

# NDPERS BOARD MEETING

# Agenda

Due to public health considerations, and in accordance with Executive Order 2020-16, a meeting room will not be available to the public.

Conference Call #: 701.328.0950  
Conference ID: 548 052 985#

Tuesday, January 12, 2021

Time: 1:00 PM

## I. MINUTES

- A. December 8, 2020

## II. PRESENTATIONS

- A. (15 minutes) Delta Dental

## III. RETIREMENT

- A. Retiree Health Insurance Credit (RHIC) Investment Policy – Bryan (Board Action)
- B. Investment Consultant Contract – Bryan (Board Action)

## IV. GROUP INSURANCE

- A. Health Plan Contract – Scott (Board Action) **\*Executive Session**

## V. MISCELLANEOUS

- A. Comprehensive Annual Financial Report – Derrick (Information)
- B. Quarterly Consultant Fees – Derrick (Information)
- C. Audit Committee Member Appointment – Shawna (Board Action)
- D. Annual Communication Plan – Aime (Information)
- E. Human Resource Policy Manual – Scott (Board Action)
- F. Office Lease – Scott (Board Action)
- G. Legislation – Scott (Board Action)
- H. Educational Opportunities – Scott (Information)
- I. September 2021 Board Meeting Date – Scott (Board Action)
- J. Strategic Plan – Scott (Board Action)
- K. AssuranceNM Testing – Scott (Information)

## VI. MEMBER **\*\*Executive Session**

- A. Retirement Appeal Case # 658 – MaryJo (Board Action)
- B. Retirement Appeal Case # 659 – MaryJo (Board Action)
- C. Retirement Appeal Case # 661 – MaryJo (Board Action)
- D. Retirement Appeal Case # 662 – MaryJo (Board Action)

\*Executive Session pursuant to N.D.C.C. § 44-04-19.1(9) to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future.

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



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**Scott A. Miller**  
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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** January 12, 2021

**SUBJECT:** Delta Dental Annual Update

Mark Keller with Delta Dental of Minnesota will be at the meeting to provide an update (Attachment) for the NDPERS dental plan.

# Dental conversation with the NDPERS Board of Trustees

January 12, 2021

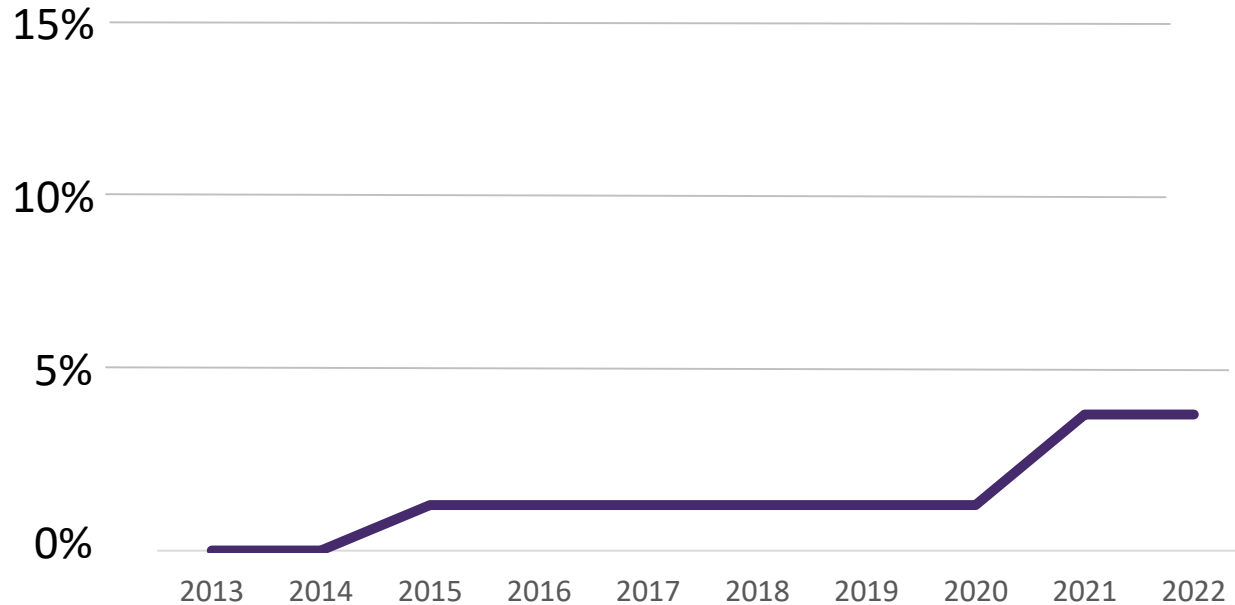
# Dashboard Summary

Review of our notable achievements with NDPERS since 2013



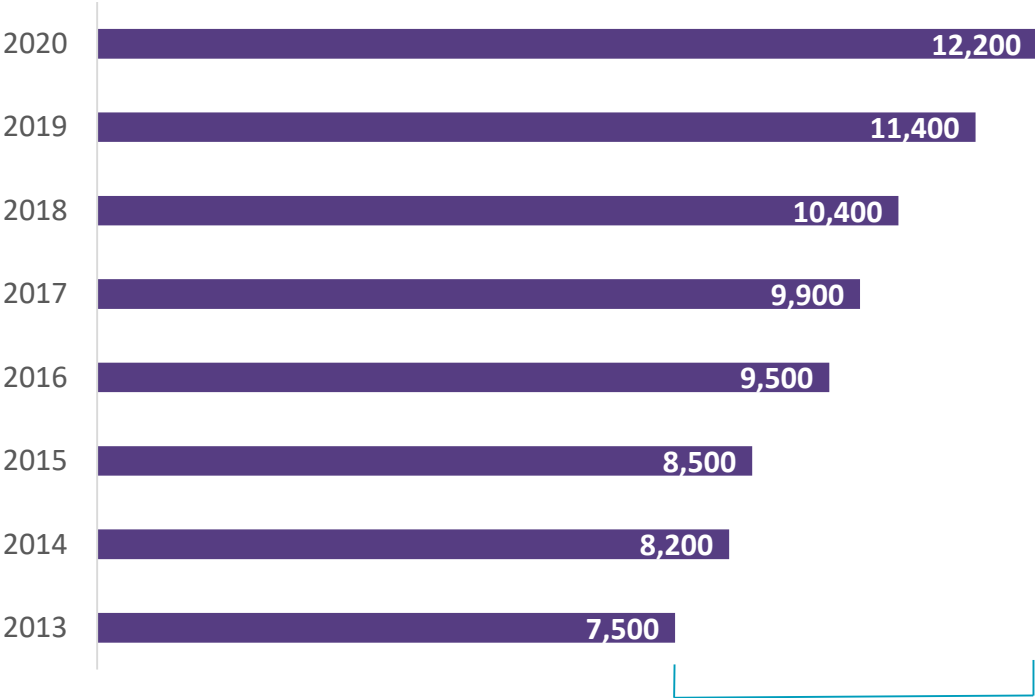
Thank you for choosing  
Delta Dental as your partner  
in maintaining good  
oral health.

# NDPERS Dental Premium Rate Stability



**4% increase  
over the 9  
year period**

# NDPERS Dental Enrollment Growth



# Delta Dental Operational Performance



99% of claims processed in less than 14 days



99% claims processed & payment accuracy



10 second average answer speed



1.0% call abandonment rate



97% of calls resolved same day



96% member satisfaction

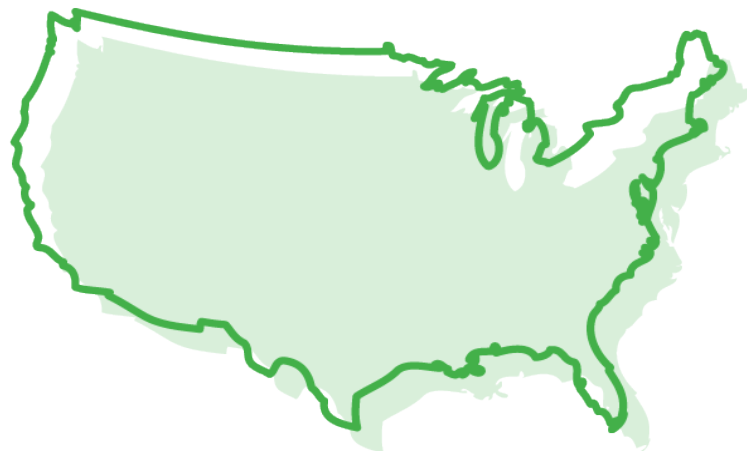


# Two Networks, More Choices

## Delta Dental Premier® & Delta Dental PPO<sup>SM</sup>

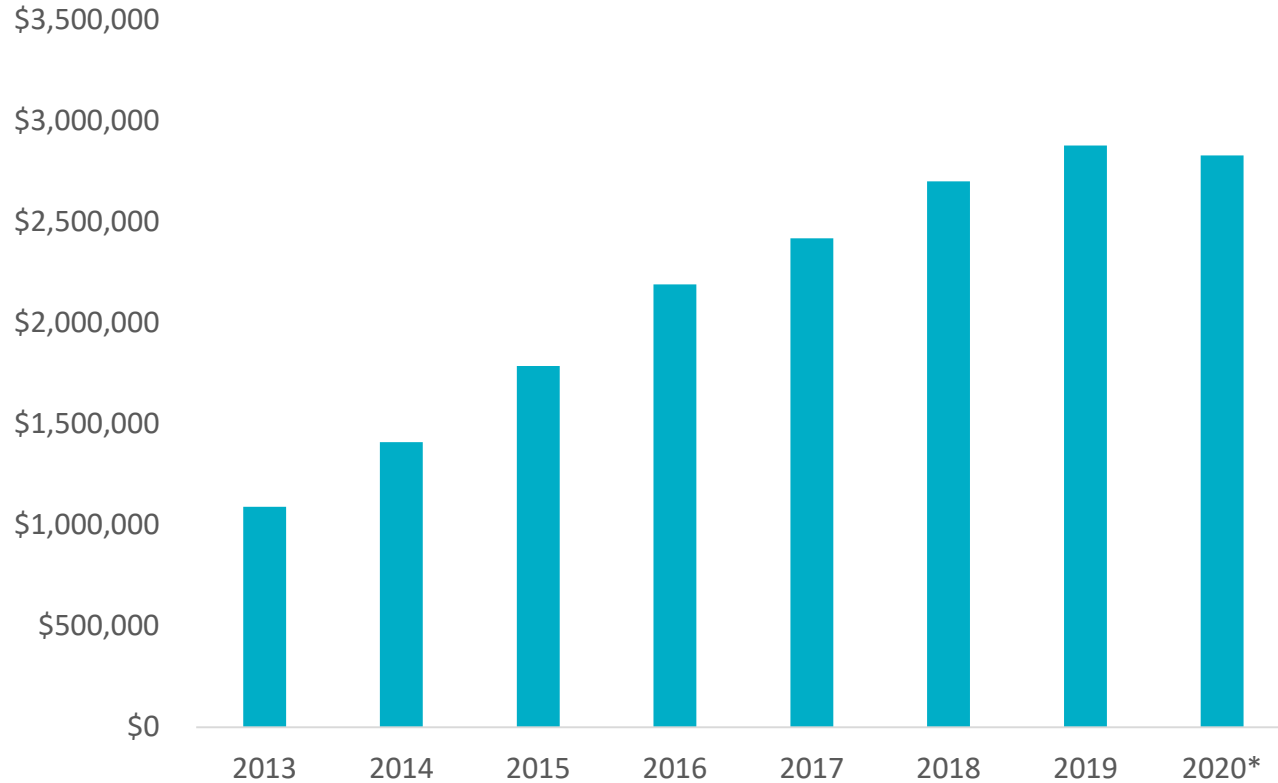
Delta Dental Premier® is one of the largest dental networks in **North Dakota** with more than 270 participating dentists. Delta Dental PPO<sup>SM</sup> offers over 100 participating dentists.

Delta Dental Premier® is the largest **national** dental network with more than 159,800 participating dentists. Delta Dental PPO<sup>SM</sup> offers 115,000 participating dentists.





# Network Savings for NDPERS Members



**Saving  
members  
\$17.3 million**

# Dental Offices and COVID-19

Dental offices have made changes to the way they operate due to the circumstances surrounding COVID-19. When you make an appointment, here are some changes you should anticipate during your next office visit.



**Schedule Early**  
Appointments will fill up fast.



**Personal Masks**  
Masks may be required.



**Temperature Checks**  
Expect to be screened both over the phone and once you arrive. Some offices will have temperature checks.



**Social Distancing**  
You may be asked to wait in another safe and open space instead of a waiting room.

# Sustainability/Go Green Efforts

Delta Dental of Minnesota recently launched a new portal designed to drive digital solutions to reduce overall waste.



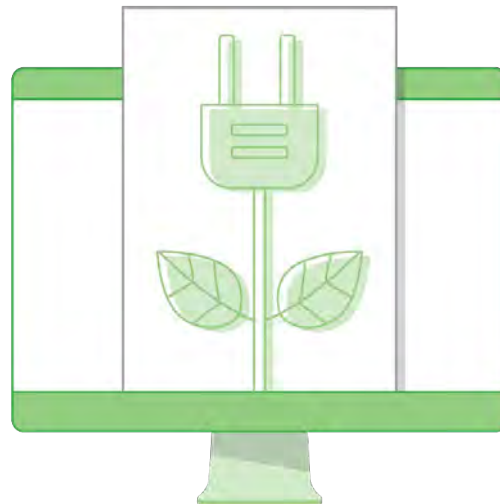
## **Member ID card printing options**

Added convenience with less waste.



## **Digital Explanation of Benefits (EOB)**

A growing number of members opting out of mailings resulting in less paper use and waste.



**It's good for the planet and good for you.**

# Thank you!

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Thank you for choosing Delta Dental as your partner in maintaining good oral health. We appreciate your ongoing business and we look forward to continuing our commitment to excellent service and quality dental benefits for you and your employees.



Delta Dental of Minnesota  
Serving North Dakota



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# Memorandum

**TO:** NDPERS Board

**FROM:** Bryan

**DATE:** January 12, 2021

**SUBJECT:** RHIC Investment Policy

At the December 2020 NDPERS Board meeting, a new asset allocation was approved for the Retiree Health Insurance Credit plan. Attached is an updated RHIC investment policy. The new asset allocation has been sent to the State Investment Board and they will take action at their January meeting.

If you have any questions, I will be available at the NDPERS Board meeting.

**BOARD ACTION:**

Approve the Retiree Health Insurance Credit investment policy.

## NDPERS RETIREE HEALTH INSURANCE CREDIT FUND

### STATEMENT OF INVESTMENT GOALS, OBJECTIVES AND POLICIES

#### 1. PLAN CHARACTERISTICS AND FUND CONSTRAINTS

The North Dakota Public Employees Retirement System (NDPERS) Retiree Health Insurance Credit Fund was established in 1989 to provide for prefunding of premiums for medical coverage to state employees and employees of participating political subdivisions in accordance with Chapter 54-52.1 of the North Dakota Century Code. The plan is administered by a nine member Board of Trustees (the Board). The Chair is appointed by the governor, three members are elected by the active members of the plans, one member is elected by the retired members, one is appointed by the Attorney General, one member is the State Health Officer or their designee and two are legislative appointees.

The NDPERS plan is a defined benefit program that provides for a partial payment of a retiree's medical insurance premium based on the number of years of service.

Funding for the NDPERS plan is provided by a monthly employer contribution of 1.14 percent of payroll. On a monthly basis, benefit payments are netted out against contributions and the balance forwarded to the trust's custodian for investment.

Each year the NDPERS Board has an actuarial valuation performed. The current actuarial assumed rate of return on assets for the plan is 6.5%.

#### 2. RESPONSIBILITIES AND DISCRETION OF THE STATE INVESTMENT BOARD (SIB)

Aggregate plan contributions plus earnings, minus allowable expenses constitute the Fund. The Board is charged by NDCC chapters 54-52, 21-10-02, and 39-03.1 to establish policies for the investment goals and asset allocation of the Fund. The State Investment Board (SIB) is charged with implementing the asset allocation as promptly and prudently as possible in accordance with Board's policies by investing the assets of the Fund in the manner provided in the prudent investor rule, which provides:

*Fund fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. The retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives. (NDCC 21-10-07)*

The SIB may delegate investment responsibility of the Fund or any portion of the Fund to professional money managers. Where a money manager has been retained, the SIB's role in determining investment strategy is supervisory not advisory.

The SIB may at its discretion, pool the assets of the Fund with another fund or funds having similar investment objectives and time horizons in order to maximize returns and minimize costs. In pooling fund assets the SIB will establish asset class pools it deems necessary to achieve the specific quality, diversification, restrictions, and performance objectives subject to the prudent investor rule and the objectives of the funds participating in the pools.

The SIB is responsible for establishing the selection criteria, determining the performance measures, and retaining all fund money managers. SIB is also responsible for the selection and retention of any investment consultants that may be employed in the investment of the Fund assets.

### 3. DELEGATION OF AUTHORITY

Management responsibility for NDPERS funds not assigned to the North Dakota State Investment Board (SIB) in Chapter 21-10 of the North Dakota Century Code (NDCC) is hereby delegated to the SIB, which must establish written policies and procedures for the operation of the NDPERS funds, consistent with this investment policy.

Such procedures must provide for:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the SIB pursuant to NDCC 21-10-02.1(1) (a).
2. Investment diversification, investment quality, qualification of money managers, and amounts to be invested by money managers pursuant to NDCC 21-10-02.1(1)(e). In developing these policies it is understood:
  - a. Futures and options may be used to hedge or replicate underlying index exposure, but not for speculation.
  - b. The use of derivatives will be monitored to ensure that undue risks are not taken by the money managers.
  - c. All assets must be held in custody by the SIB's master custodian or such other custodians as are selected by the SIB.
3. Guidelines for the selection and redemption of investments will be in accordance with NDCC 21-10-02.1(1) (d).
4. The criteria for making decisions with respect to hiring, retention, and termination of money managers will be clearly defined. This also includes selecting performance measurement standards, consultants, report formats, and frequency of meetings with money managers.

All participants in the investment process must seek to act responsibly as custodians of the public trust.

### 4. INVESTMENT GOALS

The investment goals of the Fund have been established by the NDPERS Board based upon consideration of the Board's strategic objectives and a comprehensive review of the current and projected financial requirements. These goals are to be viewed over the long term.

- |          |  |
|----------|--|
| Goal # 1 | Accumulate sufficient wealth through a diversified portfolio of investments which will enable the State of North Dakota to pay all current and future retirement benefits and expense obligations of the Fund. |
| Goal # 2 | To obtain an investment return in excess of that needed to allow for increases in a retiree's credit to maintain the purchasing power of their benefit.  |

### 5. INVESTMENT PERFORMANCE OBJECTIVE

The NDPERS Board will seek to make investments that generate sufficient return to meet the goals outlined in this policy. The objectives established in this section are in accordance with the fiduciary requirement in federal and state law.

It is in the best interest of NDPERS and its beneficiaries that performance objectives be established for the total Fund. It is clearly understood these objectives are to be viewed over the long term and have been established after full consideration of all factors set forth in this Statement of Investment Goals, Objectives and Policies.

- a. The funds rate of return, over the long term should equal that of the policy portfolio which is comprised of policy weights of appropriate asset class benchmarks as set by the SIB.
- b. The annual standard deviation of total returns for the Fund should not materially exceed that of the policy portfolio.
- c. Over 5-year and longer periods the fund should match or exceed the expected rate of return projected in the most recent asset/liability study without exceeding the expected risk for the period by more than 15% as measured by standard deviation.

6. ASSET ALLOCATION

In recognition of the plan's performance objectives, benefit projections, and capital market expectations, the NDPERS Board has established the following asset allocation:

Date of Last Asset Allocation Study: ~~December 2020~~ – ~~Callan~~ Corporation

<del>Broad US Equity</del>	<del>39%</del>	<del>Deleted: February 2018</del>
<del>▼</del>	<del>▼</del>	<del>Deleted: SEI</del>
<del>▼</del>	<del>▼</del>	<del>Deleted: 33%</del>
<del>▼</del>	<del>▼</del>	<del>Deleted: Domestic Equities - Large Cap</del>
<del>Global ex-US Equity</del>	<del>26%</del>	<del>Deleted: Domestic Equities – Small Cap</del>
<del>▼</del>	<del>▼</del>	<del>Deleted: 6%</del>
<del>▼</del>	<del>▼</del>	<del>Deleted: International Equities</del>
<del>Fixed Income</del>	<del>35%</del>	<del>Deleted: 21%</del>
<del>Expected Return</del>	<del>6.1%</del>	<del>Deleted: 40</del>
<del>Standard Deviation</del>	<del>11.7%</del>	<del>Deleted: 8.1</del>
		<del>Deleted: 13.3</del>

Rebalancing of the Fund to this target will be done in accordance with the SIB's rebalancing policy, but not less than annually.

PERS requires that in implementing this asset allocation that the State Investment Board seek to maximize return within the scope of these policies while limiting investment costs.

7. RESTRICTIONS

- A. No transaction may be made which threatens the tax exempt status of the Fund.  
  
Social Investing is defined as *"The investment or commitment of public pension fund money for the purpose of obtaining an effect other than a maximized return to the intended beneficiaries."*
- B. Social investing is prohibited unless it meets the Exclusive Benefit Rule and it can be substantiated that the



investment must provide an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.

*Economically targeted investing is defined as an investment designed to produce a competitive rate of return commensurate with risk involved, as well as to create collateral economic benefits for a targeted geographic area, group of people, or sector of the economy.*

C. Economically targeted investing is prohibited unless the investment meets the Exclusive Benefit Rule.

The Exclusive Benefit Rule is met if the following four conditions are satisfied:

- (1) The cost does not exceed the fair market value at the time of investment.
- (2) The investment provides the Fund with an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.
- (3) Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan.
- (4) The safeguards and diversity that a prudent investor would adhere to are present.

Where investment characteristics, including yield, risk, and liquidity are equivalent, the Board's policy favors investments which will have a positive impact on the economy of North Dakota.

## **8. INTERNAL CONTROLS**

The SIB must have a system of internal controls to prevent losses of public funds arising from fraud or employee error. The controls deemed most important are the separation of responsibilities for investment purchases from the recording of investment activity, custodial safekeeping, written confirmation of investment transactions, and established criteria for broker relationships. The annual financial audit must include a comprehensive review of the portfolio, accounting procedures for security transactions and compliance with the investment policy.

## **9. EVALUATION**

Investment management of the Fund will be evaluated against the Fund's investment objectives and investment performance standards.

An annual performance report must be provided to the Board by the State Investment Officer at a regularly scheduled NDPERS Board meeting. The annual performance report must include asset returns and allocation data as well as information regarding all significant or material matters and changes pertaining to the investment of the Fund, including:

- Changes in asset class portfolio structures, tactical approaches and market values;
- All pertinent legal or legislative proceedings affecting the SIB.
- Compliance with these investment goals, objectives and policies.
- A general market overview and market expectations.
- A Review of fund progress and its asset allocation strategy.
- A report on investment fees and the SIB's effort relating to Section 6. To measure investment cost

PERS requires as part of the annual review information from Callan, CEM or other acceptable source showing the value added versus the cost.

In addition, the State Investment Officer shall review with the Board the procedures and policies established by the SIB relating to this statement of investment goals, objectives, and policies.

\_\_\_\_\_  
Scott Miller  
Executive Director  
North Dakota Public Employees Retirement System

\_\_\_\_\_  
David Hunter  
Executive Director  
North Dakota Retirement and Investment Office

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

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



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# Memorandum

**TO:** NDPERS Board

**FROM:** Bryan Reinhardt

**DATE:** January 12, 2021

**SUBJECT:** Callan Investment Consultant Contract

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Here is the two-year contract with Callan for the investment consultant services. Dean has reviewed the contract.

If you have any questions Dean and I will be available at the NDPERS Board meeting.

## Board Action

Approve the Callan investment consultant contract.

## **AGREEMENT FOR SERVICES**

### **AGREEMENT FOR SERVICES BETWEEN CALLAN LLC AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

Callan LLC (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 consulting 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 2020 RFP and proposal (attached hereto and incorporated by reference Exhibit A). It is understood and agreed that CONTRACTOR's services (the "Services") may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, NDPERS. During the performance of Services by CONTRACTOR, NDPERS will retain and exercise all decision-making authority with respect to the management and administration of the retirement plans funded by NDPERS and investments relating thereto.
- 2) **TERM:** The term of this contract shall commence January 1, 2021, and end December 31, 2022.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in the BAFO proposal (attached hereto and incorporated by reference Exhibit B).
- 4) **BILLINGS:** The CONTRACTOR shall receive payment from NDPERS upon the completion of the services identified in the respective invoice. The CONTRACTOR shall bill NDPERS monthly in arrears for Services rendered and expenses incurred in accordance with the terms hereof.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

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

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

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

In addition, NDPERS may terminate this Agreement effective upon thirty (30) days prior written notice to CONTRACTOR, or any later date stated in the notice:

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

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

- 6) **ASSIGNMENT AND SUBCONTRACTS:** CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, the State expressly consents to CONTRACTOR entering into (i) subcontracts with its affiliates located in the United States, and (ii) third-party subcontracts provided that any such third-party subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor to the same extent as if such performance were done by CONTRACTOR. CONTRACTOR does not have authority to contract for or incur obligations on behalf of NDPERS.

Notwithstanding the foregoing, information shall not be considered confidential information to the extent that such information: (i) is already known to CONTRACTOR free of any restriction at the time it is obtained from NDPERS; (ii) is subsequently learned from an independent third party free of any known restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of CONTRACTOR; (iv) is independently developed by CONTRACTOR without reference to any confidential information of NDPERS; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that CONTRACTOR will exercise reasonable efforts to notify NDPERS prior to disclosure.

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 contract, 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 contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request; provided, however, that CONTRACTOR shall not be responsible for responding to requests under the North Dakota public records law on behalf of NDPERS.

- 8) **APPLICABLE LAW AND VENUE:** This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.
- 9) **MERGER AND MODIFICATION:** This Agreement shall constitute the entire agreement between the parties. In the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

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

Deleted:

Notwithstanding anything contained herein to the contrary, CONTRACTOR shall discharge its duties as a consultant in accordance with the terms of this Agreement and applicable law. NDPERS acknowledges and agrees (i) that CONTRACTOR has no authority or responsibility to manage or in any way direct the investment of any assets that are the subject of CONTRACTOR's consulting services provided under the terms of this Agreement, (ii) that CONTRACTOR has not and cannot make any promise, guarantee or other statement or representation regarding the future investment performance of such assets, and (iii) that CONTRACTOR will not be liable for any losses or expenses incurred as a result of any action or omission by an investment manager, custodian or other unrelated third party.

11) **INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate. CONTRACTOR shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, CONTRACTOR shall purchase an extended reporting period to meet the time periods required in this section.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The 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 or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this Agreement shall not be limited by the insurance required in this Agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Agreement or by the contractual indemnity obligations of CONTRACTOR.
- 5) The insurance required in this Agreement, through a policy or endorsement, shall include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;

- b) a provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- 5) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.
- 6) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.
- 7) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.
- 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 facilities 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. NDPERS acknowledges and agrees that the CONTRACTOR's performance is dependent upon the timely and effective satisfaction of NDPERS's responsibilities hereunder and timely decisions and approvals of NDPERS in connection with the Services. The CONTRACTOR shall be entitled to rely on all decisions and approvals of NDPERS. NDPERS shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the Services; (iii) evaluating the adequacy and results of the Services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** NDPERS does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. NDPERS does not waive any right to a jury trial.
- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

**NDPERS:**

Scott Miller, Executive Director  
ND Public Employees Retirement System  
400 East Broadway, Suite 505  
PO Box 1657  
Bismarck, ND 58502-1657

**CONTRACTOR:**

Paul Erlandson, Senior Vice President  
Callan LLC  
1900 16<sup>th</sup> Street, Suite 1175  
Denver, CO 80202

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 laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights, as are applicable to CONTRACTOR. CONTRACTOR agrees to timely file all legally required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including 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.
- 19) **STATE AUDIT:** All records, regardless of physical form, and the accounting practices, and procedures of CONTRACTOR relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.
- 20) **POLICY REGARDING SECURITIES ADVICE:** CONTRACTOR shall not be responsible for reviewing or advising on the merits or risks of individual securities or derivatives holdings or purchase, sale or hedging strategies, the propriety of an individual security or derivative within a manager's investment management mandate, or on the conformity of individual securities holdings with NDPERS investment policy and guidelines. CONTRACTOR shall not be responsible for providing advice to plan participants.
- 21) **ADV Disclosure:** NDPERS acknowledges receipt of CONTRACTOR's disclosure statement, Form ADV, Parts 2A and 2B, more than 48 hours prior to the date of the execution of this Agreement.
- 22) **Manager Client List Disclosure:** NDPERS acknowledges receipt of CONTRACTOR's disclosure list of investment manager clients no later than the date of the execution of this Agreement.

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

**NORTH DAKOTA PUBLIC  
EMPLOYEES RETIREMENT SYSTEM**

**CONTRACTOR**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul Erlandson  
Printed Name

\_\_\_\_\_  
Senior Vice President  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
January 1, 2021  
Date





**North Dakota  
Public Employees Retirement System**  
400 East Broadway, Suite 505 • Box 1657  
Bismarck, North Dakota 58502-1657

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

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

# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** SHP Contract

Dean and staff have reviewed the attached proposed contract, and believe it is ready for Board approval.

**Board Action Requested:** Approve the proposed administrative service agreement with Sanford Health Plan for the upcoming biennium.

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### EXHIBITS (Attachments)

Exhibit A: Certificate of Insurance, Summary of Benefit Coverage

Exhibit B: Health Plan Performance Guarantees

Exhibit C: Premium Rate Structure Table

Exhibit D: Illustration of Plan Administrator Settlement Process

Exhibit E: Pharmacy Disease Management Program Obligations

Exhibit F: Tobacco Cessation Program Obligations

Exhibit G: Wellness Benefit Program Obligations

Exhibit H: Business Associate Agreement

Exhibit I: **HSA ADMINISTRATION SERVICES AGREEMENT**

## **ADMINISTRATIVE SERVICE AGREEMENT**

This Administrative Service Agreement ("Agreement") is entered into between the State of North Dakota, acting through its Public Employees Retirement System ("the Plan Sponsor"); the North Dakota Public Employees Retirement System (NDPERS) ("the Plan Administrator"); and Sanford Health Plan, a South Dakota non-profit corporation ("SHP").

WHEREAS, the Plan Sponsor has established and maintains a fully insured group health plan (the "Plan") which provides, among other things, various benefits to Members in the Plan, as set forth in the Certificate of Insurance provided to plan Members. The Plan Administrator is the administrator of the Plan established through this Agreement.

WHEREAS, in consideration of payment of required premium and acceptance of membership applications, SHP enters into this Agreement with the Plan Sponsor and the Plan Administrator. SHP agrees to provide plan Members the benefits set forth in the Certificate of Insurance, in accordance with its terms and conditions.

WHEREAS, the Plan Administrator is the sole party with authority to make plan design changes to the Plan.

WHEREAS, SHP is an affiliate of Sanford, a North Dakota non-profit organization and integrated delivery system; however, SHP and Sanford maintain a firewall such that (i) SHP maintains a team that negotiates participating provider agreements with hospitals, physicians and other providers, (ii) Sanford provider entities maintain a team that negotiates agreements with third party payors, and (iii) fee schedules, discounts, pricing and other competitively sensitive data are not shared between those teams.

The terms of this Agreement are as follows:

### **1. EFFECTIVE DATE AND PLAN YEAR**

This Agreement is effective July 1, 2021 through June 30, 2023, unless terminated as provided.

The Plan Administrator may renew this Agreement upon satisfactory completion of the initial Agreement Term. Plan Administrator reserves the right to execute up to two (2) options to renew this Agreement under the same terms and conditions for a period of twenty – four (24) months each.

For the purposes of the costs of any and all benefits and services extended through this Benefit Plan, including the implementation of any benefit changes required under federal or state law, the Plan Administrator agrees that the Plan Year shall commence on July 1, unless it is terminated by one of the parties as specified in Section 8. TERM AND TERMINATION OF AGREEMENT.

### **2. DEFINITIONS**

This section defines the terms used in this Agreement.

- A. **BENEFIT PAYMENTS** – payments of benefits under the Plan.
- B. **CERTIFICATE OF CREDITABLE COVERAGE** – a certificate disclosing information relating to an individual's creditable coverage under a health care benefit program for purposes of reducing any preexisting condition waiting period imposed by any group health plan coverage.
- C. **CLAIM** – notification in a form acceptable to SHP that service has been provided or furnished to a Member.
- D. **DRG** – shall mean diagnostic related groups.
- E. **DATA AGGREGATION** – the combining of Protected Health Information that SHP creates or receives for or from the Plan for or from other health plans or health care providers for which SHP is acting as a business associate to permit data analysis that relate to Health Care Operations of the Plan and those other health plans or providers.
- F. **FEES AND CHARGES** – the amounts the Plan Administrator must pay SHP for the administrative services described in Section 6.
- G. **HEALTH CARE OPERATIONS** – any of the activities of a health plan to the extent the activities relate to functions that make it a health plan.
- H. **HEALTH CARE PROVIDER** – any eligible provider that has provided care, diagnosis, or treatment to or for a Member for which benefits are sought under the Plan.
- I. **HEALTH CLUB/WELLNESS CREDIT PROGRAM** – means a member-based fitness center reimbursement and wellness (points) reward program.
- J. **HSA PROGRAM** – means the Health Savings Account Program administered by SHP through a subcontractor pursuant to the terms and conditions of a separate agreement between SHP and NDPERS and acknowledged by said subcontractor.
- K. **INELIGIBLE PERSON** - any person, firm, or corporation that has received benefits or on whose behalf benefits have been paid but for whom benefits are not payable under the terms of the Plan.
- L. **MEMBER** - the Subscriber and any eligible dependent of a Subscriber who is enrolled in the Plan. The term also includes eligible employees of other governmental units as permitted by state law.
- M. **PARTICIPATING PROVIDER** - A healthcare provider who, under a contract with SHP, or with its contractor or subcontractor, has agreed to provide health care services to Members with an expectation of

receiving payment, other than coinsurance, copays, or deductibles, directly or indirectly, from the Plan.

- N. PAYMENT - activities undertaken to obtain premiums, determine or fulfill coverage and benefits, or obtain or provide reimbursement for health care services.
- O. PHARMACY BENEFITS MANAGER (PBM) - shall mean OptumRx, Inc., or such other pharmacy benefits manager as is engaged by SHP after prior consultation with NDPERS. Said PBM is responsible for maintaining the network of participating pharmacies.
- P. PHARMACY DISEASE MANAGEMENT PROGRAM – shall mean the diabetes disease management program through which Members receive services and support provided by the North Dakota Pharmacy Service Corporation, which program is jointly administered by NDPERS and SHP hereunder.
- Q. PLAN ADMINISTRATOR –North Dakota Public Employees Retirement System (NDPERS) is the administrator of the Plan with all of the duties and responsibilities applicable to plan administrators, including but not necessarily limited to compliance with any and all administrative, reporting, and disclosure requirements. SHP is not the Plan Sponsor or the Plan Administrator of the Plan and is not responsible for any of the duties assigned to the Plan Sponsor or the Plan Administrator by the terms of the Plan, or by this Agreement.
- R. PLAN SPONSOR –The State of North Dakota, acting through its Public Employees Retirement System (NDPERS) is the Plan Sponsor of an employee benefit plan established under NDCC Ch. 54-52.1.
- S. PROTECTED HEALTH INFORMATION (PHI) – individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
  - a. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
  - b. relates to a Member's past, present or future physical or mental health or condition;
  - c. relates to the provision of health care to a Member;
  - d. relates to the past, present, or future payment for health care to or on behalf of a Member; or
  - e. identifies a Member or could reasonably be used to identify a Member.
  - f. educational records and employment records are not considered PHI under federal law.

- T. SANFORD HEALTH PLAN (SHP) - is a health maintenance organization that provides fully-insured, prepaid group health care and pharmacy benefits through an organized health care delivery system.
  - U. SECURITY INCIDENT - any attempted or successful unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with SHP's system operations in SHP's information systems.
  - V. STANDARD TRANSACTIONS - health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
  - W. SUBSCRIBER - any eligible employee of the Plan Sponsor, employee of a participating employer or other eligible individual as prescribed by NDCC CH. 54-52.1 whose application for membership has been accepted, whose coverage is in force with SHP and in whose name the ID Card is issued.
  - X. SUCCESSFUL SECURITY INCIDENTS - Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
  - Y. TOBACCO CESSATION PROGRAM – shall mean Member tobacco education and cessation programs funded through the Department of Health by appropriation from the state legislature, which programs are jointly administered by SHP, NDPERS and the ND Department of Health.
  - Z. UNSUCCESSFUL SECURITY INCIDENTS - Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
  - AA. VALUE OF FORFEITURE- the dollar value of payments due from SHP if target behavior is not achieved.
  - BB. WELLNESS BENEFIT PROGRAM – shall mean the NDPERS employer-based Wellness Benefit Program related to health and wellness promotion for Members under which funding is made available to State agencies or political subdivisions, as jointly administered by NDPERS and SHP hereunder.
- 3. SHP SHALL:** Establish a membership record for existing Members containing information as provided by NDPERS
- 3.1 Provide Identification Cards, Certificates of Insurance, Summary of Benefits and Coverage and Summaries of Material Modifications (paper and/or electronic, as reasonably agreed by the parties).

- 3.2 Provide the Health Plan Performance Guarantees, as outlined in Exhibit B.
- 3.3 Upon enrollment under the NDPERS Benefit Plan, SHP will provide written notice to covered employees and their covered spouses of their applicable continuation rights pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") or under State law pursuant to NDCC § 26.1-36-23, if applicable.
- 3.4 Receive enrollment file for late entrants who enroll outside of the Plan's annual open enrollment period as part of a special election (for qualifying events) as defined in the Plan Sponsor's Group Health Insurance Eligibility and Enrollment Guidelines and ND Administrative Rules.
- 3.5 Provide Managed Benefits services in accordance with appropriate licensure and certification requirements; such services to be provided by a dedicated staff person.
- 3.6 Provide a dedicated service unit to adjudicate all claims and respond to Member's inquiries. Provide toll-free Member and Health Care Provider service lines between the hours of 8 AM and 5:30 PM CST at the office(s) in North Dakota, as appropriate. A toll-free managed benefits line for Health Care Providers will also be available between the hours of 8:00 AM and 5:00 PM CST. During nonbusiness hours, answering machine services will be available for managed benefits calls.
- 3.7 Process claims and inquiries for all members, including claims from non-participating providers.
- 3.8 Correspond with the Members and Health Care Providers if additional information is deemed necessary by SHP to complete the administrative process.
- 3.9 Administer third party liability programs.
- 3.10 Provide to Members an Explanation of Benefits Statement.
- 3.11 Provide a procedure for detection of fraud and unlawful activity.
- 3.12 Offer Members an individual policy when application is made within 31 days of the termination of enrollment under NDPERS and Member resides in SHP's service area where SHP is licensed to sell an individual policy.
- 3.13 Provide assistance to NDPERS for the conduct of enrollment, servicing and education.

- 3.14 NDPERS shall provide SHP with the scope and requirements of any audit or review prior to the commencement of activities. If a sample of claims is required, SHP will provide or NDPERS will select statistically valid computerized sample of claims, if not prohibited by law, regulations or rule.

NDPERS will provide a copy of the report of all audit or review findings and shall discuss the findings with SHP upon discovery to allow further investigation or implementation of corrective action.

- 3.15 Provide NDPERS with reporting to include but not limited to:
- a. Annual group reporting of membership and utilization by group segments and product.
  - b. Estimates of future claim reserves and premium to claim ratio.
  - c. Such other special claims reports as requested from time-to-time by NDPERS, subject to the availability of data and appropriate cost considerations.
  - d. Interest calculation monthly report, including supporting documentation as reasonably requested.
  - e. Performance objectives as described in Exhibit B of this Agreement.
- 3.16 Provide NDPERS with claims specific data on a monthly basis in agreed upon medium. This information shall be in a format acceptable to NDPERS and subject to all federal and state laws on confidentiality and open records; and provide at least monthly to any NDPERS designated third party administrator of a pretax benefits program, for purposes of claim reimbursement for any member pretax medical spending account, an electronic claims data file as reasonably requested, such file to include at least the following: member eligibility and demographic information, provider/pharmacy demographic information (i.e. NPI), applicable member liability (i.e. copay, deductible, and coinsurance), and prescription NDC number.
- 3.17 Provide support to NDPERS for the establishment of a Preferred Provider Network consistent with objectives established by NDPERS. SHP shall determine Participating Provider eligibility in accordance with its policies and accreditation standards.

SHP will provide technical and administrative advice to NDPERS relative to the appropriateness of PPO arrangements for the Plan. SHP shall pursue in good faith participating provider



agreements with those providers who were historically in the NDPERS PPO but are not currently SHP Participating Providers. The parties agree that participation and reimbursement information

- a. may contain trade secret, proprietary, commercial, and financial information under ND Cent. Code 44-04-18.4 or any other applicable law. To the extent that NDPERS determines that such information is confidential under applicable state law, NDPERS shall maintain the confidentiality of the same. Further, NDPERS shall notify SHP of any request for release of information and, upon NDPERS' determination to release, shall allow SHP a reasonable opportunity to respond prior to disclosure, upon request. The duty of NDPERS to maintain the confidentiality of information under this section continues beyond the term of this Agreement as is commercially reasonable.
  - b. SHP will enforce strict managed benefits, utilization review and quality assurance criteria to assure attainment of Preferred Provider program objectives.
  - c. SHP will, upon NDPERS reasonable direction, terminate a Provider's NDPERS PPO participation agreement in accordance with terms of the agreement, when a PPO Provider is noncompliant with NDPERS/SHP policies and procedures. Said policies and procedures shall be documented and communicated to the Participating Provider prior to implementation.
- 3.18 Neither SHP nor its contracted PBM will engage in any practice that effectively reduces network pharmacy reimbursement for medication cost and dispensing fees when such reimbursement claims have been properly submitted by a network pharmacy at the time of adjudication. Such practices include directing a contractor, such as a PSAO, to engage in such a practice. SHP will include language in its PBM (and PSAO, if applicable) contracts explicitly prohibiting the aforementioned practices.
- 3.19 Jointly administer the Pharmacy Disease Management Program, Tobacco Cessation Program, and Wellness Benefit Program substantially in accordance with Exhibit E, Exhibit F, and Exhibit G, respectively.
- 3.20 Reasonably respond to requests for service meetings from NDPERS administration or its Board upon request.
- 3.21 SHP shall maintain a risk based capital level of 300%.

#### **4. NDPERS SHALL:**

- 4.1 Prepare and distribute monthly billings to participating employers and retirees participating in the Plan. NDPERS shall respond to the participating employer's inquiries concerning eligibility rules, billing, etc.
- 4.2 Prepare weekly eligibility file by participating employer and premium classification for both active and retired employees and provide the file to SHP to be used for eligibility certification purposes. Along with the eligibility file, NDPERS will furnish a full-file listing of participants (incorporating additions or terminations during the month). Such listing will reflect the name of the employee, dependents, Social Security Number, the effective date of coverage for a new employee or the termination date of a terminated employee and the coverage classification. NDPERS will submit enrollment, billing and premium remittance via a centralized electronic system. NDPERS will provide enrollment/eligibility information on a data file that follows the HIPAA 834 file specifications and SHP's companion guide. Premium payment information will be provided on a data file that follows the HIPAA 820 file specifications. Files will be transmitted using a mutually agreed upon secure file transmission process.
- 4.3 Use best efforts to notify SHP of terminated members no later than 30 days after the event that rendered the Member ineligible for coverage. Regardless of whether or not NDPERS provides notice to SHP of the terminated Member, SHP intends to recoup payments for all paid claims from applicable providers incurred after the last date of eligibility. It then becomes the duty and discretion of said providers to bill the Member accordingly. Similarly, SHP intends to recoup from terminated Members prescription claims paid after the last date of eligibility.
- 4.4 Provide enrollment files, obtain completed classifications or addresses, etc. from participants and furnish SHP with enrollment files or request for coverage or address changes and retain the original copy.
- 4.5 Be responsible for the administration of and compliance with COBRA or State-mandated continuation of coverage. SHP will forward requests for COBRA or State law continuation of coverage participation by membership to NDPERS upon notification.
- 4.6 Comply with SHP's established administrative policies which are reasonable and consistent with the NDPERS Health Plan and the bid specifications agreed to by the parties, including but not limited to: enrollment and eligibility policies, standard adjudication and Medical Policy Guidelines, Payable Provider Guidelines, Managed Benefits Program Guidelines and claim payment procedures as such materials are modified from time to time.

- 4.7 Pay premiums to SHP according to the schedule in Section 6.
- 4.8 NDPERS acknowledges that the administration of the Benefit Plan that is the subject of this Agreement may be subject to regulation under federal and/or state law. NDPERS agrees to furnish SHP with any and all information necessary to comply with any applicable federal and/or state laws and to certify that this information is accurate. If there are any changes in the employer contribution rate for benefits and services available under this Agreement, NDPERS agrees that it is its obligation to provide information related to the change in contribution rates immediately to SHP.
- 4.9 NDPERS agrees to timely provide the information as specified in Section 3.1.
- 4.10 Perform those functions or duties regarding the Pharmacy Disease Management Program, Tobacco Cessation Program and Wellness Benefit Program substantially in accordance with Exhibit E, Exhibit F and Exhibit G, respectively.
- 4.11 NDPERS will provide electronic 834 compliant files from the Plan Administrator to maintain accurate membership records of Members.

## **5. PRIVACY USE AND DISCLOSURE RESPONSIBILITIES**

### **5.1 RESPONSIBILITIES OF SHP**

#### **A. Privacy of Protected Health Information (PHI)**

- 1. SHP will keep confidential all Claim records and all other PHI that SHP creates or receives in the performance of its duties under this Agreement. Except as permitted or required by this Agreement for SHP to perform its duties under this Agreement, SHP will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
- 2. SHP will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Agreement, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members, (4) in accordance with the Business Associate Agreement ("BAA") between the parties materially in form and substance provided in Exhibit H hereto, or (5) as required by law.

3. SHP will be permitted to use or disclose Members' PHI only as follows:
  - a. SHP will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include  
Payment Activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law.
    1. SHP will be permitted to use Members' PHI as necessary for SHP's proper management and administration or to carry out SHP's legal responsibilities.
    2. SHP will be permitted to disclose Members' PHI as necessary for SHP's proper management and administration or to carry out SHP's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, SHP obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by a written contract, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which SHP disclosed it to the entity or as required by law, and notify SHP of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached as required by 45 CFR 164.410.
  - b. SHP will make reasonable efforts in accordance with its written privacy policies and procedures to use, disclose, or request only the minimum necessary amount of Members' PHI to accomplish the intended purpose. SHP will make its written privacy policies and procedures available to the Plan Sponsor.
4. Other than disclosures permitted by Section 5.1(A)3, SHP will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing and as permitted by applicable law.
5. SHP will require each subcontractor and agent to which SHP is permitted by this Agreement or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that

such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Agreement applies to SHP.

6. SHP will report to the Plan Administrator any use or disclosure of Members' PHI not permitted by this Agreement, including incidents that constitute breaches of unsecured PHI as required by 45 CFR 164.410. SHP will make any such report to the Plan Administrator after SHP learns of such nonpermitted use or disclosure.
7. SHP will report to the Plan Administrator attempted or successful unauthorized access, use, disclosure, modification or destruction of a Member's electronic PHI or interference with SHP's system operations in SHP's information systems ("Security Incident"), of which SHP becomes aware. With regard to attempted unauthorized access, use, etc., SHP and the Plan Administrator recognize and agree that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy electronic PHI will make real-time reporting formidable. Therefore, SHP and the Plan Administrator agree to the following reporting procedures for Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations ("Successful Security Incidents") and for Security Incidents that do not so result ("Unsuccessful Security Incidents").

For Unsuccessful Security Incidents, SHP and the Plan Administrator agree that this Agreement constitutes notice from SHP of any such Unsuccessful Security Incidents. In other words, the Plan Administrator waives any separate notice of Unsuccessful Security Incidents. By way of example, SHP and the Plan Administrator consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with an information system.

1. Pings on SHP's firewall,
2. Port scans,
3. Attempts to log on to a system or enter a database with an invalid password or username,

4. Denial-of-service attacks that do not result in a server being taken off-line, and

5. Malware (e.g., worms, viruses).

For Successful Security Incidents, SHP shall give notice promptly to the Plan Administrator in the event a Member's electronic PHI was compromised.

8. Disposition of Protected Health Information

The parties agree that upon termination, cancellation, expiration or other conclusion of this Agreement, SHP will return or destroy all PHI received or created by SHP on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. SHP agrees that upon conclusion of this Agreement for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet SHP's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. SHP will destroy PHI received or created by SHP on the Plan Administrator's behalf that is in SHP's possession under such circumstances and upon such schedule as SHP deems consistent with its regulatory and other legal obligations.

These responsibilities agreed to by SHP and related to protecting the privacy and safeguarding the security of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and, where applicable, shall govern SHP's receipt, use or disclosure of PHI pursuant to the terms of this Agreement.

9. To the extent SHP is to carry out one or more of Plan Administrator's obligations under the HIPAA Privacy Regulations, it shall comply with the requirements of the Privacy Regulations that apply to the Plan Administrator in the performance of such obligations.

**B. Access, Amendment and Disclosure Accounting for Protected Health Information**

1. Upon the Plan Administrator's written request, SHP will make available for inspection and obtaining copies by the Plan Administrator, or at the Plan Administrator's direction by the Member (or the Members' representative), any PHI

about the Member created or received for or from the Plan Administrator in SHP's custody or control so the Plan Administrator may meet its access obligations under federal law.

2. Upon receipt of a written request from the Plan Administrator, or at the Plan Administrator's direction by the Member (or the Members' representative), SHP will amend or permit the Plan Administrator access to amend any portion of the

PHI created or received for or from the Plan Administrator in SHP's custody or control, so the Plan Administrator may meet its amendment obligations under federal law.

3. So the Plan Administrator may meet its disclosure accounting obligations under federal law or state law, SHP will do the following:
  - a. SHP will record each disclosure of Members' PHI which is not excepted from disclosure accounting under Section 5.1(B) 3.b, that SHP makes to the Plan Administrator or to a third party.

The information about each disclosure that SHP must record ("Disclosure Information") is (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom SHP made the disclosure, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Members' PHI that SHP makes for a single purpose to the same person or entity (including the Plan Administrator), SHP may record (i) the disclosure information for the first of these repetitive disclosures, (ii) the frequency, periodicity or number of these repetitive disclosures, and (iii) the date of the last of these repetitive disclosures.

- b. SHP will not be required to record disclosure information or otherwise account for disclosures of Members' PHI that this Agreement or the Plan Administrator in writing permits or requires:
  - (1) for Payment Activities or Health Care Operations,
  - (2) to the Member who is the subject of the PHI or to that Members' personal representative,

- (3) to persons involved in that Members' health care or payment for health care, as provided under federal law,
  - (4) for notification for disaster relief purposes or national security or intelligence purposes as provided under federal law,
  - (5) to law enforcement officials or correctional institutions regarding inmates,
  - (6) for incidental uses or disclosures,
  - (7) as part of a limited data set in accordance with federal law,
  - (8) that occurred prior to the HIPAA Privacy Compliance Date,
  - (9) pursuant to a valid authorization, or (10) as may be required by law.
- c. SHP will have available for the Plan Administrator the disclosure information required by Section 5.1(B)3.a. for the six (6) years immediately preceding the date of the Plan Administrator's request for the disclosure information.
- d. Upon the Plan Administrator's written request, SHP will make available to the Plan Administrator, or at the Plan Administrator's direction to the Member (or the Member's representative), disclosure information regarding the Member so the Plan Administrator may meet its disclosure accounting obligations under federal law.

#### **C. Information Safeguards**

- 1. SHP will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
- 2. SHP will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI SHP creates, receives, maintains, or transmits on behalf of the Plan Administrator as required by federal law.

#### **D. Inspection of Books and Records**



SHP will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the Plan Administrator and to the U.S. Department of Health and Human Services to determine compliance with federal law or this Agreement.

#### **E. Plan Disclosures**

SHP will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes SHP to disclose the minimum necessary PHI to the Plan Sponsor for plan administration functions specified in the Plan documents as amended.

#### **F. Information Privacy and Safeguard Provisions Survive Termination of Agreement**

These responsibilities agreed to by SHP and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and where applicable, shall govern SHP's receipt, use and disclosure of PHI obtained pursuant to the terms of this Agreement.

### **5.2 RESPONSIBILITIES OF THE PLAN SPONSOR**

- A. The Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. SHP is empowered to act on behalf of the Plan only as stated in this Agreement or as mutually agreed in writing by the Plan Sponsor and SHP.
- B. Except with respect to services provided by SHP set forth in this agreement, the Plan Sponsor will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations concerning the privacy of PHI, including any licensing, filing, reporting, and disclosure requirements, that may apply to the Plan. SHP will have no responsibility for the Plan's compliance or noncompliance with any applicable federal, state, or local law, rule, or regulation that the Plan Sponsor is responsible for under this subsection.

By executing this Agreement, the Plan Sponsor certifies to SHP that it has amended the Plan documents to incorporate the provisions required by and under federal law, and agrees

to comply with the Plan Administrator's plan documents as amended.

SHP may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Agreement or (2) the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

- C. For any high deductible health plan offered by the Plan Sponsor, the Plan Sponsor assumes sole responsibility for determining whether the Plan qualifies as a high deductible health plan under Section 223(c)(2) of the U.S. Internal Revenue Code. SHP MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PLAN.

For any high deductible health plan offered by the Plan Sponsor, SHP does not provide legal or tax advice, and expressly disclaims responsibility for determining, on behalf of any individual or group, the legal and tax implications of: (1) establishing a health savings account; (2) eligibility for a health savings account; (3) the contributions made to a health savings account; (4) the deductibility of contributions to a health savings account; and (5) withdrawals from a health savings account and related taxation.

## **6. FEES AND CHARGES:**

- 6.1 SHP agrees to the provisions and premium rates, for the Effective Date of this Agreement, in the attached Premium Rate Structure Table (Exhibit C).
- 6.2 SHP and NDPERS agree to the Health Plan Performance Guarantees, as outlined in the attached Exhibit B.
- 6.3 NDPERS will use best efforts to pay SHP, on or before the twentieth day of each month (but not later than the last day of the month), for the current month's premium income based on the amount identified in Exhibit C.

NDPERS will also maintain funds in a Programs Cash Reserve Account held by SHP for purposes of funding the Pharmacy Disease Management Program, the Wellness Benefit Program and any other programs funded outside of premium. NDPERS will

maintain a balance reasonably estimated to anticipate experience of such programs. This Programs Cash Reserve Account shall earn interest at a rate to be determined monthly, based on US Treasury Notes quoted by the Wall Street Journal. The monthly rate will be established at the close of the first trading day each month based on the closing yield to maturity of US Treasury Notes maturing 24 months hence. If there are multiple notes for that maturity, the rate will be based on an average. If there are no notes with that maturity, the next subsequent maturity will be used.

- 6.4 SHP will retain any surplus funds from the amounts identified as such in a schedule to the Premium Rate Table attached as Exhibit C. Surplus funds retained by SHP shall earn interest at a rate to be determined monthly, based on US Treasury Notes quoted by the Wall Street Journal. The monthly rate will be established at the close of the first trading day each month based on the closing yield to maturity of US Treasury Notes maturing 24 months hence. If there are multiple notes for that maturity, the rate will be based on an average. If there are no notes with that maturity, the next subsequent maturity will be used.

Surplus funds described in the above section 6.5 not used by SHP to pay NDPERS Health Plan incurred claims plus retention will be subject to the Final Accounting as described in Section 7 of this Agreement.

- 6.5 In the event any Federal or State authority imposes any changes to plan design, plan benefits or other mandate affecting the Plan, SHP and NDPERS shall reasonably cooperate to anticipate material increased expenses or other material effects and negotiate in good faith to incorporate consequent premium rate or other contractual changes. In the event the parties are unable to reach agreement, either party may terminate this Agreement pursuant to Section 8.2(b) hereof. SHP reserves the right to adjust premium rates, with a 90-day notice, for any such changes in taxes and/or benefits imposed upon SHP for the NDPERS health plan. SHP further reserves the right to adjust premium rates for any health plan design, plan benefit changes or other mandates imposed by the STATE or Federal legislative action or NDPERS Board mandate when such changes become effective.

## **7. FINAL ACCOUNTING**

- 7.1 A continual accounting of NDPERS Health Plan experience will take place during the 2021-2023 biennium. Monthly reports of earned income less incurred claims and retention will be produced during the biennium and the twenty-four months following the biennium.

7.2 Within 31 days of 12 months after the end of the biennium (by July 31, 2024) SHP will provide an accounting which will result in an initial settlement of the biennium agreement as follows:

1. Earned Premium Income (which is net of the NDPERS monthly admin fee) during the Biennium.
2. Plus interest on Surplus Funds.
3. Less Claims Incurred during the Biennium and paid July 1, 2021 - June 30, 2024. (Claims include payments/receivables to/from providers for value based contracts)
4. Less Estimated Claims Incurred and unpaid on June 30, 2024 as calculated using standard actuarial completion factors.
5. Less Administrative Expense during the Biennium (\$43.37 per contract per month).
6. Less Fitness Center Reimbursement/Wellness Credit Program fees during the Biennium (\$5.62 per contract per month).
7. If 1+2-3-4-5-6 of 7.2 is positive, the lesser of 50% of this amount or \$1.5 million is retained by SHP. The remainder equals Refund paid to NDPERS.
8. Within 62 days of 12 months after the end of the biennium (by August 31, 2024) refunds will be paid to NDPERS as defined by 7.2.

7.3 Within 31 days of 24 months after the end of the biennium (by July 31, 2025) SHP will provide an accounting which will result in a final settlement of the biennium agreement as follows:

1. Earned Premium Income (which is net of the NDPERS monthly admin fee) during the Biennium.
2. Plus interest on Surplus Funds.
3. Less Claims Incurred during the Biennium and paid July 1, 2021 – June 30, 2025. (Claims include payments/receivables to/from providers for value based contracts)

4. Less Estimated Claims Incurred and unpaid on June 30, 2025 as calculated using standard actuarial completion factors.
5. Less Administrative Expense during the Biennium (\$43.37 per contract per month).
6. Less Fitness Center Reimbursement/Wellness Credit  
Program fees during the Biennium (\$5.62 per contract per month).
7. If 1+2-3-4-5-6 of 7.3 is positive, the lesser of 50% of this amount or \$1.5 million is retained by SHP. The remainder equals Refund paid to NDPERS. If applicable, the final settlement amount will be net of initial settlement payments
8. Within 62 days of 24 months after the end of the biennium (by August 31, 2025), the final settlement will be paid to NDPERS as defined by 7.2 and 7.3. Sample illustrations of Sections 7.2 and 7.3 are attached as Exhibit D.

## **8. TERM AND TERMINATION OF AGREEMENT**

- 8.1 The term of this Agreement shall be for a two year period from July 1, 2021 to June 30, 2023.
- 8.2 This Agreement may be terminated by mutual agreement of both parties, upon 60 days' notice, in writing.

Either party may terminate this Agreement effective 90 days following delivery of written notice to the other party, or at such later date as may be stated in the notice, under any of the following conditions:

- a. 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. The Agreement may be modified by agreement of the parties in writing to accommodate a reduction of funds.
- b. If federal or state laws, rules or regulations are modified, changed or interpreted in such 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.

- c. If any license, permit or certificate required by law, rule or regulation, or by the terms of this Agreement, is for any reason denied, revoked, suspended or not renewed.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- d. In the event of a breach by either party, other than for nonpayment of premium, the other party may terminate this Agreement by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Agreement will immediately terminate.

## **9. PROVIDER NETWORK DISCOUNT PROGRAMS**

SHP has a variety of relationships with regional and national PPO discount Programs. Whenever a Member accesses health care services outside of the geographic area SHP serves, the claim for those services may be processed through one of these discount Programs and presented to SHP for payment in accordance with the rules of the discount program policies then in effect. The discount programs available to Members under this Agreement are described generally below.

Typically when accessing care outside the SHP service area, a Member will obtain care from health care providers that have a contractual agreement (i.e., "participating agreement") with the discount program. In some instances, a Member may obtain care from health care providers who have not entered into a "participating agreement" with SHP directly. SHP payment practices in both instances are described below.

### **A. Regional and National Network Discount Program**

When Members access health care services outside the geographic area served by SHP, SHP will adjudicate claims with the health care providers who have entered into a "participating agreement" with any one of SHP's discount network programs (participating health care providers). The financial terms of the Regional or National Network Discount Program are described generally below. Individual circumstances may arise that are not directly covered by this description; however, in those instances, SHP's action will be consistent with the spirit of this description.

Liability Calculation Method Per Claim - The calculation of Member liability on claims for Covered Services processed through the Regional or National Network Discount Program will be based on the

negotiated price made available to SHP by the Regional or National Network Discount program.

The Regional or National Network discount program may use various methods to determine a negotiated price, depending on the terms of each health care provider contracts. The negotiated price made available to SHP represents a payment negotiated by a Regional or National Network discount program with a health care provider that is the difference between the applicable contract rate and the participating provider's billed charges.

The amount paid by the Member is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims.

Should the state in which health care services are accessed mandate liability calculation methods that differ from the negotiated price methodology or require a surcharge, SHP would then calculate the Member's liability in accordance with applicable law.

Return of Overpayments - recoveries from participating health care providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, SHP will engage third parties to assist in discovery or collection of recovery amounts. The fees of such a third party may be netted against the recovery. Recovery amounts determined in this way will be applied in accordance with applicable SHP policies, which generally require correction on a claim-by-claim or prospective basis.

## **B. Nonparticipating Providers Outside the SHP Service Area**

When Covered Services are provided outside of SHP's service area by health care providers who have not entered into a "participating agreement" with SHP or SHP- contracted Regional or National Network Discount Programs (nonparticipating health care providers), the amount the Member pays for such services will be based on SHP's maximum allowed amount, which is the lesser of (a) the amount charged for a covered service or supply, or (b) reasonable costs as established by SHP or its Regional or National Network Discount Programs. Members are responsible for any difference between the amount charged and SHP's payment for covered services.

In certain situations, SHP may pay claims based on the payment SHP would make if the Covered Services had been obtained within the SHP service area by a Participating Provider. Such situations include where a Member did not have reasonable access to a participating health care provider, as determined by SHP in its sole and absolute discretion or by applicable state law. SHP may also in

its sole and absolute discretion, negotiate a payment with such a health care provider on an exception basis. In any of these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and payment SHP will make for the Covered Services as set forth in this paragraph.

## **10. REBATE PAYMENTS**

Sanford Health Plan agrees that all rebates collected as a result of medication utilization is applied in two ways, both to reduce the cost of the agreement with NDPERS. First, the claim experience is reduced by the use of the savings caused by rebates, resulting in a premium reduction.

Second, rebate savings are used to reduce the member cost share paid by the member at the point of sale for all generic medications in the formulary.

## **11. GENERAL PROVISIONS**

11.1 SHP 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. SHP retains sole and absolute discretion in the manner and means of carrying out SHP'S activities and responsibilities under This Agreement, except to the extent specified in this Agreement.

11.2 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:

- a. The terms of this Agreement as may be amended;
- b. State's Request for Proposal fully Insured Group Medical and Prescription; and
- c. SHP's Formal Health Insurance Proposal for 2021-2023 and all amendments thereto.



- 11.3 This Agreement shall be governed by and construed according to the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota.
- 11.4 Failure of either party at any time to require performance by the other party of any provision of this Agreement shall not be deemed to be a continuing waiver of that provision or a waiver of any other provision of this Agreement.
- 11.5 No assignment of this Agreement in whole or in part may be made by either party without written agreement approved by both parties. SHP may not assign or otherwise transfer or delegate any right or duty hereunder without NDPERS express written consent, or as otherwise set forth in this Agreement. However, SHP may enter into subcontracts for the provision of services under this Agreement provided that any subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. SHP is solely responsible for the performance of any subcontractor. Notwithstanding the foregoing, NDPERS acknowledges and agrees that SHP is a party to existing subcontracts with the PBM and other entities and may be bound by, or subject to, exclusivity or other limiting provisions under such existing subcontracts. SHP does not have authority to contract for or incur obligations on behalf of the Plan Sponsor or Plan Administrator.
- 11.6 All notices and correspondence required or permitted to be given under this Agreement shall be given by personal delivery to the other party or may be sent by mail, postage prepaid to the other party at the following address:
- North Dakota Public Employees Retirement System  
PO Box 1657  
Bismarck, North Dakota 58502
- Sanford Health Plan  
300 Cherapa Place, Suite 201  
Sioux Falls, South Dakota 57103
- 11.7 Neither party shall be liable for any delay in or failure to perform under this Agreement due to an act of God or due to war mobilization, insurrection, rebellion, civil commotion, riot, act of an extremist or public enemy, sabotage, labor dispute, explosion, fire, flood, storm, accident, drought, equipment failure, power failure, fuel or energy shortages, unavoidable delay of carriers, embargo, law, ordinance, act, rule or regulation of any government, whether valid or invalid.

- 11.8 Scope of Services: SHP agrees, represents, and warrants, to provide the services as specified in this agreement, State's Request for Proposal Fully Insured Group Medical and Prescription, SHP's Formal Health Insurance Proposal for 2021-2023 and all amendments thereto; additionally, the parties agree to be bound by the terms contained in the following exhibits (incorporated by reference):

[The parties agree to negotiate in good faith to finalize the applicable exhibits and will execute an amendment to add a reference such exhibits here once they are finalized.]

- 11.9 SHP will prepare Summaries of Benefits and Coverage for distribution to applicants and Members by NDPERS so that SHP, the Plan and NDPERS may all satisfy related disclosure obligations under federal law. It shall be the sole responsibility of NDPERS to distribute the Summaries of Benefits and Coverage in accordance with federal law, and the Plan Administrator acknowledges and agrees that SHP will rely upon NDPERS for compliance with the requirements for distribution of the Summaries of Benefits and Coverage to applicants and Members.

A. STATE AUDIT: All records, regardless of physical form, and the accounting practices and procedures of SHP relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. SHP shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them upon reasonable notice. The Plan Sponsor, State Auditor, or Auditor's designee shall provide reasonable notice to SHP prior to conducting examination.

- 11.10 When coverage under this Agreement is terminated, SHP will, within a reasonable period of time, issue a Certificate of Creditable Coverage to the Subscriber to the extent the certificate is required under state and/or federal law. Upon notification by the Subscriber of the ineligibility of a dependent, a Certificate of Creditable Coverage will be issued to the affected Member within a reasonable period of time. Certificates of Creditable Coverage may also be obtained from SHP upon request within 24 months after coverage is terminated. Certificates of Creditable Coverage will only reflect continuous coverage provided through SHP.
- 11.11 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.

- 11.12 ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:  
Neither Plan Sponsor nor Plan Administrator 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. Neither Plan Sponsor nor Plan Administrator waive any right to a jury trial.
- 11.13 PAYMENT OF TAXES BY PLAN SPONSOR and ADMINISTRATOR : Neither Plan Sponsor nor Plan Administrator will pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the Plan Administrator.
- 11.14 Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and SHP remain in compliance with such regulations, unless SHP elects to terminate this Agreement by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Agreement at least thirty-one (31) days before the effective date of such final regulation or amendment to final regulations.
- 11.15 The parties agree that all participation by Members in programs administered by NDPERS is confidential under North Dakota law. SHP may request and NDPERS shall provide directly to SHP upon such request, confidential information necessary for SHP to provide the services described herein. SHP shall keep confidential all NDPERS information obtained in the course of delivering services in accordance with law and the BAA, and shall not use any PHI or other Member information for any marketing purposes without express consent. Failure of SHP 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. SHP shall not disclose any individual employee or dependent information unless otherwise permitted by the

terms of this Agreement or the BAA without the prior written consent of the employee or family member. SHP has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, SHP shall return or destroy all

confidential information received from NDPERS, or created or received by SHP on behalf of NDPERS except as provided in the BAA. This provision applies to confidential information that may be in the possession of subcontractors or agents of SHP. SHP shall retain no copies of the confidential information except as provided in the BAA. In the event that SHP asserts that returning or destroying the confidential information is not feasible, SHP 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, SHP shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as SHP maintains the confidential information.

SHP understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from SHP unless such disclosure is not permitted by law. SHP further understands that any records that are obtained or generated by SHP 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 open records law. SHP agrees to contact NDPERS immediately upon receiving a request for information under the open records law and to comply with NDPERS's instructions on how to respond to the request.

The parties acknowledge and agree that the provisions of N.D.C.C. § 54-52.1-12 apply with respect to Member information.

In compliance with Law, SHP shall not discriminate on the basis of age, gender, gender identity, sex, color, race, national origin, disability, marital status, sexual preference, religious affiliation, public assistance status, a person's status as a victim of domestic violence or whether an advance directive has been executed. SHP shall not, with respect to any person and based upon any health factor or the results of genetic screening or test (a) refuse to issue or renew a Certificate of Insurance, (b) terminate coverage, (c) limit benefits, or (d) charge a different Premium.

- 11.16 SHP agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. SHP shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

- 11.17 All records, regardless of physical form, and the accounting practices and procedures of SHP relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. SHP shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them at any reasonable time. Plan Sponsor, State Auditor, or Auditor's designee shall provide reasonable notice.
- 11.18 INDEPENDENT ENTITY: SHP 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. SHP retains sole and absolute discretion in the manner and means of carrying out SHP's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

## **12. DISPUTES AND INDEMNIFICATION**

- A. If litigation is filed regarding denial of benefits or otherwise, and SHP is named as the sole defendant, SHP will have the right to manage and have full control of litigation and to determine whether to pay, compromise, litigate or appeal litigation. The legal defense provided by SHP to the Plan Sponsor and Plan Administrator under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for Plan Sponsor and Plan Administrator is necessary. The legal defense must meet the requirements of N.D.C.C. §54-12-08. Except as otherwise provided in this Agreement, the Plan Sponsor, Plan Administrator, and SHP each agree to assume their own liability for any and all legal equitable claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this Agreement.
- B. SHP shall secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, the following insurance coverages:
1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per occurrence and \$1,000,000 aggregate.

2. Professional errors and omissions with minimum liability limits of \$1,000,000 per occurrence and in the aggregate, SHP shall continuously maintain such coverage during the term of the Agreement and for three years thereafter. In the event of a change or cancellation of such coverage, SHP shall purchase an extended reporting period to meet the time periods required in this section.
3. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
4. Workers compensation coverage meeting all statutory requirements.

The policy shall provide coverage for all states of operation that apply to the performance of this contract.

- C. 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 SHP. The amount of any deductible or self-retention is subject to approval by NDPERS, upon request.
  2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A" rating must be approved by NDPERS. The policies shall be in form and terms approved by NDPERS,
  3. SHP shall furnish a certificate of insurance to the undersigned NDPERS representative.
  4. Failure to provide insurance as required in this Agreement is a material breach of contract entitling NDPERS to terminate this Agreement immediately.
- D. SHP shall not cancel insurance coverage required by this Agreement or modify the insurance coverage below limits required by this Agreement without thirty (30) days' prior written notice to the undersigned NDPERS representative.
- E. New insurance shall be promptly furnished in the event of insolvency, bankruptcy, or failure of any insurance company. SHP shall notify NDPERS thirty (30) days in advance of any cancellation, termination, or alteration of insurance policies required hereunder. A

renewal policy or certificate shall be delivered to NDPERS at least thirty (30) days prior to the expiration date of each expiring policy.

- F. After a period of a right to cure, failure to provide insurance as required in this Agreement is a material breach of contract entitling NDPERS to terminate this Agreement immediately.

### **13. DOCUMENTS NECESSARY TO EFFECTUATE THE AGREEMENT**

In the event the parties mutually determine the need to complete other documentation, including contract amendments, to complete this transaction, the parties agree to reasonable cooperate to execute such documents to effectuate the agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in their names by their undersigned officers, the same being duly authorized to do so.

**NORTH DAKOTA PUBLIC EMPLOYEES  
RETIREMENT SYSTEM (PLAN  
ADMINISTRATOR)**  
PO Box 1657  
Bismarck, North Dakota 58502

**SANFORD HEALTH PLAN**  
300 Cherapa Place, Suite 201 Sioux Falls, SD  
67103

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

**NORTH DAKOTA PUBLIC EMPLOYEES  
RETIREMENT SYSTEM (PLAN SPONSOR)**  
PO Box 1657  
Bismarck, North Dakota 58502

By: \_\_\_\_\_

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

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





**North Dakota  
Public Employees Retirement System**  
400 East Broadway, Suite 505 • Box 1657  
Bismarck, North Dakota 58502-1657

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

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

# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein, CPA

**DATE:** January 12, 2021

**SUBJECT:** Comprehensive Annual Financial Report (CAFR)

The 2020 comprehensive annual financial report has been completed. 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://ndpers.nd.gov/image/cache/2020-cafr.pdf>

An email notice was sent to each participating employer notifying them that the annual report is available on the NDPERS website. The report was submitted 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.



**North Dakota  
Public Employees Retirement System**  
400 East Broadway, Suite 505 • Box 1657  
Bismarck, North Dakota 58502-1657

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

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

# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** January 12, 2021

**SUBJECT:** Consultant Fees for the Quarter Ended December 2020

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended December 2020.

Attachment

**North Dakota Public Employees Retirement System  
Consulting/Investment/Administrative Fees  
For the Quarter ended December 31, 2020**

Program/Project		Fee Type	Oct-20	Nov-20	Dec-20	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
<b>Actuary/Consulting Fees:</b>							
Mid Dakota Clinic	Retirement Disability	Time charges	1,250	600	550	2,400	\$ 3,350
Ice Miller	Legal fees Employee benefit matters				292	292	\$ 292
Deloitte	Legislative Analysis					-	\$ 3,050
Deloitte	Claims Projections			9,019		9,019	\$ 12,229
Deloitte	Consulting			133,981	14,056	148,038	\$ 180,459
Gabriel Roeder Smith & Company	Retirement	Fixed Fee	32,000		30,000	62,000	\$ 73,000
Gabriel Roeder Smith & Company	RHIC	Fixed Fee	6,400		3,700	10,100	\$ 13,600
Gabriel Roeder Smith & Company	GASB 67/68	Fixed Fee			22,000	22,000	\$ 22,000
Gabriel Roeder Smith & Company	GASB 74/75	Fixed Fee			4,125	4,125	\$ 4,125
Gabriel Roeder Smith & Company	Actuarial Factor Updates	Fixed Fee	11,700			11,700	\$ 17,900
Gabriel Roeder Smith & Company	Projections	Fixed Fee			10,000	10,000	\$ 10,000
Gabriel Roeder Smith & Company	Retirement	Time Charges	5,525		7,180	12,705	\$ 20,650
Gabriel Roeder Smith & Company	RHIC	Time Charges				-	\$ 340
Gabriel Roeder Smith & Company	Deferred Comp	Time Charges				-	\$ -
Gabriel Roeder Smith & Company	Flexcomp	Time Charges				-	\$ -
Callan & Associates	Asset Allocation & Liability Study	Fixed Fee	68,000			68,000	\$ 68,000
<b>Audit Fees:</b>							
Clifton Larson Allen	Annual Audit Fee	Fixed Fee	62,500			62,500	\$ 62,500
<b>Website Maintenance</b>							
MABU	Website Redesign	Time Charges				-	\$ -
<b>Legal Fees:</b>							
ND Attorney General	Administrative	Time charges	10,417	3,295	1,713	15,425	\$ 28,151
<b>Investment Fees:</b>							
SIB - Investment Fees	Retirement (DB)	% Allocation	1,102,708	309,925	1,235,628	2,648,261	\$ 6,009,230
SIB - Investment Fees	Ret Health Credit	% Allocation	107,391	108,628	109,704	325,723	\$ 557,238
SIB - Investment Fees	Insurance	% Allocation	15,375	15,697	16,375	47,447	\$ 97,278
SIB - Administrative Fees	Retirement (DB)	% Allocation	32,728	35,901	26,429	95,058	\$ 298,715
						3,116,489	\$ 6,962,461
<b>Administrative Fee:</b>							
Sanford Health Plan	Health Plan	Fixed fee	2,261,710	2,266,967	*	4,528,677	\$ 11,298,243

\* fees not yet available



**North Dakota  
Public Employees Retirement System**  
400 East Broadway Avenue, Suite 505 • Box 1657  
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**Scott A. Miller**  
Executive Director  
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# Memorandum

**TO:** NDPERS Board

**FROM:** Shawna Piatz

**DATE:** January 12, 2021

**SUBJECT:** Audit Committee Position

With the transition of Senator Grabinger off of the NDPERS Board, a new Audit Committee member may be appointed.

The Audit Committee Charter states, "The audit committee will consist of two to five members with the majority of the members selected from the Board of Directors, and one may be selected from outside the organization. The Board or its nominating committee will appoint committee members and the committee chair. The Board should attempt to appoint committee members who are knowledgeable and experienced in financial matters, including the review of financial statements."

Current Audit Committee members are as follows:

- Mona Rindy
- Adam Miller
- Dirk Wilke
- Julie Dahle – member at large
- vacant

Board Action:

Request appointment of a new Audit Committee member.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Aime

**DATE:** January 12, 2021

**SUBJECT:** Annual Communication Plan

Each year, NDPERS develops a comprehensive communication plan to actively engage with our members and employers. The communication plan ensures NDPERS' communications efforts are proactive and effective.

The following table summarizes the communication topics NDPERS will distribute in 2021.

This update is informational only.

# NDPERS Annual Communication Plan

## Overview of 2020 Communication Messages & Campaigns



January			February			March		
Member Experience Survey Companion Plan and Defined Contribution Members			Flexible Spending Account (FSA) - Submit Claims Email from ASIFlex and NDPERS			Flexible Spending Account (FSA) - Incur Claims Deadline Email from ASIFlex and NDPERS		
1099R Tax Form			Employer Monthly Tip Email			Employer Monthly Tip Email		
Board Recap Latest News			Board Recap Latest News			Board Recap Latest News		
TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info		
TIAA Webinars Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info		
Customer Experience Feedback Email from NDPERS			Customer Experience Feedback Email from NDPERS			Customer Experience Feedback Email from NDPERS		
April			May			June		
Flexible Spending Account (FSA) - Submit Claims Deadline Email from ASIFlex and NDPERS			Health Plan Rates Changes (Mercer County) <i>Standard - Public Info Role not involved</i> Retiree and COBRA rates <i>Standard - Public Info Role not involved</i>			Retiree Newsletter		
Employer Monthly Tip Email			Employer Monthly Tip Email			Active Newsletter		
Board Recap Latest News			Board Recap Latest News			Employer Monthly Tip Email		
TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			Board Recap Latest News		
TIAA Webinars Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info		
Customer Experience Feedback Email from NDPERS			Customer Experience Feedback Email from NDPERS			TIAA Webinars Email from NDPERS with TIAA info		
						Customer Experience Feedback Email from NDPERS		
July			August			September		
			Annual Statements Available Notice Email from NDPERS to active employees			Flu Shot Clinic Website/emails from NDPERS		
Employer Monthly Tip Email			Employer Monthly Tip Email			Suicide awareness month Email from NDPERS with SHP info		
Board Recap Latest News			Board Recap Latest News			Employer Monthly Tip Email		
TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			Board Recap Latest News		
TIAA Webinars Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info		
Customer Experience Feedback Email from NDPERS			Customer Experience Feedback Email from NDPERS			TIAA Webinars Email from NDPERS with TIAA info		
						Customer Experience Feedback Email from NDPERS		
October			November			December		
Flu Shot Clinic Website/emails from NDPERS			Flu Shot Clinic Website/emails from NDPERS					
Medicare Part D Retiree Rate Changes and Creditable Coverage Notice Mailing			457 Deferred Compensation Provider Training Benefits Division					
457 Deferred Compensation Provider Training Benefits Division			Annual Enrollment Website/emails - Active members and employers			Wellness Benefit Insurance Plan Carrier Email		
Annual Enrollment Website/emails - Active members and employers						Employer Monthly Tip Email		
National Retirement Security Week Email from NDPERS with TIAA info			Employer Monthly Tip Email			Board Recap Latest News		
Employer Monthly Tip Email			Board Recap Latest News			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info		
Board Recap Latest News			TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info		
TIAA 1:1 Individual Consultations Email from NDPERS with TIAA info			TIAA Webinars Email from NDPERS with TIAA info			Customer Experience Feedback Email from NDPERS		
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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott Miller

**DATE:** January 12, 2021

**SUBJECT:** HR Policy Manual Update

On an annual basis, staff is tasked with reviewing the NDPERS Human Resource Policy Manual. The following is a summary of the proposed revisions to the Policy Manual.

- Chapter 2: Employment Policies & Practices -
  - 2.5 Hiring Policy/Background Checks: Suggested language taken from the Universal Policy and reflects best practice by a number of agencies whose employees are subject to background checks.
  - 2.6 Confidentiality: language added to address non-work related visitors in the back office area.
  - 2.7 Code of Ethical Responsibility: Dean DePountis has made updates regarding conflicts of interest and hiring practices.
- Chapter 2.1 Use of NDPERS Property –
  - Chapter was updated and expanded to reflect best practice regarding computer use and cyber security.
- Chapter 3 Salary Administration -
  - 3.6 Probationary Period: language added for clarification.
- Chapter 7 Performance Evaluations -
  - 7.1 and 7.5 language taken from universal policy and added to provide clarification.
- Chapter 8 Annual Leave -
  - 8.2 language from universal policy, added for clarification.
  - 8.3 language from N.D.A.C., added for clarification.

- Chapter 11 Leave of Absence Without Pay
  - 11.5 language added for clarification.
- Chapter 21 Service Award Program -
  - 21.1 added for clarification, historically, service awards have applied only to classified employees at NDPERS.
- Chapter 29 Telecommuting -
  - A new chapter to address an alternative work arrangement where employees may be allowed to work from home. It outlines expectations and provides guidance. The NDPERS Teleworking Agreement document referenced in the Policy Manual resides outside the Policy Manual.

Copies of the above revised sections are included in Attachment 1. The draft Teleworking Agreement is provided as Attachment 2. A pdf version of the full Policy Manual is provided in attachment 3.

The proposed changes and Teleworking Agreement have been reviewed by HRMS staff, NDIT, and Legal Counsel. Staff recommends approval of the proposed changes.

**Board Action Requested:** Approve the proposed HR Policy revisions.



## CHAPTER 2 - EMPLOYMENT POLICIES & PRACTICES

- 2.5 **Hiring Policy/Background Checks.** It is the policy of NDPERS to exercise reasonable care in hiring employees by conducting a thorough background check on all candidates selected for hire, regardless of the position and prior to the candidate reporting to work. If at any time during employment, an employee is charged with or convicted of a crime, he/she must disclose the necessary information to their immediate supervisor or agency human resources. Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

See Universal Policy: Criminal History Record Information 11-1-18

- 2.6 **Confidentiality.** As an employee of NDPERS, you are required to maintain confidentiality of all member records. Failure to comply with this provision may result in immediate termination.

Non-work related visitors are not allowed in your office while you are conducting business.

- 2.7 **Code of Ethical Responsibility.** NDPERS has a Code of Ethical Responsibility that outlines its conflict of interest and confidentiality guidelines. These guidelines are reviewed with you annually at the time of your performance evaluation. The following is the NDPERS Code of Ethical Responsibility.

1. NDPERS is committed to providing our members the best service possible. Each NDPERS employee owes a duty to conduct him or herself to inspire the confidence, respect and trust of the NDPERS members and to strive to avoid not only professional impropriety, but also the appearance of impropriety.
2. NDPERS employees should perform the duties of their offices impartially and diligently.
3. NDPERS employees are expected to fulfill their responsibilities in accord with the intent of all applicable laws and to refrain from any form of dishonest or unethical conduct. Partisan interest, public sentiment, or fear of criticism should not sway employees.

4. Conflicts of interest and the appearance of impropriety shall be avoided by NDPERS employees. Employees must not allow their family, social, or other relationships to influence their judgment in discharging their responsibilities. Employees must refrain from financial and business dealings that tend to reflect adversely on their impartiality or interfere with the proper performance of their duties. If a conflict of interest unavoidably arises, the employee shall immediately disclose the conflict to the NDPERS Executive Director.
5. Employees must not unnecessarily hire employees or retain consultants. Employees and consultants shall be hired based on NDPERS' needs and candidates' qualifications – and in accordance with North Dakota's nepotism policy. The compensation of such employees and consultants shall not exceed the fair value of services rendered.



Lund, Janis M.  
Dean's changes

## CHAPTER 2.1 – USE OF NDPERS PROPERTY

2.1.1 Use of NDPERS Property. NDPERS property, supplies, and equipment are to be used for conducting NDPERS business. State law prohibits the use of NDPERS property for political purposes.

The following policies apply to personal use of NDPERS equipment:

**Telephone.** NDPERS recognizes that staff will make or receive personal telephone calls; however, the number and length of these calls should be kept to a minimum. Personal long-distance calls are prohibited.

**Distracted Driving Policy.** The use of State-owned and personal cell phones or other mobile devices on-the-job and while operating a moving vehicle has restrictions and guidelines for use due to the distraction and lack of concentration presented to safe work performance. Refer to Chapter 26, Section 2 for an outline of the guidelines.

**Printers and Copy Machine(s).** Personal use of printers and copy machine(s) may be allowed. If you must use the machines for personal use, you may do so at a cost of 5¢ per page. This charge applies whether you are duplicating or printing copies. If you will be printing or copying more than 50 pages at one time, you must receive prior approval from your supervisor or manager.

**Fax Machine.** Personal use of the fax machine is not allowed.

Violation of these policies will result in disciplinary action.

2.1.2 **Electronic Mail (e-mail) Policy.** E-mail is one of NDPERS internal and external communication methods. E-mail originating from a North Dakota Public Employees Retirement System (NDPERS) e-mail account is to be considered the property of NDPERS. As such, the agency reserves the right to search and access employee e-mail when necessary to ensure the proper use of the system and to protect the interests of the agency. System features such as passwords and delete message functions do not affect the agency's ability to retrieve and right to review e-mail.

2.1.3 **Internet Policy.** Internet access is available to agency employees to conduct official business, such as researching business issues, accessing business-related data, information, and training. An employee is responsible for any charges associated with billable Internet services unless appropriate authorization has been obtained before accruing the charge. Authorized Uses and Standards of Conduct are included in Chapter 2 Section 2.7.

#### 2.1.4 **Use of Electronic Communication Devices.**

##### Section 1. Introduction and Purpose

The State of North Dakota provides Electronic Communication Devices (ECDs) and an information technology (IT) infrastructure designed to facilitate business communications among state government, educational entities, political subdivisions, and their business contacts.

These devices include telephones (cell phones and smartphones), facsimile (fax) machines, multi-function printers, tablets, mobile computing devices, workstations, video equipment, all computer and network-related hardware, software (including e-mail and Internet), and/or peripheral devices. These devices are connected to the State's IT infrastructure and as such, public scrutiny and/or disclosure of usage must not damage the reputation of the State of North Dakota, nor jeopardize the systems' integrity.

It is NDPERS' intent to provide a policy that ensures the appropriate use of ECDs by its staff and

business contacts. These policies apply to all state-owned devices that are synced or directly attached to the state IT network infrastructure.

North Dakota State government branches and agencies are responsible for developing and administering policies to prevent or detect abuse and reduce legal exposure related to the use of ECDs. Unless exempted by law, all electronic communications shall follow North Dakota's Open Records Law. State ECDs are not part of any employee benefit program.

#### Section 2. Employees Provided State ECDs

NDPERS employees have job duties that require access to a desktop or laptop computer. State of ND Information Technology Department (NDIT) provides these devices and is responsible for the maintenance and replacement of such devices. In addition to a laptop or desktop computer, some positions may require the use of mobile computing devices such as cell phones, smartphones, or tablets.

NDPERS Chief Operating Officer is responsible for determining if a state-owned mobile computing device should be provided to an employee. In making that determination, the COO, in consultation with the Executive Director, must assess the need and cost-effectiveness for employees to have a state-issued mobile computing device. Each situation should be considered individually and be based on the employee's work or position. Factors to be considered in determining if an employee should be issued a state-owned mobile device should include, but are not limited to, the following:

1. The frequency that employees conduct business off-site or away from the office setting and landline phones or radio communication is inaccessible or inefficient.
2. Communication is required for safety purposes or to respond to emergencies.
3. The extent to which an employee is required to be in regular or immediate contact with the office when out of the office or after hours.
4. The extent to which a mobile device will increase an employee's productivity.
5. The extent to which a mobile device will provide quality customer service and enhance business operations.
6. The extent to which the position requires mobile email access.
7. The determination of whether the position is exempt or non-exempt under the Fair Labor Standards Act.
8. A state-owned ECD should be used if an employee's work outside the office requires a VPN connection.
9. Any other unique aspects of the position.

#### Section 3. Authorized Use

NDPERS' policy is to limit the use of State ECDs to official business. However, users may be permitted to utilize ECDs for personal use, if in compliance with the following terms of this policy:

1. Does not interfere with the performance of the user's public duties.
2. Is of nominal cost or value.
3. Does not create the appearance of impropriety.
4. Is not for a political or personal commercial purpose.
5. Is reasonable in time, duration, and frequency.
6. Makes minimal use of hardware and software resources.
7. Does not affect the safety of the employee or employee's coworkers.
8. Uses only software that has been licensed by the State of ND or NDPERS. Unauthorized downloading of software/shareware is prohibited; ECDs may be audited at any time.

#### Section 4. Standards of Conduct

Users shall be held personally liable (legally, financially, or otherwise) for the use of ECDs not in

compliance with State policy. ECDs should be used in a professional and ethical manner as noted below:

1. Must not use ECDs to distribute or access content that is harassing, bullying, discriminatory, defamatory, insulting, sexually explicit, offensive, or erotic.
2. Must not create, distribute, copy, store, or knowingly use unauthorized copies of copyrighted material on State of North Dakota computers, or transmit them over the State networks; approval for the use and distribution of such information must be obtained from the owner/author.
3. Must not use non-business related "streaming" audio & video (including Internet radio, stock/news tickers, and software such as Weather Bug, etc.)
4. Must not use State of ND issued ECDs for accessing external email.
5. Must not use ECDs for the purposes of probing or hacking.
6. Must not use ECDs for any illegal activity, gambling, trading in illegal substances, etc.
7. Must not use ECDs to knowingly download, copy, distribute, store, or use pirated software or data.
8. Must not use ECDs with photo/video/audio capability in restricted-access areas and areas where personal privacy would be expected (e.g., restrooms) or electronically transmit images, video, or audio recorded on such devices without permission.
9. Must not create or distribute a virus or intentionally cause damage to any ECDs or bypass any State virus detection system in place.
10. Must protect the ECD from theft, damage, abuse, or unauthorized use.
11. Must immediately report suspicious activity or unauthorized access of an ECD.
12. Must report a lost or stolen ECD immediately.
13. Must conform to State procurement policies when making business-related purchases using an ECD.

#### Section 5. Email Use

Communication via email is approved by NDPERS but caution should be exercised in its use. This guidance applies to all ECDs:

1. Email messages and attachments are not encrypted by default and are therefore vulnerable to interception by persons with malicious intent.
2. Email messages and attachments sent to destinations in the 'nd.gov' domain are not encrypted.
3. All email messages including personal email messages are the property of NDPERS and may be examined if deemed necessary.
4. Email users will not permit unauthorized individuals to access their State of North Dakota email account.
5. Email users should exercise caution when receiving unsolicited email messages or attachments:
  - Unsolicited messages may be spam or junk mail but could be part of a phishing attack.
  - Clicking a link or opening an attachment may initiate the download of malicious software.
6. Contacts made through email should not be trusted with NDPERS information unless due diligence has first been performed.
7. The State of North Dakota's email system does provide some protection against spam and phishing emails.

All inbound/outbound messages are scanned for common malware and spam filters are in place:

4.
  - Suspicious spam emails are dropped.
  - Emails identified with malicious attachments are dropped.
  - Specific file type attachments are automatically removed from messages before the message

is forwarded to the recipient.

- If you are expecting an email message that may have been removed or an attachment that may have been removed, contact NDPERS IT.

NDPERS does not restrict staff from forwarding items from personal email to work email if the forwarded message or attachment is relevant to the individual's work.

#### Section 6. StageNet Guest wireless network

NDPERS does not restrict the use of personal devices using the STAGEnet Guest wireless network. The owner of a personally owned ECD is responsible for ensuring that the device is protected, has antivirus software installed and enabled; that the antivirus software remains updated; the latest operating system updates are applied, including all applicable security patches.

#### Section 7. STAGEnet MEMBER wireless network

NDPERS does not restrict the use of personal devices using the STAGEnet Member wireless network. Active Directory credentials are required to use STAGEnet Member. STAGEnet Member may be required in certain testing scenarios (i.e. NDPERS Mobile App testing).

NDPERS is not responsible for maintaining, supporting, protecting, replacing, or repairing personally owned ECDs. NDPERS is not responsible for damage to a personally owned ECD or any loss of data.

#### Section 8. Training

User training on computer security and appropriate usage is required. Security training is available from NDIT. Additional information is available on the State of NDIT's website.

#### Section 9. Social Media

Social media is a means of communication using web-based and mobile technologies for the exchange or publication of information. Social media includes but is not limited to social networking sites, blogging, instant messaging, etc. The use of social media for business purposes is at the discretion of the NDPERS Executive Director.

An employee's use of social media must comply with all current NDPERS policies such as, but not limited to Employer Responsibilities, Confidentiality, Employment Practices, and Use of Electronic Communications Devices.

#### Section 10. Measuring and Monitoring

Except where precluded by law, the State has the right to monitor the usage of ECDs. Monitoring includes but is not limited to, reviewing, storing, accessing, auditing, and intercepting information received or sent through e-mail, texting, instant messaging, voicemail, or over the Internet.

The tools available from the NDIT (by request of an agency) allow for monitoring an individual's Internet usage.

The State reserves the right to block any Internet sites deemed by the State to be unrelated to the State's responsibilities.

The State will disclose records to law enforcement, management, government officials, or third parties through a subpoena or other processes. Consequently, employees should always ensure that their communications are accurate, appropriate, and lawful.

#### Section 11. Non-Compliance Measures

A user's violation of state policy may lead to disciplinary actions, and up to and including termination of employment, and/or service.

#### Section 12. Acknowledgment of ECD Policies

An acknowledgment of ECD policies must be completed and signed before a state-owned ECD can be issued and attached to the state IT infrastructure.

**2.1.5 Computer Access.** It is NDPERS policy that all new employees must read and sign an acknowledgment that they understand and agree to the provisions governing computer access prior to access being granted.

If you are on an approved leave of absence (LOA) that exceeds thirty (30) days, system access will be terminated unless otherwise authorized by your supervisor or manager if it is determined that continued access should be allowed based on a business-related reason. For those occurrences in which access is terminated, upon return from the LOA, the employee will be required to sign a new acknowledgment.

#### **2.1.6 Remote Access Policy.**

##### Mainframe.

It is NDPERS' policy that staff members who are approved by their supervisor or manager will be granted access to the State's mainframe computer via the currently supported web client supplied by NDIT.

##### State of ND Wide Area Network (WAN).

It is NDPERS' policy that no staff member will access STAGEnet (state network) via remote connection without permission from his/her supervisor or manager. In such a case that permission is approved, such access to the WAN must be accessed via Virtual Private Network (VPN). The supervisor or manager will request that the IT Division acquire the VPN client and install it on an ECD assigned to the staff member.

This policy is not intended to guarantee that hardware (i.e. laptop computer) for such a connection will be available. The decision to supply the hardware will be left to NDPERS Management.

**2.1.7 Fraud or Misconduct.** Maintaining high standards of conduct and ethics is important to NDPERS. All employees are encouraged to report fraudulent or dishonest conduct (i.e., to act as a "whistleblower") following NDPERS procedures. Fraudulent or dishonest conduct may involve employees as well as consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship.

Actions constituting Fraud or Misconduct refer to, but are not limited to:

1. Dishonest or fraudulent acts relating to or affecting NDPERS operations.
2. Forgery or alteration of any document or account belonging to the agency.
3. Forgery or alteration of a check, bank draft, or any other financial document relating to agency business.
4. Misappropriation of funds, securities, supplies, or other assets owned, leased, or related to agency business.
5. Improperly handling or reporting of money or financial transactions involving agency business.
6. Disclosing confidential and proprietary information to outside parties.
7. Accepting or seeking anything of value from contractors, vendors, or people providing services/materials to the agency.



8. Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment.

*How to Report.*

Employees should report any reasonable concern about fraudulent or dishonest use or misuse of agency resources or property to the Chief Audit Officer. Reports should contain enough information to substantiate the concern and allow an appropriate investigation to begin. Reports may be submitted anonymously. Appropriate action will be taken in response to reports. Supervisors or managers who receive the reports must promptly contact the Chief Audit Officer to initiate a review of the allegations. If the Chief Audit Officer is named in the allegation, the supervisor or manager should contact the NDPERS Executive Director. The Chief Audit Officer or the Executive Director will determine the scope of the investigation and the internal and/or external personnel required to conduct the investigation.

All reports received will be acted upon in confidence to the extent possible within the constraints of state law, the need to gather facts, and the ability to conduct an effective investigation and take necessary corrective action. Reasonable care will be taken in dealing with suspected misconduct to avoid baseless allegations, premature notice to persons suspected of misconduct, disclosure of suspected misconduct to persons not involved with the investigation, and violations of a person's rights under the law.

*Whistleblower Protection.*

NDPERS will use its best efforts to protect whistleblowers, those who report fraud or abuse, against retaliation. Whistleblower complaints will be handled with sensitivity, discretion, and confidentiality to the extent allowed by the circumstances and the law. Whistleblowers who believe that they have been retaliated against for reporting an activity may file a written grievance about the retaliation pursuant to the grievance procedure in chapter 23. Any substantiated complaint of retaliation, including but not limited to, threats of physical harm, loss of a job, punitive work assignments, or reduced salary or wages, will be promptly investigated and corrective action is taken. This protection from retaliation is not intended to prohibit managers or supervisors from taking action, including disciplinary action in the usual scope of their duties based on valid performance-related factors, nor is it intended to preclude disciplinary action against individuals who report baseless allegations.

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2.1.10 Personal Device Policy

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NDIT offers employees the opportunity to download Office 365 for personal use. In doing so, employees agree to adhere to the State of North Dakota OneDrive policy below. Also, accessing NDPERS data stored in the Microsoft Government Cloud using a personal device or from outside the state network requires using multi-factor authentication (MFA), and employees are encouraged to use a virtual private network (VPN).

Any personal device such as tablets, computers, or smartphones used to access the State of North Dakota services must have appropriate security safeguards in place to protect the system from compromise or misuse. These include but are not limited to the following:

1. The system and all applications on the system must be kept up to date with the most recent security updates and patches. This includes firmware updates for smart devices.
2. The system must have anti-virus software installed and the software and virus signature files must be kept up to date. This does not apply to smartphones.
3. The system cannot access the State of North Dakota data using a public Wi-Fi connection. No information should be transmitted through a public Wi-Fi network.
4. The system cannot access the State of North Dakota data using a public hotspot connection. No information should be transmitted through a public hotspot.

5. For the user's protection and added security for NDPERS data, it is strongly recommended that a VPN is used regardless if internet service is secure.

Personal devices must follow the guidelines below:

1. Protected by a strong password, non-trivial PIN that is a minimum of six (6) digits and has a maximum life of ninety (90) days, single fingerprint or facial scan identification, or other similar security feature
2. Use a 5 minute or less inactivity timeout with an idle-time screen saver password
3. Employ automatic device locking after 10 consecutive failed login attempts

Personal device users are:

1. Prohibited against sharing passwords or using the passwords of others
2. Prohibited against writing down passwords, or otherwise storing passwords in an insecure manner
3. Required to report any suspected compromise or any use of their user identifier and password by other individuals

Prevent snooping on personal devices by:

1. Always knowing where the device is
2. Locking devices when not in use
3. Hiding notification previews for email, Teams, and OneDrive
4. Silencing notification alert sounds for email, Teams, and OneDrive
5. Being aware of the surroundings and the people nearby

After completion of any activity, immediately and properly log out of all sessions.

#### **State of North Dakota Email.**

Employees may access their State of North Dakota email account from personal devices provided the device follows the personal device guidelines above. State email account information can be accessed using an Office 365 download, Outlook or similar mail application, or the NDIT web application via a web browser. *It is advisable not to attempt to view attachments or emails that may contain confidential/sensitive information via personal devices. Attachments containing confidential/sensitive information should not be downloaded to a personal device under any circumstance.*

#### **State of North Dakota Teams for Business.**

Employees may use their State of North Dakota Teams for Business account from personal devices for instant messaging (IM), Teams meetings or other Teams collaboration provided the device follows the personal guidelines above. Teams for Business can be accessed using an Office 365 download, a stand-alone Teams application, or the Teams web application via a web browser. *It is advisable not to display or discuss confidential/sensitive information during Teams meetings via personal devices.*

Recording of Teams for Business sessions that include confidential/sensitive data is strictly prohibited as this recording is saved to the cloud automatically.

#### **State of North Dakota OneDrive.**

Employees may access their State of North Dakota OneDrive account from personal devices provided the device follows the personal guidelines above. *It is advisable not to open confidential/sensitive information from OneDrive via personal devices. Attachments containing confidential/sensitive information should not be downloaded to a personal device under any circumstance.*

The State of North Dakota OneDrive account is the only cloud account that can be used to store



sensitive data. Using personal or other OneDrive accounts or similar Internet-based file-sharing systems (such as Dropbox, Google Docs, etc.) for storing confidential documents is prohibited.

Don't sync the State of North Dakota OneDrive files to a machine or device that is not issued and secured by the state.

Avoid sharing OneDrive files with individuals outside of NDPERS. But when necessary:

1. Never share confidential documents with individuals outside of NDPERS.
2. Share files with specific individuals, never with "everyone" or the "public".
3. Be careful sending links to shared folders because they can often be forwarded to others to whom you did not provide access.
4. Remember that once a file is shared with someone and they download it to their device, they can share it with others.
5. Remove individuals when they no longer require access to files or folders.

#### **Investigations.**

If accessing State of North Dakota NDPERS data on a personal device, employees agree to cooperate fully with any authorized internal State of North Dakota investigations (e.g. security incident investigations, data breach investigations, fraud investigations, etc.). This may require employees to produce any personal systems, devices, or media to authorized State of North Dakota staff for examination and/or analysis required by the investigation.

#### **Violations.**

Report any incidents of non-compliance with or violations of applicable laws, regulations, or policies and procedures to NDPERS managers.

Employees may be sanctioned and/or disciplined, up to and including termination, for noncompliance with or violations of applicable laws, regulations, or NDPERS policies and procedures.

## CHAPTER 3 - SALARY ADMINISTRATION

N.D.A.C. 4-07

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- 3.6 **Probationary Period.** The purpose of the probationary period is to evaluate whether you can meet the performance requirements of your position. At the time of initial hiring, all regular employees will serve a probationary period of no less than six months. This period may be extended up to an additional six-month period contingent on the outcome of your performance evaluation. A probationary review, including the outcome of the probationary period, will be conducted with the employee within 15 business days of the six-month anniversary date. Non-probationary classified employees are not required to serve a probationary period upon promotion within an agency.

## CHAPTER 7 - PERFORMANCE EVALUATIONS

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- 7.1 The Public Employees Retirement System evaluation program is designed to develop your skills, potential and career growth within our organization. New employees will receive a performance evaluation at the end of the six-month probationary period. At the end of that time, the employee will receive a formal evaluation and the initial probationary period may be extended for up to six months if the employee is not meeting performance standards or training has not been completed. The employee will be notified in writing of the decision to extend, the reason for the extension and the length of the extension. The employee will be notified within fifteen (15) working days of completion of the probationary period of the decision to extend the probationary period. A probationary employee who is not meeting performance standards may be separated from employment at will if they do not successfully complete the initial period or the extended probationary period.
- 7.2 As a regular employee, you will have a formal evaluation by April 1<sup>st</sup> each year. The first annual review following the six-month evaluation period may be more or less than 12 months depending on the timing of your six-month review.
- 7.3 For each formal evaluation, you will be required to complete an employee input form. Your supervisor or manager will discuss your responses as well as his or her appraisal of your work.
- 7.4 It is important for supervisors or managers to provide frequent informal performance progress review of employees on an ongoing basis focusing on current issues. An informal performance/progress review may or may not be documented. The supervisor or manager will use discretion on whether issues should be included in the employee's formal evaluation. If satisfactory performance is achieved through an ongoing informal process, instances of unsatisfactory performance may be corrected in a timely manner and may never appear on a formal evaluation form. In certain cases, this may be the most effective method of achieving high organizational performance. However, if satisfactory performance is not achieved, instances of unsatisfactory performance must be reflected in the formal performance evaluation.
- 7.5 If an employee's supervisor changes during the evaluation cycle, both supervisors share responsibility for the yearly evaluation (providing the supervisors remain employees of the agency). It is the responsibility of the new supervisor to assure the performance evaluation is completed within the required timeline and it is the responsibility of the former supervisor to provide feedback for the appropriate portion of the evaluation.

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Performance appraisals are not grievable beyond the next level supervisor unless the evaluation is combined with a demotion, dismissal, reduction in pay, or if the employee alleges discrimination or retaliation in the evaluation. Such allegations are grievable through the grievance process of the employing agency.

## CHAPTER 8 - ANNUAL LEAVE

N.D.C.C. 54-06-14

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8.2 Persons in the permanent employment of this state begin to accrue annual leave from the first day of employment. Annual leave accrues on a prorated basis for a fraction of a month. Part-time and temporary employees not filling a regularly funded position are not eligible for annual or leave benefits as set forth in N.D.C.C. 54-06-14. If a part-time temporary position becomes permanent, leave accrual begins on the first day of permanent employment; however, the temporary time worked may be credited toward total service time subject to approval by the NDPERS Executive Director. An employee who leaves the employee's employment and who is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate. (N.D.A.C. 4-07-12-12) Annual leave does not accrue while you are on a leave without pay.

8.3 You are encouraged to take at least 80 hours of leave annually. No more than 240 hours of annual leave may be carried forward beyond April 30 each year. North Dakota Administrative Code 4-07-12-10 provides, "An employee may not be paid for unused annual leave while the employee remains in the service of the agency except when the employee: takes a long-term leave of absence (six months or more), goes on educational leave, transfers to temporary employment, or if specifically requested by the employing agency and approved by HRMS due to a business-related reason prior to April 30 of each year." Requests for annual leave must be approved by your supervisor or manager. Approval will be subject to the workload and priorities of your department. Leave must be reported on your monthly Time Report and must be taken in no less than one-quarter (.25) hour increments. If you transfer from NDPERS to another state agency, you will be paid the difference in hours between what you have accumulated and the number of hours the hiring agency will accept. If you separate from employment, you will be paid for all annual leave accrued but not taken.

To insure adequate coverage during the month of April, no more than 40 hours of leave for any employee will be approved during the month of April absent extenuating circumstances that are approved by each employee's manager and the Executive Director. You are encouraged to use your leave over the course of the year in order to avoid losing leave in excess of 240 hours after each April 30<sup>th</sup>.

During Legislative sessions, managers may not take more than 16 consecutive hours of leave absent extenuating circumstances approved by the Executive Director.

Certain staff positions are required to take at least one continuous week of leave during the calendar year. This policy applies to the following positions:

Chief Operating Officer	Chief Benefits Officer	Retirement Plan Manager
Accounting Division	Insurance Plan Manager	Benefit Payment Specialist
IT Division	Benefit Enrollment Specialist	Benefit Determination Specialist
		Counselors

## CHAPTER 11 - LEAVE OF ABSENCE WITHOUT PAY

N.D.A.C. 47-07-15

11.5 An employee on an unpaid Leave of Absence that is not FMLA related may continue health insurance coverage and it may be at their own expense. If the employee elects to continue

coverage, the premium they will be charged during the unpaid leave is the LOA/Part-time Temporary rate based upon their level of coverage. If the employee does not pay NDPERS for any applicable portion of premium that the employee is responsible for, NDPERS can cancel the employee's coverage but only on a prospective basis. NDPERS reserves the right to garnish any unpaid premiums from future paychecks as needed.

If an employee elects not to continue health coverage during the leave, they will be required to complete a Health Insurance Application or Change SFN 60036 within 31 days of return to work. Coverage will be effective the first day of the month following reinstatement of employment. If the employee does not return, they will have the right to COBRA continuation coverage at their own expense.

## CHAPTER 21 - SERVICE AWARD PROGRAM

N.D.A.C. 4-07-18

- 21.1 NDPERS has a service award program to recognize classified employees who reach certain service anniversaries. You must have completed three, five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five or fifty years of employment with the state in order to receive an award. If you were employed by other state agencies, NDPERS will recognize your total years of state service in determining your service anniversary designation. If you have eligible state service accrued prior to a break in service, NDPERS will apply it to any future service award.

## CHAPTER 29 – TELEWORKING

- 29.1 NDPERS considers teleworking to be a viable alternative work arrangement in cases where individual, and job, characteristics are best suited to such an arrangement and/or the employee's mission-critical job responsibilities require continuity of operations during crisis situations. Individuals may be asked to telecommute to provide continuity of mission-critical support in emergency or natural disaster situations.

The needs of NDPERS and the requirements of the job will be used to determine if teleworking is an option for the job.

Teleworking allows an employee to routinely work at home, in the office, or in a shared office, for all or part of their regular work week. Teleworking is a work alternative that may be appropriate for some employees and some jobs. It is not an employee right or entitlement; it is not an agency-wide benefit; and it in no way changes the terms and conditions of employment with NDPERS.

Teleworking may also be requested on an informal basis, such as working from home for a short-term project or on the road during business travel, or formal, as will be described below. Other informal, short-term arrangements may be made for employees on family and medical leave, to the extent practical for the employee and NDPERS, and with the consent of the employee's health care provider, if appropriate. Informal Teleworking is not to replace an employee's desire to not use sick leave, vacation, family sick leave, etc. and in general will not be approved for

these situations when the time needed away from work is five working days or less.

All informal teleworking arrangements will be made on a case-by-case basis, focusing on the priority business needs of NDPERS. Such informal arrangements will be executed at the discretion of the Manager or Supervisor and with the approval of the Executive Director.

An employee may request a formal teleworking arrangement through their supervisor or manager and complete a Teleworking Agreement form. The form will be reviewed and with the employee and approved by the Supervisor or Manager and the Executive Director.

*draft*



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## **NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM TELEWORKING AGREEMENT**

This Agreement between [employee name] and the North Dakota Public Employees Retirement System is to formalize a process whereby [employee name] will be conducting state business in [specify his/her home]. This arrangement will begin on [date] and may be discontinued at will (at any time), at the request of either the employee or the North Dakota Public Employees Retirement System if workspace is available.

Both parties to this Agreement voluntarily agree to the following terms and conditions of teleworking:

- This Agreement is of mutual benefit to the North Dakota Public Employees Retirement System, hereinafter referred to as Agency, and to the employee specified above, hereinafter referred to as Employee.
- The Employee will work away from the NDPERS office setting at [specify his/her home]. The Employee's work schedule will be set and mutually agreed upon between the Employee and the Employee's immediate supervisor. The Employee will report into the office as requested and based on business needs. The Employee will complete assigned work as agreed upon. Time and attendance will be recorded according to the Fair Labor Standards Act in accordance with Agency policy, and as applicable to exempt and non-exempt employees.
- Compensation, benefits, and work status will not change due to this Agreement when the Employee is performing the same work as when in the office setting.
- The Employee will continue to work in pay status while working at a home office. An employee working overtime, ordered and approved in advance, will be compensated in accordance with the Fair Labor Standards Act and Agency policy. The Employee agrees that failing to obtain proper approval for overtime work may result in removal from the teleworking program or other appropriate disciplinary action.
- As part of the Employee's job responsibilities, the Employee is generally expected to be available during normal business hours, defined as 8:00 A.M. to 5:00 P.M. CST, for meetings, conferences, telephone calls, emails, and all other NDPERS business unless a flex work schedule has been agreed upon.
- NDPERS makes no representations about the personal tax implications or other legal issues arising from this teleworking arrangement, and that it is the Employee's personal obligation to address these issues, seeking professional advice, if necessary.
- The Employee will be allowed to use the specified equipment in the Teleworking Agreement Addendum which will be provided by the Agency. Employee agrees to protect any State-owned equipment and to use the equipment only for official purposes. The Employee will have no expectation of privacy with respect to the State-owned equipment. Use by family members and

others is strictly prohibited. The Agency agrees to service and maintain any State-owned equipment issued to the teleworking employee. Any State-owned equipment remains the property of NDPERS and will be returned to the Agency at termination of the Teleworking Agreement.

- Employees must obtain supervisory approval before taking leave in accordance with established procedures. The Employee agrees to follow established procedures for requesting and obtaining approval of leave.
- The Agency will supply materials necessary to complete assigned work at the work site through the Employee's in-office visits. Out-of-pocket expenses for supplies normally available through the Agency will not be reimbursed.
- Necessary high-speed internet connection (Cable or DSL equivalent) will be provided by the Employee for the duration of the teleworking agreement at no reimbursement.
- All Agency data and member information must be handled in a secure and confidential manner. The Employee agrees to follow the Agency's procedures for secure network access and to take all necessary steps to protect the integrity of the Agency's systems and the confidentiality of member information. To mitigate the risk of confidential information inadvertently shared by telephone conversations being overheard, information visible on a computer screen, or access to paperwork, visitors or family members are not permitted in and around the Employee's workspace during work time (the exceptions are: \_\_\_\_\_).
- The employee should establish a professional, safe, and appropriate work environment from which to work remotely.
- The Employee must maintain safe conditions in the work area and practice the same safety habits in the designated work area as the Employee would in the Employee's office on the Agency's premises. The Employee must report all work-related accidents, injuries, and near misses to their supervisor and NDPERS' Risk Division.
- Workers compensation coverage will be provided for the Employee while in the teleworking arrangement when injuries are sustained in conjunction with the employee's regular work duties. The Agency assumes no liability for injuries occurring to the Employee at the work site outside of the agreed-upon work schedule or when injuries sustained are not in conjunction with the performance of the regular work duties.
- Teleworking is not designed to be a replacement for appropriate childcare or eldercare. Employee's work schedule may be modified to accommodate childcare or eldercare needs; however, the focus of the agreement is job performance and business demands. Childcare or eldercare must be provided during work hours. Temporary exceptions must be discussed with employee's manager or supervisor and documented.
- The Agency will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities) associated with the use of the Employee's residence. The Employee does not give up any reimbursement for authorized business for the Agency because the Employee works from home.



- The Agency will not be liable for damages to the Employee's property resulting from participation in the teleworking program. In signing this document, the Employee agrees to hold the Agency harmless against any and all claims, excluding worker's compensation claims.
- A teleworking employee must have demonstrated an ability to work independently with little direction or supervision. The evaluation of the Employee's job performance will be based on established standards. Performance must remain satisfactory to remain as a teleworker.
- The Employee will apply safeguards that are approved by the employer to protect records from unauthorized disclosure or damage. All records, papers, and correspondence must be safeguarded for their return to the office.
- The Employee agrees to work at the office or teleworking location and not from another unapproved site. Failure to comply with this provision may result in termination of the agreement and/or other appropriate disciplinary action.

We agree to abide by the terms and conditions of this agreement:

I have read and understand this Agreement. I have had a reasonable opportunity to review and consider this Agreement. I understand my responsibilities under this arrangement and further recognize this arrangement can be modified or terminated at any time by the Employee or Agency. I further agree to abide by all Agency rules in accordance with the Agency's written policies and procedures concerning the use of Agency property and equipment, and member's confidential information.

\_\_\_\_\_  
Employee Signature                      Date

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

I have reviewed the above with the Employee and approve this Agreement as outlined.

**NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

By: \_\_\_\_\_  
Supervisor/Manager

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date



**NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM  
TELECOMMUTING AGREEMENT ADDENDUM**

**Alternative Work Site Location:**

Employee Name: [Click or tap here to enter text.](#)

Location/Setup (specify location if in home): [Click or tap here to enter text.](#)

Address: [Click or tap here to enter text.](#)

Permanent or temporary changes to the alternative worksite location must be approved by the office director.

**Central Work Site:**

Will the teleworker maintain a workstation or office at the central workplace when this telework agreement takes effect? Yes ☐ No ☐

If yes, please provide explanation: [Click or tap here to enter text.](#)

**Fixed Telecommuting Schedule:**

Telework days and hours are scheduled. Deviation from the schedule must receive supervisor's approval.

**Telecommuting Days:** ☐Monday ☐Tuesday ☐Wednesday ☐Thursday ☐Friday

**Start Time:** [Click or tap here to enter text.](#) **End Time:** [Click or tap here to enter text.](#)

**Lunch:** ½ Hour ☐ 1 Hour ☐ Other: [Click or tap here to enter text.](#)

**State Telecommuting Equipment/Furnishings for Alternative Worksite:**

☐ Laptop or Desktop: [Click or tap here to enter ID tag number.](#)

☐ Computer Monitors (indicate how many and ID tag): [Click or tap here to enter ID tag number.](#)

☐ Laptop Docking Station: [Click or tap here to enter ID tag number.](#)

☐ Computer Mouse

☐ Computer Keyboard

☐ Computer laptop backpack

☐ Headphones

☐ VARIDESK

☐ Chair Mat

☐ Fatigue Mat

☐ Office Chair

☐ Other (please specify all state equipment and furnishings that were taken to your alternative worksite): [Click or tap here to enter text.](#)

# NDPERS Human Resource Policy Manual



**NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM**

**January 2020**

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### Acknowledgement

*The policies described herein are not firm conditions of employment, and the language is not intended to create any expressed or implied contract of employment between NDPERS and its employees. The North Dakota Public Employees Retirement System Board of Directors reserves the right to alter, amend, modify, rescind, or otherwise change the content of this manual as permitted by law, in its sole discretion, and without advance notice to any employee affected by the provisions of this manual.*

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## CHAPTER 1 - GENERAL PURPOSE

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- 1.1 This Human Resource Policy Manual (the "Manual") establishes the guidelines for the general management of employees within the North Dakota Public Employees Retirement System (NDPERS). It is intended to be a source of information about personnel policies, benefits and employee services in the interest of promoting uniform, equitable and fair treatment of classified employees and effective and efficient operation of the agency.
- 1.2 This Manual will be made available to all employees of NDPERS. These policies may be revised as deemed necessary by NDPERS or its Board or to comply with the rules as promulgated by the Human Resource Management Services (HRMS). You are encouraged to submit comments and/or recommendations to the NDPERS Executive Director, Chief Operating Officer, Chief Benefits Officer, or your supervisor or manager.



## CHAPTER 2 - EMPLOYMENT POLICIES & PRACTICES

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- 2.1 **Mission.** It is the mission of NDPERS to design, communicate and efficiently administer a viable employee benefits program within a framework of prudent risk-taking, applicable state and federal laws, and professional and ethical standards so as to provide an employee benefit package that is among the best available from public and private employers in the upper Midwest.
- 2.2 **Title VII - Equal Employment Opportunity (EEO).** It is the policy of NDPERS to recruit, hire, train, compensate and promote without regard to race, color, religion, sex, age, national origin, ancestry, marital status, the presence of any mental or physical disability, genetic information or any other factor unrelated to job performance or job requirements.  
See Universal Policy: Equal Employment Opportunities 10-1-18
- 2.3 **Americans With Disabilities Act (ADA).** The ADA is a federal civil rights law that prohibits discrimination against disabled individuals in all aspects of employment, public services and transportation, public accommodations, and telecommunication services. It is NDPERS policy to comply with the provisions of the ADA with respect to our recruitment and employment practices and our policies, procedures and services. NDPERS has adopted an internal grievance procedure for resolution of complaints alleging any action prohibited by the regulations implementing the Americans with Disabilities Act.  
See Universal Policy: Americans with Disabilities Act (ADA) 11-1-18
- 2.4 **Veterans Preference.** Veterans who are North Dakota residents are entitled to preference over all other applicants, in recruitment and selection processes by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment (N.D.C.C. 37-19-1).
- 2.5 **Hiring Policy/Background Checks.** It is the policy of NDPERS to exercise reasonable care in hiring employees by conducting a thorough background check on all candidates selected for hire, regardless of the position and prior to the candidate reporting to work. If at any time during employment, an employee is charged with or convicted of a crime, he/she must disclose the necessary information to their immediate supervisor or agency human resources. Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.  
See Universal Policy: [Criminal History Record Information](#)
- 2.6 **Confidentiality.** As an employee of NDPERS, you are required to maintain confidentiality of all member records. Failure to comply with this provision may result in immediate termination.  
Non-work related visitors are not allowed in your office while you are conducting business.
- 2.7 **Code of Ethical Responsibility.** NDPERS has a Code of Ethical Responsibility that outlines its conflict of interest and confidentiality guidelines. These guidelines are reviewed with you annually at the time of your performance evaluation. The following is the NDPERS Code of Ethical Responsibility.
1. NDPERS is committed to providing our members the best service possible. Each NDPERS employee owes a duty to conduct him or herself to inspire the confidence, respect and trust of the NDPERS members and to strive to avoid not only professional impropriety, but also the appearance of impropriety.

2. NDPERS employees should perform the duties of their offices impartially and diligently.
3. NDPERS employees are expected to fulfill their responsibilities in accord with the intent of all applicable laws and to refrain from any form of dishonest or unethical conduct. Partisan interest, public sentiment, or fear of criticism should not sway employees.
4. Conflicts of interest and the appearance of impropriety shall be avoided by NDPERS employees. Employees must not allow their family, social, or other relationships to influence their judgment in discharging their responsibilities. Employees must refrain from financial and business dealings that tend to reflect adversely on their impartiality or interfere with the proper performance of their duties. If a conflict of interest unavoidably arises, the employee shall immediately disclose the conflict to the NDPERS Executive Director.
5. Employees must not unnecessarily hire employees or retain consultants. Employees and consultants shall be hired based on NDPERS' needs and candidates' qualifications – and in accordance with North Dakota's nepotism policy. The compensation of such employees and consultants shall not exceed the fair value of services rendered.
6. NDPERS members' retirement benefit information and health insurance data shall not be transmitted to any person other than in the fulfillment of an employee's lawful responsibilities.
7. Employees shall not accept any cash or gifts, special accommodations, favors, or the use of property or facilities of more than \$50 from anyone with whom such person is doing, negotiating, or being solicited for business on behalf of NDPERS. However, employees may accept: occasional meals or beverages from a citizen or business representative in connection with official duties; meals or refreshments offered in connection with a conference or seminar; reimbursement for costs related to attending a conference or seminar; and promotional items of nominal value. Travel and lodging costs may be accepted only upon prior approval of the Board.
8. The following is a list of general expectations that all employees are expected to observe:
  - Adhere to work schedule and attendance policy.
  - Follow safety procedures.
  - Adhere to all laws, rules, policies, procedures and professional ethics.
  - Work as part of a team.
  - Use courtesy and respect in all interactions.
  - Maintain a well-organized work area and a business-like appearance.
  - Foster good working relationships by being responsive to requests.
  - Maintain confidentiality policy.
9. Use of agency information is limited to that which is required to perform your lawful job duties and responsibilities. Accessing information for other purposes is prohibited.
10. It is your responsibility to notify your supervisor or manager if you accept employment outside of NDPERS during your employment tenure. You will be required to read and sign an Outside Employment Agreement. A new agreement must be completed annually. If there is a change in outside employment you must notify your supervisor or manager immediately and a new agreement must be completed. If you terminate outside employment, you must notify your supervisor or manager in writing of your change in status.  
See Universal Policy: Additional Employment 10-1-18

Commented [LJM1]: Dean's changes



11. Employees shall conduct all work-related activities in compliance with all laws, regulations, policies, and procedures. NDPERS employees are charged with understanding the applicable laws recognizing potential dangers and knowing when to seek management or legal advice.

Violation of these rules will result in disciplinary action up to and including termination of employment.

Each year, during your annual performance review, you will be required to read and sign a Code of Ethical Responsibility statement and if engaged in outside employment, an Outside Employment Agreement. These acknowledgements will be retained in your personnel file.

**2.8 Dress Policy.**

With the purpose of providing an enjoyable, inspiring and flexible work environment for the NDPERS team, the business dress code is:

1. Monday through Thursday is Business Casual. Wear your regular business attire but instead of business pants, you may choose to wear jeans.
2. Giving back to the Bismarck – Mandan Community: NDPERS has long supported the Bismarck Mandan community efforts through funds collected on Jeans Friday and the United Way Jeans Week. You may choose to wear jeans these days but continue to pay \$1 per day.
3. Exceptions:
  - a. NDPERS Board and subcommittee meetings
  - b. Legislative Session meetings
  - c. Business meetings
4. Unacceptable attire: t-shirts, sweatshirts, flip flops, sneakers/athletic shoes (unless medically necessary)

**2.9 Smoking Policy.** As an employer, the State of North Dakota prohibits smoking in all places of state employment in accordance with N.D.C.C. 23-12-10. Smoking is allowed during scheduled breaks in designated areas only.

See Universal Policy: [Smoking and Tobacco Use](#)

**2.10 Employment of Relatives.**

See Universal Policy: [Employment of Relatives / Nepotism](#)

**2.11 Return to Work.**

See Universal Policy: [Modified Duty / Return to Work](#)

## CHAPTER 2.1 – USE OF NDPERS PROPERTY

2.1.1 Use of NDPERS Property. NDPERS property, supplies, and equipment are to be used for conducting NDPERS business. State law prohibits the use of NDPERS property for political purposes.

The following policies apply to personal use of NDPERS equipment:

**Telephone.** NDPERS recognizes that staff will make or receive personal telephone calls; however, the number and length of these calls should be kept to a minimum. Personal long-distance calls are prohibited.

**Printers and Copy Machine(s).** Personal use of printers and copy machine(s) may be allowed. If you must use the machines for personal use, you may do so at a cost of 5¢ per page. This charge applies whether you are duplicating or printing copies. If you will be printing or copying more than 50 pages at one time, you must receive prior approval from your supervisor or manager.

**Fax Machine.** Personal use of the fax machine is not allowed.

Violation of these policies will result in disciplinary action.

2.1.2 Electronic Mail (e-mail) Policy. E-mail is one of NDPERS internal and external communication methods. E-mail originating from a North Dakota Public Employees Retirement System (NDPERS) e-mail account is to be considered the property of NDPERS. As such, the agency reserves the right to search and access employee e-mail when necessary to ensure the proper use of the system and to protect the interests of the agency. System features such as passwords and delete message functions do not affect the agency's ability to retrieve and right to review e-mail.

2.1.3 Internet Policy. Internet access is available to agency employees to conduct official business, such as researching business issues, accessing business-related data, information, and training. An employee is responsible for any charges associated with billable Internet services unless appropriate authorization has been obtained before accruing the charge. Authorized Uses and Standards of Conduct are included in Chapter 2 Section 2.7.

2.1.4 Use of Electronic Communication Devices.

### Section 1. Introduction and Purpose

The State of North Dakota provides Electronic Communication Devices (ECDs) and an information technology (IT) infrastructure designed to facilitate business communications among state government, educational entities, political subdivisions, and their business contacts.

These devices include telephones (cell phones and smartphones), facsimile (fax) machines, multi-function printers, tablets, mobile computing devices, workstations, video equipment, all computer and network-related hardware, software (including e-mail and Internet), and/or peripheral devices. These devices are connected to the State's IT infrastructure and as such, public scrutiny and/or disclosure of usage must not damage the reputation of the State of North Dakota, nor jeopardize the systems' integrity.

It is NDPERS' intent to provide a policy that ensures the appropriate use of ECDs by its staff and business contacts. These policies apply to all state-owned devices that are synced or directly



attached to the state IT network infrastructure.

North Dakota State government branches and agencies are responsible for developing and administering policies to prevent or detect abuse and reduce legal exposure related to the use of ECDs. Unless exempted by law, all electronic communications shall follow North Dakota's Open Records Law. State ECDs are not part of any employee benefit program.

#### Section 2. Employees Provided State ECDs

NDPERS employees have job duties that require access to a desktop or laptop computer. State of ND Information Technology Department (NDIT) provides these devices and is responsible for the maintenance and replacement of such devices. In addition to a laptop or desktop computer, some positions may require the use of mobile computing devices such as cell phones, smartphones, or tablets.

NDPERS Chief Operating Officer is responsible for determining if a state-owned mobile computing device should be provided to an employee. In making that determination, the COO, in consultation with the Executive Director, must assess the need and cost-effectiveness for employees to have a state-issued mobile computing device. Each situation should be considered individually and be based on the employee's work or position. Factors to be considered in determining if an employee should be issued a state-owned mobile device should include, but are not limited to, the following:

1. The frequency that employees conduct business off-site or away from the office setting and landline phones or radio communication is inaccessible or inefficient.
2. Communication is required for safety purposes or to respond to emergencies.
3. The extent to which an employee is required to be in regular or immediate contact with the office when out of the office or after hours.
4. The extent to which a mobile device will increase an employee's productivity.
5. The extent to which a mobile device will provide quality customer service and enhance business operations.
6. The extent to which the position requires mobile email access.
7. The determination of whether the position is exempt or non-exempt under the Fair Labor Standards Act.
8. A state-owned ECD should be used if an employee's work outside the office requires a VPN connection.
9. Any other unique aspects of the position.

#### Section 3. Authorized Use

NDPERS' policy is to limit the use of State ECDs to official business. However, users may be permitted to utilize ECDs for personal use, if in compliance with the following terms of this policy:

1. Does not interfere with the performance of the user's public duties.
2. Is of nominal cost or value.
3. Does not create the appearance of impropriety.
4. Is not for a political or personal commercial purpose.
5. Is reasonable in time, duration, and frequency.
6. Makes minimal use of hardware and software resources.
7. Does not affect the safety of the employee or employee's coworkers.
8. Uses only software that has been licensed by the State of ND or NDPERS. Unauthorized downloading of software/shareware is prohibited; ECDs may be audited at any time.

#### Section 4. Standards of Conduct

Users shall be held personally liable (legally, financially, or otherwise) for the use of ECDs not in compliance with State policy. ECDs should be used in a professional and ethical manner as

noted below:

1. Must not use ECDs to distribute or access content that is harassing, bullying, discriminatory, defamatory, insulting, sexually explicit, offensive, or erotic.
2. Must not create, distribute, copy, store, or knowingly use unauthorized copies of copyrighted material on State of North Dakota computers, or transmit them over the State networks; approval for the use and distribution of such information must be obtained from the owner/author.
3. Must not use non-business related "streaming" audio & video (including Internet radio, stock/news tickers, and software such as Weather Bug, etc.)
4. Must not use State of ND issued ECDs for accessing external email.
5. Must not use ECDs for the purposes of probing or hacking.
6. Must not use ECDs for any illegal activity, gambling, trading in illegal substances, etc.
7. Must not use ECDs to knowingly download, copy, distribute, store, or use pirated software or data.
8. Must not use ECDs with photo/video/audio capability in restricted-access areas and areas where personal privacy would be expected (e.g., restrooms) or electronically transmit images, video, or audio recorded on such devices without permission.
9. Must not create or distribute a virus or intentionally cause damage to any ECDs or bypass any State virus detection system in place.
10. Must protect the ECD from theft, damage, abuse, or unauthorized use.
11. Must immediately report suspicious activity or unauthorized access of an ECD.
12. Must report a lost or stolen ECD immediately.
13. Must conform to State procurement policies when making business-related purchases using an ECD.

#### Section 5. Email Use

Communication via email is approved by NDPERS but caution should be exercised in its use. This guidance applies to all ECDs:

1. Email messages and attachments are not encrypted by default and are therefore vulnerable to interception by persons with malicious intent.
2. Email messages and attachments sent to destinations in the 'nd.gov' domain are not encrypted.
3. All email messages including personal email messages are the property of NDPERS and may be examined if deemed necessary.
4. Email users will not permit unauthorized individuals to access their State of North Dakota email account.
5. Email users should exercise caution when receiving unsolicited email messages or attachments:
  - Unsolicited messages may be spam or junk mail but could be part of a phishing attack.
  - Clicking a link or opening an attachment may initiate the download of malicious software.
6. Contacts made through email should not be trusted with NDPERS information unless due diligence has first been performed.
7. The State of North Dakota's email system does provide some protection against spam and phishing emails.

All inbound/outbound messages are scanned for common malware and spam filters are in place:

- Suspicious spam emails are dropped.
- Emails identified with malicious attachments are dropped.
- Specific file type attachments are automatically removed from messages before the message is forwarded to the recipient.



- If you are expecting an email message that may have been removed or an attachment that may have been removed, contact NDPERS IT.

NDPERS does not restrict staff from forwarding items from personal email to work email if the forwarded message or attachment is relevant to the individual's work.

#### Section 6. StageNet Guest wireless network

NDPERS does not restrict the use of personal devices using the STAGEnet Guest wireless network. The owner of a personally owned ECD is responsible for ensuring that the device is protected, has antivirus software installed and enabled; that the antivirus software remains updated; the latest operating system updates are applied, including all applicable security patches.

#### Section 7. STAGEnet MEMBER wireless network

NDPERS does not restrict the use of personal devices using the STAGEnet Member wireless network. Active Directory credentials are required to use STAGEnet Member. STAGEnet Member may be required in certain testing scenarios (i.e. NDPERS Mobile App testing).

NDPERS is not responsible for maintaining, supporting, protecting, replacing, or repairing personally owned ECDs. NDPERS is not responsible for damage to a personally owned ECD or any loss of data.

#### Section 8. Training

User training on computer security and appropriate usage is required. Security training is available from NDIT. Additional information is available on the State of NDIT's website.

#### Section 9. Social Media

Social media is a means of communication using web-based and mobile technologies for the exchange or publication of information. Social media includes but is not limited to social networking sites, blogging, instant messaging, etc. The use of social media for business purposes is at the discretion of the NDPERS Executive Director.

An employee's use of social media must comply with all current NDPERS policies such as, but not limited to Employer Responsibilities, Confidentiality, Employment Practices, and Use of Electronic Communications Devices. NDPERS follows the state of ND Universal Policy on Social Media. To read the policy click [here](#).

#### Section 10. Measuring and Monitoring

Except where precluded by law, the State has the right to monitor the usage of ECDs. Monitoring includes but is not limited to, reviewing, storing, accessing, auditing, and intercepting information received or sent through e-mail, texting, instant messaging, voicemail, or over the Internet.

The tools available from the NDIT (by request of an agency) allow for monitoring an individual's Internet usage.

The State reserves the right to block any Internet sites deemed by the State to be unrelated to the State's responsibilities.

The State will disclose records to law enforcement, management, government officials, or third parties through a subpoena or other processes. Consequently, employees should always ensure that their communications are accurate, appropriate, and lawful.

#### Section 11. Non-Compliance Measures

A user's violation of state policy may lead to disciplinary actions, and up to and including termination of employment, and/or service.

Section 12. Acknowledgment of ECD Policies

An acknowledgment of ECD policies must be completed and signed before a state-owned ECD can be issued and attached to the state IT infrastructure.

- 2.1.5 Computer Access.** It is NDPERS policy that all new employees must read and sign an acknowledgment that they understand and agree to the provisions governing computer access prior to access being granted.

If you are on an approved leave of absence (LOA) that exceeds thirty (30) days, system access will be terminated unless otherwise authorized by your supervisor or manager if it is determined that continued access should be allowed based on a business-related reason. For those occurrences in which access is terminated, upon return from the LOA, the employee will be required to sign a new acknowledgment.

**2.1.6 Remote Access Policy.**

Mainframe.

It is NDPERS' policy that staff members who are approved by their supervisor or manager will be granted access to the State's mainframe computer via the currently supported web client supplied by NDIT.

State of ND Wide Area Network (WAN).

It is NDPERS' policy that no staff member will access STAGEnet (state network) via remote connection without permission from his/her supervisor or manager. In such a case that permission is approved, such access to the WAN must be accessed via Virtual Private Network (VPN). The supervisor or manager will request that the IT Division acquire the VPN client and install it on an ECD assigned to the staff member.

This policy is not intended to guarantee that hardware (i.e. laptop computer) for such a connection will be available. The decision to supply the hardware will be left to NDPERS Management.

- 2.1.7 Fraud or Misconduct.** Maintaining high standards of conduct and ethics is important to NDPERS. All employees with a reasonable basis for believing a fraudulent or dishonest act has occurred are encouraged to report such conduct (i.e., to act as a "whistleblower") following NDPERS procedures. Fraudulent or dishonest conduct may involve employees as well as consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship.

Actions constituting Fraud or Misconduct refer to, but are not limited to:

1. Dishonest or fraudulent acts relating to or affecting NDPERS operations.
2. Forgery or alteration of any document or account belonging to the agency.
3. Forgery or alteration of a check, bank draft, or any other financial document relating to agency business.
4. Misappropriation of funds, securities, supplies, or other assets owned, leased, or related to agency business.
5. Improperly handling or reporting of money or financial transactions involving agency business.
6. Disclosing confidential and proprietary information to outside parties.
7. Accepting or seeking anything of value from contractors, vendors, or people providing



- services/materials to the agency.
8. Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment.

#### How to Report.

Employees should report any reasonable concern about fraudulent or dishonest use or misuse of agency resources or property to their supervisor or directly to the Chief Audit Officer. Reports should contain enough information to substantiate the concern and allow an appropriate investigation to begin. Reports may be submitted anonymously. Appropriate action will be taken in response to reports. Supervisors or managers who receive the reports must promptly contact the Chief Audit Officer to initiate a review of the allegations. If the Chief Audit Officer is named in the allegation, the supervisor or manager should contact the NDPERS Executive Director. The Chief Audit Officer or the Executive Director will determine the scope of the investigation and the internal and/or external personnel required to conduct the investigation.

All reports received will be acted upon in confidence to the extent possible within the constraints of state law, the need to gather facts, and the ability to conduct an effective investigation and take necessary corrective action. Reasonable care will be taken in dealing with suspected misconduct to avoid baseless allegations, premature notice to persons suspected of misconduct, disclosure of suspected misconduct to persons not involved with the investigation, and violations of a person's rights under the law.

#### Whistleblower Protection.

NDPERS will use its best efforts to protect whistleblowers, those who report fraud or abuse, against retaliation. Whistleblower complaints will be handled with sensitivity, discretion, and confidentiality to the extent allowed by the circumstances and the law. Whistleblowers who believe that they have been retaliated against for reporting an activity may file a written grievance about the retaliation pursuant to the grievance procedure in chapter 23. Any substantiated complaint of retaliation, including but not limited to, threats of physical harm, loss of a job, punitive work assignments, or reduced salary or wages, will be promptly investigated and corrective action is taken. This protection from retaliation is not intended to prohibit managers or supervisors from taking action, including disciplinary action in the usual scope of their duties based on valid performance-related factors, nor is it intended to preclude disciplinary action against individuals who report baseless allegations.

#### 2.1.10 Personal Device Policy

NDIT offers employees the opportunity to download Office 365 for personal use. In doing so, employees agree to adhere to the State of North Dakota OneDrive policy below. Also, accessing NDPERS data stored in the Microsoft Government Cloud using a personal device or from outside the state network requires using multi-factor authentication (MFA), and employees are encouraged to use a virtual private network (VPN).

Any personal device such as tablets, computers, or smartphones used to access the State of North Dakota services must have appropriate security safeguards in place to protect the system from compromise or misuse. These include but are not limited to the following:

1. The system and all applications on the system must be kept up to date with the most recent security updates and patches. This includes firmware updates for smart devices.
2. The system must have anti-virus software installed and the software and virus signature files must be kept up to date. This does not apply to smartphones.
3. The system cannot access the State of North Dakota data using a public Wi-Fi connection. No information should be transmitted through a public Wi-Fi network.
4. The system cannot access the State of North Dakota data using a public hotspot connection.

- No information should be transmitted through a public hotspot.
5. For the user's protection and added security for NDPERS data, it is strongly recommended that a VPN is used regardless if internet service is secure.

Personal devices must follow the guidelines below:

1. Protected by a strong password, non-trivial PIN that is a minimum of six (6) digits and has a maximum life of ninety (90) days, single fingerprint or facial scan identification, or other similar security feature
2. Use a 5 minute or less inactivity timeout with an idle-time screen saver password
3. Employ automatic device locking after 10 consecutive failed login attempts

Personal device users are:

1. Prohibited against sharing passwords or using the passwords of others
2. Prohibited against writing down passwords, or otherwise storing passwords in an insecure manner
3. Required to report any suspected compromise or any use of their user identifier and password by other individuals

Prevent snooping on personal devices by:

1. Always knowing where the device is
2. Locking devices when not in use
3. Hiding notification previews for email, Teams, and OneDrive
4. Silencing notification alert sounds for email, Teams, and OneDrive
5. Being aware of the surroundings and the people nearby

After completion of any activity, immediately and properly log out of all sessions.

#### **State of North Dakota Email.**

Employees may access their State of North Dakota email account from personal devices provided the device follows the personal device guidelines above. State email account information can be accessed using an Office 365 download, Outlook or similar mail application, or the NDIT web application via a web browser. It is advisable not to attempt to view attachments or emails that may contain confidential/sensitive information via personal devices. Attachments containing confidential/sensitive information should not be downloaded to a personal device under any circumstance.

#### **State of North Dakota Teams for Business.**

Employees may use their State of North Dakota Teams for Business account from personal devices for instant messaging (IM), Teams meetings or other Teams collaboration provided the device follows the personal guidelines above. Teams for Business can be accessed using an Office 365 download, a stand-alone Teams application, or the Teams web application via a web browser. It is advisable not to display or discuss confidential/sensitive information during Teams meetings via personal devices.

Recording of Teams for Business sessions that include confidential/sensitive data is strictly prohibited as this recording is saved to the cloud automatically.

#### **State of North Dakota OneDrive.**

Employees may access their State of North Dakota OneDrive account from personal devices provided the device follows the personal guidelines above. It is advisable not to open confidential/sensitive information from OneDrive via personal devices. Attachments containing confidential/sensitive information should not be downloaded to a personal device under any circumstance.



The State of North Dakota OneDrive account is the only cloud account that can be used to store sensitive data. Using personal or other OneDrive accounts or similar Internet-based file-sharing systems (such as Dropbox, Google Docs, etc.) for storing confidential documents is prohibited.

Don't sync the State of North Dakota OneDrive files to a machine or device that is not issued and secured by the state.

Avoid sharing OneDrive files with individuals outside of NDPERS. But when necessary:

1. Never share confidential documents with individuals outside of NDPERS.
2. Share files with specific individuals, never with "everyone" or the "public".
3. Be careful sending links to shared folders because they can often be forwarded to others to whom you did not provide access.
4. Remember that once a file is shared with someone and they download it to their device, they can share it with others.
5. Remove individuals when they no longer require access to files or folders.

#### Investigations.

If accessing State of North Dakota NDPERS data on a personal device, employees agree to cooperate fully with any authorized internal State of North Dakota investigations (e.g. security incident investigations, data breach investigations, fraud investigations, etc.). This may require employees to produce any personal systems, devices, or media to authorized State of North Dakota staff for examination and/or analysis required by the investigation.

#### Violations.

Report any incidents of non-compliance with or violations of applicable laws, regulations, or policies and procedures to NDPERS managers.

Employees may be sanctioned and/or disciplined, up to and including termination, for noncompliance with or violations of applicable laws, regulations, or NDPERS policies and procedures.

## CHAPTER 2.2 – WORKPLACE ANTI-HARASSMENT POLICY

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- 2.2.1 Sexual harassment generally occurs in supervisor/subordinate, or peer/co-worker situations. Any supervisor or manager using implicit or explicit sexual behavior to control or affect any aspect of the job of a subordinate is engaging in sexual harassment. Such action must be reported to your supervisor or manager, the NDPERS Executive Director, Chief Operating Officer, Chief Benefits Officer, Chief Audit Officer, or the agency's assigned personnel analyst at Human Resource Management Services (HRMS). Incidents must also be reported to the Risk Management Division of NDPERS.

See Universal Policy: [Workplace Anti-Harassment](#)

## CHAPTER 2.3 - DRUG AND ALCOHOL FREE WORKPLACE

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- 2.3.1 It is NDPERS policy to provide a drug and alcohol free, safe working environment. Employees are required to report to work in a condition to perform their jobs in a safe and satisfactory manner. The presence of alcohol and other drugs on the job and the influences of those substances on employees during working hours are inconsistent with the objectives of a drug and alcohol-free workplace and will not be tolerated.
- 2.3.2 While at the NDPERS workplace and while conducting business-related activities of NDPERS, no employee may use, possess, manufacture, distribute, sell, or be under the influence of alcohol or illegal drugs or use legal drugs illegally. In addition, the legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to meet standards and perform the essential functions of the job in a safe manner that does not endanger other individuals, equipment, or property in the workplace.
- 2.3.3 The use of alcohol and illegal use of drugs while operating a state vehicle is prohibited. The use of legal prescription or nonprescription drugs while operating a motor vehicle is also prohibited if the drugs impair your ability to drive.
- 2.3.4 When participating in social activities sponsored by NDPERS or your division, or which are associated with workplace activities, you are expected to conduct yourself in such a manner so you do not represent a danger to yourself, other employees, or the general public, or damage the reputation of NDPERS.
- 2.3.5 A manager or supervisor may require you to leave the workplace if it is determined you have reported to work in an inappropriate condition and cannot perform the essential functions of the job effectively in a safe manner that does not endanger yourself or others. You may be required to use a day of annual leave or sick leave. If the manager or supervisor determines you should not operate a motor vehicle, transportation will be arranged. If you refuse to accept transportation and insist on operating a motor vehicle, you will be informed that law enforcement officials will be notified that you appear unfit to operate a motor vehicle. Law enforcement officials will then be notified.
- 2.3.5 Employees violating the drug and alcohol-free workplace policy will be disciplined up to and including termination of employment for use of illegal drugs, illegal use of legal drugs, or use of legal drugs such as alcohol or other prescription/non-prescription drugs. Discipline may be imposed for use during official working hours, including mealtime or other work breaks, or during non-working hours when the effect of the legal drug inhibits your job performance or the agency's performance. In addition, discipline may be imposed when your behavior affects the agency's reputation, endangers others, or damages equipment or property. Off duty use of alcohol or other legal drugs is also cause for discipline if it results in an employee reporting to work "under the influence."
- 2.3.6 All NDPERS employees are required to annually read and sign a Drug-Free Workplace Acknowledgement (SFN 16769). The signed acknowledgement will be kept in your personnel file.
- 2.3.7 If you have questions or concerns about substance dependency or abuse you are encouraged to use the resources of the NDPERS Employee Assistance Program (EAP). Your supervisor or manager may also refer you to the EAP or any other treatment program as deemed appropriate. If you use the services of the EAP, you are guaranteed confidentiality. NDPERS will not have

access to your record, nor will the EAP staff discuss your case with your supervisor or manager without your permission. You may also wish to discuss these matters or this policy with your supervisor or manager, NDPERS Executive Director, Chief Operating Officer, Chief Benefits Officer, or agency's assigned personnel analyst at Human Resource Management Services to receive assistance or referrals to appropriate resources in the community.

## CHAPTER 2.4 - WORKPLACE VIOLENCE

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2.4.1 See Universal Policy: [Workplace Violence](#)

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## CHAPTER 3 - SALARY ADMINISTRATION

N.D.A.C. 4-07

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- 3.1 **Regular Employee.** Regular employee means an individual employed in a legislatively authorized position; if classified, was selected for a position on an open, competitive basis and successfully completed a six-month or longer probationary period; if unclassified, was authorized by statute.
- 3.2 **Probationary Employee.** Probationary employee means an individual employed in a classified position who was selected for a position on an open, competitive basis and who has not yet completed the initial probationary period.
- 3.3 **Temporary Employee.** Temporary employee means an individual employed in a position that is time-limited in duration.
- 3.4 **Classification/Salary Range.** All NDPERS staff positions are classified according to the North Dakota Classification Index and will fall within the assigned salary range for their respective classification pay grades. Your supervisor or manager will advise you of your classification and pay grade.
- 3.5 **Hiring Rate.** Entry salaries will fall within the first quartile of the salary range for the position pay grade. The NDPERS Executive Director may assign a hiring rate up to the midpoint of the salary range if either of the following requirements is met:
- The employee's job-related qualifications exceed the established minimum qualifications.
  - The agency is unable to recruit qualified candidates who would accept a salary within the first quartile of the applicable range.
- 3.6 **Probationary Period.** The purpose of the probationary period is to evaluate whether you can meet the performance requirements of your position. At the time of initial hiring, all regular employees will serve a probationary period of no less than six months. This period may be extended up to an additional six-month period contingent on the outcome of your performance evaluation. A probationary review, including the outcome of the probationary period, will be conducted with the employee within 15 business days of the six-month anniversary date. Non-probationary classified employees are not required to serve a probationary period upon promotion within an agency. See section 7.1 for additional information regarding the probationary period.
- 3.7 **Salary Increase.** The following increase guidelines represent specific circumstances that may occur and are subject to the procedures and regulations as set forth by the Human Resource Management Services division.
1. Probationary Increase.  
Based upon a performance evaluation, an increase up to 5% or \$50 a month, whichever is more, may be granted at the successful completion of the initial six-month probationary period. The size of the increase may vary depending on factors that include performance, internal equity, and budget appropriation.
  2. General Increase.  
A general salary increase must be provided in accordance with any specific guidelines or

requirements as appropriated by the Legislative Assembly.

3. Performance Increase.

You may be eligible for a performance increase contingent on the following factors:

- The increase does not exceed 5% in any 12-month period for an employee.
- Consideration is given to internal salary equity of other agency employees.
- Approval of the NDPERS Executive Director.
- Availability of budget funds.

3.8 **Salary Adjustment.** Other situations which may arise and warrant a salary adjustment are as follows:

Reclassification Adjustment. A salary adjustment because of an employee's position being reallocated to a different classification in a different pay grade. An increase, if applicable, cannot exceed 5% of the new grade minimum.

Responsibility Level or Workload Increase. Salary adjustment because of a permanent documented change in the duties and responsibilities assigned to an employee and independent of a classification change or a substantial, documented increase in workload is assigned to a position.

Equity Increase. Salary adjustment to a classified employee to mitigate either a documented internal agency inequity or a documented external inequity.

Temporary Increase. Salary increase because of a temporary assignment to perform a higher level of responsibilities on an acting or interim basis.

Promotional Increase. Salary increase because of an internal promotion to a new position subject to the following requirements:

- You must be paid at least the minimum of the new salary range.
- The effect of an increase on internal salary relationships is considered.
- The magnitude of the job change is considered.

3.9 **Appeals: Classification and Pay Grade.** Details of the process for classification and pay grade appeals are outlined in N.D.A.C. 59.5-03-02.1. These guidelines should be reviewed before taking any action.

## CHAPTER 3.1 - RECRUITMENT & RETENTION BONUS PROGRAM

N.D.C.C. 54-06-31

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- 3.1.1 The purpose of this policy is to provide guidelines and limitation for recruitment and retention bonuses paid to employees of the North Dakota Public Employees Retirement System.
- 3.1.2 **Recruitment Bonus.** Recruitment bonus is a lump-sum payment, which is not a part of an employee's base salary, paid to recruit a new employee for a hard-to-fill classified position. A recruitment bonus is subject to State and Federal tax withholding.
1. A recruitment bonus is used only in extraordinary circumstances where there is a need to fill a position and usual recruitment methods are demonstrated to be unsatisfactory. Identification of eligible positions or occupations will consider the following factors:
    - a. Explanation of recent efforts to fill a position or a substantially-similar position: number of qualified applicants, recruitment methods utilized, why job offer was declined, etc.;
    - b. Turnover: history, number of existing vacancies, frequency, length of vacancy;
    - c. Labor market data factors: information indicating the availability in the labor market of the skills/professions being recruited, current market rate of pay for occupation, unemployment rate, etc.;
    - d. Special qualifications: education, experience, skills, or licensure/certification required for profession which make it more difficult to fill the job;
    - e. Budget availability: amount of money available for bonus;
    - f. Low unemployment rate for the occupation; and
    - g. Higher current rate of pay by other state agencies and the private sector for the occupation.
  2. A manager or supervisor may request positions to be considered for a recruitment bonus by submitting a letter to the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer. The letter should contain information based on the above criteria.
  3. A bonus may not exceed more than three month's starting salary. Before a recruitment bonus will be paid, the new employee must sign a written agreement to complete two years of full-time employment with the agency. If the employee does not complete the specified term of employment, the employee must repay bonus which will be prorated based on the incomplete period. The bonus may be paid upon the new employee starting employment, upon completion of training, or upon completion of the probationary period.
  4. Request and recommendations must be sent to the NDPERS Executive Director, or the Chief Operating Officer, or the Chief Benefits Officer. Recruitment bonus requests will be reviewed and approved or denied by the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer.
- 3.1.3 **Retention Bonus.** Retention bonus means a lump-sum payment, which is not a part of an employee's base salary, paid to retain an employee in a hard to fill classified position unless the employee is leaving to work for another state agency. A retention bonus is subject to State and Federal tax withholding.

A retention bonus may be used only in situations where it is necessary to meet a critical deadline.



to complete a critical project, or to maintain staffing in positions of critical need, where recruitment has been difficult or the risk of losing the incumbent is high. A retention bonus should be proactive to retain staff with critical skills. It is not to be used for counter-offers. Identification of eligible positions or occupations will consider the same factors set forth for recruitment bonuses.

Before a retention bonus will be paid, the employee must sign a written agreement to remain in the agency's current full-time position for a specified time as determined by the NDPERS Executive Director, Chief Operating Officer or Chief Benefits Officer. If the employee does not complete the specified term, the employee must repay the portion of the bonus attributable to the incomplete period.

A retention bonus may not exceed more than three month's salaries of the incumbent.

All bonus recommendations will be reviewed by the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer. The NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer will determine whether a bonus will be granted and the bonus amount, to maintain consistency throughout the agency, and in consideration of available funding.

## CHAPTER 4 - STANDARD WORK WEEK

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- 4.1 The standard administrative workweek is forty hours, which consists of five, eight-hour days within the calendar work week. The calendar work week is from 12:00 a.m. Sunday to 12:00 midnight on Saturday. The standard office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.
- 4.2 You will be allowed a total of two 15-minute break periods during the day -- one in the morning and one in the afternoon. The breaks must be scheduled to ensure each department has at least one representative available at all times.
- 4.3 It is the policy of NDPERS to allow the year around practice of flextime to benefit employee preference. The regular 8:00 a.m. to 5:00 p.m. service to the public must be maintained and each department is responsible for ensuring at least one representative is available at all times. For each shift exceeding five hours, you are required to take a minimum 30-minute unpaid lunch period. In extenuating circumstances, and after discussion with the Executive Director, or delegate, a supervisor may allow an employee to work through their lunch period if necessary. Flextime hours/schedules are subject to approval by your supervisor or manager. Your supervisor or manager will discuss with and advise you of the schedules.
- 4.4 Adverse weather is defined as an emergency condition other than normally expected seasonal weather. If it becomes necessary for you to adjust your work schedule because of adverse weather conditions, you must notify your supervisor or manager. The official closing and reopening of State government offices in the Bismarck-Mandan area is the responsibility of the Governor.
- 4.5 **Reduced Work Week.** In some instances, an employee may find it necessary as a result of personal or family circumstances to request a reduced work week schedule.

If the provisions of any of the following apply to your situation NDPERS will consider the applicable policy or act and administer the provisions in compliance with federal or state law.

1. Annual and sick leave as provided in N.D.C.C. 54-06-14.
2. State annual and sick leave sharing program as provided in N.D.C.C. 54-06-14.
3. Use of sick leave as provided in N.D.C.C. 54-52.4.
4. Federal Family and Medical Leave Act of 1993 (public Law 103.3). Please refer to Chapter 12 of this Manual for information on these acts.
5. Americans with Disability Act (ADA).

If none of the above provisions apply to your situation or the benefits allowed have been utilized and/or depleted, you may request a reduced work week schedule subject to the criteria set forth in this policy.

- 4.6 **Eligibility.** To be eligible to request a reduction in hours you must have been employed by NDPERS for at least one continuous year and be a regular employee.
- 4.7 A reduced work schedule may be allowed for the following reasons:
1. To care for a seriously ill spouse, child, parent or immediate in-law or other family member as defined under N.D.C.C. 54-52.4 and Chapter 12 of this Manual; to care for a newborn, adopted or foster child; as a result of a disability or serious health condition of the employee.

2. Desire of the employee to work toward a degree or professional designation or certification which relates directly to the skills and knowledge required for your current position or which could qualify you for a more responsible position with NDPERS. Please refer to Chapter 18 of this manual for information regarding our education and training policy.

4.8 **Criteria for Approval.** Approval of a reduced work schedule for an eligible employee will be based on the following criteria:

1. Continuity of service to the membership will be maintained.
2. Responsibilities and duties currently assigned to the position can be re-assigned, if necessary, to existing staff or through hiring of part-time/temporary staff.
3. Additional payroll expense for part-time/temporary staff, if required, can be funded within the agency's biennial appropriation.
4. The reduced work schedule cannot fluctuate from week to week but must be maintained on a regularly scheduled basis.

If a reduced schedule is approved, the arrangement is considered to be permanent and NDPERS is under no obligation to guarantee your return to a regularly scheduled 40-hour work week in the future.

NDPERS reserves the right to rescind the reduced work schedule agreement if these criteria are not adhered to or for any other reason as deemed in the best interests of the agency.

4.9 **Compensation and Benefits.** The percent reduction in your work schedule will be based on a 40-hour work week and your salary and benefits will be prorated accordingly. The following will be affected by a reduced schedule; salary, retirement contributions, sick and annual leave accrual.

Your basic life and health insurance premiums will continue to be paid by NDPERS so long as you meet the eligibility requirements for participation. You may also continue participation in the flexcomp and deferred compensation plans subject to maintaining eligibility. For information on eligibility for any of the above plans, please refer to Chapter 17 of this Manual.

Overtime and compensatory time will be calculated on hours worked in excess of 40 per week. Guidelines for payroll recording are set forth in Chapter 6 of this manual.

4.10 Request for a reduction in hours and the reason for the request must be submitted in writing to your supervisor or manager at least 60 days prior to the date the reduction is to begin. The terms of employment relative to a reduced work schedule must be in writing and agreed to by both you and NDPERS. The NDPERS Executive Director will have final approval on all requests.

4.11 You or your supervisor or manager can initiate a request for a return to a 40-hour work schedule. The request must be in writing and include justification for the change. The NDPERS Executive Director will have final approval on all requests.

## CHAPTER 5 - PAY POLICY

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- 5.1 Pay periods are once a month on the first day of the month for the prior month's hours. If the first falls on a Saturday, Sunday, or a holiday, you will be paid on the next business day. Part-time/temporary employees are paid on the tenth calendar day of the month. If the tenth day falls on a Saturday, Sunday, or a holiday, you will be paid on the preceding business day.
- 5.2 Under guidelines established by the Fair Labor Standards Act (FLSA), each position is classified as exempt or non-exempt subject to the requirements of this Act. Your supervisor or manager will advise you of your status.
- 5.3 Exempt employees occupy positions which are not subject to coverage by the FLSA. There is no additional compensation paid for hours worked in excess of 40 in a week.
- 5.4 Non-Exempt employees occupy positions which are covered by the FLSA. Employees must be given either monetary overtime compensation or compensatory time. Hours reported as annual leave, sick leave, or other paid leave time such as holidays unless the holiday is worked, are not considered actual hours worked for purposes of computing overtime or compensatory time. All hours that will exceed 40 hours in a week, must be approved in advance by your supervisor or manager. In rare circumstances when prior approval is not possible, employees must report the overtime to their supervisor by the next business day.
  - 1. Overtime compensation must be paid at a rate not to exceed time and one-half for each overtime hour when the hours actually worked exceed forty (40) in a designated work week.
  - 2. Compensatory time must accrue at a rate not to exceed time and one-half for each overtime hour when the hours actually worked exceed forty (40) in a designated work week. You may accrue up to 42 hours of compensatory time. Time in excess of 42 hours will be paid by payroll. Accrued compensatory time is recorded and calculated on a monthly basis. Upon separation from employment, you will be paid for all compensatory time accrued but not taken.
  - 3. If paid leave hours in a week, plus actual hours worked exceed 40, you have the option to be paid straight time or accrue compensatory time on an hour for hour basis for the additional time worked.
- 5.5 A six-month probationary increase, subject to the guidelines in Chapter 3.7, will be effective on the date coincident with your date of hire.
- 5.6 A reclassification adjustment, as a result of a position being reallocated to a different classification that is in a different pay grade, will be effective the first day of the month following date of approval by the Human Resource Management Services division. A salary increase, if appropriate, may not exceed 5% of the new grade minimum.



## CHAPTER 6 - PAYROLL RECORDING

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- 6.1 If you occupy a non-exempt position, you are required to complete a Time Sheet each week for hours worked and leave taken. If you occupy an exempt position, you are not required to complete a Time Sheet for hours worked each week; however, you are required to submit a request for any leave taken.
- 6.2 **Reduced Work Week.** If you are a regular employee but on a reduced work week schedule you are eligible for holiday pay. The hours you will be paid for a holiday will be prorated as follows:

<u>Work Week</u>	<u>Hours per week</u>	<u>Prorated Hours Paid for Holiday*</u>
Full-time	40 Hours	8
7/8 time	35 Hours	7
4/5 time	32 Hours	6
3/5 time	24 Hours	5
1/2 time	20 Hours	4

\*Fractions are rounded to nearest whole number.

The following policy will apply for payroll recording:

1. If a holiday falls on a day you are scheduled to work, your hours for a week may be less than if there was no holiday. For example, you work eight hours a day Monday through Thursday (4/5 time or 32 hours a week). If a holiday falls on a Monday, you will be paid for six hours whereas if you had worked, you would be paid for eight hours. If you wish to make up the two hours, you have the option of either taking two hours of annual leave or working an additional two hours during that same week. You should inform your supervisor or manager as soon as reasonably possible if you wish to use either of these two options.
2. If the holiday falls on a day you are not scheduled to work - using Friday from the above example - you will be paid six hours for the holiday. As this will result in 38 hours reported for the week instead of the scheduled 32 hours, you will be required to take six hours off during the week in order to adjust the hours paid for that week to 32. In this situation, your supervisor or manager has the discretion to authorize the additional hours contingent on the workload requirements of your department.

## CHAPTER 7 - PERFORMANCE EVALUATIONS

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- 7.1 The Public Employees Retirement System evaluation program is designed to develop your skills, potential and career growth within our organization. New employees will receive a performance evaluation at the end of the six-month probationary period. At the end of that time, the employee will receive a formal evaluation and the initial probationary period may be extended for up to six months if the employee is not meeting performance standards or training has not been completed. The employee will be notified in writing of the decision to extend, the reason for the extension and the length of the extension. The employee will be notified within fifteen (15) working days of completion of the probationary period of the decision to extend the probationary period. A probationary employee who is not meeting performance standards may be separated from employment at will if they do not successfully complete the initial period or the extended probationary period.
- 7.2 As a regular employee, you will have a formal evaluation by April 1<sup>st</sup> each year. The first annual review following the six-month evaluation period may be more or less than 12 months depending on the timing of your six-month review.
- 7.3 For each formal evaluation, you will be required to complete an employee input form. Your supervisor or manager will discuss your responses as well as his or her appraisal of your work.
- 7.4 It is important for supervisors or managers to provide frequent informal performance progress review of employees on an ongoing basis focusing on current issues. An informal performance/progress review may or may not be documented. The supervisor or manager will use discretion on whether issues should be included in the employee's formal evaluation. If satisfactory performance is achieved through an ongoing informal process, instances of unsatisfactory performance may be corrected in a timely manner and may never appear on a formal evaluation form. In certain cases, this may be the most effective method of achieving high organizational performance. However, if satisfactory performance is not achieved, instances of unsatisfactory performance must be reflected in the formal performance evaluation.
- 7.5 If an employee's supervisor changes during the evaluation cycle, both supervisors share responsibility for the yearly evaluation (providing the supervisors remain employees of the agency). It is the responsibility of the new supervisor to assure the performance evaluation is completed within the required timeline and it is the responsibility of the former supervisor to provide feedback for the appropriate portion of the evaluation.
- Performance appraisals are not grievable beyond the next level supervisor unless the evaluation is combined with a demotion, dismissal, reduction in pay, or if the employee alleges discrimination or retaliation in the evaluation. Such allegations are grievable through the grievance process of the employing agency.

## CHAPTER 7.1 - PERFORMANCE BONUS PROGRAM

N.D.C.C. 54-06-30

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- 7.1.1 North Dakota Century Code section 54-06-30 allows state agencies to pay a lump sum payment to an employee to recognize exceptional performance or work achievement.

To be eligible for a performance bonus, the employee must:

1. Be in a classified position.
2. Have been in the position within state government for at least one year prior to the bonus being paid.
3. Be a full-time or part-time regular, non-probationary employee holding a regularly funded, non-temporary position.
4. Have had an overall performance rating that meets expectations, or in the case of a special project or work achievement, has maintained satisfactory overall performance in their current job.
  - A performance bonus may be especially effective when the NDPERS Executive Director, or Chief Operating Officer, Chief Benefits Officer or Manager has limited resources from which to make an adjustment to an employee's base salary but wishes to recognize an employee's exceptional efforts.

- 7.1.2 A classified employee may not receive more than one performance bonus per fiscal year and may not receive more than \$1,500 in bonuses per fiscal year.

- 7.1.3 The bonus is not part of an employee's base salary and is subject to state and federal taxes and withholding. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

- 7.1.4 Bonuses during a fiscal year may be paid to not more than 25% of employees employed by NDPERS on July 1 at the beginning of each state fiscal year.

- 7.1.5 A recommendation for a performance bonus may come from a manager or supervisor. It must be made in writing and submitted to the division manager, who will review the request. The manager will forward the request to the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer, along with the manager's recommendation, including any documentation that describes the employee's exceptional efforts and accomplishments, and documentation confirming the employee meets the technical requirements for the bonus.

- 7.1.6 The NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer will determine whether a bonus will be granted and the bonus amount to maintain consistency throughout the agency and in consideration of available funding.



## CHAPTER 8 - ANNUAL LEAVE

N.D.C.C. 54-06-14

- 8.1 Annual leave is a part of your overall compensation package. All persons in the permanent employment of this state will accrue annual leave based on the following schedule:

Years of Service	Hours		Days	
	Month	Year	Month	Year
0 - 3	8	96	1	12
4 - 7	10	120	1 ¼	15
8 - 12	12	144	1 ½	18
13 - 18	14	168	1 ¾	21
Over 18	16	192	2	24

Part-time employees will accrue annual leave on a pro-rated basis. Total straight-time hours actually worked will be compared to total number of normal working hours in a month.

- 8.2 Persons in the permanent employment of this state begin to accrue annual leave from the first day of employment. Annual leave accrues on a prorated basis for a fraction of a month. Part-time and temporary employees not filling a regularly funded position are not eligible for annual or leave benefits as set forth in N.D.C.C. 54-06-14. If a part-time temporary position becomes permanent, leave accrual begins on the first day of permanent employment; however, the temporary time worked may be credited toward total service time subject to approval by the NDPERS Executive Director. An employee who leaves the employee's employment and who is rehired within three years must be credited with the employee's previous years of continuous service for the purpose of determining the employee's annual leave accrual rate. (N.D.A.C. 4-07-12-12) Annual leave does not accrue while you are on a leave without pay.

- 8.3 You are encouraged to take at least 80 hours of leave annually. No more than 240 hours of annual leave may be carried forward beyond April 30 each year. North Dakota Administrative Code 4-07-12-10 provides, "An employee may not be paid for unused annual leave while the employee remains in the service of the agency except when the employee takes a long-term leave of absence (six months or more), goes on educational leave, transfers to temporary employment, or if specifically requested by the employing agency and approved by HRMS due to a business-related reason prior to April 30 of each year." Requests for annual leave must be approved by your supervisor or manager. Approval will be subject to the workload and priorities of your department. Leave must be reported on your monthly Time Report and must be taken in no less than one-quarter (.25) hour increments. If you transfer from NDPERS to another state agency, you will be paid the difference in hours between what you have accumulated and the number of hours the hiring agency will accept. If you separate from employment, you will be paid for all annual leave accrued but not taken.

To ensure adequate coverage during the month of April, no more than 40 hours of leave for any employee will be approved during the month of April absent extenuating circumstances that are approved by each employee's manager and the Executive Director. You are encouraged to use your leave over the course of the year in order to avoid losing leave in excess of 240 hours after each April 30<sup>th</sup>.

During Legislative sessions, managers may not take more than 16 consecutive hours of leave absent extenuating circumstances approved by the Executive Director.



Certain staff positions are required to take at least one continuous week of leave during the calendar year. This policy applies to the following positions:

Chief Operating Officer	Chief Benefits Officer	Retirement Plan Manager
Accounting Division	Insurance Plan Manager	Benefit Payment Specialist
IT Division	Benefit Enrollment Specialist	Benefit Determination Specialist
		Counselors

- 8.4 If you are employed by NDPERS by means of a transfer from another state agency, NDPERS will accept 80 hours of accrued annual leave from your previous employer.
- 8.5 If you terminate employment with NDPERS by means of a transfer to another state agency, NDPERS will pay out only those hours of annual leave the new employer will not accept.
- 8.6 **Annual Leave Donation (N.D.C.C. 54-06-14.1).** You may donate annual leave to another state employee under certain situations. The employee must be suffering from, or have a relative or household member suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused, or is likely to cause, the employee to take leave without pay or terminate employment. Donated leave must be voluntary, donated in full-hour increments, and is not returnable. You must retain 40 hours of leave after donating.

To be eligible to receive donated leave, you must have over six months of continuous service and are not probationary, temporary or otherwise limited in term. You must have exhausted or will exhaust all annual and sick leave and compensatory time due to illness, injury, impairment or physical or mental condition that is of an extraordinary or severe nature. Excluded as an eligible condition for annual leave donation are conditions relating to normal pregnancy. Your use of shared leave cannot exceed four months in any twelve-month period. Medical certification will be required.

## CHAPTER 9 - SICK LEAVE

N.D.C.C. 54-06-14

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- 9.1 If sick leave is necessary, it is your responsibility to notify your supervisor or manager within one hour of your scheduled reporting time or as soon as reasonably possible that you will be absent and the nature of your absence. Sick leave must be reported on your monthly Time Report and must be taken in no less than one-quarter (.25) hour increments. The leave is subject to approval by your supervisor or manager. NDPERS reserves the right to request a physician's verification if deemed necessary. Failure to notify your supervisor or manager you will be absent may result in disciplinary action. Failure to report to work for three consecutive days without your supervisor or manager's approval will be considered grounds for disciplinary action up to and including termination.
- 9.2 You may donate sick leave to another state employee under certain situations. The employee must be suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment. Donated leave must be voluntary, donated in full-hour increments and is not returnable. You may donate no more than 5% of your accrued leave.

To be eligible to receive donated leave, you must have over six months of continuous service and are not probationary, temporary or otherwise limited in term. You must have exhausted or will exhaust all annual and sick leave and compensatory time due to an illness, injury, impairment or physical or mental condition that is of an extraordinary or severe nature. Excluded as eligible for sick leave donation are conditions relating to normal pregnancy. Your use of shared leave cannot exceed four months in any twelve-month period. Medical certification will be required.

See Universal Policy: [Sick Leave](#)

## CHAPTER 10 – HOLIDAYS

N.D.C.C. 1-03

- 10.1 The following are the recognized holidays for State government purposes:

<u>Holiday</u>	<u>Day</u>
New Year's Day	January 1
Marth Luther King, Jr. Birthday	Third Monday in January
President's Day	Third Monday in February
Good Friday	Friday preceding Easter Sunday
Memorial Day	Last Monday in May
Fourth of July	Independence Day
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday of November
Christmas Day	December 25

- 10.2 State offices close at 12:00 noon on December 24. This is an office closure, not a holiday.
- 10.3 All persons in the permanent employment of this state are eligible for holiday pay. Permanent part-time employees are eligible for holiday pay on a pro-rated basis. Temporary employees are not eligible for holiday pay.
- 10.4 If the holiday falls on a Saturday, it will be observed on the preceding Friday. If the holiday falls on a Sunday, it will be observed on the following Monday. No extra day off is given for a holiday while you are on a leave without pay.
- 10.5 If you are required to work on a holiday, you will be paid at your regular straight time rate. You will be given the choice of an alternative day off with pay, or to accrue the time as straight compensatory time. If selecting an alternative day off, this day should be taken within the same month if possible, or at the mutual convenience of you and your supervisor or manager. Discuss reporting the worked holiday as compensatory time on your time sheet with your supervisor or manager. You must have your supervisor or manager's approval to work on a holiday. Temporary and part-time employees, who are required to work on a holiday, will be paid at their regular straight time rate.

Reference: Universal Policy Holidays

## CHAPTER 11 - LEAVE OF ABSENCE WITHOUT PAY

N.D.A.C. 47-07-15

- 11.1 A leave of absence without pay is an unpaid, approved temporary suspension of employment not to exceed one year and is initiated at the employee's request. It is separate from family leave authorized without pay. It is the policy of NDPERS to allow an official leave of absence provided the reason for such a leave is acceptable to and is approved by management. The terms and conditions of the leave must be in writing.
- 11.2 A leave of absence without pay may be allowed for several reasons including higher education, disability or family emergency. NDPERS reserves the right to require verification by a physician or any other source as deemed necessary.
- 11.3 A request for a leave of absence must be submitted in writing to your supervisor or manager. If you fail to report for duty upon expiration of the leave, you will be considered to have voluntarily resigned, unless other arrangements were made and approved by your supervisor or manager. The date of termination will be the last day worked before the leave.
- 11.4 When appropriate, we will fill your position on a temporary basis during your absence. However, a return from a leave of absence may be subject to and contingent upon availability of current openings for which you are qualified. In addition, it may not be possible to place you in the same job or in the same department. Annual and sick leave do not accrue during a leave without pay period.
- 11.5 An employee on an unpaid Leave of Absence that is not FMLA related may continue health insurance coverage and it may be at their own expense. If the employee elects to continue coverage, the premium they will be charged during the unpaid leave is the LOA/Part-time Temporary rate based upon their level of coverage. If the employee does not pay NDPERS for any applicable portion of premium that the employee is responsible for, NDPERS can cancel the employee's coverage but only on a prospective basis. NDPERS reserves the right to garnish any unpaid premiums from future paychecks as needed.

If an employee elects not to continue health coverage during the leave, they will be required to complete a Health Insurance Application or Change SFN 60036 within 31 days of return to work. Coverage will be effective the first day of the month following reinstatement of employment. If the employee does not return, they will have the right to COBRA continuation coverage at their own expense.

**Commented [LJM1]:** HRMS Chad: I have no comment on this section. It is not in the OMB handbook, but PERS is the benefit arm for state government so I assume this is a policy that can be employed.



## CHAPTER 12 - FAMILY AND MEDICAL LEAVE

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- 12.1 Family and medical leave is provided for by the state under N.D.C.C. 54-52.4-03 and the federal Family and Medical Leave Act (FMLA) of 1993 (Public Law 103.3).
- 12.2 **Eligibility:** You are eligible for family leave if you have been employed with the state for at least 12 months and have worked at least 1,250 hours in the previous 12 months.
- 12.3 **Qualifying Events:** The maximum family medical leave available to eligible employees is 12 weeks in a twelve-month period for the following qualifying events:
1. To care for your newborn child if the leave concludes within twelve months of the child's birth;
  2. To care for a newly adopted or foster child if the leave concludes within twelve months of the child's placement;
  3. To care for your spouse, child or parent who has a serious health condition;
  4. Your own serious health condition; or
  5. A qualifying exigency arising from the fact that the employee's spouse, child, or parent is a covered military member on active duty or has been notified of impending call or order to covered active duty in the armed forces. "Qualifying exigency" includes short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that may arise out of active duty or call to active duty status and upon which the employer employee agree. Leave for a qualifying exigency applies when a member of the regular or reserved components of the armed forces is deployed to a foreign country under a call or order of active duty. Care for a military service member with a serious injury or illness. Note: An employee who is the spouse, parent, child, or next of kin of a current member of the armed forces (including National Guard or Reserves) who was injured in the line of duty or while on active duty in the armed forces may be eligible for a combined total of 26 weeks of leave for a veteran who is undergoing medical treatment, recuperation, or therapy and who was a service member at any time during the five years preceding the date in which the injury or illness was incurred in the line of duty and manifested itself before or after the member became a veteran.

For purposes of this policy, a serious health condition is defined as an illness, injury, or physical or mental condition involving in-patient care in a hospital, hospice, or residential medical care facility, continuing care by a health care provider or family member or is a chronic or long-term illness which requires continuing medical treatment or supervision.

The leave entitlement period will be determined by the rolling 12-month period measured backward from the date an employee uses any leave under this section. Any FMLA leave used during this 12-month period will be deducted from the total allowable under this section. The 12 months of employment with the State need not be consecutive. Leave begins counting on the date an employee first takes leave to care for the military service member.

- 12.4 **Paid Leave:** You may request, and may be required to use paid leave by using a combination of sick leave, annual leave, comp time or donated leave as follows:
1. If you request leave for the reasons specified in 12.3(1), you will be required to first use any accrued sick leave, then accrued comp time and last any accrued annual leave. You will be allowed 6 weeks of sick leave without medical certification. Medical certification will be required for sick leave requested beyond the first 6 weeks or you may use accrued annual

- leave and comp time not to exceed 12 weeks of total leave.
2. If you request leave for the reasons specified in 12.3(2) or (5), you will be required to first use any accrued annual leave then accrued comp time.
  3. If you request leave for the reasons specified in 12.3(3) you will be required to first use any accrued family leave\*, then any accrued comp time, and last accrued annual leave. Donated leave may be used subject to the requirements set forth in Chapters 8 and 9.
  4. If you request leave for the reasons specified in 12.3(4), you will be required to first use any accrued sick leave, then any accrued comp time, and last accrued annual leave. Donated leave may be used subject to the requirements set forth in Chapters 8 and 9.

Leave under any of the above situations may be used consecutively or taken in intermittent or reduced work schedules. Leave under these conditions may be taken in no less than one-quarter (.25) hour increments. Any paid leave, including donated leave, is considered part of the total available weeks for care of family members or for your own serious health condition. If you have exhausted the applicable types of paid leave, you will be provided unpaid leave to fulfill the authorized period of family and medical leave.

\*The family leave referred to is the 80 hours of paid leave granted to eligible employees under N.D.C.C. 54-52.4-03.

- 12.5 **Notification and Determination of Qualifying Event:** The NDPERS Executive Director must approve all leave under this section. If it is determined there is a qualifying event that entitles you to leave under this section, the Director may initiate the process by providing you with a SFN 58548, Employee Request for Family Medical Leave form.

To apply for leave you must complete SFN 58548, Employee Request for Family Medical Leave, and submit it to your supervisor or manager at least 30 days in advance of when the leave is to begin if the leave is foreseeable or as soon as is practicable for unforeseen leave. An employee requesting leave for a qualifying exigency must complete Form WH-384, Certification of Qualifying Exigency for Military Family Leave ([www.dol.gov/esa/whd/forms/WH-384.pdf](http://www.dol.gov/esa/whd/forms/WH-384.pdf)). An employee requesting leave to care for a military service member with a serious injury or illness must complete Form WH-385, Certification for Serious Injury or Illness of Covered Service member for Military Family Leave ([www.dol.gov/esa/whd/forms/WH-385.pdf](http://www.dol.gov/esa/whd/forms/WH-385.pdf)).

The NDPERS Executive Director must provide you within five business days of the request for leave or of becoming aware of the leave, if feasible, with a copy of the Form WH-381, Notice of Eligibility and Rights & Responsibilities ([www.dol.gov/esa/whd/forms/WH-381.pdf](http://www.dol.gov/esa/whd/forms/WH-381.pdf)), which will detail your specific entitlements and responsibilities and explain any consequences of failure to meet those obligations. Upon approval of requested information, the division manager will provide you with Form WH-382, Designation Notice ([www.dol.gov/esa/whd/forms/WH-382.pdf](http://www.dol.gov/esa/whd/forms/WH-382.pdf)), and attach a list of the essential functions of your position if a fitness for duty to return to work is required.

- 12.6 **Medical and Other Certification.** The division manager must, within five business days of a request for family and medical leave, notify you of the requirement of a medical certification from a health care provider. This is required to verify that the family and medical leave request is necessary for your own serious health condition, to care for a family member's serious health condition, or to care for a covered service member with a serious injury or illness.

You must provide the medical certification within 15 calendar days of NDPERS request unless it is not practicable under the particular circumstances in spite of your good faith efforts. The certification is required on either of the U.S. Department of Labor's forms: WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition ([www.dol.gov/esa/whd/forms/WH-380-E.pdf](http://www.dol.gov/esa/whd/forms/WH-380-E.pdf)), or WH-380-F, Certification of Health Care Provider



for Family Member's Serious Health Condition ([www.dol.gov/esa/whd/forms/WH-380-F.pdf](http://www.dol.gov/esa/whd/forms/WH-380-F.pdf)), as applicable.

If an incomplete or insufficient certification is returned, the division manager will give you seven calendar days to correct any deficiency by notifying you in writing what additional information is necessary. If the deficiencies are not corrected, the division manager may deny the FMLA leave. The division manager must notify you at the time the certification is requested of the consequences of your failure to provide adequate certification.

A NDPERS representative may contact the health care provider, after written employee authorization, to clarify or authenticate the medical certification (whether initial or recertification) after you have been given an opportunity to cure any deficiencies. The NDPERS representative who contacts your health care provider must be a human resource professional or a management official. Under no circumstances may your direct supervisor or manager contact your health care provider.

Failure to provide the requested certification in a timely manner or cooperate or release relevant information may result in denial of the leave until it is provided. If you refuse to provide a certification, the leave request may be denied, and you may be disciplined.

You may also be required to submit to additional examinations by a physician selected and paid for by NDPERS. If the minimum duration of your incapacity specified on a certification furnished by the health care provider is more than 30 days, NDPERS will not request recertification until the minimum duration has passed unless:

1. You request a leave extension;
2. Circumstances described by the previous certification have changed significantly (e.g. duration of the illness, the nature of the illness, complications); or
3. NDPERS receives information that casts doubt upon the continuing validity of the certification.

If family and medical leave is taken intermittently or on a reduced work schedule basis, NDPERS will not request recertification in less than the minimum period specified on the certification for such leave unless conditions 1, 2 or 3 above are met.

Any recertification requested by NDPERS shall be at your expense. A supervisor or manager may not require second or third opinions on recertification.

A supervisor or manager may require certification that your family member is on active military duty by requesting the covered military member's active duty orders the first time you request exigency leave.

If you request an extension of family medical leave due to the continuation, recurrence or onset of your own serious health condition or of the serious health condition of your spouse, child, or parent, you must, within two business days, submit a written request for an extension to your supervisor or manager. This written request must be made as soon as you realize that you will not be able to return at the expiration of the leave period.

- 12.7 **Intermittent Leave.** When medically necessary, you may take family and medical leave intermittently or on a reduced work schedule basis for your own serious health condition, the serious health condition of a family member, or to care for a covered service member with a serious injury or illness. Leave must be taken in no less than one-quarter (.25) hour increments. You are required to cooperate with NDPERS to arrange reduced work schedules or intermittent leave to minimize disruption of business operations. To better serve you and the agency,

intermittent leave may require you to go from full-time to part-time status or to be temporarily transferred to an alternative position for which you are qualified and is of equal pay and benefits. Once leave is no longer needed, you would return to the original or equivalent job.

Qualifying exigency leave may be taken intermittently or on a reduced leave schedule.

Leave for the birth of a healthy child or placement by adoption or foster care of a healthy child may be taken intermittently or on a reduced leave schedule if the division manager agrees.

- 12.8 **Return from Leave.** If you wish to return to work prior to the expiration of a family medical leave of absence, a notification must be given to your supervisor or manager within two business days prior to your planned return. However, the supervisor or manager, with your concurrence, may allow you to return to work immediately.

If you take leave for your own serious health condition you may be required to provide a fitness for duty certification signed by the health care provider; such notice must be included in the Designation Notice. If you fail to submit the required fitness for duty certification, your restoration to your position may be delayed or denied.

Upon return from leave, an employee who is not designated as a "key employee" will be restored to their original position or an equivalent position with equivalent pay, benefits, and any other employment rights that existed at commencement of the leave or that may have accrued during the leave period. Whether a position is an "equivalent position" is the decision of the division manager.

An employee designated as a "key employee" may not be provided restoration rights upon return from leave. Individuals designated as "key employees" under FMLA will be notified of such designation at or before the time FMLA leave commences. If the restoration of a key employee causes "substantial and grievous economic injury" to the employing agency, reinstatement upon returning from leave may not occur.

An employee who fails to return at the end of the leave will be considered to have voluntarily resigned unless additional leave as a reasonable accommodation under the Americans with Disabilities Act is necessary. If an employee fails to return from an FMLA leave, NDPERS may recoup the cost of health plan premiums for any period of the FMLA leave which was taken as unpaid leave, unless the reason you do not return is due to:

1. The continuation, recurrence, or onset of a serious health condition of you or your family member which would otherwise entitle you to leave under FMLA; or
2. Other circumstances beyond your control such as staying home to care for a newborn with a serious health condition, the spouse is transferred to a location more than 75 miles from your worksite, you are laid off, etc.

If NDPERS experiences a reduction-in-force during your absence and you would have lost your position, you retain any rights under NDPERS' Reduction in Force policy (Chapter 25) but may not be eligible for reinstatement under the Family and Medical Leave Acts.

- 12.9 **Determining Allowable Leave.** The maximum allowable weeks for family or medical leave are measured using the "rolling" twelve months backward method. This means the year is counted backward from the time your leave begins. If you have not taken any leave under this section in the previous twelve-month period, you are entitled to the maximum family and medical leave available and consistent with your qualifying event. Any leave taken under this section within the previous twelve months is deducted from the maximum allowable leave.



If both spouses are employed by the same employer, the combined leave may not exceed 12 weeks if the leave is taken for the birth or placement of child or to care for the employee's parent with a serious health condition.

- 12.10 **Benefits.** During an unpaid leave PERS will continue to pay the health, basic life and Employee Assistance Program premiums. If you do not return from the unpaid leave, your coverage will terminate at the end of the month for which the last premium was paid. PERS has the right to recover any premium contributions paid to maintain your health insurance coverage during the unpaid leave. If you elect not to continue your health insurance during your leave, your coverage will be reinstated on the first day of the month following your return to active employment. No pre-existing or waiting periods will apply.

The following policies will apply to other benefits in which you may be enrolled at the time of your leave:

**Supplemental Life Insurance:** If you have employee, dependent, or spouse supplemental life coverage, the premium can continue to be deducted from your pay if you are on paid or donated leave. If you do not elect this option or if the leave is unpaid, you can keep your coverage in force by paying the premiums to NDPERS by personal check. If you elect not to continue coverage while you are on leave, your supplemental coverage can be reinstated on the first day of the month following your return to active employment. It will be at the same levels of coverage that were in effect before your leave and no evidence of insurability will be required.

**Group Dental Insurance:** You may continue your dental coverage while on leave. If you are on paid or donated leave the premium will continue to be deducted from your pay. If the leave is unpaid, you can keep your coverage in effect by paying the premium to NDPERS by personal check. If you elect not to continue coverage while you are on leave, upon return to active employment, you will be considered a late entrant.

**Group Vision Insurance:** You may continue your vision coverage while on leave. If you are on paid or donated leave the premium will continue to be deducted from your pay. If the leave is unpaid, you can keep your coverage in effect by paying the premium to NDPERS by personal check. If you elect not to continue coverage while you are on leave, upon return to active employment, you will be considered a late entrant.

**Retirement:** If the leave is paid or donated, the monthly contributions will continue to be paid by NDPERS. If the leave is unpaid, contributions will be discontinued. Upon return to active employment, contributions will be resumed.

**FlexComp Plan:** If the leave is paid or donated, the monthly contributions will continue to be deducted from your pay. Medical spending and dependent care contributions or pre-tax insurance premiums may be made as follows for an unpaid leave of absence, military leave, or an unpaid leave covered by the Family and Medical Leave Act (FMLA):

1. Under the pre-pay option, you may pay the amounts due while on leave on a pre-tax basis by having the total amount due while on leave payroll deducted prior to the leave.
2. Under the pay-as-you-go option, the contribution may also be made pre-tax from any taxable compensation, such as annual leave or sick leave during the leave period.
3. Under the "catch-up option", NDPERS will continue coverage during an unpaid leave. Upon return from leave, a participant will catch up with pre-tax payroll deductions.

You may elect not to participate while on leave. If they elect not to participate while they are on a leave of absence, they will not be entitled to receive reimbursements for claims incurred beyond the last day of the month a contribution is received. Upon returning from leave, you may reinstate

the coverage that was in effect prior to their leave or reinstate the coverage less the contributions that were missed during the leave.

If you elect to revoke your election, claims incurred while you are on leave are not eligible for reimbursement. Upon return to active employment, you may reinstate your participation at the same levels that were in effect prior to your leave.

Deferred Compensation Plan: If the leave is paid or donated, the monthly contributions can continue to be deducted from your pay. If you elect to suspend deductions during your leave you can resume them when you return to active employment. You cannot take distributions from your account during the leave period.

Annual and Sick Leave: You will not accrue annual or sick leave while on unpaid family and medical leave.

- 12.11 Whether you are on paid or unpaid leave, you may not perform work for another employer during the leave period without prior notification and approval by the NDPERS Executive Director. Working for another employer other than under the conditions approved may be cause for immediate cancellation of FMLA leave status or disciplinary action up to and including termination of employment.
- 12.12 This policy is not a comprehensive description of an employee's rights under the federal Family Medical Leave Act. You should contact the agency's assigned personnel analyst at Human Resource Management Services for specific questions.

See Universal Policy: [Family Medical Leave Act \(FMLA\)](#)

## CHAPTER 13 - FUNERAL LEAVE AND HONOR GUARD LEAVE

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### 13.1 Funeral Leave.

See Universal Policy: [Funeral Leave](#)

### 13.2 Honor Guard Leave.

See Universal Policy: [Honor Guard Leave](#)

## CHAPTER 14 - MILITARY LEAVE

N.D.C.C. 37-01-25

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- 14.1 Employees of NDPERS who are National Guard or armed forces reserve members, or who are subject to call to service by the President or volunteer for such service when ordered by proper authority will be entitled to a leave of absence without loss of status or performance rating. When appropriate, we will fill your position on a temporary basis during your absence.
- 14.2 If you have been employed for 90 continuous days preceding the leave, you will receive 20 work days each calendar year without loss of pay. In the event of full or partial mobilization of U.S. forces or State active duty, there will be no loss of pay for the first 30 days of leave less any other paid leave of absence which was granted during the calendar year.
- 14.3 When you return from active duty, you must report for work within 90 days of your discharge date in order to exercise your right to return to employment with NDPERS. If you return within the time specified, you will be reinstated to your previous position or one of like status and pay.

## CHAPTER 15 - JURY AND WITNESS LEAVE

N.D.A.C. 4-07-16-02

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- 15.1 An employee called to jury duty will be granted time off with pay not to exceed 40 hours a week. However, if you are paid for serving, the amount received will be deducted from your regular pay. You may use annual leave to perform jury duty and then may keep any jury duty fee paid.
- 15.2 If you perform witness duties on behalf of NDPERS, you will receive your regular pay plus any expense reimbursement. You may not accept witness pay or reimbursement expenses from any other source. If witness pay or reimbursement expenses are paid by any other source, the reimbursement must be paid to NDPERS. If you volunteer or are called to perform witness duty unrelated to your employment with NDPERS, you must take annual leave or leave without pay.

## CHAPTER 16 - TIME OFF TO VOTE

N.D.C.C. 16.1-01-02.1

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- 16.1 It is the policy of NDPERS to encourage voting by all eligible voters at all local, statewide special, primary or general elections. You will be granted reasonable time off with pay from work to vote.



## CHAPTER 17 - EMPLOYEE BENEFITS

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- 17.1 **Group Health Insurance.** Participation in this plan is optional. You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 hours or more per week for at least 20 weeks in a calendar year. You will have an initial enrollment period of 31 days from your date of employment. Applications received within the enrollment period will be accepted with no restrictions, limitations, or waiting periods for you and any eligible dependents. Coverage will be effective the first of the month following your date of employment. NDPERS will pay the full premium cost for either a single or a family plan.

If you do not enroll within your initial enrollment period, you may be eligible to enroll during the annual enrollment season conducted in the fall each year with coverage effective January 1.

Temporary or part-time employees not covered by the above eligibility criteria may participate as long as they are reasonably expected to work at least 30 hours per week or 130 hours per month and must enroll within 31 days from their date of employment or determination of eligibility. You may be billed for a portion of the monthly premium.

- 17.2 **Group Life Insurance.** You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 hours or more per week for at least 20 weeks in a calendar year. You have 31 days from your employment date in which to enroll in the plan without being required to be medically underwritten. NDPERS will pay for the level of basic life coverage in effect at the time of employment. You may purchase supplemental coverage for yourself in increments of \$5,000. Optional coverage for your spouse and dependents is also available at your expense.

Temporary or part-time employees not covered by the above eligibility criteria, may participate and are responsible for the monthly premium payment.

- 17.3 **Defined Benefit Hybrid Retirement Plan.** Unless you are eligible to elect to participate in the Defined Contribution Retirement Plan, and do so elect, participation in this plan is mandatory. You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 or more hours per week for at least 20 weeks in a calendar year. NDPERS pays a portion of the cost of your participation in the plan.

Temporary or part-time employees not covered by this definition may participate on a voluntary basis at their own expense.

- 17.4 **FlexComp Plan.** This is an optional program set up under Section 125 of the Internal Revenue Code. The plan allows you to set aside a portion of your salary, through payroll deduction and before taxes are deducted, into accounts from which tax-free reimbursements for insurance premiums, out-of-pocket medical expenses and dependent care costs are paid. You are eligible to participate if you are a permanent, full-time employee in a regularly funded position working 20 hours or more per week for at least 20 weeks in a calendar year. You will be provided with the respective plan information upon employment.

- 17.5 **Deferred Compensation Plan.** This is an optional supplemental retirement plan set up under Section 457 of the Internal Revenue Code. The plan allows you to defer salary dollars on a pretax basis for investment with any of the providers who are eligible to provide services for the State's plan. You are eligible to participate if you are a permanent full-time employee in a



regularly funded position working 20 or more hours per week at least 20 weeks in a calendar year.

- 17.6 **Employee Assistance Program (EAP).** The EAP provides problem assessment, short-term counseling and referral to appropriate community resources for employees who are experiencing personal problems which may or may not affect their job performance. It is the responsibility of management to use this program in case of a performance problem, and when appropriate, to encourage your use of the EAP. Your job security or promotional opportunities will not be jeopardized for requesting counseling or referral assistance. When necessary, annual and sick leave may be granted for treatments or rehabilitation. You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 or more hours per week at least 20 weeks in a calendar year.

The EAP is also available to you and each of your immediate family members on a self-referral basis. All records are confidential and do not become a part of your personnel file.

- 17.7 **Worker's Compensation.** You are automatically covered by worker's compensation on your first day of employment. If you are injured during the performance of your duties, you should report the injury either verbally or in writing to your supervisor or manager within seven days. Within seven days after you have given notice, NDPERS must file an Employer's Report of Injury with the Bureau. Benefits will be paid according to state compensation statutes.

If your injury results in lost time from your job, you may use sick or annual leave to supplement your worker's compensation benefits. The leave benefits will be prorated based on the difference between your compensation benefits and your regular base salary. The combination of benefits cannot exceed your base salary.

If your sick or annual leave is depleted or you elect not to use your accrued leave benefits, you must request leave without pay for the remainder of your recovery period. The leave without pay status may not exceed two years.

- 17.8 **Voluntary Group Dental Plan.** You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 or more hours per week for at least 20 weeks in a calendar year. You pay the cost for participation in the plan.

Temporary or part-time employees are not eligible to participate in the plan.

- 17.9 **Voluntary Group Vision Plan.** You are eligible to participate if you are a permanent full-time employee in a regularly funded position working 20 or more hours per week for at least 20 weeks in a calendar year. You pay the cost for participation in the plan.

Temporary or part-time employees are not eligible to participate in the plan.

- 17.10 **Defined Contribution Plan.**

You will be provided with the respective plan information upon employment.

## CHAPTER 18 - EDUCATION AND TRAINING

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- 18.1 **Continuing Education.** NDPERS has adopted an educational assistance program to provide you with the opportunity to develop personally and professionally. We believe that employees who demonstrate the initiative to undertake and complete courses or work toward a degree or professional designation or certification become greater assets to the organization and should be supported in this endeavor.
- 18.2 To qualify for educational assistance you must be a permanent/regular employee who has completed the six-month evaluation period. You must complete the course successfully and agree to work for the agency for two years following the completion of the reimbursed course work. If you leave our employment prior to the two years, you must reimburse NDPERS for the cost of those portions of education that were funded by NDPERS.
- 18.3 You may apply for educational assistance for any course, degree or certification programs that relate directly to the skills and knowledge required for your current job or which could qualify you for a more responsible position with NDPERS.
- 18.4 You must complete an Application for Educational Assistance and submit it to your supervisor or manager prior to taking the course. Applications are considered on a first-come, first-serve basis contingent with the purpose of this program and availability of funds.
- 18.5 The level of assistance is limited to \$3,000 in tuition fees per eligible employee per fiscal year. Professional development courses for a designation or certification are also subject to this limitation. Books, software and other similar costs for items that you will maintain ownership of are your responsibility.
- 18.6 Reimbursement of tuition will be made upon completion of the course. You will be required to provide verification of your tuition payment and your course grade. You must receive no lower than a "C" grade in undergraduate work and no lower than a "B" grade in graduate work. Payments made to an employee for educational expenses may be subject to IRS taxation laws.
- 18.7 **Training.** NDPERS will also fund the cost of conferences, seminars, workshops, conventions and related programs. Attendance is subject to approval by your supervisor or manager and is limited to two per fiscal year or four per biennium. Approval will not be granted for out-of-state attendance if the program is available locally or in-state. The NDPERS Executive Director must approve out-of-state participation.

## CHAPTER 19 - MEMBERSHIP DUES

### OMB POLICY 209

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- 19.1 Payment by NDPERS of dues to professional organizations is not a fringe benefit for state employees. However, NDPERS realizes the importance of membership in professional organizations and encourages involvement in these activities. Membership in professional organizations is an allowable expenditure of agency funds only if it is directly related to your job as evidenced in your job description, minimum qualifications, and related job functions.

Whenever possible, a membership should be carried in the name of NDPERS and not of an individual. This is to promote transferability of the benefits of the membership.

## CHAPTER 20 – TRAVEL

N.D.C.C. 44-08-04

- 20.1 If you are required to travel in state on official NDPERS or state business, you will be reimbursed for your meals, lodging, and personal telephone expenses in compliance with the Office of Management and Budget (OMB) Policy 505, 513, and 514 while you are away from your normal working and living residence. Your supervisor or manager must approve all travel. You will be required to complete a Travel Expense Voucher (SFN 2029) to receive reimbursement. Receipts must be submitted for all related travel expenses. Section 20.7 outlines the policy regarding personal telephone expense while traveling.
- 20.2 If you are required to drive to a destination outside the Bismarck-Mandan area, it is recommended you use a State Fleet vehicle rather than your personally owned vehicle.
- Whenever possible, use of your personal vehicle must be approved in advance by your supervisor or manager and must be in writing. The only reimbursement you will receive will be for the prevailing per mile rate established by DOT for a state fleet sedan vehicle. If work-related circumstances require the use of your personal vehicle and your supervisor or manager has approved this use, NDPERS will reimburse mileage at the prevailing rate for a personally owned vehicle.
- NDPERS will not provide any reimbursement nor be responsible for any mechanical, towing or maintenance expenses which may be incurred while using your personal vehicle. In addition, the NDPERS insurance will not cover any costs for accidents or liabilities that occur when you are using your personal vehicle.
- 20.3 **In State Travel.** Hours spent traveling as a driver or passenger for approved events or presentations are considered hours worked.
- Out of State Travel.** All out-of-state travel must be arranged through the office travel coordinator and is subject to approval by the NDPERS Executive Director.
- You will be reimbursed for lodging, meals, taxi/bus/rental car and personal telephone expenses subject to OMB guidelines and limits contained in policies 505 and 514. Section 20.7 outlines the policy regarding personal telephone expenses while traveling.
- 20.5 **Travel Outside the Continental United States.** All travel outside the Continental United States must be arranged through the office travel coordinator and is subject to approval by the PERS Board. You will be reimbursed for expenses subject to OMB guidelines and limits contained in policies 505 and 514.
- 20.6 **Travel in Bismarck-Mandan.** Necessary official travel in Bismarck-Mandan will be reimbursed at the rate established by OMB. Travel from your residence to a conference/meeting site is not reimbursable; however, if you have reported to work before attendance, travel to the meeting will be reimbursed in accordance with the mileage rate established by OMB. Expenses for mileage that is routinely incurred in the performance of your employment duties should not be claimed until a minimum of \$10 in reimbursement is due. Such reimbursement will be made quarterly without regard for the dollar amount.
- 20.7 Employees will be reimbursed for personal telephone calls made to their city of residence while in



travel status, subject to the following provisions and limitations:

1. Reimbursement will be limited to \$10 per day. Allowance for calls not made on one day cannot be carried forward and used on another day. For example, if an employee did not make a call on Monday, you cannot claim \$20 for calls made on Tuesday.
2. A claim may only be made for those days in which an overnight stay is required.
3. A claim for this expense may not be made for "free minutes" used on a personal cellular phone.
4. To claim this expense, the charge must appear on the receipt submitted for lodging, on a separate receipt, or a billing statement.

## CHAPTER 21 - SERVICE AWARD PROGRAM

N.D.A.C. 4-07-18

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- 21.1 NDPERS has a service award program to recognize classified employees who reach certain service anniversaries. You must have completed three, five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five or fifty years of employment with the state in order to receive an award. If you were employed by other state agencies, NDPERS will recognize your total years of state service in determining your service anniversary designation. If you have eligible state service accrued prior to a break in service, NDPERS will apply it to any future service award.
- 21.2 Service awards will be presented each year for employees who reach their anniversary during the previous year. You will receive a service award plaque and a gift card that corresponds in value with the service award amount specified in the schedule under N.D.A.C. 4-07-18. Gift cards are taxable under IRS rules.

REF: Universal Employment Policies – Service Award Program



## CHAPTER 22 - DISCIPLINARY PROCEDURES

N.D.C.C. 54-44.3

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- 22.1 NDPERS has rules of conduct that apply to all employees. These rules are necessary to ensure a safe, efficient business operation, ensure compliance with public laws, and to protect the well-being and rights of all employees.
- 22.2 You may be disciplined only for cause. "Cause" means conduct related to your duties, job performance or working relationships that is detrimental to the discipline and efficiency of the service in which you are or were engaged.
- 22.3 Progressive discipline may be used when there is "cause." Progressive discipline will not be used when an employee is in the initial six-month evaluation period. A Reduction-in-Force (RIF) may not be used to substitute for disciplinary measures. The following outlines the steps in the progressive discipline process. These steps should be viewed as a general guideline to be used at the supervisor or manager's discretion.
1. In most cases, if you have a performance problem or a violation of some rule or standard, your supervisor or manager will discuss the problem with you to give you an opportunity to correct the situation.
  2. If this does not correct the problem, you may be issued a written reprimand that will be kept in your personnel file for a period not to exceed six months. If no further infractions occur during the designated period, the reprimand will be removed from your file.
  3. If the problem or violation is still not corrected, a formal written reprimand may be issued recognizing the problem and stating previous actions were unsuccessful. This formal reprimand may include a probationary period not to exceed six months and will become part of your permanent record.
  4. If there is no improvement or there are any infractions during the probationary period, your supervisor or manager may terminate your employment.
  5. If the same type of problem or violation should occur within 90 days after the successful completion of the probationary period, you may be terminated. The progressive disciplinary process may be reinstated for infractions occurring after the 90-day period.
- 22.4 Your supervisor or manager may, at any time during the disciplinary process, refer you to the NDPERS Employee Assistance Program (EAP) or any other treatment program as deemed appropriate if it appears personal problems are the factor affecting your performance and/or behavior. Your supervisor or manager can assist you in making the necessary contacts for an appointment. If you use the services of the EAP, you are guaranteed confidentiality. NDPERS will not have access to your record, nor will the EAP staff discuss your case with your supervisor or manager without your permission. (See Chapter 17)
- 22.5 Some situations and types of conduct may be serious enough to warrant immediate termination without using the progressive disciplinary procedures. Examples of such conduct may include, but are not limited to insubordination, theft, misappropriation, falsifying records, breach of a confidentiality provision, assaulting a co-worker or client, possessing firearms or possessing or selling illegal drugs on NDPERS premises or for any other such infraction or violation for which

imposition of a less severe disciplinary action would be inappropriate.

- 22.6 Disciplinary actions that result in suspension without pay, forced relocation, reduction in force, reprisal, dismissal, demotion with loss of pay or discrimination may be grounds for a grievance, and you have the right to appeal to the Human Resource Management Services Division. Details of the process for filing an appeal are outlined in N.D.A.C. 4-07-20.1. These guidelines should be reviewed before taking any action.

See Universal Policy: [Discipline ...](#)

## CHAPTER 23 - GRIEVANCE PROCEDURE

N.D.C.C. 54-44.3

23.1 The NDPERS internal grievance procedure is for the purpose of resolving disputes or disagreements between you and the agency over some term or condition of employment, or over the interpretation or application of a policy, rule or law. You may use the grievance procedure without fear of discipline or penalty.

23.2 We have both an internal informal and a formal grievance process.

**Informal Grievance Procedure.** Before a written grievance is filed, you should first try to resolve the complaint by discussing it with your immediate supervisor or manager. If this does not result in a satisfactory solution, you may then discuss the problem with the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer, or you may go directly to any of these parties if you prefer not to discuss the problem with your supervisor or manager. If a satisfactory solution is not reached, you may file a formal written grievance.

**Formal Grievance Procedure.** A formal written grievance must be submitted on SFN 18409 to your immediate supervisor or manager or the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer within 15 working days from the date of the occurrence or notice of the agency's action following the informal procedure.

Your supervisor or manager will investigate the matter and discuss the findings with the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer. They will submit a written response within ten (10) working days. If you are dissatisfied with this response or action, you may file the grievance with the Human Resource Management Services (HRMS) division within 15 working days from notice of the agency's action or 15 working days from date of waiver.

23.3 You may appeal a grievance to the HRMS for demotion with loss of pay, dismissal, suspension without pay, forced relocation, reduction in force, reprisal or discrimination. You must have had your grievance processed through the agency's grievance procedure before submitting it to HRMS unless the agency grievance procedure is waived in writing by mutual agreement between you and the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer. Upon obtaining the waiver, you may appeal directly to the HRMS in accordance with procedures set forth in N.D.A.C. 4-07-20.1.

23.4 HRMS will submit a written request within two working days to the Office of Administrative Hearings. If the administrative law judge determines the division has jurisdiction over the appeal, the judge will conduct a hearing, issue a decision, and notify the parties involved. The decision of the administrative law judge is binding.

23.5 If the Office of Administrative Hearings does not have jurisdiction over the appeal, the decision of your supervisor or manager and the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer is final.

Failure on your part to follow-up within the time limits specified in this policy will be interpreted to mean you have accepted the action at that point in time.

23.7 **Extension of Time Limits.** The steps comprising the internal grievance process contain time limitations. An employee should be allowed a reasonable amount of time to process a grievance



during regular working hours without loss of pay. Occasionally, situations will arise beyond the control of management or the employee that will prevent compliance with the time limitations. Time limitations may be extended for employees by the division director or Chief Operating Officer. Time limitations may be extended for the division director by the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer. Requests for extensions must be received by the supervisor or manager, NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer prior to the established deadline.

- 23.8 **Grievance Procedure for Non-Employer Actions.** There are three steps to the grievance process involving grievances that are not a result of an employer action. Grievances are to proceed on to each successive step until the employee is satisfied with the outcome at that step, does not file a timely appeal, or exhausts the right to file a grievance or appeal.

Failure on the part of the employee to grieve an NDPERS decision within the time prescribed shall be construed to be acceptance of the determination at that point, and the same grievance shall not be accepted thereafter.

Grievances involving claimed discriminatory or retaliatory behavior or actions may be brought to the supervisor or manager. If the actions complained of involve the supervisor or manager, grievances may be brought to the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer of NDPERS. The employee may also contact HRMS for assistance with the issue. If needed, a workplace investigation may be conducted within thirty days.

**Step One:**

An employee who has a complaint that is not the result of an employer action should first discuss it with their immediate supervisor or manager. If discussion and any subsequent action the supervisor or manager may take fails to effectively resolve the complaint, the employee may file a written grievance, using an Employee Grievance form (SFN 18409), with the immediate supervisor or manager within five working days of the incident or aggrieved action, or within five working days after informal discussion with the immediate supervisor or manager has failed to resolve the grievance.

The supervisor or manager upon receipt of a written grievance, must respond to the complaint in writing within five working days of receipt of the written complaint from the employee.

**Step Two:**

The employee, if dissatisfied with the response or action taken by the immediate supervisor or manager, or if no response is received from the immediate supervisor or manager within the five-working day response period, may continue the formal grievance process by filing the grievance form with the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer within five working days from receipt of the immediate supervisor or manager's response or within five working days following the supervisor or manager's response period if no response is received. The NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer must receive the continued grievance within five working days from the date of service of notice of the immediate supervisor or manager's response. The date of service is the date the notice was mailed, or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.

The NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer upon receipt of a written grievance, shall notify the employee's supervisor or manager of receipt of the complaint, properly review the issue, and give a written response to the employee within ten working days of receipt of the grievance from the employee.

Step Three:

The employee, if dissatisfied with the response or action taken by the NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer, or if no response is received from any one of these parties within the ten-working day response period, may continue the formal grievance process by filing the grievance form with HRMS within five working days from receipt of the NDPERS Executive Director's, Chief Operating Officer's, or Chief Benefits Officer's response, or within five working days following the NDPERS Executive Director's, Chief Operating Officer's, or Chief Benefits Officer's response period if no response is received. HRMS must receive the continued grievance within five working days from the date of service of notice of the NDPERS Executive Director's, Chief Operating Officer's, or Chief Benefits Officer's response. The date of service is the date the notice was mailed, or the date transmitted by electronic means, or absent proof of the date of mailing or delivery through electronic means, the date of actual delivery. The agency shall prepare a certificate of service, or provide reliable means, to show proof of the date of mailing, transmittal by electronic means, or hand delivery.

HRMS shall notify the employee's NDPERS Executive Director, Chief Operating Officer, or Chief Benefits Officer of receipt of the grievance, properly review the issue, and give a final written response to the employee within 15 working days of receipt of the complaint from the employee. The final written decision of the HRMS ends the OMB internal grievance procedure.

## CHAPTER 24 - ALTERNATE DISPUTE RESOLUTION – MEDIATION

N.D.C.C. 54-44.3

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- 24.1 Mediation is a method of alternative dispute resolution (ADR) which enables people in conflict to reach a mutually agreeable solution to their problems with the assistance of a neutral third party called a mediator.
- 24.2 The program is designed to deal with disputes such as dismissals, suspension without pay, demotion, reprisals, discrimination, and problems of working relationships such as communication issues, etc.
- 24.3 A request to mediate may be made to the Human Resources Management Division (HRMS) before a grievance is filed or during the time an internal agency grievance is in process. However, a request to mediate may not be made after the internal agency grievance procedure has been completed. If you use mediation, the time limits of the internal agency grievance procedure are suspended. The NDPERS Executive Director must be aware of a request to mediate in order to suspend time limits in the grievance process.
- 24.4 All parties involved in the dispute must agree to the use of mediation prior to using the method by completing the Agreement to Mediate form (SFN 50365) and submitting it to the HRMS. The Mediation Coordinator will determine if the dispute is acceptable for mediation.
- 24.5 If a resolution is not agreed to by the participants, then the time limits of the agency grievance procedure will be activated as determined by the Mediation Coordinator at the end of the mediation process.



## CHAPTER 25 - REDUCTION-IN-FORCE

N.D.C.C. 54-44.3

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- 25.1 A Reduction-in-Force (RIF) is the layoff of employees caused primarily by a reduction in workload, funding, or reorganization. Emergency, temporary, provisional, or probationary employees shall be considered for RIF ahead of classified employees.
- 25.2 Classified employees who have successfully completed probation may appeal a RIF only if the following factors were not considered by the agency:
1. An analysis of acquired knowledge, demonstrated skills, and versatility.
  2. An analysis of demonstrated performance.
  3. A review of length of service.
  4. An analysis of retraining needed to reassign an employee.
- 25.3 A RIF is nondiscriminatory in nature and may not be used to substitute for disciplinary measures. This section will be administered in compliance with Chapter 4-07-11 of N.D.A.C..

## CHAPTER 26 - HEALTH AND SAFETY POLICY

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26.1 **General Safety Rules.** It is NDPERS policy to provide a safe workplace. General safety rules are considered minimum safety standards for usual work conditions. The following general safety rules for usual work conditions shall be adhered to by all employees:

1. Participate in new employee training.
2. Participate in continuing education which is conducted on a departmental level.
3. Report all accidents, injuries, near misses or safety hazards in the workplace immediately to your supervisor or manager.
4. Report faulty electrical equipment. Faulty electrical equipment will be removed from service until the equipment has been repaired or replaced.
5. Report any dangerous physical plant situations or equipment to appropriate maintenance personnel.
6. Ask and insist on sufficient help before lifting heavy objects. Follow proper procedure when lifting - bend knees and keep back erect, lift with weight close to the body and do not twist while lifting. Use mechanical devices!
7. Remember, no horseplay is allowed in the workplace.
8. Always wear your safety belt when driving.
9. Participate in proper housekeeping. Proper housekeeping is mandatory for all departmental areas.

If you notice a potential hazard in the workplace, report it to your immediate supervisor or manager. Your ideas for alleviating problems are welcome.

### 26.2 **Distracted Driving Policy.**

To reduce the risks associated with distracted driving, it is the policy of NDPERS to prohibit the use of cell phones (including hands free) or any other mobile devices while operating a motor vehicle on NDPERS business. This restriction includes answering or making phone calls, engaging in phone conversations, reading or responding to e-mails and text messages, and accessing the Internet.

These restrictions do not apply to emergency calls, or brief calls that are identified and designated as necessary to fulfill critical agency functions. However, agency designated necessary calls may not take place while driving in urban or congested traffic, construction zones or during periods of inclement weather.

26.3 **Working Conditions.** It is NDPERS policy to provide a clean, healthy, and satisfactory work environment. As such, we have adopted a no-smoking policy for our office. Please refer to Chapter 2 of this Manual. Other environmental conditions may include but are not limited to the following:

1. Inadequate lighting.
2. Heating, air conditioning, or ventilation problems.
3. Ergonomic hazards, i.e. human physical conditions perpetuated or created as a result of the design and operation of office machines or equipment. This includes cumulative trauma or repetitive motion injuries such as carpal tunnel syndrome and back injury, posture, manual lifting techniques, work station design, etc.

You should inform your supervisor or manager about symptoms, concerns, or complaints

regarding working conditions. NDPERS will make every effort to correct working conditions, which pose a hazard to the health or safety of its employees. Suggestions for improvement are welcome.

- 26.4 **Wellness.** NDPERS supports preventive health programs designed to improve the health and physical well-being of our employees. Some aspects of this program include:

1. Employee Assistance Program. Refer to Chapter 17 for further details.
2. Safety training and education programs to help employees avoid the causes of illness and injury. These are provided through our Risk Management Program.

- 26.5 **Worker's Compensation.** Please refer to Chapter 17 for further details.

If you have a work-related accident resulting in lost time, it is your responsibility to keep your supervisor or manager informed concerning your recuperation. Upon returning to work following an injury, you will be required to furnish a written release from your physician concerning any physical activities that should be avoided and for what period.

To file for Worker's Compensation Benefits, you must complete a Worker's Claim for Injury, SFN 02828. Even if the injury due to an accident does not require emergency treatment or loss of work time, a form should be filed. The forms are available through the Human Resource Department.

- 26.6 Employees who violate established safety and health rules or procedures will be subject to disciplinary action up to and including termination.

See Universal Policy: [Driving While Conducting State Business](#)

## CHAPTER 27 - INFANTS AT WORK

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- 27.1 **Infant at Work Approval.** An employee may submit a request, SFN 54321, Infant at Work Request, to the supervisor or manager to care for his or her infant child by birth, adoption, or foster care, under the age of six months, at work during normal work hours. The supervisor or manager shall consider and approve or deny such request.
- If the supervisor or manager approves an employee's request, the employee and other parent of the infant are required to sign a waiver of liability, indemnification, and medical release SFN 59429, Infant at Work Waiver of Liability, Indemnification, & Medical Release.
- If the infant becomes ill or fussy for a prolonged period of time causing a distraction or preventing the employee or other employees from accomplishing work, the infant must be removed from the workplace. If in the opinion of the employee's supervisor or manager the infant's presence is excessively disruptive in the work environment or negatively affects the productivity of the employee or other employees, the infant at work arrangement will be terminated.
- At the end of the infant at work duration, the supervisor or manager shall complete SFN 54320, Supervisors' Infant at Work Review.
- 27.2 **Employee Responsibilities.** The employee must keep the infant in the employee's workspace. For short periods of time, such as restroom breaks, the infant may be in another employee's workspace if the arrangement is mutually agreed upon. The work environment must be safe for the infant at all times.
- An employee's child may not accompany an employee traveling in a State vehicle. If the employee's job includes travel, he or she must make alternative childcare arrangements for travel days or must travel in the employee's personal vehicle. Travel must be approved by the supervisor or manager prior to the travel.
- The employee must provide appropriate furniture for the infant's care, i.e. crib, playpen, swing, etc.
- The employee must use discretion as to when and where the infant's diapers are changed. Used cloth diapers must be stored in a closed container and taken home daily. Used disposable diapers must be wrapped appropriately and discarded in an appropriate container outside of office or meeting space.
- See [OMB Human Resource Policy Manual Chapter 18](#)



## CHAPTER 28 - SEPARATION AND RE-EMPLOYMENT

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- 28.1 Notice of separation is generally required in written form to describe or record the ending of an employer-employee relationship.

When an employee, consultant, or contractor terminates his or her relationship with NDPERS, the immediate supervisor or manager or NDPERS Executive Director must notify all administrators handling the computer and communications accounts used by the worker as soon as the termination is known and must take the following action:

1. All physical security access codes known by the worker must be deactivated or changed.
2. All access rights and privileges to restricted areas and information systems must be immediately revoked.
3. All agency property must be returned, including but not limited to portable computers, library books, documentation, building keys, magnetic access cards, state identification, and credit cards.

- 28.2 The supervisor or manager or payroll contact shall conduct the following activities:

1. Discuss the status of fringe benefits, including insurances, retirement, deferred compensation, flexible spending accounts and payments such as annual leave. The supervisor or manager may wish to refer the employee to appropriate resources such as the Public Employees Retirement System and HRMS.
2. Arrange for the return of agency property as listed above and referred to on the Employee Exit Checklist, SFN 19451.
3. Explain agency practice regarding references required by future employers for those employees seeking other employment.
4. Coordinate an exit interview with the Chief Audit Officer. Use this opportunity to explain when the employee can expect to be paid. If there will be a delay securing the final check, explain the reason for the delay.
5. Supervisor or managers shall notify NDPERS payroll.

- 28.3 **Employee Exit Interview.** Internal Audit should conduct exit interviews with employees who are terminating their employment with the agency. The purpose of an exit interview is to determine what motivated the employee to resign and, if possible, correct the situation. When an employee is resigning for personal or health reasons, the possibility of a family medical leave should be explored. Exit interviews of involuntarily dismissed employees may be waived.

Since employee resignations or terminations may indicate the need for improvement in some aspect of the business, exit interviews should determine:

1. The reason why the employee is leaving in an effort so as to retain other employees with satisfactory job performance and reduce turnover.
2. Any complaint the employee may have regarding unit/agency policy or conditions so that corrective action can be taken if possible, and communication practices within the agency enhanced.
3. Any difficulties the employee may have had regarding the employee's job or supervision received so that corrective action can be identified which will result in better selection, placement, and training of other staff.

The exit interview also affords management an opportunity to discuss with terminating



employee's terms and conditions relative to final pay, reemployment, unemployment compensation and other matters relating to separation from employment.

- 28.4 **Resignation.** Employees are expected to notify their supervisor or manager of their intent to resign a minimum of two weeks in advance of the final day of employment. Employees are encouraged to consider informing supervisor or managers of their plans or intent to resign as early as possible to facilitate orderly replacement planning and training.

NDPERS will accept resignations of employees at any time. Employees are encouraged to submit their resignation in writing. The supervisor or manager has the authority to modify the resignation date in an effort to manage budget dollars. Resignation dates incorporating annual leave will not be allowed.

## CHAPTER 29 – TELEWORKING

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29.1 NDPERS considers teleworking to be a viable alternative work arrangement in cases where individual, and job, characteristics are best suited to such an arrangement and/or the employee's mission-critical job responsibilities require continuity of operations during crisis situations. Individuals may be asked to telework to provide continuity of mission-critical support in emergency or natural disaster situations.

The needs of NDPERS and the requirements of the job will be used to determine if teleworking is an option for the job.

Teleworking allows an employee to routinely work at home, in the office, or in a shared office, for all or part of their regular work week. Teleworking is a work alternative that may be appropriate for some employees and some jobs. It is not an employee right or entitlement; it is not an agency-wide benefit; and it in no way changes the terms and conditions of employment with NDPERS.

Teleworking may also be requested on an informal basis, such as working from home for a short-term project or on the road during business travel, or formal, as will be described below. Other informal, short-term arrangements may be made for employees on family and medical leave, to the extent practical for the employee and NDPERS, and with the consent of the employee's health care provider, if appropriate. Informal Teleworking is not to replace an employee's desire to not use sick leave, vacation, family sick leave, etc. and in general will not be approved for these situations when the time needed away from work is five working days or less.

All informal teleworking arrangements will be made on a case-by-case basis, focusing on the priority business needs of NDPERS. Such informal arrangements will be executed at the discretion of the Manager or Supervisor and with the approval of the Executive Director.

An employee may request a formal teleworking arrangement through their supervisor or manager and complete a Teleworking Agreement form. The form will be reviewed and with the employee and approved by the Supervisor or Manager and the Executive Director.

### Reference:

Teleworking Guidance

State of North Dakota Universal Policy on Teleworking Policy on Teleworking

## APPENDICES: OMB UNIVERSAL POLICIES

As part of an ongoing effort to improve certain HR functions for state agencies, a universal set of employment policies is being developed. The intent is to improve understanding of workplace expectations and requirements by these simplified, standardized policies. The following [Universal State of ND Policies](#) are also contained in the [OMB Human Resource Policy Manual](#) :

[Additional Employment](#)  
[Americans with Disabilities Act \(ADA\)](#)  
[Annual Leave](#)  
[Conflicts of Interest](#)  
[Criminal History Record Information](#)  
[Designated Medical Provider](#)  
[Discipline](#)  
[Driving While Conducting State Business](#)  
[Drug and Alcohol Free Workplace](#)  
[Employment of Relatives Nepotism](#)  
[Equal Employment Opportunities](#)  
[Fair Labor Standards Act](#)  
[Family Medical Leave Act Funeral Leave](#)  
[Honor Guard Leave](#)  
[Modified Duty Return-to-Work](#)  
[Performance Evaluation](#)  
[Service Award Program](#)  
[Sick Leave](#)  
[Smoking and Tobacco Use](#)  
[Social Media](#)  
[Workplace Anti-Harassment](#)  
[Workplace Violence](#)

Not all Universal Policies have been adopted by NDPERS.



**North Dakota  
Public Employees Retirement System**  
400 East Broadway, Suite 505 • Box 1657  
Bismarck, North Dakota 58502-1657

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

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

# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2020

**SUBJECT:** Office Lease

Attached is the proposed lease between NDPERS and WSI for the space in the WSI building into which we hope to move our office early next biennium. You can see the proposed space on the attached diagram.

**BOARD ACTION:** Approve the proposed lease for my signature.



## **PARTIES**

The parties to this lease (Lease) are the state of North Dakota, acting through North Dakota Public Employees Retirement System (STATE), and Workforce Safety & Insurance having its principal place of business at 1600 E Century Ave Ste 1, Bismarck ND 58503 (LANDLORD);

## **SCOPE OF LEASE**

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises situated in the city of Bismarck, county of Burleigh and state of North Dakota:

--lots 1-4 Block 1 Pebble Creek Addition – Century Center, Suite #2 & Storage Room # 147, 1600 East Century Avenue, Bismarck ND, 58503

## **Space Modifications**

LANDLORD will assist STATE with planning agreed upon space modifications, obtaining cost proposal from a general contractor and coordinating with the general contractor insofar as the modifications relate to building systems, structural, mechanical, electrical and security. STATE will be responsible for any modifications that do not directly tie into building systems such as modular furniture.

STATE is liable for all costs related to enhancements and or modifications to suite 2 deemed necessary by STATE.

Modifications planned before 6-30-2021 are contingent on negotiations with current tenant.

## **TERM OF LEASE**

The term of this Lease (Term) is for a period of 24 months, commencing on 1<sup>st</sup> day of July, 2021, and terminating on the 30<sup>th</sup> day of June, 2023. The term of this lease will automatically renew at the end of each lease period for an additional 24 month period with a ninety (90) day notice of intent to renew by the lessee. The rental rate will be negotiated prior to the renewal of each lease period and prior to renewal of the lease. Either party can unilaterally terminate the lease with a ninety (90) day notice prior to the end of any lease period. All other terms and conditions of the lease will remain in effect and in force during the lease period.

## **HOLDING OVER**

If STATE remains in possession of the Premises after this Lease expires or early terminates, and LANDLORD accepts rent from STATE, this Lease shall be deemed renewed on a month-to-month basis with all other terms and conditions of this Lease remaining in effect until otherwise agreed in writing.

## **RENTAL PAYMENTS**

STATE will pay rent for the premises, consisting of 6,003 square feet of office space suite #2, at \$16.00 per square foot per annum, or \$ 96,048 per annum and 199 Square feet of storage space room # 147 , at \$5.00 per square foot per annum, or \$ 995 per annum for a total of \$ 97,043.

Rent Will be paid in advance by the 10<sup>th</sup> day of each month in a monthly amount of \$ 8,086.92, which is 1/12 of the annual amount, commencing on July 1, 2021, and continuing monthly thereafter for the term of the lease. Rent shall be payable at the residence of the LANDLORD,



which is 1600 East Century Avenue Suite #1, Bismarck ND 58506, unless the STATE is notified otherwise in writing by the LANDLORD.

#### **LANDLORD'S OBLIGATIONS**

1. To pay all water, sewer, garbage collection, heating, air conditioning, electric, and all other utility fees (except telephone and data) charged against the Premises.
2. To perform all reasonably required maintenance and repairs for the Premises including HVAC equipment, plumbing and lighting.
3. To perform all reasonable maintenance and repairs requested by STATE which are related to use and habitability of the Premises.
4. To keep the walkways and parking areas of the Building free of accumulations of snow and ice and to cut and care for the grass, shrubbery, plants, and trees on the Building grounds.
5. That if other portions of the Building are leased to other parties, LANDLORD shall not permit any activity to be conducted in other portions of the Building or grounds that will materially interfere with STATE's use and enjoyment of the Premises.
6. That STATE may install items that it deems necessary for its intended use of the Premises. STATE may, at any time, remove from the Premises all fixtures and other equipment owned by STATE; provided the removal is completed before termination of this Lease. STATE agrees to repair any damages that may be done to the Premises resulting from the removal of the items, if any.
7. That STATE may place decorations, wall hangings, signs and directories upon entrance doors, in hallways leading to its premises, or doors and walls within the Premises.
8. To comply at its own expense with all federal, state, county, and city laws and ordinances and all lawful rules, regulations, or orders of any duly constituted authority, present or future, affecting the Premises.
9. To pay all real estate taxes and special assessments on the Premises during the terms of the Lease.
10. To furnish 25 automobile parking stalls for use by STATE, its agents or designees, in the lot provided for use by the building tenants.

#### **STATE'S OBLIGATIONS**

STATE agrees:

1. To pay the rent when due.
2. To pay for its own telephone service and data services.
3. To keep the Premises in reasonable condition the same as at the commencement of the Term or as it may be put by LANDLORD, except for reasonable use and wear, or damage by fire and unavoidable casualty.

4. Not to make any unlawful, improper, or offensive use of the Premises, and to observe all the laws of the State of North Dakota and the ordinances of the city of Bismarck in force from time to time relating to the leased Premises.

5. To permit LANDLORD at all reasonable times to enter and examine the Premises and to make necessary repairs for the protection of the Premises.

6. To surrender the Premises to LANDLORD at the end of the Term; and, in default of the payment of rent due or failure to perform its obligations under this Lease, to surrender the Premises upon demand by LANDLORD.

7. To maintain at its own expense and assume responsibility for (including the responsibility for the loss of for any reason), all office equipment, furniture, and fixtures installed by STATE.

#### **TERMINATION OF LEASE**

STATE has no obligation under this Lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this Lease by providing thirty (30) days' written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the Term of this Lease.

During the Term of this Lease or any renewal or extension, STATE may terminate this Lease by providing thirty (30) days' written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this Lease, or if STATE determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

In the case of any early termination of the Lease as set forth in this section, STATE shall immediately surrender the Premises to LANDLORD.

#### **TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES**

If the leased Premises are destroyed or damaged by fire or the elements to the extent they become untenable, this Lease will terminate immediately, unless LANDLORD, within twenty (20) days of the happening of the event, gives written notice of intention to restore the Building and fully restores the Premises within a reasonable time. During the term between destruction and restoration of the Premises rent will not be due, and if rent has already been paid LANDLORD shall refund to STATE all that portion of the prepaid rent attributable to the time during which STATE was unable to use the Premises for its intended use.

#### **MERGER AND MODIFICATION**

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

#### **SEVERABILITY**



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

**ASSIGNMENT – SALE OF PREMISES**

This Lease must not be assigned or subleased by STATE without LANDLORD's written consent unless to another state entity. This Lease does not terminate if the Premises are sold, but continues throughout the entire Term.

**NOTICE**

All notices or other communications required under this Lease must be given by regular mail, registered mail, certified mail, or e-mail, and are complete on the date mailed or sent when addressed to the parties at the following mailing or e-mail addresses:

STATE	LANDLORD
North Dakota Public Employees Retirement System	Mike Schumacher
	mschumacher@nd.gov
	1600 E Century Ave Ste 1
Bismarck ND 58503	Bismarck ND 58503

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.

**APPLICABLE LAW AND VENUE**

This Lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Lease 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*.

**ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

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

**SPOILIATION – PRESERVATION OF EVIDENCE**

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

**INSURANCE**

LANDLORD's Property Insurance. LANDLORD shall keep the Building insured in an amount

equivalent to the full replacement value thereof (excluding foundation, grading, excavation costs) against: (1) loss or damage by fire; and (2) such other risks as are customarily covered with respect to buildings. LANDLORD agrees that such policy or policies of insurance shall include a waiver of subrogation clause as to STATE.

STATE's Property Insurance. STATE shall keep all of its personal property (including property under the care, custody or control of STATE) and business interests which may be located in, upon or about the Premises insured for the benefit of STATE in commercially reasonable amounts and on such terms and conditions as STATE determines from time to time.

Liability Insurance. Each party shall procure and maintain during the Term such commercial general liability insurance as each deems appropriate but with limits of not less than \$1,000,000 per occurrence. LANDLORD agrees to make STATE additional insured.

Notwithstanding the foregoing, STATE shall have the option to maintain self-insurance having retentions sufficient to satisfy potential liabilities arising hereunder, in full satisfaction of the foregoing insurance requirements.

### **CONFIDENTIALITY**

LANDLORD shall not use or disclose any information it receives from STATE under this Lease that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by STATE. STATE shall not disclose any information it receives from LANDLORD that LANDLORD has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and LANDLORD to maintain confidentiality of information under this section continues beyond the Term of this Lease.

LANDLORD acknowledges that STATE possesses substantial amounts of information at the leased Premises that is confidential pursuant to state law. LANDLORD, if it views, comes into possession of, or otherwise becomes knowledgeable of confidential information located at the leased Premises, shall maintain the confidentiality of that information and shall refrain from re-disclosing that information to any third party. LANDLORD shall require, by contract, any agent it retains to fulfill its obligations otherwise set out in this Lease to similarly maintain the confidentiality of any information it views, comes into possession of or of which otherwise becomes knowledgeable. Those indemnity provisions otherwise set out in the Lease agreement specifically apply to this confidentiality requirement.

### **COMPLIANCE WITH PUBLIC RECORDS LAWS**

LANDLORD understands that, in accordance with this Lease's Confidentiality clause, STATE must disclose to the public upon request any records it receives from LANDLORD. LANDLORD further understands that any records obtained or generated by LANDLORD under this Lease, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. LANDLORD agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

### **STATE AUDIT**

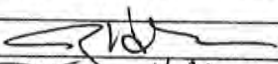
All records, regardless of physical form, and the accounting practices and procedures of LANDLORD relevant to this Lease are subject to examination by the North Dakota State Auditor,

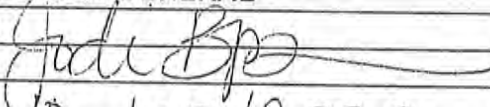


the Auditor's designee, or Federal auditors, if required. LANDLORD shall maintain all of these records for at least three (3) years following completion of this Lease and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to LANDLORD prior to conducting examination.

#### EFFECTIVENESS OF LEASE

This Lease is not binding on STATE until it is reviewed and executed by the Office of Attorney General and approved and executed by the Director of Facility Management Division, OMB, as required in N.D.C.C. § 54-21-24.1.

<b>LANDLORD</b>	<b>STATE OF NORTH DAKOTA</b>
<i>Workforce Safety &amp; Insurance</i>	Acting through ND Public Employees Retirement System
BY: 	BY:
<i>JOHN HALVORSON</i>	
<i>COO</i>	
Date: <i>12/29/2020</i>	Date:

<b>REVIEWED BY</b>	<b>APPROVED BY</b>
<b>ATTORNEY GENERAL</b>	<b>OMB FACILITY MANAGEMENT</b>
BY: 	BY: <i>John Boyle</i>
Date: <i>12/29/2020</i>	Date: 12/29/2020



## **Conflict of Interest**

WSI adheres to the State's universal [Conflict of Interest Policy](#).

**Revised Policy Date: November 2018**

## **Gifts and Gratuities**

Employees should inform anyone doing or desiring to do business with WSI that all gifts of more than a nominal value are prohibited. Employees must adhere to all aspects of Chapter 4-12-04 of N.D. Administrative Code, Ethics in Public Procurement.

If an employee or an employee's family member receives a gift or a benefit of more than nominal value (i.e., \$60), the employee must report it using the on-line form on the Finance Page of the Source.

Employees may accept items received in random drawings when participating in business related conferences or events.

**Revised Policy Date: November 2018**



# Employment Policies for the State of North Dakota

## CONFLICTS OF INTEREST

Effective Date: 10/1/2018

The State of North Dakota, as the employer, must avoid any interest, influence or relationship that might conflict or appears to conflict with the interests of the State, or that might affect one's working judgement. Employees must avoid any situation in which their loyalty may be divided and promptly disclose any situation to their supervisor when an actual or potential conflict may exist. This policy applies to all employees regardless of status.

Conflict of Interest: Conflict between the duties assigned to the employee and the self-interest of the employee or the employee's immediate family. Examples of potential conflict situations include, but are not limited to:

- a. Ownership, a significant financial interest in, or other relationship with a supplier or vendor to the State.
- b. Having a financial interest in any business transaction with the State.
- c. Receipt of gifts of more than a nominal value.

Gifts: Tokens, meals and refreshments, entertainment, or other benefit of more than a nominal value (i.e., \$60).

Immediate family: Any member of the employee's immediate family, including a parent, spouse, child, sibling, grandparent, step- (parent, child, siblings), or in-laws (parent, child, and sibling).

Conflicts of interest will be avoided through open disclosure practices and corrective actions. An employee with a conflict must disclose the conflicting interest and remove themselves from any related negotiations, deliberations, or decisions; however, employees may state their position and respond to questions when their knowledge may be of assistance.

An employee may not accept or give anything of value for official position, opinion, or action or nonperformance of a legal duty or for purposes of attempting to influence any other public official or employee in the exercise of an official action. A "thing of value" does not mean a campaign contribution properly received and reported in accordance with NDCC 16.1-08.1.

Employees may accept meals and refreshments if they are infrequent, of nominal value, and in direct connection with State business.

If an employee receives a gift or a benefit of more than nominal value, the employee must report it promptly to their supervisor. The received item(s) must be then returned, shared or donated to a suitable charity.

Gifts may not be accepted if offered with the intent to directly or indirectly influence or give the impression of such influence.

Any employee who is determined to have violated this policy will be subject to disciplinary action up to and including termination of employment.

References: NDAC 4-12-04-04, NDCC 16.1-08.1, 54-44.4

## **CHAPTER 4-12-04 ETHICS IN PUBLIC PROCUREMENT**

### **Section**

4-12-04-01	Requirement for Good-Faith Actions
4-12-04-02	Emphasis on Competition
4-12-04-03	Handling of Information
4-12-04-04	Conflict of Interest
4-12-04-05	Attempt to Influence Award
4-12-04-06	Collusion of Bidders or Offerors
4-12-04-07	Nondiscrimination in Source Selection
4-12-04-08	Artificial Fragmentation Prohibited

#### **4-12-04-01. Requirement for good-faith actions.**

All parties involved in the solicitation, negotiation, performance, and administration of contracts for the state shall act in good faith.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-04-02. Emphasis on competition.**

Solicitations for bids or proposals will be issued in sufficient time and in a form that will permit the highest practicable degree of full and free competition.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 54-44.4-01, 54-44.4-04

#### **4-12-04-03. Handling of information.**

1. No state employee or official will furnish information to a prospective bidder or offeror if, alone or together with other information, it might give the prospective bidder or offeror an unfair advantage.
2. Each state employee or official will handle confidential or proprietary information belonging to the state, a vendor, or a contractor with due care and compliance with state procurement laws and open records laws.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-04-04. Conflict of interest.**

1. Each state employee or official directly or indirectly involved in procurement activities for the state will exercise caution in professional and personal activities to prevent a conflict of interest, or the appearance of conflict, regarding any vendor or contractor.
2. An employee or official shall not participate directly or indirectly in a procurement when the employee or official knows that:
  - a. The employee or any member of the employee's immediate family, including a parent, spouse, child, sibling, grandparent, step- (parent, child, siblings), or in-laws (parent, child, and sibling), has a financial interest pertaining to the procurement;

- b. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - c. Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.
3. Upon discovery of an actual or potential conflict of interest, an employee or official shall promptly file a written statement of disqualification and withdraw from further participation in the transaction involved. The head of the state agency or institution, in consultation with the attorney general, shall make a written determination as to what further participation, if any, the employee may have in the procurement.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 12.1-13-02, 12.1-13-03, 48-02-12, 54-44.4-01, 54-44.4-04

#### **4-12-04-05. Attempt to influence award.**

1. Any vendor or contractor is prohibited from giving or offering to give, and any employee and official of the office of management and budget or a purchasing agency involved in any aspect of the procurement process is prohibited from soliciting, accepting, or agreeing to accept money, loans, credits, or prejudicial discounts, subscriptions, offer of employment, gifts, entertainment, favors, or services that might influence, or appear to influence, procurement decisions.
2. Items of nominal value may be offered by a vendor or contractor as a gesture of good will or for public relations purposes and may be accepted.
3. A vendor, contractor, agent, consultant, subcontractor, employee, lobbyist, or any state employee or official may not attempt to influence a procurement decision.
4. A state employee or official involved in any aspect of the procurement process shall report to the state procurement manager any person or business entity that attempts to influence an award or makes or offers to make a gift prohibited by this section. All bids or proposals submitted by the person or business entity will be rejected and the person or business entity will be barred from further bidding for a period of time determined by the state procurement manager. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 12.1-12, 54-44.4-04

**Law Implemented:** NDCC 12.1-12-01, 12.1-12-03, 54-44.4-01, 54-44.4-04, 54-44.4-10

#### **4-12-04-06. Collusion of bidders or offerors.**

A state employee or official involved in any aspect of the procurement process must promptly report to the state procurement manager any case of suspected collusion or suspicious bidding pattern indicating anticompetitive trade practices between actual or prospective bidders or offerors. The procurement action must be suspended. The state procurement manager will notify the attorney general of any violation of this section for any action as the attorney general may deem appropriate.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-04-07. Nondiscrimination in source selection.**

Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04

#### **4-12-04-08. Artificial fragmentation prohibited.**

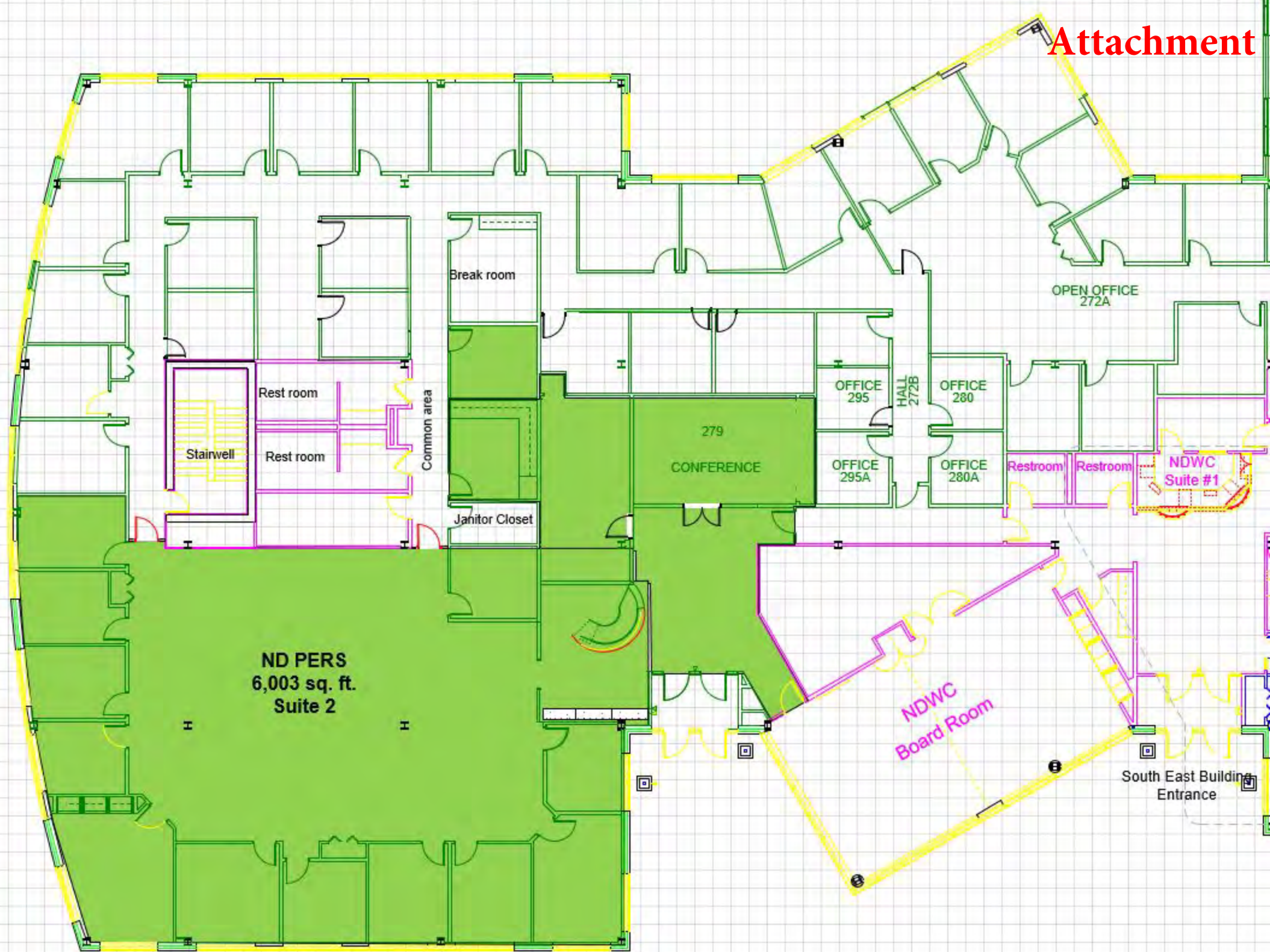
Requirements may not be artificially divided to avoid requirements for obtaining competition. Fragmentation of current requirements for commodities and services must be based upon actual need by the purchasing agency.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-04, 54-44.4-11







**North Dakota  
Public Employees Retirement System**  
400 East Broadway, Suite 505 • Box 1657  
Bismarck, North Dakota 58502-1657

**Scott A. Miller**  
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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** Legislation

**The numbers assigned to the PERS-proposed bills are as follows:**

HB 1023 – Appropriation bill

HB 1041 – Penalty for violating PERS statutory processes (PERS)

HB 1042 – would remove the NDPERS Part D plan from the HB 1374 transparency requirements (PERS)

SB 2042 – 5.12% employer contribution increase (PERS)

SB 2043 – 2% and 2% employer contribution increase to the Highway Patrol plan (PERS/HP)

SB 2044 – Technical corrections (PERS)

SB 2045 – Deferred compensation plan administrative expense assessment (PERS)

SB 2046 – 1% employer and 1% employee contribution increases (PERS)

**Bills filed by others that affect PERS plans in some way are as follows:**

HB 1029 – Technical correction to requirements for a self-insurance health plan from Legislative Management

B – Telehealth Coverage – requires a health insurance plan to cover telehealth visits similarly to how they cover in-person visits (Sen. Lee)

B – Actuarially Determined Contribution Rate requirement – gives the Board the authority to set the employer contribution rate; requires the Board to create a stabilization fund if assets and valuation reach a certain amount (Rep. M. Ruby)

B - To require NDPERS to transition to a fiscal year benefit plan year for the group insurance program – **withdrawn** (Rep. Vetter)

B - Add fertility benefits to our group health insurance plan (Rep. Brandenburg)

B - Add vitamin D testing to our group health insurance plan (Rep. Rohr)

B – Restrict prescription drug prices within ND to those prices available in Canada, and provide a penalty against sellers who violate those restrictions or withdraw from the ND market as a result

Since it is still so early in the session, I expect other bills will surface before the Board meeting. I will advise you of those bills during the meeting.

**Board Action:** Provide guidance regarding the Board's position on non-PERS bills.

21.0170.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1029

Introduced by

Legislative Management

(Employee Benefits Programs Committee)

1 A BILL for an Act to amend and reenact section 54-52.1-04.2 of the North Dakota Century  
2 Code, relating to public employee uniform group insurance for health benefits; to provide for  
3 application; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **54-52.1-04.2. Self-insurance health plan.**

8 1. This section applies to a self-insurance health plan for:

- 9 a. Health insurance and prescription drug benefits coverage;  
10 b. Health insurance benefits coverage, excluding all or part of prescription drug  
11 benefits coverage; or  
12 c. All or part of prescription drug benefits coverage.

13 2. Except for prescription drug coverage under subdivision c of subsection 1, a  
14 self-insurance health plan established by the board under this section must be  
15 provided under an administrative services only (ASO) contract or a third-party  
16 administrator (TPA) contract under the uniform group insurance program. The board  
17 may not establish a self-insurance health plan unless the board determines the self-  
18 insurance health plan best serves the interests of the state and the state's eligible  
19 employees. ~~Except for prescription drug coverage under subdivision c of subsection 1,~~  
20 ~~if~~if the board determines it is in the best interest of the plan, individual stop-loss  
21 coverage insured by a carrier authorized to do business in this state may be made part  
22 of a self-insurance health plan.

23 **SECTION 2. APPLICATION.** This Act applies to self-insurance health plans effective on or  
24 after the effective date of this Act.



Sixty-seventh  
Legislative Assembly  
of North Dakota

**BILL NO.**

Introduced by

Senator Lee

1 A BILL for an Act to amend and reenact section 26.1-36-09.15 of the North Dakota Century  
2 Code, relating to health insurance coverage of telehealth; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 26.1-36-09.15 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **26.1-36-09.15. Coverage of telehealth services.**

7 1. As used in this section:

8 a. "Distant site" means a site at which a health care provider or health care facility is  
9 located while providing medical services by means of telehealth.

10 b. "Health care facility" means any office or institution at which health services are  
11 provided. The term includes hospitals; clinics; ambulatory surgery centers;  
12 outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted,  
13 living, and residential facilities; group homes; laboratories; and offices of any  
14 health care provider.

15 c. "Health care provider" includes an individual licensed under chapter 43-05,  
16 43-06, 43-12.1 as a registered nurse or as an advanced practice registered  
17 nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42,  
18 43-44, 43-45, 43-47, 43-58, or 43-60.

19 d. "Originating site" means a site at which a patient is located at the time health  
20 services are provided to the patient by means of telehealth.

21 e. "Policy" means an accident and health insurance policy, contract, or evidence of  
22 coverage on a group, individual, blanket, franchise, or association basis.

23 f. "Store-and-forward technology" means electronic information, imaging, and  
24 communication that is transferred, recorded, or otherwise stored in order to be



1 reviewed at a distant site at a later date by a health care provider or health care  
2 facility without the patient present in real time. The term includes ~~telehome~~remote  
3 patient monitoring and interactive audio, video, and data communication.

4 g. "Telehealth":

5 (1) Means the use of interactive audio, video, or other telecommunications  
6 technology that is used by a health care provider or health care facility at a  
7 distant site to deliver health services at an originating site and that is  
8 delivered over a secure connection that complies with the requirements of  
9 state and federal laws.

10 (2) Includes the use of electronic media for consultation relating to the health  
11 care diagnosis or treatment of a patient in real time or through the use of  
12 store-and-forward technology.

13 (3) Includes audio-only telephone if no other means of communications  
14 technology are available to the patient, including lack of adequate  
15 broadband access, or that other means of communications technology  
16 being infeasible, impractical, or otherwise not medically advisable, as  
17 determined by the health care provider or health care facility providing  
18 telehealth services to the patient or as determined by another health care  
19 provider or health care facility with an existing relationship with the patient.

20 (4) Does not include the use of ~~audio-only telephone~~, electronic mail, or  
21 facsimile transmissions.

22 2. An insurer may not deliver, issue, execute, or renew a policy that provides health  
23 benefits coverage unless that policy provides coverage for health services delivered  
24 by means of telehealth which is the same as the coverage for health services  
25 delivered by in-person means.

26 3. Payment or reimbursement of expenses for covered health services delivered by  
27 means of telehealth under this section may not be ~~established through negotiations~~  
28 ~~conducted by the insurer with the health services providers in the same manner as the~~  
29 ~~insurer with the health services providers in the same manner as the insurer~~  
30 ~~establishes payment or~~less than reimbursement of expenses for covered health  
31 services ~~that are~~ delivered by in-person means.

- 1       4. Coverage under this section may be subject to deductible, coinsurance, and  
2       copayment provisions. However, any coinsurance or copayment applicable to covered  
3       health services delivered by means of telehealth must be equivalent to the  
4       coinsurance or copayment applicable to such covered health services if delivered by  
5       in-person means and coverage may not provide for application of a deductible to  
6       covered health services delivered by means of telehealth which accumulates  
7       separately from the deductible that applies in the aggregate to all items and services  
8       covered.
- 9       5. This section does not require:
  - 10      a. A policy to provide coverage for health services that are not medically necessary,  
11      subject to the terms and conditions of the policy;
  - 12      b. A policy to provide coverage for health services delivered by means of telehealth  
13      if the policy would not provide coverage for the health services if delivered by  
14      in-person means;
  - 15      c. A policy to reimburse a health care provider or health care facility for expenses  
16      for health services delivered by means of telehealth if the policy would not  
17      reimburse that health care provider or health care facility if the health services  
18      had been delivered by in-person means; or
  - 19      d. A health care provider to be physically present with a patient at the originating  
20      site unless the health care provider who is delivering health services by means of  
21      telehealth determines the presence of a health care provider is necessary.
- 22      6. An insurer may not impose any type of utilization management on health services  
23      delivered by means of telehealth unless that type of utilization management is  
24      imposed if the health services had been delivered by in-person means.
- 25      7. An insurer may not require an in-person consultation or contact with a health care  
26      provider or a health care facility before a patient may receive health services delivered  
27      by means of telehealth.

28      **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Sixty-seventh  
Legislative Assembly  
of North Dakota

**BILL NO.**

Introduced by

Representative M. Ruby

1 A BILL for an Act to amend and reenact section 54-52-02.9, 54-52-06, 54-52-06.5, and  
2 54-52.6-09 of the North Dakota Century Code, relating to public employees retirement system  
3 employer and temporary employee contribution rates; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **54-52-02.9. Participation by temporary employees.**

8 1. Within one hundred eighty days of beginning employment, a temporary employee may  
9 elect to participate in the public employees retirement system and receive credit for  
10 service after enrollment. Monthly, the temporary employee shall pay to the fund an  
11 amount equal to ~~eight and twelve hundredths~~ four percent times the temporary  
12 employee's present monthly salary. ~~The amount required to be paid by a temporary~~  
13 ~~employee increases by two percent times the temporary employee's present monthly~~  
14 ~~salary beginning with the monthly reporting period of January 2012, and with an~~  
15 ~~additional two percent increase, beginning with the reporting period of January 2013,~~  
16 ~~and with an additional increase of two percent, beginning with the monthly reporting~~  
17 ~~period of January 2014~~ plus the amount of the employer contribution under  
18 subdivision a of subsection 1 of section 54-52-06.

19 2. If the temporary employee first enrolled:

20 a. Before January 1, 2020, in addition the temporary employee shall pay the  
21 required monthly contribution to the retiree health benefit fund established under  
22 section 54-52.1-03.2. This contribution must be recorded as a member  
23 contribution pursuant to section 54-52.1-03.2.

b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.

3. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 2. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan - Report to the legislative assembly.**

1. Each

a. As determined by actuarial valuations, each governmental unit shall contribute an amount equal to four and twelve hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014 on a level percent of compensation basis for all employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over a closed period of either twenty years, or a period less than twenty years as established by the board taking into account the recommendation of the plan's actuary.

b. For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.
4. The board shall report to each session of the legislative assembly the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

**SECTION 3. AMENDMENT.** Section 54-52-06.5 of the North Dakota Century Code is amended and reenacted as follows:



**54-52-06.5. Reduction in member and employer contributions - Stabilization reserve  
account.**

1. The required increase in the amount of member and employer contributions under sections 54-52-02.9, 54-52-05, 54-52-06, 54-52-06.1, 54-52-06.3, 54-52.6-02, and 54-52.6-09 and in the amount of employer contributions under section 54-52-06.1 must be reduced to the rate in effect on July 1, 2013, effective on the July first that follows the first valuation of the public employees retirement system main system showing a ratio of the actuarial value of assets to the actuarial accrued liability of the public employees retirement system main system that is equal to or greater than one hundred percent.

2. Under subdivision a of subsection 1 of section 54-52-06:

a. During the fiscal year an employer's contribution to the plan in combination with a member's contribution may not be less than the actuarially determined normal cost for that fiscal year. After the close of any fiscal year, if the plan's actuary determines the actuarial valuation of the fund contains excess valuation assets and is more than one hundred twenty percent funded, the board shall account for fifty percent of the excess valuation assets in a stabilization reserve account. After the close of a fiscal year, if the plan's actuary determines the actuarial valuation of the fund has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account, to the extent available, to limit the decline in the fund's funding ratio to not more than two percent.

b. The board may not suspend contributions to the system unless:

- (1) The retirement system actuary, based on the annual valuation, determines continuing to accrue excess earnings could result in disqualification of the system's tax-exempt status under the provisions of the Internal Revenue Code; and
- (2) The board determines the receipt of additional contributions required under this subsection would conflict with the board's fiduciary responsibility.

**SECTION 4. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

a. The employer shall contribute an amount equal to ~~four and twelve-hundredths~~ percent of the monthly salary or wage of a participating member. ~~Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014~~ the employer contribution rate under subdivision a of subsection 1 of section 54-52-06.

b. For members first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution.

c. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be

1                   assessed for each month the contributions are delinquent. If contributions are  
2                   paid within ninety days of the date the contributions became due, penalty and  
3                   interest to be paid on delinquent contributions may be waived.

4       3. Each employer, at its option, may pay the employee contributions required by this  
5       section for all compensation earned after December 31, 1999. The amount paid must  
6       be paid by the employer in lieu of contributions by the employee. If the employer  
7       decides not to pay the contributions, the amount that would have been paid will  
8       continue to be deducted from the employee's compensation. If contributions are paid  
9       by the employer, they must be treated as employer contributions in determining tax  
10      treatment under this code and the federal Internal Revenue Code. Contributions paid  
11      by the employer may not be included as gross income of the employee in determining  
12      tax treatment under this code and the federal Internal Revenue Code until they are  
13      distributed or made available. The employer shall pay these employee contributions  
14      from the same source of funds used in paying compensation to the employee. The  
15      employer shall pay these contributions by effecting an equal cash reduction in the  
16      gross salary of the employee or by an offset against future salary increases or by a  
17      combination of a reduction in gross salary and offset against future salary increases.  
18      Employee contributions paid by the employer must be treated for the purposes of this  
19      chapter in the same manner and to the same extent as employee contributions made  
20      before the date on which employee contributions were assumed by the employer. An  
21      employer shall exercise its option under this subsection by reporting its choice to the  
22      board in writing.

23      **SECTION 5. EFFECTIVE DATE.** This Act becomes effective January 1, 2022.

Sixty-seventh  
Legislative Assembly  
of North Dakota

**BILL NO.**

Introduced by

Representative Vetter

1 A BILL for an Act to provide for a public employee uniform group insurance program plan year.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. UNIFORM GROUP INSURANCE PROGRAM - PLAN YEAR.** During the  
4 2021-23 biennium, the public employees retirement system board shall transition from a  
5 calendar year plan year to a fiscal year plan year for uniform group insurance plans.

21.0447.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

## BILL NO.

Introduced by

Representative Brandenburg

1 A BILL for an Act to create and enact section 54-52.1-04.19 of the North Dakota Century Code,  
2 relating to public employee fertility health benefits; to amend and reenact section 26.1-36.6-03  
3 of the North Dakota Century Code, relating to self-insurance health plans; to provide for a  
4 report; to provide for application; to provide an expiration date; and to declare an emergency.

### 5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 26.1-36.6-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

#### 8 **26.1-36.6-03. Self-insurance health plans - Requirements.**

- 9 1. The following policy provisions apply to a self-insurance health plan or to the  
10 administrative services only or third-party administrator, and are subject to the  
11 jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10,  
12 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17,  
13 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39,  
14 26.1-36-41, 26.1-36-44, and 26.1-36-46.
- 15 2. The following health benefit provisions applicable to a group accident and health  
16 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are  
17 subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07,  
18 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3,  
19 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10,  
20 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15,  
21 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and  
22 26.1-36-43. Section 2 of this Act applies to a self-insurance health plan and is subject  
23 to the jurisdiction of the commissioner.



21.0475.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

## BILL NO.

Introduced by

Representative Rohr

1 A BILL for an Act to create and enact a new section to chapter 43-15 and section 54-52.1-04.18  
2 of the North Dakota Century Code, relating to vitamin D screening and testing; to amend and  
3 reenact section 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance  
4 health plans; to provide for a report; to provide for application; to provide an expiration date; and  
5 to declare an emergency.

## 6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 26.1-36.6-03 of the North Dakota Century Code is  
8 amended and reenacted as follows:

### 9 **26.1-36.6-03. Self-insurance health plans - Requirements.**

- 10 1. The following policy provisions apply to a self-insurance health plan or to the  
11 administrative services only or third-party administrator, and are subject to the  
12 jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10,  
13 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17,  
14 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39,  
15 26.1-36-41, 26.1-36-44, and 26.1-36-46.
- 16 2. The following health benefit provisions applicable to a group accident and health  
17 insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are  
18 subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07,  
19 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3,  
20 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10,  
21 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15,  
22 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and  
23 26.1-36-43. Section 3 of this Act applies to a self-insurance health plan and is subject  
24 to the jurisdiction of the commissioner.

1       **SECTION 2.** A new section to chapter 43-15 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Vitamin D screening and testing.**

4       A pharmacist may screen and test for vitamin D deficiency.

5       **SECTION 3.** Section 54-52.1-04.18 of the North Dakota Century Code is created and  
6 enacted as follows:

7       **54-52.1-04.18. Coverage of vitamin D screening and testing.**

8       The board shall provide medical benefits coverage under a contract for insurance, health  
9 maintenance organization, or self-insurance plan for vitamin D deficiency screening and testing,  
10 as deemed necessary by the pharmacist or health care provider.

11       **SECTION 4. APPLICATION.** This Act applies to medical benefits coverage that begins after  
12 June 30, 2021, and which does not extend past June 30, 2023.

13       **SECTION 5. PUBLIC EMPLOYEES RETIREMENT SYSTEM - VITAMIN D SCREENING -**  
14 **REPORT.** Pursuant to section 54-03-28, the public employees retirement system shall prepare  
15 and submit for introduction a bill to the sixty-eighth legislative assembly to repeal the expiration  
16 date for sections 1 and 3 of this Act and to extend the coverage of vitamin D testing and  
17 screening to all group and individual health insurance policies. The public employees retirement  
18 system shall append a report to the bill regarding the effect of the testing and screening  
19 requirement on the system's health insurance programs, information on the utilization and costs  
20 relating to the coverage, and a recommendation regarding whether the coverage should be  
21 continued.

22       **SECTION 6. EXPIRATION DATE.** Sections 1 and 3 of this Act are effective through July 31,  
23 2023, and after that date are ineffective.

24       **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

1       **SECTION 2.** Section 54-52.1-04.19 of the North Dakota Century Code is created and  
2 enacted as follows:

3       **54-52.1-04.19. Health insurance benefits coverage - Fertility health care.**

4       1. As used in this section:

- 5       a. "Diagnosis of infertility" means the services, procedures, testing, or medications  
6 recommended by a licensed physician which are consistent with established,  
7 published, or approved best practices or professional standards or guidelines,  
8 such as the American society of reproductive medicine, the American college of  
9 obstetricians and gynecologists, or the American society of clinical oncology for  
10 diagnosing and treating infertility.
- 11       b. "Fertility treatment" means health care services, procedures, testing,  
12 medications, monitoring, treatments, or products, including genetic testing,  
13 provided with the intent to achieve a pregnancy that results in a live birth with  
14 healthy outcomes.
- 15       c. "Infertility" means a disease or condition characterized by:  
16       (1) The failure to conceive a pregnancy or to carry a pregnancy to live birth  
17 after unprotected sexual intercourse;  
18       (2) An individual's inability to cause pregnancy and live birth either as a covered  
19 individual or with the covered individual's partner; or  
20       (3) A licensed health care provider's findings and statement based on a  
21 patient's medical, sexual, and reproductive history, age, physical findings, or  
22 diagnostic testing.
- 23       d. "Medically necessary" means health care services or products provided in a  
24 manner:  
25       (1) Consistent with the findings and recommendations of a licensed physician,  
26 based on a patient's medical history, sexual, and reproductive history, age,  
27 partner, physical findings, or diagnostic testing;  
28       (2) Consistent with generally accepted standards of medical practice as set  
29 forth by a professional medical organization with a specialization in any  
30 aspect of reproductive health, such as the American society for reproductive  
31 medicine or the American college of obstetricians and gynecologists; or

(3) Clinically appropriate in terms of type, frequency, extent, site, and duration.

e. "Monitoring" includes, ultrasounds, transvaginal ultrasounds, laboratory testing, and follow-up appointments.

e. "Standard fertility preservation services" means services, procedures, testing, medications, treatments, cryopreservation of eggs, sperm, embryos, and products consistent with established best medical practices or professional guidelines such as those published by the American society for reproductive medicine or the American society of clinical oncology for an individual who has a medical condition or is expected to undergo medication therapy, surgery, radiation, chemotherapy, or other medical treatment recognized by medical professionals to result in, or increase the risk of, impaired fertility.

f. "Third-party reproductive care for the benefit of the covered individual" means the use of eggs, sperm, or embryos donated to the covered individual or partner by a donor, or the use of a gestational carrier, to achieve a live birth with healthy outcomes.

2. The board shall provide coverage for the expenses of the diagnosis of infertility, fertility treatment, and standard fertility preservation services if recommended and medically necessary.

a. Coverage must include:

(1) Three completed cycles of intrauterine insemination, in accordance with best practices, such as the standards and guidelines of the American society of reproductive medicine.

(2) Fertility treatment and standard fertility preservation services, necessary to achieve two live births, or a maximum of four completed oocyte retrievals with unlimited fresh and frozen embryo transfers, in accordance with best practices, such as the guidelines of the American society for reproductive medicine, and using no more than two embryos per transfer.

(3) Diagnosis of infertility, fertility treatment, and standard fertility preservation services, including third-party reproductive care for the benefit of the covered individual or partner.

1           (4) Fertility treatment, consisting of a method of causing pregnancy other than  
2           sexual intercourse which is provided with the intent to create a legal parent-  
3           child relationship between the covered individual and the resulting child in  
4           accordance with chapter 14-20.

5           (5) Standard fertility preservation services, including the procurement,  
6           cryopreservation, and storage of gametes, embryos, or other reproductive  
7           tissue, and standard fertility preservation services if the covered individual  
8           has a diagnosed medical condition or genetic condition that may cause  
9           impairment of fertility affecting reproductive organs or processes. As used in  
10          this paragraph, "may cause" means the disease itself, or the necessary  
11          treatment, has a likely side effect of infertility as established by best  
12          practices, such as the American society for reproductive medicine, the  
13          American college of obstetricians and gynecologists, or the American  
14          society of clinical oncology.

15          (6) Medical and laboratory services that reduce excess embryo creation  
16          through egg cryopreservation and thawing in accordance with a covered  
17          individual's religious or ethical beliefs.

18          b. This section may not be construed to deny the included coverage in this section  
19          to an individual who forgoes a particular fertility treatment or standard fertility  
20          preservation service if the individual's physician determines the fertility treatment  
21          or standard fertility preservation service is likely to be unsuccessful.

22          3. To be covered under this section, the diagnosis of infertility, fertility treatment, and  
23          standard fertility preservation services must be performed at a facility that conforms to  
24          best practices, such as the standards and guidelines developed by the American  
25          society of reproductive medicine, the American college of obstetricians and  
26          gynecologists, or the American society of clinical oncology.

27          4. Coverage under this section must be made available to all covered individuals,  
28          including covered individuals who have entered coverage during special enrollment or  
29          open enrollment.

30          5. Coverage under this section must be in accordance with best practices, such as the  
31          standards or guidelines developed by the American society of reproductive medicine,



1 the American college of obstetricians and gynecologists, or the American society of  
2 clinical oncology. If a carrier makes, issues, circulates, or causes to be made, issued,  
3 or circulated, clinical guidelines based upon data not reasonably current or do not cite  
4 with specificity, this act constitutes unfair or deceptive acts or practices in the business  
5 of insurance as prohibited by chapter 26.1-04.

6 6. Benefits under this section may not be limited based on:

- 7 a. A copayment, deductible, coinsurance, benefit maximum, waiting period, or other  
8 limitation on coverage different from maternity benefits provided under the health  
9 benefits;  
10 b. An exclusion, limitation, or other restriction on coverage of fertility medication  
11 different from restrictions imposed on any other prescription medication;  
12 c. A requirement that provides different benefits to, or imposes different  
13 requirements on, a class protected under chapter 14-02.4 than that provided to or  
14 required of other covered individuals; or  
15 d. A pre-existing condition exclusion, pre-existing condition waiting period on  
16 coverage for required benefits, or a prior diagnosis of infertility, fertility treatment,  
17 or standard fertility preservation services.

18 **SECTION 3. APPLICATION.** This Act applies to health benefits coverage that begins after  
19 June 30, 2021, and which does not extend past June 30, 2023.

20 **SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - FERTILITY HEALTH**  
21 **BENEFITS.** Pursuant to section 54-03-28, the public employees retirement system shall  
22 prepare and submit for introduction a bill to the sixty-eighth legislative assembly to repeal the  
23 expiration date for this Act and to extend the coverage of fertility benefits to all group and  
24 individual health insurance policies. The public employees retirement system shall append a  
25 report to the bill regarding the effect of the fertility health benefits requirement on the system's  
26 health insurance programs, information on the utilization and costs relating to the coverage, and  
27 a recommendation regarding whether the coverage should be continued.

28 **SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that  
29 date is ineffective.

30 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

1        **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

21.0611.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

## BILL NO.

Introduced by

Senator Anderson

1 A BILL for an Act to create and enact chapter 19-03.7 of the North Dakota Century Code,  
2 relating to prescription drug costs; and to provide a penalty.

### 3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 **SECTION 1.** Chapter 19-03.7 of the North Dakota Century Code is created and enacted as  
5 follows:

#### 6 **19-03.7-01. Definitions.**

7 As used in this chapter:

- 8 1. "Employee Retirement Income Security Act plan" means a plan qualified under the  
9 federal Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002 et seq.].
- 10 2. "Health plan" has the same meaning as accident and health insurance policy under  
11 section 26.1-36-02.
- 12 3. "Participating Employee Retirement Income Security Act plan" means an Employee  
13 Retirement Income Security Act plan that has elected to participate in the  
14 requirements and restrictions of this chapter as described in section 19-03.7-03.
- 15 4. "Prescription drug" has the same meaning as stated in section 43-15.1-01.
- 16 5. "Referenced drugs" means prescription drugs subject to a referenced rate.
- 17 6. "Referenced rate" means the maximum rate established by the insurance  
18 commissioner utilizing the wholesale acquisition cost and other pricing data described  
19 in section 19-03.7-04.
- 20 7. "State entity" means any agency of state government that purchases prescription  
21 drugs on behalf of the state for an individual whose health care is paid for by the state,  
22 including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of  
23 the state. The term does not include the medical assistance program established  
24 under 42 U.S.C. section 1396 et seq.

8. "Wholesale acquisition cost" has the meaning stated in 42 U.S.C. section 1395w-3a.

**19-03.7-02. Payment in excess of referenced rate prohibited.**

1. It is a violation of this chapter for a state entity, health plan, or participating Employee Retirement Income Security Act plan to purchase referenced drugs to be dispensed or delivered to a consumer in the state, whether directly or through a distributor, for a cost higher than the referenced rate as determined in section 19-03.7-04.

2. It is a violation of this chapter for a retail pharmacy licensed in this state to purchase for sale or distribution referenced drugs for a cost that exceeds the referenced rate to an individual whose health care is provided by a state entity, health plan, or participating Employee Retirement Income Security Act plan.

**19-03.7-03. Employee Retirement Income Security Act plan opt-in.**

An Employee Retirement Income Security Act plan may elect to participate in the provisions of this chapter. Any Employee Retirement Income Security Act plan that desires its purchase of prescription drugs to be subject to the prohibition described in section 19-03.7-02 shall notify the insurance commissioner in writing by October first of each year.

**19-03.7-04. Referenced drugs determined.**

1. As of October first of each year, the public employees retirement system shall transmit to the insurance commissioner a list of the two hundred fifty most costly prescription drugs based upon net price times utilization. For each of these prescription drugs, the public employees retirement system also shall provide the total net spend on each of those prescription drugs for the previous calendar year.

2. Utilizing the information described in subsection 1, as of January first of each year, the insurance commissioner shall create and publish a list of two hundred fifty referenced drugs subject to the referenced rate.

3. The insurance commissioner shall determine the referenced rate by comparing the wholesale acquisition cost to reference costs such as the cost from the Ontario ministry of health and long-term care and most recently published on the Ontario Drug Benefit Formulary; régime de l'assurance maladie du Québec and most recently published on the Quebec Public Drug Programs List of Medications; British Columbia ministry of health and most recently published on the BC PharmaCare Formulary; and Alberta ministry of health and most recently published on the Alberta Drug Benefit List.

1       4.   The referenced rate for each prescription drug must be calculated as the lowest cost  
2       among those resources and the wholesale acquisition cost. If a specific referenced  
3       drug is not included within resources described in subsection 3, the insurance  
4       commissioner shall utilize as a reference for the purpose of determining the  
5       referenced rate a reference such as, the ceiling price for drugs as reported by the  
6       government of Canada patented medicine prices review board.

7       5.   The insurance commissioner shall calculate annually the savings expected to be  
8       achieved by subjecting prescription drugs to the referenced rate. In making this  
9       determination the commissioner shall consult with the public employees retirement  
10      system and the state board of pharmacy.

11      6.   The insurance commissioner may adopt rules to implement fully the requirements of  
12      this chapter.

13      **19-03.7-05. Registered agent and office within the state.**

14      An entity that sells, distributes, delivers, or offers for sale any prescription drug in the state  
15      must be a registered agent and maintain an office within the state.

16      **19-03.7-06. Use of savings.**

17      1.   Any savings generated as a result of the requirements in section 19-03.7-02 must be  
18      used to reduce costs to consumers. A state entity, health plan, or participating  
19      Employee Retirement Income Security Act plan shall calculate the savings and utilize  
20      the savings directly to reduce costs for its members.

21      2.   No later than April first of each year, each state entity, health plan, and participating  
22      Employee Retirement Income Security Act plan subject to this chapter shall submit a  
23      report to the insurance commissioner describing the savings achieved for each  
24      referenced drug for the previous calendar year and how those savings were used to  
25      achieve the requirements of subsection 1.

26      **19-03.7-07. Enforcement - Penalty.**

27      Each violation of this chapter is subject to a fine of one thousand dollars. Every individual  
28      transaction in violation of section 19-03.7-02 is determined to be a separate violation. The  
29      attorney general may enforce this chapter on behalf of any state entity or consumers of  
30      prescription drugs. The refusal of a manufacturer or distributor to negotiate in good faith as



described in subsection 4 of section 19-03.7-08 is a valid affirmative defense in any enforcement action brought under this chapter.

**19-03.7-08. Prohibition on withdrawal of referenced drugs for sale.**

1. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to withdraw the referenced drug from sale or distribution within this state for the purpose of avoiding the impact of the rate limitations set forth in section 19-03.7-02.
2. A manufacturer that intends to withdraw a referenced drug from sale or distribution from within the state shall provide a notice of withdrawal in writing to the insurance commissioner and to the attorney general at least one hundred eighty days before the withdrawal.
3. The insurance commissioner shall assess a penalty on a manufacturer or distributor that the insurance commissioner determines has withdrawn a referenced drug from distribution or sale in the state in violation of subsection 1 or 2. With respect to each referenced drug for which the insurance commissioner has determined the manufacturer or distributor has withdrawn from the market, the penalty must be equal to five hundred thousand dollars or the amount of annual savings determined by the insurance commissioner as described in subsection 5 of section 19-03.7-04, whichever is greater.
4. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to refuse to negotiate in good faith with a payor or seller of prescription drugs a price that is within the referenced rate as determined in section 19-03.7-04.
5. The insurance commissioner shall assess a penalty on a manufacturer or distributor the insurance commissioner determines has failed to negotiate in good faith in violation of subsection 4. With respect to each referenced drug for which the insurance commissioner has determined the manufacturer or distributor has failed to negotiate in good faith, the penalty must be equal to five hundred thousand dollars or the amount of annual savings determined by the insurance commissioner as described in subsection 4 of section 19-03.7-04, whichever is greater.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** Additional Legislation

As predicted, there have been several more bills pop up since we sent out the Board book. They include:

SB 2130 – modifications to the statute requiring health insurance mandates to first apply to NDPERS, I believe to make it more strict (Senators Lee, Anderson, Dever; Representatives Keiser, Meier, Weisz)

Legacy Fund Contribution – provides for the biennial transfer of 5% of available Legacy Fund earnings to the PERS trust. We are working out how much that might be, and the effect on the funding status. (Rep. Lefor)

Employee and Employer Contribution Increase plus \$24 million – increase both the employee and the employer contribution by 1% each, and deposit an extra \$24 million into the PERS trust. (Rep. Lefor)

Group Insurance Plan Decision-making – as with the bill considered over the interim, this would remove the decision-making from the Board and give it to a Legislative Committee, this time the Budget Section. (Rep. Kasper)

Line of Duty Death Health Insurance – requires the employer of an officer killed in the line of duty to continue paying for the health insurance for any surviving family (Rep. Ista)

In addition to the drug price limitation bill Senator Anderson previously submitted for Employee Benefits Programs Committee consideration (which is the last bill on the original Legislation memo), Senator Anderson is considering submitting three additional bills:

- 1) To create a wholesale prescription drug importation program;
- 2) To limit the price for prescription drugs to a price determined by looking at Canadian prices; and
- 3) To create a second wholesale prescription drug importation program.

21.0058.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

SENATE BILL NO. 2130

Introduced by

Senators Lee, Anderson, Dever

Representatives Keiser, Meier, Weisz

1 A BILL for an Act to amend and reenact section 54-03-28 of the North Dakota Century Code,  
2 relating to a cost-benefit analysis for mandated health insurance coverage measures.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-03-28 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **54-03-28. Health insurance mandated coverage of services - Cost-benefit analysis**  
7 **requirement.**

8 1. ~~Alf the legislative management determines a legislative measure mandating mandates~~  
9 ~~health insurance coverage of services or payment for specified providers of services,~~  
10 ~~the measure may not be acted on by any committee of the legislative assembly unless~~  
11 ~~the measure is accompanied by a cost-benefit analysis provided by the legislative~~  
12 ~~council;referred to a committee of the legislative assembly unless a cost-benefit~~  
13 ~~analysis provided by the legislative management is appended to that measure.~~

14 a. ~~If a committee of the legislative assembly determines a measure mandating~~  
15 ~~health insurance coverage of services or payment of specified providers was~~  
16 ~~referred to committee without a cost-benefit analysis, the committee shall request~~  
17 ~~the legislative management provide a cost-benefit analysis. The committee may~~  
18 ~~not act on the measure unless the measure is accompanied by the cost-benefit~~  
19 ~~analysis.~~

20 b. ~~If a committee of the legislative assembly determines a proposed amendment to~~  
21 ~~a measure mandates health insurance coverage of services or payment of~~  
22 ~~specified providers, the committee may not act on the proposed amendment~~  
23 ~~unless the amendment is accompanied by a cost-benefit analysis or amended~~  
24 ~~cost-benefit analysis provided by the legislative management.~~

- 1        2. Factors ~~to consider in this~~ considered in the cost-benefit analysis must include:
- 2            a. The extent to which the proposed mandate would increase or decrease the cost
- 3            of the service.
- 4            b. The extent to which the proposed mandate would increase the appropriate use of
- 5            the service.
- 6            c. The extent to which the proposed mandate would increase or decrease the
- 7            administrative expenses of insurers and the premium and administrative
- 8            expenses of insureds.
- 9            d. The impact of the proposed mandate on the total cost of health care.
- 10        2.3. A committee of the legislative assembly may not act on a legislative measure
- 11        mandating the legislative management or committee determines mandates health
- 12        insurance coverage of services or payment for specified providers of services ~~may not~~
- 13        ~~be acted on by any committee of the legislative assembly~~ unless the measure as
- 14        recommended by the committee provides:
- 15            a. The measure is effective through June thirtieth of the next odd-numbered year
- 16            following the year in which the legislative assembly enacted the measure, and
- 17            after that date the measure is ineffective.
- 18            b. The application of the mandate is limited to the public employees health
- 19            insurance program and the public employee retiree health insurance program.
- 20            The application of such mandate begins with every contract for health insurance
- 21            which becomes effective after June thirtieth of the year in which the measure
- 22            becomes effective.
- 23            c. That for the next legislative assembly, the public employees retirement system
- 24            shall prepare and request introduction of a bill to repeal the expiration date and to
- 25            extend the mandated coverage or payment to apply to accident and health
- 26            insurance policies. The public employees retirement system shall append to the
- 27            bill a report regarding the effect of the mandated coverage or payment on the
- 28            system's health insurance programs. The report must include information on the
- 29            utilization and costs relating to the mandated coverage or payment and a
- 30            recommendation on whether the coverage or payment should continue. For
- 31            purposes of this section, the bill is not a legislative measure mandating health



1 insurance coverage of services or payment for specified providers of services,  
2 unless the bill is amended following introduction so as to change the bill's  
3 mandate.

4 ~~3. A majority of the members of the committee, acting through the chairman, has sole~~  
5 ~~authority to determine whether a legislative measure mandates coverage of services~~  
6 ~~under this section.~~

7 ~~4. Any amendment made during a legislative session to a measure which mandates~~  
8 ~~health insurance coverage of services may not be acted on by a committee of the~~  
9 ~~legislative assembly unless the amendment is accompanied by a cost-benefit analysis~~  
10 ~~provided by the legislative council.~~The legislative management shall adopt a procedure  
11 for identifying measures and proposed measures mandating health insurance  
12 coverage of services or payment for specified providers of services. The procedure  
13 may include solicitation of draft measures and proposals during the interim between  
14 legislative sessions from legislators and agencies with bill introduction privileges and  
15 may include deadlines for identification of the measures or proposals.

16 5. The legislative council shall contract with a private entity, after receiving one or more  
17 recommendations from the insurance commissioner, to provide the legislative  
18 management the cost-benefit analysis required by this section. The insurance  
19 commissioner shall pay the cost of the contracted services to the entity providing the  
20 services.

Introduced by

Representative Lefor

A BILL for an Act to create and enact a new section to chapter 6-09, a new section to chapter 6-09.4, a new section to chapter 15-20.1, a new section to chapter 21-10, a new section to chapter 50-06, two new sections to chapter 54-44, and a new section to chapter 54-59 of the North Dakota Century Code, relating to an economic diversification research fund, a legacy sinking and interest fund, a career and technical education support fund, a legacy earnings fund, a behavioral health support fund, a legacy infrastructure project fund, a state building maintenance and project fund, and an information technology cybersecurity fund; to amend and reenact subsection 1 of section 21-10-06 and section 21-10-12 of the North Dakota Century Code, relating to funds invested by the state investment board and legacy fund definitions; to provide for a transfer; and to provide a report.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

**Economic diversification research fund - Economic diversification research committee - Legislative management report.**

1. There is created in the state treasury the economic diversification research fund. The fund consists of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund may be spent by the Bank of North Dakota pursuant to legislative appropriations to provide grants to institutions under the control of the state board of higher education for economic diversification research.
2. The economic diversification research committee consists of:
  - a. The president of the Bank of North Dakota, as chairman;
  - b. Four members with experience in research or venture capital appointed by the president of the Bank of North Dakota;

1           c. The state commissioner of higher education, or a designee; and

2           d. The president of North Dakota state university and the president of the university  
3           of North Dakota.

4       3. In consultation with representatives of North Dakota state university and the university  
5       of North Dakota, the committee shall award grants to institutions under the control of  
6       the state board of higher education. Up to ninety percent of the funding must be  
7       awarded to North Dakota state university and the university of North Dakota with equal  
8       amounts awarded to each institution. The remaining funding must be awarded to the  
9       other institutions under the control of the state board of higher education, as  
10      determined by the committee. The committee may not award more than fifty percent of  
11      the available funding during the first year of the biennium. The Bank of North Dakota  
12      shall distribute the grant funding as awarded by the committee.

13      4. The committee shall develop guidelines for the economic diversification research  
14      grants. The purpose of the grants is to stimulate economic activity across the state  
15      through innovation of new technology, concepts, and products; to promote job creation  
16      and career and wage growth; to enhance health care outcomes; and to provide  
17      experiential learning opportunities for students. Research projects may be initiated by  
18      an institution under the control of the state board of higher education or by the private  
19      sector. The guidelines must include consideration for research projects with matching  
20      funds and provisions for grant oversight by an internal advisory committee and an  
21      external advisory committee.

22      5. The committee shall develop reporting requirements for the institutions under the  
23      control of the state board of higher education. The reporting requirements must  
24      include criteria for assessing performance outcomes related to the grants. The  
25      committee shall compile the reports and shall submit a comprehensive report annually  
26      to the legislative management. The comprehensive report must include information on  
27      how the research efforts by each institution align with the state's priorities, how the  
28      institutions collaborate when appropriate, and how the outcomes of the research meet  
29      established performance expectations.

30       **SECTION 2.** A new section to chapter 6-09.4 of the North Dakota Century Code is created  
31      and enacted as follows:

1       **Legacy sinking and interest fund - Debt service requirements - Public finance**  
2 **authority.**

3       There is created in the state treasury the legacy sinking and interest fund. The fund consists  
4 of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund may be  
5 spent by the public finance authority pursuant to legislative appropriations to meet the debt  
6 service requirements for evidences of indebtedness issued by the authority.

7       **SECTION 3.** A new section to chapter 15-20.1 of the North Dakota Century Code is created  
8 and enacted as follows:

9       **Career and technical education support fund - Department of career and technical**  
10 **education.**

11       There is created in the state treasury the career and technical education support fund. The  
12 fund consists of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund  
13 may be spent by the department of career and technical education pursuant to legislative  
14 appropriations to support career and technical education centers and programs.

15       **SECTION 4. AMENDMENT.** Subsection 1 of section 21-10-06 of the North Dakota Century  
16 Code is amended and reenacted as follows:

- 17       1. Subject to the provisions of section 21-10-02, the board shall invest the following  
18 funds:
- 19       a. State bonding fund.
  - 20       b. Teachers' fund for retirement.
  - 21       c. State fire and tornado fund.
  - 22       d. Workforce safety and insurance fund.
  - 23       e. Public employees retirement system.
  - 24       f. Insurance regulatory trust fund.
  - 25       g. State risk management fund.
  - 26       h. Budget stabilization fund.
  - 27       i. Health care trust fund.
  - 28       j. Cultural endowment fund.
  - 29       k. Petroleum tank release compensation fund.
  - 30       l. Legacy fund.
  - 31       m. Legacy earnings fund.

1           n. A fund under contract with the board pursuant to subsection 3.

2           **SECTION 5. AMENDMENT.** Section 21-10-12 of the North Dakota Century Code is  
3 amended and reenacted as follows:

4           **21-10-12. Legacy fund –~~Earnings defined~~definitions.**

5           For the purposes of section 26 of article X of the Constitution of North Dakota, ~~the term~~  
6 "earnings":

7           1. "Earnings" means net income in accordance with generally accepted accounting  
8 principles, excluding any unrealized gains or losses.

9           2. "Principal" means all moneys in the legacy fund not included in earnings as defined  
10 under subsection 1.

11          **SECTION 6.** A new section to chapter 21-10 of the North Dakota Century Code is created  
12 and enacted as follows:

13          **Legacy earnings fund - State treasurer - Transfers - Reserve balance.**

14          1. There is created in the state treasury the legacy earnings fund. The fund consists of all  
15 moneys transferred to the fund under subsection 2 and all interest and earnings upon  
16 moneys in the fund.

17          2. Any legacy fund earnings transferred to the general fund at the end of each biennium  
18 in accordance with section 26 of article X of the Constitution of North Dakota must be  
19 immediately transferred by the state treasurer to the legacy earnings fund.

20          3. Any amounts transferred under subsection 2 in excess of the amount available for  
21 appropriation under subsection 4 must be retained in the fund and designated as a  
22 reserve balance. The reserve balance may be used only to supplement legacy fund  
23 earnings in a biennium in which the amounts transferred under subsection 2 are less  
24 than the amount available for appropriation under subsection 4.

25          4. For each biennium subsequent to the biennium in which the legacy fund earnings are  
26 transferred under subsection 2, the amount available for appropriation from the legacy  
27 earnings fund is seven percent of the five-year average value of the legacy fund  
28 assets as reported by the state investment board. The average value of the legacy  
29 fund assets must be calculated using the value of the assets at the end of each fiscal  
30 year for the five-year period ending with the most recently completed even-numbered  
31 fiscal year.



- 1       5. On July first of each odd-numbered year, from the amount available for appropriation  
2       or transfer from the legacy earnings fund for the biennium, the state treasurer shall  
3       transfer funding as follows:
- 4       a. Twenty-six percent to the legacy sinking and interest fund under section 2 of this  
5       Act;
- 6       b. Fourteen percent to the highway tax distribution fund for allocations under section  
7       54-27-19;
- 8       c. Eight percent to the school construction assistance revolving loan fund under  
9       section 15.1-36-08;
- 10      d. Five percent to the infrastructure revolving loan fund under section 6-09-49;
- 11      e. Five percent to the innovation loan fund to support technology advancement  
12      under section 6-09.18-05;
- 13      f. Five percent to the public employees retirement system fund under section  
14      54-52-13, only if the fund's actuarial-funded ratio as reported for the most  
15      recently completed even-numbered fiscal year is less than ninety percent;
- 16      g. Five percent to the behavioral health support fund under section 7 of this Act;
- 17      h. Four percent to the career and technical education support fund under section 3  
18      of this Act;
- 19      i. Four percent to the state building maintenance and project fund under section 9  
20      of this Act;
- 21      j. Four percent to the legacy development and innovation fund under section  
22      6-09-52;
- 23      k. Four percent to the economic diversification research fund under section 1 of this  
24      Act;
- 25      l. Three percent to the information technology cybersecurity fund under section 10  
26      of this Act;
- 27      m. Three percent to the housing incentive fund under section 54-17-40; and
- 28      n. Any remaining amounts to the legacy infrastructure project fund.

29       **SECTION 7.** A new section to chapter 50-06 of the North Dakota Century Code is created  
30       and enacted as follows:

1        **Behavioral health support fund - Department of human services.**

2        There is created in the state treasury the behavioral health support fund. The fund consists  
3 of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund may be  
4 spent by the department of human services pursuant to legislative appropriations to support  
5 behavioral health programs.

6        **SECTION 8.** A new section to chapter 54-44 of the North Dakota Century Code is created  
7 and enacted as follows:

8        **Legacy infrastructure project fund.**

9        There is created in the state treasury the legacy infrastructure project fund. The fund  
10 consists of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund may  
11 be spent pursuant to legislative appropriations to support one-time infrastructure projects with a  
12 statewide benefit.

13        **SECTION 9.** A new section to chapter 54-44 of the North Dakota Century Code is created  
14 and enacted as follows:

15        **State building maintenance and project fund.**

16        There is created in the state treasury the state building maintenance and project fund. The  
17 fund consists of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund  
18 may be spent pursuant to legislative appropriations for deferred maintenance and construction  
19 projects associated with state lands and buildings.

20        **SECTION 10.** A new section to chapter 54-59 of the North Dakota Century Code is created  
21 and enacted as follows:

22        **Information technology cybersecurity fund.**

23        There is created in the state treasury the information technology cybersecurity fund. The  
24 fund consists of all moneys deposited in the fund under section 6 of this Act. Moneys in the fund  
25 may be spent pursuant to legislative appropriations to support information technology  
26 cybersecurity initiatives.

# Employee and Employer Contribution Increase plus \$24 million

Introduced by

Representative Lefor

A BILL for an Act to amend and reenact subsection 1 of section 54-52-02.9, subsection 2 of section 54-52-05, subsection 1 of section 54-52-06, subsection 6 of section 54-52.6-02, subsection 1 of section 54-52.6-09, and subsection 2 of section 54-52.6-09 of the North Dakota Century Code, relating to increased employer and employee contributions under the public employees retirement system defined benefit and defined contribution plans; to provide an appropriation; and to provide a statement of legislative intent.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

1. Within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~twelve and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, ~~and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014; and with an additional increase of two percent, beginning with the monthly reporting period of January 2022.~~

**SECTION 2. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~six percent of the monthly salary or wage paid to the member, and such assessment must be deducted

and retained out of such salary in equal monthly installments commencing with the first month of employment. Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, ~~and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of~~ January 2022.

**SECTION 3. AMENDMENT.** Subsection 1 of section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Each governmental unit shall contribute an amount equal to ~~four~~six and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; ~~with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of~~ one percent, beginning with the monthly reporting period of January 2022. For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.

**SECTION 4. AMENDMENT.** Subsection 6 of section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A participating member who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee. The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to ~~eight~~twelve and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases

by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of ~~January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014;~~ and with an additional increase of two percent, beginning with the monthly reporting period of January 2022. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. 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.

**SECTION 5. AMENDMENT.** Subsection 1 of section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Each participating member shall contribute monthly ~~four~~six percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of ~~January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014;~~ and an additional increase of one percent, beginning with the monthly reporting period of January 2022.

**SECTION 6. AMENDMENT.** Subsection 2 of section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The employer shall contribute an amount equal to ~~four~~six and twelve-hundredths percent of the monthly salary or wage of a participating member. Employer contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of ~~January 2012; with an additional increase of one percent, beginning with the monthly reporting period of~~

1           ~~January 2013; and with an additional increase of one percent, beginning with the~~  
2           ~~monthly reporting period of January 2014; and with an additional increase of~~  
3           ~~one percent, beginning with the monthly reporting period of January 2022.~~ For  
4           members first enrolled after December 31, 2019, the employer contribution includes  
5           an additional increase of one and fourteen-hundredths percent. If the employee's  
6           contribution is paid by the employer under subsection 3, the employer shall contribute,  
7           in addition, an amount equal to the required employee's contribution. Monthly, the  
8           employer shall pay such contribution into the participating member's account from the  
9           employer's funds appropriated for payroll and salary or any other funds available for  
10          such purposes. If the employer fails to pay the contributions monthly, the employer is  
11          subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due  
12          for each month of delay or fraction of a month after the payment became due. In lieu  
13          of assessing a civil penalty or one percent per month, or both, interest at the actuarial  
14          rate of return may be assessed for each month the contributions are delinquent. If  
15          contributions are paid within ninety days of the date the contributions became due,  
16          penalty and interest to be paid on delinquent contributions may be waived.

17           **SECTION 7. APPROPRIATION - TRANSFER TO PUBLIC EMPLOYEES RETIREMENT**

18   **SYSTEM FUND - INTENT.** There is appropriated out of any moneys in the general fund in the  
19   state treasury, not otherwise appropriated, the sum of \$24,000,000, or so much of the sum as  
20   may be necessary, which the office of management and budget shall transfer to the public  
21   employees retirement system fund on July 1, 2021. It is the intent of the sixty-seventh legislative  
22   assembly that the funds transferred be derived from legacy fund earnings transferred to the  
23   general fund during the biennium beginning July 1, 2021, and ending June 30, 2023.



# Group Insurance Plan Decision-making

Introduced by

Representative Kasper

1 A BILL for an Act to amend and reenact sections 54-52.1-04, 54-52.1-04.1, 54-52.1-04.2,  
2 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-05 of the North Dakota Century Code, relating to  
3 public employee uniform group insurance plans; to provide for application; and to declare an  
4 emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52.1-04. Board to contract for insurance - Approval by budget section.**

9 1. The board shall receive bids for the providing of hospital benefits coverage, medical  
10 benefits coverage, life insurance benefits coverage for a specified term, and employee  
11 assistance program services; and may receive bids separately for all or part of the  
12 prescription drug benefits coverage component of medical benefits coverage; ~~and~~  
13 ~~shall accept one or more bids of and contract with the carriers the board determines~~  
14 ~~best serve the interests of the state and the state's eligible employees.~~ Solicitations  
15 must be made not later than ninety days before the expiration of an existing uniform  
16 group insurance contract. Bids must be solicited by advertisement in a manner  
17 selected by the board which will provide reasonable notice to prospective bidders. ~~In~~  
18 ~~preparing bid proposals and evaluating bids, the board may utilize the services of~~  
19 ~~consultants on a contract basis in order that the bids received may be uniformly~~  
20 ~~compared and properly evaluated~~

21 2. After the board identifies which bids of carriers, if any, the board determines best serve  
22 the interests of the state and the state's eligible employees, the board shall forward a  
23 recommendation and all the bids to the budget section. The board may recommend  
24 rejection of one or more bids received under this section. Upon receipt of the board's

recommendation, the budget section shall determine which bid, if any, will best serve the interests of eligible employees and the state. In identifying and determining which bid, if any, will best serve the interests of eligible employees and the state, the board and the budget section shall give adequate consideration to the following factors:

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

2-3. The ~~board~~budget section may reject any or all bids received under this section. If the ~~board~~budget section rejects all bids received, the board again shall again solicit bids as provided in this section. If the budget section does not reject all bids received, the board shall enter a contract with the bidder selected by the budget section under this section.

3-4. In preparing a bid proposal and evaluating a bid under this section, the board and the budget section may use the services of a consultant on a contract basis so the bids received may be compared uniformly and evaluated properly. The board may not enter a contract for consultant services under this subsection unless the budget section has approved the selection of the consultant.

5. Under sections 54-52.1-04.1 and 54-52.1-04.2, following approval by the budget section, the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan.

**SECTION 2. AMENDMENT.** Section 54-52.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.1. Health maintenance organization contract - Membership option.**

Notwithstanding the provisions of section 54-52.1-04, but subject to approval by the budget section, the board may contract with one or more health maintenance organizations to provide

1 eligible employees the option of membership in a health maintenance organization. If ~~it~~the  
2 board makes such a contract, the board may not require ~~that~~ the health maintenance  
3 organization be federally qualified if the health maintenance organization has a certificate of  
4 authority issued by the North Dakota insurance commissioner. The contract or contracts must  
5 be included in the uniform group insurance program.

6 **SECTION 3. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-52.1-04.2. Self-insurance health plan.**

- 9 1. This section applies to a self-insurance health plan for:
- 10 a. Health insurance and prescription drug benefits coverage;
- 11 b. Health insurance benefits coverage, excluding all or part of prescription drug  
12 benefits coverage; or
- 13 c. All or part of prescription drug benefits coverage.
- 14 2. Except for prescription drug coverage under subdivision c of subsection 1, a  
15 self-insurance health plan established by the board under this section must be  
16 provided under an administrative services only (ASO) contract or a third-party  
17 administrator (TPA) contract under the uniform group insurance program. The board  
18 may not establish a self-insurance health plan unless the ~~board~~budget section  
19 determines the self-insurance health plan best serves the interests of the state and the  
20 state's eligible employees. ~~Except for prescription drug coverage under subdivision c~~  
21 ~~of subsection 1, if the board~~If the budget section determines it is in the best interest of  
22 the plan, individual stop-loss coverage insured by a carrier authorized to do business  
23 in this state may be made part of a self-insurance health plan.

24 **SECTION 4. AMENDMENT.** Section 54-52.1-04.7 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **54-52.1-04.7. Uniform group insurance program - Vision and dental plans.**

27 The board may establish a dental plan, a vision plan, or both, for eligible employees. The  
28 board shall receive bids for the plan or plans pursuant to section 54-52.1-04. The ~~board~~budget  
29 section may reject any or all bids and provide a plan of self-insurance. Premiums for this  
30 coverage must be paid by the eligible employee. Any refund, rebate, dividend, experience rating

allowance, discount, or other reduction of premium must be credited as provided by section 54-52.1-06.

**SECTION 5. AMENDMENT.** Section 54-52.1-04.8 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.8. Uniform group insurance program - Long-term care plan.**

The board may establish a long-term care plan for eligible employees. The board shall receive bids for the plan under section 54-52.1-04. The ~~board~~budget section may reject any or all bids and provide a plan of self-insurance. Premiums for this plan must be paid by the eligible employee. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium must be credited as provided by section 54-52.1-06.

**SECTION 6. AMENDMENT.** Section 54-52.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-05. Provisions of contract - Term of contract - Renewal of contract.**

1. Each uniform group insurance contract entered by the board must be approved by the budget section, must be consistent with ~~the provisions of~~ this chapter, must be signed for the state of North Dakota by the chairman of the board, and must include the following:
  - a. As many optional coverages as deemed feasible and advantageous by the board.
  - b. A detailed statement of benefits offered, including maximum limitations and exclusions, and such other provisions as the board may deem necessary or desirable.
2. The initial term or the renewal term of a uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.
  - a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board ~~determines~~recommends and the budget section approves the renewal in the same manner as provided for approving a contract under section 54-52.1-04. In making a recommendation or determination, the board and budget section shall determine whether the carrier's

1 performance under the existing contract meets the ~~board's~~ expectations of the  
2 board and the budget section, the proposed premium renewal amount does not  
3 exceed the ~~board's~~ expectations of the board and the budget section, and  
4 renewal best serves the interests of the state and the state's eligible employees.

5 b. In making a recommendation or determination under this subsection, the board  
6 or budget section, respectively, shall:

7 (1) Use the services of a consultant to ~~concurrently and independently~~ prepare  
8 concurrently and independently a renewal estimate the board and the  
9 budget section shall consider in determining the reasonableness of the  
10 proposed premium renewal amount. The board may not enter a contract for  
11 consultant services under this subsection unless the budget section has  
12 approved the selection of the consultant.

13 (2) Review the carrier's performance measures, including payment accuracy,  
14 claim processing time, member service center metrics, wellness or other  
15 special program participation levels, and any other measures the board  
16 ~~determines~~and budget section determine relevant to making the  
17 determination and shall consider these measures in determining the ~~board's~~  
18 satisfaction with the carrier's performance.

19 (3) Consider any additional information the board ~~determines~~and the budget  
20 section determine relevant to making the determination.

21 c. The board may recommend and the budget section may determine the carrier's  
22 performance under the existing contract does not meet the board's expectations,  
23 the proposed premium renewal amount exceeds ~~the board's~~ expectations, or  
24 renewal does not best serve the interests of the state or the state's eligible  
25 employees, and the board therefore may recommend or the budget section may  
26 decide to solicit a bid under section 54-52.1-04.

27 **SECTION 7. APPLICATION.** This Act applies to contracts entered or renewed on or after  
28 the effective date of this Act.

29 **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

# Line of Duty Death Health Insurance

Introduced by

Representative Ista

1 A BILL for an Act to create and enact a new section to chapter 11-10, a new section to chapter  
2 15-10, a new section to chapter 39-03.1, a new section to chapter 40-20, and a new section to  
3 chapter 54-23.3 of the North Dakota Century Code, relating to peace officers, patrolmen,  
4 correctional officers, and firefighters who die in the line of duty; and to provide for application.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 11-10 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Dying in the line of duty - Health benefits.**

9 **1. As used in this section:**

- 10 **a. "Correctional facility staff" has the same meaning as provided under section**  
11 **12-44.1-01.**
- 12 **b. "Dies in the line of duty" means a death occurring as a direct and proximate**  
13 **result of a personal injury sustained by an employee engaged in a line of duty**  
14 **activity or which arose out of and as a result of the individual's performance of a**  
15 **line of duty activity.**
- 16 **c. "Employee" means correctional facility staff, a firefighter, or a peace officer**  
17 **employed by the county.**
- 18 **d. "Health benefits" means hospital and medical service benefits. The term may**  
19 **include dental and vision services benefits. The term does not include a policy of**  
20 **workforce safety and insurance, a long-term care insurance policy, a life**  
21 **insurance policy, or an annuity.**
- 22 **e. "Line of duty activity" means an employment-related action taken by an employee**  
23 **which is required or authorized by law, rule, regulation, or condition of**  
24 **employment and for which compensation is provided by the employing agency or**



- 1                   would have been eligible to have been provided by the employing agency if the  
2                   employee had been on duty at the time the action in question was taken.  
3           f.   "Peace officer" has the same meaning as provided under section 12-63-01.  
4       2.   If a county provides health benefits for an employee at the time the employee dies in  
5       the line of duty, the county shall pay for health benefits for the employee's surviving  
6       spouse and dependent child who were covered under the health benefits at the time of  
7       the death. The provision of health benefits under this section includes coverage of a  
8       child of the employee who was unborn at the time of the death.  
9       3.   The provision of health benefits under this section must continue for a:  
10       a.   Surviving spouse until the surviving spouse remarries, receives health benefits  
11       from another source, or reaches age sixty-five; and  
12       b.   Dependent child until the dependent child reaches age twenty-six or receives  
13       health benefits from another source.

14       **SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created  
15 and enacted as follows:

16       **Peace officers who die in the line of duty - Health benefits.**

- 17       1.   As used in this section:  
18       a.   "Dies in the line of duty" means a death occurring as a direct and proximate  
19       result of a personal injury sustained by a peace officer while engaged in a line of  
20       duty activity or which arose out of and as a result of the individual's performance  
21       of a line of duty activity.  
22       b.   "Health benefits" means hospital and medical service benefits. The term may  
23       include dental and vision services benefits. The term does not include a policy of  
24       workforce safety and insurance, a long-term care insurance policy, a life  
25       insurance policy, or an annuity.  
26       c.   "Line of duty activity" means an employment-related action taken by a peace  
27       officer which is required or authorized by law, rule, regulation, or condition of  
28       employment and for which compensation is provided by the employing agency or  
29       would have been eligible to have been provided by the employing agency if the  
30       peace officer had been on duty at the time the action in question was taken.  
31       d.   "Peace officer" has the same meaning as provided under section 12-63-01.

2. If an institution of higher education under the control of the state board of higher education provides health benefits for an employee employed as a peace officer at the time the employee dies in the line of duty, the institution of higher education shall pay for health benefits for the employee's surviving spouse and dependent child who were covered under the health benefits at the time of death. The provision of health benefits under this section includes coverage of a child of the employee who was unborn at the time of the death.

3. The provision of health benefits under this section must continue for a:

a. Surviving spouse until the surviving spouse remarries, receives health benefits from another source, or reaches age sixty-five; and

b. Dependent child until the dependent child reaches age twenty-six or receives health benefits from another source.

**SECTION 3.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Patrolmen who die in the line of duty - Health benefits.**

1. As used in this section:

a. "Dies in the line of duty" means a death occurring as a direct and proximate result of a personal injury sustained by a patrolman while engaged in a line of duty activity or which arose out of and as a result of the individual's performance of a line of duty activity.

b. "Health benefits" means hospital and medical service benefits. The term may include dental and vision services benefits. The term does not include a policy of workforce safety and insurance, a long-term care insurance policy, a life insurance policy, or an annuity.

c. "Line of duty activity" means an employment-related action taken by a patrolman which is required or authorized by law, rule, regulation, or condition of employment and for which compensation is provided by the employing agency or would have been eligible to have been provided by the employing agency if the patrolman had been on duty at the time the action in question was taken.

d. "Patrolman" has the same meaning as "patrolmen" under section 39-03-01.

2. If the state provides health benefits for a patrolman at the time the patrolman dies in the line of duty, the state shall pay for health benefits for the surviving spouse and dependent child who were covered under the benefits at the time of the death. The provision of health benefits under this section includes coverage of a child of the patrolman who was unborn at the time of the death.

3. The provision of health benefits under this section must continue for the:

a. Surviving spouse until the surviving spouse remarries, receives health benefits from another source, or reaches age sixty-five; and

b. Dependent child until the dependent child reaches age twenty-six or receives health benefits from another source.

**SECTION 4.** A new section to chapter 40-20 of the North Dakota Century Code is created and enacted as follows:

**Dying in the line of duty - Health benefits.**

1. As used in this section:

a. "Correctional facility staff" has the same meaning as provided under section 12-44.1-01.

b. "Dies in the line of duty" means a death occurring as a direct and proximate result of a personal injury sustained by an employee while engaged in a line of duty activity or which arose out of and as a result of the individual's performance of a line of duty activity.

c. "Employee" means correctional facility staff, a firefighter, or a peace officer employed by the governing body.

d. "Health benefits" means hospital and medical service benefits. The term may include dental and vision services benefits. The term does not include a policy of workforce safety and insurance, a long-term care insurance policy, a life insurance policy, or an annuity.

e. "Line of duty activity" means an employment-related action taken by an employee which is required or authorized by law, rule, regulation, or condition of employment and for which compensation is provided by the employing agency or would have been eligible to have been provided by the employing agency if the employee had been on duty at the time the action in question was taken.

- 1           f. "Peace officer" has the same meaning as provided under section 12-63-01.
- 2           2. If a governing body provides health benefits for an employee at the time the employee  
3 dies in the line of duty, the governing body shall pay for health benefits for the  
4 employee's surviving spouse and dependent child who were covered under the health  
5 benefits at the time of the death. The provision of health benefits under this section  
6 includes coverage of a child of the employee who was unborn at the time of the death.
- 7           3. The provision of health benefits under this section must continue for the:
- 8           a. Surviving spouse until the surviving spouse remarries, receives health benefits  
9 from another source, or reaches age sixty-five; and
- 10           b. Dependent child until the dependent child reaches age twenty-six or receives  
11 health benefits from another source.

12           **SECTION 5.** A new section to chapter 54-23.3 of the North Dakota Century Code is created  
13 and enacted as follows:

14           **Correctional officers who die in the line of duty - Health benefits.**

- 15           1. As used in this section:
- 16           a. "Dies in the line of duty" means a death occurring as a direct and proximate  
17 result of a personal injury sustained by a correctional officer while engaged in a  
18 line of duty activity or which arose out of and as a result of the individual's  
19 performance of a line of duty activity.
- 20           b. "Health benefits" means hospital and medical service benefits. The term may  
21 include dental and vision services benefits. The term does not include a policy of  
22 workforce safety and insurance, a long-term care insurance policy, a life  
23 insurance policy, or an annuity.
- 24           c. "Line of duty activity" means an employment-related action taken by a  
25 correctional officer which is required or authorized by law, rule, regulation, or  
26 condition of employment and for which compensation is provided by the  
27 employing agency or would have been eligible to have been provided by the  
28 employing agency if the correctional officer had been on duty at the time the  
29 action in question was taken.
- 30           2. If the state provides health benefits for a correctional officer at the time the correctional  
31 officer dies in the line of duty, the state shall pay for health benefits for the correctional

1 officer's surviving spouse and dependent child who were covered under the health  
2 benefits at the time of the death. The provision of health benefits under this section  
3 includes coverage of a child of the correctional officer who was unborn at the time of  
4 the death.

5 3. The provision of health benefits under this section must continue for the:

6 a. Surviving spouse until the surviving spouse remarries, receives health benefits  
7 from another source, or reaches age sixty-five; and

8 b. Dependent child until the dependent child reaches age twenty-six or receives  
9 health benefits from another source.

10 **SECTION 6. APPLICATION.** This Act applies to an employee who dies in the line of duty on  
11 or after the effective date of this Act.

# create a wholesale prescription drug importation program

21.0656.02000

Sixty-seventh  
Legislative Assembly  
of North Dakota

BILL NO.

Introduced by

Senator Anderson

1 A BILL for an Act to create and enact a new section to chapter 19-02.1 and a new chapter to  
2 title 19 of the North Dakota Century Code, relating to increased access to low-cost  
prescription  
3 drugs; to amend section 43-15.3-12 of the North Dakota Century Code, relating to drug 4  
wholesaler fees; to provide for a report; to provide a continuing appropriation; to provide for a 5  
transfer; and to provide a contingent effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 19-02.1 of the North Dakota Century Code is created 8  
and enacted as follows:

9 **Exception - Drug importation.**

10 This chapter does not prohibit a manufacturer of a drug approved by the federal drug 11  
administration from importing a version of the approved drug sold in foreign countries  
pursuant 12 to section 801 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 384].

13 **SECTION 2.** A new chapter to title 19 of the North Dakota Century Code is created and 14  
enacted as follows:

15 **Wholesale prescription drug importation program.**

16 1. The state board of pharmacy, in consultation with appropriate federal and state  
17 agencies, other states, and interested parties, shall design a wholesale prescription  
18 drug importation program for the importation of prescription drugs from Canada in 19  
compliance with section 804 of the Federal Food, Drug, and Cosmetic Act [21  
U.S.C.



20 384], including requirements regarding safety and cost-savings.

21 2. The program must:

22 a. Designate a state agency to become a licensed drug wholesaler or to contract

23 with a licensed drug wholesaler to import safe prescription drugs and provide cost-

savings to consumers in the state. The designated state agency shall implement and

operate the program.

b. Use prescription drug suppliers in Canada which are regulated under the laws of

Canada, one or more Canadian provinces, or both.

5 c. Ensure compliance with title II of the federal Drug Quality and Security Act of 6

2013 [Pub. L. 113-54; 21 U.S.C. 301 et seq.] for the safety and effectiveness of

7 imported prescription drugs.

8 d. Limit importation to prescription drugs expected to generate

substantial cost<sup>9</sup> savings for consumers in the state.

10 e. Ensure the program complies with the transaction and tracing

requirements of

11 sections 360eee and 360eee-1 of the Federal Food, Drug, and Cosmetic Act

12 [21 U.S.C. 384] to the extent feasible and practical before the imported

13 prescription drugs come into the possession of the licensed drug wholesaler and

14 ensure the program complies fully after the imported drugs are in the

possession

15 of the state wholesaler.

16 f. Consider whether the program may be developed on a multistate basis through

17 collaboration with other states.

18 g. Except as provided under subdivision f, prohibit the distribution, dispensing, or 19

sale of imported prescription drugs outside the state.

20 h. Recommend a charge per prescription or another method of financing to  
ensure

21 the program is adequately funded in a manner that does not jeopardize 22  
significant consumer savings.

23 i. Include an audit function.

24 **Rulemaking.**

25 The state board of pharmacy shall adopt rules to design the program in accordance  
with 26 this chapter.

27 **Implementation.**

28 1. The state agency designated to oversee the program shall implement the program as  
29 required under this chapter.

30 2. The state agency designated to oversee the program shall:

a. Become a licensed drug wholesaler or enter a contract with a licensed drug  
wholesaler in the state.

b. Contract with one or more wholesale drug distributors licensed in the state.

c. Contract with one or more licensed and regulated prescription drug suppliers in  
5 Canada.

6 d. Consult with health insurance carriers, employers, pharmacies,  
pharmacists, 7 health care providers, and consumers.

8 e. Develop a registration process for health insurance carriers, pharmacies, and 9  
health care providers authorized to prescribe and administer prescription drugs 10  
which are willing to participate in the program.

11 f. Create a publicly accessible website for listing the prices of imported  
prescription  
12 drugs.

13 g. Create an outreach and marketing plan to generate public awareness of  
the

- 14                    program.
- 15                    h.        Establish a hotline to answer questions and address the needs of  
16                    consumers,  
17                    employers, health insurance carriers, pharmacies, health care providers, and  
18                    others affected by the program.
- 19                    i.        Develop a two - year audit work plan.
- 20                    j.        Conduct any other activity the agency determines necessary to successfully  
21                    implement and operate the program.

22                    **Reporting.**

23                    By June 1 of each year, the state agency designated to implement and operate the program  
24                    under this chapter shall provide a report to the legislative management regarding the  
25                    implementation and operation of the program during the previous calendar year. The report  
26                    include:

- 27                    1.        The prescription drugs included in the program.
- 28                    2.        The number of participating pharmacies, health care providers, and health  
29                    insurance  
30                    carriers.
- 31                    3.        The number of prescription drugs dispensed through the program.
- 32                    4.        The estimated cost-savings to consumers, health insurance carriers,  
33                    employers, and 31    the state during the previous calendar year and over the course  
34                    of the program.
- 35                    5.        Information regarding the implementation of the audit work plan and audit findings.
- 36                    6.        Any other information the state agency designated to oversee the program considers  
37                    relevant.

38                    **Transfer - Continuing appropriation.**

39                    The state board of pharmacy shall transfer six hundred dollars of every wholesaler license

6     fee and every virtual wholesaler license fee collected by the board under section 43 - 15.3  
7     - 12 to  
8     the drug importation program fund. All the moneys in the fund, not otherwise appropriated,  
9     are  
10    appropriated to the state agency designated to implement and operate the wholesale  
11    prescription drug importation program under this chapter for the purpose of administering  
12    the  
13    program.

14    **SECTION 3. AMENDMENT.** Section 43-15.3-12 of the North Dakota Century Code is 12  
amended and reenacted as follows:

15    **43-15.3-12. Fees.**

16    The board shall charge and collect the following fees under this chapter:

15	Chain drug warehouse	\$200
16	Chain pharmacy warehouse	\$200
17	Durable medical equipment distributor, medical gas distributor, or both	\$200
18	Durable medical equipment retailer, medical gas retailer and distributor, or both	\$300
19	Hospital offsite warehouse	\$200
20	Jobber or broker	\$400
21	Manufacturer	\$400
22	Medical gas retailer, durable medical equipment retailer, or both	\$200
23	Medical gas durable medical equipment distributor and retailer	\$300
24	Outsourcing facility	\$200
25	Own label distributor	\$400
26	Pharmacy distributor	\$200
27	Private label distributor	\$400
28	Repackager	\$400
29	Reverse distributor	\$200
30	Third-party logistic provider	\$400
31	Veterinary-only distributor	\$200
	Virtual manufacturer	\$400
	Virtual wholesaler or distributor	<del>\$400</del> <u>\$1,000</u>
	Wholesaler or distributor	<del>\$400</del> <u>\$1,000</u>

**SECTION 4. PENALTY. CONTINGENT EFFECTIVE DATE.** The state board of pharmacy

5 shall submit a request to the United States department of health and human services for  
6 approval and certification of a wholesale prescription drug importation program created under  
7 section 2 of this Act. Section 2 of this Act becomes effective six months following the date the  
8 president of the state board of pharmacy certifies to the legislative council the receipt of 9  
approval and certification of the state's wholesale prescription drug importation program from 10 the  
United States department of health and human services.

# limit the price for prescription drugs to a price determined by looking at Canadian prices

21.0611.01000

Sixty-seventh  
Legislative Assembly  
of North Dakota

**BILL NO.**

Introduced by

Senator Anderson

1 A BILL for an Act to create and enact chapter 19-03.7 of the North Dakota Century Code, 2  
relating to prescription drug costs; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 19-03.7 of the North Dakota Century Code is created and enacted as 5  
follows:

6 **19- 03.7 - 01. Definitions.**

7 As used in this chapter:

8 1. "Employee Retirement Income Security Act plan " means a plan qualified under the  
9 federal Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002 et seq.]. 10 2.  
" Health p lan" has the same meaning as accident and health insurance policy under 11  
section 26.1 - 36- 02.

12 3. " Participating Employee Retirement Income Security Act plan " means an  
Employee  
13 Retirement Income Security Act plan that has elected to participate in the  
14 requirements and restrictions of this chapter as described in section 19 - 03.7 - 03.

15 4. " Prescription d rug " has the same meaning as stated in section 43 - 15.1 -  
01. 165. " Referenced d rugs " means p rescription d rugs subject to a r  
eferenced r ate.

17 6. " Referenced r ate " means the maximum rate established by the insurance  
18 commissioner utilizing the wholesale acquisition c ost and other pricing data described  
19 in section 19 - 03.7 - 04.



7. " State entity " means any agency of state government that purchases prescription drugs on behalf of the state for an individual whose health care is paid for by the state, including any agent, vendor, fiscal agent, contractor, or other party acting on behalf of the state. The term does not include the medical assistance program established under 42 U.S.C. section 1396 et seq.

8. "Wholesale acquisition cost" has the meaning stated in 42 U.S.C. section 1395w-3a.

**19- 03.7 - 02. Payment in excess of referenced rate prohibited.**

1. It is a violation of this chapter for a state entity, health plan, or participating Employee Retirement Income Security Act plan to purchase referenced drugs to be dispensed or delivered to a consumer in the state, whether directly or through a distributor, for a cost higher than the referenced rate as determined in section 19 - 03.7 - 04 .

2. It is a violation of this chapter for a retail pharmacy licensed in this state to purchase for sale or distribution referenced drugs for a cost that exceeds the referenced rate to an individual whose health care is provided by a state entity, health plan, or participating Employee Retirement Income Security Act plan .

**19- 03.7 - 03. Employee Retirement Income Security Act plan opt-in.**

An Employee Retirement Income Security Act plan may elect to participate in the provisions of this chapter. Any Employee Retirement Income Security Act plan that desires its prescription drugs to be subject to the prohibition described in section 19 - 03.7 - 02 shall notify the insurance commissioner in writing by October first of each year.

**19- 03.7 - 04. Referenced drugs determined.**

1. As of October first of each year, the public employees retirement system shall transmit to the insurance commissioner a list of the two hundred fifty most costly prescription

19 d rugs based upon net price times utilization. For each of these p rescription d rugs,  
the  
20 public employees retirement system also shall provide the total net spend on each of  
21 those p rescription d rugs for the previous calendar year .

22 2. Utilizing the information described in subsection 1, as of January first of each year,  
the  
23 insurance commissioner shall create and publish a list of two hundred fifty r eferenced 24  
d rugs subject to the r eferenced r ate.

25 3. The insurance commissioner shall determine the r eferenced r ate by  
comparing the  
26 wholesale acquisition c ost to reference costs such as the cost from the Ontario  
27 ministry of health and long-term care and most recently published on the Ontario Drug  
28 Benefit Formulary; régime de l'assurance maladie du Québec and most recently  
29 published on the Quebec Public Drug Programs List of Medications; British Columbia  
30 ministry of health and most recently published on the BC PharmaCare Formulary; and  
31 Alberta ministry of health and most recently published on the Alberta Drug  
Benefit List .

4. The r eferenced r ate for each p rescription d rug must be calculated as the  
lowest cost among those resources and the wholesale acquisition c ost. If a specific r  
eferenced d rug is not included within resources described in subsection 3, the insurance  
commissioner shall utilize as a reference for the purpose of determining the 5 r eferenced r ate  
a reference such as, the ceiling price for drugs as reported by the 6 government of Canada  
patented medicine prices review board .

7 5. The insurance commissioner shall calculate annually the savings expected to be 8  
achieved by subjecting p rescription d rugs to the r eferenced r ate. In making this 9  
determination the commissioner shall consult with the public employees retirement 10 system  
and the state board of p harmacy.

6. The insurance commissioner may adopt rules to implement fully the requirements of this chapter.

**19- 03.7 - 05. Registered agent and office within the state.**

An entity that sells, distributes, delivers, or offers for sale any prescription drug in the state 15 must be a registered agent and maintain an office within the state .

**19- 03.7 - 06. Use of savings.**

1. Any savings generated as a result of the requirements in section 19 - 03.7 - 02 must be used to reduce costs to consumers. A state entity, health plan, or participating 19 Employee Retirement Income Security Act plan shall calculate the savings and utilize 20 the savings directly to reduce costs for its members.

2. No later than April first of each year, each state entity, health plan, and participating Employee Retirement Income Security Act plan subject to this chapter shall submit a report to the insurance commissioner describing the savings achieved for each 24 referenced drug for the previous calendar year and how those savings were used to 25 achieve the requirements of subsection 1.

**19- 03.7 - 07. Enforcement - Penalty.**

Each violation of this chapter is subject to a fine of one thousand dollars. Every individual transaction in violation of section 19 - 03.7 - 02 is determined to be a separate violation. The attorney general may enforce this chapter on behalf of any state entity or consumers of prescription drugs. The refusal of a manufacturer or distributor to negotiate in good faith as described in subsection 4 of section 19 - 03.7 - 08 is a valid affirmative defense in any enforcement action brought under this chapter.

**19- 03.7 - 08. Prohibition on withdrawal of referenced drugs for sale.**

1. It is a violation of this chapter for a manufacturer or distributor of a referenced drug to  
5 withdraw the referenced drug from sale or distribution within this state for the purpose  
6 of avoiding the impact of the rate limitations set forth in section 19 - 03.7 - 02.

2. A manufacturer that intends to withdraw a referenced drug from sale or distribution  
8 from within the state shall provide a notice of withdrawal in writing to the insurance  
commissioner and to the attorney general at least one hundred eighty days before the  
10 withdrawal.

3. The insurance commissioner shall assess a penalty on a manufacturer or  
11 distributor  
12 that the insurance commissioner determines has withdrawn a referenced drug from  
13 distribution or sale in the state in violation of subsection 1 or 2. With respect to each  
14 referenced drug for which the insurance commissioner has determined the  
15 manufacturer or distributor has withdrawn from the market, the penalty must be equal  
16 to five hundred thousand dollars or the amount of annual savings determined by the  
17 insurance commissioner as described in subsection 5 of section 19 - 03.7 - 04, 18  
whichever is greater .

4. It is a violation of this chapter for a manufacturer or distributor of a referenced drug  
to 20 refuse to negotiate in good faith with a payor or seller of prescription drugs a price that  
21 is within the referenced rate as determined in section 19 - 03.7 - 04.

5. The insurance commissioner shall assess a penalty on a manufacturer or  
22 distributor  
23 the insurance commissioner determines has failed to negotiate in good faith in  
24 violation of subsection 4. With respect to each referenced drug for which the  
insurance  
25 commissioner has determined the manufacturer or distributor has failed to negotiate in  
26 good faith, the penalty must be equal to five hundred thousand dollars or the amount

27

of annual savings determined by the insurance commissioner as described in 28  
subsection 4 of section 19 - 03.7 - 04, whichever is greater.

# create a second wholesale prescription drug importation program

21.0067.02000

Sixty-seventh  
Legislative Assembly  
of North Dakota

BILL NO.

Introduced by

Representative M. Nelson

1 A BILL for an Act to create and enact a new section to chapter 19-02.1 and a new chapter to 2  
title 19 of the North Dakota Century Code, relating to increased access to low-cost prescription 3  
drugs; to provide for a report; and to provide a contingent effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 19-02.1 of the North Dakota Century Code is created 6  
and enacted as follows:

7 **Exception - Drug importation.**

8 This chapter does not prohibit a manufacturer of a drug approved by the federal drug 9  
administration from importing a version of the approved drug sold in foreign countries pursuant 10  
to section 801 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 384].

11 **SECTION 2.** A new chapter to title 19 of the North Dakota Century Code is created and 12  
enacted as follows:

13 **Wholesale prescription drug importation program.**

14 1. The state department of health, in consultation with appropriate federal and  
state

15 agencies, other states, and interested parties, shall design a wholesale prescription

16 drug importation program for the importation of prescription drugs from Canada in 17

compliance with section 804 of the Federal Food, Drug, and Cosmetic Act [21

U.S.C.

18 384], including requirements regarding safety and cost-savings.

19 2. The program must:



- 20           a.       Designate a state agency to become a licensed drug wholesaler or to  
              contract
- 21           with a licensed drug wholesaler to import safe prescription drugs and provide  
22           cost-savings to consumers in the state. The designated state agency shall 23  
              implement and operate the program.
- b.    Use prescription drug suppliers in Canada which are regulated under the laws of  
              Canada, one or more Canadian provinces, or both.
- c.    Ensure compliance with title II of the federal Drug Quality and Security Act of  
              2013 [Pub. L. 113-54; 21 U.S.C. 301 et seq.] for the safety and effectiveness of  
5           imported prescription drugs.
- 6           d.       Limit importation to prescription drugs expected to generate  
              substantial cost<sup>7</sup>       savings for consumers in the state.
- 8           e.       Ensure the program complies with the transaction and tracing requirements of  
9           sections 360eee and 360eee-1 of the Federal Food, Drug, and Cosmetic Act  
10          [21 U.S.C. 384] to the extent feasible and practical before the imported  
11          prescription drugs come into the possession of the licensed drug wholesaler and 12  
              ensure the program complies fully after the imported drugs are in the possession  
13          of the state wholesaler.
- 14          f.    Consider whether the program may be developed on a multistate basis through  
              15       collaboration with other states.
- 16          g.       Except as provided under subdivision   f, prohibit the distribution, dispensing, or 17  
              sale of imported prescription drugs outside the state.
- 18          h.       Recommend a charge per prescription or another method of financing to  
              ensure  
19          the program is adequately funded in a manner that does not jeopardize 20  
              significant consumer savings.

i. Include an audit function.

**Rulemaking.**

The health council shall adopt rules to design the program in accordance with this chapter.

**Implementation.**

1. The state agency designated to oversee the program shall implement the program as 26 required under this chapter.

2. The state agency designated to oversee the program shall:

a. Become a licensed drug wholesaler or enter a contract with a licensed drug

wholesaler in the state.

b. Contract with one or more wholesale drug distributors licensed in the state.

c. Contract with one or more licensed and regulated prescription drug suppliers in Canada.

d. Consult with health insurance carriers, employers, pharmacies, pharmacists, health care providers, and consumers.

e. Develop a registration process for health insurance carriers, pharmacies, and 6 health care providers authorized to prescribe and administer prescription drugs 7 which are willing to participate in the program.

f. Create a publicly accessible website for listing the prices of imported prescription

drugs.

g. Create an outreach and marketing plan to generate public awareness of the program.

h. Establish a hotline to answer questions and address the needs of consumers.

13 employers, health insurance carriers, pharmacies, health care providers, and 14  
15 others affected by the program.

16 i. Develop a two - year audit work plan.

17 j. Conduct any other activity the agency determines necessary to successfully  
18 implement and operate the program.

19 **Reporting.**

20 By June 1 of each year, the state agency designated to implement and operate the program  
21 under this chapter shall provide a report to the legislative management regarding the 21  
22 implementation and operation of the program during the previous calendar year. The report 22 must  
23 include:

24 1. The prescription drugs included in the program.

25 2. The number of participating pharmacies, health care providers, and health  
26 insurance  
27 carriers.

28 3. The number of prescription drugs dispensed through the program.

29 4. The estimated cost-savings to consumers, health insurance carriers,  
30 employers, and 28 the state during the previous calendar year and over the course  
31 of the program.

32 5. Information regarding the implementation of the audit work plan and audit findings.

33 6. Any other information the state agency designated to oversee the program considers  
34 relevant.

**SECTION 3. CONTINGENT EFFECTIVE DATE.** The state department of health shall submit a request to the United States department of health and human services for approval and certification of a wholesale prescription drug importation program created under section 2 of this Act. Section 2 of this Act becomes effective six months following the date the state health

5 officer certifies to the legislative council the receipt of approval and certification of the state's 6  
wholesale prescription drug importation program from the United States department of health 7  
and human services.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** Educational Opportunities

As you will recall from my Fiduciary Responsibility presentation last summer, the Duty of Loyalty and the Duty of Prudence are the “Big Two” as far as a Board member’s fiduciary responsibility goes – nearly every other “duty” is a derivative of one of those two. The Duty of Prudence requires you to act with a high degree of care, skill, prudence, and diligence. The question then becomes, how does one acquire the skill and information necessary to act in that manner? The answer, of course, is education.

Staff strives to provide the necessary information and education for each of the decisions Board members make every month. Nonetheless, education that provides an over-arching view of the issues you consider can also be extremely beneficial. On-line and out-of-state educational opportunities can help provide that.

Below is a list of pension- and benefit-related organizations that provide educational opportunities, along with some of their upcoming offerings. Some are usually virtual, and some are forced to be virtual for the time being, but are otherwise in-person. I have attended both, and find both informative.

We budget for one out-of-state educational event per biennium for each Board member. Virtual, webinar-type opportunities are relatively inexpensive, so Board members could participate in nearly any number of them. Over the course of my 23-year career I have attended conferences from all of these organizations, and would be happy to talk with you about any that interest you.

**National Association of State Retirement Administrators (NASRA):**

- 2021 Winter Meeting, February 20-24, Washington, D.C. (virtual)

- 2021 Annual Conference, August 7-11, Pittsburgh, PA (possibly in-person)
- [NASRA](#)

### **International Foundation of Employee Benefit Plans (IFEBP):**

IFEBP has a huge number and variety of opportunities, including several certificate series like the one Rebecca and I attended in 2019. You can find all of the opportunities on their webpage: <https://www.ifebp.org/Pages/default.aspx>

### **National Conference on Public Employee Retirement Systems (NCPERS):**

[NCPERS](#)

[NCPERS Conferences](#)

### **National Institute on Retirement Security (NIRS):**

[National Institute on Retirement Security – Reliable Research. Sensible Solutions. \(nirsonline.org\)](#)

[Special Webinar Series – National Institute on Retirement Security \(nirsonline.org\)](#)

### **Pensions and Investments (P&I):**

[Pensions & Investments - The International Newspaper of Money Management \(pionline.com\)](#)

[Events, Conferences, and Webinars | Pensions and Investments \(pionline.com\)](#)

-P&I holds defined contribution conferences twice a year, once on the west coast and once on the east. I found them to be incredibly professional and well-organized.

### **National Association of Governmental Defined Contribution Administrators (NAGDCA):**

[NAGDCA](#)

[Past and Future Conference Locations \(nagdca.org\)](#)

### **Callan**

[Events and Education - Callan](#)





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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** September 2021 Board Meeting Date

We had a miscalculation regarding the second Tuesday of September for Board meeting purposes. The Board approved September 7, when it should have been September 14. We propose moving the September Board meeting date from the 7<sup>th</sup> to the 14<sup>th</sup>.

**Board Action:** Consider moving the September 2021 regular Board meeting date to September 14, 2021.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** Strategic Plan Update

At the December 2019 meeting, the Board approved goals for a three-year strategic plan. I gave you an update on our progress in June, and advised you we would revisit the Strategic Plan at this meeting to review our progress and set additional goals for the future.

I have attached the updated strategic planning table. New information is in red. As you can see, we are well on our way to completing the goals for 2020. Management staff also met to discuss suggested goals to add for the next few years, which are also added in red. We look forward to discussing our goals going forward, and getting the Board's direction on where to focus our work.

**Board Action:** Designate new goals to include in our strategic plan.

# Attachment

Goal	2020	2021	2022	2023
Accuracy Improvement	In Process	X	X	X
Succession Planning:				
IT	In Process	X		
Research & Planning	In Process	X		
Admin Services			X	X
CFO			X	X
Transition RHIC to Calendar Year	Done			
Internal MVVM	Done			
Part D Transparency	Done			
HRMS Onboarding	Done			
External MVVM	Done			
*Online Presentations - FEW & PREP	Done	X		
Funded Status of Retirement	In Process - Legislation Submitted	X		
Educational Videos for Website	In Process	X	X	
Consider/Relocate Office	In Process	X		
Part D Bundle/Unbundle		X		
*Communication Engine		Implementing Alternate Solution		
**Mainframe Discontinuation		X		
**Website Redesign		X		
**ND Login Process		X		
Internal PIR Process Redesign		X		
Renewal/RFPs				
Vision		X		
RHIC (RFP)		X		
Medicare Part D (RFP)		X		
EAP		X		
Consultant - Actuary		X		
Consultant - Health Plan		X		
Health			X	
Dental			X	
457/DC Third Party Administrator			X	
Flexcomp Third Party Administrator			X	
Consultant - Dental, Vision, Life			X	
Consultant - Investment			X	
Electronic Surveys/Board Elections		X	X	
Electronic Records Cleanup		X	X	
Develop an Employee Handbook		X	X	
Implement Employer Statement Process		X	X	
Archive/Purge PERSLink Tables & Drives		X	X	X
*Comprehensive Wizards		X	X	X
*System Enhancement Backlog		X	X	X
*Workflow Redesign (BPM)		X	X	X
Lifecycle Training Recordings				X

\* Will require one-time appropriation next session

\*\* Bulk of the work done outside of NDPERS Staff



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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** January 12, 2021

**SUBJECT:** AssuranceNM Testing

AssuranceNM is the state's emergency/disaster recovery communication software that enables us to keep in contact when other communication channels have gone down. We test this capability every three months with staff, and every six months with the Board. At the appropriate time during the Board meeting, one of the staff will send out a message through AssuranceNM. Please let us know if you do not receive that message.

## **VI. MEMBER \*\*Executive Session**

**Material for the Executive Session will be sent under separate cover.**