



NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM

# Board Meeting Agenda

**Location:** WSI Board Room, 1600 East Century Avenue, Bismarck ND  
By phone: 701.328.0950 Conference ID: 501 960 686#  
**Date:** Tuesday, January 9, 2024  
**Time:** 8:30 A.M.

[Click here to join the meeting](#)

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## I. MINUTES

- A. December 12, 2023

## II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

## III. PRESENTATIONS

- A. Interplay Between Century Code, Administrative Code, and Board Policy – Dean

## IV. DEFINED CONTRIBUTION PLAN IMPLEMENTATION

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

## V. DEFINED BENEFIT

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

## VI. GROUP INSURANCE / FLEXCOMP

- A. Group Voluntary Dental Plan Request For Proposal – Katheryne (Board Action)
- B. Uniform Group Insurance Consultant Contract – Katheryne (Board Action)
- C. Benefit Coverage Change for Respiratory Syncytial Virus (RSV) Immunization – Rebecca (Board Action)

## VII. OPERATIONS / ADMINISTRATIVE

- A. Contracts Under \$10,000 – Rebecca (Information)
- B. Proposed Administrative Rules – Rebecca (Information)
- C. Committee Chair Assignments – Rebecca & Michelle (Board Action)
- D. Ethics Commission Request for Opinion – Michelle (Information)
- E. Annual Comprehensive Financial Report (ACFR) – Derrick (Information)
- F. Quarterly Consultant Fees – Derrick (Information)
- G. Letter from North Dakota Industrial Commission – Michelle (Information)
- H. Assurance NM Testing – Derrick (Information)



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## VIII. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

### A. Recordkeeper Request For Proposal Vendor Interviews

1:00 to 1:15 Scoring Review **\*EXECUTIVE SESSION**

1:15 to 2:10 **Vendor A \*\*EXECUTIVE SESSION**

1. Presentation (20 minutes)
2. Board Questions (20 minutes)

2:10 to 3:05 **Vendor B \*\*EXECUTIVE SESSION**

3. Presentation (20 minutes)
4. Board Questions (20 minutes)

3:05 Board Discussion with the Consultant **\*EXECUTIVE SESSION**

### B. Vendor Selection – Board Action

\*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator.

\*\*Executive Session pursuant to N.D.C.C. §§ 44-04-17.1(2) and (5), 44-04-18.4(6), and 44-04-19.2(1) and (6) to hear and discuss oral presentations regarding bids or proposals received by a public entity in response to a request for proposals and to sequester all competitors in a competitive selection or hiring process from that portion of a public meeting wherein presentations are heard or interviews are conducted.



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**Public Employees Retirement System**  
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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** January 9, 2024

**SUBJECT:** Interplay Between Century Code, Administrative Code and Board Policy

As requested at the December meeting, Dean DePountis will be providing an overview of the interplay between North Dakota Century Code, Administrative Code and Board policy.

# Statutes, rules, and policies – an overview.



Constitution  
Century Code  
Administrative Code  
Policies

“No bill may become law except by a recorded vote of a majority of the members elected to each house....”

“No law may be enacted except by a bill passed by both houses....”

“The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution.”

North Dakota Constitution

Article IV, § 13

The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.

N.D.C.C. § 28-32-02

Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency or commission, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

N.D.C.C. § 28-32-06



“The board shall adopt rules necessary to implement this chapter, and to manage the system, subject to the limitations of this chapter.”

N.D.C.C. § 54-52-04

“The board shall adopt rules necessary to implement this chapter and to manage the deferred compensation plan subject to the limitations of this chapter.”

N.D.C.C. § 54-52.2-03.2(1)

The plan may allow a participating member to transfer or rollover funds from other qualified plans into the member's account under rules adopted by the board.

N.D.C.C. § 54-52.6-09.1

## Article 71-01 - General Administration

71-01-01 Organization of Board

71-01-02 Election Rules

71-01-03 Confidential Information Requests

## Article 71-02 - Public Employees Retirement System

71-02-01 Definitions

71-02-02 Membership

71-02-03 Service Credit

71-02-04 Retirement Benefits

71-02-05 Disability

71-02-06 Contributions

71-02-07 Return to Service

71-02-08 Participation by Governmental Units

71-02-09 Review Procedure

71-02-10 Qualified Domestic Relations Orders

71-02-11 Uniformed Services Employment and Reemployment Rights Act

## Article 71-03 - Uniform Group Insurance Program

71-03-01 Bid Process

71-03-02 Health Maintenance Organization Coverage [Repealed]

71-03-03 Employee Responsibilities

71-03-04 Employer Responsibilities

71-03-05 Board Responsibilities

71-03-06 Participation of Political Subdivisions Employee Responsibilities

71-03-07 Participation of Political Subdivisions Employer Responsibilities

## Article 71-04 - Deferred Compensation Plan for Public Employees

71-04-01 Definitions

71-04-02 Plan Design

71-04-03 Employee Responsibilities

71-04-04 Retirement Board Responsibilities

71-04-05 Employer Responsibilities

71-04-06 Provider Responsibilities

71-04-07 Benefits [Repealed]

71-04-08 Qualified Domestic Relations Orders

71-04-09 Uniform Services Employment and Reemployment Rights Act

## Article 71-05 - Highway Patrol Retirement System

71-05-01 Definitions

71-05-02 Disability

71-05-03 Membership

71-05-04 Service Credit

71-05-05 Normal and Early Retirement Benefits

71-05-06 Return of Contributions

71-05-07 Return to Service

71-05-08 Qualified Domestic Relations Orders

71-05-09 Indexing Final Average Salary for Vested Terminated Contributors

Article 71-06 - Retiree Health Insurance Credit

71-06-01 Retiree Health Insurance Credit

Article 71-07 - Pretax Benefits Program

71-07-01 General Organization

Article 71-08 - Defined Contribution Retirement Plan

71-08-01 Election and Transfer

71-08-02 Membership in Defined Contribution Retirement Plan

71-08-03 Disability

71-08-04 Qualified Domestic Relations Orders

71-08-05 Review Procedure

71-08-06 Uniformed Services Employment and Reemployment Rights Act

71-08-07 Additional Contributions

71-08-08 Temporary Employee Participation

71-08-09 Return to Service - Retired Member

Constitution – approved by voters

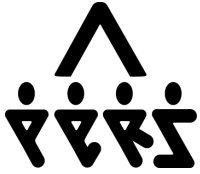
Statutes – promulgated by legislature

Rules – promulgated by agency; approved by legislative committee

Policies – drafted and approved by agencies, boards, and commissions for internal operations

# Discussion

Thank you!



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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** January 9, 2024

**SUBJECT:** House Bill 1040 Implementation Update

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

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

- At the December meeting, the Board provided guidance to staff on moving forward with next steps. The selection of the record-keeper will be discussed later in the meeting.
- Finalized Marketing Intern application and submitted to Human Resource Management Services to assist us with our communication efforts in 2024. Approval was received so currently moving forward with filling this intern position.
- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming, as vendor has questions.
- Reviewed draft Administrative Rules prepared by legal counsel and also developed timeline given schedule is different than normal biennial updates. Draft rule and timeline for promulgation of these rules will be part of a discussion during a separate agenda item.
- Held kick-off meeting to discuss various communications needed during 2024 to include:
  - Employer Relations:
    - Education of new tier provisions

- Outreach to political subdivisions participating in the Main plan and not on Public Safety plan
  - Outreach to political subdivisions participating in the Main plan and not currently offering NDPERS 457 plan
  - Notice that as of plan closure date, political subdivisions that are not currently participating in NDPERS retirement will not be able to join unless there is a future law change
  - Payroll system update requirements once determined
  - Effective date once finalized
- Member relations:
    - Requirement in HB 1547 during Special Session to have an education campaign for current and future state employees as follows:

benefit plan below six and one-half percent.

**SECTION 3. PUBLIC EMPLOYEES RETIREMENT SYSTEM - RETIREMENT PLAN TRANSITION EDUCATION.** During the 2023-25 biennium, the public employees retirement system shall conduct an informational campaign to educate current and prospective state employees of the transition from the defined benefit retirement plan to the defined contribution retirement plan.

- Work with HRMS on communications for individuals searching for employment on their job site
- Educate current state employees on differences between plans, who is impacted by HB 1040, special election window for state employees with no more than 5 years of service
- Effective date once finalized

Specific to employer relations, a brief update presentation has been prepared for state agencies and political subdivisions on the Main plan. The presentation will be distributed this month and serves as a “kick-off” for our employer education efforts. We will be looking at doing a similar type of presentation that employers can distribute to their employees.

As requested at the December meeting, attached is a high-level overview of work efforts and timelines identified. Staff are working on a more detailed overview that provides more specific tasks with deadlines and will bring this to the Board at future meetings.

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



## House Bill 1040 Administrative Implementation

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

## KEY

★ Goal

Task Completed

Work Effort

Goal Missed

## House Bill 1040 Programming Implementation Timeline

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

### KEY

★ Goal

Task Completed

Work Effort

Goal Missed

Tentative for October 1, 2024 Launch

Tentative for January 1, 2025 Launch



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# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** January 9, 2024

**SUBJECT:** Retirement Plan Services (RFP)

The Retirement Plan Services RFP was issued on January 2, 2024.

Following are the key dates for the proposal process:

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

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

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



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# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** January 9, 2024

**SUBJECT:** Dental Request for Proposal (RFP)

We have included for your review a draft copy of the Group Voluntary Dental PPO Benefits RFP. It has been reviewed by staff and our changes are included in the document. Proposers are required to submit a bid to provide services for eligible active and retired employees and their dependents.

Following are the key dates for the proposal process:

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

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

**Board Action Requested:** Approve the Group Voluntary Dental PPO Benefits RFP and the timeline for the proposal process.

Attachment



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

### ***Request for Proposal***

**Project Name:**

**Group Voluntary Dental PPO Benefits**

**Claims Administration, Customer Service, Provider  
Network and Network Management Services,  
Related Administrative Services**

**RFP Issue Date: February 1, 2024**

**Proposal Due Date: March 29, 2024**

**Proposed Effective Date: January 1, 2025**

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## **I. INTRODUCTION**

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### **1. Objectives of the Request for Proposal**

The objective of this Request for Proposal (RFP) is to solicit fully-insured proposals for services related to claim administration, customer service, access to a provider network(s) (as appropriate), and associated network management services for the North Dakota Public Employees Retirement System (NDPERS) group voluntary dental PPO plan. The account services to be provided under any resulting contract shall commence on January 1, 2025.

### **2. Definitions**

For purposes of this RFP, the following terms are defined as indicated below:

- A. "Contractor" – the insurer/administrator selected pursuant to this RFP,
- B. "Offeror" – an entity responding to this RFP,
- C. "The Plan" – the dental benefits program pursuant to this RFP,
- D. "Dental Claims" – all dental services, equipment, and supplies eligible under the Plan,
- E. "Participant(s)" – All active or retired employees and their eligible dependents.

### **3. Background**

The North Dakota Public Employees Retirement System (NDPERS) desires to provide voluntary Dental benefits to all eligible active and retired employees and their eligible dependents. NDPERS is soliciting proposals for coverage to be effective January 1, 2025.

### **4. Key Dates in the RFP Process**

The following dates will apply during the RFP process. NDPERS reserves the right to waive or modify specific terms and conditions contained in this RFP, and to waive, modify, or extend deadlines specified herein.

Date	Activity
February 1, 2024	RFP is issued.
February 23, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
March 11, 2024	NDPERS posts responses to all questions received.
March 29, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).

May 2024	NDPERS Board review of proposals.
June 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
End of August 2024	Selection and award of contract by NDPERS.
January 1, 2025	Effective Date of Coverage

## 5. ***Current Enrollment and Demographics***

NDPERS provides fully-insured, voluntary group Dental benefits for active permanent employees, retirees and their respective eligible dependents (collectively “participants”) of NDPERS. In addition to eligible state and university employee and dependents, it is possible that participation may be extended to certain political subdivisions eligible to participate in NDPERS based upon approval of the NDPERS Board. However, at this time, that action has not been taken.

NDPERS currently offers one plan design of voluntary Dental benefits. Listed below are the number of eligible participants and the number of enrolled participants as of December 31, 2023.

Eligibility Category	Number of Eligible Employees/Retirees	Number of Enrolled Participants
Actives	15,000	9,863
Retirees/COBRA	13,000	4,589

Annual enrollment for active state and university employees will be done each year from approximately mid-October through mid-November for coverage effective the following January 1. New hires must elect coverage within 31 days of their effective date. Coverage will then be effective the first day of the month following the date of permanent employment. If they do not elect coverage within 31 days, they must wait until the next annual enrollment period to apply unless they experience a qualifying event such as marriage, birth or loss of other employer sponsored dental coverage. Retirees do not have annual enrollment but must apply within 31 days of a qualifying event as provided under the Retiree Eligibility definition.

## 6. ***General Information on the Voluntary Dental Plan***

### 6.1. **Benefit Plans**

The Benefit Plan Year for NDPERS begins on January 1 of each year and concludes on December 31 of each year.

NDPERS has one plan of voluntary group Dental benefits, which is funded by the employee/retiree contributing 100% of the premiums. The current benefits are described in the Summary Plan Description available at the following link: <https://ndpers.nd.gov/active-members/insurance-plans/dental/>

Note: In all cases the “Dental Benefit Plan Summary” as issued by Delta Dental of Minnesota and made part of this RFP, will stand as the authority on questions related to plan design and plan provisions.

## **6.2. General**

Offerors should keep in mind the following considerations as they prepare proposals in response to this RFP.

- The dental program is 100% voluntary. Premiums will be paid entirely by the employee.
- The dental program is fully insured. With respect to this contract and program, no commissions, bonuses or overrides will be paid to any party directly by NDPERS.
- No minimum participation requirements will be allowed by NDPERS.
- The Incumbent vendor will process all claims incurred prior to 1/1/2025.
- The Contractor will process all claims incurred while the contract between NDPERS and the Contractor is in effect. This includes run-out claims incurred during the period of the contract, but processed after the contract has been terminated.

## **II. ELIGIBILITY AND SELECTION CRITERIA**

---

### **1. *Minimum Requirements***

To be eligible for consideration for this project, the Offeror must meet the following Minimum Requirements:

- A. The Offeror must have been in the business of providing group Dental benefits for at least five (5) years. Offerors should provide detailed information to establish that they have been in the business of providing group Dental insurance for at least five (5) years.
- B. The Offeror must be currently licensed by the North Dakota Department of Insurance to underwrite and administer group Dental insurance.
- C. The Offeror must have successfully underwritten, implemented, and administered a group Dental benefits plan for at least one group with 15,000+ active employees.

### **2. *Selection Criteria***

In determining which bid, if any, will best serve the interests of eligible employees and the state, the Board shall give adequate consideration to the following factors:

- A. The economy to be affected.
- B. The ease of administration.
- C. The adequacy of the coverages.
- D. The financial position of the carrier, with special emphasis as to its solvency.
- E. The reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

The Board may reject any or all bids. In the event it does so, NDPERS shall again solicit bids as provided in this section.

### **III. GENERAL INFORMATION**

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#### **1. *Non-Disclosure Agreement (NDA)***

In order to obtain Attachment C: Confidential Documents, which contains confidential data necessary to complete a proposal in response to this RFP, each Offeror must complete and return a signed Non-Disclosure Agreement. NDPERS requests that only those offerors qualified to respond to this RFP, as defined in Section II, submit the Non-Disclosure Agreement.

The Non-Disclosure Agreement must be the form provided in Appendix B of this RFP. The Non-Disclosure Agreement must be received before any confidential data will be released to an Offeror. Please scan and email a signed copy of the NDA to:

<p>Rebekah Ferstadt, Consultant Buck, A Gallagher Company Phone: 602-541-5241 E-mail: <a href="mailto:Rebekah.Ferstadt@buck.com">Rebekah.Ferstadt@buck.com</a></p>
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The information that will be provided to the Offeror after submission of the Non-Disclosure Agreement includes the following:

1. Demographic data showing the coverage election, date of birth, gender, city, state, zip and county for the eligible employee and retiree populations, to be used in completing the Geo-Access reports required in Attachments A-6.
2. Confidential Vendor Response Documents, which includes data on the most utilized providers by total claims paid and by total number of devices and disruption reports for completion of Attachments A-8 and A-9.
3. Historical claims data on a paid basis covering the past six years.

Attachment C will be sent via encrypted e-mail upon receipt of the Non-Disclosure Agreement. Attachment C will contain the necessary files in Microsoft Office.

Note: Failure to complete all fields on Appendix B may slow the processing of the request for Attachment C or may cause the request to be rejected. In such instances, Buck Consultants will attempt to contact the offeror to resolve the deficiencies.

#### **2. *Inquiries Regarding Specifications***

Insurers will have until 5:00 p.m. (CDT) on February 23, 2024, to submit questions in writing regarding this RFP. All questions shall cite the specific RFP section and paragraph number(s) to which the question refers. Any questions received as directed below prior to the date and time above will be answered in a question and answer document issued by NDPERS. Only answers provided in writing by NDPERS will be considered official.

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

Questions must be submitted by email to Rebekah Ferstadt of Buck Consultants, using the contact information found below. Neither NDPERS nor Buck Consultants are responsible for questions received after the submittal deadline.

Answers to questions will be made available on the NDPERS web site at <https://www.ndpers.nd.gov/about/bid-opportunities> by March 11, 2024, at 5:00 p.m. C.D.T.

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

All inquiries regarding these specifications must be in writing and sent via email to:

<p>Rebekah Ferstadt, Consultant Buck, A Gallagher Company Phone: 602-541-5241 E-mail: <a href="mailto:Rebekah.Ferstadt@buck.com">Rebekah.Ferstadt@buck.com</a></p>
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### **3. Rules and Regulations**

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

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

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

**PLEASE NOTE** that proposals should follow the Confidential/Proprietary Information instructions in Appendix C. Any provisions of the Responder's proposal that are desired to be confidential must be identified specifically on each page of the proposal and included in the table provided in Appendix C. The Request for Redaction chart in Appendix C MUST be completed and submitted with the proposal.

### **5. Addenda, Amendments, and Clarifications to the RFP**

NDPERS may issue any addenda, amendments, and clarifications regarding this RFP that NDPERS determines are necessary. All such addenda, amendments, and clarifications issued by NDPERS become part of the RFP. All addenda,

amendments, and clarifications to the RFP will be issued in writing and added to the RFP posting at: <https://ndpers.nd.gov/about/bid-opportunities/>. NDPERS may also e-mail any addenda, amendments, or clarifications to all eligible Offerors that have submitted a Non-Disclosure Agreement that is recorded by NDPERS and that have provided NDPERS with an e-mail address. **However, it shall be the responsibility of the Offeror** to recheck the RFP posting at: <https://ndpers.nd.gov/about/bid-opportunities/> for any possible addenda prior to submitting a proposal. The Offeror must acknowledge all addenda, amendments, or clarifications by indicating receipt on the Signature Page (A-13 Signature Page) of Attachment A, Technical Proposal. Only written addenda, amendments, and clarifications signed or sent by authorized NDPERS personnel shall be binding. All oral and other interpretations or clarifications have no legal effect.

## **6. Order of Responses**

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

## **7. Submission of Proposals**

To be considered for award, six (6) printed and bound copies, one (1) unbound copy of the Offeror's proposal, and one (1) electronic, editable, PDF redacted copy of the qualitative proposal on a separate USB flash drive (note that the electronic redacted copies may not be a picture) must be received by NDPERS on or before 5:00 P.M. (CDT), **March 29, 2024**. The Request for Redaction chart in Appendix C **MUST** be completed and submitted with the proposal. The unbound copy shall bear original signatures and shall be marked as the "Master Copy". The unbound Master Copy shall contain no divider sheets or tabs, and shall be printed on one side only of 8-1/2 in. x 11 in. white paper to enable copying if needed. Colors must reproduce in a legible manner on a black-and-white copier. The unbound original and one (1) copy of the proposal on a USB flash drive shall be provided in a sealed envelope.

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to an open records request. Responder is also put on notice that, except for information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota Open Records law, NDPERS must disclose to the public upon request any records it receives from Responder. If NDPERS receives a request for information that Responder has requested be kept confidential, NDPERS will review the information submitted by Responder and may also contact Responder for additional input regarding the nature of those records, but NDPERS will be solely responsible for making the ultimate determination of whether the materials submitted are open or exempt. All information that has not been clearly identified by Responder as being confidential and which NDPERS has determined constitutes confidential or exempt information under the North



Dakota open records law will be disclosed as an open record. If, as a result of the position taken by Respondent regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Respondent shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Respondent as confidential, Respondent will be deemed to have consented to the release of the document or material, and to have waived any cause of action against NDPERS resulting from the release of the documents or materials. NDPERS will not consider the prices submitted by the Responder to be confidential.

Copies of the proposal shall be delivered to:

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

- One additional bound hardcopy of the Offeror's proposal along with a USB flash drive version of the proposal in MS WORD and MS Excel formats (as appropriate) shall also be sent to:

**Gallagher Benefits Services  
C/O Jacob Vaughan  
12750 Merit Drive  
Suite 1000  
Dallas, TX 75251  
Phone: 602-541-5241  
E-mail: Rebekah.Ferstadt@Buck.com**

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

- Late proposals may be returned to the offeror unopened at the organization's expense. Late proposals will not be considered unless the NDPERS Board determines otherwise.
- Proposals submitted via email or fax will not be accepted.
- Any award is contingent upon a contract acceptable to NDPERS being executed.

## **8. *Conflicts of Interest List***

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

## **9. *Acceptance of Proposals***

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

## **10. *Non-Responsive Proposals***

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

## **11. *References***

Each Offeror must provide references from at least three clients of similar size or larger with public sector experience as requested in this RFP. NDPERS or its designated representative may ask these clients to provide information regarding the Offeror's overall record of service in providing services for their participants. Providing references in its proposal constitutes the Offeror's permission for NDPERS to contact these clients.]

## **12. *Compliance with HIPAA***

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

The Contractor will be required to execute a business associate agreement, which will be an attachment to the Agreement, and abide by the terms of the business associate agreement throughout any contract term. The Contractor will also be required to comply with the security requirements of HIPAA.

### **13. Certification**

An authorized Officer of any Offeror submitting a proposal must certify that the organization complies with the RFP specifications by signing and including the signature pages as follows:

Attachment A: Technical Proposal:

- Tab A-2
- Tab A-4a
- Tab A-4b
- Tab A-5
- Tab A-10
- Tab A-11
- Tab A-12
- Tab A-13

Attachment B: Financial Proposal:

- Tab B-2
- Tab B-4a
- Tab B-4b
- Tab B-7

### **14. Waiver**

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

### **15. Additional Information from Responding Organizations**

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

### **16. Interview with Responding Organizations**

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

## **17. Modification**

No modifications to a proposal will be accepted after the stated deadline for submissions of proposals, unless language within the proposal is clarified at NDPERS's request.

## **18. Solicitation**

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

## **19. News Release**

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

## **20. Change Required by Statute, Regulation, Court Orders, or Program Appropriations**

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

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

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

## **21. Historical Claim, Rate, and Member Census Information**

This information will be provided electronically as "Attachment C - Confidential Data" to those Offerors that return an executed non-disclosure agreement as described in Section III.1 of this RFP.

## IV.CONTRACT REQUIREMENTS

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### 1. *Introduction*

The Agreement between NDPERS and the Contractor will include the RFP as finally amended and/or clarified, the Contractor's proposal as amended or clarified, if applicable, and any other information the Contractor may be required to provide (hereinafter Contract Documents).

The Contract Documents are intended as the complete and exclusive statement of the agreement between NDPERS and the Contractor and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, or oral representations relating to the Agreement subject matter.

The terms and conditions of any agreements, amendments, modifications, or other documents submitted by the Offeror that conflict with or in any way purport to amend or add to any of the terms and conditions of the Agreement are specifically objected to by NDPERS and are of no force or effect, unless specifically agreed to by NDPERS and incorporated into the Agreement for Services as an amendment signed by both parties.

The Agreement may be amended by mutual consent of the parties. No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the Agreement must be forwarded to NDPERS for prior review and approval.

The contracting organization agrees that it shall not publicize the Contract Documents or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of NDPERS' or participating entities' employees or use NDPERS' name in connection with any sales promotion or publicity event without the prior express written approval of NDPERS.

### 2. *Term of the Contract*

The contract term will begin on January 1, 2025 upon the execution of the Agreement by NDPERS. The initial contract term will end on December 31, 2026. The NDPERS Board, at its discretion may extend the contract for up to two additional two (2) year option periods. The timeline in the table below will apply for the duration of the contract.

Contract Period	Effective Date	Termination Date	Renewal Submission Date
Base Contract	January 1, 2025	December 31, 2026	March 1, 2026 (for Option Period #1)
Option Period 1	January 1, 2027	December 31, 2028	March 1, 2028 (for Option Period #2)
Option Period 2	January 1, 2029	December 31, 2030	N/A

NDPERS and the Contractor agree and acknowledge that the account services to be provided under this proposal will occur between January 1, 2025 and December 31, 2026. However, NDPERS and the Contractor also agree and acknowledge that there are duties and obligations specified by this proposal to be performed both prior to and after these dates. The parties each agree to perform all such duties and obligations, and all damage provisions included in the Agreement shall thereby be in effect.

### **3. *Failure to Comply***

Failure to comply with the procedures required by NDPERS or any other applicable guidelines shall be cause for the immediate imposition of liquidated damages and/or immediate cancellation of the Agreement, at NDPERS' option. Liquidated damages and/or cancellation shall remain in effect until NDPERS has been satisfied that circumstances resulting in liquidated damages and/or cancellation have been corrected.

### **4. *Compliance with ERISA***

As a governmental entity, NDPERS is not directly covered by the provisions of ERISA .

### **5. *Taxpayer I.D. Number***

The Contractor must obtain a Vendor Identification Number in order to receive payments issued through NDPERS. The Contractor will be required to complete a Payment Identification Form (W-9) and submit it to NDPERS in order to receive payment.

### **6. *Authorized Signatures***

An authorized officer of the Offeror must sign the Signature Page (Attachment A-13) and the Deviations page (Attachment A-12), which are part of this RFP. Offeror shall include a copy of a document granting the signing officer authority to bind the Offeror to the agreements and representations made in the Offeror's proposal. This document shall be labeled as Response Attachment A-14: Authorization Documentation.

### **7. *Prohibited Interest***

An officer, director, or employee of NDPERS may not have a direct interest in the gains or profits from any Agreement executed by NDPERS pursuant to this RFP and may not receive any pay or emolument for any service performed for the Contractor.

### **8. *Required Contract Provisions***

The selected Offeror will enter into a written agreement between it and NDPERS. The contract shall be in a form satisfactory to NDPERS.

## **V. DESCRIPTION OF SERVICES CURRENTLY PROVIDED**

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It is NDPERS' intent that the Contractor provide a level of service that is at least comparable to that provided by the Incumbent. The incumbent carrier is Delta Dental of Minnesota and has been retained by the organization since January 1, 2013. A description of benefits currently offered is available on-line at "NDPERS Group Plan Booklet" at <https://ndpers.nd.gov/active-members/insurance-plans/dental/>. To assist Offerors in assessing the opportunity, the following information is an overview of the services currently provided.

### **1. *Claim Adjudication and Member Services***

The majority of NDPERS claims are auto-adjudicated, which means the claims can be processed without human intervention. Paper claims are scanned into an imaging system, and verified for accuracy. Data Entry Specialists are responsible for confirmation of scanned claims with image anomalies as well as manually keying any claims that cannot be scanned. Once the scanned claim is verified, it and all other claims ready for processing are run through a batch process each evening. The claims that edit out of the auto adjudication process are routed to the examiners and senior examiners for review and release. Customer Service Specialists (CSS) can see claim history and claims in process. Through a workflow process they can send corrections or updates as needed based on calls received into the call center. CSSs do not process or correct claims.

### **2. *Network Management***

Currently, the NDPERS voluntary dental plan is a network based, Preferred Provider Organization (PPO) plan. As such, there is a provider network in place that includes dental care providers who are currently under contract with, but not necessarily employed by Delta Dental of Minnesota. Non-network providers (and associated benefit levels) are also available and may be accessed at the discretion of the individual plan participant.

### **3. *Eligibility / Participant Premium Billings Services***

NDPERS will submit enrollment, billing, and premium remittance via a centralized electronic system. NDPERS will collect enrollment/eligibility information which will be provided to the successful Contractor on a data file that follows the HIPAA 834 file specifications. Premium payment information will be provided on a data file that follows the HIPAA 820 file specifications. Files will be transmitted using a secure file transmission process. The successful Contractor must be able to receive this data in that format and media. Premiums will be eligible for salary reduction on a pre-tax basis, through IRC Section 125.

### **4. *COBRA Administration***

This function is currently performed internally by NDPERS.



## **5. Issuance of ID Cards**

ID cards are provided by Contractor and mailed directly to the participants' homes. Participants also have the option of printing replacement ID cards from the carrier's web site.

## **6. Reporting**

- Weekly Eligibility Discrepancy Reports
- Quarterly Reports:
  - Enrollment by coverage tier report
  - Eyeglass frame summary report
  - Top 35 provider report by claim count and claim cost

## **7. Summary Plan Description**

An electronic copy is available at <https://ndpers.nd.gov/active-members/insurance-plans/dental/>

## **8. Functional Relationships**

It is expected that the successful Contractor will interact with the following people at NDPERS:

General Account Management Contact:

Rebecca Fricke, Chief Benefits Officer NDPERS
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Secondary Contact:

Lindsay Schaf, Insurance Plans Manager NDPERS
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## **9. Applicable Law**

Bidder must meet all requirements in the North Dakota Century Code including 54-52 and 54-52.1, and all requirements in the North Dakota Administrative Code and other applicable State Laws. Bidder must also comply with all applicable statutes of the North Dakota Insurance Commissioner.



## **VI. FORMAT OF PROPOSAL**

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Offeror shall submit their proposal in accordance with the requirements of Section III.7, Submission of Proposals. Regarding the proposal, Offerors are hereby advised of the following:

- Each proposal shall be prepared simply and economically, providing a straightforward, concise description of the organization's ability to meet the requirements of this RFP as outlined in Sections V and VI. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of NDPERS's needs.
- Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to disqualification by NDPERS, at its option.
- Representations made within the proposal will be binding on the responding organizations. NDPERS will not be bound to act by any previous communication or proposal submitted by the organization other than this RFP and any proposal submitted in response to this RFP.

The proposal shall include the following sections in the order in which they appear below. Each of the attachments described in this section must be completed in the MS Excel format in which it is provided.

### **1. Cover Letter**

A transmittal letter shall be bound with the Offeror's proposal. The letter should bear the name and address of the Offeror and the name and number of this RFP. The purpose of this letter is to transmit the proposal(s) and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Contractor to the services and requirements as stated in this RFP.

### **2. Table of Contents**

The proposal shall include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the proposal and separate attachments (which shall be included in the main Table of Contents). If supplemental materials are included with the proposal, each copy of the proposal must include such supplemental materials. Supplemental information and attachments included by the organization (i.e., not required) should be clearly identified in the Table of Contents and provided as a separate section.

### **3. Attachment A: Technical Proposal**

The following exhibits are located in the MS Excel documents labeled **Attachment A: Technical Proposal** and **Attachment C: Confidential Documents**.

*Attachment C: Confidential Documents* will be sent only to those Offerors who submit a Non-Disclosure Agreement as described in Section III.1 of this RFP.

The Offeror shall complete each of the tabs in Attachment A according to the instructions described below and any additional instructions included at the top of each worksheet.

Cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or writing a brief narrative. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list.

**Microsoft Excel will print 1,024 characters in each cell. Therefore, please limit the length of your response to 1,024 characters. Additional space has been provided in Attachments A-4b: Additional Answers to Questionnaire for the Offeror to continue a response from Attachment A-4a Questionnaire as appropriate.**

### **3.1. Attachment A-1: Minimum Requirements**

The Offeror shall complete Attachment A-1 as requested. The Offeror shall state how they specifically meet or exceed each requirement.

### **3.2. Attachment A-2: Offeror Information**

The Offeror shall complete each section of Attachment A-2 as requested. References provided shall include at least one reference for which the proposed account manager currently provides service.

The Offeror's Legal Name entered in Attachment A-2 will automatically be used to populate the Attachment A-13: Signature Page and Attachment A-12: Explanations and Deviations, in addition to other areas of the MS Excel attachments.

### **3.3. Attachment A-3: Dental Plan Design**

The Offeror shall review the current plan design and propose alternative plan designs in the space provided. Benefits for Alternative Plans benefits should be equal to or better than the current benefit plan and should be revenue neutral with respect to the current plan rating structure generated by the bidders underwriting guidelines. (Please note that the Offeror will provide a premium quote for all plan designs in Attachment B-4: Fully Insured Current and Alternative Premium Rates.)

### **3.4. Attachment A-4: Questionnaire**

The Offeror shall answer each question in A-4a: Questionnaire completely/briefly in the space provided. If additional space is needed, the

response can be continued in Attachment A-4b: Additional Answers to Questionnaire. Continued responses should be labeled clearly with both the Section number (A-4a) and the corresponding question number.

If a drop down list is available, the Offeror shall select a response from the list provided.

### 3.5. Attachment A-5: Subcontractor Questionnaire

The Offeror shall complete a Subcontractor Questionnaire for each subcontractor proposed to perform any of the administrative requirements of this contract.

### 3.6. Attachment A-6: Provider Access

NDPERS is interested in the availability of key Dental care providers to its eligible population. To assist the Offeror in completing the standard GeoAccess report for Dental care providers, NDPERS will provide the Offeror with a census file as part of Attachment C: Confidential Documents. The file will include the following fields:

personal identifier, age, gender, city, state and ZIP Code. (Please exclude individuals for which the zip code is equal to "00000" from the analysis.) This file will be sent to only those Offerors who submit a Non-Disclosure Agreement as described in Section III, 1 of this RFP.

The Offeror shall prepare a GeoAccess report for each network proposed, using the census data provided by NDPERS and the parameters shown below:

Access to Dental Care Providers (Non-Retail Chain Providers)	
By County	2 within 15 miles
By County	2 within 30 miles

The report should include the average distance to each provider, the number of providers in the ZIP Code, the number of members that meet the access requirements above and the number of members that do not meet the access requirements above.

**In addition to the standard GeoAccess hard copy report, the data must be supplied in electronic format that has read/write capabilities. Do not send the data in a read-only file. Label the complete GeoAccess report as *Response Attachment A-6: Provider Access*.**

### 3.7. Attachment A-7: Dental Providers

The Offeror shall complete the exhibit in Attachment A-7, which summarizes the GeoAccess data for Dental care providers by county by zip codes. Please note

that the Offeror needs only to populate the highlighted cells in the exhibit; all other cells will be calculated based on the values entered in the highlighted cells.

NDPERS is interested in the availability of Dental care providers to its eligible population. To assist the Offeror in completing the standard GeoAccess report for these providers, NDPERS will provide the Offeror with a census file as part of Attachment C: Confidential Documents. The file will include the following fields: person identifier, age, gender, city, state and ZIP Code. (Please exclude individuals for which the zip code is equal to "00000" from the analysis.) This file will be sent to only those Offerors who submit a Non-Disclosure Agreement as described in Section III.1 of this RFP.

The Offeror shall prepare a GeoAccess report for each network proposed, using the census data provided by NDPERS and the parameters shown below:

The report should include the average distance to each provider, the number of providers in the ZIP Code, the number of members that meet the access requirements above and the number of members that do not meet the access requirements above.

**In addition to the standard GeoAccess hard copy report, the data must be supplied in electronic format that has read/write capabilities. Do not send the data in a read-only file. Label the complete GeoAccess report as Response.**

### **3.8. Attachment A-8: Provider Disruption by Claims**

The required data for Attachment A-8 is included in the MS Excel document entitled **Attachment C: Confidential Documents**. This file will be sent to only those Offerors who submit a Non-Disclosure Agreement as described in Section III.1 of this RFP.

The Offeror shall agree that all confidential, proprietary, or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS. Offeror shall further agree that following its use of such confidential, proprietary, or trade secret information, it shall take immediate action to destroy and/or render unidentifiable such information.

The Offeror shall complete the exhibit by indicating where or not the named provider is a member of the network being proposed for NDPERS. Valid responses are either "Yes" or "No". All other responses will be treated as a "No" response.

### **3.9 Attachment A-9: Provider Disruption by Service**

The required data for Attachment A-9 is included in the MS Excel document entitled **Attachment C: Confidential Documents**. This file will be sent to only

those Offerors who submit a Non-Disclosure Agreement as described in Section III.1 of this RFP.

The Offeror shall agree that all confidential, proprietary, or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS. Offeror shall further agree that following its use of such confidential, proprietary or trade secret information, it shall take immediate action to destroy and/or render unidentifiable such information.

The Offeror shall complete the exhibit by indicating where or not the named provider is a member of the network being proposed for NDPERS. Valid responses are either "Yes" or "No". All other responses will be treated as a "No" response.

### **3.10 Attachment A-10: Compliance**

The Offeror shall complete the exhibit by selecting either "Yes" or "No" from the drop down list next to each compliance checklist. For each requirement for which the Offeror selects "No", an explanation must be provided in Attachment A-12: Explanations and Deviations.

### **3.11 Attachment A-11: Performance Guarantees**

At a minimum, the criterion identified in Attachment A-11 serves as a benchmark for performance measurements. Actual performance metrics and penalties will be finalized during contract negotiations between NDPERS and the selected organizations.

The Offeror shall complete the exhibit by selecting either "Yes" or "No" from the drop down list next to each performance guarantee. For each requirement for which the Offeror selects "Disagree", an explanation must be provided in Attachment A-12: Deviations.

### **3.12 Attachment A-12: Explanations and Deviations**

The Offeror shall complete this attachment regardless of whether or not deviations from the administrative requirements or performance guarantees are proposed. The top right of the worksheet includes macros that the Offeror can use to indicate whether or not deviations are included in the table below the signature line.

**Prior to printing the final proposal, the Offeror shall ensure that the print area of this document is set appropriately.** If no deviations are claimed, then the print area shall end following the title of the individual signing the document. Otherwise, the print area shall end following the last deviation described in the table.

### **3.13 Attachment A-13: Signature Page**

The Offeror shall complete this attachment and provide documentation granting authorization for the signing officer to bind the Offeror to the agreements and representations made in the Offeror's proposal. Label the documentation as **Response Attachment A-13: Authorization Documentation**.

### **3.14 Completed Appendices**

The following Appendices are included in this RFP:

- Appendix A – Agreements
- Appendix B – Non-Disclosure Agreement
- Appendix C – Confidential/Proprietary Information
- Appendix D – Conflicts of Interest List

Appendix B - Non-Disclosure Agreement must be completed and received before any confidential data will be released to an Offeror. Completed Non-Disclosure Agreements must be emailed to [Rebekah.Ferstadt@buck.com](mailto:Rebekah.Ferstadt@buck.com).

Appendices A, C, and D must be completed and submitted with the proposal.

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

### **3.15 Response Attachments**

The following response attachments shall be included in the following order:

1. Response Attachment A-2: Management Reporting Package
2. Response Attachment A-2: Claims Appeals Protocols
3. Response Attachment A-4a: Certificates of Insurance
4. Response Attachment A-4a: Provider Satisfaction Survey
5. Response Attachment A-4a: Dental Director Resume
6. Response Attachment A-4a: DPPO Implementation Team Organizational Chart
7. Response Attachment A-4a: DPPO Implementation Plan
8. Response Attachment A-4a: DPPO Account Management Team Organizational Chart
9. Response Attachment A-4a: DPPO Account Management Support
10. Response Attachment A-6: Geo Access Details

#### **4. Attachment B: Financial Proposal**

The following exhibits are located in the MS Excel documents labeled **Attachment B: Financial Proposal** and **Attachment C: Confidential Documents**.

**Attachment C: Confidential Documents** will be sent only to those Offerors who submit a Non-Disclosure Agreement as described in Section III.1 of this RFP.

The Offeror shall complete each of the tabs in Attachment B according to the instructions described below and any additional instructions included at the top of each worksheet.

Cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or writing a brief narrative. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list.

##### **4.1 Attachment B-1: Financial Proposal**

Instructions for completing the tabs within Attachment B are listed on Attachment B-1

##### **4.2 Attachment B-2: Financial Compliance Checklist**

The Offeror shall answer each question in B-2: Financial Compliance Checklist by indicating the willingness to comply with each requirement by selecting "Yes" or "No" from the drop down list provided in the response column of each item.

##### **4.3 Attachment B-3: Financial Compliance Explanations**

The Offeror shall complete this attachment regardless of whether or not there are deviations from the financial requirements are proposed. The top right of the worksheet includes macros that the Offeror can use to indicate whether or not explanations are included in the table below the signature line.

Prior to printing the final proposal, the Offeror shall ensure that the print area of this document is set appropriately. If no deviations are claimed, then the print area shall end following the title of the individual signing the document. Otherwise, the print area shall end following the last deviation described in the table.

##### **4.4 Attachment B-4a, B-4b: Fully Insured Proposed Premium Rates**

Complete the charts on this tab with the applicable benefits information and/or premium rates required that will be offered to NDPERS participants for the current DPPO and alternative DPPO plan design for January 2025 through December 31, 2030.

#### **4.5 Attachment B-5: Offeror Premium Analysis**

In the table provided, please enter the applicable dollar amount of the total premium attributable to the component of the premium listed. For any item for which the Offeror enters \$0, it will be assumed that the service is included in the premium; however, the Offeror is unable to provide a separate amount attributable to that item.

#### **4.6 Attachment B-6: Provider Reimbursement History**

Provide the Dental PPO reimbursement fees as of January 1, 2025. Some networks have different fee schedules for a given zip code. If there are multiple fee schedules used in any of the selected 5-digit zip codes, provide the set of fees that apply to the largest number of dentists in the zip code. This information will be weighted by expected utilization to develop an overall average cost that will be used to validate the Projected Fee-For-Service Paid Claims in Attachment B-5a. Also, provide the expected average increase in fees for each of the projection years 2026, 2027, 2028, 2029, and 2030.

#### **4.7 Attachment B-7: Signature Page**

The Offeror shall complete this attachment and provide documentation granting authorization for the signing officer to bind the Offeror to the agreements and representations made in the Offeror's proposal. Label the documentation as **Response Attachment B-7: Authorization Documentation**.

#### **4.8 Response Attachments**

The following response attachment shall be included in the following order:

- Response Attachment B-7: Authorization Documentation



## APPENDICES

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## **Appendix A – Agreements**

The updated 2024 state contract will be attached to the RFP prior to issuance.

## Appendix B – Non-Disclosure Agreement

This Non- Disclosure Agreement (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between \_\_\_\_\_ (hereinafter referred to as "the OFFEROR ") and the North Dakota Public Employees Retirement System (hereinafter referred to as "NDPERS").

OFFEROR warrants and represents that it intends to submit a Proposal in response to the NDPERS RFP, the Request for Proposals for Group Voluntary Dental PPO Benefits. In order for the OFFEROR to submit a Proposal, it will be necessary for NDPERS to provide the OFFEROR with access to certain information that constitutes confidential information under North Dakota law, including, but not limited to, demographic and identifying information on NDPERS active and retiree population and plan utilization data. All such information provided by NDPERS shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information.” As a condition for its receipt and access to the Confidential Information described in Section III of the RFP, OFFEROR agrees as follows:

1. OFFEROR will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received under Section III, except in connection with the preparation of its Proposal.
2. The OFFEROR shall agree that all confidential, proprietary or trade secret information of the Incumbent shall be used only for the express purpose of formulating a proposal for NDPERS.
3. Each employee or agent of the OFFEROR who receives or has access to the Confidential Information shall execute a copy of this Agreement and the OFFEROR shall provide originals of such executed Agreements to NDPERS. Each employee or agent of the OFFEROR who signs this Agreement shall be subject to the same terms, conditions, requirements, and liabilities set forth herein that are applicable to the OFFEROR and the OFFEROR shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information.
4. OFFEROR shall destroy and confirm such destruction with notice to NDPERS, the Confidential Information, including any copies, remaining in its possession within five business days of NDPERS's notice of a recommended award in connection with this procurement. If the OFFEROR does not submit a Proposal, the OFFEROR shall return the Confidential Information, including any copies, to Buck consultant Rebekah Ferstadt listed in the RFP, Section III, on or before the due date for Proposals.
5. OFFEROR acknowledges that the disclosure of the Confidential Information may cause irreparable harm to NDPERS and agrees that NDPERS may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. NDPERS's rights and remedies hereunder are cumulative and NDPERS expressly reserves any and all rights, remedies,

claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the OFFEROR'S failure to comply with the requirements of this Agreement.

6. In the event NDPERS suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the OFFEROR or any employee or agent of the OFFEROR to comply with the requirements of this Agreement, OFFEROR and such employees and agents of OFFEROR shall hold harmless and indemnify NDPERS and the State of North Dakota from and against any such losses, damages, liabilities, expenses, and/or costs.
7. This Agreement shall be governed by the laws of the State of North Dakota. The OFFEROR consents to personal jurisdiction in North Dakota state courts, and exclusive venue shall be in Burleigh County, North Dakota.
8. The individual signing below warrants and represents that they are fully authorized to bind the OFFEROR to the terms and conditions specified in this Agreement. If signed below by an individual employee or agent of the OFFEROR under Section 3 of this Agreement, such individual acknowledges that a failure to comply with the requirements specified in this Agreement may also result in personal liability.

Offeror: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS  
TO THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual Agent	Employee(E) or Agent (A)	Signature	Date

***Please provide the name and delivery address for the individual who is to receive Attachment C: Confidential Documents.***

Offeror: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Attach Contractor Records Retention Policy**

## Appendix C – Confidential/Proprietary Information Request for Redaction Chart

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

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

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

In response to the Request for Proposals entitled Group Voluntary Dental PPO Benefits (please check one):

- \_\_\_\_\_ Offeror asserts that the information noted in the table below constitutes proprietary, trade secret, commercial, or financial information as defined by North Dakota Century Code section 44-04-18.4, and desires that the information noted in the table below not be disclosed if requested pursuant to the North Dakota Open Records law. **Offeror has submitted a redacted copy of the proposal on a flash drive labeled "REDACTED" that accurately and completely redacts the information noted in the table below.**
- \_\_\_\_\_ Offeror makes NO assertion that any information in its Proposal, in whole or in part, should be protected from disclosure under the North Dakota Open Records law.

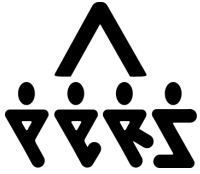
Technical Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been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

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

\_\_\_\_\_ (Signature) \_\_\_\_\_ (Vendor name)

## Appendix D – CONFLICTS of INTEREST LIST

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



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

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

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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:** Katheryne Korom

**DATE:** January 9, 2024

**SUBJECT:** Uniform Group Insurance Consultant Contract

At the December Board meeting, the Board approved the contract for the NDPERS Uniform Group Insurance Consultant with Deloitte Consulting LLP (Deloitte). The renewal was approved for January 1, 2024, through December 31, 2025, contract period. The attached contract was drafted by NDPERS legal staff and approved by representatives from Deloitte.

**Board Action Requested:** Approve the contract and signature by the Chairperson for the NDPERS Uniform Group Insurance Consultant for January 1, 2024, through December 31, 2025, contract period.

Attachment



## SECTION 9 - OFFER (Agreements)

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### AGREEMENT FOR SERVICES BETWEEN (Deloitte Consulting LLP) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

Deloitte Consulting LLP (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 be for the period of January 1, 2024 – December 31, 2025.
- 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 for convenience 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 for convenience 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. In the event of any termination under this subsection, CONTRACTOR shall have the right to cure within the notice period:

- 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 the applicable provisions of this Contract, including any attachments. CONTRACTOR is solely responsible to STATE for the Services performed by any subcontractor with whom CONTRACTOR contracts and for such subcontractor's failure to comply with the relevant provisions of this Contract, to the same extent that CONTRACTOR would be responsible to STATE if CONTRACTOR had performed such Services or had failed to comply with such provisions. 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, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. 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. The parties agree to the disclosure of the following types of information: (i)

as expressly set forth in Exhibit A; (ii) to CONTRACTOR providing administrative, infrastructure and other support services to the receiving party and subcontractors providing services in connection with Exhibit A, in each case, whether located within or outside of the United States, provided that they have agreed to be bound by confidentiality obligations similar to those in this Section; (iii) as may be required by law or regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to this Agreement or Exhibit A; or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source that the receiving party believes is not prohibited from disclosing such information to the receiving party, (C) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independently of any disclosures made to the receiving party hereunder. 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, and upon written request, CONTRACTOR shall return or destroy all confidential information received from NDPERS or received by CONTRACTOR from NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. Notwithstanding anything herein to the contrary, CONTRACTOR shall retain no copies of the confidential information except to the extent necessary to evidence the Services, provided that CONTRACTOR retains such copies in accordance with its confidentiality obligations hereunder. 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 pursuant to this section, 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 promptly 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 - CONTRACTOR's Proposal (attached in Exhibit A) and Third – the state's Request for 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 by third parties for bodily injury, death, or damage to real or tangible personal property, to the extent directly and proximately caused by CONTRACTOR's negligence or intentional misconduct, but not against any such 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 reasonable 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 liability pursuant to policy terms and conditions, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$2,000,000 per accident for bodily and property damage.
- 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 \$1,000,000 per accident, \$1,000,000, each employee by disease and \$1,000,000 policy limit by disease.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter subject to continued commercial availability. 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.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc. or the equivalent rating from another nationally recognized ratings provider, 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 with respect to Contractor's acts or omissions in performance under this Agreement. The State shall have all the benefits, rights and coverages of an additional insured under these policies except it shall be contingent upon the acts or omissions of the first named insured and all rights and privileges customarily afforded the first named insured shall remain exclusively with the first named insured and additional insured status shall only apply where specifically referenced and shall not be limited by the contractual indemnity obligations of the Contractor.

- 5) A "Waiver of Subrogation," excluding the Professional Errors and Omissions Liability coverage, waiving any right to recovery the insurance company may have against the State.
  - 6) The Contractor shall furnish an industry standard ACORD certificate of insurance to the undersigned State representative prior to commencement of this agreement. All blanket 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 adverse material change to the policies or endorsements unless replacement coverage meeting the terms and conditions hereunder are obtained without lapse. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 3 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 promptly 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 email, registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

**NDPERS:**

Rebecca Fricke, Interim Executive Director  
ND Public Employees Retirement System  
1600 East Century Avenue, Suite 2  
PO Box 1657  
Bismarck, ND 58502-1657

**CONTRACTOR:**

Deloitte Consulting LLP  
50 South Sixth Street, Suite 2800  
Minneapolis, MN 55402

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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:** Pursuant to N.D.C.C. §54-10-19, all records, regardless of physical form maintained in accordance with the accounting practices and procedures of CONTRACTOR and that are 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: 06-1454513.
- 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.
- 23) **LIMITATION OF DAMAGES:** Except for (i) CONTRACTOR's indemnity obligations contained in Section 10, and (ii) claims for bodily injury and damage to real or tangible personal property, NDPERS agrees that the CONTRACTOR, its affiliates, subcontractors, and their respective personnel shall not be liable to NDPERS for any Claims for an aggregate amount in excess of two (2) times the fees paid by NDPERS to the CONTRACTOR pursuant to this engagement, except to the extent finally judicially determined to have resulted primarily from the recklessness, bad faith or intentional misconduct of the CONTRACTOR or its subcontractors. In no event shall the CONTRACTOR, its affiliates, subcontractors, or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (all of which are expressly agreed and understood to be indirect Claims), or any loss, damage, or expense that is consequential, special, indirect, incidental, punitive or exemplary in nature, relating to this engagement. The parties expressly acknowledge and agree that the exception contained in N.D.C.C. § 32-12.2-15 permitting a limitation on CONTRACTOR's liability hereunder does apply to CONTRACTOR, this Agreement and the Services under this Agreement. In circumstances where all or any portion of the provisions of this section 23 are finally judicially determined to be unavailable, the aggregate liability of the CONTRACTOR, its affiliates, subcontractors, and their respective personnel for any Claim shall not exceed an amount which is proportional to the relative fault that their conduct bears to the relative fault that their conduct bears to all other conduct giving rise to such Claim. NDPERS hereby represents that it has taken all steps necessary (including those required by N.D.C.C. 32-12.2-15) to render this Section 23 fully and completely enforceable and that such steps are based upon CONTRACTOR's representations regarding its business practices and procedures.



**24) INTELLECTUAL PROPERTY RIGHTS**

Upon full payment to CONSULTANT hereunder, and subject to the terms herein, CONSULTANT hereby grants to STATE a royalty-free, fully paid-up, non-exclusive license to use, for Client's internal business purposes, the works of authorship, materials, information and other intellectual property delivered to STATE pursuant to this Agreement (the "Deliverables"). To the extent any Deliverable provided to STATE in connection with the services constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such Deliverable is licensed to STATE by CONSULTANT as agent for its product company subsidiary on the terms contained herein. The rights granted in this Section do not apply to any intellectual property that is licensed to STATE under a separate agreement.

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


**NORTH DAKOTA PUBLIC  
EMPLOYEES RETIREMENT SYSTEM**

\_\_\_\_\_  
Executive Director

ND Public Employees Retirement System

\_\_\_\_\_  
**Date**

**CONTRACTOR**

  
\_\_\_\_\_  
Signature

Timothy J. Egan  
\_\_\_\_\_  
Printed Name

Managing Director  
\_\_\_\_\_  
Title

01/04/2024  
\_\_\_\_\_  
Date



# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** January 9, 2024

**SUBJECT:** Benefit Coverage Change for Respiratory Syncytial Virus (RSV) Immunization

Please find the attached information from Steve Webster of Sanford Health Plan regarding the Center for Disease Control (CDC) recommendation related to Respiratory Syncytial Virus (RSV) immunization and the impact to the NDPERS health insurance plans.

Due to the Affordable Care Act, the NDPERS non-grandfathered plans must cover RSV vaccinations at 100%. However, this provision of the Affordable Care Act does not apply to the NDPERS grandfathered plan. Therefore, the Board can decide to cover the benefit at 100% or could apply member cost-share for this plan.

The following is the language that is currently in the grandfathered plan Certificate of Insurance (COI):

- |   |                                     |                                     |
|---|-------------------------------------|-------------------------------------|
| • <b>Immunizations other than Well Child Care</b> | 100% of Allowed Charge.             | 100% of Allowed Charge.             |
|   | <i>Deductible Amount is waived.</i> | <i>Deductible Amount is waived.</i> |
- Covered immunizations are those that have been published as policy by the Centers for Disease Control, including Tetanus, Influenza Virus, Pneumococcal Pneumonia, MMR (Measles-Mumps-Rubella), Varicella (Chicken Pox), Shingles (Zoster) Vaccine, Meningococcal Disease and Human Papillomavirus (HPV). **Certain age restrictions may apply.***

Based upon the current plan language, other immunizations published by the CDC are covered at 100% subject to certain age restrictions. Therefore, for consistency, the Board may want to consider approving the RSV immunization for coverage based upon the CDC

age populations at 100%, and not specifically exclude the RSV immunization from this coverage. Given the at risk population and the possible expenses that could incur should an individual within this population experience RSV, the coverage of the benefit at 100% encourages individuals who should receive the immunization to get it and outweigh the cost and severity of illness should an individual opt not to get the immunization since they'd have to pay for a portion of it.

Steve and representatives from Sanford Health Plan will be available at the meeting to review the information with the Board and answer questions you may have. They will also be able to discuss how the cost of the immunization will be handled once the Board makes the decision as it relates to applying the immunization cost to the claims experience and settlement calculation. It is staff's understanding that should the Board opt to cover the benefit at 100%, then effective February 1, 2024, the expenses of the coverage will be applied to the NDPERS claims experience and considered when performing the biennial settlement between NDPERS and Sanford Health Plan.

Per the attached, Sanford Health Plan has covered the cost from September 1, 2023 through January 1, 2024 and is holding NDPERS harmless from these costs, including not applying them to the claims experience during this time period. The following provides details from Sanford Health Plan on the expenses related to the grandfathered plan since September 1 through November 27:

Cost Impact – Grandfathered Plan

For adult RSV vaccination, there has been 85 approved claims, with a total billed amount of \$31,964, a total allowed amount of \$19,505, and a total net payable of \$12,914.

For child/infant RSV immunization, there has been 12 approved claims, with a total billed amount of \$5,253, total allowed amount of \$4,300, and a total net payable of \$4,207.

**Board Action Requested:** Confirm that RSV immunizations should be included as a covered benefit at 100% for the NDPERS grandfathered health plan per the recommendation of the CDC and the language provided in the Certificate of Insurance.

# Memo

**To:** Rebecca Fricke

**From:** Steve Webster

**Date:** 12/19/2023

**Re:** RSV medication coverage

The purpose of this memo is to obtain direction from NDPERS as to whether cost-share should be applied to coverage of the Respiratory Syncytial Virus (RSV) immunizations and vaccinations for the Grandfathered PPO plan that are being covered in accordance to Center for Disease Control (CDC) recommendations. The decision would go into effect February 1, 2024.

In accordance to the Affordable Care Act, Non-Grandfathered fully insured plans must cover RSV immunizations at 100% on or before July 1, 2024 based upon the recommendations from the The Advisory Committee on Immunization Practices (ACIP) and CDC. This rule does not apply to NDPERS Grandfathered plan.

Based upon physician recommendations, Sanford Health Plan (SHP) made a business decision to implement coverage for RSV immunizations at 100% for all fully insured business in accordance to CDC recommendations, effective September 1, 2023. The timing of implementation was decided in part because the of CDC recommendations being released during the onset of RSV season. Further, NDPERS is being held harmless from the costs associated with implementing coverage of RSV immunizations from September 1, 2023 through January 31, 2024.

Further details of the benefit changes can be found on the second page of this memo.

### **CDC Recommendations**

Vaccinations to prevent lower respiratory tract disease caused by RSV:

- Vaccination for adults aged 60 years and older
  - Adults aged 60 years and older may receive a single dose of RSV vaccine using shared clinical decision-making. In May 2023, the FDA approved two RSV vaccines for the prevention of lower respiratory tract disease caused by RSV in those 60 years of age and older: Arexvy and Abrysvo.
- Vaccination for pregnant women
  - Pregnant women may receive a single dose of RSV vaccine during weeks 32-36 weeks of pregnancy, administered immediately before or during RSV season. In August 2023, the FDA approved Abrysvo for the prevention of lower respiratory tract disease caused by RSV in pregnant women during weeks 32-36 weeks gestation.

Monoclonal antibody immunization to prevent lower respiratory tract disease caused by RSV:

- Immunization for infants and young children
  - All children aged 8 months and younger, and also those 24 months and younger with certain health conditions that place them at high risk for severe RSV disease may receive a single dose of RSV monoclonal antibody (e.g., Nirsevimab (Beyfortus™))
    - This drug works similarly to Synagis, a different monoclonal antibody.
    - Babies born to mothers who get the RSV vaccine at least 2 weeks before delivery will have protection and, in most cases, should not need an RSV immunization later. Most infants will not need both.

### **Current Coverage (NDPERS GF and NGF)**

#### Adult Vaccination:

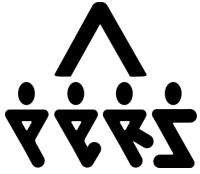
With the robust safety and efficacy data of the two FDA-approved RSV vaccinations, Arexvy and Abrysvo were added to the formulary under the medical benefit as follows:

- Covered at standard cost-share for individuals ages 60 years and older, and pregnant women at 32-36 weeks gestation.
- Prior authorization is not required.
- The vaccine can be received at a doctor's office or at an in-network pharmacy.
- Effective 9/1/23 through 1/31/24

#### Child Immunization:

The FDA-approved monoclonal antibody for RSV, Beyfortus, has also been added to the formulary under the medical benefit as follows:

- First dose:
  - Covered at standard cost-share for children under 2 years of age
  - Prior authorization not required for children under 1 year of age
  - Prior authorization is required for children 1-2 years of age
- Additional dose(s)
  - Covered at standard cost-share for children under 2 years of age when medically appropriate and preapproved.
  - Prior authorization is required for children under 2 years of age
- Effective 10/1/23 through 1/31/24



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

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

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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:** January 9, 2024

**SUBJECT:** Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that have been signed since the last update. Please let me know if you have any questions on any of these contracts.

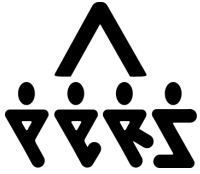
This topic is informational only.

**Contracts Signed During 2023:**

Vendor	Amount	Notes
NDIT	\$ -	Service Level Agreement (January 2023)
Spherion Staffing	~ \$7,200	Temporary Staffing for Admin Services
Marco	\$ 3,654.49	Replacement of North & Batch Printers
Inter Office	\$ 1,179.44	Chair
Central Services	\$ -	Staff authorization to pickup printed materials
Inter Office	\$ 280.00	Adjust height of workstation in scanning room
NDIT	\$ -	Service Level Agreement (June 2023)
Callan	\$ -	Recordkeeper RFP scope of work.
ND Safety Council	\$ 874.00	AED/CPR training for 19 staff
Inter Office	\$ 2,323.88	Chairs x 2
Inter Office	\$ 824.76	Rising Desk
GRS	\$ 9,000.00	Programing for DC incentive
Inter Office	\$ 2,358.88	Chairs x 2
Inter Office	\$ 824.76	Rising Desk
Inter Office	\$ 2,328.88	Chairs x2
ND Surplus Property	\$ 20.00	File Drawers x2
CliftonLarsonAllen	\$ -	Statement of Services Provided

**Contracts Signed Since Last Reported:**

Vendor	Amount	Notes
Burleigh County	\$ -	Public Safety With Prior Service
City of Rolla	\$ -	Public Safety With Prior Service
City of Wahpeton	\$ -	Public Safety With Prior Service
City of Wishek	\$ -	Public Safety With Prior Service
Golden Valley County	\$ -	Public Safety With Prior Service
Grand Forks County	\$ -	Public Safety With Prior Service
Hettinger County	\$ -	Public Safety With Prior Service
McIntosh County	\$ -	Public Safety With Prior Service
Ransom County	\$ -	Public Safety With Prior Service
Traill County	\$ -	Public Safety With Prior Service
Logan County	\$ -	Public Safety With Prior Service
Stutsman County	\$ -	Public Safety With Prior Service
Cavalier County	\$ -	Life Insurance
Traill County Water Resource	\$ -	Life Insurance



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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** January 9, 2024

**SUBJECT:** Proposed Administrative Rules

Staff has begun the process of drafting our administrative rules. The first effort is to identify areas of proposed rulemaking. Attachment 1 is the summary of proposed rule changes. Attachment 2 is a draft of the proposed rules that are what we refer to as our technical rule changes and are not specific to implementation of House Bill 1040. Attachment 3 is a draft of the proposed rules that are specific to the implementation of House Bill 1040. The draft rules were prepared by legal counsel based upon requests from staff.

We are asking you to review and identify any additional areas we should be considering. Staff will then take these items and review with legal counsel to bring forward additional rules or changes at the February meeting.

The following is the tentative schedule:

## **2024 Proposed Administrative Rule Revision/Addition/Deletion Schedule**

January 9	Initial Board review of proposed rules.
February 13	Second Board review.
March 12	Third and Final Board review.
March 18	(Week of) Post copy of proposed rules on NDPERS website, notify all employer groups that rules are on website, send formal notice and materials to Legislative Council.



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

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

**Board Action:** Provide comments on additions/edits to proposed rules.

# Attachment 1

## Summary

### TECHNICAL CORRECTION PROPOSED ADMINISTRATIVE RULES

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

Section	Description	Reason
<b>71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.</b>	New section added regarding a member's eligibility to convert a disability benefit to a normal unreduced benefit, including clarification on interest accrual and benefit option factors.	Clarification
<b>71-03-03-01. Enrollment.</b>	Ensure consistency to 71-03-06-01 between state agency employees and political subdivision employees.	Clarification
<b>71-03-03-08. Continuation of life insurance after retirement.</b>	Clarify eligibility to continue life insurance after retirement and that individual must have continuous coverage as they transition from active employment to retirement.	Clarification
<b>71-03-05-01. Premium billing.</b>	Simplify language to reference NDCC 54-52.1.	Clarification
<b>71-03-06-01. Enrollment.</b>	Ensure consistency to 71-03-03-01 between state agency employees and political subdivision employees.	Clarification
<b>71-03-06-08. Employee contribution.</b>	Clarify employee's responsible for paying part of insurance premium must pay premium to their employer.	Clarification
<b>71-05-02-06. Cancellation of disability benefit.</b>	Clarifies interest accrual ends and benefit option factors to be used for normal retirement benefit for highway patrol members.	Clarification
<b>71-05-04-08. Conversion of sick leave.</b>	Modify language for Highway Patrol Retirement System regarding the calculation of unused sick leave related to the final average salary to be used.	Clarification

**HOUSE BILL 1040 PROPOSED ADMINISTRATIVE RULES**

<b>Section</b>	<b>Description</b>	<b>Reason</b>
<b>71-02-08-01. Participation.</b>	Repeal as employer groups will no longer be able to join the Defined Benefit Plan as of closure date.	Comply with state law, HB 1040
<b>71-04-01-01. Definitions.</b>	Updates number of members on board to eleven and adds definition of wages and salary for 457 plan to be consistent with other retirement definitions.	Comply with state law and clarification, HB 1547 & HB 1040
<b>71-08-01-01. Ability to elect to transfer into the defined contribution plan.</b>	Repeal due to special enrollment window outlined in HB 1040 for state employees with no more than 5 years of service.	Comply with state law, HB 1040
<b>71-08-01-05. Transfer amount of persons transferring into eligible employment after December 31, 1999.</b>	Add clarification that calculation identified in rule expires as of closure date due to different calculation for special window outlined in HB 1040.	Comply with state law, HB 1040
<b>71-08-01-07. Late election opportunity.</b>	Repeal as late election opportunities are no longer needed.	Comply with state law, HB 1040
<b>71-08-08-01. Temporary employee participation.</b>	Add language regarding temporary participation after defined benefit plan closure to clarify new temporary employee must participate in new defined contribution.	Comply with state law, HB 1040
<b>71-08-10. Permanent employee participation.</b>	Add new section to rules related to permanent employee participation to specify additional contribution requirements due to federal restrictions. Allow NDPERS to auto enroll eligible employees. Clarify designation of beneficiary requirements.	Comply with state law, HB 1040 and IRC requirements related to governmental 401(a) plans and contribution elections
<b>71-08-11. Contributions.</b>	Add new section regarding employer reporting requirements to be consistent with reporting between defined benefit plan and defined contribution plan members, specifically related to bonuses, calculating contributions, employer payment of employee contributions, reporting for individuals working less than a forty hour week and employee incentive payments.	Comply with state law, HB 1040 and clarification

ARTICLE 71-01  
GENERAL ADMINISTRATION

**Attachment 2**  
**Technical Rule**  
**Changes**

Chapter

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

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

Section

71-01-01-01	Organization of Public Employees Retirement Board
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**71-01-01-01. Organization of public employees retirement board.**

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

Executive Director  
Box 1657  
Bismarck, North Dakota 58502

**History:** Amended effective November 1, 1981; November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004; April 1, 2016. \_\_\_\_\_

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

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

## CHAPTER 71-01-02 ELECTION RULES

### Section

71-01-02-01	Election Committee
71-01-02-02	Eligible Voters
71-01-02-03	Candidate Eligibility
71-01-02-04	Election Notification
71-01-02-05	Petition Format
71-01-02-06	Procedure for Completing and Filing Petitions
71-01-02-07	Election Ballots
71-01-02-08	Election
71-01-02-09	Canvassing Rules
71-01-02-10	Notification of Election Results
71-01-02-11	Special Elections
71-01-02-12	Penalties
71-01-02-13	Election Voting

### **71-01-02-01. Election committee.**

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

**History:** Effective April 1, 1992.

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

**Law Implemented:** NDCC 54-52-03

### **71-01-02-02. Eligible voters.**

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

**History:** Effective April 1, 1992; amended effective July 1, 1994; April 1, 2008; April 1, 2012. \_\_\_\_\_

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

**Law Implemented:** NDCC 54-52-03

### **71-01-02-03. Candidate eligibility.**

1. Any active participating member, members of the defined contribution retirement plan, the highway patrol retirement system, and the job service retirement plan are eligible to serve as an elected member of the board in accordance with subsection-4 5 of North Dakota Century

Code section 54-52-03, may become a candidate for election to the board. An department agency or political subdivision may not be represented by more than one elected member. Employees who have terminated their employment for whatever reason are not eligible to serve as an active elected member of the board.

2. ~~Any person, as of April fifteenth of the election year, who has accepted a retirement allowance, may become a candidate for the retiree member to the board.~~

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

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-04. Election notification.**

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

**History:** Effective April 1, 1992; amended effective July 1, 2000; April 1, 2008; April 1, 2014; April 1, 2020. \_\_\_\_\_

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-05. Petition format.**

4. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters. ~~The nomination petition for the retiree member on the board must include the signatures of at least twenty-five persons receiving a retirement allowance.~~
2. The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate \_\_\_\_\_ for election to the North Dakota Public Employees Retirement System board."
3. The nomination petition must include a certification by the candidate, as follows: "I accept the nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board."
4. If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

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

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

**Law Implemented:** NDCC 54-52-03

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

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

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

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

**Law Implemented:** NDCC 54-52-03

**71-01-02-07. Election ballots.**

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a narrative on candidates who have provided that information.
3. Ballots must first be arranged with the names of each candidate on the ballot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.
4. If there is only one candidate for an election, the election will nonetheless be conducted in compliance with the provisions of this chapter.



5. If there is no candidate, the board shall solicit at least two persons from the eligible pool of candidates to run for election to the board. The election will then be conducted in compliance with the provisions of this chapter.

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

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-08. Election.**

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

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

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-09. Canvassing rules.**

1. Ballot counting by election committee members or their authorized representatives will commence on the date set for the election committee to do so and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.
3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.

5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a coin toss. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.
8. If the committee should determine that the outcome of the election has been compromised for any reason, the committee may determine the election to be invalid. If the election is determined to be invalid, the committee shall call for a new election with a new election schedule.

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

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

**Law Implemented:** NDCC 54-52-03

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

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

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

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-11. Special elections.**

1. A special election ~~will~~ may be called for by the retirement board in the event of a vacancy resulting from the death, resignation, or termination of North Dakota public employees retirement system membership by any elected board members.
2. Special elections must be conducted in accordance with the regular elections rules, except that the board will determine a new election schedule.
3. In the case of a special election, the term to be filled is the unexpired portion of the vacant board position.

**History:** Effective April  
1, 1992. \_\_\_\_\_

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

**Law Implemented:** NDCC 54-52-03

#### **71-01-02-12. Penalties.**

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

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

**History:** Effective July 1, 2000.

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

**Law Implemented:** NDCC 54-52-03

**71-01-02-13. Election voting.**

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

**History:** Effective April 1, 2014.

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

**Law Implemented:** NDCC 54-52-03

## **CHAPTER 71-02-03 SERVICE CREDIT**

### **Section**

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

### **71-02-03-01. Service credit - General rule.**

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

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

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

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

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

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

Service credit will not be granted for:

1. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.
2. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.

3. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased by the member.
4. Service the member waived when transferring into the defined contribution retirement plan, including service not yet granted pursuant to section 71-02-03-01.

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

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

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

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

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

**History:** Effective June 1, 1996.

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

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

#### **71-02-03-02. Military credit.**

Repealed effective November 1, 1990.

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

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

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

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

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

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

#### **71-02-03-02.2. Payment.**

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

1. Simple interest at the actuarial rate of return must accrue monthly on the unpaid balance. Interest is calculated from the fifteenth of each month.

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

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

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

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

#### **71-02-03-02.3. Delinquent payment.**

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

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

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

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

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

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

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

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

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

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

### **71-02-03-02.5. Costs.**

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

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

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

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

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

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

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

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

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

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



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

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

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

**Law Implemented:** NDCC 54-52-17

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

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

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

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

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

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

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

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

1. Aftertax payments may be accepted from the member as early as six months prior to when the member is no longer eligible to accrue sick leave hours, if the following requirements are met:
  - a. A notice of employment change has been provided to the public employees retirement system.
  - b. A written certification by the member's employer, as to the member's unused balance of accumulated sick leave as of the date the member wishes to begin payment, is on file with the public employees retirement system.



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

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

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

**Law Implemented:** NDCC 54-52-27

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

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

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

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

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

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

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

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

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

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

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

**Law Implemented:** NDCC 54-52-27

## CHAPTER 71-02-05 DISABILITY

### Section

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

#### **71-02-05-01. Eligibility.**

Repealed effective January 1, 1992.

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

Repealed effective January 1, 1992.

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

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

~~**History:** Amended effective January 1, 1992; May 1, 2004; July 1, 2006.~~

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

~~**Law Implemented:** NDCC 54-52-17~~

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

Repealed effective November 1, 1990.

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

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

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

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

**Law Implemented:** NDCC 54-52-17

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

### **1. Application.**

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

### **2. Medical consultant.**

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

### **3. Medical examination.**

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

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

4. **Appeal.**

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

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

6. **Redetermination and recertification.**

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

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

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

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

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

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

#### **71-02-05-07. Optional benefits.**

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

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



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

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

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

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

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

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

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

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

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

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

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

**Law Implemented:** NDCC 54-52-17

#### **71-02-05-08. Transitional period.**

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

**History:** Effective January 1, 1992.

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

**Law Implemented:** NDCC 54-52-17

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

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

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

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

**Law Implemented:** NDCC 54-52-17

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

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

**History:** Effective

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

**Law Implemented:** NDCC 54-52-17



## CHAPTER 71-03-03 EMPLOYEE RESPONSIBILITIES

### Section

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

### **71-03-03-01. Enrollment.**

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

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

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

**General Authority:** NDCC 54-52.1-08

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

### **71-03-03-02. Late enrollment.**

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

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

**General Authority:** NDCC 54-52.1-08

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

### **71-03-03-03. Early enrollment.**

Repealed effective June 1, 1996.

#### **71-03-03-04. Open enrollment.**

Repealed effective June 1, 1996.

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

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

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

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

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

**General Authority:** NDCC 54-52.1-08

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

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

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

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

**General Authority:** NDCC 54-52.1-08

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

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

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

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

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

**General Authority:** NDCC 54-52.1-08

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

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

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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

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

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

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

**General Authority:** NDCC 54-52.1-08

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

#### **71-03-03-10. Employee contribution.**

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

**History:** Effective October 1, 1986.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

## CHAPTER 71-03-05 BOARD RESPONSIBILITIES

### Section

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

### **71-03-05-01. Premium billing.**

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

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

**History:** Effective October 1, 1986.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

### **71-03-05-02. Retiree billing.**

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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03

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

Repealed effective April 1, 2008.

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

Repealed effective April 1, 2012.

### **71-03-05-05. Appeal process.**

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

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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

**History:** Effective October 1, 1986.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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



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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

**History:** Effective April 1, 2002.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

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

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

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

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

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

**History:** Effective April 1, 2002.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08



## CHAPTER 71-03-06

### PARTICIPATION OF POLITICAL SUBDIVISIONS EMPLOYEE RESPONSIBILITIES

#### Section

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

#### **71-03-06-01. Enrollment.**

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

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

4. Addition of a dependent as a result of birth, adoption, or placement for adoption.

Effective date

of coverage is the first of the month in which the event occurred. An employee who previously

waived coverage shall enroll for coverage at the same time that the employee's eligible dependent is enrolled.

**History:** Effective June 1, 1996; amended effective July 1, 1998; July 1, 2010. \_\_\_\_\_

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

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

#### **71-03-06-02. Late enrollment.**

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

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

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

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

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

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

03-03-05.

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

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

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

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

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

**History:** Effective June 1, 1996.

**General Authority:** NDCC 54-52-04, 54-52.1-03.1  
**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

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

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

**History:** Effective June 1, 1996; amended effective July 1, 2010.  
**General Authority:** NDCC 54-52-04, 54-52.1-03.1  
**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

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

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

**History:** Effective June 1, 1996.  
**General Authority:** NDCC 54-52-04, 54-52.1-03.1  
**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

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

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

**History:** Effective June 1, 1996.  
**General Authority:** NDCC 54-52-04, 54-52.1-03.1  
**Law Implemented:** NDCC 54-52.1-03, 54-52.1-03.1

**71-03-06-08. Employee contribution.**

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

**History:** Effective June 1, 1996; amended effective July 1, 2010.\_\_\_\_\_  
**General Authority:** NDCC 54-52-04, 54-52.1-03.1  
**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03.1

**ARTICLE 71-04**  
**DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

Chapter

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

**CHAPTER 71-04-01**  
**DEFINITIONS**

Section

71-04-01-01	Definitions
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**71-04-01-01. Definitions.**

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

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

10. "Retirement board" or "board" means the ~~nine~~ eleven persons described in North Dakota Century Code chapter 54-52-03.
11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.
14. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

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

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

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

## CHAPTER 71-05-02 DISABILITY

### Section

71-05-02-01	Disability Retirement Eligibility
71-05-02-01.1	Conditions for Changing to a Disability Retirement Benefit From an Early Reduced Retirement Benefit
71-05-02-02	Determination of Disability - Procedures
71-05-02-03	Aggrieved Parties' Rights [Repealed]
71-05-02-04	Optional Benefits
71-05-02-05	Interest Accrued on Accumulated Contributions for Disabled Annuitants
71-05-02-06	Cancellation of Disability Benefit

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

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

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

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

**Law Implemented:** NDCC 39-03.1-11

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

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

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

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

**Law Implemented:** NDCC 39-03.1-11

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

##### **1. Application.**

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

##### **2. Medical examination.**

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

**3. Medical consultant.**

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

**4. Decision and appeal.**

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

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



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

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

**Law Implemented:** NDCC 39-03.1-11

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

Repealed effective June 1, 1996.

#### **71-05-02-04. Optional benefits.**

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

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

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

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

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

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

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

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

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

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

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

When a member receiving a disability benefit attains the member's normal retirement date, that member may elect to terminate that member's disability benefit and draw retirement benefits as specified in North Dakota Century Code section 39-03.1-11. Upon receipt of normal retirement benefits, interest accrual on the member account shall end and benefit option factors will be based upon the actuarial retirement factors on the date of disability to normal conversion.

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

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

**Law Implemented:** NDCC 39-03.1-11

## CHAPTER 71-05-04 SERVICE CREDIT

### Section

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

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

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

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

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-11

#### **71-05-04-02. Military credit.**

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

**History:** Effective October 1, 1991.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** 38 USC 2021-2026

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

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

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

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

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

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

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

Repealed effective May 1, 2004.

#### **71-05-04-04. Payment.**

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

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

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

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

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

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

#### **71-05-04-04.1. Costs.**

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

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

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

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

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

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

#### **71-05-04-05. Delinquent payment.**

If a payment to be made pursuant to section 71-05-04-04 is not received within thirty days of the due date, the public employees retirement system shall send a letter to the contributor or member of an alternative retirement system advising the person of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on a closed account must be returned to the member. The member may submit written documentation as to the cause for the delinquency to the executive director for review and to request that the purchase contract be reestablished without a new calculation.

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

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

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

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

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

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

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

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

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

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

**History:** Effective October 1, 1991.

**General Authority:** NDCC 39-03.1-06

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

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

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

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

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

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

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

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-30

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

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

1. The program meets all the requirements of the North Dakota Century Code.

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

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

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

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC 39-03.1-10.2



**CHAPTER 71-02-08  
PARTICIPATION BY GOVERNMENTAL UNITS**

**Attachment 3  
Rules specific to  
implementation  
of HB 1040**

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

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

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

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

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

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

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

**71-02-08-02. Withdrawal.**

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

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

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



**General Authority:** NDCC 54-52-04  
**Law Implemented:** NDCC 54-52-02.1

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

Repealed effective April 1, 2012.

**71-02-08-04. Transfer date.**

Repealed effective April 1, 2012.

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

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

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

**History:** Effective June 1, 1996.

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

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

## ARTICLE 71-08 DEFINED CONTRIBUTION RETIREMENT PLAN

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

### CHAPTER 71-08-01 ELECTION AND TRANSFER

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

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

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

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

**History:** Effective July 1, 2000.

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

**Law Implemented:** NDCC 54-52.6-02

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

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

**History:** Effective July 1, 2000.

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

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

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

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

**History:** Effective July 1, 2000.

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

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

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

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

**History:** Effective July 1, 2000.

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

**Law Implemented:** NDCC 54-52.6-12

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

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

**History:** Effective July 1, 2000.

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

**Law Implemented:** NDCC 54-52.6-03

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

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

**History:** Effective July 1, 2000.

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

**Law Implemented:** NDCC 54-52.6-02

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

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

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

~~have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member.~~

**History:** Effective April 1, 2002.

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

**Law Implemented:** NDCC 54-52.6-02

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

Pursuant to subdivision a of subsection 4 of North Dakota Century Code section 15-10-17, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

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

**History:** Effective April 1, 2012.

**General Authority:** NDCC 15-10-17

**Law Implemented:** NDCC 15-10-17

## CHAPTER 71-08-08 TEMPORARY EMPLOYEE PARTICIPATION

### Section

71-08-08-01 Temporary Employee Participation

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

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

1. Before January 1, 2025, ~~A~~ a temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and ~~filed~~ filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. An employer may not pay the temporary employee's contributions.
7. A temporary employee first employed after December 31, 2024 may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. [If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.](#) Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional one, two, three, four, five or six percent. The election to contribute an additional percent is a lifetime election and will continue for as long as the temporary employee is employed by a participating employer.

8. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee. For a temporary employee that becomes a permanent employee, the maximum additional contribution as a permanent employee is three percent.

**History:** Effective July 1, 2006. \_\_\_\_\_

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

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

**CHAPTER 71-08-10**  
**PERMANENT EMPLOYEE PARTICIPATION**

Section

71-08-10-01 Permanent Employee Participation

71-08-10-02 Contribution

71-08-10-03 Designation of Beneficiary

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

1. Under this section "eligible employee" means a permanent employee who:

- a. Meets all the eligibility requirements set by NDCC 54-52;
- b. Is at least eighteen years of age;
- c. Becomes a participating member after December 31, 2024; and
- d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.

2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who becomes a participating or deferred member under NDCC 54-52 before January 1, 2025, remains in the defined benefit retirement plan under NDCC 54-52, regardless of being rehired after December 31, 2024.

3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under NDCC 54-52.6 as provided under NDCC 54-52.6-02.1.

4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under NDCC 15-10-17 for university system employees.

a. A participating or deferred member in the defined contribution retirement plan under NDCC 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection is eligible to participate in the retirement plan enumerated under this subsection.

b. A participating member of a retirement plan enumerated under section 4 who becomes an eligible employee is not eligible to participate in the defined benefit retirement plan but instead participates in the defined contribution retirement plan under NDCC 54-52.6.

5. An eligible employee under section 1 must be enrolled in the plan within the first thirty days of employment.

**71-08-10-02. Contribution.**

1. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect, within thirty days of beginning employment, to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.

2. An employee's election for additional contributions under section 1 is a lifetime election as long as the individual is a participating member. This lifetime election applies regardless of the participant's employer as long as the employer participates in the defined contribution plan.
3. An employee's additional contribution must be one, two or three percent.

**71-08-10-03. Designation of beneficiary.**

A member may designate a beneficiary or beneficiaries by filing such designation with the office. A member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the death of the member. If a vested, married member designates a beneficiary other than or in addition to a spouse, the member's spouse's consent must be obtained before benefits can be paid other than to the member's spouse.

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

**Law Implemented:** NDCC 54-52-02.15, 54-52.6-09



## **CHAPTER 71-08-11** **CONTRIBUTIONS**

### **Section**

<b><u>71-08-11-01</u></b>	<b><u>Adjustment for bonuses, profit sharing, and contributions paid in a month other than earned.</u></b>
<b><u>71-08-11-02</u></b>	<b><u>Basis for calculating contributions – Salary reduction – Salary deferral arrangements.</u></b>
<b><u>71-08-11-03</u></b>	<b><u>Employer payment of employee contributions.</u></b>
<b><u>71-08-11-04</u></b>	<b><u>Retirement contributions for individuals working less than forty-hour workweek.</u></b>
<b><u>71-08-11-05</u></b>	<b><u>Individual employee incentive payments.</u></b>
<b><u>71-08-11-06</u></b>	<b><u>Contributions transferred from defined benefit retirement plan</u></b>
<b><u>71-08-11-07</u></b>	<b><u>Employer paid incentive for transferees</u></b>

### **71-08-11-01. Adjustment for bonuses, profit sharing, and contributions paid in a month other than month earned.**

Adjustments for the following must be made for all members:

1. Participating employers shall report bonuses or profit-sharing amounts paid when remitting the contribution associated with the bonus. Recruitment and retention bonuses under North Dakota Century Code section 54-06-31 are not eligible for consideration as salary and no contributions associated with those types of bonuses shall be submitted.
2. Bonuses or profit-sharing amounts may not be submitted to the public employees retirement system for future months.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

### **71-08-11-02. Basis for calculating contributions - Salary reduction - Salary deferral arrangements.**

1. Amounts deducted from a member's salary at the member's option to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan are part of wages or salary when calculating retirement contributions.
2. Employee contributions paid by the employer under IRC 414(h) pursuant to a salary reduction agreement do not reduce wages or salary when calculating retirement contributions.
3. Amounts contributed to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or 457 plan by the employer are not part of wages or salary when calculating retirement contributions.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

**71-08-11-03. Employer payment of employee contributions.**

1. A written election submitted under subsection 3 of North Dakota Century Code section 54-52.6-09 shall be reported to the board a minimum of thirty-one days prior to the effective date.
2. An employer may not discriminate in its contributions to eligible participating employees within the same plan under North Dakota Century Code section 54-52.6-09.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-09

**71-08-11-04. Retirement contributions for individuals working less than a forty-hour work week.**

Retirement contributions must be made on wages paid to eligible permanent employees who are regularly scheduled for less than forty hours per week but who work at least twenty hours per week during a twelve-month period.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-09.6

**71-08-11-05. Individual employee incentive payments.**

Individual employee incentive payments received under North Dakota Century Code section 54-06-24 or similar programs are not considered to be salary and are not subject to retirement contributions.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-01, 54-52.6-02

**71-08-11-06 Contributions transferred from defined benefit retirement plan**

1. The lump sum amount to be transferred from the defined benefit retirement plan under NDCC 54-52.6-02.2 and NDCC 54-52.6-03 based on the actuarial present value of the eligible employee's accumulated benefit obligation includes an employee contribution portion and an employer contributions portion.
2. The employee contribution portion of the actuarial present value of the eligible employees accumulated benefit obligation means the employee's direct contribution to the defined benefit retirement plan plus the interest on the employee's contributions in the defined benefit retirement plan.

3. The employer contribution portion of the actuarial present value of the eligible employee's accumulated benefit obligation means the lump sum amount transferred minus the employee share.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-02.2, NDCC 54-52.6-03

**71-08-11-07 Employer paid incentive for transferees**

The current active state employer will make the additional contribution under 54-52.6-02.2(3) no later than January 15 of the year in which the contribution is made. Only employees that are employed by an active state employer at the time or the transfer will be eligible for the incentive payment.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 54-52.6-02

**Law Implemented:** NDCC 54-52.6-02.2, NDCC 54-52.6-03



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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca & Chairperson Kommer

**DATE:** January 9, 2024

**SUBJECT:** Committee Chair Assignments

At the December Board meeting, the Board and Chair made assignments related to the various Board standing subcommittees, as well as, the State Investment Board (SIB). The following are the appointments to each committee:

- Audit:
  - Morrisette, Dever, Erickson, Miller
- Investment
  - Miller, Volk, Stemen, Erickson, Morrisette
- Compensation & Performance Appraisal (same as election committee)
  - Goodhouse, Buck, Kommer, Dockter, Vedaa
- Election Committee
  - Will be appointed in February per NDAC requirement
- State Investment Board (SIB)
  - Miller, Morrisette

During the previous meeting, it was discussed that the naming of Chairs for the Audit, Investment, and Compensation & Performance Appraisal subcommittees should be brought back to the January meeting.

**Board Action Requested:** Name Chairs for the Audit, Investment, and Compensation & Performance Appraisal subcommittees.



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# Memorandum

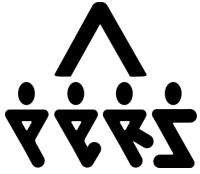
**TO:** NDPERS Board

**FROM:** Chairperson Kommer

**DATE:** January 9, 2024

**SUBJECT:** Ethics Commission Request for Opinion

This is a placeholder to provide the Board with an update on the Ethics Commission Request for Opinion.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** January 9, 2024

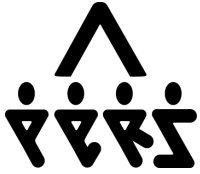
**SUBJECT:** Annual Comprehensive Financial Report (ACFR)

We have completed the 2023 annual comprehensive financial report. The report contains detailed financial, investment, actuarial, and statistical information for the plans administered by NDPERS. You can view, download, or print the report from the NDPERS website at:

<https://www.ndpers.nd.gov/sites/www/files/documents/about/financial/acfr-2023.pdf>

We sent an email notice to each participating employer notifying them that the annual report is available on the NDPERS website. We also submitted the report to the Government Finance Officers Association with an application for the GFOA Certificate of Excellence in Financial Reporting.

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



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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** January 9, 2024

**SUBJECT:** Consultant Fees for the Quarter Ended December 2023

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended December 2023.

This is informational only.

Attachment

**North Dakota Public Employees Retirement System  
Consulting/Investment/Administrative Fees  
For the Quarter ended December 31, 2023**

Program/Project	Fee Type	Oct-23	Nov-23	Dec-23	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
<b><u>Actuary/Consulting Fees:</u></b>						
<b>Insurance Plans:</b>						
Deloitte	Insurance Legislative Analysis				- \$	406
Deloitte	Health & Part D Claims Projections				- \$	-
Deloitte	Insurance Consulting	1,300			1,300 \$	9,263
Buck Consulting	Life/Dental/Vision RFP		5,000	5,000	10,000 \$	13,333
<b>Deferred Compensation/Defined Contribution:</b>						
Callan & Associates	Asset Allocation & Liability Study				- \$	-
Callan & Associates	Investment Consultant Expenses	12,824			12,824 \$	25,647
Callan & Associates	Record Keeper Search				- \$	-
<b>Defined Benefit:</b>						
Gabriel Roeder Smith & Company	Retirement Actuarial Valuation	30,500		45,500	76,000 \$	94,500
Gabriel Roeder Smith & Company	GASB 67/68 (Retirement) Valuation			27,000	27,000 \$	27,000
Gabriel Roeder Smith & Company	Actuarial Factor Updates for 1040	900			900 \$	900
Gabriel Roeder Smith & Company	Retirement Legislation			3,588	3,588 \$	7,725
Gabriel Roeder Smith & Company	Retirement Consulting/Actuarial Analysis			3,515	3,515 \$	9,258
Mid Dakota Clinic	Retirement Disability Consultant				- \$	1,800
<b>RHIC:</b>						
Gabriel Roeder Smith & Company	RHIC Actuarial Valuation	6,000		7,400	13,400 \$	14,400
Gabriel Roeder Smith & Company	GASB 74/75 (RHIC) Valuation			2,000	2,000 \$	2,000
Gabriel Roeder Smith & Company	RHIC				- \$	-
<b>All Plans:</b>						
Nexus	IT Consulting				- \$	27,626
<b><u>Audit Fees:</u></b>						
Clifton Larson Allen	Annual Audit Fee	15,750		10,500	26,250 \$	94,500
<b><u>Legal Fees:</u></b>						
ND Attorney General	Legal Fees on All Plans	3,831	6,840	9,541	20,211 \$	34,283
Ice Miller - Federal Tax Consultant	Legal Fees on All Plans	680	4,992	513	6,185 \$	13,205
Klausner, Kaufman, Jensen & Levinson	Litigation vs Legislature		34,505		34,505 \$	108,385
Klausner, Kaufman, Jensen & Levinson	Litigation vs Legislature				- \$	3,594
Elsberry & Shively Inc	Litigation vs Legislature	5,267	589		5,856 \$	15,486
<b><u>Investment Fees:</u></b>						
SIB - Investment Fees	Retirement (DB)	2,278,387	2,278,387	*	4,556,774 \$	11,391,935
SIB - Investment Fees	Ret Health Credit	252,550	254,955	*	507,505 \$	1,251,160
SIB - Investment Fees	Insurance	32,021	32,900	*	64,921 \$	156,002
SIB - Investment Fees	Job Service	141,593	142,811	*	284,404 \$	702,102
SIB - Administrative Fees	Retirement (DB)	59,870	65,627	*	125,497 \$	434,517
<b><u>Administrative Fee:</u></b>						
Sanford Health Plan	Health Plan	1,258,173	1,259,961	*	2,518,134 \$	6,293,455

\* fees not yet available





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

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

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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:** Chairperson Kommer

**DATE:** January 9, 2024

**SUBJECT:** Letter from North Dakota Industrial Commission

This is a placeholder to provide the Board with information related to a letter (Attachment1) received from the North Dakota Industrial Commission dated January 4, 2024. Also included as Attachment 2 is the response referenced in their letter from Scott Miller, former Executive Director, following direction by the Board provided at the May meeting regarding questions raised previously by the Commission.



# Industrial Commission of North Dakota

Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

January 4, 2024

To: North Dakota Public Employees Retirement System Board of Trustees

Re: Inquiry related to NDPERS Defined Benefit Plan Over-Contributions, IRC 401(a)(17)

Dear Chair Kommer and NDPERS Board Members,

In January of 2023, the Office of the Industrial Commission was made aware of an issue related to the calculation of retirement benefits for at least two Industrial Commission agency executives and was advised to contact the NDPERS Board of Trustees. A letter was sent to the NDPERS Board on March 29, 2023.

The original letter included numerous questions to which the North Dakota Industrial Commission was seeking answers. A request was made of the NDPERS Board to facilitate the gathering and communication of information that would then be reported to the Industrial Commission, which is made up of the Governor, the Attorney General, and the Agriculture Commissioner.

It is my understanding that the Board directed then Executive Director Scott Miller to respond to the inquiry, and his responses were presented at the May 2023 NDPERS Board meeting and subsequently sent to me.

The Industrial Commission members found the responses to be incomplete and directed the Office of the Industrial Commission to contract for the services of an employment and labor law specialist to conduct an inquiry and assess the impact of NDPERS operational and procedural conditions on Industrial Commission agencies and executives, and to make a report to the Industrial Commission.

While the services of an outside consultant with employment and labor law expertise are being pursued, it is my hope that the NDPERS Board will revisit this matter and the questions that were presented, and the NDPERS team will conduct a thorough analysis and work in a spirit of cooperation to develop a comprehensive response to a matter that has had serious, negative consequences for Industrial Commission agency executives.

To convey the magnitude of the problem, beginning in January of 2023, one agency executive's estimated monthly benefit dropped by approximately \$6,000 per month. Understandably, such

a dramatic and unexpected reduction in projected monthly retirement benefits has been exceedingly disruptive for this executive and his family.

Based on records related to Special Assistant Attorneys General (SAAG) appointments, it appears that in the 4<sup>th</sup> quarter of 2021 into January of 2022, NDPERS contracted with numerous SAAGs to “provide the North Dakota Public Employees Retirement System with legal advice and counsel regarding federal tax code compliance, employee benefits, and qualifications”.

Perhaps the results of this work can assist with the responses to the Industrial Commission’s questions, the development of an understanding of what transpired to create the current circumstances, and what retrospective and prospective solutions are appropriate.

I respectfully submit for your reconsideration the following summary of the matter and the questions to which the Industrial Commission seeks answers:

**The Office of the Industrial Commission has received information indicating at least one former and one current Industrial Commission agency executive have been detrimentally impacted by procedures related to the administration of IRC Section 401(a)(17) annual compensation limits that affect plan contribution and distribution levels. The Industrial Commission would like to gain an understanding of the operational systems and/or procedural conditions that have led to a protracted period during which over-contributions to the NDPERS Defined Benefit Plan were allowed, resulting in the distribution of inaccurate information regarding retirement benefits to participants in the Plan, including inaccurate annual statements and inaccurate official benefit estimates, and potentially leading to current and future monetary damages.**

**The Office of the Industrial Commission respectfully requests answers to the following questions, which do not include any request for confidential financial information related to a specific plan participant:**

- 1. When were the Section 401 (a)(17) annual compensation limits adopted and when, how, and with what frequency was this information communicated to state agency payroll administrators and participants that are enrolled in the NDPERS Defined Benefit Retirement Plan?**
- 2. When employees were provided the option to change from the NDPERS Defined Contribution Plan to the NDPERS Defined Benefit Plan, were the Section 401 (a)(17) annual compensation limits identified, communicated, and factored into the estimated benefit information provided to employees by NDPERS at that time?**
- 3. When employees have purchased years of service, have the Section 401 (a)(17) annual compensation limits been factored into the calculation of Final Average Salary that is used to determine the cost of the purchase by NDPERS?**
- 4. If years of service have been purchased based on inaccurate information and calculations that resulted in an overpayment by a plan participant, how have these transactions been corrected?**

5. When, how, and with what frequency has NDPERS communicated with non-central payroll agencies regarding 401(a)(17) limits to facilitate systems and procedural compliance?
6. It would appear that in the first half of 2021, leading up to the retirement of a former Industrial Commission agency executive, NDPERS was aware of a procedure condition that could result in over-contributions to the Defined Benefit plan. What communication was provided to the Industrial Commission and the agency payroll administrator at that time regarding the 401(a)(17) limits, as the issue could reasonably be expected to continue to impact the employing Industrial Commission agency and the retiree's successor?
7. In general terms, how did NDPERS correct this issue for the executive that has retired?
8. To the extent over-contributions were repaid to the retired executive and the Industrial Commission agency, how and by whom were those calculations determined?

The assistance of the NDPERS Board of Trustees in facilitating a thorough response to this inquiry would be greatly appreciated. The response and any questions can be directed to:

Karen Tyler, Interim Executive Director and Secretary, North Dakota Industrial Commission,  
[ktyler@nd.gov](mailto:ktyler@nd.gov), 328-4702.

Sincerely,



Karen Tyler  
Interim Executive Director  
North Dakota Industrial Commission



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

**Attachment 1**

**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)

May 15, 2023

Ms. Karen Tyler  
Interim Executive Director and Secretary  
North Dakota Industrial Commission  
State Capitol, 14<sup>th</sup> Floor  
600 E. Boulevard Ave., Dept 405  
Bismarck, ND 58505

RE:    NDPERS Defined Benefit Plan Over-Contributions

Dear Ms. Tyler:

Thank you for your questions to the Board of Trustees for the North Dakota Public Employees Retirement System. At its meeting last week, the Board approved the following responses. Please reach out of you or the Industrial Commission have any additional questions.

1. When were the Section 401 (a)(17) annual compensation limits adopted and when, how, and with what frequency was this information communicated to state agency payroll administrators and participants that are enrolled in the NDPERS Defined Benefit Retirement Plan?

We do not know when the federal government enacted the section 401(a)(17) limits.

In 2022, we had our IRS consultant review our annual limit and bonus reporting policies. After the discussions with our consultant on best practices, we put additional restrictions on the ability for members to generate a benefit estimate in Member Self Service (MSS). This process has been in place for other identified members in MSS (members with bonus spreads, duals, etc.) if they may have a salary impacted or be over the IRS annual compensation threshold that will need a manual review/calculation by PERS staff. The calculations in MSS are restricted so inaccurate estimates are not provided online, and staff must review the reported monthly wages for accuracy. In these cases, the member must contact our office to process benefit estimates and service purchase calculations.

The State Mill is the only employer to whom this information needs to be communicated. PERS staff administers this effort on PeopleSoft for all other agencies.

2. When employees were provided the option to change from the NDPERS Defined Contribution Plan to the NDPERS Defined Benefit Plan, were the Section 401 (a)(17) annual compensation limits identified, communicated, and factored into the estimated benefit information provided to employees by NDPERS at that time?

The NDPERS Defined Contribution Plan and the NDPERS Defined Benefit Plan both fall under the Section 401(a)(17) annual compensation limits, so this would apply to both plans. NDPERS had an actuary review the DC to DB comparison spreadsheets prior to their distribution to update the worksheets for any limits that may apply. As such, this was factored into the estimates provided to employees.

3. When employees have purchased years of service, have the Section 401(a)(17) annual compensation limits been factored into the calculation of Final Average Salary that is used to determine the cost of the purchase by NDPERS?

Since 2022, Yes. A review was done for all purchases that may not have factored in 401(a)(17) limits in September 2022, and affected members were contacted and the necessary corrections made.

4. If years of service have been purchased based on inaccurate information and calculations that resulted in an overpayment by a plan participant, how have these transactions been corrected?

The employee would be notified of any overpayment or underpayment for the purchased service. If an overpayment should occur, NDPERS would return the funds in the same manner in which these funds were received (issued back to the member or issued back to the rollover company).

5. When, how, and with what frequency has NDPERS communicated with non-central payroll agencies regarding 401(a)(17) limits to facilitate systems and procedural compliance?

For state payroll agencies, the 401(a) limits are already incorporated into the PeopleSoft system. The Mill & Elevator is the only non-PeopleSoft state entity impacted by the 401(a) limit, and we only recently found out about the issue which is why we reached out to the Mill & Elevator last December to seek resolution. Limitations would need to be applied on the Mill's end prior to submitting payroll information to NDPERS for accuracy in the current year. If limits are not applied prior to submitting payroll to NDPERS, a correction of any over or underpayments would not take place until the member's retirement.

6. It would appear that in the first half of 2021, leading up to the retirement of a former Industrial Commission agency executive, NDPERS was aware of a procedure condition that could result in over-contributions to the Defined Benefit plan. What communication was provided to the Industrial Commission and the agency payroll administrator at that time regarding the 401(a)(17) limits, as the issue could reasonably be expected to continue to impact the employing Industrial Commission agency and the retiree's successor?

NDPERS became aware of the 401(a)(17) limit concerns in May 2021 and later became aware of the differences with payroll reporting between central payroll and non-central payroll employers (Mill and Elevator) in December of 2022. After an internal review of who was impacted, communication was sent to the Mill and Elevator in January 2023 seeking resolution for the coming calendar year.

7. In general terms, how did NDPERS correct this issue for the executive that has retired?

If this is regarding a specific individual, this individual's accounts would require NDPERS review and we cannot share confidential member information with the employer. If corrections are made to

a member's account, you'd see a payroll header in ESS and any credits or charges you and/or the member would be entitled to or would owe would be reflected in that invoice.

8. To the extent over-contributions were repaid to the retired executive and the Industrial Commission agency, how and by whom were those calculations determined?

If this is regarding a specific individual, this individual's accounts would require NDPERS review and we cannot share confidential member information with the employer. However, it is NDPERS' policy that accounts that may be affected by the 401(a)(17) limits be reviewed by NDPERS Benefits and Internal Audit staff prior to being released to a member.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Miller". The signature is fluid and cursive, with the first name "Scott" and last name "Miller" clearly distinguishable.

Scott Miller  
Executive Director



**From:** Fricke, Rebecca D.  
**Sent:** Tuesday, May 16, 2023 8:07 AM  
**To:** -Info-NDPERS Document Imaging  
**Subject:** FW: Response to Industrial Commission Questions  
**Attachments:** Letter of Response - Highly Comp Members.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Org ID 040500  
Industrial Commission

Thanks.

Rebecca Fricke



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**From:** Miller, Scott A. <[scottmiller@nd.gov](mailto:scottmiller@nd.gov)>  
**Sent:** Monday, May 15, 2023 4:47 PM  
**To:** Fricke, Rebecca D. <[rfricke@nd.gov](mailto:rfricke@nd.gov)>; Hohbein, Derrick L. <[dhohbein@nd.gov](mailto:dhohbein@nd.gov)>; Anderson, MaryJo V. <[msteffes@nd.gov](mailto:msteffes@nd.gov)>  
**Subject:** FW: Response to Industrial Commission Questions

FYI

Scott

Scott A. Miller  
Executive Director  
North Dakota Public Employees Retirement System



**North Dakota Public Employees Retirement System**  
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**From:** Miller, Scott A.  
**Sent:** Monday, May 15, 2023 4:46 PM  
**To:** Tyler, Karen J. <[kt Tyler@nd.gov](mailto:kt Tyler@nd.gov)>  
**Subject:** Response to Industrial Commission Questions

Good Afternoon –

Please see the attached response.

Let me know if you have any additional questions.

Scott

Scott A. Miller  
Executive Director  
North Dakota Public Employees Retirement System





**North Dakota**  
**Public Employees Retirement System**  
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**Rebecca Fricke**  
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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** January 9, 2024

**SUBJECT:** Assurance NM Testing

This is a test of our emergency communication network Assurance NM. You will get a test message on all media (phone, text, email) you have listed in PeopleSoft.

No Board Action is necessary, other than letting us know if you do NOT get the communication.

## VIII. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

### A. Recordkeeper Request For Proposal Vendor Interviews

1:00 to 1:15 Scoring Review \*EXECUTIVE SESSION

1:15 to 2:10 Vendor A \*\*EXECUTIVE SESSION

1. Presentation (20 minutes)
2. Board Questions (20 minutes)

2:10 to 3:05 Vendor B \*\*EXECUTIVE SESSION

3. Presentation (20 minutes)
4. Board Questions (20 minutes)

3:05 Board Discussion with the Consultant \*EXECUTIVE SESSION

### B. Vendor Selection – Board Action

**Material for the Closed Session will be sent under separate cover.**