A. Member Orientation**

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
  - a) Prepare and print appropriate informational material for distribution to all employers.

- b) Conduct all presentations in a courteous, prudent and restrained manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
  - c) Attend and present information at the NDPERS virtual Employer Conference per the guidelines provided by NDPERS.
  - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2021-2023 biennium, the EAP vendor must:
- a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
  - b) If requested by employer, hold an informational meeting for agency employees.

**B. Minimum Services**

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: Stress, Family, Work, Grief, Tobacco, Alcohol & Drugs, Marriage & Divorce, Depression, Parent-Child Relationships, Child/Spouse Abuse, Aging, Eating Disorders, Financial, School, Gambling, Suicide, and Mental Health. Proper referrals will be made if more extensive counseling is needed or further counseling is needed, and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the work place.
- 3) Consultation and case management regarding challenging work site problems such as harassment, conflict resolution, violence, critical incidents, work performance, and change.
- 4) Educational programs including training of State supervisory personnel on the use of EAP services and employee seminars.

- 5) Administrative services including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

### **C. Consulting**

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor should anticipate attending one of these meetings per biennium. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

### **V. NDPERS ACTIVITIES**

NDPERS will assist the vendor in the following:

- 1) Notify the vendor of any new agencies.
- 2) Include information on the EAP in our NDPERS newsletters.
- 3) Assist the vendor with establishing contacts with each of the agencies. The payroll/personnel staffs of these agencies will set up meetings with their employees.
- 4) Assign an individual to act as the project leader and be the primary contact within each agency.

## **VI. FEES**

NDPERS receives its funding for this program from the covered state agencies.

NDPERS is requesting each vendor bid this project on a fixed fee per active employee per month basis for enrollments (any changes beyond the fixed fee will not be allowed).

NDPERS will make payment to the vendor by multiplying the total monthly per employee fee by the number of employees in the agencies that chose the Vendor to contract for services. NDPERS will provide each vendor with details of each monthly premium payment electronically in the HIPAA 820 file format.

Bids exceeding \$1.54 per contract (employee) per month will not meet the minimum qualification and will be disqualified from further consideration. Price per contract must be evenly divisible by two.

## **VII. INFORMATION REQUESTS**

The proposal must contain, in a separate section, your organization's responses to the following requested information:

- 1) Provide a brief description of the size, structure, and services provided by your organization, with special emphasis on past experience as an EAP vendor.
- 2) Provide, in detail, your understanding of the services NDPERS is requesting; specifically addressing the scope of work in Section IV, timeframes for delivery and how you intend to staff the project.
- 3) The vendor should provide the following information:
  - An organizational chart of the company which identifies its principal officers and staff members.
  - The qualifications of the vendor's staff members who will be associated with the contract (i.e., education levels and experience with EAP plans). Identify the relationship of staff to the vendor or project manager (i.e., full-time employee, part-time employee, etc.).
  - The day-to-day contact or project manager of the vendor's organization and the qualifications and authority of any such persons.
  - Describe the quality assurance guidelines or ongoing monitoring system you have in place for evaluating professional staff. Who is responsible for assuring high standards of care?



- Locations the vendor currently maintains or plans to maintain. Offices and staff located in and outside of North Dakota. Any subcontractors for EAP services. Please explain.
  - Please explain how you will provide services in areas you do not have an office.
- 4) If some staff is not yet hired or there are plans for expansion, the vendor should provide detailed descriptions.
  - 5) Experience and reliability of the vendor's organization is considered in the evaluation process. Therefore, the vendor is advised to submit any information, which documents successful and reliable experience in past performances; especially those performances related to the requirements of this RFP.
  - 6) The vendor **MUST** specify the principle business of the vendor and when the vendor began working in this area.
  - 7) Please discuss your capabilities to provide referral and evaluation services under the Omnibus Transportation Employee Testing Act of 1991. However, these services are not being requested as part of the EAP.
  - 8) Please certify that no real or potential conflicts of interest are known. If there is a perceived conflict of interest, please include a statement proposing remedial actions that would be taken to eliminate it. No conflict of interest should exist which would prevent the vendor from representing NDPERS with respect to this proposal. Each vendor must disclose all potential conflicts of which he or she has knowledge or which may arise with respect to the representation of NDPERS on this proposal including, without limitation, any circumstances which would create the appearance of a conflict of interest. NDPERS will disqualify a potential vendor if, in NDPERS' sole judgement, such conflict would preclude effective representation by that vendor.

- 9) Complete the following table and questions with information on your proposed EAP. The vendor shall show where their proposed services meet or exceed the minimum requirements in the following table.

EAP Features	Minimum	Vendor
EAP Established	1 year	
Number of Annual Sessions Per Individual	6	
Number of Annual Sessions Per Incident	6 (Full Individual Minimum)	
Coverage	Employee and Dependents	
Staffing	Licensed Social Workers	
Appointment Timing	Within 72 hours	
Emergency Appointments	Within 24 hours	
Weekend/Holiday Appointments	Emergency	
1-800 number	Minimum one line	
Phone Counseling	Minimum one staffed line	
24 hour Crisis 'Hot' Line Staffing	Minimum one staffed line by LSW	
On-site Employee Orientation	1 per year (Smaller groups may be combined)	
On-site Seminars	None, except as noted in IV, A, 1, c & d	
Off-site Seminars	None, except as noted in IV, A, 1, c & d	
Management Training	Minimum Requirements: Stress, Conflict, Crisis, Change Management	
Management Consulting	Available to all supervisory/management staff	
Additional/Specialty Services Available	@ Additional Cost	
Employee Newsletters Supervisory Newsletters Internal Marketing Material (i.e., payroll stuffers, posters, etc.)	Quarterly Biannually As needed	
Agency/NDPERS Reporting - Utilization - Survey	Agency Quarterly with Annual to Date Aggregate annual report on utilization and member satisfaction to NDPERS.	
Price	\$1.54 Maximum	
OTHER UNIQUE FEATURES		

**Questions:**

1. Indicate how long your organization has been in the EAP market.
2. Specify how long your organization has been in existence and whether it is a division of a parent company. Does it have an affiliation with other business entities? If so, explain the nature of these affiliations. Is it privately or publicly held?
3. Has your organization been through recent reorganization or name changes? If yes, briefly describe the nature of the reorganization and list past names of your organization.
4. Provide a summary of any and all claims, pending litigation, and judgements that have been entered against your organization in the past five years that are directly related to its provision of an EAP.
5. For cases in which a plan member requires additional services beyond those available through the EAP, which are not covered by the State health plan, how do you recommend handling referrals so that members do not get the mistaken impression that these services are covered?
6. How are emergency and crisis situations handled? How do you recommend your organization be contacted in the case of emergency admissions? What is your response time?
7. For short-term counseling within the EAP, what number of sessions per individual do you recommend and why? Is this number a total per individual per year or per problem incident? Do you recommend a different number of sessions based upon incident treatment? Explain your answers.
8. Typically, what percent of cases do you resolve within the EAP through short-term counseling and what percent are referred outside the EAP?
9. If treatment outside the EAP is recommended, typically how many visits are made to an EAP counselor before outside referral is made?
10. Describe the range of counseling services available which you recommend be provided within the EAP. Will all services be offered to employees at all your locations?
11. Describe educational courses you would propose for supervisors on use of an EAP and other employee educational programs. Indicate frequency, topics, and specify associated costs.
12. Describe educational courses or awareness campaigns specific to wellness related topics.

13. Describe educational courses or awareness campaigns specific to the topics of depression, mental health, and suicide for both supervisors and employees.
14. Describe the nature and scope of employee communications that are provided as part of your fee. Include a sample of all communication material you customarily prepare.
15. Are you able to customize written materials and communications? Is there an additional cost associated with customization?
16. Under the plan of benefits you indicate a certain number of sessions are available to each member. Please define what constitutes a session (i.e., duration or time).
17. Concerning the management training and consulting services that are part of the services proposed, please define the depth, scope and range of these services (number of sessions, hours of management consulting, etc.).
18. What services does your EAP provide relating to maintaining a drug free workplace and employee testing? To what extent are these services part of your proposal and, to the extent they are not, what is the cost for those additional services?
19. What services (virtual and/or in-person) do you provide for employers and employees?

**VIII. SUBMISSION OF PROPOSAL**

- A. 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 Vendor and shall not be chargeable to NDPERS.
- B. The bidder shall sign the proposal. The signer must be a partner or principal of the firm. An unsigned proposal will be rejected.
- C. Address or deliver the RFP to:
 

Katheryne Korom  
 North Dakota Public Employees Retirement System  
 1600 East Century Avenue, Suite 2, PO Box 1657  
 Bismarck, ND 58502-1657  
 (701) 328-3900
- D. Six (6) copies of the proposal must be received at the above listed location by: **5:00 p.m. Central Time, on March 31, 2023**. The package the proposal is delivered in must be plainly marked "**PROPOSAL TO PROVIDE EAP SERVICES**". In addition to the six copies, submit an electronic copy of the

proposal. Proposal can be sent by email to: [katherynekorom@nd.gov](mailto:katherynekorom@nd.gov) . A proposal shall be considered late and will be rejected if received at any time after the exact time specified for return of proposals.

- E. The policy of the NDPERS Board is to solicit proposals with bona fide intent to award a contract. This policy will not affect the right of the NDPERS Board to reject any or all proposals.
- F. The NDPERS Board may request representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- G. The NDPERS Board will award the contracts for service no later than June 2023.
- H. In evaluating the proposals, price will not be the sole factor. The NDPERS Board may consider any factors it deems necessary and proper for best value, including but not limited to: price, quality of service, response to this request, experience, staffing, and general reputation.
- I. The vendor must sign the attached agreements, including the agreement for services, business associate agreement, and confidential information memorandum of understanding. Signed agreements must be submitted with the proposal. If the NDPERS Board accepts the proposal, the agreements will be signed and a copy will be returned.
- J. NDPERS reserves the right to make the decision exclusively based on whatever criteria the Board deems appropriate.

**Appendix A – Agreements**  
**AGREEMENT FOR SERVICES BETWEEN (Name of Contractor)**  
**AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

VENDOR (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement (“Agreement”). CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2023 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence July 1, 2023.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

In addition, NDPERS by written notice to CONTRACTOR may terminate the whole or any part of this Agreement under any of the following conditions:

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

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination. In addition, NDPERS may terminate this Agreement effective upon thirty (30) days prior written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Agreement within the time specified or any extension agreed to by NDPERS; or

2) If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

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

- 6) **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 without cause.

CONTRACTOR may enter into 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 NDPERS.

- 7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of NDPERS that return or destruction of confidential information is not feasible, CONTRACTOR shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those



purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains the confidential information.

CONTRACTOR shall not use or disclose any information it receives from NDPERS under this Agreement that NDPERS has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by NDPERS. NDPERS shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that NDPERS 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 NDPERS and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

- 8) **APPLICABLE LAW AND VENUE:** This Agreement 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*.
- 9) **MERGER AND MODIFICATION:** This Agreement, 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 Agreement. This Agreement 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 Agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.



- 10) **INDEMNITY:** 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.
- 11) **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 contact 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.
- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement 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 Agreement, except to the extent specified in this Agreement.

- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** By entering into this Contract, NDPERS 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.
- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

**NDPERS:**  
Scott Miller, Executive Director  
ND Public Employees Retirement System  
1600 East Century Avenue, Suite 2  
PO Box 1657  
Bismarck, ND 58502-1657

CONTRACTOR:

VENDOR

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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.

- 18) **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 at all times 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.

- 19) **STATE AUDIT:** 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 all of 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.
- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is:\_\_\_\_\_.
- 21) **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, and certificates will be furnished upon request by the NDPERS.
- 22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

IN WITNESS WHEREOF, CONTRACTOR and NDPERS have executed this Agreement as of the date first written above.

**NORTH DAKOTA PUBLIC  
EMPLOYEES RETIREMENT SYSTEM**

**CONTRACTOR**

\_\_\_\_\_  
Executive Director  
ND Public Employees Retirement System

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
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

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.

- I. 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.
- d. 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.
- e. 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 07/01/2023, 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:

\_\_\_\_\_  
 Scott Miller, 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: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

**VENDOR**

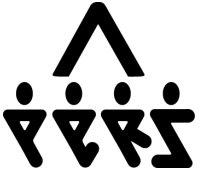
BY: \_\_\_\_\_

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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website [www.ndpers.nd.gov](http://www.ndpers.nd.gov)

# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** February 14, 2023

**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 ten 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 484 individuals received their flu vaccination through this campaign. This amount is significantly less than in previous years. Staff asked UND Center for Family Medicine for thoughts on the lower total. They indicated that vaccinations have become more readily available at pharmacies, clinics, and drive-up options that don't require pre-registration. They do not think less people are receiving the vaccines but rather, there are more options available that may be more convenient for members.

## **Annual Enrollment**

Annual enrollment was conducted from October 17 – November 4, 2022. 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:**

	<b>2022</b>	<b>2022</b>	<b>2023</b>	<b>2023</b>
	<b>Participants</b>	<b>Contributions</b>	<b>Participants</b>	<b>Contributions</b>
Medical Spending	2,164	\$3,747,483	2,100	\$3,756,531.16
Dependent Care	399	\$1,622,167	397	\$1,612,396.92
<b>Total</b>	<b>2,563</b>	<b>\$5,369,650</b>	<b>2,497</b>	<b>\$5,368,928.08</b>

**Dental & Vision Plans:**

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

	<b><u>2022</u></b>	<b><u>2023</u></b>
Dental	12,440	12,993
Vision	12,750	13,180

**High Deductible Health Plan:**

The enrollment change for the High Deductible Health Plan is:

<b><u>2022</u></b>	<b><u>2023</u></b>
646	818

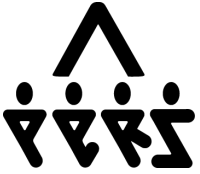
**457(b) Deferred Compensation Plan:**

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)	609	184	424	1
Other 457(b) Deferred Compensation Providers	68	4	62	2

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 E Century Ave, Suite 2 • Box 1657  
Bismarck, North Dakota 58502-1657

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax: (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website <https://ndpers.nd.gov>

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               MaryJo Anderson

**DATE:**               February 14, 2023

**SUBJECT:**           Disability Consultant Agreement

The agreement with Mid Dakota Clinic for disability consulting services expires June 30, 2023. The Board must determine whether to renew or go out for bid. Innovis Health, LLC (formerly Mid Dakota Clinic) has indicated they wish to continue to perform these services for NDPERS at the same rate of \$200 per hour for the period July 1, 2023 through June 30, 2025 contract period. The proposed agreement is attached and has been reviewed by both the Innovis and NDPERS legal staff. This agreement represents no increase in the hourly rate from the current contract period. This is the fifteenth year wherein no increase has been requested (since July 1, 2008).

The amount paid in consulting fees for the fiscal year beginning July 2021 through June 2022 is \$4,800, involving 24 hours and 40 cases. This is an average cost of \$120.00 per case. Staff is satisfied with the service provided by Mid Dakota and recommends that we renew the disability consulting contract for the period July 1, 2021 through June 30, 2022 at the rate of \$200 an hour.

## **Board Action Requested**

Approve to renew the Innovis Health, LLC (formerly Mid Dakota Clinic) proposal for disability consulting services. Also approve the Executive Director signing of the contract amendment.

## MEDICAL CONSULTING AGREEMENT

THIS MEDICAL CONSULTING AGREEMENT (this “Agreement”) is entered into between the State of North Dakota acting through its Public Employees Retirement System (“PERS”) and Innovis Health, LLC, a Delaware nonprofit limited liability company (“Innovis”).

### 1. **SCOPE OF SERVICES**

Innovis, in exchange for the compensation paid by PERS under this contract, agrees to provide the following services:

- A. Provide a licensed medical provider (the “Medical Consultant”) to review applications for disability benefits and make recommendations concerning the eligibility of the individual seeking benefits (the “Individual”). The Medical Consultant must respond in writing within thirty (30) days of receiving the application. In order to be eligible, an Individual must be permanently and totally disabled (“Disabled Annuitant”). This means they must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than twelve months. Substantial gainful activity is based upon the totality of the circumstances including consideration of an individual’s training, education, and experience; their potential for earning at least seventy percent of their pre-disability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual’s employability and not on actual employment status.
- B. Disabled Annuitants are recertified approximately every eighteen months. The medical consultant will review any new information and, if necessary, make recommendations.
- C. To prepare written finding for the Executive Director of PERS and also the Public Employees Retirement System Board. In the event of an appeal, the medical consultant will review any new information and, if necessary, make recommendations.
- D. To provide general consulting services as requested.
- E. To provide a monthly status report including the name of each applicant under review and current status of the claim\application by the 10<sup>th</sup> of each month.
- F. To maintain records and to retain such records for six (6) years after the termination of a disability.

### 2. **TERM**

This Agreement shall commence on July 1, 2023 and end on June 30, 2025.

### 3. **FEES**

PERS shall pay Innovis \$200 per hour for work performed.

#### **4. TERMINATION OF CONTRACT**

- A. Termination without cause or by mutual consent. This contract may be terminated by mutual consent of both parties or by either party by providing thirty (30) days written notice of termination.
- B. Termination for lack of funding or authority. PERS by written notice of default to Innovis 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 and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services 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.

- C. **Termination for cause.** The Parties may terminate this contract effective upon delivery of written notice to the other Party, or any later date stated in the notice:
- 1) If Innovis fails to provide services required by this contract within the time specified or any extension agreed to by PERS; or
  - 2) If Innovis 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; or
  - 3) If Innovis is unable to provide a Medical Consultant that meets the requirements for this Agreement.

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

#### **5. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

#### **6. RENEWAL**

This contract will not automatically renew.

**7. NON-DISCRIMINATION/COMPLIANCE WITH LAWS**

Each Party agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility, and civil rights. Each Party agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Each Party shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

**8. ACCESS TO RECORDS AND AUDIT**

- A. If and to the extent required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the termination of this Agreement, each party agrees to make available, upon written request by the Secretary of the Department of Health and Human Services (the "Secretary"), or upon request by the Comptroller General of the United States General Accounting Office (the "Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by either party under this Agreement. The provisions of this Section 8(A) shall survive the expiration or termination of this Agreement for any reason.
- B. The Public Employees Retirement Board, Office of the Attorney General of the State of North Dakota, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Innovis which are directly pertinent to the specific duties and obligations to be performed pursuant to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. All records, regardless of physical form, and the accounting practices and procedures of Innovis relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee, or Federal auditors. Innovis shall maintain all such records for at least six years following completion of this contract and be able to provide them at any reasonable time. PERS, State Auditor, or Auditor's designee shall provide reasonable notice.

**9. WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to PERS and must be delivered to PERS at PERS request upon termination of this contract. Innovis agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to PERS all rights and interests Innovis may have in the materials it prepares under this contract, including any right to derivative use of the material. Innovis shall execute all necessary documents to enable PERS to protect its rights under this section.

**10. INDEPENDENT ENTITY**

Innovis is an independent entity under this contract and is not a State of North Dakota 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. Innovis retains sole and absolute discretion in the manner and means of carrying out Innovis's activities and responsibilities under this contract, except to the extent specified in this contract.

#### **11. ASSIGNMENT AND DELEGATION**

Innovis may not assign or otherwise transfer or delegate any right or duty without the express written consent of PERS. However, Innovis may enter into subcontracts provided that any subcontractor acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. Innovis is solely responsible for the performance of any subcontractor. Innovis does not have authority to contract for or incur obligations on behalf of PERS.

#### **12. CONFIDENTIALITY**

Innovis agrees not to use or disclose any information it receives from PERS under this contract that PERS 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 PERS. PERS agrees not to disclose any information it receives from Innovis that Innovis has previously identified as confidential and that PERS determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. ch. 44-04. Both parties are aware that information or records may be confidential under state law or federal laws such as HIPAA. Innovis agrees to comply with the requirements of a separately signed Business Associate Agreement as required under the HIPAA Privacy Rule, 45 C.F. R. 164.502(e)(2) and with respect to any services provided under this agreement, to comply with all applicable requirements of the federal HIPAA privacy rule, 45 CFR pts. 160 and 164. The parties agree that all participation by PERS members and their dependents in programs administered by PERS is confidential under North Dakota law. Failure of Contractor to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. Contractor shall not disclose any individual employee or dependent information without the prior written consent of the employee or family member. Contractor has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, Contractor shall return or destroy all confidential information received from PERS, or created or received by Contractor on behalf of PERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the confidential information. In the event that Contractor asserts that returning or destroying the confidential information is not feasible, Contractor shall provide to PERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of PERS that return or destruction of confidential information is not feasible, Contractor shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains the confidential information. The



indemnity provisions of this agreement specifically apply to the duty of Innovis to comply with this confidentiality requirement.

**13. COMPLIANCE WITH PUBLIC RECORDS LAW**

Innovis understands that, except for information that is confidential or otherwise exempt from the North Dakota open records law, PERS must disclose to the public upon request any records it receives from Innovis. Innovis further understands that any records that are obtained or generated by Innovis under this contract, except for records that are confidential or exempt may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Innovis agrees to contact PERS immediately upon receiving a request for information under the open records law and to comply with PERS instructions on how to respond to the request.

**14. NO EXCLUSION/DEBARMENT**

Each party hereby represents and warrants to the other that neither it nor any employee, contractor, or agent now or hereafter engaged by such party to provide services under the Agreement (collectively, a “Representative”) is, and at no time has been, excluded from participation in any federally funded health care program, including the Medicare and Medicaid programs. Each party hereby agrees to immediately notify the other of any threatened, proposed, or actual exclusion of such party or any Representative from any federally funded health care program, including the Medicare and Medicaid programs. In the event that a party or any Representative is excluded from participation in any federally-funded health care program during the Term of this Agreement, or if at any time after the Effective Date it is determined that a party or a Representative is in breach of this Section, the Agreement shall automatically terminate as of the date of such exclusion or breach; provided, however, that if the breaching party immediately removes a Representative who is so excluded or has otherwise breached the provisions of this Section from the performance of services under the Agreement, the Agreement shall not automatically terminate. The provisions of this Section shall survive the expiration or termination of the Agreement for any reason.

**15. INDEMNITY**

Innovis agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees, including the North Dakota Public Employees Retirement System, its Board of Trustees, officers and employees (for the purposes of this provision all parties are together referenced as the “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 or omissions. The legal defense provided by Innovis to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for 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. Innovis also agrees to defend, indemnify,

and hold the State harmless from all costs, expenses and attorneys' fees incurred if the State prevails in an action against Innovis in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

## **16. INSURANCE**

- A. Innovis shall secure and keep in force during the term of this agreement, and shall require all subcontractors, prior to commencement of an agreement between Innovis 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 \$250,000 per person and \$1,000,000 per occurrence.
  - 2) Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate, Innovis shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, Innovis shall purchase an extended reporting period to meet the time periods required in this section.
  - 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
  - 4) 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.
  - 5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- B. 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 Innovis.
  - 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.
- C. The commercial general liability insurance required in this agreement, through a policy or endorsement, shall include:

- 1) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the commercial general liability insurance required in this agreement.
- 2) 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.
- 3) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
- 4) A provision that Innovis's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Mid Dakota's insurance and shall not contribute with it;
- 5) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
- 6) The insolvency or bankruptcy of Innovis shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents Innovis from meeting the retention limit under the policy.
- 7) Innovis 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.

D. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

E. Innovis shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements.

## **17. APPLICABLE LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought 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.

## **18. MERGER CLAUSE**

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any such waiver, consent, modification, or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.

**19. SEVERABILITY CLAUSE**

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

**20. NOTICE**

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

MaryJo V. Anderson  
Retirement Programs Manager  
NDPERS  
PO Box 1657  
Bismarck, ND 58502-1657

Alexis Witt  
WorkLife & Therapy Manager  
Essentia Health – Mid Dakota Bismarck  
2700 State St. Unit L-1, Gateway Mall  
Bismarck, ND 58503

*With a copy to:*

Essentia Health  
ATTN: Chief Legal Officer  
502 E. 2<sup>nd</sup> St.  
Duluth, MN 55805

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.

**21. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

Innovis shall promptly notify PERS of all potential claims that arise or result from this contract. Innovis 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 PERS the opportunity to review and inspect the evidence, including the scene of an accident.

**22. ATTORNEY FEES**

In the event a lawsuit is instituted by PERS to obtain performance due under this contract, and PERS is the prevailing party, Innovis shall, except when prohibited by N.D.C.C. § 28-26-04, pay to the State of North Dakota reasonable attorney fees and costs in connection with the lawsuit.

**23. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The State of North Dakota does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State of North Dakota does not waive any right to a jury trial.

**24. TAXPAYER ID:**

Innovis’s federal employer ID number is: 26-1175213.

**25. EFFECTIVENESS OF CONTRACT:**

This contract is not effective until fully executed by both parties.

**NORTH DAKOTA PUBLIC EMPLOYEES  
RETIREMENT SYSTEM**

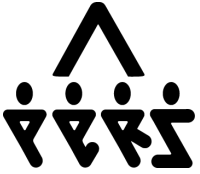
**INNOVIS HEALTH, LLC**

\_\_\_\_\_  
Scott A. Miller, Executive Director  
ND Public Employees Retirement System

\_\_\_\_\_  
Authorized Agent  
Innovis Health, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



# Memorandum

**TO:** NDPERS Board

**FROM:** Aime

**DATE:** February 14, 2023

**SUBJECT:** Board Election Committee

The term of elected Board member Jason Grueneich expires on June 30, 2023. 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 election process.

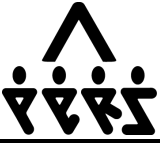
The Board Election Committee is responsible for validating the candidates' nomination petitions in May and canvassing the election results in June.

The timeline for the 2023 Board Election is as follows:

<b>Date</b>	<b>Action Item</b>
<i>April 10</i>	Announce and promote board vacancy to members
<i>May 5</i>	Deadline to receive physical nomination petitions forms at the NDPERS office
<i>Week of May 8</i>	Election subcommittee meets to validate petitions
<i>May 15</i>	Deadline for candidate to withdraw from election
<i>May 22</i>	Electronic voting begins
<i>June 9</i>	Electronic voting closes
<i>June 12</i>	Election subcommittee meets to canvass election results
<i>June 13</i>	Election results announced during Board meeting

## **BOARD ACTION REQUESTED**

Appoint a three-member committee and designate one as chair to oversee the 2023 Board election and approve the proposed timeline.



# Memorandum

**TO:** NDPERs Board

**FROM:** Aime

**DATE:** February 14, 2023

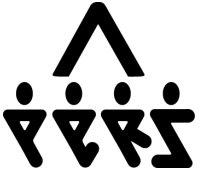
**SUBJECT:** Annual Communication Plan

In 2023, we will continue the popular Lunch & Learns as well as the regular Pre-Retirement Education and Financial Essential Workshop.

Event Topic	Date
Reading your benefit estimate	February 8
Sick leave: what is it and should I purchase it?	March 8
Returning to work after retirement	April 12
Financial Essentials Workshop	May 10
Pre-Retirement Education Day 1: Retirement	May 17
Pre-Retirement Education Day 2: Insurance & Legal	May 18
Creating your Member Self Service Account	September 13
Health Insurance in Retirement	November 8

This topic is informational only.





# Memorandum

**TO:** NDPERs Board

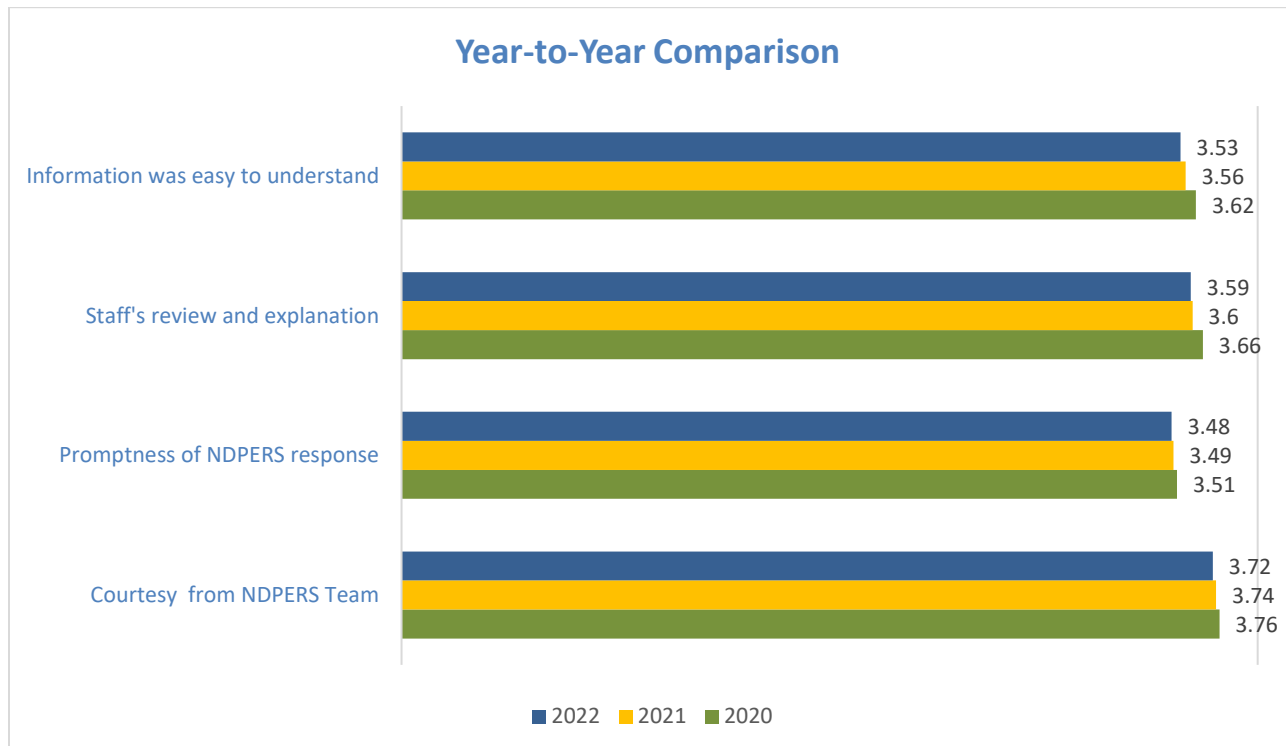
**FROM:** Aime

**DATE:** February 14, 2023

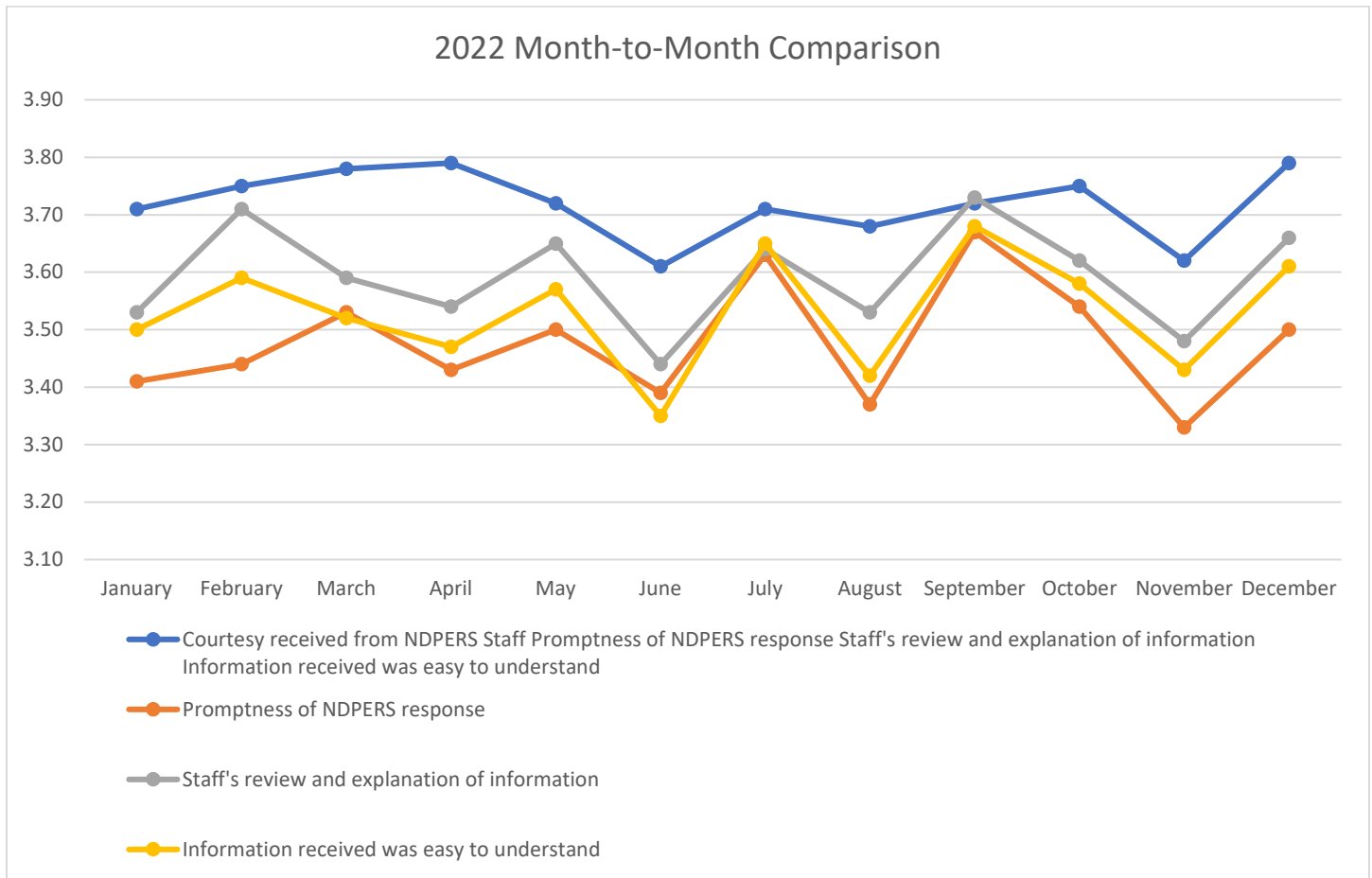
**SUBJECT:** Member Experience Annual Report

This is the 2022 summary of member feedback regarding their experience with NDPERs.

The first graph reflects the 2022 year-to-year comparison. The highest score is a 4.

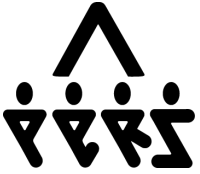


The second graph displays a month-to-month comparison.



Question	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Courtesy from NDPERS staff	3.71	3.75	3.78	3.79	3.72	3.61	3.71	3.68	3.72	3.75	3.62	3.79
Promptness of NDPERS response	3.41	3.44	3.53	3.43	3.50	3.39	3.63	3.37	3.67	3.54	3.33	3.50
Staff's review and explanation	3.53	3.71	3.59	3.54	3.65	3.44	3.64	3.53	3.73	3.62	3.48	3.66
Information was easy to understand	3.50	3.59	3.52	3.47	3.57	3.35	3.65	3.42	3.68	3.58	3.43	3.61

This topic is informational only.



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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

Fax: (701) 328-3920 Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov) Website <https://ndpers.nd.gov>

# Memorandum

**TO:** NDPERS Board  
**FROM:** Derrick Hohbein  
**DATE:** February 14, 2023  
**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, 2022, as well as our total appropriation, are summarized in the table below:

	2021-2023 Appropriation	Expenditures to Date	Remaining Appropriation	% Remaining
Salaries & Wages	7,209,060	5,218,317	1,990,743	28%
Operating	2,500,736	1,633,464	867,272	35%
Capital Assets	257,600	257,600	-	0%
Contingency	250,000	-	250,000	100%
Total	10,217,396	7,109,381	3,108,015	30%

The biennium runs through June 30, 2023, meaning we have 25% of the biennium remaining for these expenditures.

Please let me know if you have any questions on the summary.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Derrick Hohbein

**DATE:**               February 14, 2023

**SUBJECT:**           IT Consulting Contract

During the Board planning meeting in November 2021, staff discussed the possibility of using some of our operational savings this biennium to help modernize some processes in our IT division. Losing two members out of a division of three makes this endeavor a necessity.

There are a handful of essential functions (Deferred Compensation processing, Flex processing, H.S.A. processing) that use archaic processes, some that have been in place since before the introduction of PERSLink. The current IT staff do not have the expertise to debug these programs to identify where the inputs for these processes exist, where the outputs from these processes appear, or how to make changes if needed.

Staff is proposing using an IT consultant for the remainder of the biennium to analyze these functions, and if there is a better platform to which we should move the activities. Nexus is an IT consultant that utilizes a state contract, and because the services will be under the \$250,000 threshold, an RFP process is not necessary to move forward with this endeavor.

Both OMB Procurement and Dean DePountis have reviewed the attached proposal and did not have any concerns other than the vague scope of the project, which we know will change based on the needs of the findings.

**Board Action Requested:**

Consider the agency's need for an IT consultant for the rest of the biennium, approve the contract, and allow for the Executive Director to execute the contract.



# VENDOR WORK ORDER REQUEST

STATE OF NORTH DAKOTA  
SFN 54383 (2-2020)

# Attachment

<b>Agency Name</b> NDPERS	<b>Work Order Request Number</b> 20230214	<b>Issue Date</b> 02/14/2023	
<b>Name of Agency Contact</b> Mandy Nagel	<b>E-mail Address</b> mnagel@nd.gov	<b>Telephone Number</b> (701) 328-3912	
<b>Address</b> 1600 East Century Avenue, Suite 2	<b>City</b> Bismarck	<b>State</b> ND	<b>Zip Code</b> 58503
<b>Work Order Requested Under State Contract (Insert Number)</b> Information Technology Professional Services Contract Pool 095			

**Reference:** In accordance with the terms and conditions of the State Contract noted above between State and Vendor, this Work Order Request authorizes delivery of the Deliverables described in accordance with the Scope of Work, Schedule, and terms specified below.

### 1. Scope of Work

a. Describe Scope of Work
<ol style="list-style-type: none"> <li>1. Read the desktop application code and document what the process</li> <li>2. Update the code since much of it is in older versions of Visual Studios</li> <li>3. Optimize the code and remove unnecessary dependencies</li> <li>4. Revise the applications with the needed changes that we will specify later</li> <li>5. Set up a code repository for managing application code branches and versioning</li> <li>6. A BAA/MOU will be executed for the work (See attachment)</li> <li>7. Weekly status meetings to review budget and hours worked</li> <li>8. Weekly resource meeting to determine the quantity of work for the following week</li> </ol>
b. Budget Available (if applicable)
Not to exceed \$50,000

### 2. Staffing Requirement

Job Class/Skill Set	Number of Staff
Programmer / Analyst	1

<b>3. Agreement Type</b> <input checked="" type="checkbox"/> Time and Materials <input type="checkbox"/> Fixed Bid Project	<b>4. Project Start Date</b> 2/14/2023	<b>5. Project End Date</b> 6/30/2023
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### 6. Schedule of Deliverables

Deliverable	Start Date	Completion Date
Review and document eight to ten desktop applications	2/14/2023	6/30/2023
Update code to current version of Visual Studio	2/14/2023	6/30/2023
Optimize code and remove unnecessary dependencies	2/14/2023	6/30/2023
Revisions to existing applications as specified	2/14/2023	6/30/2023
Set up a code repository for managing application branches and versions	2/14/2023	3/31/2023

<b>7. Location of Work</b> Off-Site		
<b>8. Office Space Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor	<b>9. Equipment Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor	<b>10. Software Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor
<b>11. Agency Project Manager</b> Mandy Nagel		<b>12. Vendor Project Proposal Due Date</b> 6/30/2023

**13. Time and Status Reporting Systems to be Utilized by the Vendor (Mark all that apply)**  
 Daily Accountability       Weekly Status Reports       Monthly Reports       Other – Describe below:

14. Evaluation Criteria (For Competitive Work Orders) The criteria below will be used to select the most advantageous proposal.	Points (100 Total)
Vendor Project Proposal Solution	30
Qualification and Availability of Vendor Staff	40
Cost	30

**Vendor Project Proposal:** Vendor shall attach its proposal to this Work Order Request when responding. If Points are zero in 14. Evaluation Criteria, the information requested is optional as it will not be scored. The Vendor Project Proposal will include, at a minimum, the following items:

1. Vendor Project Proposal - Vendors must describe their strategy for accomplishing the work. Provide customer references for similar projects successfully completed, if available.
2. Qualifications and Availability of Vendor Staff - Provide the names and availability of staff who will work on the project. Provide the following documentation with the first work order for an agency. Provide updated documentation for subsequent work orders, if requested:
  - a. Resume(s) for Vendor staff
  - b. Reference checks for Vendor staff. Include the results of two reference checks that the Vendor has performed on the proposed individual, including the names and telephone numbers of the references. At least one reference must be from a previous employer or from a customer for which the Vendor staff performed IT contract services.
  - c. Background checks for Vendor staff. Vendor agrees that State may require contracted staff and subcontractors assigned by Vendor to perform work under this work order to submit to a criminal history record check in accordance with N.D.C.C. § 54-59-20 and §12-60-24. State shall have the right to reject any individual assigned to perform work under this work order if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.
3. Cost - Provide a cost to match the requested Agreement Type above.
  - a. Time and Materials Proposals - Propose a Service Rate per hour for each proposed Vendor staff. If the Project dates span more than one year of the Contract term, provide rates for each effective year. Service rates may not exceed the rates originally proposed in response to this RFP; however, the rates may be less.
  - b. Fixed Bid Proposals - Provide a fixed price to accomplish the Statement of Work.

**Execution:** The parties through their authorized agents have executed this Work Order Request and attached Vendor Project Proposal under terms of the above-mentioned master agreement, subject to amendments in this Work Order, for the project price and on the dates set out below.

The total dollar contractual amount specified below for this Work Order and attached Project Proposal shall not be exceeded unless a written amendment is appended to this Work Order, duly executed by the authorized representative of both parties.

Total Contractual Amount \$35,000.00
---

State of North Dakota	Vendor
Agency Name NDPERS	Vendor Name Nexus
Signature	Signature
Printed Name Scott Miller	Printed Name
Title Executive Director	Title

If Vendor is unable to bid this work order, please return the work order to requesting agency and provide the reason:





# VENDOR WORK ORDER REQUEST

STATE OF NORTH DAKOTA  
SFN 54383 (2-2020)

<b>Agency Name</b> Nexus	<b>Work Order Request Number</b> 20230124	<b>Issue Date</b> 02/14/2023	
<b>Name of Agency Contact</b> Scott Borchers	<b>E-mail Address</b> sborchers@nexusinnovations.com	<b>Telephone Number</b> (701) 353-5203	
<b>Address</b> 4204 Boulder Ridge Rd, Suite 160	<b>City</b> Bismarck	<b>State</b> ND	<b>Zip Code</b> 58503
<b>Work Order Requested Under State Contract (Insert Number)</b> Information Technology Professional Services Contract Pool 095			

**Reference:** In accordance with the terms and conditions of the State Contract noted above between State and Vendor, this Work Order Request authorizes delivery of the Deliverables described in accordance with the Scope of Work, Schedule, and terms specified below.

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a. Describe Scope of Work
<ol style="list-style-type: none"> <li>1. Read the desktop application code and document what the process</li> <li>2. Update the code since much of it is in older versions of Visual Studios</li> <li>3. Optimize the code and remove unnecessary dependencies</li> <li>4. Revise the applications with the needed changes that we will specify later</li> <li>5. Set up a code repository for managing application code branches and versioning</li> <li>6. A BAA/MOU will be executed for the work (See attachment)</li> <li>7. Weekly status meetings to review budget and hours worked</li> <li>8. Weekly resource meeting to determine the quantity of work for the following week</li> </ol>
b. Budget Available (if applicable)
Not to exceed \$50,000

## 2. Staffing Requirement

Job Class/Skill Set	Number of Staff
Programmer / Analyst	1

<b>3. Agreement Type</b> <input checked="" type="checkbox"/> Time and Materials <input type="checkbox"/> Fixed Bid Project	<b>4. Project Start Date</b> 2/14/2023	<b>5. Project End Date</b> 6/30/2023
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Set up a code repository for managing application branches and versions	2/14/2023	3/31/2023

<b>7. Location of Work</b> Off-Site		
<b>8. Office Space Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor	<b>9. Equipment Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor	<b>10. Software Provided By</b> <input type="checkbox"/> Agency <input checked="" type="checkbox"/> Vendor
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2. Qualifications and Availability of Vendor Staff - Provide the names and availability of staff who will work on the project. Provide the following documentation with the first work order for an agency. Provide updated documentation for subsequent work orders, if requested:
  - a. Resume(s) for Vendor staff
  - b. Reference checks for Vendor staff. Include the results of two reference checks that the Vendor has performed on the proposed individual, including the names and telephone numbers of the references. At least one reference must be from a previous employer or from a customer for which the Vendor staff performed IT contract services.
  - c. Background checks for Vendor staff. Vendor agrees that State may require contracted staff and subcontractors assigned by Vendor to perform work under this work order to submit to a criminal history record check in accordance with N.D.C.C. § 54-59-20 and §12-60-24. State shall have the right to reject any individual assigned to perform work under this work order if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.
3. Cost - Provide a cost to match the requested Agreement Type above.
  - a. Time and Materials Proposals - Propose a Service Rate per hour for each proposed Vendor staff. If the Project dates span more than one year of the Contract term, provide rates for each effective year. Service rates may not exceed the rates originally proposed in response to this RFP; however the rates may be less.
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Total Contractual Amount \$35,000.00
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State of North Dakota	Vendor
Agency Name NDPERS	Vendor Name Nexus
Signature	Signature
Printed Name Scott Miller	Printed Name
Title Executive Director	Title

If Vendor is unable to bid this work order, please return the work order to requesting agency and provide the reason:

## 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 **Nexus, 4204 Boulder Ridge Rd, Suite 160. Bismarck, ND 58503.**

### 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 **Nexus company.**
- 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

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.

- I. 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.
- d. 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.
- e. 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 02/14/2023, 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 **Nexus** [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:

\_\_\_\_\_  
Scott Miller, 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 Nexus relating to maintenance and destruction of NDPERS Confidential Information held by VENDOR and its subsidiaries.

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

WHEREAS, the services provided by NEXUS 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 NEXUS 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 NEXUS 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, NEXUS has provided and NDPERS has reviewed the NEXUS records retention policy (Policy) applicable to the Confidential Information and NEXUS 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. NEXUS 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, NEXUS shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, NEXUS shall provide NDPERS a copy of any change to the Policy provided NDPERS on DATE.
4. NDPERS agrees these actions are consistent with NEXUS obligations under these Contracts.

5. This Memorandum of Understanding will terminate upon notice to NDPERS by NEXUS that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to NEXUS 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: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

**NEXUS**

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Attach Contractor Records Retention Policy**



*Application Analysis and Support*

# Statement of Work

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Version 1.0

*Presented By*  
*Nexus Innovations*

*Prepared For*

**North Dakota Public Employees Retirement System**

## Project Details

<b>Client Name</b>	North Dakota Public Employees Retirement System
<b>Client Contact</b>	Mandy Nagel
<b>Project Name</b>	Application Analysis and Support
<b>Engagement Duration</b>	4 ½ months
<b>Proposed Start Date</b>	February 14, 2023
<b>Proposed End Date</b>	June 30, 2023

## Background

North Dakota Public Employees Retirement System (NDPERS) has requested assistance from Nexus to provide analysis and technical support of software applications.

## Project Scope

### *Application Analysis and Support*

The Nexus team will work with the NDPERS IT team to analyze current software applications and provide technical assistance as requested in support of the software applications.

### *Schedule of Rates*

Consultant	Rate
Software Engineer/Business Analyst	\$130/hr – based on current ND Labor Pool Rates

### *Estimated Project Costs*

Estimated project costs, assuming 15-20 hours per week of support and rates as above, are \$35,000. The project contains many unknowns and the cost estimate is an estimate. The actual project cost could be higher or lower than the initial estimate based on direction and support requested by the NDPERS IT team. Nexus will communicate clearly with NDPERS on actual costs throughout the project and not exceed the estimated estimate unless directed by NDPERS.

### *Travel Expenses*

Nexus will utilize remote office staff and leverage tools such as video-conferencing to meet the needs to support the project.

### *Assumptions*

- *North Dakota Public Employees Retirement System* will provide Nexus Innovations consultants with up-to-date project information.
- Designated project representatives within *North Dakota Public Employees Retirement System* will have sufficient knowledge to be able to answer questions with certainty.

### *North Dakota Public Employees Retirement System Responsibilities*

- Respond to any questions or concerns in a timely manner.

- Provide off-site access as needed (preferably VPN) to servers and systems for the purpose of analysis.
- Coordinating meetings with client staff as needed.

### ***Change Management***

Changes and modifications to the project scope will result in an addendum to this statement of work. Any revision to project costs and timeline impacts will be presented to NDPERS for approval prior to implementation.

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## Acceptance and Authorization

The terms and conditions of the **Nexus Master Services Agreement** apply in full to the services and products provided under this Statement of Work.

**IN WITNESS WHEREOF**, the parties hereto each acting with proper authority have executed this Statement of Work, under seal.

**North Dakota Public Employees  
Retirement System**

**Nexus Innovations, Inc.**

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date





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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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Fax (701) 328-3920    Email [ndpers-info@nd.gov](mailto:ndpers-info@nd.gov)    Website [www.ndpers.nd.gov](http://www.ndpers.nd.gov)

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Scott

**DATE:**               February 14, 2023

**SUBJECT:**           Legislative Relations

Attached is our internal tracking list for legislation. We'll go over some of that and discuss other Legislative topics.

# Attachment

## INDEX OF BILLS:

Updates also provided on NDPERS website at: [Legislation Update | NDPERS](#)

Bill #	Description	Details	Board Position	Status
HB 1039	DB Closure with 1/1/24 effective date	Closes DB plan to new hires after 12/31/23, requires new hires enrollment in DC plan, requires state employers to pay the actuarially determined contribution rate, political sub employers to pay additional 1% ER contribution, one-time cash infusion	Oppose	
HB 1040	DB Closure with 1/1/25 effective date	Closes DB plan to new hires after 12/31/24, requires new hires enrollment in DC plan, requires state employers to pay the actuarially determined contribution rate, political sub employers to pay additional 1% ER contribution, one-time cash infusion	Oppose	
HB 1088	State Investment Board (SIB) Make-up	Changes make-up of the State Investment Board	Neutral	Passed House
HB 1095	Comprehensive Medication Management Program	Requires carriers to have a comprehensive medication management program for individuals taking higher volume of prescriptions	Neutral	
HB 1146	Infertility Benefits	Enhances NDPERS infertility benefit, requires a 2 year study under NDPERS	Neutral	
HB 1183	Changes definition of Peace Officer, retirement eligibility	Expands definition of eligible employee for the State Public Safety plan	Neutral	
HB 1309	BCI benefit change, vesting change	Changes vesting schedule for new hires after 7/31/23, modifies multiplier to two-tiers for all BCI members	Neutral	

HB 1321	NDPERS Board Make-up/Contracting for health insurance (Kasper)	Changes make-up of NDPERS Board and requires legislature to approve renewal or award of health insurance carrier	Oppose	
HB 1379	Legacy interest fund/earnings fund	Modifies stream of payments to NDPERS DB plan	Support	
HB 1411	Prosthetic devices	Requires NDPERS health coverage to include repair & replacement of a prosthetic limb or socket if medically necessary	Neutral	
HB 1413	Copays/Deductibles to Out-of-Pocket Maximums	Requires copayments to go towards out-of-pocket maximum, requires carrier to include any amount paid by the enrollee or paid on behalf of the enrollee to go towards out-of-pocket maximum	Neutral	
HB 1416	Freedom of provider choice	Requires an insurance carrier to reimburse any provider within North Dakota as if they were in-network, even if not within carrier's network	Oppose	
HB 1486	DB Closure with 1/1/25 effective Date, split ADEC	Closes DB plan to new hires after 12/31/24, requires new hires enrollment in DC plan, requires employers (split between state & political subs) to pay the actuarially determined contribution rate, one-time cash infusion	Oppose	
HB 1501	Soybean Council Privatization	Privatizes the Soybean Council	Oppose (unless amended to pay the ER unfunded liability)	
SB 2023	NDPERS Budget	NDPERS budget	Support	
SB 2031	Canadian Drug Reference Pricing	Requires NDPERS to identify the top 25 most costly prescription drugs and provide to the Insurance Dept, Insurance Dept to compare cost of drugs to Canadian drug	Oppose	Failed Senate

		prices, NDPERS/carriers/pharmacists cannot charge more than the Canadian drug prices or face penalties		
SB 2135	Dental Benefit Assignment	Allows the re-assignment of payment to someone other than member for dental carrier reimbursement	Neutral	Passed Senate
SB 2140	Insulin Cap	Imposes a cap on diabetes drugs and supplies	Neutral	
SB 2158	CHAND Study	Requires the study of dissolution of the Comprehensive Health Association of North Dakota (CHAND) during interim, NDPERS included in study of where participants could be transitioned to for health coverage	Neutral	Passed Senate
SB 2160	Telehealth parity	Modifies definitions of telehealth, requires parity of services whether delivered through telehealth or in-person	Neutral	
SB 2164	NDPERS Board Make-up (Legislator from each chamber)	Modifies make-up of NDPERS Board to clarify that a legislator from each chamber to be named	No position	Passed Senate
SB 2171	Governor's 3 <sup>rd</sup> Health Plan Option	Requires NDPERS to offer a 3 <sup>rd</sup> health plan option to state employees that includes ACA mandated coverage, at state employee expense	Neutral	Passed Senate
SB 2239	ADEC Cont, DB Remain Open, DC option	Keeps DB plan open, provides option for new state hires enrollment in DC plan, requires employers (split between state & political subs) to pay the actuarially determined contribution rate, one-time cash infusion	Support	
SB 2378	Clinician-administered drugs	Provides requirements related to clinician-administered drugs for health insurance carriers and pharmacy benefit managers	Monitor	
SB 2389	Prior Authorization	Provides requirements related to prior authorization for health insurance carriers	Neutral if asked	