



# Board Meeting Agenda

**Location:** WSI Board Room, 1600 East Century Avenue, Bismarck ND  
By phone: 701.328.0950 Conference ID: 501 960 686#  
**Date:** Tuesday, July 9, 2024  
**Time:** 8:30 A.M. [Click here to join the meeting](#)

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## I. MINUTES

- A. June 11, 2024

## II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

## III. PRESENTATIONS

- A. Fiduciary Responsibility & Ethics – Dean DePountis

## IV. DEFINED CONTRIBUTION PLAN IMPLEMENTATION

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

## V. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

- A. 401(a) Defined Contribution Plan Document -- Rebecca (Board Action)
- B. Recordkeeper Vendor Transition Status Update – Derrick (Information)
- C. Investment Consultant Contract Amendment – Katheryne (Board Action)

## VI. DEFINED BENEFIT

- A. Highway Patrol Indexing – MaryJo (Board Action)

## VII. GROUP INSURANCE / FLEXCOMP

- A. Group Voluntary Dental Plan RFP **\*EXECUTIVE SESSION** – Katheryne (Board Action)
- B. FlexComp RFP **\*EXECUTIVE SESSION** – Katheryne (Board Action)
- C. Wellness Renewal – Rebecca (Information)
- D. Insulin and Diabetic Supplies Bill, Report, and Recommendation – Rebecca (Information)
- E. Sanford Health Plan Change in Formulary (Free Libre CGM) – Rebecca (Information)

## VIII. OPERATIONS / ADMINISTRATIVE

- A. Board Subcommittee and State Investment Board Assignments – Rebecca (Board Action)
- B. Code of Ethical Responsibility – Rebecca (Board Action)
- C. Board Self-Evaluation – Rebecca (Information)
- D. Contracts Under \$10,000 – Rebecca (Information)
- E. Budget – Derrick (Board Action)

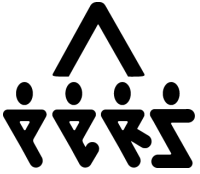
- F. AssuranceNM Testing – Katheryne (Information)
- G. Next Meeting Date: August 20, 2024 (3<sup>rd</sup> Tuesday)

**IX. MEMBER \*\*EXECUTIVE SESSION**

- A. Insurance Benefit Appeal Case #867 – Lindsay (Board Action)
- B. Retirement Benefit Appeal Case #868 – MaryJo (Board Action)
- C. Retirement Benefit Appeal Case #870 – MaryJo (Board Action)

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

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



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# Memorandum

**TO:**                   NDPERS BOARD

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           Fiduciary Responsibility & Ethics

Dean DePountis will provide the Board with its annual fiduciary responsibility and ethics education.



# Fiduciary Responsibility & Ethics

Dean DePountis

July 2024

NDPERS Board July 2024 Board Book Page 4 of 113

# Terminology

- **Trust**
  - A legal entity created by a grantor for the benefit of designated beneficiaries.
- **Grantor, aka settlor, funder, trustor, or sponsor**
  - Creates and establishes the terms of the trust.
- **Beneficiaries**
  - Those who benefit from the trust.
- **Trustees**
  - Those who oversee asset management and benefit distributions in accordance with the plan documents.
  - Trustees are fiduciaries.
- **Plan documents**
  - Memorialize the intent of grantor.

# Trust, sponsor, and beneficiaries

The North Dakota Public Employees Retirement plan was established to “provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women.”

N.D.C.C. 54-52-02

Retirement plans are the trust; North Dakota is the sponsor; and employees are beneficiaries.

# Trustee

“A state agency is hereby created to constitute the governing authority of the system to consist of a board of eleven individuals known as the retirement board.”

N.D.C.C. 54-52-03(1)

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

N.D.C.C. 54-52-04(1)

The Board is the trustee.

# Plan Documents

- Statute: North Dakota Century Code chapters 39-03.1, 54-52, 54-52.1, 54-52.2, 54-52.3, 54-52.6;
- Administrative Rules Title 71;
- Policies;
- Internal Revenue Code section 401(a) – Applicable to governmental plans.



# What is a fiduciary?

“Someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure...”

“Someone who must exercise a high standard of care in managing another's money or property...”

Black's Law Dictionary (11<sup>th</sup> ed. 2019)

# Who is a fiduciary?

- Agents, executors and administrators, trustees, guardians, and officers of corporations are fiduciaries;
- Accountants, attorneys, and bankers are fiduciaries;
- NDPERS Board members are fiduciaries.
- Fiduciaries are charged with fiduciary duty.

# Fiduciary Duty

- Fiduciary responsibility has been called the most important duty imposed by law.
- Fiduciary law has a long history: recognized in Roman law, British common law, American common law, and developed by courts over hundreds of years.
- ERISA (1974), a federal law, clarified trust law as it applied to private sector pension funds.
- Although ERISA does not apply to public pension funds, it provides best practices that inform public pension fund fiduciary behavior.

# Fiduciary Responsibilities

The legal duties imposed on fiduciaries generally include the duty of loyalty and the duty of care.

N.D.C.C. § 47-36-14

# Duty of Loyalty

“Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the ... [careful observance] of an honor the most sensitive, is then the standard of behavior....”

Justice Benjamin N. Cardozo, United States Supreme Court

# Duty of Loyalty

- The duty of loyalty means the fiduciary acts “solely in the interest of the beneficiaries.”

N.D.C.C. § 59-16-02

- “All moneys from any source paid into any public employee retirement system fund created by the laws of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of that system, including the payment of system administrative costs.”

N.D.C.C. § 54-52-14.3

# Duty of Loyalty

Realize Duty of Loyalty by implementing good governance, which includes transparency, accountability, and managing conflicts of interest.

- Open meetings and communication
- Awareness and restraint

# Conflicts of Interest

- The standards concerning conflicts of interest originate from the common law duty of loyalty. The question is: which hat am I wearing?
- Dealing with conflicts:
  - **Avoid** conflicts of interest;
  - **Disclose** unavoidable conflicts of interest;
  - **Mitigate** conflicts of interest;
  - Adopt and follow a Code of Ethics that defines standards of conduct.



# Conflicts of Interest

- ❖ North Dakota Ethics Commission
  - ❖ Article XIV of the North Dakota Constitution (2018)
  - ❖ Chapter 54-66 of the North Dakota Century Code (2019)
  - ❖ Title 115 of the North Dakota Administrative Code (2022)

# Conflicts of Interest

- ❖ Regular conflict of interest: typical Board matters
  - ❖ Gift from one of the parties
  - ❖ Significant financial interest in one of the parties or the outcome
  - ❖ Relationship in private capacity
  
- ❖ Quasi-judicial bias: quasi judicial matters (will this lead to an OAH hearing?)
  - ❖ Gift from one of the parties
  - ❖ Significant financial interest in one of the parties or the outcome
  - ❖ Relationship in private capacity
  - ❖ Campaign Monetary or In-kind Support: for any campaign, not just statewide

# Conflicts of Interest

1. Review the agenda: are there topics that trigger a conflict of interest?
2. At the meeting: declare the conflict before any discussion and prior to any action on the topic. Must provide sufficient information to put public on notice of the “material facts.”
3. Board member determines recusal; or
4. Board member may request remaining board members (neutral reviewer) determine recusal. If board member follows neutral reviewer determination, board member has safe harbor.

# Conflicts of Interest

What happens if a board member with a known conflict fails to disclose the conflict?

- A board member may mention another board member's conflict of interest.
- Follow procedure in N.D.C.C. § 44-04-22.
- The board votes on whether the conflicted board member can vote.

# Conflict of Interest Standards

Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.

A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.

It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.

# Duty of Prudence

- Requires that fiduciaries discharge their duties in good faith with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. N.D.C.C. § 59-21-02
- Requires conscientious processes in all decision-making by:
  - Understanding the facts
  - Investigating the options
  - Seeking expert advice and questioning those experts if their advice is not clear
- The law requires process more than outcome and prudence rather than perfection.

# Duty to Follow the Law and Plan Docs

- Fiduciaries have a duty to administer the plan in a fair and impartial manner.
- In doing so, they must consider:
  - Plan provisions
  - Statutes, rules, and ordinances
  - Federal laws
  - Legal opinions
  - Common law concepts

# Fiduciary Liability

- Fiduciary liability means personal liability for losses
  - Restoration of profits
  - Additional civil penalties and/or injunctions
  - Potential criminal penalties for willful violations
- Co-Fiduciary Liability
  - Knowledge of another fiduciary's breach coupled with inaction is a breach of fiduciary duty
  - Courts have held that fiduciaries have a duty to speak up and try to prevent or remedy the breach



# Mitigating Fiduciary Risk

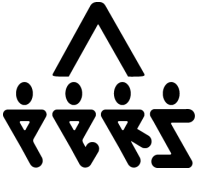
- ✓ Establish, follow, and document prudent processes
- ✓ Maintain good governance structure
  - Thorough decision-making processes
  - Rigorous risk identification and management
  - Clearly defined and understood roles and responsibilities
- ✓ Perform on-going oversight
- ✓ Establish appropriate reporting and disclosure
- ✓ Periodically review procedures and processes; revise as needed
- ✓ Offer orientation and continuing education
- ✓ Obtain independent expert advice – law, actuarial, benefits, investments, audits

# Summary

- Fulfill Duty of Loyalty
- Effect Duty of Prudence
- Follow Plan Documents
- Act in good faith in the best interest of plan participants and beneficiaries
- When in doubt, seek the advice of experts
- Maintain independence and objectivity by avoiding conflicts of interest



**Thank  
you!**



# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           House Bill 1040 Implementation Update

The following activities have occurred for House Bill 1040 implementation since our last Board discussion:

- Continued discussions with Sagitec, our business system vendor, regarding requirements of the bill and updates needed for programming, as vendor has questions. Staff received a demo of system updates made to our line of business application and have begun performing system testing.
- The new Defined Contribution enrollment form was reviewed by legal counsel (both Ice Miller and Dean), finalized, and turned over for development in our Member Self Service platform.
- Finalized the Defined Contribution Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes. This item is a separate agenda item for the Board's approval of the Plan Document. Once approved, staff will begin working with Ice Miller on requesting the IRS Letter of Determination.
- Continued review of 457 Deferred Compensation Plan Document and 457 Companion Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes to ensure state and federal law compliance. Once final, the document will be brought to the Board for approval.
- Finalized internal staff training presentation regarding plan provisions. The presentation is being recorded and broken into shorter videos to be used as education for members and employers also.
- Conducted a meeting with Software Unlimited and NDIT to begin development on the State's PeopleSoft platform.
- Distributed a video and email for employers on June 12<sup>th</sup> outlining payroll reporting responsibilities and introducing file layout requirements.

- Presented a transition update to the ND University System Human Resource Council on June 19<sup>th</sup>.
- Presented a transition update to the League of Cities on June 24<sup>th</sup>.
- Presented a transition update to the SE Commissioner Association on June 27<sup>th</sup>.
- Will be presenting a transition update at the County Auditor and Treasurer Conference on July 11.
- Programmatic updates and testing have begun within the State's Central Payroll reporting platform (PeopleSoft).
- Presented to the Administrative Rules Committee on June 13<sup>th</sup>. Although the Committee had many questions, the Committee did not raise any specific concerns with the proposed rules.

Attachment 1 and Attachment 2 are included as an overview of work efforts and timelines identified.

## House Bill 1040 Administrative Implementation

	2024	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>HB 1040 Administrative Implementation</b>													
Marketing intern recruitment		★											
1% employer contribution increase launched		★											
Inventory the PERSLink correspondence updates				★									
Targeted communications to subs in main but not public safety					★								
Targeted communications to subs in main but not deferred comp					★								
Recordkeeper transition							★						★
PERSLink correspondence updates							★				★		
PERSLink correspondence testing							★				★		
Form updates							★				★		
Plan document updates											★		
Plan handbook updates											★		
Special election window education for eligible employees												★	
Administrative rule making promulgation													★
Employer training													★
Website updates													★
Revise new hire, transfer, termination guides													★
Staff training													★
Biweekly internal administrative implementation meetings													★
Communication team biweekly meetings													★
Education on new plan provision to members						★			★			★	★
Education on new plan provision to employers				★			★			★			★

### KEY

★ Deadline

Task Completed

Work Effort

Deadline Missed

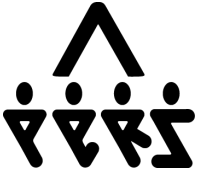
## House Bill 1040 Programming Implementation Timeline

	2023	Jul	Aug	Sep	Oct	Nov	Dec	2024	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>HB 1040 Programming Implementation</b>																				
Funding for development effective		★																		
HB 1040 section-by-section analysis to determine system enhancements		Work Effort	Task Completed																	
Meet with GRS to discuss the incentive, and get programming parameters			Task Completed																	
NDPERS updates file layout documentation for employers												Task Completed	★							
NDPERS develops sample file layouts for employers												Task Completed	★							
Biweekly meetings to discuss section-by-section coding		Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	★	
NDPERS user acceptance testing of enhancements												Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	★	
State PeopleSoft development														Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	★	
Higher Ed PeopleSoft development														Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	★	
Political sub development														Work Effort	Work Effort	Work Effort	Work Effort	Work Effort	★	
Employer file testing																	Work Effort	Work Effort	Work Effort	★

**KEY**

★ Deadline

<b>Task Completed</b>
<b>Work Effort</b>
<b>Deadline Missed</b>



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           401(a) Defined Contribution Plan Document Revised  
Effective January 1, 2025

One of the items we've been discussing monthly as part of the House Bill 1040 Implementation Status Update is that the provisions of House Bill 1040 would need to be incorporated into the 401(a) Defined Contribution Plan Document with an effective date of January 1, 2025.

Staff along with legal counsel from both the Attorney General's Office and Ice Miller have updated the 401(a) Defined Contribution Plan Document (Attachment) to ensure compliance with the provisions of House Bill 1040, as well as other state laws and federal law. At this time, we are seeking approval of the updated Plan Document and request that it be approved to be effective January 1, 2025. Once approved, staff will begin working with Ice Miller to request an IRS Letter of Determination for the Plan per the Board's action at the June meeting.

**Board Action Requested:**

Approve the updated 401(a) Defined Contribution Plan Document effective January 1, 2025.



**NORTH DAKOTA DEFINED CONTRIBUTION  
RETIREMENT PLAN**

**Plan Document**

**Amended and Restated Effective January 1, 2025**

**ADOPTION RESOLUTION**

4871-1103-5820.2

Resolved, that effective January 1, 2025, the State of North Dakota has adopted the attached amended and restated Defined Contribution Retirement Plan. The Plan is a profit sharing plan that is intended to satisfy the requirements of Sections 401 and 501 of the Internal Revenue Code of 1986, as amended, and its associated regulations.

	Executive Director	
Signature	Title	Date Signed

## TABLE OF CONTENTS

<b>Article</b>	<b>Description</b>	<b>Page</b>
Article 1	Definitions	4
Article 2	Participation	7
Article 3	Contributions	8
Article 4	Vesting	12
Article 5	Account Valuation	13
Article 6	Distributions	14
Article 7	Form of Distribution	15
Article 8	Establishment and Administration of the Trust	23
Article 9	Right of Appeal and Determination of Disputes	26
Article 10	Amendment and Termination	27
Article 11	General Provisions	28

## ARTICLE 1.

### DEFINITIONS

The following words and phrases shall, when used in this Plan, have the following meanings unless the context clearly indicates otherwise.

- 1.1 “Account Balance” means the total contributions made by the Employee, vested Employer contributions, any transferred amounts under Section 3.4 and any investment gains or losses.
- 1.2 “Administrator” means any entity or individual designated by the Board to provide contractual administrative services to the Plan.
- 1.3 “Beneficiary” means any person designated by a Participating Member to receive a benefit provided by this Plan after the death of the Participant.
- 1.4 “Board” means the Public Employees Retirement System Board.
- 1.5 “Code” means the federal Internal Revenue Code of 1986, as amended from time to time, and as interpreted by applicable regulations and rulings.
- 1.6 “Deferred Member” means a vested member of the Public Employees Retirement System who has not elected to receive a refund and is eligible to receive deferred vested retirement benefits under the System.
- 1.7 “Effective Date” means January 1, 2000.
- 1.8 “2025 Electing Employee” means a permanent State Employee who on December 31, 2024 is a Participating Member of the Public Employees Retirement System Main System Plan under 54-52 with no more than five years of Service who opted to terminate participation in the defined benefit plan and transfer to this Plan during the special election opportunity provided in NDCC 54-52.6-02.2. The election opportunity is a three-month election period, from January 1, 2025, through March 31, 2025 to elect to transfer to this Plan.
- 1.9 “Eligible Employee” for Employees who become Participating Members after December 31, 2024, has the same meaning as provided under section 54 - 52 - 02.15. It also shall include Temporary Employees who make the election under section 54-52-02.9(4) and elected or appointed State officials under section 54-52-02.5(2). For Employees who elected to join this Plan under this chapter before January 1, 2025, the term includes a permanent State Employee, except an Employee of the judicial branch or an Employee of the board of higher education and State institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and

who is in a position not classified by the North Dakota human resource management services. This term also includes 2025 Electing Employees under NDCC 54-52.6-02.2.

- 1.10 “Employee” means an individual employed by a Governmental Unit, whose compensation is paid out of the Governmental Unit’s funds, or funds controlled or administered by the Governmental Unit, or paid by the federal government through any of its executive or administrative officials.
- 1.11 “Employer” means a Governmental Unit.
- 1.12 “Governmental Unit” means the State of North Dakota or a participating political subdivision of the State.
- 1.13 “Participating Member” or “Participant” means an Eligible Employee who through payment into the Plan has established a claim against the Plan. For purposes of investment and payment of benefits under the Plan, the terms “Participating Member” or “Participant” also includes individuals who have separated from employment with the Employer and Beneficiaries, but who have retained benefit rights under the Plan.
- 1.14 “Permanent Employee” means an Employee whose Services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
- 1.15 “Plan” means the North Dakota Defined Contribution Retirement Plan, as stated herein, and as amended from time to time. This Plan shall be a profit sharing plan.
- 1.16 “Plan Year” means a twelve consecutive month period beginning any July 1 and ending the following June 30, with a short initial Plan Year beginning January 1, 2000 and ending June 30, 2000.
- 1.17 “Profit Sharing Contribution” means a discretionary contribution to the Plan made by the Employer. Profit Sharing Contributions under this Plan shall be made in accordance with Section 3.2, subsection e. and without regard to whether the Employer earns any profits.
- 1.18 “Public Employees Retirement System” or “System” means the defined benefit retirement plans established under North Dakota Century Code Chapter 54-52.
- 1.19 “Required Beginning Date” means April 1 of the calendar year following the later of the calendar year in which the Participant retires or reaches the required minimum distribution age under Code Section 401(a)(9).

- 1.20 "Service" means periods of active employment with the Employer, determined in the same fashion as service and prior service under North Dakota Century Code § 54-52-01.
- 1.21 "State" means the State of North Dakota.
- 1.22 "Temporary Employee" means an Employee who is not eligible to participate as a Permanent Employee, who is at least eighteen years old and who is not actively contributing to another Employer-sponsored retirement fund, and, if employed by a school district, occupies a noncertified teacher's position.
- 1.23 "Trust Fund" means the assets of the Plan held in trust by the Trustee.
- 1.24 "Trustee" means the Public Employees Retirement System Board, which shall serve as the Board of Trustees for this Plan.
- 1.25 "Wages" and "Salaries" means earnings in eligible employment under this Plan reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under Code Sections 125, 401(k), 403(b), 414(h) or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a Participant in lieu of previously Employer-provided fringe benefits under an agreement between the Participant and participating Employer. Bonuses may be considered as Salary under this section pursuant to rules adopted by the Board.

Notwithstanding any other provision of the law, the amount of Wages or Salary used to determine the retirement benefits of a Participating Member in this Plan must not exceed the amount of compensation permitted to be taken into account under Code Section 401(a)(17).

## ARTICLE 2.

### PARTICIPATION

- 2.1 **Eligibility.** An Employee is eligible for membership under this Plan at the later of the first day of employment or the Effective Date of this Plan. Such eligibility, however, shall terminate at any time employment with the Employer is terminated.
- 2.2 **Election to participate.** Prior to January 1, 2025, in order to participate in this Plan, an Eligible Employee may make an election to participate in this Plan established under NDCC 54-52.6 at any time during the first six months after the date of employment. If the Board, in its sole discretion, determines that the Employee was not adequately notified of the Employee's option to participate in the Plan, the Board may provide the Employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window." If the Employee making the election is married at the time of the election, the election is not effective unless it is signed by the individual's spouse. However, the Board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

An additional election opportunity is provided under NDCC 54-52.6-02.2 to 2025 Electing Employees.

Effective January 1, 2025 and after, participation in this Plan is mandatory for any new Eligible Employee.

- 2.3 **Participation in other plans.** A Permanent Employee may not participate in any other public sector retirement benefits plan for simultaneous Services rendered to the same Employer. However, this Section does not prohibit a Participant from participating in a retirement plan established by this State or other public sector Employer under the Code.

## ARTICLE 3.

### CONTRIBUTIONS

- 3.1 **Mandatory Employee contributions.** For Participating Members enrolled prior to January 1, 2025 and Eligible Employees under NDCC 54-52.6-02.2 who elected to transfer to this Plan between January 1, 2025 and March 31, 2025, each Participating Member shall contribute monthly seven percent of the monthly Salary or Wage paid to such Participant. This assessment must be deducted and retained out of such Salary in equal monthly installments commencing with the first month of participation in this Plan. As of January 1, 2025, any newly Participating Members on or after this date shall contribute four percent of the monthly Salary or Wage paid to such Participant. In addition, this newly Participating Member can irrevocably elect within the first thirty days of employment to contribute up to an additional three percent Employee contribution.
- 3.2 **Employer contributions.**
- a. For Participating Members enrolled in the Plan before December 31, 2019 or for those 2025 Electing Employees, each Employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly Salary or Wage of a Participating Member.
  - b. For Participating Members enrolled after December 31, 2019 and before January 1, 2025 or for those electing Employees who exercised their option under NDCC 54-52.6-02.2 to transfer to this Plan during their special window, the Employer shall make an additional one and fourteen-hundredths percent Employer contribution.
  - c. For Participating Members who were first enrolled after December 31, 2024, the Employer shall contribute an amount equal to five and twenty-six hundredths as an Employer contribution. If the Employee elects to contribute up to an additional three percent Employee contribution under 3.1, then the Employer shall make a matching Employer contribution up to three percent.
  - d. If the Employee's contribution is paid by the Employer under Section 3.3, the Employer shall contribute, in addition, an amount equal to the required Employee contributions. The Employer shall pay such contribution monthly into the Participating Member's account from funds appropriated for payroll and Salary or any other funds available for such purposes. If the Employer fails to pay the contributions monthly, it 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.

- e. Each Employer, at its sole discretion, may elect to make a Profit Sharing Contribution to the Plan. The Profit Sharing Contribution shall be allocated among all or any part of the Participating Members of the Plan for such Plan Year in proportion to the Salary or Wage of the Participating Member. For purposes of this Section 3.2, subsection b. only, Participating Members include only those individuals who are Eligible Employees on the date the Profit Sharing Contribution is declared by the Employer. Each Participating Member's share of the Profit Sharing Contribution will be allocated to his or her Account Balance. Profit Sharing Contributions shall be subject to the rules regarding vesting of Employer contributions as set forth in Section 4.2.
- f. For 2025 Electing Employees, they shall be eligible for an additional annual Employer contribution of three thousand three hundred and thirty-three dollars for up to three years, beginning January 2026 and extending no further than January 2028, as long as the Employee remains under the employment of the State of North Dakota.
- g. Notwithstanding any other requirements under this Section 3.2, Temporary Employees shall not be eligible to receive Employer contributions.
- h. In addition to the Employer contribution under section 54-52.6-09, a State Employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required Employer contribution under sections 54-52.2-09 and 54-52.6-09. If a State Employer uses federal funds to pay any or all of an Employee's Wages, the Employer shall use State funds to pay this additional contribution.

**3.3 Employer pick up of Employee contributions.** Each Employer, at its option, may pay the Employee contributions required by Section 3.1, in accordance with Code Section 414(h), for all compensation earned after December 31, 1999. The amount paid must be paid by the Employer in lieu of contributions by the Employee. Employee contributions paid by the Employer must be treated as Employer contributions in determining tax treatment under State tax law and the federal Code. Such contributions may not be included as gross income of the Employee in determining tax treatment until they are distributed or made available. The Employer shall pay these Employee contributions by effecting an equal cash reduction in the gross Salary of the Employee or by an offset against future Salary

increases. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the Board in writing by June fifteenth of each odd-numbered year.

### **3.4 Transfer of contributions.**

- a. For Participating Members prior to January 1, 2025, electing to terminate membership in the Public Employees Retirement System and to become a Participating Member in this Plan, the Board shall transfer a lump sum amount from the retirement fund to the Participating Member's account under this Plan. However, if the individual terminates employment prior to receiving the lump sum transfer under this Section, the election made under Section 2.2 is ineffective and the Participant remains a Participant of the Public Employees Retirement System and retains all rights and benefits under that plan.
- b. For Participating Members prior to January 1, 2025, the Board shall calculate the amount to be transferred for Employees electing to transfer in accordance with North Dakota Century Code Section 54-52.6-02 as follows: The actual Employer contribution made, less vested Employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election, plus the Employee Account Balance.
- c. For 2025 Electing Employees, the Board shall transfer a lump sum amount from the Public Employees Retirement System fund to the Participant's account in this Plan. However, if the Eligible Employee terminates employment before receiving the lump sum transfer, the election is made ineffective and the Participant shall remain in the Public Employees Retirement System under NDCC 54-52. The Board shall calculate the lump sum amount to be transferred based on the actuarial present value of the Eligible Employee's accumulated benefit obligation under the Public Employees Retirement System based on the assumption the Eligible Employee will retire under the earlier applicable normal retirement age, plus interest from January 1, 2025, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election.

### **3.5 Rollover contributions from other eligible plans.**

- a. Subject to limitations and conditions adopted by the Board and in accordance with North Dakota Century Code Section 54-52.6-09.1, a

Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution from an Eligible Retirement Plan as such terms are defined in Code Sections 402(c)(4) and 402(c)(8)(B), respectively, and as permitted by Section 408(d)(3) of the Code.

- b. Upon receipt of a rollover contribution, the Board shall credit the amount of any rollover contribution to the contributing Participant's Account in the Plan and shall invest such amount in accordance with the provisions of this Plan.
- c. The Participant shall establish to the satisfaction of the Board that the amount tendered as a rollover contribution represents a qualified distribution of the Participant from an Eligible Retirement Plan maintained by the former employer(s) of the Participant. The Board shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a rollover contribution eligible for rollover treatment in accordance with this Section 3.6 and Code Section 402. In making such determination, the Board may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment.
- d. The Board shall maintain the rollover contributions for each Participant in a separate rollover account that will consist solely of the rollover contributions made by the Participant, plus any adjustments for investment gains or losses.
- e. The rollover contribution account under this Section shall be fully vested at all times, and shall be administered and distributed according to the same terms and conditions of this Plan applicable to other Participant accounts; provided, however, that it may distributed at any time without the occurrence of a distribution event under Section 6.1.

**3.6 Military service leave.** Notwithstanding any other provision of this Plan, a Participating Member returning from qualified military service protected under the Uniformed Services Employment and Reemployment Rights Act (Chapter 43 of Title 38, United States Code) shall be provided all participation, contribution, vesting and benefit rights required under that Act and Section 414(u) of the Code, as described in North Dakota Century Code Section 54-52.6-09.4. Effective for deaths occurring on or after January 1, 2007, if a Participating Member dies while performing qualified military service (as defined in Code Section 414(u)(5)), this Plan shall provide vesting service and any other benefits required in accordance with Code Section 401(a)(37), but the provisions of Code Section 414(u)(9) shall not apply to this Plan.

## ARTICLE 4.

### VESTING

- 4.1 **Vesting of Employee contributions.** A Participating Member is immediately one hundred percent vested in that Participant's contributions made to that Participant's account under Section 3.1 or paid by the Employer under Section 3.3.
- 4.2 **Vesting of Employer contributions.** A Participating Member vests in the Employer contributions made on the Participant's behalf according to the following schedule:
- a. Upon completion of two years of Service, fifty percent.
  - b. Upon completion of three years of Service, seventy-five percent.
  - c. Upon completion of four years of Service, one hundred percent.
  - d. Upon attainment of age 65 while an Employee, one hundred percent.

A Participating Member who was a Participant or Deferred Member of the Public Employees Retirement System and who makes an election to participate in this Plan must be credited with years of Service accrued under the Public Employees Retirement System on the effective date of participation in this Plan for the purpose of meeting vesting requirements under this Section. Any forfeiture as a result of a Participating Member to vest in the Employer contributions must be used to defray administrative expenses.

- 4.3 **Reemployment.** If a Participating Member terminates employment, is paid a lump sum distribution from their account, and then becomes reemployed as an Eligible Employee, any years of Service completed before termination will not be counted for vesting. If a Participant does not take a distribution of their account, then for purposes of vesting under the Plan, upon reemployment, the Participating Member's years of Service completed before termination will count for vesting.

## ARTICLE 5.

### ACCOUNT VALUATION

- 5.1 **Separate accounts.** A separate bookkeeping account shall be established and maintained under this Plan for each Participating Member to which shall be credited, at times prescribed by the Board, all Employee contributions and all Employer contributions.
- 5.2 **Credits and debits.** Each Participating Member's account shall be credited or debited from time to time, under rules established by the Board, to reflect investment earnings and administrative expenses.
- 5.3 **Limited rights to assets.** The fact that separate accounts are established for each Participating Member shall not give any Employee or others any right, title or interest in the Plan or its assets, or in any account except at the time and upon the terms and conditions provided in this Plan.

## ARTICLE 6.

### DISTRIBUTIONS

- 6.1 **Distribution eligibility.** A Participating Member's vested Account Balance is distributable upon the occurrence of one of the following events:
- a. The Participating Member has terminated employment with the Employer. Termination of employment means a severance of employment by not being on the payroll of the Employer for a minimum of one month. An approved leave of absence does not constitute termination of employment.
  - b. The Participating Member has become totally and permanently disabled according to medical evidence called for under the rules of the Board.
  - c. The Participating Member dies.
  - d. The Participating Member has reached the Required Beginning Date and has terminated employment. In no event shall the distribution of a Participant's Account Balance commence later than the Required Beginning Date, whether or not they apply for benefits.

## ARTICLE 7.

### FORM OF DISTRIBUTION

- 7.1 **Distribution election.** A Participating Member or his or her Beneficiary who is eligible to receive benefits under Article 6 shall receive benefits upon proper application in a manner approved by the Board as to the date benefit distributions under the Plan will begin. This election must be made consistent with the other distribution requirements of Section 6.1 and this Article 7.
- 7.2 **Payable benefits.** Benefits under this Article 7 shall be measured by Participating Member's vested Account Balance on the date or dates the benefits are payable under this Plan and shall be payable in lump sum or in equal monthly, quarterly, semiannual or annual installments over a period of one or more years, including annuities provided through an annuity provider selected pursuant to North Dakota Century Code Section 54-52.6-05.1.
- 7.3 **Distribution over life expectancy and deaths prior to January 1, 2022.** A Participating Member's form of distribution election under Section 7.2 must be expected to result in the distribution of the Participant's entire interest in this Plan within a period not exceeding the life of the Participant or the lives of the Participant and the Participant's Beneficiary, or over a period not extending beyond the life expectancy of the Participating Member or the life expectancy of the Participant and the Participant's designated Beneficiary.

For deaths prior to January 1, 2022, when a Participating Member dies after distribution of benefits has begun, the remaining portion of the Participant's interest shall be distributed at least as rapidly as under the method of distribution prior to the Participating Member's death.

For deaths prior to January 1, 2022, when a Participating Member dies before distribution of benefits has begun, the entire interest of the Participant shall be distributed within five years of the Participant's death. The five year payment rule does not apply to any portion of the Participant's interest which is payable to a designated Beneficiary over the life or life expectancy of the Beneficiary and which begins within one year after the date of the Participating Member's death. The five year payment rule does not apply to any portion of the Participating Member's interest which is payable to a surviving spouse over the life or life expectancy of the spouse and which begins no later than the date the Participant would have reached age seventy and one-half.

- 7.4 **Additional distribution requirements.** In the case of distributions beginning before the death of a Participating Member, any amounts not distributed before the Participant's death shall be distributed at times specified by the Secretary of the Treasury which are not later than the time determined under Code Section 401(a)(9)(G), relating to incidental death benefits and at least as rapidly as under the method being used on the date of the Participating Member's death.

The Plan shall comply with the minimum distribution rules under Section 401(a)(9) of the Code and the Treasury Regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a Participating Member's Required Beginning Date and the required minimum distribution rules override any inconsistent provision of this Plan.

In addition, amounts that would have been 2009 required minimum distributions in the absence of Code Section 401(a)(9)(h), as added by the Worker, Retiree and Employer Recovery Act of 2008, including amounts that would have been first required minimum distributions payable in 2010, were paid as scheduled for 2009. Recipients of such required minimum distributions were given the opportunity to elect to stop receiving the 2009 required minimum distributions described in the preceding sentence, and a direct rollover was only offered for such distributions that would have been eligible rollover distributions without regard to Code Section 401(a)(9)(H).

Notwithstanding any other provisions of this Plan, a recipient who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a recipient with a Required Beginning Date of April 1, 2021) but for the enactment of section 401(a)(9)(l) of the Code (2020 RMD), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years (Extended 2020 RMDs), will receive those 2020 distributions unless the recipient elects not to receive such distribution. Notwithstanding the preceding sentence, recipient will be given an opportunity to make an election as to whether or not to receive such 2020 RMD distributions.

- 7.5 **Small benefit cashouts.** Notwithstanding any other provision of the Plan to the contrary, the Board shall automatically distribute the benefits of a Participating Member in a lump sum as soon as administratively feasible after the Participant becomes eligible for a distribution in accordance with



Section 6.1 if the total amount of the Participating Member's vested Account Balance and any amounts held in a rollover contribution account established under Section 3.6 is less than or equal to \$1,000. A Participating Member may waive the lump sum cashout if the Participant submits a written statement to the Board, within sixty days after termination of employment, requesting that the Participant's Account Balance remain in the Trust Fund.

- 7.6 **Death benefit payments.** In the event of the Participating Member's death prior to receiving payment in full of his benefits under this Plan, the Board shall pay the Account Balance of the Participating Member, to the Participant's designated Beneficiary. If the deceased Participant designated an alternate Beneficiary with the surviving spouse's written consent, the Board shall distribute the accumulated balance to the named Beneficiary. If the deceased Participant named more than one primary Beneficiary with the surviving spouse's written consent, the Board shall pay the accumulated Account Balance to the named primary Beneficiaries in the percentages designated by the deceased Participant or, if the deceased Participant had not designated a percentage for the Beneficiaries, in equal percentages. If one or more of the primary Beneficiaries has predeceased the deceased Participant, the Board shall pay the predeceased Beneficiary's share to the remaining primary Beneficiaries. If any Beneficiary survives the deceased Participant, yet dies before distribution of the Beneficiary's share, the Beneficiary must be treated as if the Beneficiary predeceased the deceased Participant. If there is no remaining primary Beneficiary, the Board shall pay the accumulated Account Balance of that deceased Participant to the contingent Beneficiaries in the same manner. If there is no remaining designated Beneficiary, the Board shall pay the accumulated Account Balance of that deceased Participant to the deceased Participant's estate.

If the surviving spouse is the Beneficiary, the surviving spouse may select from a form payment as provided in NDCC Section 54-52.6-13(3). If the surviving spouse is not the sole Beneficiary, the Beneficiary may only choose a lump sum distribution of the accumulated balance.

- 7.7 **Direct rollovers.** A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this Section 7.7, the following definitions shall apply:
- a. **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a Participating

Member's account to the credit of the Distributee, including any after-tax Employee contributions that are not includible in gross income except that an Eligible Rollover Distribution does not include:

1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his designated Beneficiary, or for a specified period of ten (10) years or more;
2. Any distribution to the extent such distribution is required under Code Section 401(a)(9);
3. The portion of any distribution that is not includable in a Distributee's gross income (determined without regard to the exclusion for net unrealized unappreciation with respect to Employer securities); or
4. Any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions.

An Eligible Rollover Distribution also includes any portion of a distribution that consists of after-tax Employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for the after-tax Employee contribution amounts so transferred.

- b. **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in section 401(a) of the Code that accepts the Distributee's Eligible Rollover Distribution or an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and, effective January 1, 2008, a Roth IRA described in section 408A of the Code, and effective December 18, 2015, a SIMPLE IRA as described in Code Section 408(p), provided that the rollover contribution is made after the two-year period

beginning on the date the Distributee first participated in any qualified salary reduction arrangement maintained by the Distributee's employer under Code Section 408(p)(2), as described in Code Section 72(t)(6). The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of an Eligible Retirement Plan for a nonspouse designated Beneficiary of a deceased Participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Code Section 408(d)(3)(C)).

- c. **Distributee.** A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's designated Beneficiary or the Employee's or former Employee's spouse or former spouse, with regard to the interest of the spouse or former spouse, are Distributees.
- d. **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**7.8 Benefits payable to alternate payee under qualified domestic relations order.**

- a. The Board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The Board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this Section 7.8 and under rules established by the Board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the Board shall notify the Participating Member and the named alternate payee of its receipt of the qualified domestic relations order.
- b. A "qualified domestic relations order" for purposes of this Section 7.8 means any judgment, decree or order, including approval of a property settlement, which relates to a provision of child support, spousal support or marital property rights to a spouse, former spouse, child or other dependent of a Participating Member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the Participating Member. A qualified

domestic relations order may not require the Board to provide any type of benefit, or any option, not otherwise provided under this Plan, or to provide increased benefits as determined on the basis of actuarial value. However, payment of benefits to the alternate payee under a qualified domestic relations order shall be made as soon as administratively feasible after the order is determined to be qualified, notwithstanding that the Participating Member has not terminated eligible employment. A qualified domestic relations order must be in a form as may be required by the Board.

**7.9 Contribution limitations.** The Plan shall comply with the contribution limitation rules under Section 415 of the Code, including the defined contribution limitations under Section 415(c)(1)(A) and (B) of the Code and the Treasury Regulations thereunder, as such apply to governmental plans, which are incorporated herein by reference.

- a. In accordance with the defined contribution limitations under Section 415(c) of the Code, annual additions (as defined in Section 415(c)(2) of the Code) under this Plan may not exceed the limitations set forth in Code Section 415(c)(1)(A) and (B), as adjusted under Section 415(d) of the Code, effective January first of each year following a regular legislative session.

If a Participating Member's aggregate annual additions exceed the defined contribution limitations under Section 415(c) of the Code, the Participant's annual additions to this Plan must be reduced to the extent necessary to comply with Section 415(c) of the Code and the Treasury Regulations thereunder.

- b. "Compensation" for purposes of this Section 7.9 shall mean compensation as defined in Treasury Regulations section 1.415(c)-2(d)(3), which includes wages within the meaning of Code Section 3401(a), plus amounts that would be included in wages but for an election under Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Code; provided, however, that any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed are disregarded for purposes of this definition. In order to be taken into account for a limitation year, compensation must be actually paid or made available to a Participating Member within the limitation year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or would have been paid on that date but for an election under Sections 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b) of the Code. In order to be taken into account for a limitation year, compensation must be paid or treated

as paid to a Participating Member prior to a severance from employment.

- c. If a Participating Member's annual additions exceed the limits set forth in this Section 7.9 for a limitation year, such excess allocations shall be corrected in accordance with the applicable provisions of the Employee Plans Compliance Resolution System (EPCRS) issued by the Internal Revenue Service (currently Revenue Procedure 2021-30).

**7.10 Deaths After December 31, 2021.** Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions in this section 7.10 shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act.

- a. **Death with a Designated Beneficiary.** If the Participant dies before the distribution of his or her entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:
  - 1. The entire account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.
  - 2. Notwithstanding the paragraph above, if the designated Beneficiary is surviving spouse, then the surviving spouse may elect for the Participant's account(s) to be distributed (i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or (ii) the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained age seventy-two (72) (or age 70 ½ with respect to a Participant who was born before July 1, 1949), or other applicable age under Code Section 401(a)(9).
  - 3. For calendar years beginning after December 31, 2023, if the designated Beneficiary is the Participant's surviving spouse, the surviving spouse may elect to be treated as if he or she were the Participant, pursuant to Code Section 401(a)(9)(B)(iv).
- b. **Death without a Designated Beneficiary.** If the Participant dies before distributions of his or her account begins and the Participant has no designated Beneficiary, the Participant's account under the Plan shall be distributed by December 31 of the calendar year

containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his or her account begins and the Participant has no designated Beneficiary, any remaining portion of the account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

## ARTICLE 8.

### ESTABLISHMENT AND ADMINISTRATION OF THE TRUST

- 8.1 **Establishment of trust.** There is hereby established a Trust Fund to be known as the North Dakota Defined Contribution Retirement Fund. This Trust Fund is intended to be a tax-exempt trust under Code Sections 401 and 501. The assets of this Plan, and all income attributable to such assets, are held in trust by the Board for the exclusive benefit of Participating Members and their Beneficiaries.
- 8.2 **Acceptance of trust.** The Board consents to act as Trustee for this Trust Fund.
- 8.3 **Administration.** The Board shall supervise the operation of the Plan, maintain records and supply information to Participating Members and others. In administering this Plan, the Board shall have any applicable rights, powers and duties granted to it by law for the administration of the Public Employees Retirement System.
- 8.4 **Specific powers and duties.** The Board shall:
- a. Exercise exclusive authority to invest and manage assets of the Plan. However, the Board shall permit each Participating Member to direct the investment of the individual's Employer and Employee contributions and earnings to one or more investment options within available categories of investment as established by the Board.
  - b. Establish and adopt a statement of investment objectives and policies setting forth the manner and parameters of the investment of the assets of the Plan. The statement of investment objectives and policies shall be established in a manner consistent with the purposes of the Plan. The Board shall monitor the performance of the investments of the Plan to ensure such remain consistent with the investment policy established by the Board.
  - c. Provide information to Employees who are eligible to elect to become Participating Members in this Plan. The information must include at a minimum the Employee's current Account Balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the Public Employees Retirement System and this Plan. Notwithstanding any other provision of law, the Board is not liable for any election or investment decision made by an Employee based upon information provided to an Employee under this Plan.

- d. Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.
  - e. Pay Plan benefits and related taxes from the assets of the Plan.
  - f. Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and record keeping services.
  - g. Procure and dispose of the goods and property of the Plan necessary for its proper administration.
  - h. Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend or revoke any rules and regulations so adopted.
- 8.5 **Expenses.** The expenses incurred by the Board in the proper administration of the Plan shall be paid from sources made available under applicable state law, including the Trust Fund.
- 8.6 **Accounting.** For accounting purposes, the Board will maintain a summary of the Account Balances of each Participating Member whose benefits have not begun to be distributed. This accounting summary will reflect from time to time the total deferred liability of the Plan as well as the Account Balance for each Participating Member in the Plan.
- 8.7 **Compliance authority.** The Board may administratively alter the terms of the Plan as it determines to be necessary or appropriate to maintain the status of the Plan as a qualified defined contribution retirement plan under the Code.
- 8.8 **Delegation of responsibilities.** The Board may delegate the duties and authorities established under the Plan in a manner consistent with its fiduciary responsibilities as established under this Article 8.
- 8.9 **Fiduciary responsibilities.** The Board, the Administrator, and any agent or designee thereof with discretionary authority for the Plan, are fiduciaries under the Plan as to the discharge of their duties under the Plan and shall act as to their duties:
- a. Solely in the interest of the Plan's Participating Members and their Beneficiaries;



- b. For the exclusive purpose of providing benefits to Participating Members and their Beneficiaries and paying reasonable expenses of administering the Plan;
- c. With the care, skill, prudence and diligence under the circumstances then prevailing that a person acting a like capacity and familiar with such matters would use in the conduct of an activity of like character and purpose;
- d. Incurring only costs that are appropriate and reasonable; and
- e. In accordance with good faith interpretation of the law governing the Plan.

## ARTICLE 9.

### RIGHT OF APPEAL AND DETERMINATION OF DISPUTES

- 9.1 **Claim to benefits.** No Participating Member, Beneficiary or other person shall have any right or claim to benefits under this Plan, or any right or claim to payment from the Trust Fund, other than as specified herein and under all applicable sections of North Dakota Century Code Chapter 54-52. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payment from the Trust Fund shall be resolved pursuant to the terms of the Plan, under appeal procedures adopted by the Board.

## ARTICLE 10.

### AMENDMENT AND TERMINATION

- 10.1 **Right to amend Plan.** The Board has the right to amend the Plan, in whole or in part, at any time and from time to time. However, no amendment shall, with respect to any Participating Member, reduce such benefits provided hereunder as are derived from vested contributions credited to the Participating Member before the effective date of any such amendment.
- 10.2 **Exclusive benefit.** Except as permitted specifically by law, it shall be impossible by operation of this Plan, by termination or amendment or by the happening of any contingency, for any part of the principle or income of the Trust Fund or any fund contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participating Members or their Beneficiaries.
- 10.3 **Severability.** If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.
- 10.4 **Nonforfeitable benefits upon termination.** In the event of a termination of the Plan, the rights of each Participating Member to all benefits accrued to date of such termination, which is the vested Account Balance of each Participating Member, shall be one hundred percent nonforfeitable and fully vested in each Participating Member.

## ARTICLE 11.

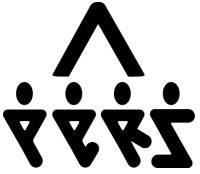
### GENERAL PROVISIONS

- 11.1 **Plan not employment contract.** The adoption of or participation in this Plan may not be deemed to give an Employee the right to be retained in the employ of an Employer or to interfere with the right of the Employer to discharge any Employee at any time.
- 11.2 **Alienation of benefits prohibited.** Neither the Participating Member nor his designated Beneficiary, or any other designee, has any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments or assets under this Plan. Such payments or assets are non-assignable and non-transferable. The Participating Member's rights under the Plan are not subject to the rights of creditors of the Participating Member, any Beneficiary, the Board or the Employer and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third persons. This Section shall not apply to a qualified domestic relations order, as defined in Section 7.8.
- 11.3 **Beneficiary designation.** A Participant or former Participant in the Plan may nominate one or more individuals as a Beneficiary by filing written notice of nomination with the Board. If the Participating Member or former Participant is married at the time of the nomination and the Participant's spouse is not the Beneficiary for one hundred percent of his or her Account Balance, the nomination is not effective unless it is signed by the Participant's spouse. However, the Board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
- 11.4 **Overpayments.** The Board has the right of setoff to recover overpayments made under this Plan and to satisfy any claims arising from embezzlement or fraud committed by a Participating Member, Deferred Member, Beneficiary or other person who has a claim to a distribution or any other benefit from this Plan.
- 11.5 **Plan qualification.** If the Board receives notice from the Internal Revenue Service that this Plan is not qualified for tax purposes under the Code, then the portion that will cause the disqualification does not apply.
- 11.6 **Construction.** The laws of the State of North Dakota, as amended from time to time, shall govern the construction and application of this Plan. Words used in the masculine gender shall include the feminine and words in the singular shall include the plural, as appropriate. The headings and

subheadings of this Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

- 11.7 **Reemployment.** Any former Participating Member of this Plan who returns to public employment following a previous termination or retirement and is eligible to participate in a retirement plan, must resume participation in this Plan.

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**North Dakota  
Public Employees Retirement System**  
1600 East Century Avenue, Suite 2 • PO Box 165  
Bismarck, North Dakota 58502-1657

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

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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** July 9, 2024

**SUBJECT:** Recordkeeper Vendor Transition Status Update

This memo is to provide the Board with an update on the Recordkeeper vendor transition from TIAA to Empower.

Weekly conversion meetings continue to take place between Staff & Empower. Attachment 1 is an updated project plan as of June 28<sup>th</sup>. The blackout date started on June 18<sup>th</sup> as expected, and was in effect until we officially went “live” with Empower on July 1, 2024.

“Go-live” emails were sent to all active employees that are enrolled in the plan (those we have emails on file) as well as to all active employers that offer the plan(s) to forward to their employees. In addition, hard copy mailings were sent to participants who are retired or deferred members in each of the plans.

The first contribution and demographic files were provided to Empower on June 17, 2024. These files all loaded and were processed as expected. The contributions were held by Empower in a “pending” status until July 1, 2024, when they were deposited into each participant’s account.

Empower will be hosting live webinars on July 9, 16, 18, and 23, 2024, to discuss how the transition went, talk about the plans and investment options available, and also a demonstration of the website and technological capabilities they will be bringing to the table.

Empower has provided Staff with an approved format for the monthly reporting requirements going forward. They have a developed interim report to get us accurate financial data as of June 30, 2024, and our first reconciliation process for July will take place in early August.

A communication has been developed to notify the participants on how to setup periodic rebalancing with Empower. This communication will be sent directly to participants who had the periodic rebalancing with TIAA, and will be available to members who question if the feature is available as well.

Staff will now begin entering Phase II of the transition period, gearing up for rules and changes that take effect on January 1, 2025. Some of the topics that Phase II will encompass include:




- Annuity requirements for HB 1040
- Enrollment files from Empower to NDPERS
- Education campaigns
- HB 1040 election/incentive window

Phase III will begin late Fall, as we prepare for the ongoing operations for the timeframe after January 1, 2025.

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

## North Dakota Public Employees Retirement System Plans

KEY MILESTONES  
TRANSFER OF ASSET DATE 06/28/2024

 <p><b>Planning</b> Learning your needs, understanding required services and building the project plan.</p>	 <p><b>Implementation</b> Communicating, and setting you up for a seamless transition.</p>	 <p><b>Conversion</b> Activating the project plan and bringing your plan to life with Empower.</p>
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TASK	COMPLETION DUE DATE	ACTUAL COMPLETION DATE	STATUS / COMPLETE	COMMENTS
<b>Phase I - Planning</b>				
Sale Confirmed and Internal Project Assignment initiated	01/10/24 (Wed)	01/15/24 (Mon)	COMPLETE	Sale confirmed and internal project assignment initiated
Prior Recordkeeper Termination Letter sent	01/31/24 (Wed)	01/29/24 (Mon)	COMPLETE	Signed Service termination letter sent to Prior Recordkeeper(s)
Conduct Implementation Meeting (Kick-off Call)	02/01/24 (Thu)	02/01/24 (Thu)	COMPLETE	Meeting with the Empower Team to begin transition discussions
Empower Services Setup Confirmation	02/01/24 (Thu)	02/01/24 (Thu)	COMPLETE	Discussion to talk about what services are available to the plan
Participant Communication Strategy Reviewed	02/07/24 (Wed)	02/08/24 (Thu)	COMPLETE	Empower to work with plan sponsor to develop the participant communication campaign for the Plan
Implementation Welcome Kit Review Finalized / Prior Document Discovery collection completed	02/12/24 (Mon)	02/07/24 (Wed)	COMPLETE	Will be reviewed on our weekly status call
Schedule and conduct Initial Payroll conference call(s)	02/21/24 (Wed)	02/26/24 (Mon)	COMPLETE	Empower to work with the payroll contact to begin discussions with your payroll vendor
Plan Document Comments Review	03/13/24 (Wed)	03/14/24 (Thu)	COMPLETE	Empower to review plan document comments and features
Complete additional paperwork for Prior Recordkeeper, Trustee, and Funds	04/19/24 (Fri)	05/02/24 (Thu)	COMPLETE	Empower to work with Plan Sponsor to complete additional paperwork requirements
Prior Recordkeeper Review of Test Data and Other Conversion Details	04/24/24 (Wed)	05/06/24 (Mon)	COMPLETE	Empower to review conversion data and other requirements with prior recordkeeper(s)
Fund Mapping and Line-up Finalized (Signed Fund LOI)	05/20/24 (Mon)	05/16/24 (Thu)	COMPLETE	Empower to provide to advisor and plan sponsor for review and execution
<b>Phase II - Implementation</b>				
Payroll Meeting - Requirements finalized/Discuss 1st Test File Timing	02/27/24 (Tue)	02/26/24 (Mon)	COMPLETE	Call with Empower, plan sponsor, payroll contact, and payroll vendor to discuss deliverables
Plan Document Provisions, Features Finalized (457 by 4/9/2024, 401a by 4/10/2024)	04/03/24 (Wed)	04/09/24 (Tue)	COMPLETE	Coordinated by Empower project team
Initial Announcement Delivery (Word version to Retirees/Deferred 4/1 & Email to Actives 1st week of May)	04/05/24 (Fri)	03/27/24 (Wed)	COMPLETE	Delivered (e-mail) approx 3 weeks prior to Transition Guide Delivery
Test Files Received from TIAA	04/19/24 (Fri)	04/25/24 (Thu)	COMPLETE	Prior Recordkeeper delivers 1st round of test files
Data Conversion Testing Complete	05/08/24 (Wed)	05/06/24 (Mon)	COMPLETE	Complete analysis of the prior recordkeeper data
<b>Participant Transition Guide Delivered including other disclosures as applicable</b>	05/17/24 (Fri)	05/17/24 (Fri)	COMPLETE	<b>Mailed at least 30 days prior to blackout</b>
Payroll File Testing Complete - sFTP Setup/Interim Process Confirmed	05/31/24 (Fri)	06/01/24 (Sat)	COMPLETE	Payroll program moved to production
Online Enrollment (OE) Setup Complete - Part of Phase II	07/30/24 (Tue)			Online Enrollment setup to take place post-conversion
Feedback File Testing Complete - Part of Phase II	07/30/24 (Tue)			Feedback file from Empower to Payroll programming moved to production
Base Services Agreement Signed (Schedule of Services & Trust Agreement will be separate)	06/13/24 (Thu)	03/21/24 (Thu)	COMPLETE	Empower to receive executed Services Agreement
<b>Final payroll file transmission and funding accepted (4 pm ET)</b>	06/14/24 (Fri)	06/14/24 (Fri)	COMPLETE	<b>Final Date to Allow for Payroll transmission and funding with Prior Recordkeeper</b>
<b>Final Date for Enrollment Processing with prior recordkeeper</b>	06/18/24 (Tue)	06/18/24 (Tue)	COMPLETE	<b>Final Date to Allow for Enrollment Processing with Prior recordkeeper</b>
<b>Final day to receive paperwork for distribution, loan or other for processing ("soft blackout")</b>	06/18/24 (Tue)	06/18/24 (Tue)	COMPLETE	<b>Prior Recordkeeper restricts receipt of any paperwork for transaction processing</b>
<b>Final day for electronic Distribution, withdrawal and loan requests accepted (4 pm ET)</b>	06/18/24 (Tue)	06/18/24 (Tue)	COMPLETE	<b>Prior Recordkeeper restricts any electronic distributions, loans or other withdrawal requests</b>
<b>Final transaction processing date for all transactions including fund transfers or exchanges (4 pm ET) - ("hard blackout")</b>	06/18/24 (Tue)	06/18/24 (Tue)	COMPLETE	<b>Prior Recordkeeper restricts all activity for Participants at market close</b>
<b>Final day participants can access prior recordkeeper system (vru/web/phone)</b>	06/18/24 (Tue)	06/18/24 (Tue)	COMPLETE	<b>Prior Recordkeeper closes participant access to system access</b>



**Planning**

Learning your needs, understanding required services and building the project plan.

**Implementation**

Communicating, and setting you up for a seamless transition.

**Conversion**

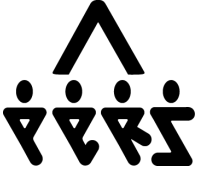
Activating the project plan and bringing your plan to life with Empower.

TASK	COMPLETION DUE DATE	ACTUAL COMPLETION DATE	STATUS / COMPLETE	COMMENTS
<b>Phase III - Conversion</b>				
*Refresh Data Files Delivered to Empower for TIAA	06/21/24 (Fri)	06/21/24 (Fri)	COMPLETE	Prior recordkeeper delivers refresh files after blackout start but before final files available
Prior Recordkeeper begins Asset Transfer process	06/26/24 (Wed)	06/26/24 (Wed)	COMPLETE	Last valuation performed by prior recordkeeper
<b>Transfer in kind shares receipt</b>	06/27/24 (Thu)	06/28/24 (Fri)	COMPLETE	<b>Receipt of all share registrations for assets transferring in-kind</b>
<b>Transfer of Assets (TOA) - wire receipt</b>	06/27/24 (Thu)	06/27/24 (Thu)	COMPLETE	<b>Expected Wire receipt date</b>
*Final Data Files Delivered to Empower for TIAA	06/28/24 (Fri)	06/27/24 (Thu)	COMPLETE	Prior recordkeeper delivers final account balances and other conversion records in good order
Balances Loaded to Participant Accounts	06/29/24 (Sat)	06/28/24 (Fri)	COMPLETE	Balances and finalized data loaded to Participant accounts
Reconciliation Complete	06/30/24 (Sun)	06/30/24 (Sun)	COMPLETE	Reconciliation provided to Plan Sponsor
<b>*Projected Live Date</b>	07/01/24 (Mon)	07/01/24 (Mon)	COMPLETE	<b>Plan is released and Participants have full access to their accounts</b>
First Cash Processed (Payroll File receipt and funding)	07/01/24 (Mon)	07/01/24 (Mon)	COMPLETE	Is it necessary for the demographic, loans above, should it be here? Process all pending payroll files
Live e-mail / postcard delivered to plan participants	07/01/24 (Mon)	07/01/24 (Mon)	COMPLETE	Delivered in conjunction with plan live status
Soft Open for Plan Sponsor Pre-Live review	07/01/24 (Mon)	07/01/24 (Mon)	COMPLETE	Select accounts opened for Plan Sponsor review prior to full Live
Transition Guide Live Date	07/01/24 (Mon)	07/01/24 (Mon)	COMPLETE	Remove Task - Do use if the plan is Live Term. Transition Notice stated week that Participants have full access to their accounts
First Feedback Files for Payroll System updates for participant activity - Phase II	07/30/24 (Tue)			Process feedback files to payroll updating participant activity to the payroll system

STATUS KEY	COMPLETE
	In Process
	Follow Up
	Delayed
	TBD
	N/A

**Notes:**

\*These dates are tentative until final discussions are complete with the prior recordkeeper (PRK).



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Katheryne Korom

**DATE:**               July 9, 2024

**SUBJECT:**           Investment Consultant Contract Amendment

At the June Board meeting, the Board approved renewal of the Investment Consultant contract with Callan. The attached renewal agreement was drafted by NDPERS legal staff and approved by representatives from Callan.

**Board Action Requested:** Approve the renewal agreement and Executive Director's signature for the Investment Consultant Renewal agreement with Callan for the January 1, 2025, through December 31, 2026, contract period.

Attachment

## SECOND AMENDMENT TO AGREEMENT FOR SERVICES BETWEEN Callan LLC AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

The State of North Dakota, acting through the North Dakota Public Employees Retirement System (hereinafter NDPERS), and Callan LLC (hereinafter CONTRACTOR), entered into an Agreement for Services, with an initial term from January 1, 2021 through December 31, 2022. Exercising the first renewal option, NDPERS and Contractor renewed the initial Contract, amending the term to January 1, 2023 through December 31, 2024. NDPERS and Contractor hereby agree to amend the Contract for its second optional renewal term, from January 1, 2025 through December 31, 2026. The original Agreement, the amendment dated August 18, 2022 and this Amendment shall constitute the consulting services agreement (“Agreement”). This Second Amended Agreement shall control should there be any discrepancies between this Second Amended Agreement and the original agreement.

### 1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (STATE), and *Callan LLC* having its principal place of business at *1900 16<sup>th</sup> St. Suite 1175, Denver Colorado* (CONTRACTOR);

### 2. SCOPE OF WORK

CONTRACTOR agrees to provide the service(s) as specified in the 2020 bid document and VENDOR 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, STATE. During the performance of Services by CONTRACTOR, STATE will retain and exercise all decision-making authority with respect to the management and administration of the retirement plans funded by STATE and investments relating thereto.

### 3. COMPENSATION – PAYMENTS

#### a. Contractual Amount

NDPERS shall only pay pursuant to the terms in the Rule 408b-2 Disclosure dated April 23, 2024 (attached hereto and incorporated by reference Exhibit B).

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

**b. Payment**

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

**c. Travel**

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

**d. Prepayment**

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

**e. Payment of Taxes by STATE**

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

**f. Taxpayer ID**

CONTRACTOR'S federal employer ID number is: 82-2748926

**4. TERM OF CONTRACT**

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

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Extension Option**

STATE reserves the right to extend this Contract for an additional period, not to exceed 24 months, beyond the current termination date of this Contract. The terms and provisions of any renewal contract will be substantially the same as those contained in this Contract, provided that the fees payable pursuant to any such renewal will be subject to mutual agreement.

**c. Renegotiation Option**

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

**5. TIME IS OF THE ESSENCE**

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

**6. TERMINATION**

**a. Termination by Mutual Agreement**

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

**b. Early Termination in the Public Interest**

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

**c. Termination for Lack of Funding or Authority**

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

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

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

#### **d. Termination for Cause.**

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

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

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

### **7. FORCE MAJEURE**

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

### **8. INDEMNIFICATION**

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

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. STATE 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.

## **9. INSURANCE**

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

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

of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies, other than the professional errors and omissions policy, that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State, other than in the case of the professional errors and omissions policy.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

## **10. WORKS FOR HIRE**

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



## 11. WORK PRODUCT

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

## 12. NOTICE

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

<b>STATE</b>	<b>CONTRACTOR</b>
Name: Rebecca Fricke	Name: Craig Chaikin
Title: Executive Director	Title: Senior Vice President
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address: 1900 16 <sup>th</sup> Street, Suite 1175
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip: 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.

## 13. CONFIDENTIALITY

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

Notwithstanding the foregoing or anything contained herein to the contrary, information shall not be considered confidential to the extent that such information: (i) is already known to CONTRACTOR free of any restriction at the time it is obtained from STATE; (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 STATE; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that CONTRACTOR will exercise reasonable efforts to notify STATE prior to disclosure if legally permissible

## 14. COMPLIANCE WITH PUBLIC RECORDS LAWS

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

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

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

## **15. INDEPENDENT ENTITY**

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

## **16. ASSIGNMENT AND SUBCONTRACTS**

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

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

## **17. SPOILIATION – PRESERVATION OF EVIDENCE**

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

## **18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, constitutes the entire agreement between the

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

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

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

## **19. SEVERABILITY**

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

## **20. APPLICABLE LAW AND VENUE**

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

## **21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

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

## **22. ATTORNEY FEES**

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

## **23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

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

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

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

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

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

#### **24. STATE AUDIT**

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

#### **25. COUNTERPARTS**

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

#### **26. ADV Disclosure**

STATE 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.

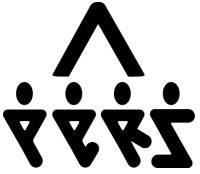
#### **27. Manager Client List Disclosure**

STATE acknowledges receipt of CONTRACTOR's disclosure list of investment manager clients no later than the date of the execution of this Agreement.

**28. EFFECTIVENESS OF CONTRACT**

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

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
Callan LLC	Acting through its NDPERS
BY: <i>[Signature]</i>	BY:
Craig Chaikin	Rebecca Fricke
Senior Vice President	NDPERS Executive Director
Date:	Date:



# Memorandum

**TO:** NDPERS Board

**FROM:** MaryJo Anderson

**DATE:** July 9, 2024

**SUBJECT:** Highway Patrol Final Average Salary Indexing for Deferred Members

North Dakota Century Code § 39-03.1-11(5) provides:

*The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly.*

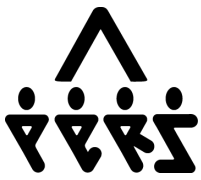
As provided in statute, it is necessary for the NDPERS Board to set a rate to be used in establishing the index factor for deferred members of the Highway Patrol. Currently there are 39 members in the system in a deferred vested status.

It has been NDPERS' policy to solicit input (Attachment 1) and a recommendation from the Highway Patrol leadership (Attachment 2). The last legislative session provided a 4.00% increase for the second year of agencies' budgets for the 2023-2025 biennium. The North Dakota Highway Patrol leadership is recommending that deferred members in its system receive a 4.00% increase to their final average salary (FAS). A copy of this correspondence is attached for your information.

The current assumption for indexing of deferred members as reported in the Gabriel Roeder & Smith (GRS) July 1, 2023 actuarial report is 3.00% ([page E-3](#)). Therefore, a 4.00% increase will result in an actuarial loss to the plan as confirmed by our consultant.

In the past, the Board has generally approved an indexing percentage, as recommended by the Highway Patrol leadership, that is the same or slightly lower than the salary increases granted to state employees.

**Board Action Requested:**



# Memorandum

**TO:** Major Aaron Hummel  
**FROM:** MaryJo Anderson  
**DATE:** May 21, 2024  
**SUBJECT:** Highway Patrol Indexing

The Highway Patrol indexing for deferred members of the HP system is up for review. There are currently 39 deferred vested members affected.

For your convenience, listed below are the legislative equivalents granted, as well as the increase percentages set for indexing purposes by the board since 1993 when the factor became policy.

	Legislative Increase		Index Approved
1993	3.00		3.57
1994	2.00		3.00
1995	2.00		2.00
1996	2.00+ 1.00 discretionary		2.00
1997	Average 3.00		3.00
1998	Average 3.00		1.80
1999	2.00 (min \$35)		1.26
2000	2.00 (min \$35)		2.00
2001	3.00 (min \$35)		1.81
2002	3.00 (min \$35)		1.73
2003	None Authorized	-0-	
2004	None Authorized	-0-	
2005	4.00		4.00
2006	4.00		4.00
2007	4.00		4.00
2008	4.00		4.00
2009	5.00		5.00
2010	5.00		5.00
2011	3.00		2.00
2012	3.00		2.00
2013	3.00		3.00
2014	3.00		3.00
2015	3.00		3.00
2016	3.00		2.00
2017	None Authorized	-0-	
2018	None Authorized	-0-	
2019	2.00		2.00
2020	2.50		2.50
2021	1.50		1.50
2022	2.00		2.00
2023	6.00		5.00
2024	4.00		

As the above illustrates, the rate has historically been set at a percentage that is the same or less than the salary increases granted to state employees. The 2023 legislature provided appropriation to agency budgets by 4.0% for the second year of the 2023-2025 biennium.

This item will be scheduled for the July NDPERS Board meeting agenda. We are requesting your written response by June 12, if possible. If you need additional information, please let me know.

June 5, 2024

Ms. MaryJo Anderson  
North Dakota Public Employees Retirement System  
1600 East Century Avenue, Suite 2  
PO Box 1657  
Bismarck, ND 58503

SUBJECT: HIGHWAY PATROL INDEXING

Dear Ms. Anderson:

The North Dakota Highway Patrol recommends that the North Dakota Public Employees Retirement System index at a rate of 4% for 2024 for the highway patrol system.

Sincerely,



BRANDON SOLBERG  
Colonel, NDHP  
Superintendent





**GROUP INSURANCE / FLEXCOMP**

**A. Group Voluntary Dental Plan RFP \*EXECUTIVE SESSION**

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

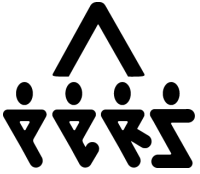
**Confidential material for the Closed Session  
will be sent under separate cover.**

## **GROUP INSURANCE / FLEXCOMP**

### **B. FlexComp RFP \*EXECUTIVE SESSION**

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

**Confidential material for the Closed Session  
will be sent under separate cover.**



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

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

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

# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           Wellness Renewal

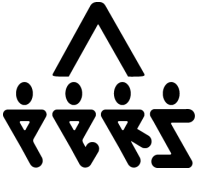
NDPERS staff has completed the renewal of the Employer Based Wellness Program for the plan year July 1, 2024, to June 30, 2025. This renewal determines those employers that will qualify for the 1% health insurance premium discount during the plan year. Employers are given the opportunity to combine efforts with another NDPERS employer in order to qualify.

At this time, there are a total of 166 out of 213 employers electing to participate in the wellness program. This is an employer participation rate of 78%. However, approximately 96% of employees covered on the insurance plan are working for employers that are offering wellness programs and activities to their employees.

The breakdown of the participating employers is as follows:

- 107 state agencies, universities and district health units
- 23 counties
- 10 school districts
- 13 cities
- 13 political subdivisions

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



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

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

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

# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca Fricke

**DATE:** July 9, 2024

**SUBJECT:** Insulin and Diabetic Supplies Bill, Report and Recommendation

SB 2140 (Attachment 1) was passed last Session and requires a monthly cap of \$25/month for insulin and diabetic supplies within the NDPERS health insurance active plans and became effective July 1, 2023. Section 4 of SB 2140 is shown below and requires that the NDPERS Board submit a bill in the upcoming Session that would roll this coverage out to the commercial market in North Dakota. Draft bill # 118 (Attachment 2) is the bill that the Board approved for submission by the April 1, 2024 Employee Benefits Programs Committees deadline.

In addition to the bill submission, Section 4 of SB 2140 as shown below requires the Board to “append a report to the bill regarding the effect of the insulin drug and supplies benefits requirement on the system’s health insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should be continued.”

**SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - INSULIN DRUG AND SUPPLIES BENEFITS - REPORT.** Pursuant to section 54-03-28, the public employees retirement system shall prepare and submit for introduction a bill to the sixty-ninth legislative assembly to repeal the expiration date for this Act and to extend the coverage of insulin drug and supplies benefits to all group and individual health insurance policies. The public employees retirement system shall append a report to the bill regarding the effect of the insulin drug and supplies benefits requirement on the system's health insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should be continued.

Staff are working with Sanford Health Plan (SHP) to develop these requirements for the Board's review and approval in upcoming Board meetings. In order to include as much data and claims experience, staff has asked SHP to begin accumulating the data through June 30, 2024 so that a full year can be analyzed. SHP has been asked to compare the difference in coverage expenses that occurred with the cap compared to previous plan design without the cap. In addition, Sanford has been asked to provide information regarding their experience with their other lines of business and also if they have industry information from a more universal or national perspective that would be beneficial for the Board to review.

Deloitte has also provided input through their analysis (Attachment 3) of Draft Bill # 118, which was prepared following the Employee Benefits Programs Committee taking jurisdiction of the bill at their April meeting.

At this time, staff wanted to provide information on the requirement, along with details on how staff anticipate moving this requirement forward. Staff also are looking for input on if the Board would like to see additional details or analysis included in the report.

## Sixty-eighth Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 3, 2023

SENATE BILL NO. 2140  
(Senators Mathern, Dever)  
(Representatives Hanson, McLeod, Pyle, Schauer)

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employee insulin drug and supplies benefits; to amend and reenact subsection 2 of section 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance health plans; to provide for a report; to provide for application; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36.6-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 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, 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, 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, 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 26.1-36-43. Section 2 of this Act applies to a self-insurance health plan and is subject to the jurisdiction of the commissioner.

**SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

#### **Health insurance benefits coverage - Insulin drug and supply out-of-pocket limitations.**

1. As used in this section:
  - a. "Insulin drug" means a prescription drug that contains insulin and is used to treat a form of diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes insulin in the following categories:
    - (1) Rapid-acting insulin;
    - (2) Short-acting insulin;
    - (3) Intermediate-acting insulin;
    - (4) Long-acting insulin;
    - (5) Premixed insulin product;
    - (6) Premixed insulin/GLP-1 RA product; and
    - (7) Concentrated human regular insulin.
  - b. "Medical supplies for insulin dosing and administration" means supplies needed for proper insulin dosing, as well as supplies needed to detect or address medical emergencies in an individual using insulin to manage diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a

continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes:

- (1) Blood glucose meters;
  - (2) Blood glucose test strips;
  - (3) Lancing devices and lancets;
  - (4) Ketone testing supplies, such as urine strips, blood ketone meters, and blood ketone strips;
  - (5) Glucagon, in injectable and nasal forms;
  - (6) Insulin pen needles; and
  - (7) Insulin syringes.
- c. "Pharmacy or distributor" means a pharmacy or medical supply company, or other medication or medical supply distributor filling a covered individual's prescriptions.
2. The board shall provide health insurance benefits coverage that provides for insulin drug and medical supplies for insulin dosing and administration which complies with this section.
  3. The coverage must limit out-of-pocket costs for a thirty-day supply of:
    - a. Covered insulin drugs which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or type of insulin drug used to fill the covered individual's prescription needs.
    - b. Covered medical supplies for insulin dosing and administration, the total of which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or manufacturer of supplies used to fill the covered individual's prescription needs.
  4. The coverage may not allow a pharmacy benefits manager or the pharmacy or distributor to charge, require the pharmacy or distributor to collect, or require a covered individual to make a payment for a covered insulin drug or medical supplies for insulin dosing and administration in an amount that exceeds the out-of-pocket limits set forth under subsection 3.
  5. The coverage may not impose a deductible, copayment, coinsurance, or other cost-sharing requirement that causes out-of-pocket costs for prescribed insulin or medical supplies for insulin dosing and administration to exceed the amount set forth under subsection 3.
  6. Subsection 3 does not require the coverage to implement a particular cost-sharing structure and does not prevent the limitation of out-of-pocket costs to less than the amount specified under subsection 3. Subsection 3 does not limit out-of-pocket costs on an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor. This section does not limit whether coverage classifies an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor as a drug or as a medical device or supply.

**SECTION 3. APPLICATION.** This Act applies to public employees retirement system health benefits coverage that begins after June 30, 2023, and which does not extend past June 30, 2025.

**SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - INSULIN DRUG AND SUPPLIES BENEFITS - REPORT.** Pursuant to section 54-03-28, the public employees retirement system shall prepare and submit for introduction a bill to the sixty-ninth legislative assembly to repeal the expiration date for this Act and to extend the coverage of insulin drug and supplies benefits to all group and individual health insurance policies. The public employees retirement system shall append a report to the bill regarding the effect of the insulin drug and supplies benefits requirement on the system's health

insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should be continued.

**SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2025, and after that date is ineffective.



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2140.

Senate Vote:    Yeas 38            Nays 6            Absent 3

House Vote:    Yeas 57            Nays 33           Absent 4

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

Sixty-ninth  
Legislative Assembly  
of North Dakota

**BILL NO.**

Introduced by

(North Dakota Public Employees Retirement System)

1 A BILL for an Act to create and enact a new section to chapter 26.1-36 of the North Dakota  
2 Century Code, relating to individual and group health insurance coverage of insulin drugs and  
3 supplies; and to amend and reenact section 54-52.1-04.18 of the North Dakota Century Code,  
4 relating to health insurance benefits coverage of insulin drugs and supplies.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Health insurance benefits coverage - Insulin drug and supply out-of-pocket**  
9 **limitations.**

10 1. As used in this section:

11 a. "Insulin drug" means a prescription drug that contains insulin and is used to treat  
12 a form of diabetes mellitus. The term does not include an insulin pump, an  
13 electronic insulin-administering smart pen, or a continuous glucose monitor, or  
14 supplies needed specifically for the use of such electronic devices. The term  
15 includes insulin in the following categories:

- 16 (1) Rapid-acting insulin;
- 17 (2) Short-acting insulin;
- 18 (3) Intermediate-acting insulin;
- 19 (4) Long-acting insulin;
- 20 (5) Premixed insulin product;
- 21 (6) Premixed insulin/GLP-1 RA product; and
- 22 (7) Concentrated human regular insulin.

23 b. "Medical supplies for insulin dosing and administration" means supplies needed  
24 for proper insulin dosing, as well as supplies needed to detect or address medical

1 emergencies in an individual using insulin to manage diabetes mellitus. The term  
2 does not include an insulin pump, an electronic insulin-administering smart pen,  
3 or a continuous glucose monitor, or supplies needed specifically for the use of  
4 such electronic devices. The term includes:

5 (1) Blood glucose meters;

6 (2) Blood glucose test strips;

7 (3) Lancing devices and lancets;

8 (4) Ketone testing supplies, such as urine strips, blood ketone meters, and  
9 blood ketone strips;

10 (5) Glucagon, in injectable and nasal forms;

11 (6) Insulin pen needles; and

12 (7) Insulin syringes.

13 c. "Pharmacy or distributor" means a pharmacy or medical supply company, or  
14 other medication or medical supply distributor filling a prescription.

15 2. An insurance company, nonprofit health service corporation, or health maintenance  
16 organization may not deliver, issue, execute, or renew any health insurance policy,  
17 health service contract, or evidence of coverage on an individual, group, blanket,  
18 franchise, or association basis unless the policy, contract, or evidence of coverage  
19 provides benefits for insulin drug and medical supplies for insulin dosing and  
20 administration which complies with this section.

21 3. The health benefit plan must limit out-of-pocket costs for a thirty-day supply of:

22 a. Covered insulin drugs, which may not exceed twenty-five dollars per pharmacy or  
23 distributor, regardless of the quantity or type of insulin drug used to fill the  
24 covered individual's prescription needs.

25 b. Covered medical supplies for insulin dosing and administration, the total of which  
26 may not exceed twenty-five dollars per pharmacy or distributor, regardless of the  
27 quantity or manufacturer of supplies used to fill the covered individual's  
28 prescription needs.

29 4. The health benefit plan may not allow a pharmacy benefits manager or the pharmacy  
30 or distributor to charge, require the pharmacy or distributor to collect, or require a  
31 covered individual to make a payment for a covered insulin drug or medical supplies

1           for insulin dosing and administration in an amount exceeding the out-of-pocket limits  
2           under subsection 3.

3       5. The health benefit plan may not impose a deductible, copayment, coinsurance, or  
4       other cost-sharing requirement that causes out-of-pocket costs for prescribed insulin  
5       or medical supplies for insulin dosing and administration to exceed the amount under  
6       subsection 3.

7       6. Subsection 3 does not require the health benefit plan to implement a particular cost-  
8       sharing structure and does not prevent the limitation of out-of-pocket costs to less than  
9       the amount specified under subsection 3. This section does not limit whether the  
10       health benefit plan classifies an insulin pump, an electronic insulin-administering smart  
11       pen, or a continuous glucose monitor as a drug or as a medical device or supply.

12       7. If application of subsection 3 would result in the ineligibility of a health benefit plan that  
13       is a qualified high-deductible health plan to qualify as a health savings account under  
14       section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of  
15       subsection 3 do not apply with respect to the deductible of the health benefit plan until  
16       after the enrollee has met the minimum deductible under section 26 U.S.C. 223.

17       8. This section does not apply to the Medicare part D prescription drug coverage plan.

18       **SECTION 2. AMENDMENT.** Section 54-52.1-04.18 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20       **54-52.1-04.18. Health insurance benefits coverage - Insulin drug and supply out-of-**  
21 **pocket limitations. (Expired effective July 31, 2025)**

22       1. As used in this section:

23           a. "Insulin drug" means a prescription drug that contains insulin and is used to treat  
24           a form of diabetes mellitus. The term does not include an insulin pump, an  
25           electronic insulin-administering smart pen, or a continuous glucose monitor, or  
26           supplies needed specifically for the use of such electronic devices. The term  
27           includes insulin in the following categories:

- 28           (1) Rapid-acting insulin;
- 29           (2) Short-acting insulin;
- 30           (3) Intermediate-acting insulin;
- 31           (4) Long-acting insulin;

- 1                   (5) Premixed insulin product;
- 2                   (6) Premixed insulin/GLP-1 RA product; and
- 3                   (7) Concentrated human regular insulin.
- 4           b. ~~"Medical supplies for insulin dosing and administration" means supplies needed~~  
5                   ~~for proper insulin dosing, as well as supplies needed to detect or address medical~~  
6                   ~~emergencies in an individual using insulin to manage diabetes mellitus. The term~~  
7                   ~~does not include an insulin pump, an electronic insulin-administering smart pen,~~  
8                   ~~or a continuous glucose monitor, or supplies needed specifically for the use of~~  
9                   ~~such electronic devices. The term includes:~~
- 10                   (1) Blood glucose meters;
- 11                   (2) Blood glucose test strips;
- 12                   (3) Lancing devices and lancets;
- 13                   (4) Ketone testing supplies, such as urine strips, blood ketone meters, and  
14                   blood ketone strips;
- 15                   (5) Glucagon, in injectable and nasal forms;
- 16                   (6) Insulin pen needles; and
- 17                   (7) Insulin syringes.
- 18           e. ~~"Pharmacy or distributor" means a pharmacy or medical supply company, or~~  
19                   ~~other medication or medical supply distributor filling a covered individual's~~  
20                   ~~prescriptions.~~
- 21           2. The board shall provide health insurance benefits coverage that provides for insulin drug  
22 and medical supplies for insulin dosing and administration which complies with this section as  
23 provided under section 1 of this Act.
- 24           3. ~~The coverage must limit out-of-pocket costs for a thirty-day supply of:~~
- 25           a. ~~Covered insulin drugs which may not exceed twenty-five dollars per pharmacy or~~  
26                   ~~distributor, regardless of the quantity or type of insulin drug used to fill the~~  
27                   ~~covered individual's prescription needs.~~
- 28           b. ~~Covered medical supplies for insulin dosing and administration, the total of which~~  
29                   ~~may not exceed twenty-five dollars per pharmacy or distributor, regardless of the~~  
30                   ~~quantity or manufacturer of supplies used to fill the covered individual's~~  
31                   ~~prescription needs.~~

- 1           4.    ~~The coverage may not allow a pharmacy benefits manager or the pharmacy or~~  
2           ~~distributor to charge, require the pharmacy or distributor to collect, or require a~~  
3           ~~covered individual to make a payment for a covered insulin drug or medical supplies~~  
4           ~~for insulin dosing and administration in an amount that exceeds the out-of-pocket limits~~  
5           ~~set forth under subsection 3.~~
- 6           5.    ~~The coverage may not impose a deductible, copayment, coinsurance, or other cost-~~  
7           ~~sharing requirement that causes out-of-pocket costs for prescribed insulin or medical~~  
8           ~~supplies for insulin dosing and administration to exceed the amount set forth under~~  
9           ~~subsection 3.~~
- 10          6.    ~~Subsection 3 does not require the coverage to implement a particular cost-sharing~~  
11          ~~structure and does not prevent the limitation of out-of-pocket costs to less than the~~  
12          ~~amount specified under subsection 3. Subsection 3 does not limit out-of-pocket costs~~  
13          ~~on an insulin pump, an electronic insulin-administering smart pen, or a continuous-~~  
14          ~~glucose monitor. This section does not limit whether coverage classifies an insulin-~~  
15          ~~pump, an electronic insulin-administering smart pen, or a continuous glucose monitor~~  
16          ~~as a drug or as a medical device or supply.~~
- 17          7.    ~~If application of subsection 3 would result in the ineligibility of a health benefit plan that~~  
18          ~~is a qualified high-deductible health plan to qualify as a health savings account under~~  
19          ~~section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of~~  
20          ~~subsection 3 do not apply with respect to the deductible of the health benefit plan until~~  
21          ~~after the enrollee has satisfied the minimum deductible under section 26 U.S.C. 223.~~
- 22          8.    ~~This section does not apply to the Medicare part D prescription drug coverage plan.~~

## Memo

Date: June 7, 2024

To: Rebecca Fricke - Executive Director, North Dakota Public Employees Retirement System  
Representative Austen Schauer - Chair, Legislative Employee Benefits Programs Committee, North Dakota State Government

From: Tim Egan, Dan Plante, Ford Edgerton, and Karno Sarkar - Deloitte Consulting LLP

Subject: FINANCIAL REVIEW OF PROPOSED BILL 25.0118.01000

Deloitte Consulting LLP (Deloitte<sup>1</sup>) was engaged to review the proposed legislation and the potential financial impact to the Uniform Group Insurance Program (Program) administered by the North Dakota Public Employees Retirement System (NDPERS), as well as other considerations that may contribute to the evaluation of the legislation.

The information included in the review relies on data provided by NDPERS, as well as publicly available data and industry studies. From the data provided by NDPERS, some of these data sources were developed by NDPERS, while others were prepared or created by third parties and delivered to NDPERS.

As part of the review, all data was reviewed for reasonableness, but an audit was not performed on the data. To the extent the data contains errors or anomalies that were unknown at the time the data was provided, the analysis may be affected by those issues.

### OVERVIEW OF PROPOSED BILL

The Bill would create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to public employee insulin drug and supplies benefits. The legislation does the following:

- defines "insulin drug", "medical supplies for insulin dosing and administration", and "pharmacy or distributor"
- restricts insurers and plan sponsors from offering any health insurance coverage unless the coverage meets the cost-sharing and covered service requirements listed in the Bill
- provides a \$25 member cost-share limit per thirty-day supply of insulin drugs and medical supplies for insulin dosing and administration regardless of the quantity or type of insulin drug
- restricts pharmacy benefit managers from collecting payment in excess of the cost-sharing requirements covered in the Bill
- restricts health plans from imposing a cost-sharing structure like a deductible or coinsurance that would require a member to pay more than the cost-share limit to receive insulin services

- allows for plans to impose cost-sharing limits that are lower than the \$25 member cost-share limit included in the Bill
- stipulates that high-deductible health plans that qualify for health savings accounts are exempt from this cost-share limit until a member reaches their minimum deductible

#### ESTIMATED FINANCIAL IMPACT

Based on the analysis, it is anticipated the proposed legislation will have a financial impact on the Uniform Group Insurance Program. It is estimated the financial impact of the proposed legislation on the Uniform Group Insurance Program is approximately \$1,000,000 in the 2025-2027 biennium ending 6/30/2027.

The Uniform Group Insurance Program requires members to pay a copayment and coinsurance for insulin. Depending on the cost of the insulin prescribed and/or the cost of the supplies purchased, the member cost-share can exceed the proposed \$25 limit. Therefore, it is expected that imposing this limit will shift costs from members to the Uniform Group Insurance Program.

Using 12 months of NDPERS claims data from September 2021 through August 2022, Sanford Health Plan estimated that a \$25 per month limit on member cost share would have shifted \$445,000 from the member to the Uniform Group Insurance Program in that period. Assuming prescription drug trend of 9.4% per year, the cost in the 2025-2027 biennium is estimated to be approximately \$1,000,000 (or 0.12% increase to the estimated Program total claims costs). The estimate does not assume changes to drug mix or formulary changes that could impact member out-of-pocket payments (pharmacy benefit managers typically update their formularies at least twice per year).

#### OTHER CONSIDERATIONS

By limiting or capping the out-of-pocket cost to members for specific services, a smaller amount of those related costs will accumulate towards a member's deductible. As a result, members may have to pay for other services out-of-pocket until they reach their deductible, which may negate a component of the estimated 0.12% increase to the estimated Program total claims costs. Therefore, the \$1,000,000 estimated increase in cost can be treated as a conservative estimate, assuming no other change in utilization.

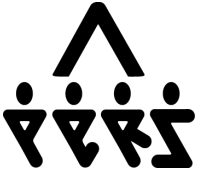
Clinical outcomes associated with lowering member out-of-pocket costs on insulin drugs and medical supplies for insulin dosing and administration may have a favorable impact on the Uniform Group Insurance Program, but such effects are difficult to quantify. If insulin and supplies are more affordable, member adherence may increase and result in fewer adverse health effects that result in expenditures to the Program, such as increased doctor and emergency department visits and prolonged hospitalization.

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# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** July 9, 2024

**SUBJECT:** Sanford Health Plan Change in Formulary (Free Libre Continuous Glucose Monitor)

Please find the attached information (Attachment 1) from Sanford Health Plan (SHP) regarding a change being made to their formulary effective September 1, 2024. The change is regarding the Free Libre continuous glucose monitor, moving this brand off their formulary to non-formulary and no longer covering it without a prior authorization as of this date. There are 104 NDPERS members impacted by this change who were sent notice (Attachment 2) from SHP.

SHP will be available at the meeting to answer questions you may have.

This item is informational and requires no action by the Board.

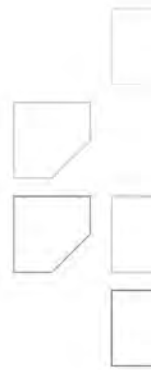
# Memo

**To:** Rebecca Fricke

**From:** Kim Haug

**Date:** 6/25/2024

**Re:** Formulary change of CGM



In June 2024 the Sanford Health Plan (SHP) Pharmacy and Therapeutics Committee removed the Continuous Glucose Monitor (CGM), Freestyle Libre, from the SHP Formulary. CGM's are used to monitor blood sugar levels.

Prior to June 2024 there were 2 CGM's, Freestyle Libre & Dexcom, on the formulary. The decision to move to a preferred CGM product allows SHP to extend coverage to any diabetic member using any insulin product. The following factors were used in this decision:

- Approximately 70% of SHP members that currently use a CGM are utilizing a Dexcom product
- Dexcom products are preferred over Freestyle Libre in the market because of its ability to integrate with other devices (i.e. insulin pumps, smart phones...)
- This change will not impact the insulin coverage for members

As of June 2024 there were 234 NDPERS members utilizing a Dexcom CGM and 104 NDPERS members utilizing Freestyle Libre CGM. The members utilizing Freestyle Libre CGM were mailed a letter informing them of the change. They will be given until Sept 1st to transition to a Dexcom CGM or have their provider submit a Prior Authorization request to continue with Freestyle Libre. SHP's medical team will review any Prior Authorization requests and inform the member and provider of the decision.

# Attachment 2

July 1, 2024

«Member\_First\_Name» «Member\_Last\_Name»  
« Member\_Address\_1» « Member\_Address\_2»  
«Member\_City», «Member\_State» «Member\_ZIP»

Dear «Member\_First\_Name»,

Sanford Health Plan's covered drug list (formulary) is changing September 1, 2024. The drug below will be changing to non-formulary, not covered, as of September 1, 2024. This means the medication will not be covered after September 1 without prior authorization. If you no longer take this drug, please disregard this letter.

We encourage you to speak with your doctor about other possible drug option(s) that may be available to suit your needs.

<b>Current Non-Preferred Drug</b>	<b>Preferred Drug Option(s)</b>
«Column BE»	«Column BF»

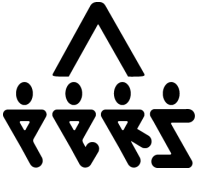
If you or your doctor feel you should not stop taking the current drug or change to the new preferred drug option, please have your doctor complete and submit a request for prior authorization through our provider portal.

We apologize for any inconvenience this disruption has caused. If you have questions about this change, your prescription drug benefits, or would like a free copy of your formulary, please call us Monday through Friday from 8 a.m. to 5 p.m. CST at (855) 305-5062 (TTY: 711). You can also contact us through your secure member portal at [sanfordhealthplan.com/memberlogin](https://sanfordhealthplan.com/memberlogin).

Sincerely,

Pharmacy Management Department  
Sanford Health Plan

Enc: Appeal Rights COM-IND-PERS or MN  
Non-discrimination and Language Help Notice



# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           Board Subcommittee Assignments/State Investment Board  
Assignment

The NDPERS Board has two standing subcommittees, the Audit Subcommittee and the Investment Subcommittee, and two ad hoc committees, the Election Subcommittee and the Performance Review and Compensation Subcommittee. The Board also has two members on the State Investment Board (SIB). Given we have a new Board Chair, staff felt a review of the subcommittees would be appropriate.

The Audit Subcommittee membership is described in its charter:

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.

Joe (Chair), Dick, Tyler, Adam and Nina Sand (at-large member) currently serve on the Audit Subcommittee. The Board appoints these members. The Audit Subcommittee typically meets quarterly.

The Investment Subcommittee membership is described in its charter.

The Committee will consist of three to five members (including one alternate) with the members being appointed by the Board Chair. The Board Chair is also responsible for appointing a Committee Chair from the appointed members. The

Board Chair should attempt to appoint Committee members who are knowledgeable and experienced in financial and/or investment related functions.

Currently, Adam (Chair), Tyler, Joe, Greg and Jeffrey serve on the subcommittee. The Board Chair appoints these members. The Investment Subcommittee also usually meets quarterly.

The Performance Review and Compensation Subcommittee is described in its charter.

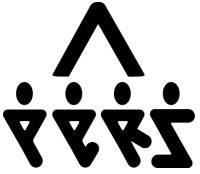
The Committee will consist of at least three Board members appointed by the Board Chair. The Board Chair is also responsible for appointing a Committee Chair from the three appointed members.

The Performance Review and Compensation Subcommittee's purpose is to review the performance evaluations for the Executive Director and recommend a compensation figure to the full Board. Jason (Chair), Shawn, Casey and Gerald are the current members. The Board Chair was also on the Subcommittee previously, but the Board Chair vacancy since February also left a vacancy on this subcommittee. The Board Chair appoints these members. This subcommittee meets on an ad hoc basis.

As far as the State Investment Board, Adam and Joe currently serve as the two NDPERS Board members on the SIB. The Board appoints these members. The SIB meets monthly.

We just completed an election, and so we do not need an active Election Subcommittee until the next election.

**BOARD ACTION REQUESTED:** Prior to the Board meeting, consider whether you would like to serve, or continue to serve, on one of these subcommittees or the SIB. Should changes be desired, the Chair and the Board will need to appoint the necessary Board members to the appropriate Subcommittees and the SIB.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           Code of Ethical Responsibility

Attached is the Code of Ethical Responsibility. Now that you have received your fiduciary responsibility education, please sign and date the document and give it to Jan for our records.

## North Dakota Public Employees Retirement System Board of Trustees

### Code of Ethical Responsibility

1. Each NDPERS Board and subcommittee member owes a duty to conduct themselves so as 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 Board and subcommittee members should perform the duties of their offices impartially and diligently. NDPERS Board and subcommittee members 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. Board members should be unswayed by partisan interest, public sentiment, or fear of criticism.
3. Conflicts of interest and the appearance of impropriety shall be avoided by NDPERS Board and subcommittee members. Board members shall comply with the rules of the North Dakota Ethics Commission related to conflicts of interest, North Dakota Administrative Code (N.D.A.C.) chapters 115-04 and -05. Board and subcommittee members should not allow their family, social, or other relationships to influence their judgment in discharging their responsibilities. Board and subcommittee members should 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 Board or subcommittee member shall immediately disclose the conflict to the NDPERS Board.
4. Board and subcommittee members should not unnecessarily retain employees or consultants. The hiring of employees and consultants shall be based on merit, avoiding nepotism and favoritism. The compensation of such employees and consultants shall not exceed the fair value of services rendered.
5. NDPERS members' retirement benefit information and health insurance data shall not be transmitted to any person other than in the fulfillment of a Board or subcommittee member's lawful responsibilities.
6. Board and subcommittee members shall not accept any cash or gifts, special accommodations, or favors from anyone with whom such person is doing, negotiating, or being solicited for business on behalf of NDPERS. However, Board and subcommittee members 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.

7. Board and subcommittee members shall perform their respective duties in a manner that satisfies their fiduciary responsibilities including:
  - a. **The exclusive benefit rule.** All activities and transactions performed on behalf of the retirement fund must be for the exclusive purpose of providing benefits to plan participants and defraying reasonable expenses of administering the plan.
  - b. **The prudent person rule.** Fiduciaries are required to exercise the same care, skill, prudence, and diligence that a prudent person familiar with such matter would exercise in managing similar affairs. The investments of the trust funds must be diversified so as to minimize the risk of large losses unless such diversification is clearly imprudent.
  - c. **Compliance with statutory scheme.** The fiduciary must act in conformance with the requirements of law, specifically, NDCC Chapter 54-52.
  - d. **Prohibited transactions.** Prohibited transactions for fiduciaries generally fall into two areas: those involving self-dealing and those involving a party-in-interest. Self-dealing refers to the fiduciary's use of plan assets for personal gain, engaging transactions on behalf of parties whose interests are adverse to the plan, or receiving personal consideration in connection with any planned transaction. A party-in-interest includes a fiduciary, counsel, or employee of the plan, anyone providing services to the plan, any employer or employee, organizations whose employees or members are covered by the plan and any of the number of other persons or entities that have a stated interest or relationship with a party-in-interest. Prohibited transactions between the plan and a party-in-interest include the sale, loan, exchange, or transfer of any plan assets.
8. Violation of these rules may result in an official reprimand from the NDPERS Board. No reprimand may be issued until the Board or subcommittee member has had the opportunity to be heard by the Board.

**I understand and agree to the provisions of this policy.**

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**Printed Name**

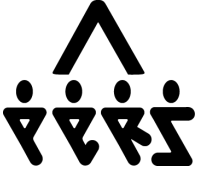
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**Signature NDPERS Trustee or subcommittee member**

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**Date**





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# Memorandum

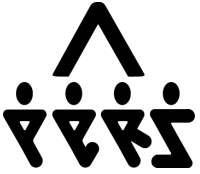
**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

**SUBJECT:**           Board Self-Evaluation

This agenda topic is just to let you know that we will be sending out a Board Self-Evaluation survey through Survey Monkey in the near future. We will go over the results of the evaluation at a future Board meeting.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 9, 2024

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

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

This topic is informational only.

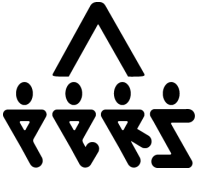
# Attachment

## All Contracts Signed During 2024:

Vendor	Amount	Notes
CliftonLarsonAllen	\$ -	GASB 68 & 75 Representation Lettess
TIAA	\$ -	Termination notice due to recordkeeper award
BND	\$ 909.00	Staff Years of Service Awards (Gift Cards)
City of Berthold	\$ -	Joined Life Insurance Plan 3/1/2024
Mandaree Public Schools	\$ -	Joined Deferred Compensation Plan 3/1/2024
Interoffice	\$ 1,179.44	Office Chair
Emmons County	\$ -	Joined Public Safety Plan 4/1/2024
City of Leeds	\$ -	Joined Defined Benefit Plan 4/1/2024
City of Leeds	\$ -	Joined Deferred Compensation Plan 4/1/2024
City of Emerado	\$ -	Joined Public Safety Plan 2/1/2024
City of Riverdale	\$ -	Joined Defined Benefit Plan 4/1/2024
City of Riverdale	\$ -	Joined Deferred Compensatoin Plan 4/1/2024
Fireside	\$ 3,079.80	5 year total lease on multi-function printer
Advanced Business Methods	\$ 5,713.20	5 year total lease on document scanner
Eddy County	\$ -	Joined Life Insurance Plan 5/1/2024
Galliard Fund Agreements	\$ -	Lowering the share class in the Galliard investments in the 401(a) & 457 Plans
Larimore Public School	\$ -	Joined Deferred Compensation Plan 1/1/2025
TIAA Deconversion Guide	\$ -	Strategy guide with TIAA for deconvertig to Empower
TIAA Letter of Direction	\$ -	Direction to pay out RMDs & scheduled installments early with TIAA prior to blackout
Empower Letter of Instruction	\$ -	Letter of instruction on brokerage account in 457 and 401(a) plans
Empower Brokerage Application	\$ -	Application on brokerage account in 457 and 401(a) plans
TIAA Custodial Agreement Terminations	\$ -	Termination of Custodial Agreements with TIAA for both the 457 and 401(a) Plans
TIAA Record Keeper Amendment	\$ -	Authorization for TIAA to pull recordkeeper fees through June 2024
Beulah Public School # 27	\$ -	Joined Deferred Compensation Plan 7/1/2024
TIAA Brokerage Re-Registration Letter	\$ -	Authorizes the transfer of brokerage acoounts on both the 457 and 401(a) Plans
Empower Brokerage Transfer Request Form	\$ -	Authorizes the transfer of brokerage acoounts on both the 457 and 401(a) Plans
Empower Plan Asset Transfer & Investment Direction	\$ -	Directs the investments of brokerage acoounts on both the 457 and 401(a) Plans
Inter Office	\$ 824.76	Rising legs for standing desk
Advanced Business Methods	\$ 3,930.00	5 year total lease on multi-function printer

## Contracts Signed Since Last Reported:

Vendor	Amount	Notes
Steele County	\$ -	Joined Public Safety Retirement Plan 7/1/2024
City of Grand Forks	\$ -	Joined Deferred Compensation Plan 9/1/2024
Fargo Public Schools	\$ -	Joined Deferred Compensation Plan 1/1/2025



# Memorandum

**TO:** NDPERS Board  
**FROM:** Derrick Hohbein  
**DATE:** July 9, 2024  
**SUBJECT:** Budget

The request by the Governor was for NDPERS to submit a 3% reduced budget to focus on efficiencies that create budget savings while improving outcomes for the citizens our agency serves. The budget presented to you today takes that recommendation into consideration and is for a base budget request of \$11,799,582. This amount equals the base budget calculation provided by OMB.

**Budget Request:**

2023-25 appropriation	\$10,903,218
Cost to continue adjustments	1,716,300
Remove one-time funding	(455,000)
3% reduction	<u>(364,936)</u>
Base Budget calculated by OMB	\$11,799,582

The base budget incorporates a 3% reduction of the following:

- Reduction of 2.0 FTE plus temporary funding to discontinue all 457 providers other than the Companion Plan

Legal has reviewed NDCC as well as the agreements we have with our providers. When we've had our operating budget reduced in the past, a statement of Legislative intent was included in our appropriation bill as to why the Legislature was moving forward with the reduction. If this is a benefit the Legislature chooses to reduce, legal agrees that a similar statement of intent may be beneficial as we'd move forward with the reduction. So if it appears this is a reduction the Legislature is interested in, Staff will be sure to request that the Legislature add a similar statement next session to our appropriation bill.

Callan has also considered how the benefit reduction may impact our membership, and unfortunately cannot offer a lot of insight into how the membership may be impacted considering they are not privy to the contractual arrangements each provider may have with our members.

**Optional Budget Requests**

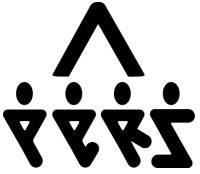
At the May & June Board Meetings, discussion took place as to what optional change packages to include in the upcoming budget.

Following is the cost information relating to the optional packages:

<b>Initiative</b>	<b>FTE</b>	<b>Cost</b>	<b>% Increase Over Base Budget</b>
Restore 2.0 FTE & temp funding to continue the 457 providers & cost to continue 4% salary increases as well as 1% increase in retirement	2.0	\$ 495,503	4.2%
Cost to continue operational inflationary increases	-	246,289	2.1%
Additional FTE to support long-term success of DC Plan	2.0	450,162	3.8%
One-time funding to add a business analyst & two developers	0.0	539,595	4.6%
Targeted compensation adjustments for Staff, fund an internship position, and fund the additional Legislators on the Board	-	155,848	1.3%
Self-Funded Health Insurance	5.0	1,359,790	11.5%
<b>TOTAL</b>	<b>9.0</b>	<b>\$ 3,247,187</b>	<b>27.5%</b>

**Board Action Requested:**

Approve the 2025-27 base budget and optional packages to be submitted to OMB.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Katheryne Korom

**DATE:**               July 9, 2024

**SUBJECT:**           Assurance NM Testing

Assurance NM is the State's emergency communication software. It is a way to get critical information out to all necessary parties without making individual contacts. All Board members' contact information is added to the system in the event we have an emergency and staff need to get in contact with the Board. We test this process twice a year to ensure all Board members get the messages we have sent.

You will receive a test message during our meeting on all phone numbers and email addresses you have listed in PeopleSoft.

No Board Action is necessary, other than letting us know if you do NOT receive the communication.

**MEMBER \*\*EXECUTIVE SESSION**

**A. Insurance Benefit Appeal Case #867**

***\*\*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.***

**Confidential material for the Closed Session  
will be sent under separate cover.**

## **MEMBER \*\*EXECUTIVE SESSION**

### **B. Retirement Benefit Appeal Case #868**

***\*\*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.***

**Confidential material for the Closed Session  
will be sent under separate cover.**



**MEMBER \*\*EXECUTIVE SESSION**

**C. Retirement Benefit Appeal Case #870**

***\*\*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.***

**Confidential material for the Closed Session  
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