



NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

Special Board Meeting Agenda

Location: WSI Board Room, 1600 East Century Avenue, Bismarck ND
By phone: 701.328.0950 Conference ID: 132 481 751#
Date: **Thursday, May 23, 2024**
Time: 8:30 A.M. [Join the meeting now](#)

I. MINUTES

- A. April 9, 2024

II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

III. PRESENTATIONS

- A. 2023 About the Patient Diabetes Program Annual Report
- B. Sanford Health Plan Updates:
 - 1. Introduction of President & Chief Executive Officer
 - 2. Executive Summary 2023 Quarter 4

IV. DEFINED CONTRIBUTION PLAN IMPLEMENTATION

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

V. DEFINED BENEFIT

- A. Retirement Plan Actuarial and Consultant Contract – Katheryne (Board Action)

VI. DEFERRED COMPENSATION / DEFINED CONTRIBUTION

- A. Recordkeeper Vendor Transition Status Update – Derrick (Information)

VII. GROUP INSURANCE / FLEXCOMP

- A. Dental Plan Request for Proposal (RFP) Update – Katheryne (Board Action)
***EXECUTIVE SESSION**
- B. FlexComp Plan Request for Proposal (RFP) Update – Katheryne (Information)
- C. Medicare Part D Plan Premium Projection and Request for Proposal (RFP) – Rebecca (Board Action)

VIII. LEGISLATION / ADMINISTRATIVE RULES

- A. Proposed Legislation - Rebecca (Information)
- B. Proposed Administrative Rules Update - Rebecca (Information)

IX. OPERATIONS / ADMINISTRATIVE / FINANCE

- A. Board Election Update – Aime (Information)
- B. Executive Director Performance Review and Compensation Subcommittee Recommendations – Rep. Dockter, Subcommittee Chair (Board Action)
- C. External Audit Contract – Derrick (Board Action)
- D. Budget – Derrick (Board Action)

NDPERS BOARD MEETING AGENDA

THURSDAY, MAY 23, 2024

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E. Quarterly Consultant Fees – Derrick (Information)

F. Contracts Under \$10,000 – Rebecca (Information)

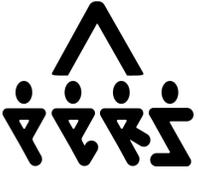
G. Next Meeting: June 11, 2024

X. MEMBER ** EXECUTIVE SESSION

A. Retirement Appeal Case #812 Follow-up – Rebecca (Information)

*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. 54-52-26 to discuss confidential member information and N.D.C.C. 44-04-19.1(2) & (5) for attorney consultation.



Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 2024

SUBJECT: About the Patient Diabetes Management Program Annual Report

Jesse Rue of the ND Pharmacy Association will be providing the Board with the 2023 Annual Report for the About the Patient Diabetes Management Program (Attachment).

NDPERS partners with the ND Pharmacy Association to provide our members this program pursuant to NDCC 54-52.1-16 and 54-52.1-17:

54-52.1-16. Uniform group insurance program - Collaborative drug therapy program - Continuing appropriation.

- 1. The board may establish a collaborative drug therapy program available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals in identified health populations and to manage health care expenditures.*
- 2. Under the program, the board may involve physicians, pharmacists, and other health professionals to coordinate health care for individuals in identified health populations in order to improve health outcomes and reduce spending on care for the identified health problem. Under the program, pharmacists and other health professionals may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals in the identified health population. To encourage enrollment in the plan, the board may provide incentives to covered individuals in the identified health population which may include waived or reduced copayment for related treatment drugs and supplies.*
- 3. The board may request the assistance of the North Dakota pharmacists association or a specified delegate to implement a formalized disease management program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize chronic disease care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of care, enable consistent*

documentation of clinical and economic outcomes, and structure an outcomes reporting system.

4. The board may seek and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources for a collaborative drug therapy program for identified health populations. Any funds that may become available through contributions, gifts, grants-in-aid, or other sources to the board for a collaborative drug therapy program are appropriated to the board on a continuing basis.

54-52.1-17. Uniform group insurance program - Collaborative drug therapy program - Funding.

1. The board shall establish a collaborative drug therapy program that is to be available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals with diabetes and to manage health care expenditures.

2. The board shall involve physicians, pharmacists, and certified diabetes educators to coordinate health care for covered individuals with diabetes in order to improve health outcomes and reduce spending on diabetes care. Under the program, pharmacists and certified diabetes educators may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals with diabetes. To encourage enrollment in the plan, the board shall provide incentives to covered individuals who have diabetes which may include waived or reduced copayment for diabetes treatment drugs and supplies.

3. The North Dakota pharmacists association or a specified delegate shall implement a formalized diabetes management program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize diabetes care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of diabetes care, enable consistent documentation of clinical and economic outcomes, and structure an outcomes reporting system.

4. The board shall fund the program from any available funds in the uniform group insurance program and if necessary the fund may add up to a two dollar per month charge on the policy premium for medical and hospital benefits coverage. A state agency shall pay any additional premium from the agency's existing appropriation.

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



ANNUAL REPORT FOR NDPERS

About the Patient Collaborative Diabetes Drug ← Therapy Program

North Dakota Pharmacy Services Corporation

MAY 2024

Prepared by | Jesse Rue, PharmD, BCPS

In the lineup for today

Here are the topics presented today: ←

1. Program Design
2. Key Health Indicators
3. Medication Related Problems
4. Member Engagement
5. Member Satisfaction
6. Budget Status Update

Program Design



At its heart, this is a program to optimize treatment plans and adherence for chronic illnesses

CALENDAR DIVIDED INTO THREE BLOCKS



Calendar divided into three segments



Visit made within each segment



When visit is made, copay reimbursement awarded for segment



Without a visit, reimbursement isn't awarded

When a visit occurs during a block, the reimbursement is awarded for certain diabetes, hypertension and cholesterol meds as well as certain testing supplies.

FRESH ASSETS MAINTAIN VIBRANCY.



Program assets are continually refreshed to provide members with appealing and impactful educational materials, better standardizing their experiences.

Key ←

Health Indicators

Insight into program impact in 2023 for members with diabetes and hypertension

Some Background

A few words on measures, prevalence, and personal impact to members. Hypertension and diabetes impact health and quality of life in profound ways.

DIABETES

- 01** Quality Measures often require HbA1c <9%. Good control often considered HbA1c <7% depending upon variables.
- 02** Over 10% of people in North Dakota have diabetes.
- 03** Persons with diabetes experience health expenditures >2x those without and risk of early death increases by 60%.

HYPERTENSION

- 01** Quality Measures often report Hypertension control <140/90, whereas ACC/AHA define as <130/80.
- 02** Over 29% of North Dakota adults have hypertension.
- 03** About 7 of 10 people having their first heart attack have high blood pressure and 8 out of 10 having first stroke.

Adapted from Health Issues for the State of ND, Biennial Reports 2021 & 2023 University of North Dakota

A1c data **for** Diabetes

Program care initiatives have helped members improve their Hemoglobin A1c measurement, which is critical for long term success.

AVERAGE A1C IMPROVEMENT

Members improving their A1c for this program year did so by an average of 0.5 points.

0.5 point
A1c reduction

Pressure data for Hypertension

Program care initiatives helped members improve their blood pressure, which is critical in avoiding complications such as heart attack and stroke.

UNCONTROLLED ACHIEVING CONTROL

We evaluated patients experiencing uncontrolled blood pressure in 2023 and tracked progress. Of those, 55% found control later in the year with blood pressure reading <130/80.

55% controlled
by end of year

Medication Related Problems



Key to the program is resolving Medication Related Problems to avoid Adverse Drug Events

Adverse Drug Events remain a **persistent national problem.** ←

An ADE is an event resulting in harm from a medication. Identifying Drug Therapy Problems are a way for pharmacists to resolve issues **before they turn into a serious ADE.**

Intervening to mitigate or prevent these problems is an area where the pharmacist is addressing issues that remain unresolved elsewhere and is a unique contribution to care.

Pharmacists in this program are making over two interventions per member on average.

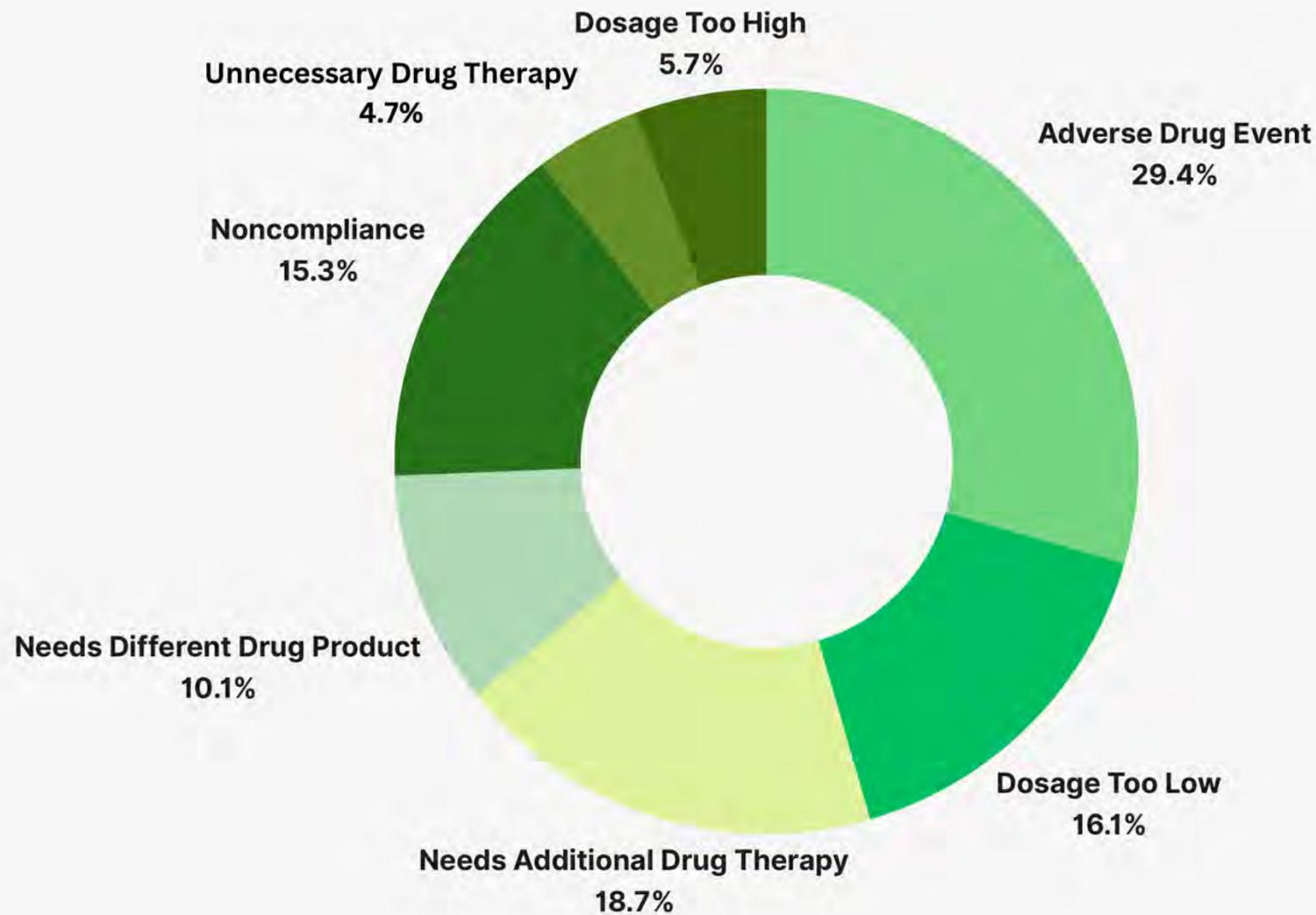
Problems Identified

Identifies >2 problems per member on average

From the Federal Office of Disease Prevention and Health Promotion:

“Each year, ADEs in outpatient settings account for:

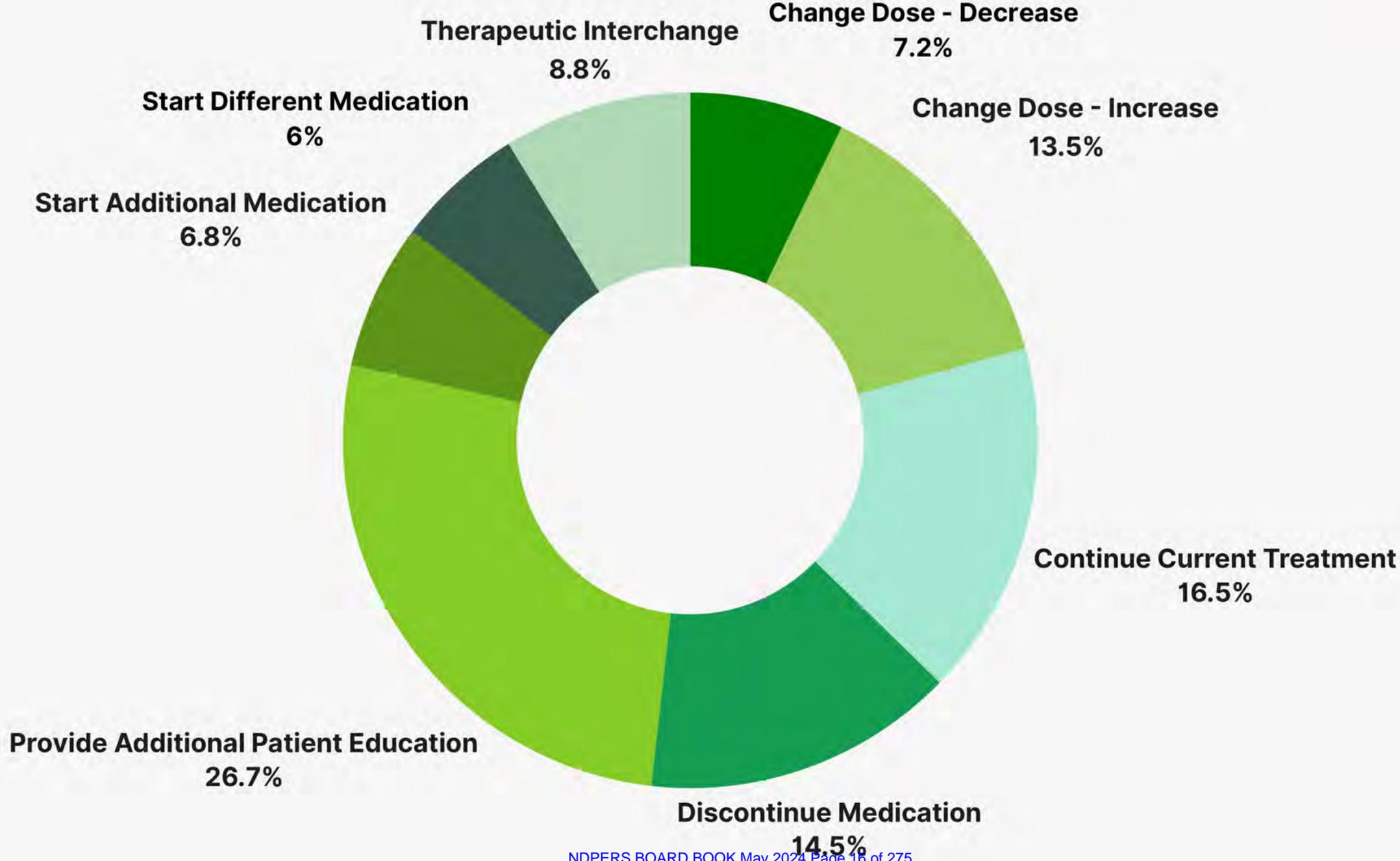
- Over 3.5 million physician office visits
- An estimated 1 million ER visits
- Approximately 125,000 hospital admissions



THE GOOD NEWS IS THAT LARGE MAJORITY OF ADE'S ARE PREVENTABLE. REDUCING ADES IS EXPECTED TO RESULT IN SAFER AND HIGHER QUALITY HEALTH CARE SERVICES, REDUCED HEALTH CARE COSTS, MORE INFORMED AND ENGAGED CONSUMERS, AND IMPROVED HEALTH OUTCOMES.”

Problem Resolution

IMPROVEMENTS TO OVERALL CARE RESULTED FROM INTERVENTIONS DESCRIBED ABOVE AND IMPROVED SELF-MANAGEMENT EDUCATION THROUGH THE PROGRAM VISITS.
THIS IS THE FOUNDATION OF THE PROGRAM'S DESIGN.



Member ←

Engagement

Chronic disease care improves when members are able to engage conveniently and often

Member Engagement

We were successful in achieving our fifth consecutive year of engagement growth in 2023. We remained encouraged by the resiliency of members, NDPERS leadership and staff, and providers in this program as stakeholders maintained commitment to improving member health.



- 2019** Member visits increase 80% from prior year.
- 2020** COVID impact begins in March. Visits increase 5% for the year.
- 2021** COVID continues to ravage healthcare. Visits increase 27% for the year.
- 2022** COVID remains but lessens deeper into the calendar. Visits increase 4% for the year.
- 2023** Member visit growth remains a durable narrative. Visits increase 12% for the year.

Member ← Satisfaction

Satisfaction with care received remains a strength of the program year over year

Member Satisfaction

Remained Strong in 2023

Member satisfaction remains consistently strong and stable year to year, indicating belief that the providers have member's best interests in mind and are effective in improving health overall.



The provider's interest in your health = **4.89**



How well the provider helps you manage your medications = **4.89**

**1 = Strongly Disagree to
5= Strongly Agree**



The provider's efforts to improve your health or stay healthy = **4.89**



The program services overall = **4.84**

Budget ←

Status Update

A snapshot of spend in 2023 compared with budgeted amounts

Budget **status snapshot**



CATEGORY	ANNUAL BUDGET	ACTUAL SPEND
PATIENT COPAY INCENTIVE	\$98,000	\$111,240
PROVIDER VISITS	\$66,000	\$63,760
ADMIN FEE	\$10,000	\$10,000
MARKETING	\$2,500	\$2,500
TOTAL	\$177,000	\$187,500

The **program remains close to budget** and is tracking **similarly to recent years.**

The table displays one year of budgeted expenses and demonstrates that the program is currently near target for budget goals during the biennium.

Patient incentives have been increasing as visits have increased.

Gratitude

We appreciate the opportunity to deliver this report and are grateful to be part of your continued efforts to create healthier members and communities across North Dakota.

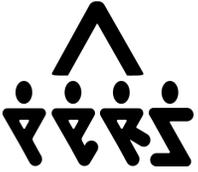


Thank You

Contact

Jesse Rue, PharmD, BCBS
Clinical Coordinator
About the Patient Programs

www.aboutthepatient.net
jrue@aboutthepatient.net
701-258-4968



**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

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

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 2024

SUBJECT: Sanford Health Plan Updates

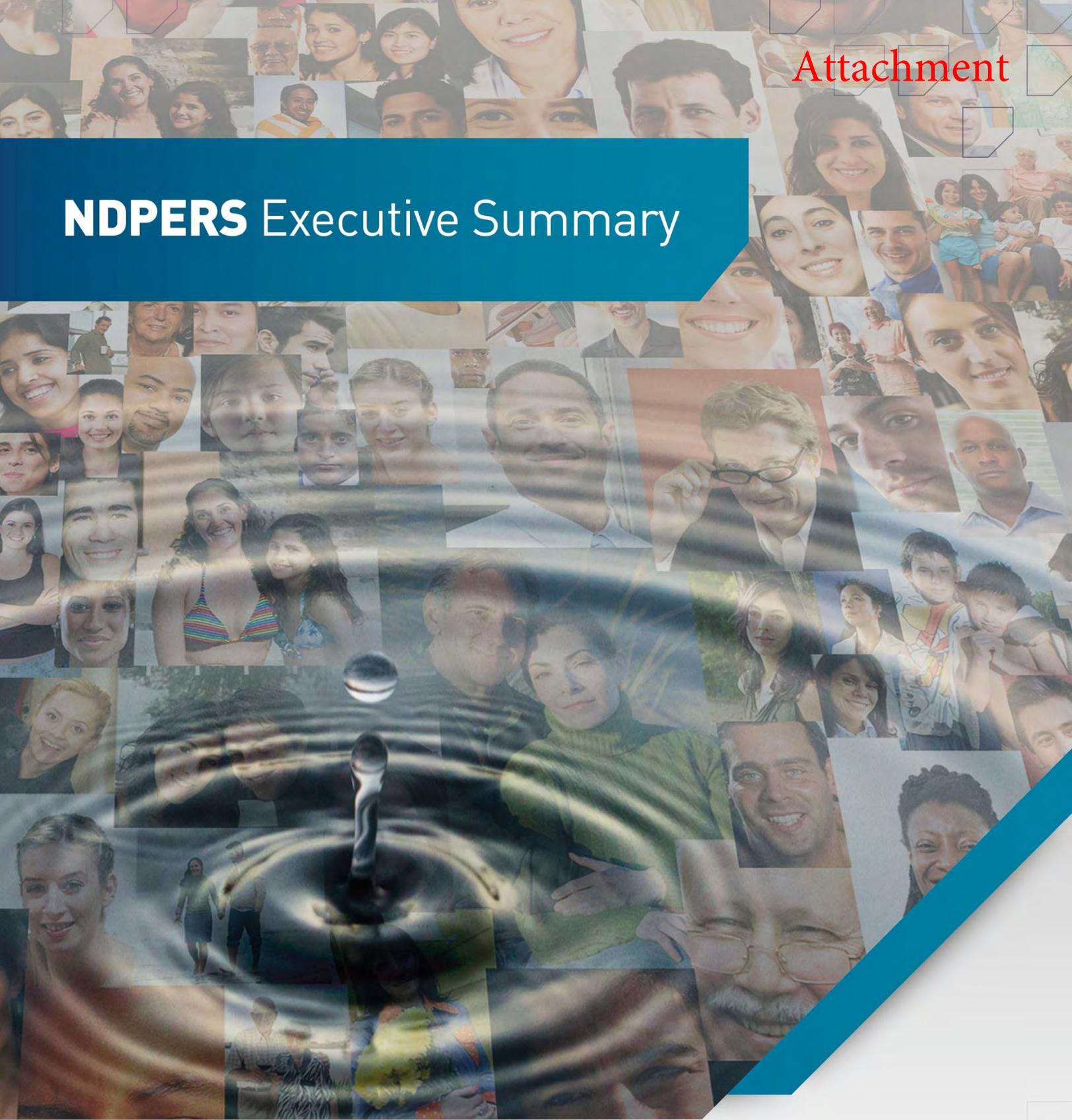
Sanford Health Plan (SHP) will be at the meeting to provide the Board with the following updates:

- 1) Introduce Tommy Ibrahim, Sanford Health Plan President and Chief Executive Officer
- 2) Review the attached SHP 2023 Quarter 4 Executive Summary and answer any questions you may have. This summary is using the new format that was discussed at the March Board meeting.

Representatives from Humana are also available to discuss any questions related to the Medicare Part D Plan information, labeled as NDPERS EGWP, found on page 17 of the summary.

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

NDPERS Executive Summary



Quarter 4 | 2023

Presented May 2024



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Section 7: Performance Guarantees

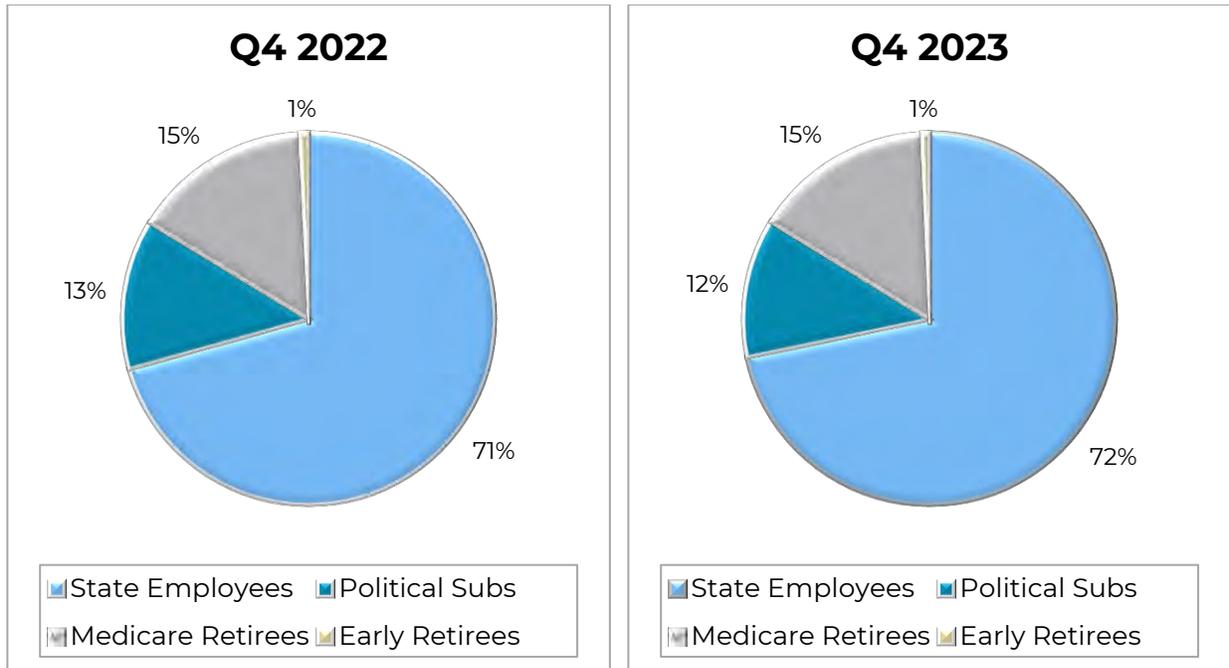
SECTION 1: MEMBERSHIP

ANNUAL MEMBERSHIP SUMMARY

Exhibit 1.1

MEASURE	Q4 2022	Q4 2023	PERCENT CHANGE
State Employees	41,553	41,919	0.9%
Political Subs	7,673	7,044	-8.2%
Medicare Retirees	9,115	9,072	-0.5%
Early Retirees	452	395	-12.6%
TOTAL	58,793	58,430	-0.6%

Exhibit 1.2



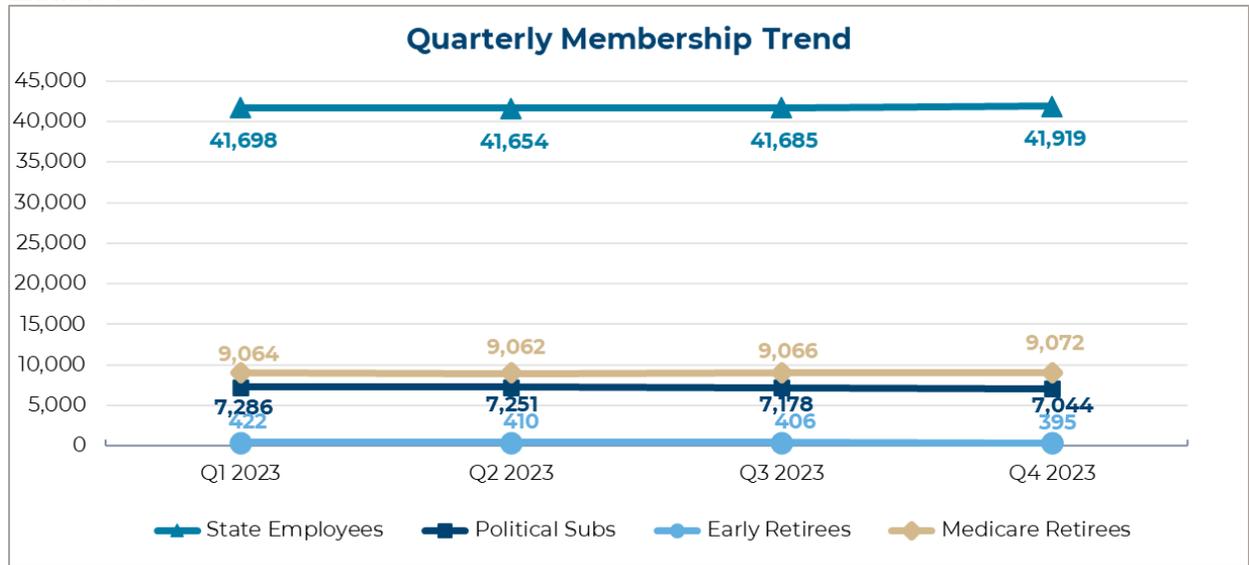
MEMBERSHIP TREND

Exhibit 1.3

MEASURE	Q4 2022	Q4 2023	% CHANGE	BENCHMARK	% VARIANCE
Average Employees	18,744	18,435	-1.6%		
Average Members	49,916	49,329	-1.2%		
Average Contract Size	2.66	2.68	0.5%		
Average Age	33.0	32.9	-0.4%		
% Female	51.0%	50.8%	-0.3%	50.9%	-0.0%
HCCs (% of Members)	0.8%	0.9%	11.9%	0.8%	14.2%

*Includes State Employees, Early Retirees & Political Subs.

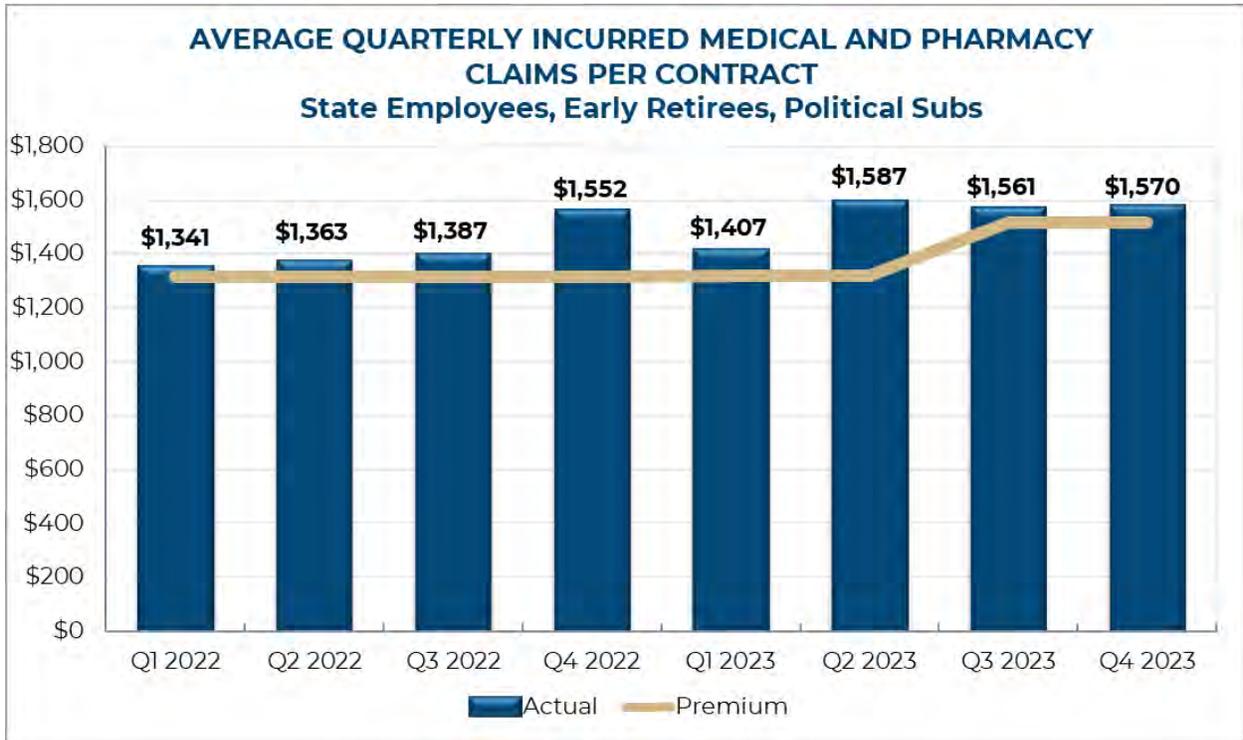
Exhibit 1.4



SECTION 2: CLAIMS ANALYSIS

PAID CLAIMS PER CONTRACT PER MONTH

Exhibit 2.1



*Incurred between January 1, 2023 and December 31, 2023 with paid date as of March 31, 2024. Final Adjusted Claims.

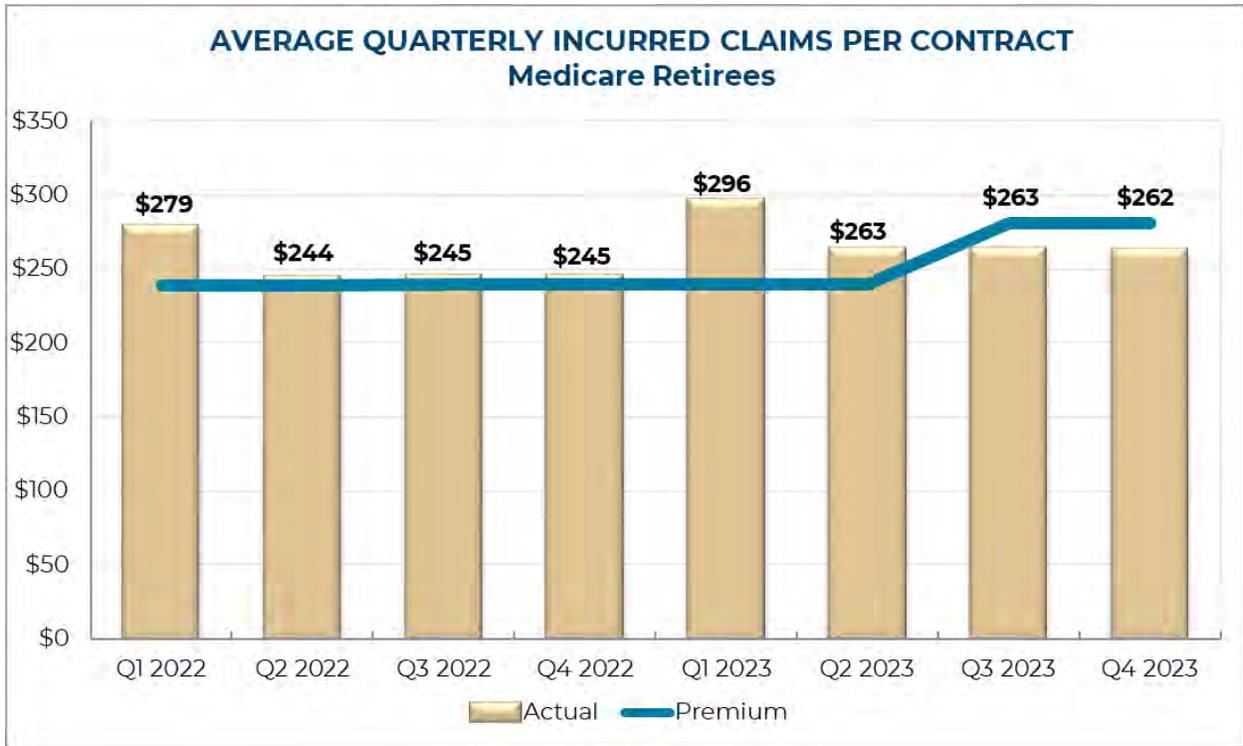
*NDPERS Active contracts have approximately 2.68 members per contract.

*Includes medical claims and prescriptions without IBNR.

*Additional medical claims may be received.

PAID CLAIMS PER CONTRACT PER MONTH

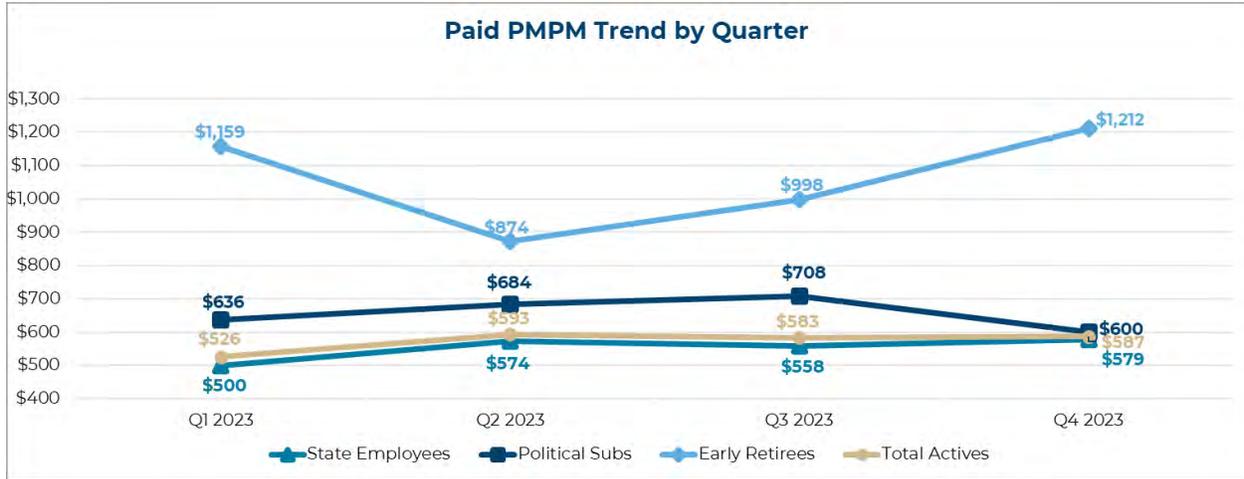
Exhibit 2.2



*Incurred between January 1, 2023 and December 31, 2023 with paid date as of March 31, 2024. Final Adjusted Claims.
 *Includes medical claims only excludes prescription drug coverage (Medicare Part D).
 *Additional medical claims may be received.
 *Medicare Retirees contracts have approximately 1.37 members per contract.

PAID PER MEMBER PER MONTH (PMPM) TREND BY QUARTER

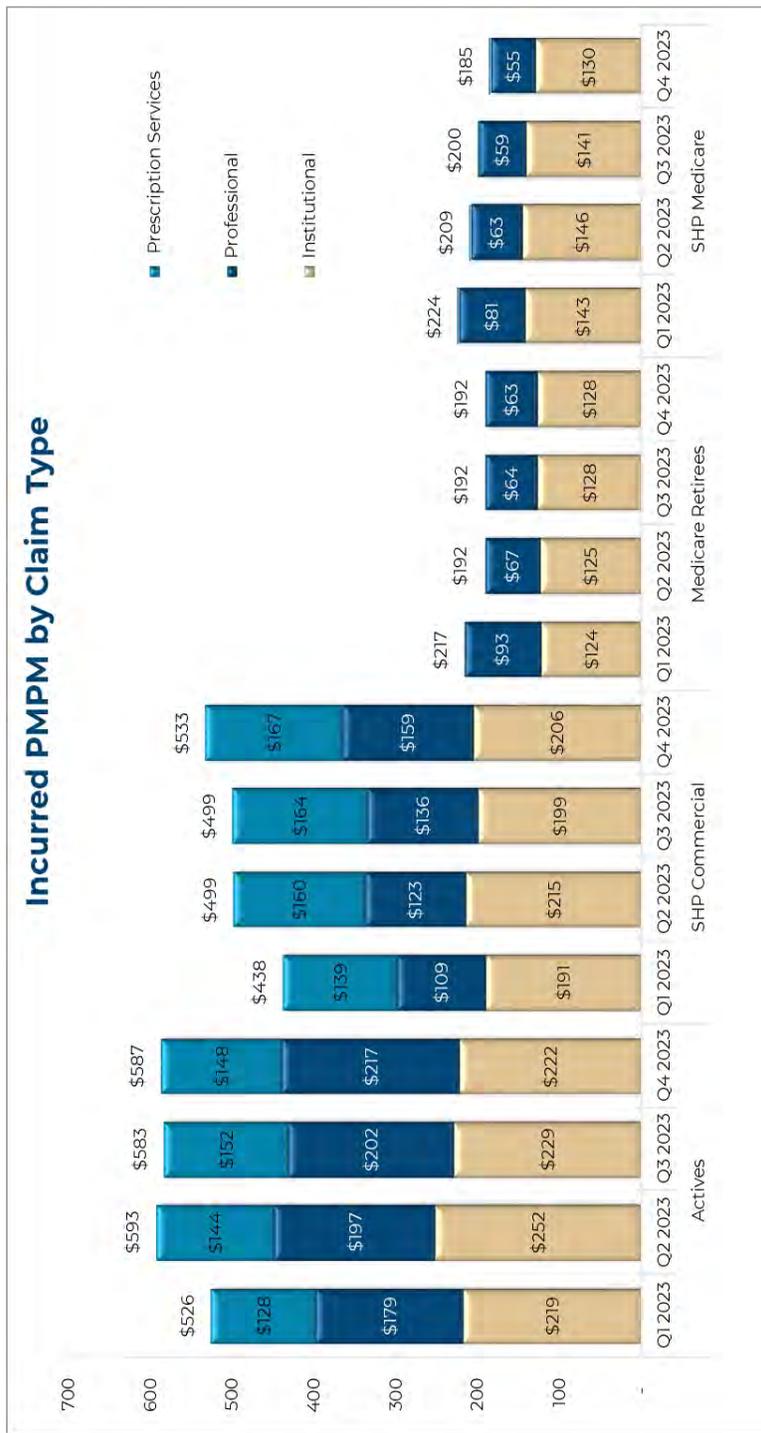
Exhibit 2.3



*Incurred between January 1, 2023 and December 31, 2023 with paid date as of March 31, 2024. Final Adjusted Claims.
 *Total Actives = State Employees + Early Retirees + Political Subs
 *Medical claims and Prescription services without IBNR.
 *Additional medical claims may be received.

INCURRED PMPM BY CLAIM TYPE

Exhibit 2.4



*Incurred between January 1, 2023 and December 31, 2023 with paid date as of March 31, 2024. Final Adjusted Claims.
 *Medical claims and prescription services without IBNR.
 *Additional medical claims may be received.

SECTION 3: UTILIZATION

MEDICAL COST DRIVERS: ACTIVES

Exhibit 3.1

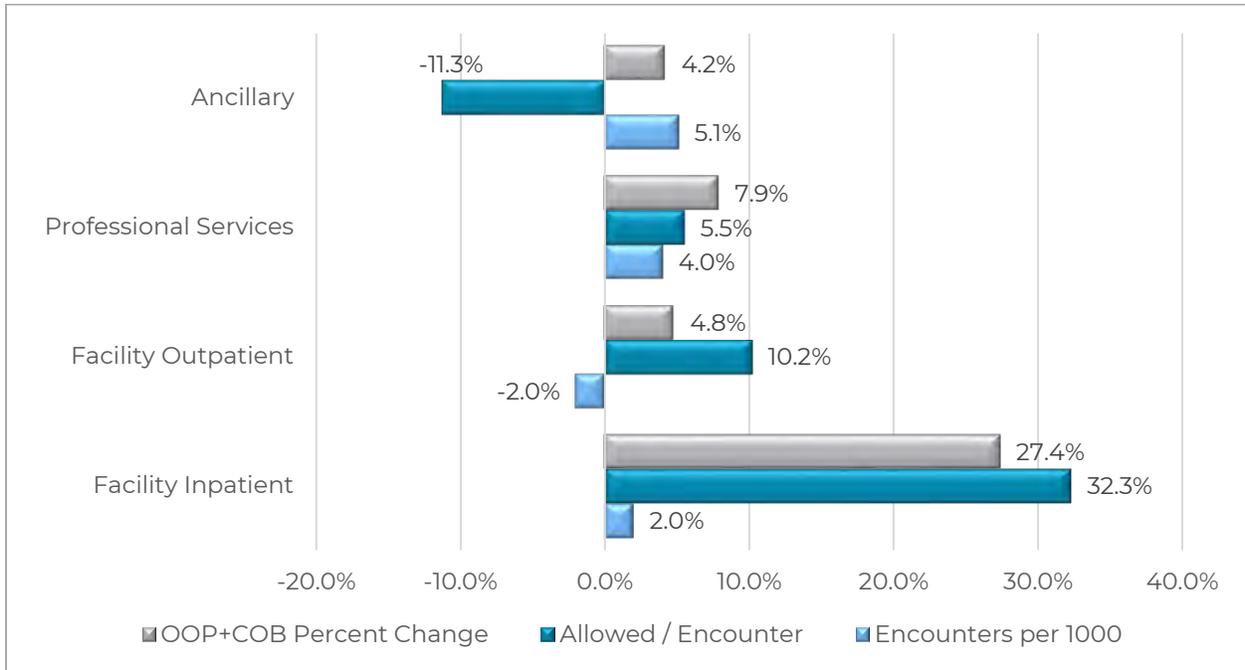


Exhibit 3.2

MEASURE	FACILITY INPATIENT	FACILITY OUTPATIENT	PROFESSIONAL SERVICES	ANCILLARY
Encounters per 1000 Prior Period	49	2,511	12,727	1,627
Encounters per 1000 Current Period	50	2,462	13,236	1,710
% Change	2.0%	-2.0%	4.0%	5.1%
Amount Allowed per Encounter Prior Period	\$19,982	\$582	\$172	\$417
Amount Allowed per Encounter Current Period	\$26,431	\$642	\$182	\$370
% Change	32.3%	10.2%	5.5%	-11.3%
OOP+COB PMPM Prior Period	\$0.28	\$15.51	\$35.68	\$2.98
OOP+COB PMPM Current Period	\$0.35	\$16.24	\$38.48	\$3.11
% Change	27.4%	4.8%	7.9%	4.2%

*Prior Period: January 2022- December 2022. Current period: January 2023- December 2023.

SECTION 4: HIGH DOLLAR CASES: ACTIVES

Exhibit 4.1

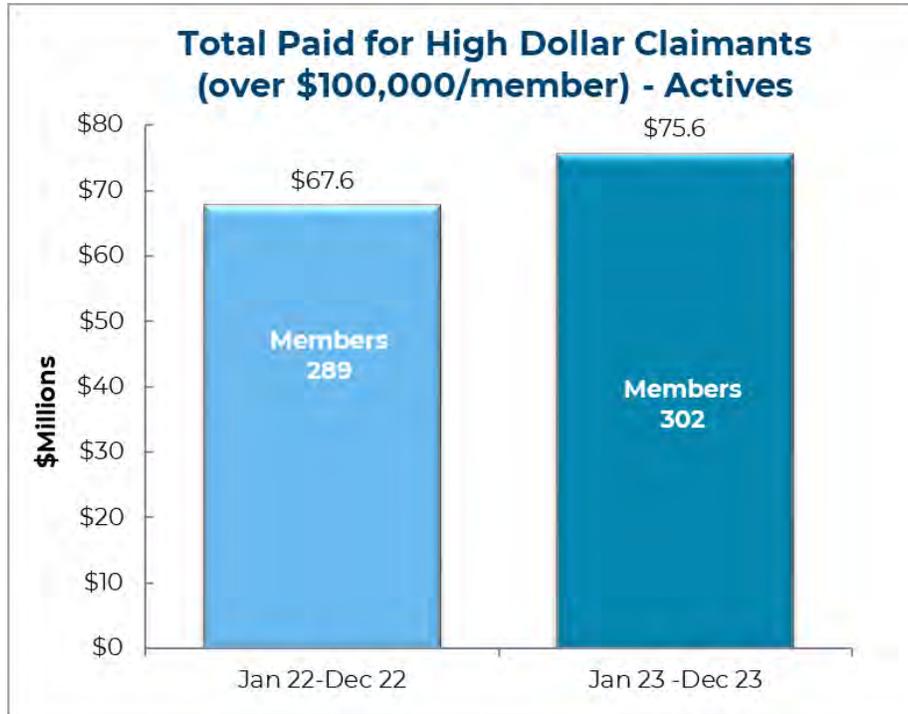
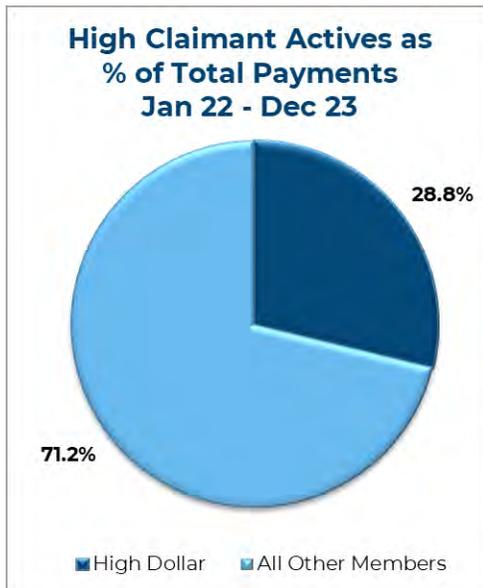


Exhibit 4.2

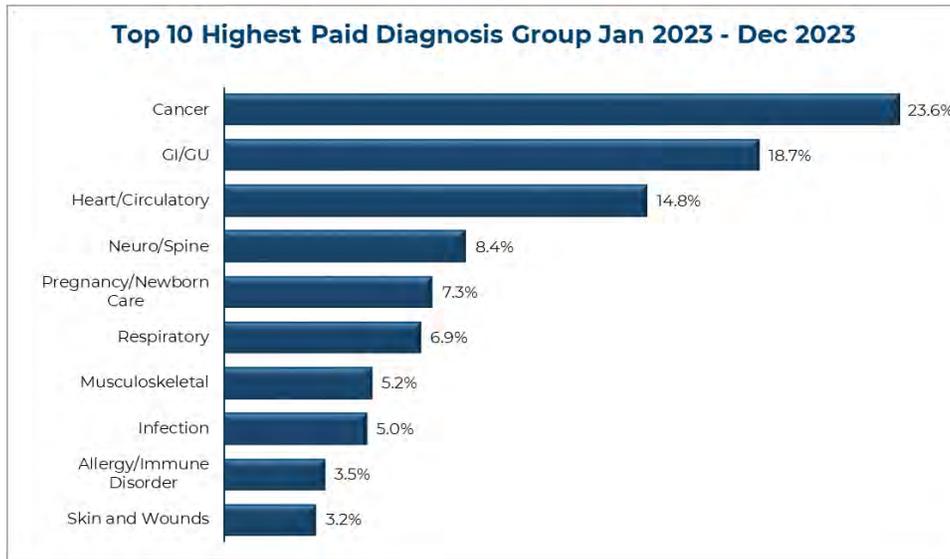


ACTIVE MEMBERS	
Avg. Paid/ Claimant	\$250,225
% of Total Payments	28.8%

*Medical claims only without IBNR.

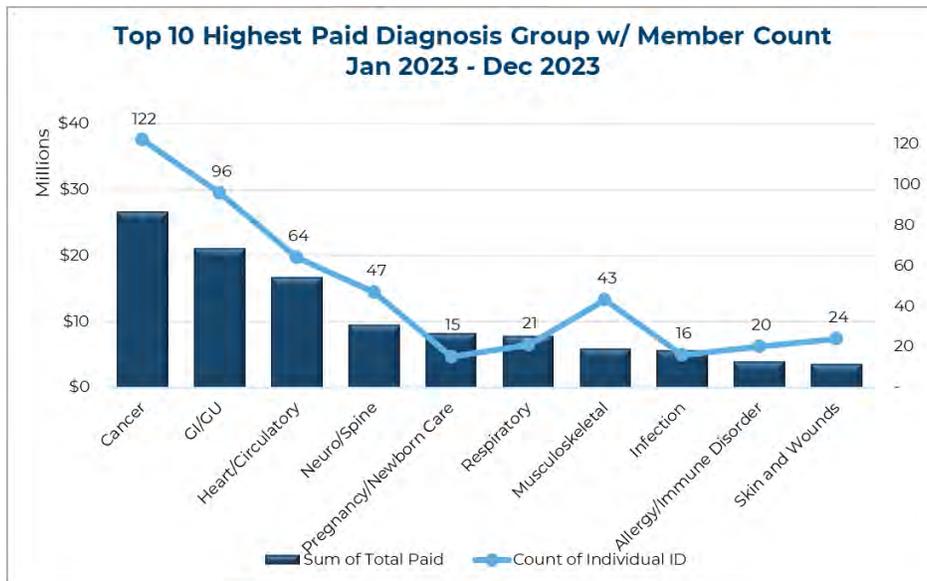
*Additional medical claims may be received.

Exhibit 4.3



*The remaining 3.5% represent 5 diagnosis groups.
 *High dollar cases consist of combined medical claims and prescriptions with a total of \$100K or greater.
 *Includes Medical claims and Prescription services without IBNR.
 *Additional medical claims may be received.

Exhibit 4.4



*The remaining 3.5% represent 5 diagnosis groups.
 *High dollar cases consist of combined medical claims and prescriptions with a total of \$100K or greater.
 *Includes Medical claims and Prescription services without IBNR.
 *Additional medical claims may be received.

SECTION 5: PHARMACY

Exhibit 5.1

SUMMARY OF YOUR PLAN		NDPERS – 2023 TOTAL Jan 22- Dec 22 vs. Jan 23- Dec 23
 <p>\$142.82 Total plan paid PMPM</p>	<h4>PLAN PAID PMPM</h4> <ul style="list-style-type: none">• NDPERS – 2023 Total's PMPM is trending at 14.8% versus previous period• Inflammatory Conditions, Diabetes, and Oncology disease states accounted for 65.7% of overall plan paid and increased \$13.52 PMPM in total plan paid. The benchmark increased \$10.03 PMPM in these categories	
 <p>\$39.65 Total PMPM savings</p>	<h4>YOUR OUTCOMES</h4> <ul style="list-style-type: none">• Strategic Solutions have resulted in a total of \$39.65 PMPM plan savings• Strategic Solutions have resulted in a total of \$1,078,653 total healthcare (medical + pharmacy) savings	

Exhibit 5.2

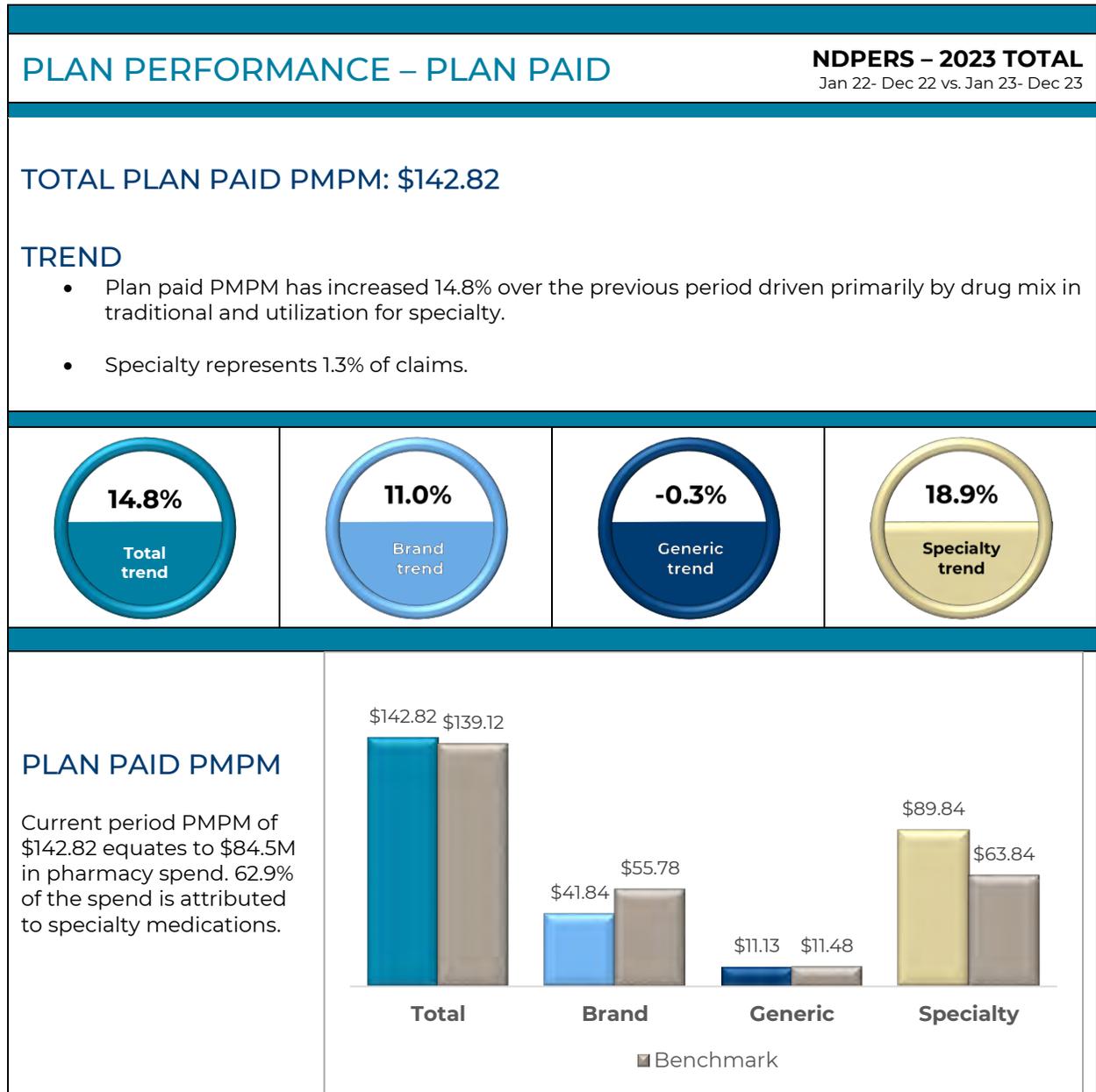


Exhibit 5.3

KEY STATISTICS			NDPERS – 2023 TOTAL Jan 22- Dec 22 vs. Jan 23- Dec 23		
PLAN PAID PMPM: \$142.82					
		The key metrics here help highlight the changes NDPERS - 12 Month - 2023Q1 to 2023Q4 has experienced period over period. <ul style="list-style-type: none"> • Eligibility has decreased by -569. • Number of utilizers has decreased by -405. 			
TOTAL RXS		TOTAL PLAN PAID		UTILIZERS	
CURRENT 447,602		CURRENT \$84,536,803		CURRENT 38,339	
PREVIOUS 446,452		PREVIOUS \$74,507,868		PREVIOUS 38,744	
PREVIOUS CHANGE 0.3%		PREVIOUS CHANGE 13.5%		PREVIOUS CHANGE -1.0%	
KEY STATISTICS	NDPERS			COMMERCIAL BENCHMARK	
	CURRENT	PREVIOUS	% CHANGE	CURRENT	% CHANGE
Average Age	33.3	33.4	-0.4%	36.8	0.2%
Plan Paid PMPM	\$142.82	\$124.44	14.8%	\$135.88	15.8%
Plan Paid Per Rx	\$188.87	\$166.89	13.2%	\$170.10	16.7%
Rx PMPM	0.76	0.75	1.4%	0.80	-0.8%
Average Days Supply	45.2	45.0	0.5%	39.8	2.7%
Days Supply PMPM	34.2	33.6	1.9%	31.8	1.9%
Member Paid Share	11.4%	12.6%	-9.8%	10.8%	-8.1%
Member Paid per Rx	\$24.23	\$24.06	0.7%	\$20.52	6.1%
Brand Dispensing Rate	13.1%	13.9%	-5.8%	14.0%	-8.9%
Generic Dispensing Rate (GDR)	86.9%	86.1%	0.8%	86.0%	1.6%
GDR- Without Vaccines	88.1%	87.9%	0.2%	88.1%	-0.1%
Home Delivery Rate	0.6%	0.6%	3.5%	5.1%	3.4%
Retail 90 Rate	32.6%	32.5%	0.4%	20.4%	4.9%
% of Specialty Plan Paid	62.9%	60.7%	3.6%	50.3%	-0.4%

Exhibit 5.4

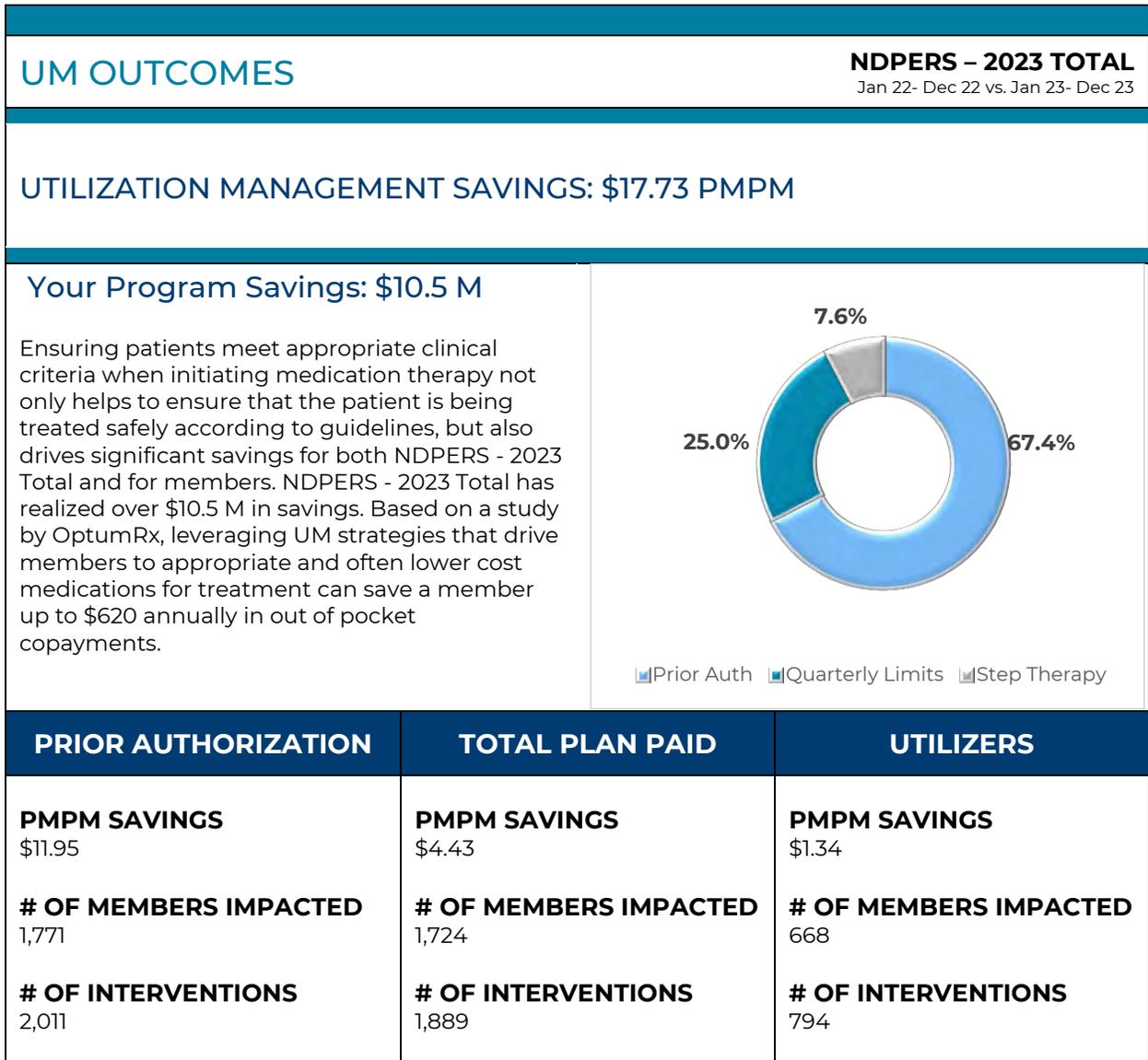
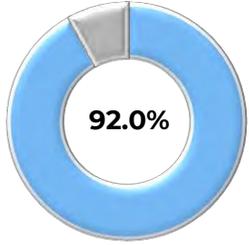
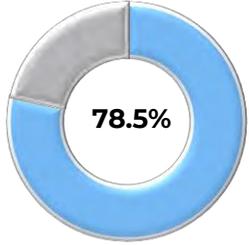
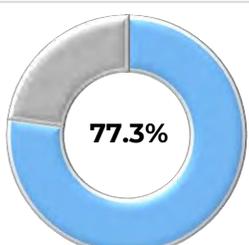


Exhibit 5.5

TOP 5 THERAPY CLASSES			
PRIOR AUTHORIZATION			
 <p>Prior authorization savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	GLP-1 Receptor Agonists	1,155	\$4,109,909
	Chronic Inflammatory Disease	229	\$1,923,652
	Migraine Products	91	\$198,187
	Narcolepsy	5	\$172,327
	Oncology	56	\$106,581
QUANTITY LIMITS			
 <p>Quality limits savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	Chronic Inflammatory Disease	38	\$909,363
	GLP-1 Receptor Agonists	93	\$440,139
	Migraine Products	887	\$432,091
	Oncology	1	\$172,229
	Diabetes Monitoring and Testing Supplies	60	\$107,034
STEP THERAPY			
 <p>Step therapy savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	Atypical Antipsychotics	78	\$278,520
	Diabetes Monitoring and Testing Supplies	385	\$139,849
	Migraine Products	59	\$110,072
	Urinary Antispasmodics & OAB Drugs	33	\$50,612
	Antidepressants	36	\$35,769

NDPERS EGWP: HUMANA

Exhibit 5.6

DESCRIPTION	Q4 2022	Q4 2023	CHANGE
Avg. Members per Month	9,112	9,064	-0.5%
Average Member Age	76.6	76.9	0.4%
Members Utilizing Benefit	8,656	8,701	0.5%
% Members Utilizing Benefit	95.0%	96.0%	1.1%
Total Rx (30 day adjusted)	477,648	482,571	1.0%
Total Rx PMPM (30 day adjusted)	4.37	4.44	1.6%
Generic Fill Rate	90.5%	89.6%	-1.0%
Maintenance 90 Day Utilization	78.6%	79.4%	1.0%
Retail – Maintenance 90 Day Utilization	76.7%	77.6%	1.2%
Home Delivery – Maintenance 90 Day Utilization	1.9%	1.8%	-5.3%
Total Specialty Rx	1,382	1,242	-10.1%
Specialty % of Plan Paid	34.3%	28.1%	-18.1%

SECTION 6: WELLNESS CONTINUUM

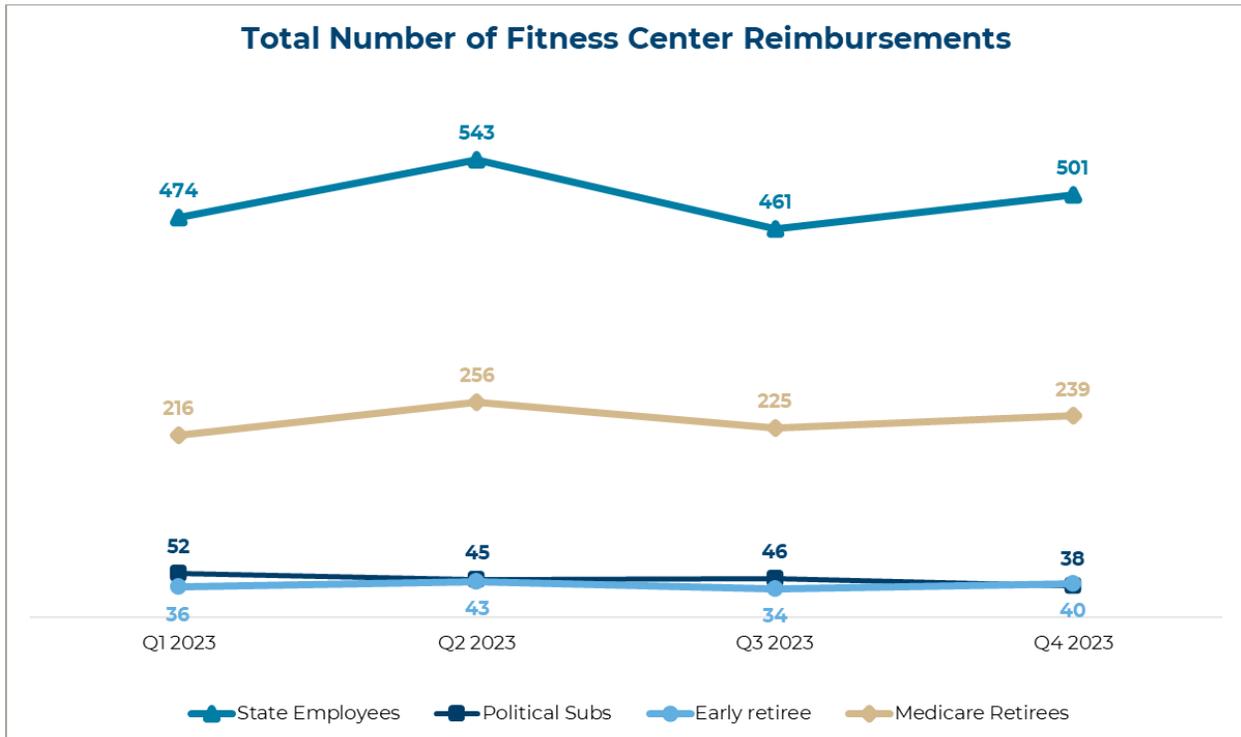
An integrated approach to health management

+Wellness is a family of services that identifies and delivers personalized, whole-person care to members based upon where they are on the wellness continuum. It helps ensure appropriate intervention, diagnoses and treatment plans while navigating members to appropriate resources and high-value specialty care when needed.



DAKOTA WELLNESS PROGRAM FITNESS CENTER REIMBURSEMENT

Exhibit 6.1



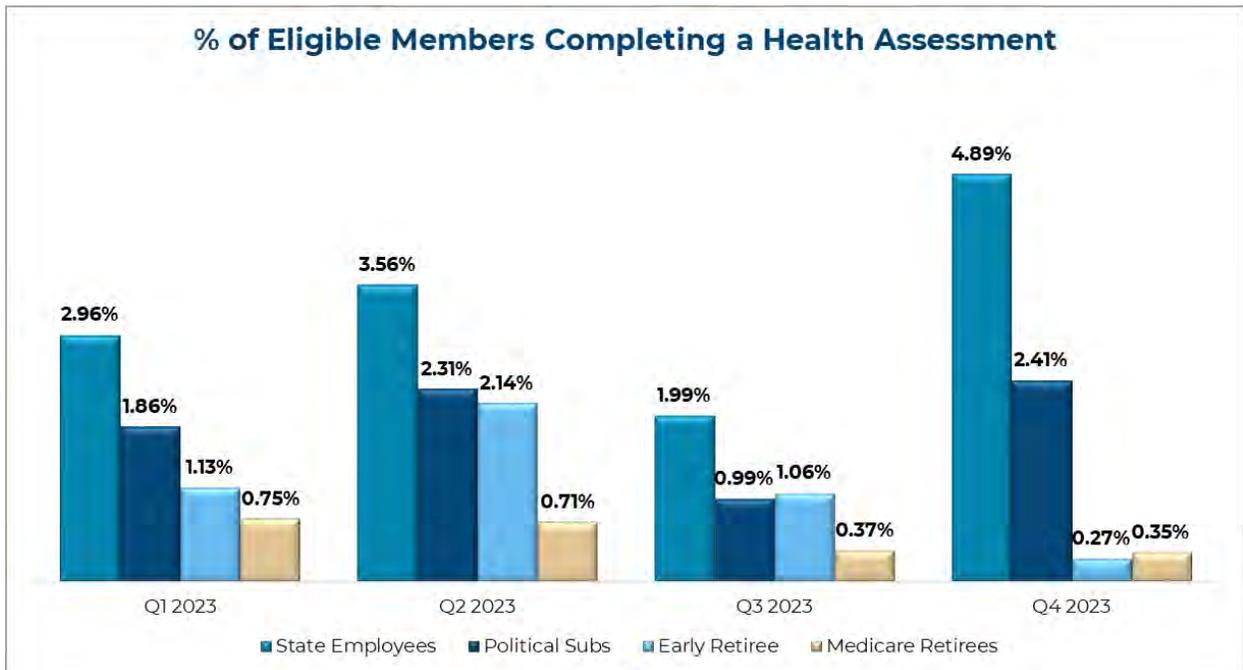
*Percentages are based on numbers per quarter and are not accumulated.

WELLNESS CONTINUUM



HEALTH ASSESSMENT

Exhibit 6.2



*Percentages are based on numbers per quarter and are not accumulated.

MONTHLY WELLNESS THEMES

Exhibit 6.3

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



Dakota Wellness Program

Rest, Relaxation and Exercise

We often get lost in our go-go-go lifestyle and fail to intentionally slow down, take a break and nourish our mind and body with meaningful rest. Our bodies are designed to need rest, which includes but is not limited to just sleep but relaxation as well. Also, getting the appropriate amount of exercise benefits nearly all aspects of a person's health.

REST
Our bodies undergo a variety of physiological processes that help to repair and rejuvenate cells, tissues, and muscles while we sleep. The American Academy of Sleep Medicine recommends that adults should sleep seven hours or more per night on a regular basis to promote optimal health.

RELAXATION
Techniques like meditation not only relieve stress and anxiety, but also is shown to improve mood, decrease blood pressure, relieve pain, and improve your immune and cardiovascular system.

EXERCISE
Not only does exercise help control weight it also improves mental health, mood, chances of living longer, and the strength of your bones and muscles.

Doing something is better than doing nothing, so start small and increase the frequency, duration and intensity of physical activity gradually over time.

Learn more in the Dakota Wellness Program Newsletter.




Dakota Wellness Program

Self-Care: Your Personal Path to Well-Being

In today's fast-paced world, self-care has emerged as a lifeline for those seeking balance in their lives. It's important to clarify that self-care isn't a selfish act; it's a way to ensure you're in the best shape to help others and conquer your daily challenges.

What makes self-care truly special is its personal nature. It's about recognizing your unique needs and taking steps to meet them. These steps can take many forms, and don't have to be extravagant. Here are some of them:

- 1 Pampering yourself with a relaxing bath**
- 2 Committing to a daily exercise routine**
- 3 Savoring a mindful shower**
- 4 Making your bed**

Learn more in the Dakota Wellness Program Newsletter.




Dakota Wellness Program

Gratitude

Feeling gratitude and not expressing it is like wrapping a present and not giving it. There are a variety of ways to feel and express gratitude. Focusing on the positive aspects of your life instead of what is lacking, can train your brain to look for "the good" in every situation.

Here are some tips to express your gratitude.

GRATITUDE JOURNAL
An easy way to start is to simply jot down a few things, people, or events for which you are thankful. Circling back to your journal entries in the future can be a great pick-me-up when you're feeling stressed or depressed.

EXPRESSING "THANK YOU"
All gratitude does not need to be saved for the journal. Expressing appreciation to others, makes them feel good, strengthens your relationships, and builds a sense of community. You can express gratitude to others with a verbal "thank you" or written in a "thank you" note.

MINDFULNESS MEDITATION
Practice mindfulness meditation by taking a few moments to focus on your breath and be present in the moment. Notice the sights, sounds, and sensations around you and appreciate them for what they are.

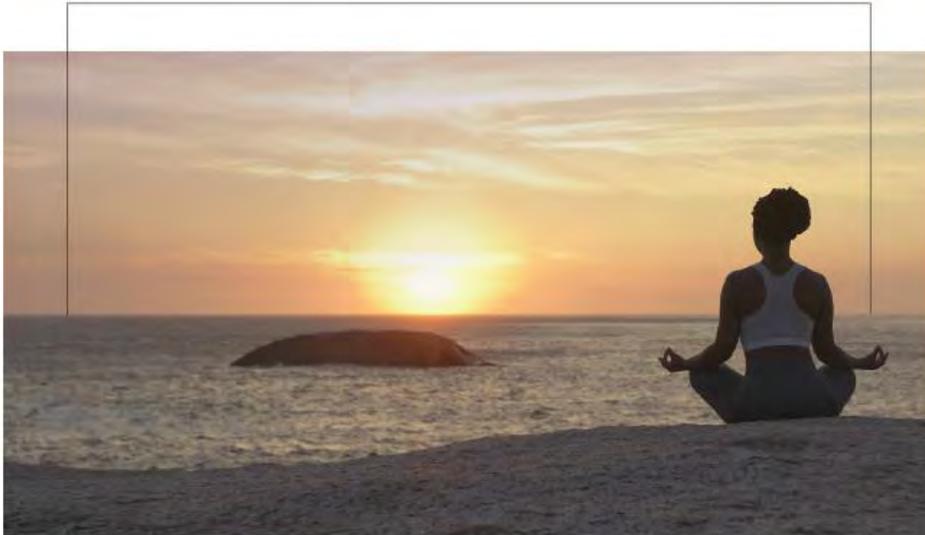
Learn more in the Dakota Wellness Program Newsletter.



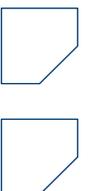
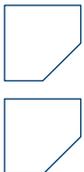
Q4 QUARTERLY WELLNESS CHALLENGE

WELLNESS FROM WITHIN

- Members were presented different emotional well-being topics each week and tracked their entries in an emotional health journal. Members needed to record “Yes” on at least 21 out of 42 days in the period of October 25- December 5.
- **Participation:**
 - **Members Enrolled:** 1,294
 - **Total Visits:** 18,924
 - **Average Visits per Member:** 15

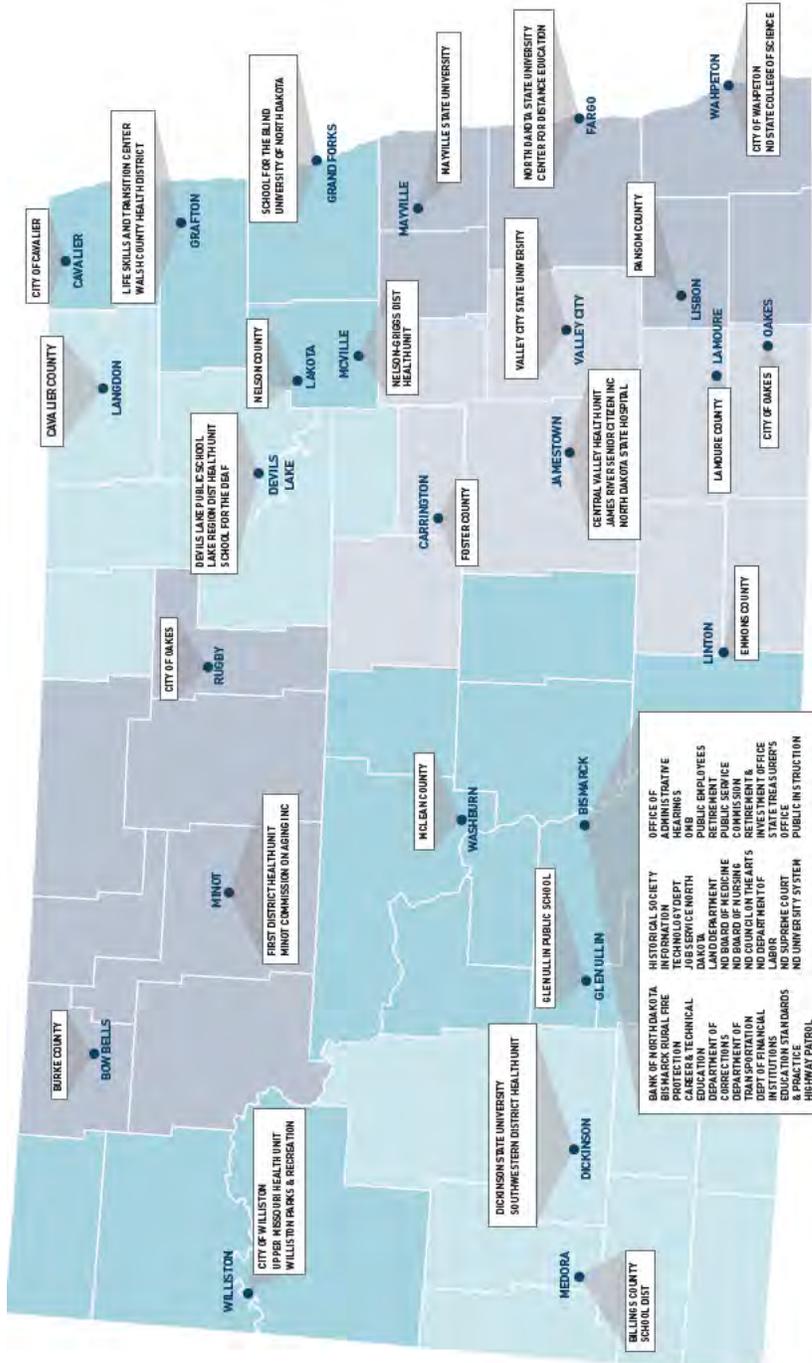


Reflect and Renew



EVENT ATTENDANCE BY AGENCY

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



TOTAL NUMBER OF AGENCIES VISITED (UNDUPLICATED)
37

WEBINARS/ PRESENTATIONS/ EVENTS:

- October: Rest, Relaxation and Exercise
- November: Ways to Improve Your Gratitude
- December: Self Care
- Q4 Wellness challenge: Wellness from within
- Exercise without Perfection
- Nutrition & Hydration
- Get Moving at Work
- Working from home that Works
- Healthy Meals in a Hurry
- Promoting Healthy Behavior with Positivity
- Gratitude
- Cancer Prevention
- Overcoming Stress
- Make it Happen

TOTAL MEMBER ATTENDANCE THIS QUARTER:
1,937



Preventive Screening Rates

Exhibit 6.4

MEASURE	GOAL	OUTCOME DATE	CURRENT
FOCUS AREAS			
Breast cancer screening rates	80%	December 31, 2023	81.4%
Cervical cancer screening rates	85%	December 31, 2023	79.4%
Colorectal cancer screening rates	60%	December 31, 2023	65.0%



POPULATION HEALTH TARGETED COHORTS

Exhibit 6.5

PCP MATCHING – WOMEN OF CHILDBEARING AGE

PROGRAM OVERVIEW

- Women of Child-Bearing Age Target
- Sanford Health Plan analyzed predictors of high neonatal cost and preterm delivery in birth mothers. Not having an established PCP prior to pregnancy was identified as a predictor. This presented an opportunity to provide telephonic outreach to a targeted cohort of women.

Current Cohort:

- Women age 20-41 years old that did not have an established PCP

Member Reach:

- 534 Members Outreached
- 849 Calls Made
- Provide members with information regarding the importance of having an attributed PCP, facilitate adherence to seeking medical care through an attributed PCP (when appropriate), and sustain measurable improvement in attributed PCP rates as well as increased care gap closure
- The program attains the above objectives by:
 - Outreaching to members
 - Providing information
 - Assisting members in choosing/establishing a PCP
 - Advocating for completion of Annual Wellness Benefit, assist with scheduling
 - Educate on importance of completing recommended cancer screenings
 - Discuss benefits of having a My Sanford Chart account (wellness portal, health insurance information, ID card access, claims and EOB's)
 - Assist members in setting up a My Sanford Chart account (does not require that they use Sanford Health system)
 - Assist members in navigating a participating healthcare system and Sanford Health Plan website, and
 - Addressing barriers and offering support, guidance, and/or information

Q3 2023 OUTCOMES:

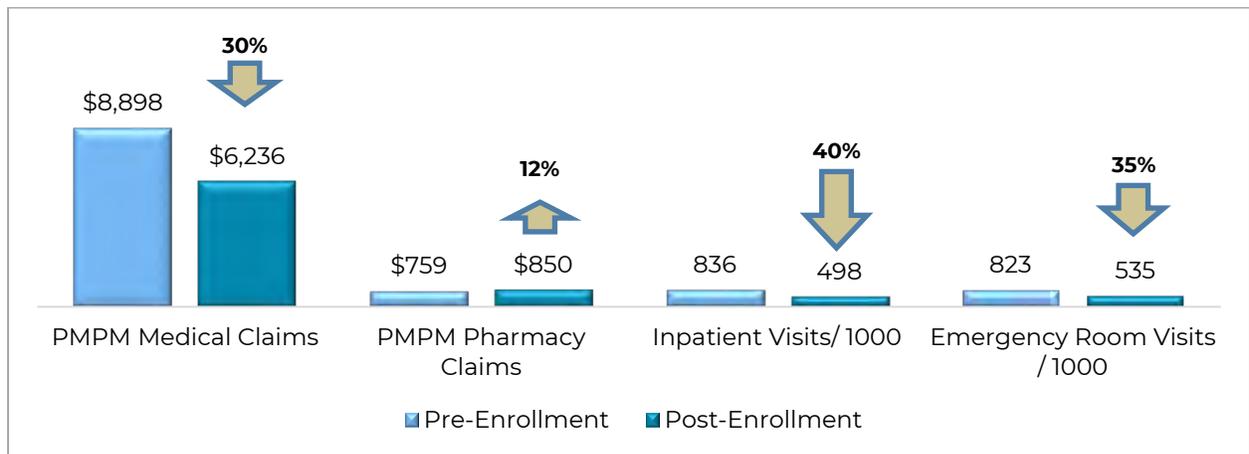
- 3% of cohort scheduled with PCP



CARE MANAGEMENT ENGAGEMENT

Exhibit 6.6

CARE MANAGEMENT PERFORMANCE METRICS				
January 1, 2023 – December 31, 2023				
OFFERED	RESPONDED		ENGAGED	
2,652	1,252	47.21%	377	30.11%



SURVEY SCORE

Exhibit 6.7

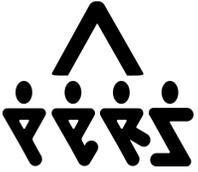


SECTION 7: PERFORMANCE GUARANTEES

Exhibit 7.1

MEASURE	GOAL	MEASUREMENT PERIOD	Q3 2023 REPORTING PERIOD	CURRENT
WELLNESS				
Health risk assessment completion	18%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	4.83%
Worksite interventions agency participation	75%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	49%
Fitness reimbursement participation	5%	1/1/23 – 12/31/23	1/1/23 – 12/31/23	2.9%
Wellness redemption center payments	\$850,000	1/1/23 – 12/31/23	1/1/23 – 12/31/23	\$974,039
Wellness redemption center rate	9%	1/1/23 – 12/31/23	1/1/23 – 12/31/23	10.91%
HEALTH OUTCOMES				
Healthy Pregnancy Program	+3%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	40.0%
Diabetes Prevention Program	5%	1/1/23 – 12/31/23	1/1/23 – 12/31/23	5.9%
Breast cancer screening rates	80%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	81.4%
Cervical cancer screening rates	85%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	79.4%
Colorectal cancer screening rates	60%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	65.0%
PROVIDER NETWORK / CONTRACTING				
PPO network participation rate	Hospital, MDs & DOs: 92%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	100% Hospital 97% MD/DO
Provider network minimum discount	30%	7/1/23 – 6/30/25	1/1/23 – 12/31/23	44.90%
CUSTOMER SERVICE & CLAIMS				
Claims financial accuracy	99%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	99.96%
Claims payment accuracy	98%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	99.83%
Claim timeliness	99%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	99.77%
Claims procedural accuracy	95%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	99.77%
Average speed of answer	30 seconds	7/1/23 – 6/30/24	7/1/23 – 12/31/23	35 seconds
Call abandoned rate	5% or less	7/1/23 – 6/30/24	7/1/23 – 12/31/23	1.00%
First call resolution	95%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	97.48%
Written inquiry response time	95%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	99.28%
PHARMACY & FINANCIAL				
Prescription drug turnaround times	98%	7/1/23 – 6/30/25	7/1/23 – 12/31/23	100%
Network Pharmacy Access	<5%	7/1/23 – 6/30/24	7/1/23 – 12/31/23	<1%
About the patient program payment	5 days	7/1/23 – 6/30/24	7/1/23 – 12/31/23	100%
Interest Rate determined by PERS/SHP	Quarterly	7/1/23 – 6/30/25	7/1/23 – 12/31/23	100%





Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 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. Sagitec has indicated they will be releasing the initial stages of programming soon, which staff will then begin testing.
- Continued review of Defined Contribution Plan Document, including input from legal counsel (both Ice Miller and Dean) on suggested changes. Once final, the document will be brought to the Board for approval.
- 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.
- Documented necessary changes due to recordkeeper transition and House Bill 1040 for correspondence templates and forms so that programming can be done to update documents.
- Working on development of internal staff training presentation regarding provisions of House Bill. It is anticipated that this presentation can then be broken into shorter videos to be used as education for members and employers also.
- Presented a transition up on expectations of the DB closure to the School Business Managers on April 24, 2024.
- Presented to the Employee Benefits Programs Committee on April 25, 2024 regarding updates in implementation since the last committee meeting on November 15th.

- Presented to the Retirement Committee on April 30, 2024 regarding updates in implementation since the last committee meeting on February 7th.
- Presented a transition up on expectations of the DB closure to the Counties on May 13, 2024.
- Completed file layout requirements for employers to begin developing their payroll systems.
- Inventoried the largest political subdivision developers to schedule meetings on the requirements for programming payroll for HB 1040.
- Requested a developer from NDIT to begin analyzing the State's PeopleSoft platform. Once the State parameters are complete, Staff will begin outreach to Higher Ed and share the State's parameters.

Attachment 1 is the overview of work efforts and timelines identified.

There are a few items that staff would like direction from the Board on related to the implementation.

401(a) Defined Contribution Plan IRS Letter of Determination

In our review of the Defined Contribution Plan Document, Ice Miller asked whether NDPERS had requested and received a favorable Letter of Determination from the IRS for the 401(a) Defined Contribution Plan. Staff could not find record that this had ever been requested or received, likely due to the small volume of members that were previously eligible and participating in the plan. Given the significant change in the population that will occur in future years, Ice Miller encouraged the Board to consider submitting a request to the IRS for this plan. Attachment 2 and Attachment 3 provide information from Ice Miller regarding what this process would entail and also their input on the timing of making the request, whether prior to or after January 1, 2025. Ice Miller indicated that the timing is not a significant consideration from their view point but it would be something we'd need to ensure we had the budget to provide for the costs associated with it. Note that the costs would include additional expenses to Ice Miller to assist us in the application process and the fee that the IRS charges for the determination, which is \$2,500 per plan application.

Staff would recommend that the Board move forward with requesting an IRS Letter of Determination for the 401(a) Defined Contribution Plan given the input of Ice Miller and given the significant increase in membership that this plan will experience following January 1, 2025.

457(b) Deferred Compensation Plan IRS Private Letter Ruling

Ice Miller also discussed the ability to request an IRS Private Letter Ruling for the NDPERS 457(b) Deferred Compensation Plan. Page 5 of Attachment 2 provides more specific details regarding this type of IRS request. As you can see from Page 7 of Attachment 2, the fee for requesting a Private Letter Ruling is substantially higher (\$38,000) than the Letter of Determination fee. Attachment 3 also gives information regarding Ice Miller's suggestion to conform with the IRS Model Language, which is the IRS' preferred wording and format.

This may take additional time, but most of that time would likely fall under Ice Miller rather than NDPERS staff.

Staff would recommend that the Board move forward with requesting an IRS Private Letter Ruling for the 457(b) Deferred Compensation Plan, including the NDPERS 457(b) Deferred Compensation Companion Plan given the input of Ice Miller.

The 68th Legislative Assembly provided NDPERS with one-time funding this biennium to successfully close the Main Plan. Staff has confirmed with OMB that this funding could be used any way the Board deems appropriate to ensure the conversion is not only successful, but also complies with IRS regulations. If the Board would like to move forward with the Determination Letter and the Private Letter Ruling this biennium, we should be able to accommodate the project from a budget perspective. If the Board would like to delay the project into next biennium, we can also request separate funding next session, or also consider using our Contingency funding as well.

457(b) Deferred Compensation Plan Expedited Enrollment

In July 2006, NDPERS implemented an expedited enrollment process for individuals eligible to participate in the 457 (b) Deferred Compensation Plan. This expedited process was developed mainly because staff at that time were hearing from new hires that they were unaware of the Portability Enhancement Provision (PEP), which allowed them to vest in a portion of the Defined Benefit Plan employer contribution subject to participation in the 457 (b) Deferred Compensation Plan. A survey of new hires conducted at that time had also indicated that some of the obstacles for new hires in enrolling were not knowing how much they were comfortable deferring or which of the multiple provider options to select as a provider. The original expedited process took away these decision points by setting the deferral as the minimum of \$25 per month that would go to the NDPERS Companion Plan. This would at least begin the employee down the path of supplemental savings while ensuring they'd begin vesting in a portion of the employer contribution in the Defined Benefit Plan. There was also a section of the expedited form that the employee could sign to decline enrollment that specifically spoke to the connection between the two plans. Attachment 4 is the current form used for this expedited enrollment.

As staff have been reviewing the various forms and processes that need to be modified due to House Bill 1040, discussion has taken place on the need to continue this expedited process after January 1, 2025 given the majority of new hires after this date will become members of the Defined Contribution Plan with automatic employer vesting based upon service and more specifically, members of the new tier of the Defined Contribution Plan that has the up to 3% additional contribution option with a subsequent employer match.

Staff would recommend that the expedited enrollment process be discontinued as of January 1, 2025 as the plan enrollment for the majority of new hires will be different than when the process was established in 2006 and will eliminate confusion for members wanting to enroll in the 457 (b) Deferred Compensation Plan as there would then only be one enrollment option on Member Self Service or for those that prefer paper enrollments, one form to enroll in this plan.

Board Action Requested:

- 1) Direct staff regarding working with Ice Miller to obtain an IRS Letter of Determination for the 401(a) Defined Contribution Plan.
- 2) Direct staff regarding working with Ice Miller to obtain an IRS Private Letter Ruling for the 457(b) Deferred Compensation Plan, including the NDPERS Companion Plan.
- 3) Direct staff regarding discontinuing the 457(b) Deferred Compensation Plan Expedited Enrollment/Waiver process.

House Bill 1040 Administrative Implementation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
HB 1040 Administrative Implementation												
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

May 1, 2024

WRITER'S DIRECT NUMBER: (317) 236-2249
EMAIL: Audra.Ferguson@icemiller.com

WRITER'S DIRECT NUMBER: (317) 236-2133
EMAIL: GAUSS@ICEMILLER.COM

VIA ELECTRONIC MAIL

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

RE: Overview of Determination Letter Process

Dear Rebecca:

This letter provides an overview of the value of obtaining a favorable determination letter from the Internal Revenue Service ("IRS") on the qualified status of a retirement plan, as well as the process involved to secure a determination letter for the North Dakota Defined Contribution Retirement Plan ("DC Plan"), an Internal Revenue Code ("Code") Section 401(a) governmental defined contribution retirement plan administered by the North Dakota Public Employee Retirement Systems ("NDPERS"). It is our understanding that the DC Plan has never sought nor obtained a determination letter from the IRS. Accordingly, we strongly encourage obtaining a favorable determination letter to protect both the Plan and the Plan's participants.

In addition, NDPERS administers a Code Section 457(b) governmental deferred compensation plan ("457(b) Plan"). You have stated that the 457(b) Plan has never sought nor obtained a private letter ruling ("PLR") on the 457(b) Plan terms. As noted below, the cost to obtain a PLR is more significant than for a determination letter; however, we think there is a tremendous amount of value and security to the 457(b) Plan in obtaining a favorable PLR from the IRS.

REVIEW OF FUNDAMENTAL LEGAL STATUS

To start this discussion, it is critical to review the fundamental legal status of a pension plan under federal tax law. Most governmental pension plans are intended to be, and act as if they are, qualified governmental retirement plans under Sections 401(a) and 414(d) of the Code. Qualified governmental plan status is critical to maintain the benefits for plan members that are outlined below. There is no other way under federal law to qualify members for these benefits.

BENEFITS OF STATUS AS A QUALIFIED 401(a) PLAN

In the public sector, the benefits of tax qualified status flow to the members of the retirement plan. These tax benefits are as follows:

- Employer contributions are not taxable to members as they are made (or even when vested); taxation only occurs when plan distributions are made.
- Earnings and income are not taxed to the trust or the members (until distribution).
- Certain favorable tax treatments may be available to members and beneficiaries when they receive plan distributions, e.g., ability to rollover eligible distributions.
- Employers and members do not pay employment taxes (even if the positions are Social Security covered) where contributions are made or when benefits are paid.

These advantages would generally not apply to a non-qualified plan.

BENEFITS OF STATUS AS A QUALIFIED GOVERNMENTAL PLAN

There are also a number of special provisions and/or exemptions that are applicable solely to governmental plans. Chief among these is that governmental plans are exempt from Title I and Title IV of ERISA. Additionally, governmental plans are exempt from many Code requirements that were made applicable by ERISA to retirement plans. The authority provided to state and local government plans and employers allows for increased flexibility. For this and other reasons, it is important for participating employers and policy makers to guard against their plans losing their governmental plan status. Notable examples of the special provisions for governmental plans of state and local employers include:

- State and local government employers may "pick up" employee contributions and thereby make them pre-tax, rather than post-tax.
- Favorable grandfathering and transitional rules apply to significant parts of Internal Revenue Service ("IRS") guidance.
- Special benefit limits under Code § 415 apply that are more favorable than those that apply to private sector plans.
- Certain service purchase opportunities may be used that apply only to governmental plans.
- Plans are exempt from many costly and cumbersome nondiscrimination testing requirements.

EFFECT OF A FAVORABLE DETERMINATION LETTER

An IRS favorable determination letter contains the opinion of the IRS that a particular plan document is qualified under Code § 401(a). The IRS refers to the determination letter as an "insurance policy" because it protects a plan from being challenged as not qualified on account of its

written terms. A determination letter is the only way to secure the IRS's opinion on a plan's tax qualified status.

A determination letter also means that:

- The "plan document" (statutes, regulations, rules, policies) complies with the Code, Treasury Regulations and other IRS guidance.
- All "required amendments" have been made.
- The plan does not have any provisions that are impermissible.

Having a current favorable determination letter provides the following advantages for plan administration:

- A qualified plan with a current determination letter may use self-correction under the IRS Employee Plans Compliance Resolution System ("EPCRS") to correct certain plan document failures and operational failures to comply with federal law. Following this self-correction process means that the plan will not have to make IRS filings and pay fees for those corrections. This process can be very efficient, streamlined and flexible.
- Having a favorable determination letter will measurably reduce the burden of an IRS audit with respect to the plan.
- For any foreign investments, a current determination letter is helpful (and may be required) with respect to foreign tax recapture.

Having a current determination letter can be advantageous for members in the following ways:

- All of the benefits of a tax qualified plan are confirmed for the member.
- A member's assets in a qualified plan are protected in a member's bankruptcy. (If the member's plan has a determination letter, it makes it easier for the member to protect his/her assets in that case.)
- If a plan has a favorable determination letter, a member can more easily respond to questions from financial institutions regarding rollovers.
- If a member is audited by the IRS, a member can more easily respond to certain IRS questions if his/her plan has a favorable determination letter.

Effective January 1, 2017, the IRS eliminated the staggered five-year remedial amendment cycle system for individually designed qualified retirement plans. *See Rev. Proc. 2016-37.* As of that date, the IRS no longer accepts applications for determination letters based on the five-year remedial amendment cycle system. However, the IRS will accept determination letter applications for (1)

May 1, 2024

Page 4

initial plan qualification, (2) plan termination, and (3) other circumstances determined by the IRS. *See also* Rev. Proc. 2024-4, Section 8.04.

You have advised us that the DC Plan has never received an IRS determination letter. Thus, the DC Plan could be submitted to the IRS as an initial plan qualification filing. Again, it is our strong recommendation that the Plan seek a determination letter.

REMEDIAL AMENDMENT PERIOD

Code Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Treasury Regulation § 1.401(b)-1 describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the IRS Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period. Rev. Proc. 2005-66 § 2.01.

Revenue Procedure 2005-66 established a cyclical remedial amendment period for plans with determination letters. It essentially gave all individually designed plans a regular five year amendment and submission cycle, but this prolonged remedial amendment period and cycle was only available to plans with current determination letters.

As noted previously, effective January 1, 2017, the IRS eliminated the staggered five-year remedial amendment cycle system for individually designed qualified retirement plans. *See* Rev. Proc. 2016-37. Going forward, the required amendments list issued annually by the IRS establishes the date that the remedial amendment period for individually-designed plans expires for changes in qualification requirements contained on the list. Rev. Proc. 2106-37, Section 5.05(3).

LACK OF DISADVANTAGES IN OBTAINING DETERMINATION LETTERS

There are no significant disadvantages to obtaining a determination letter. Certainly, there will be an outlay of cost in preparing and filing the determination letter. However, given the significant advantages to receiving a favorable determination letter and the modest cost in relation to the plan assets, we strongly encourage NDPERS to seek a determination letter for the DC Plan.

457(b) GOVERNMENTAL DEFERRED COMPENSATION PLANS

Governmental deferred compensation plans under Code § 457(b) are not "qualified" plans, and they do not receive determination letters. Instead, the IRS will issue a private letter ruling regarding the status of a governmental 457(b) plan as an eligible plan.

In addition, governmental 457(b) plans have a special correction period for plan failures that is not available for qualified plans:

- (a) **Eligible governmental plans.** A plan of a State ceases to be an eligible governmental plan on the first day of the first plan year beginning more than 180 days after the date on which the Commissioner notifies the State in writing that the plan is being administered in a manner that is inconsistent with one or more of the requirements of §§1.457-3 through §1.457-8 or §1.447-10. However, the plan may correct the plan inconsistencies specified in the written notification before the first day of that plan year and continue to maintain plan eligibility....

Treas. Reg. § 1.457-9(a).

DOCUMENT COMPLIANCE REVIEW STEPS AND PROCESS

The following are the next steps in applying for a determination letter from the IRS:

A. Draft the IRS Determination Letter Application Packages (and VCP Filings, if Necessary)

This would involve completing the various IRS forms (including Form 5300 and Form 2848, power of attorney to allow Ice Miller to represent the plan with the IRS), along with various explanatory attachments. If necessary, a Voluntary Correction Program (“VCP”) filing (which also consists of completing various IRS forms and attachments) would also be drafted under the non-amender correction process. (Note: It appears that the DC Plan has been timely amended for all changes under federal law. We will want to verify the timing of the various amendments though.)

B. Submit the Determination Letter Applications (and VCP filings, if Necessary) to the IRS

We would work with you and staff on each step to ultimately submit the filings to the IRS. At that point, we would work with you and staff to respond to any requests for additional information from the IRS as they complete their review. Once the IRS has reached a favorable conclusion, the IRS would issue a favorable determination letter for the DC Plan and, if necessary, a compliance statement for the correction of any non-amender failures.

C. Private Letter Ruling Request, 457(b) Deferred Compensation Plan

The qualified plan determination letter process is not applicable to governmental 457(b) plans. For the 457(b) plan, we would (similar to the qualified plans) do a document review for compliance with federal law requirements and draft any necessary legislative or rule language in order to address any compliance issues. After that, the plan could be submitted to the IRS through the private letter ruling process. This process involves drafting a letter requesting certain rulings from the IRS to confirm that the plan meets the applicable federal law requirements, and the IRS would ultimately issue a private letter ruling in response.

Given the generous self-correction period for governmental deferred compensation plans described above, we would not anticipate that a separate correction filing would be necessary for the deferred compensation plan.

ESTIMATED FEES

Given that we have worked with NDPERS on drafting the DC Plan restatement, we do not anticipate significant legal fees. As noted above, though, we will need to confirm that the various federal law requirements amendments were timely made to the DC Plan. Further, the legal fees will be more significant if a VCP filing is required.

We can provide you with the following IRS filing fee schedule, which is current for 2024:

Determination Letter Filing (Rev. Proc. 2024-4, Appendix A .06(1):

\$2,500 per plan application

VCP Filing (Rev. Proc. 2024-4, Appendix A .09(1):

Plans with assets of—

(a) \$500,000 or less	\$1,500
(b) Over \$500,000 to \$10,000,000	\$3,000
(c) Over \$10,000,000	\$3,500

Private Letter Ruling Request (Rev. Proc. 2024-1, Appendix A (A)(3):

\$38,000

Of course, if you or the Board have any questions, please do not hesitate to let us know.

Very truly yours,

ICE MILLER LLP



Audra Ferguson


Robert L. Gauss

Attachment 3

From: Audra.Ferguson@icemiller.com
To: [Fricke, Rebecca D.](#); [Hohbein, Derrick L.](#); [DePountis, Dean](#)
Cc: [Anderson, MaryJo V.](#); [Aldinger, Marcy D.](#); Robert.Gauss@icemiller.com; Cindy.Worth@icemiller.com; Lindsay.Knowles@icemiller.com
Subject: RE: 401(a) Defined Contribution Plan Handbook
Date: Thursday, May 2, 2024 1:25:41 PM
Attachments: [image001.png](#)
[image002.png](#)

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Hi Rebecca –

Overall, we would view the staff time as limited. For the Defined Contribution Plan determination letter, NDPERS will need to provide us with any amendments to the Plan and the effective dates. To the extent those amendments are statutory, we can determine that without staff assistance via legislative history, but we will need copies of any Board resolutions or other actions taken to amend the Plan. Given that the Plan was established effective January 1, 2000, there could be some time involved in locating those documents if they are not easily available. Other than locating historical documents, NDPERS staff time would be limited to reviewing and signing Power of Attorney forms and a review of the final submission requesting the determination letter.

For the 457(b) Deferred Compensation Plan, there would be less time involved because historical documents are not necessary. If NDPERS does want to obtain a PLR, we recommend the Plan be restated to conform with the IRS Model Language provided in Rev. Proc. 2004-56. In this regard, we may restate the Plan to conform to the IRS's preferred wording and format. Although this would not change the substantive terms of the Plan, some staff time may be involved in reviewing the restated plan to make sure NDPERS understands the changes that have been made. However, we do not think this would take more than one meeting.

NDPERS would not be directly involved with submitting the applications to the IRS. We would be responsible for submitting the applications to the IRS and dealing directly with the IRS regarding any requests for additional information under a Power of Attorney.

Of course, if you have any other questions, please do not hesitate to let us know.

Best regards,
Audra and Rob

From: Fricke, Rebecca D. <rfricke@nd.gov>
Sent: Thursday, May 2, 2024 11:58 AM
To: Ferguson, Audra <Audra.Ferguson@icemiller.com>; Hohbein, Derrick L. <dhohbein@nd.gov>; DePountis, Dean <ddepountis@nd.gov>
Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Gauss,

Robert L. <Robert.Gauss@icemiller.com>; Worth, Cindy <Cindy.Worth@icemiller.com>

Subject: RE: 401(a) Defined Contribution Plan Handbook

Audra & Robert, as we analyze this and discuss with the Board on timing, can you give some perspective on the time/work effort that may be required of NDPERS staff? We obviously have a substantial work effort with HB 1040 implementation for the remainder of the year, and then it will be legislative Session. It would be helpful to know more on what staff will need to gather for documentation, application processing, etc as we evaluate a recommendation to our board.

Thanks.

Rebecca Fricke



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From: Audra.Ferguson@icemiller.com <Audra.Ferguson@icemiller.com>

Sent: Thursday, May 2, 2024 10:08 AM

To: Hohbein, Derrick L. <dhohbein@nd.gov>; Fricke, Rebecca D. <rfricke@nd.gov>; DePountis, Dean <ddepountis@nd.gov>

Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Robert.Gauss@icemiller.com; Cindy.Worth@icemiller.com

Subject: RE: 401(a) Defined Contribution Plan Handbook

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Hi Derrick –

Either approach would be fine. Certainly, there is no need to wait until January 1, 2025 to submit the determination letter (or Private Letter Ruling) request. They can be submitted prior to then. If it would be helpful to budget it for the current biennium, we can make sure it is filed by June 30th or it can be filed with the next budget.

Best regards,
Audra and Rob

From: Hohbein, Derrick L. <dhohbein@nd.gov>
Sent: Thursday, May 2, 2024 11:04 AM
To: Ferguson, Audra <Audra.Ferguson@icemiller.com>; Fricke, Rebecca D. <rfricke@nd.gov>; DePountis, Dean <ddepountis@nd.gov>
Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Gauss, Robert L. <Robert.Gauss@icemiller.com>; Worth, Cindy <Cindy.Worth@icemiller.com>
Subject: RE: 401(a) Defined Contribution Plan Handbook

Thanks, Audra. Very helpful.

Timing wise – how should this look? Is this something we should try and seek prior to January 1, 2025 or is this something that should be done after?

Our biennium runs though June 2025, so I am trying to determine if I need to look at possible spending this biennium or if I need to work it into our base budget next biennium.

Thank you,

Derrick Hohbein, CPA MBA CEBS
Chief Operating / Financial Officer



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From: Audra.Ferguson@icemiller.com <Audra.Ferguson@icemiller.com>
Sent: Thursday, May 2, 2024 9:53 AM
To: Fricke, Rebecca D. <rfricke@nd.gov>; DePountis, Dean <ddepountis@nd.gov>
Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Hohbein, Derrick L. <dhohbein@nd.gov>; Robert.Gauss@icemiller.com; Cindy.Worth@icemiller.com
Subject: RE: 401(a) Defined Contribution Plan Handbook

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Rebecca –

We updated the letter to include information regarding the 457(b) private letter ruling process. Of course, if you have any questions, please do not hesitate to let us know.

Best regards,
Audra and Rob

From: Fricke, Rebecca D. <rfricke@nd.gov>

Sent: Thursday, May 2, 2024 8:43 AM

To: Ferguson, Audra <Audra.Ferguson@icemiller.com>; Gauss, Robert L. <Robert.Gauss@icemiller.com>; DePountis, Dean <ddepountis@nd.gov>

Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Hohbein, Derrick L. <dhohbein@nd.gov>

Subject: RE: 401(a) Defined Contribution Plan Handbook

Hi Audra. A quick follow-up, your memo on the IRS letter process is more specific on the 401a plan and obtaining a letter. From what I recall, the cost is significantly different if a letter is being requested on the 457 plan. Is that correct or did I misunderstand the discussion? Would it be possible to prepare input on benefits/cost of requesting an IRS letter of determination for the 457 plan? Thanks.

Rebecca Fricke



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From: Audra.Ferguson@icemiller.com <Audra.Ferguson@icemiller.com>

Sent: Wednesday, May 1, 2024 3:05 PM

To: Fricke, Rebecca D. <rfricke@nd.gov>; Robert.Gauss@icemiller.com; DePountis, Dean <ddepountis@nd.gov>

Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Hohbein,

Derrick L. <dhohbein@nd.gov>

Subject: RE: 401(a) Defined Contribution Plan Handbook

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Hi Rebecca –

Our redline changes are attached. We did not update the table of contents yet, but we are happy to do so when you are ready. In addition, we attached the letter you requested regarding obtaining a determination letter.

Of course, if you have any questions, please do not hesitate to let us know.

Best regards,
Audra and Rob

From: Fricke, Rebecca D. <rfricke@nd.gov>

Sent: Tuesday, April 30, 2024 9:48 AM

To: Ferguson, Audra <Audra.Ferguson@icemiller.com>; Gauss, Robert L. <Robert.Gauss@icemiller.com>; DePountis, Dean <ddepountis@nd.gov>

Cc: Anderson, MaryJo V. <msteffes@nd.gov>; Aldinger, Marcy D. <mdaldinger@nd.gov>; Hohbein, Derrick L. <dhohbein@nd.gov>

Subject: 401(a) Defined Contribution Plan Handbook

Good morning. The attached has been updated per our discussion and review yesterday. Also, Dean and MaryJo have provided me updates related to their areas needing further input.

I have accepted the changes and left a few comments, mostly related to formatting, for resolution.

Please review again and provide comments back to me by May 15 if possible.

Audra & Robert, can you also provide information related to the IRS Letter of Determination as I think we'll want to discuss having a request made to the IRS for the 401(a) DC plan. Can you share estimated cost, timeline and other considerations you think the Board should be aware of? From a timeline perspective, given the changes we are making in the Plan Document are effective 1/1/2025 when the provisions of HB 1040 take effect, do you recommend we request the determination after the effective date, therefore after 1/1/2025?

Thanks, all, for your help on this.

Rebecca Fricke

North Dakota Public Employees Retirement System
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457 DEFERRED COMPENSATION PLAN QUICK ENROLLMENT/WAIVER

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
SFN 54362 (Rev. 08-2021)

NDPERS • PO Box 1657 • Bismarck • ND • 58502-1657
(701) 328-3900 • (800) 803-7377 • Fax (701) 328-3920 • ndpers-info@nd.gov

PART A EMPLOYEE INFORMATION

Name (Last, First, Middle)	NDPERS Member ID
Last Four Digits of Social Security Number	Date of Birth (mm/dd/yyyy)
Preferred Email Address	Organization Name

PART B NDPERS COMPANION PLAN ENROLLMENT

I elect to enroll in the NDPERS Companion Plan. My enrollment automatically entitles me to maximize my retirement savings by vesting in the employer’s contribution to the Defined Benefit Retirement Plan.

Choose one type of enrollment selection:

<input type="checkbox"/> \$25 monthly (minimum enrollment amount) <input type="checkbox"/> \$_____ Per Pay Period (must be higher than the \$25 monthly minimum)	Pay Period Beginning Date (Not Date Paid) mm/dd/yyyy
---	--

Terms of Agreement

- I understand that by electing to participate, my monthly salary will be reduced by the amount I have selected.
- I acknowledge my total monthly contribution will be divided, if applicable, to align with my employer’s pay period schedule.
- I understand that by participating in the Companion Plan and the NDPERS Defined Benefit Retirement Plan, I am automatically enrolled in the Portability Enhancement Provision (PEP). Thus, the applicable employer contribution is redistributed to my NDPERS member retirement account as stated on the vesting schedule provided on this form.
- I acknowledge I have the right to increase or decrease the amount of contribution, change to another Provider company or suspend contributions at any time by completing the Participant Agreement for Salary Reduction - SFN 3803.
- I understand the accumulated deferred salary is not available to me until I separate from service, or when I experience an approved unforeseeable emergency. Early withdrawal of funds may incur in financial penalties.
- I acknowledge the NDPERS Board makes no recommendation as to any fund investment, and I understand the NDPERS Board does not warrant or guarantee the investment performance of the funds offered by any provider.
- I understand all compensation deferred under the Plan, and all earnings accruing thereof, shall be held for the exclusive benefit of myself or my beneficiary, until such time as it is made available to me pursuant to the terms of the Plan.
- I authorize NDPERS to work with the North Dakota Office of Management and Budget if necessary to insure the appropriate amount is withheld from my paycheck.

I accept the Terms of Agreement, and I authorize my employer to deduct my Companion Plan contribution by my own designated amount on the Pay Period Beginning Date (Not Date Paid) listed above.

Member’s Signature (Electronic Signature will <u>not</u> be accepted)	Date (Must be prior to Pay Period Beginning Date above)
---	---

PART C DECLINE ENROLLMENT IN NDPERS 457 DEFERRED COMPENSATION PLANS

I elect to decline enrollment in an NDPERS sponsored 457 Deferred Compensation Plan, including but not limited to the Companion Plan. I understand I will not maximize my retirement savings through vesting in the employer’s contribution to the Defined Benefit Retirement Plan. I acknowledge I am eligible to begin participation in an NDPERS sponsored 457 Deferred Compensation Plan at a later date and by doing so, will proactively vest in the employer’s contribution.

Member’s Signature to Waive Participation (Electronic Signature will <u>not</u> be accepted)	Date
--	------

By electing to enroll in the Deferred Compensation Program through your employer at a minimum required monthly contribution of \$25.00, you automatically enroll in the Portability Enhancement Provision (PEP) for the NDPERS Defined Benefit Retirement Plan. Your NDPERS retirement account will automatically be credited with the percentage of the employer contribution to which you are entitled based upon your years of credited service. As you attain additional service credit, you must increase your 457 contribution amount to the corresponding percentage of salary to achieve maximum vesting.

Service Credit	Minimum Contribution	Maximum Vesting %
0-12 Months	\$25	1%
13-24 Months	\$25	2%
25-36 Months	\$25	3%
37+ Months	\$25	4%

INSTRUCTIONS:

PART A EMPLOYEE INFORMATION

This form must be completed regardless of whether the employee elects to participate or declines to participate in the 457 Deferred Compensation Plan and Portability Enhancement Provision (PEP).

For member identification, please provide all requested information.

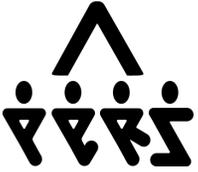
Part B QUICK ENROLLMENT IN DEFERRED COMP/PEP

This section should be completed if the employee elects to participate in the 457 Deferred Compensation Plan and the Portability Enhancement Provision (PEP). The employee's signature in this section **will authorize** a reduction in the employee monthly wage and contribution to a deferred compensation plan.

The employee must sign and date this section. **(This date must be in the month prior to the date entered above).**

Part C WAIVER OF PARTICIPATION

The employee must sign and date this section only if the **employee waives participation** in the Deferred Compensation Plan.



**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

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

Memorandum

TO: NDPERS Board

FROM: Katheryne Korom

DATE: May 23, 2024

SUBJECT: Retirement Plan Actuarial & Consultant Contract

At the April Board meeting, the Board awarded the RFP for the NDPERS Retirement Plan Actuarial and Consultant Services to Gabriel, Roeder, Smith & Company (GRS). The attached contract was drafted by NDPERS legal staff and approved by representatives from GRS.

Board Action Requested: Approve the contract and Executive Director's signature for the NDPERS Retirement Plan Actuarial and Consultant contract with Gabriel, Roeder, Smith & Company (GRS) for the July 1, 2024, through June 30, 2026, contract period.

Attachment

Attachment

AGREEMENT FOR SERVICES BETWEEN *GABRIEL, ROEDER, SMITH & COMPANY* AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (STATE), and *Gabriel, Roeder, Smith & Company* having its principal place of business at *One Towne Square, Suite 800; Southfield, Michigan 48076* (CONTRACTOR);

2. SCOPE OF WORK

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

3. COMPENSATION – PAYMENTS

a. Contractual Amount

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

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

b. Payment

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

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

c. Travel

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

d. Prepayment

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

e. Payment of Taxes by STATE

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

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: [38-1691268](#).

4. TERM OF CONTRACT

This Contract term (Term or Initial Term) begins on *July 1, 2024*, and ends on *June 30, 2026*.

a. No Automatic Renewal

This Contract will not automatically renew.

b. Renewal Option

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

c. Extension Option

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

d. Renegotiation Option

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

5. TIME IS OF THE ESSENCE

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

6. TERMINATION

a. Termination by Mutual Agreement

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

b. Early Termination in the Public Interest

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

c. Termination for Lack of Funding or Authority

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

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed. Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

d. Termination for Cause.

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

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

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

7. FORCE MAJEURE

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

8. INDEMNIFICATION

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

9. INSURANCE

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

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

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

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

- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

10. WORKS FOR HIRE

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

11. WORK PRODUCT

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

12. NOTICE

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

STATE	CONTRACTOR
Name: Rebecca Fricke	Name Judith A. Kermans
Title: Executive Director	Title President and CEO
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address One Towne Square, Suite 800
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip Southfield, Michigan 48076

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

13. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that

CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

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

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

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

15. INDEPENDENT ENTITY

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

16. ASSIGNMENT AND SUBCONTRACTS

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

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

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence

and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

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

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

- a. The terms of this Contract, including any BAA and/or MOU (if applicable), as may be amended;
- b. STATE’s Request for Proposal (“RFP”) number 192.01-02-24,
- c. CONTRACTOR’s proposal in response to RFP number 192.01-02-24.
- 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 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.

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.

24. STATE AUDIT

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

25. COUNTERPARTS

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

26. EFFECTIVENESS OF CONTRACT

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

CONTRACTOR	STATE OF NORTH DAKOTA
<i>Gabriel, Roeder, Smith & Company</i>	Acting through its NDPERS
BY: 	BY:
<i>Judith A. Kermans</i>	Rebecca Fricke
<i>President and CEO</i>	NDPERS Executive Director
Date: April 15, 2024	Date:

FIXED FEE:

Retirement:

Fixed Annual Fee	7/1/2024 to 6/30/2025:	\$77,000
	7/1/2025 to 6/30/2026:	\$79,000

Retiree Health Insurance Credit:

Fixed Annual Fee	7/1/2024 to 6/30/2025:	\$14,400
	7/1/2025 to 6/30/2026:	\$14,800

GASB 67, 68, 74, and 75 Work:

Fixed Annual Fee	7/1/2024 to 6/30/2025:	\$49,750
	7/1/2025 to 6/30/2026:	\$51,000

Experience Study:

Fixed Annual Fee	7/1/2024 to 6/30/2025:	\$45,000
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Actuarial Factor Update with Heat Map:

Fixed Annual Fee	7/1/2025 to 6/30/2026:	\$18,000
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FEE FOR SERVICE:

NDPERS is requesting a flat rate fee per hour for work efforts relating to general consulting, Legislative Work, and Defined Contribution/Deferred Comp consulting based on a July – June fiscal year (FY)

Retirement and Retiree Health General Consulting⁽¹⁾:

Flat Rate Per Hour	7/1/2024 to 6/30/2025:	\$370
	7/1/2025 to 6/30/2026:	\$380

Legislative Work⁽¹⁾:

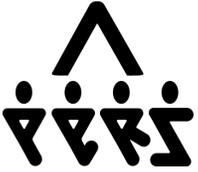
Flat Rate Per Hour	7/1/2024 to 6/30/2025:	\$350
	7/1/2025 to 6/30/2026:	\$360

Defined Contribution/Deferred Compensation Consulting⁽²⁾:

Flat Rate Per Hour	7/1/2024 to 6/30/2025:	\$550
	7/1/2025 to 6/30/2026:	\$550

(1) To be provided by Gabriel, Roeder, Smith & Company

(2) To be provided by Groom Law Group



**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

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

Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 23, 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 May 9th. All tasks are on schedule to be successfully completed by the transition date.

NDPERS and Empower have finalized the plan provisions for both the 401(a) Defined Contribution Plan, as well as the 457(b) Deferred Compensation Plan. This documentation helps ensure Empower has our plan provisions properly programmed in their system of record.

NDPERS, Ice Miller, our Assistant Attorney General, and Callan have been working on the next phase of contracting for these plans by reviewing the Schedule of Services & Custodial Agreements. We anticipate having finalized copies of these agreements to the Board in June for approval.

Deconversion meetings between NDPERS, Empower, and TIAA have resulted in signed deconversion strategy guides (allows for TIAA to exchange test files with Empower, and ensures everyone is on the same page with what funds will transfer vs. which funds will be liquidated) and a strategy for handling required minimum distribution (RMD) and installment payments during the blackout period. NDPERS has provided TIAA direction that any RMD or installment payment that was set to occur between June 18, 2024 and July 8, 2024 will be provided by TIAA no later than June 17, 2024. Staff felt it was important to ensure those who rely on the payments would not be adversely impacted by the blackout period, and have instructed TIAA to make those payments early.

Staff have provided updated sample contribution (payment) files as well as demographic files on our membership for both DC plans to Empower. Empower has indicated that all 6 files look good on their end, and they will be released into our production system on June 15th.

Empower has provided NDPERS with a frequently asked questions document that we can use as a basis to train our staff on expected questions from our membership regarding this transition (Attachment 2). In addition, a transition brochure that was sent to individuals enrolled in the plan, deferred in the plan, receiving payments in the plan, as well as those eligible for the plan(s) but not yet enrolled was sent out in May and is included in Attachment 3.

In March, 2024, the Board approved pulling the revenue shortfall from participant accounts. The revenue shortfall for the 457(b) Companion Plan was \$52,125.29 and \$5,149.30 on the 401(a) Defined Contribution Plan. This shortfall covers calendar year 2023, and the first two quarters of 2024. These fees will be pulled from participant accounts on June 14, 2024. Participation in the plans (as of 12/31/2023) were 10,195 and 200 participants, respectively. So participants in the 457 plan will each be assessed a fee of roughly \$5, and 401(a) participants will each be assessed a fee of roughly \$25.

Below is a timeline of important events. The only change to what previously has been reported to the Board (but not communicated to members) was moving the Blackout date to June 18th instead of the 19th. In addition, the blackout period will be communicated as “no later than July 3rd” to give Empower some flexibility if things do not go as planned so they don’t have to send additional notices to participants if there are any hiccups.

The final contribution will be sent to TIAA on Friday, June 14. NDPERS will continue processing contribution files on a daily basis starting Monday, June 17. Empower will hold these files in a pending status until the conversion process is completed, and will post the contributions to member accounts on July 1.

Important Dates	
Date	Item
February 27, 2024	Investment Sub-Committee Meeting
March 12, 2024	Board Meeting – Basic Service Agreement Approval for signature
March 26, 2024	Special Investment Sub-Committee Meeting - Finalized Fund Lineup (to Empower 3/27/2024)
Week of April 8 th	Board Meeting April 9 th – Formally Approved Finalized Fund Lineup
May 2, 2024	Deadline – Transition Guide to printers
5/17/2024	Transition Guide/SOX communications mailing date
5/28/2024	Investment Sub-Committee Meeting
6/14/2024	Last contribution files to TIAA (Coincides with NDPERS system release on 6/15/2024)
6/17/2024	First contribution files to Empower
6/18/2024 at 3:00 PM CT	Blackout start
6/20/2024 by 3:00 PM CT	TIAA to set Brokerage Accounts to RELEASED Status – to allow ACAT initiation by Empower Brokerage
6/21/2024	Refresh Data File from TIAA to Empower – Generated as of 6/20/2024 market close
6/26/2024	TIAA begins asset transfer (liquidation & in-kind transfer)
6/27/2024 by 3:00 PM CT	Transfer of Assets (TOA) with asset breakdown by fund to Empower prior to 3:00 PM CT (for same day investment)
6/27/2024, or 6/28/2024	Final Record Deadline from TIAA
6/29/2024 – 6/30/2024	Balances loaded to Participant Accounts and Reconciliation completed
7/1/2024	Blackout Ends/Go-Live

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

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
Phase I - Planning				
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)		In Process	Empower to provide to advisor and plan sponsor for review and execution
Phase II - Implementation				
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
Participant Transition Guide Delivered including other disclosures as applicable	05/17/24 (Fri)		In Process	Mailed at least 30 days prior to blackout
Payroll File Testing Complete	05/31/24 (Fri)		In Process	Payroll program moved to production
Online Enrollment (OE) Setup Complete	06/01/24 (Sat)			Online Enrollment setup complete and ready for production
Feedback File Testing Complete	06/03/24 (Mon)			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
Final payroll file transmission and funding accepted (4 pm ET)	06/14/24 (Fri)			Final Date to Allow for Payroll transmission and funding with Prior Recordkeeper
Final Date for Enrollment Processing with prior recordkeeper	06/18/24 (Tue)			Final Date to Allow for Enrollment Processing with Prior recordkeeper
Final day to receive paperwork for distribution, loan or other for processing ("soft blackout")	06/18/24 (Tue)			Prior Recordkeeper restricts receipt of any paperwork for transaction processing
Final day for electronic Distribution, withdrawal and loan requests accepted (4 pm ET)	06/18/24 (Tue)			Prior Recordkeeper restricts any electronic distributions, loans or other withdrawal requests
Final transaction processing date for all transactions including fund transfers or exchanges (4 pm ET) - ("hard blackout")	06/18/24 (Tue)			Prior Recordkeeper restricts all activity for Participants at market close
Final day participants can access prior recordkeeper system (vru/web/phone)	06/18/24 (Tue)			Prior Recordkeeper closes participant access to system access

**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
Phase III - Conversion				
*Refresh Data Files Delivered to Empower for TIAA	06/21/24 (Fri)			Prior recordkeeper delivers refresh files after blackout start but before final files available
Prior Recordkeeper begins Asset Transfer process	06/26/24 (Wed)			Last valuation performed by prior recordkeeper
Transfer in kind shares receipt	06/27/24 (Thu)			Receipt of all share reregistrations for assets transferring in-kind
Transfer of Assets (TOA) - wire receipt	06/27/24 (Thu)			Expected Wire receipt date
*Final Data Files Delivered to Empower for TIAA	06/28/24 (Fri)			Prior recordkeeper delivers final account balances and other conversion records in good order
Balances Loaded to Participant Accounts	06/29/24 (Sat)			Balances and finalized data loaded to Participant accounts
Reconciliation Complete	06/30/24 (Sun)			Reconciliation provided to Plan Sponsor
*Projected Live Date	07/01/24 (Mon)			Plan is released and Participants have full access to their accounts
First Cash Processed (Payroll File receipt and funding)	07/01/24 (Mon)			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)			Delivered in conjunction with plan live status
Soft Open for Plan Sponsor Pre-Live review	07/01/24 (Mon)			Select accounts opened for Plan Sponsor review prior to full Live
Transition Guide Live Date	07/01/24 (Mon)			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	07/02/24 (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).



What you need to know: Two NDPERS Retirement Plans transitioning to Empower in July 2024

What is happening?

At the North Dakota Public Employees Retirement System (NDPERS), we are committed to helping you achieve your retirement goals. After a thorough Request for Proposal process, we're pleased to announce that the NDPERS Deferred Compensation 457(b) Companion Plan and the NDPERS Defined Contribution 401(a) Plan will be moving from TIAA to Empower effective no later than July 3, 2024. The move will happen automatically. You do not need to take any action for your account to transfer.

Why are we moving from TIAA?

NDPERS is committed to providing retirement plans that reflect industry best practices. After a comprehensive selection process and thorough evaluation of vendors, the NDPERS Board chose Empower as a company that offered the best fit for our plans. This change is designed to strengthen the plans, provide new plan enhancements, and help you pursue your retirement savings goals more effectively.

Who is Empower?

Empower serves over 82,000 plans and more than 18 million individuals¹. They take great pride in helping people reach saving and investing goals by providing helpful tools, support, and resources. Visit empower.com to learn more.

How do I learn more about the transition?

If you are currently participating in the NDPERS Deferred Compensation 457(b) Companion Plan or the NDPERS Defined Contribution 401(a) Plan (or are eligible to enroll), additional information explaining everything you need to know about the transition will be sent directly to you in May 2024.

During the transition is there a time period I will not be able to access my account?

To help ensure an accurate transfer of assets and records, there will be a blackout period from June 18, 2024, to no later than July 3, 2024, during which you will not have access to perform transactions in your current account. This "blackout period" is a normal occurrence when plans change recordkeepers. Payroll deductions and any employer contributions will continue during the blackout period and will be reflected in your account when the blackout is complete.

The notice you receive in May will outline all the key dates and any time frames you will not have access to your account during the transition from TIAA to Empower.

Note: If active members are completing a service purchase transfer or inactive members are requesting a distribution during the blackout period, NDPERS will hold the paperwork and submit it to Empower to be processed once the plans are live no later than July 3, 2024.

¹ As of December 31, 2023. Information refers to all retirement business of Empower Annuity Insurance Company of America (EAICA) and its subsidiaries, including Empower Retirement, LLC; Empower Life & Annuity Insurance Company of New York (ELAINY); and Empower Annuity Insurance Company (EAIC), marketed under the Empower brand.

Are there any changes to the fees I will pay?

Every participant in these two NDPERS Retirement Plans pays fees, even if you haven't noticed them. These fees cover management of the investments within your plans and administrative fees, which cover expenses such as recordkeeping, accounting, and legal fees. The fund managers for the plans' investment options also charge fees to cover the costs of managing their respective funds.

How fees worked previously

Each investment option available in each of the plans charged fees based on a percentage of the assets in the fund. Each fund fact sheet showed how much you would pay in fees if you invested in that fund. The fees were subtracted from your funds' investment returns, so you never saw those subtracted amounts in your statement. Generally, more complex investment products will charge more in fees because managing those products is more challenging.

As in many retirement plans, some fund managers make payments back to the plan's recordkeeper (a process called revenue sharing). Under this arrangement, some participants may have paid more and others less based on how the investment funds they chose handled fees.

- *The takeaway:* The amount you paid in fees wasn't easy to determine, and administrative/recordkeeping fees could vary from person to person depending on investment choices.

How fees will work after the transition to Empower

Effective July 3, 2024, your administrative/recordkeeping fee will be \$11.50 quarterly. Your first fee will be assessed on October 15, 2024, and will be disclosed in your quarterly statement in a more straightforward and transparent way. If your balance is greater than \$1,000, you'll pay the same amount in administrative expenses for the plans every year. No fee will be assessed if your account balance is less than \$1,000.

- *The takeaway:* The new arrangement will result in a more equitable approach. You will pay the same plan administrative fees, rather than paying based on your investment choices. You will still pay investment management fees, which are lower overall but will vary based on the funds you choose.

What do I need to do to transfer my account?

The transfer will happen automatically. No action is required on your part unless you want to make changes to your account at TIAA prior to the blackout date.

Will my money remain invested during the blackout period?

Your money will remain invested and is subject to gains and losses based on normal market fluctuations. Payroll deductions will continue during the blackout period and will be reflected in your account when the blackout is complete. Investing involves risk, including possible loss of principal. You should carefully consider the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income, and investments.

Can I make investment changes during the blackout period?

No, during the blackout period your money will remain invested in your selected investment options, and you will not be able to make changes to your account.

Will my investments be moved to a default plan or into similar funds like the ones I have today?

As part of your move to Empower:

- Some funds will transfer in kind, meaning they will remain invested in the same funds as your current elections;
- Some funds will liquidate and transfer to funds with similar investment objectives; and
- Some funds that do not have a fund with a similar investment objective in the new lineup will liquidate and transfer to an age-appropriate (estimated retirement at age 65) target date fund.

Once the transfer is complete (and the blackout period has ended), you may transfer your account balance to any of the funds available in the NDPERS 457(b) and/or 401(a) plans. Refer to the transition notice being mailed to your address on file in May for detailed information on how your investments will transfer.

What if I have a required minimum distribution (RMD) or periodic payments scheduled to be paid during the blackout period?

Any periodic payments that are scheduled to be paid during the blackout will be paid out no later than June 17, 2024, before the two NDPERS retirement plans transfer to Empower.

Will my new account statements be mailed to my home address?

You will be enrolled in paperless document delivery during the transition. Your Empower statement will be delivered electronically (if a valid email address is on file) and will include your full account balance. If you prefer printed copies of your statement, **once the transition is complete**, you can request printed copies be mailed to you at no charge by calling **866-816-4400**. You can also print copies of your statements from your new Empower account at **empowermyretirement.com**.

To change statements to print rather than electronic delivery, go to **empowermyretirement.com**, click your initials in the top right corner, scroll down to the *Communication preference* section and click *Change*. Deselect the box marked *E-delivery* and click *Save*.

What do I do if I have installment payments?

If you have an existing W-4P-eligible installment, an update is required. To comply with IRS regulations, Empower will update your federal income tax withholding on your periodic payments to the IRS default withholding rate of single with no adjustments (regardless of your marital status). This change will occur upon conversion of your account balance to Empower and will be effective on payments that you receive after the conversion. To make income tax-withholding elections other than the default withholding, complete and return the updated IRS Form W-4P to Empower after the plans are out of blackout no later than July 3, 2024.

You can download the form by visiting irs.gov, typing "W-4P Form" into the search bar, and then clicking on the corresponding PDF link. Mail the form to: Empower, ATTN 401(k) Department, PO Box 173764, Denver, CO 80217-3764. You can also upload the form to the participant website after the plans are live at **empowermyretirement.com**. For additional information about the impact this form will have on income tax-withholding elections, refer to the 2024 IRS Publication 15-T or consult your tax advisor.

Will I have a new account website?

Yes, changing our retirement plans' recordkeeper means that you will log in to a new website, and call a new service center (the Empower Customer Care Center), to view/access your account balance and contributions, change your investment elections, or request a distribution.

Once the transition is complete, you should log in to your account at **empowermyretirement.com**. Registering your account helps safeguard it online, ensures you receive timely account updates, provides convenient online account management, and gives you the opportunity to explore new tools and resources at Empower. When you log in to your account for the first time, you will be prompted to create a username and password and complete multifactor authentication security steps.

Will I need to designate an account beneficiary?

If you have a beneficiary election on file for the **NDPERS Deferred Compensation 457(b) Companion Plan**, that election **will transfer** to Empower. After the Plan is live, you can add or update your beneficiary(ies) at **empowermyretirement.com**.

If you have a beneficiary election on file for the **NDPERS Defined Contribution 401(a) Plan**, that election **will not transfer** to Empower. You can add, change, or update your beneficiary(ies) for this Plan with NDPERS using [SFN 2560](https://www.ndpers.nd.gov/sites/www/files/documents/forms/active-defined-benefit/sfn-2560-designation-of-beneficiary-retirement.pdf) (<https://www.ndpers.nd.gov/sites/www/files/documents/forms/active-defined-benefit/sfn-2560-designation-of-beneficiary-retirement.pdf>) and returning to NDPERS per the instructions on the form.

We encourage you to periodically verify your beneficiary designation to be sure that it reflects your current wishes.

How does Empower ensure that my data is secure?

Data security is always a top priority. Empower layers its internal controls with a rigorous information security program based on industry standards and best practices. In addition, all vendor partners are subject to significant information technology (IT) security reviews and requirements.

Empower has a number of protections in place to prevent fraudulent activity, including multi-factor authentication, PINDROP (voice biometrics and device verification), and participant security alerts, and everything is backed by the Empower Security Guarantee.

Your retirement accounts are entrusted to a company that wants to help you keep them safe and secure. Empower stands behind its online security with the Empower Security Guarantee. This guarantee states that Empower will restore losses from your account that occur as a result of unauthorized transactions through no fault of your own. It is important to follow current and prudent online security practices, review your accounts regularly for any unusual activity, maintain strong passwords, and more.

For more information regarding account security, including the Empower Security Guarantee, visit empower.com and, from the list of additional links at the bottom of the page, click *Security center*.

How do I download the Empower mobile app?

The Empower app is available on both iOS® and Android™ devices for mobile phones, tablets, and the Apple Watch®. Go to your device's app store and search for *Empower*. Then just download the app and log in with your new Empower username and password.

Where can I direct my questions?

You can call Empower's Customer Care Center at **866-816-4400**. Representatives are available by phone weekdays from 7 a.m. to 9 p.m. and Saturdays from 8 a.m. to 4:30 p.m. Central time.

Note: Prior to the end of blackout (before the plans go live), Customer Care Center representatives will only be able to answer questions about key dates, including whether or not the plans are in blackout. Once the plans are live no later than July 3, 2024, representatives will be able to assist with all transactions and answer all account-specific questions.

For after-hours services, you can use Empower's voice response system at **866-816-4400**. The voice response system and website are available 24 hours a day, seven days a week.

Carefully consider the investment option's objectives, risks, fees, and expenses. Contact Empower for a prospectus, summary prospectus for SEC-registered products, or disclosure document for unregistered products, if available, containing this information. For prospectuses related to investments in your self-directed brokerage account (SDBA), contact your SDBA provider. Read them carefully before investing.

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Investing involves risk, including possible loss of principal.

Fund changes may alter the risk exposure of an investment account. Some cash-alternative options (other than money market funds), such as guaranteed interest funds or stable value funds, may have withdrawal and transfer restrictions. Carefully consider the importance of a well-balanced and diversified investment portfolio, while considering all your assets, income, and investments. Adjustments may be needed to realign the account with its desired investment strategy.

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Helping you pursue the future you want

Two of the NDPERS Retirement Plans are moving to Empower.

- The North Dakota Public Employees Retirement System Deferred Compensation 457(b) Companion Plan (“457(b) Plan”)
- The North Dakota Public Employees Retirement System Defined Contribution 401(a) Plan (“401(a) Plan”)

Effective July 3, 2024

Why am I receiving this information?

Your plans are moving from TIAA to Empower. This booklet will help you understand what to expect during the transition and some features you will continue to see after the transition no later than July 3, 2024.

You are also receiving this notice if you are eligible to participate in the NDPERS Deferred Compensation 457(b) Companion Plan and are not currently enrolled. If you are not interested in participating, please disregard.

Everything we do centers around you

Your path to retirement is unique. We believe your plans should be too.

With a focus on monthly income in retirement, Empower strives to help people replace — for life — the income they earned while working.

This innovative approach, combined with Empower’s unique offerings and commitment to service excellence, has earned the trust of millions of plan participants.

No longer employed with a participating NDPERS employer?

You’re receiving this announcement because you may have a balance in one of the above-named plans.

Even though you’re not actively contributing, you should review the information in this notice as it impacts your account balance and provides information regarding other plan features and benefits.

Once the transition is complete, go to empowermyretirement.com or call **866-816-4400** to access your account.



What's changing?

Together with Empower, the North Dakota Public Employees Retirement System (NDPERS) is committed to helping you pursue the retirement you imagine. After a formal and competitive Request for Proposal process, the NDPERS Board selected Empower to continue offering members top-quality service and resources for your retirement planning. This change will give you enhanced, yet simple financial planning resources to help you manage your account and improve your overall retirement planning experience.

After the transition is complete, you will experience excellent customer service focused on results along with technology designed to give you more ways to access your account and take action. Empower offers access to powerful tools and robust services to help you pursue your retirement goals and financial independence.

This required transition happens automatically

To make the required transition as smooth as possible, your contributions and investments will transfer automatically for both the 457(b) and 401(a) Plans. Beneficiary designations will also transfer in the 457(b) Plan.

You may make changes to your current investments prior to the blackout period. You may not make updates during the blackout period.

Key dates

June 18, 2024, at 3 p.m. Central time

Blackout period begins

You will have read-only access to your plans at TIAA. Self-directed brokerage account transfers and trades will also be restricted at this time. This “blackout period” will give us time to transfer your plans’ administrative records to Empower (see the **Important notice** section of this document for details).

Payroll deductions and any employer contributions will continue during the blackout period and will be reflected in your account when the transition is complete. During the blackout period, your investments will continue to gain and/or lose value depending on market conditions.

June 26, 2024

TIAA website account view access ends

You will no longer have access to view your NDPERS 457(b) or 401(a) Plan account on the TIAA website.

No later than July 3, 2024

Blackout period is expected to end

- Enjoy full access to your Empower account online at **empowermyretirement.com** and on the Empower app. See page 6 for first-time log in instructions.
- Update your personal preferences to stay up to date and receive account alerts.
- Add or update your beneficiary(ies) for the 457(b) Plan online at **empowermyretirement.com**. If you have a beneficiary designation for this plan, it **will transfer** automatically.
- **Note:** If you have a beneficiary election on file for the NDPERS 401(a) Plan, that election **will not transfer** to Empower. You can add, change, or update your beneficiary(ies) for this Plan with NDPERS by completing the NDPERS Designation of Beneficiary for the Group Retirement Plan, SFN 2560.

Learn more at an upcoming education session

After the transition, Empower will hold informational webinars where you can learn how to access your account, see the new financial tools in action, ask questions, and more. These sessions, as well as a recording if you are unable to attend, will be available in July. When the schedule is finalized, dates and times will be posted to the *Upcoming Events* page on the NDPERS website (ndpers.nd.gov), along with a copy of this communication and a link to the recorded education session.

How your account will transfer

As part of your move to Empower:

- Some funds will transfer in kind, meaning they will remain invested in the same funds as your current elections;
- Some funds will liquidate and transfer to funds with similar investment objectives; and
- Some funds that do not have a fund with a similar investment objective in the new lineup will liquidate and transfer to an age-appropriate (estimated retirement at age 65) target date fund.

Note: This liquidation and transfer is not a taxable event as it is a plan-to-plan transfer.

Once the transfer is complete (and the blackout period has ended), you may transfer your account balance to any of the funds available in the NDPERS 457(b) and/or 401(a) plans.

This transfer may result in an increase or decrease of your investment risk exposure and may or may not be consistent with your investment style. We encourage you to review your account prior to and after the blackout period and adjust your asset allocation if necessary.

The following investments will transfer in kind and remain invested in the same fund

Cohen & Steers Realty Shares (CSRSX)	Vanguard Total Bond Index Adm (VBTLX)
Vanguard Institutional Index (VINIX)	Vanguard Treasury MM Inv (VUSXX)

The following investments will liquidate and transfer into an investment with a similar investment objective

BALANCES IN THESE INVESTMENTS	WILL LIQUIDATE AND TRANSFER TO
Allspring Growth Adm (SGRKX)	Vanguard Institutional Index (VINIX)
Baird Core Plus Bond Investor (BCOSX)	Baird Core Plus Bond (BCOIX)
Brown Small Company Fund Investor (BCSIX)	JPM US SMID Core (WOOSX)
Columbia Mid Cap Index Fund A (NTIAX)	JPM US SMID Core (WOOSX)
DFA U.S. Small Cap Inst'l (DFSTX)	JPM US SMID Core (WOOSX)
Franklin Growth Fund Advisor (FCGAX)	Vanguard Institutional Index (VINIX)
Galliard Stable Return J (N/A)	Galliard Stable Return C (N/A)
Hartford Dividend and Growth R5 (HDGTX)	Vanguard Institutional Index (VINIX)
Northern Small Cap Value Fund (NOSGX)	JPM US SMID Core (WOOSX)
PGIM Jennison Mid-Cap Growth Z (PEGZX)	JPM US SMID Core (WOOSX)
T. Rowe Price Equity Income (PRFDX)	Vanguard Institutional Index (VINIX)
Vanguard Dividend Growth Inv (VDIGX)	Vanguard Institutional Index (VINIX)
Vanguard Total Int'l Stock Adm (VTIAX)	Vanguard Total Int'l Stock (VTSNX)
Virtus Ceredex Mid-Cap Value I (SMVTX)	JPM US SMID Core (WOOSX)
TIAA-CREF Lifecycle Ret. Inc (TLIRX)	TIAA-CREF Lifecycle Ret. Inc (TLRIX)
TIAA-CREF Lifecycle Ret. 2010 (TCLEX)	TIAA-CREF Lifecycle Ret. 2010 (TCTIX)
TIAA-CREF Lifecycle Ret. 2015 (TCLIX)	TIAA-CREF Lifecycle Ret. 2015 (TCNIX)
TIAA-CREF Lifecycle Ret. 2020 (TCLTX)	TIAA-CREF Lifecycle Ret. 2020 (TCWIX)
TIAA-CREF Lifecycle Ret. 2025 (TCLFX)	TIAA-CREF Lifecycle Ret. 2025 (TCYIX)
TIAA-CREF Lifecycle Ret. 2030 (TCLNX)	TIAA-CREF Lifecycle Ret. 2030 (TCRIX)
TIAA-CREF Lifecycle Ret. 2035 (TCLRX)	TIAA-CREF Lifecycle Ret. 2035 (TCIIX)
TIAA-CREF Lifecycle Ret. 2040 (TCLOX)	TIAA-CREF Lifecycle Ret. 2040 (TCOIX)
TIAA-CREF Lifecycle Ret. 2045 (TTFRX)	TIAA-CREF Lifecycle Ret. 2045 (TTFIX)
TIAA-CREF Lifecycle Ret. 2050 (TLFRX)	TIAA-CREF Lifecycle Ret. 2050 (TFTIX)
TIAA-CREF Lifecycle Ret. 2055 (TTRLX)	TIAA-CREF Lifecycle Ret. 2055 (TTRIX)
TIAA-CREF Lifecycle Ret. 2060 (TLXRX)	TIAA-CREF Lifecycle Ret. 2060 (TLXNX)
TIAA-CREF Lifecycle Ret. 2065 (TSFRX)	TIAA-CREF Lifecycle Ret. 2065 (TSFTX)

The following investments will liquidate and transfer into an age-appropriate TIAA-CREF Lifecycle target date fund (based on estimated retirement at age 65)

*AF New Perspective R4 (RNPEX)

*PGIM High Yield Fund Z (PHYZX)

*Invesco Developing Markets Y (ODVYX)

*T. Rowe Capital Appreciation Adv (PACLX)

*MM Premier Infl-Pr and Inc Srv (MIPYX)

*Templeton Global Bond Advisor (TGBAX)

Funds exempt from Securities and Exchange Commission (SEC) registration do not have ticker symbols.
Investing involves risk, including possible loss of principal.

*Upon transfer of assets to Empower Retirement, these assets will be invested into the Dreyfus Government Cash Management Fund (DGCXX) in a temporary holding account. After receipt and reconciliation of the plans' records from the prior provider (the end of the blackout period), your account balance and future contribution investment allocations will be allocated at Empower in accordance with the mapping table above.

Investment transfer restrictions

Reallocating or transferring investments from the Galliard Stable Return C fund to the Vanguard Treasury Money Market is subject to a trading provision called an equity wash. This restriction means that money cannot be transferred out of the Galliard Stable Return C fund directly into the Vanguard Treasury Money Market. It must be directed to another investment option among the plans' investment lineup for a minimum of 90 days before it can be moved into the Vanguard Treasury Money Market. This restriction is already in effect with TIAA.

Fee structure change

Every member in the North Dakota Public Employees Retirement System Deferred Compensation 457(b) Companion Plan and the North Dakota Public Employees Retirement System Defined Contribution 401(a) Plan pays fees, even if you haven't noticed them. These fees cover management of the investments within your plans and administrative fees, which cover expenses such as recordkeeping, accounting, and legal.

How fees worked previously

Each investment option available in the plans charged fees based on a percentage of the assets in the fund. Each fund fact sheet showed how much you would pay in fees if you invested in that fund. The fees were subtracted from your funds' investment returns, so you never saw those subtracted amounts in your statement. Generally, more complex investment products will charge more in fees because managing those products is harder.

As in many retirement plans, some fund managers make payments back to the plan's recordkeeper (a process called revenue sharing). Under this arrangement, some members may have paid more and others less toward plan administration based on how the investment funds they chose handled fees.

- **The takeaway:** The amount you paid in fees wasn't easy to determine, and administrative/recordkeeping fees could vary from person to person depending on investment choices.

How fees will work after the transition to Empower

Effective July 3, 2024, your administrative/recordkeeping fee will be \$11.50 quarterly, starting October 15, 2024. It will be disclosed in your quarterly statement in a more straightforward and transparent way. If your balance is greater than \$1,000, you'll pay the same amount in administrative expenses for the plans every year. No fee will be assessed if your account balance is less than \$1,000.

- **The takeaway:** The new arrangement will result in a more equitable approach. You will pay the same plan administrative fees, rather than paying based on your investment choices. You will still pay investment management fees, which are lower overall and will vary based on the funds you choose.

Your self-directed brokerage account (SDBA)

Empower Brokerage will replace the TIAA self-directed brokerage option currently available in the NDPERS 457(b) and 401(a) Plans. The Empower Brokerage account is intended for knowledgeable investors who acknowledge and understand the risks associated with the investments available through an Empower Brokerage account.

If you have an SDBA with TIAA, your investments will be transferred in-kind to Empower Brokerage. To allow time for this move to occur, SDBA transfers and trades will be restricted from 3 p.m. Central time on June 18, 2024, through the blackout end date (no later than July 3, 2024). You will be notified via email once the plans are out of blackout. Please refer to the enclosed **Important Information For Current Self-Directed Brokerage Account (SDBA) Holders** notice for more information.

Access your account after transition

Online – empowermyretirement.com

- To access your account for the first time, click the *Register* button.
- Follow the prompts on the *I do not have a PIN* tab to enter your personal information and create a username and password.
- The next time you access your account, simply choose *Sign in*.

By phone – **866-816-4400**

Empower representatives are available weekdays from 7 a.m. to 9 p.m. Central time (excluding most financial market holidays) and Saturdays from 8 a.m. to 4:30 p.m. Central time.

You can also view and manage your account, anywhere, anytime with the Empower app for your mobile device or Apple Watch® available in the App Store® from Apple® for iOS® or on Google Play™ for Android™.

Important notice concerning your rights in two NDPERS Retirement Plans

- The North Dakota Public Employees Retirement System Deferred Compensation 457(b) Companion Plan
- The North Dakota Public Employees Retirement System Defined Contribution 401(a) Plan

May 17, 2024

This notice is to inform you that your account in The North Dakota Public Employees Retirement System Deferred Compensation 457(b) Companion Plan and/or The North Dakota Public Employees Retirement System Defined Contribution 401(a) Plan will transfer to Empower effective no later than July 3, 2024.

The temporary transition period begins at 3 p.m. Central time on June 18, 2024, and is expected to end no later than July 3, 2024. During this time, you will have no access to your account. You will be unable to check your account balances; transfer or diversify your investments; or take withdrawals or distributions from your account in either of the NDPERS Retirement Plans named above. The period during which you will be unable to exercise these rights otherwise available under the plans is called a transition period.

Before the transition period begins, it is very important that you review and consider the appropriateness of your current investments because you will be unable to transfer or diversify those investments during the transition period. For your long-term retirement security, you should give careful consideration to the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income, and investments.

Whether or not you are planning retirement in the near future, we encourage you to carefully consider how this transition period may affect your retirement planning as well as your overall financial plan.

To review your plan(s) account and request any changes to your investment allocation before the transition period begins, contact TIAA at 800-842-2252 or TIAA.org before 3 p.m. Central time on June 18, 2024. If you have questions concerning this notice, please contact Empower at **866-816-4400**.

Once the transition period ends, you will have full access to your plan(s) account. If you would like to confirm the status of the transition period, contact Empower at **866-816-4400** or **empowermyretirement.com**.

These dates and times are subject to change. Please contact Empower for more information. Diversification does not ensure a profit or protect against loss.

Empower your journey to financial freedom

Empower provides numerous resources to help you save and plan for your future. The website helps you see your complete financial picture in one place, where you can create a single personalized dashboard that provides a real-time view of spending, savings, debt, and more. Empower will continue to reach out to you with the right message at the right time so you can take action when it's most relevant to your personal situation.

Based on the tools and resources you use, and your communication preferences, you may receive emails, app messages, text messages, or a call from an Empower representative. This approach creates a one-on-one experience based on your needs and the savings and investing choices you've made regarding your retirement strategy.

Carefully consider the investment option's objectives, risks, fees, and expenses. Contact Empower for a prospectus, summary prospectus for SEC-registered products, or disclosure document for unregistered products, if available, containing this information. Read each carefully before investing.

You could lose money by investing in a money market fund. Although the fund seeks to preserve the value of your investment at \$1 per share, it cannot guarantee it will do so. An investment in the fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The fund's sponsor has no legal obligation to provide financial support to the fund, and you should not expect the sponsor to provide financial support to the fund at any time.

Fund changes may alter the risk exposure of an investment account. Some cash-alternative options (other than money market funds), such as guaranteed interest funds or stable value funds, may have withdrawal and transfer restrictions. Carefully consider the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income, and investments. Adjustments may be needed to realign the account with its desired investment strategy. Once the transition is complete, please review the information for each fund on the plan website.

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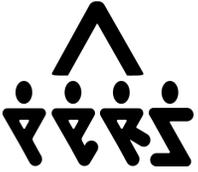
Investing involves risk, including possible loss of principal.

Unless otherwise noted:

Not a Deposit | Not FDIC Insured | Not Bank Guaranteed | Funds May Lose Value | Not Insured by Any Federal Government Agency

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Memorandum

TO: NDPERs Board

FROM: Katheryne Korom

DATE: May 23, 2024

SUBJECT: Dental Request for Proposal (RFP)

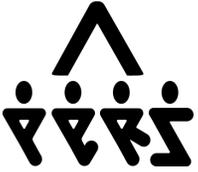
Rebekah Ferstadt and the team at Buck have completed their proposal review process. They will be available at the NDPERs Board meeting to review their findings and answer any questions.

Following are the key dates for the proposal process:

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

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

Board Action Requested: Provide guidance to Staff and Consultant on how to proceed with the Dental contract award.



Memorandum

TO: NDPER Board

FROM: Katheryne Korom

DATE: May 23, 2024

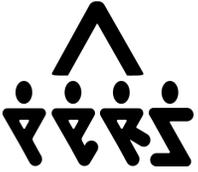
SUBJECT: Administrative and Recordkeeping Services for Section 125 FlexComp Plan Request for Proposal (FlexComp RFP)

We received three proposals by the April 30th deadline for the FlexComp RFP issued on March 4, 2024. These three proposals were received from: P&A Group, ASIFlex, and Total Administrative Services Corporation (TASC).

Following are the key dates for the proposal process:

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

If you have any questions, we will be available at the NDPER Board Meeting. This item is informational and does not require any action by the Board.



Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 2024

SUBJECT: Medicare Part D Plan 2025 Premium Projection

Per the terms of the contract with Humana for the Employer Group Waiver Plan (EGWP), referred to as the Medicare Part D product, we have received a preliminary projection for the 2025 premium.

Humana's preliminary projection for the 2025 premium is \$77.38 per member, per month (PMPM). This is an increase of 19.56% over the current monthly premium of \$64.72 per month. The information provided by Humana as part of their preliminary projection is provided in Attachment 1. Per Humana, the projection takes into account rating factors including; claims experience, Center for Medicare & Medicaid Services (CMS) reimbursements, pharmacy trends that include pipeline drugs, demographics, plan benefits, CMS mandates and regulatory changes. In addition, as discussed at the April meeting, there are significant changes being made to all Medicare Part D plans for the 2025 plan year due to the Inflation Reduction Act (IRA).

Humana has provided the following additional comments regarding this preliminary projection and will be available at the meeting to answer questions the Board may have:

- The IRA impact is \$10.45 PMPM
 - Part D redesign under the IRA
 - The Part D benefit will be restructured to cap beneficiary out-of-pocket spending at \$2,000 per plan year for covered Part D drugs. Beneficiaries will also have the option to “smooth” these costs across the plan year via the Medicare Prescription Payment Plan. (Noting that Humana will provide more details as information is available regarding the Medication Prescription Payment Plan for Maximum Out of Pocket, or MOOP, Smoothing).

- Accumulation towards the \$2,000 IRA MOOP is based on “incurred costs.” This is different than what the MOOP plans currently have which is based on the retiree’s out of pocket cost.
- The current coverage gap will be eliminated.
- A new shared liability is established in the catastrophic phase.
- Plans will now be responsible for 60%, manufacturers for 20%, and the government for 20% brand and 40% generic.
- Catastrophic phase: member cost share for Part D drugs is \$0 (In 2024, cost sharing for Part D drugs was eliminated for beneficiaries in the catastrophic phase of coverage)
- Projected Primary Trend Increase Drivers
 - Eliquis & Ozempic utilization
 - IRA benefit enhancement
 - The plan is not responsible for Paxlovid in 2024 due to a government patient assistance program operated by Pfizer. Paxlovid is expected to return as a plan liability in 2025.
- Projected Member Cost Sharing is reducing due to enhanced benefits due to IRA (no coverage gap and mandatory \$2000 MOOP)
- Projected CMS Federal Reinsurance is down as CMS’s liability reduces from 80% to 20% for brand and 40% for generic in 2025.
- Projected CMS Direct Subsidy is up significantly due to the increased National Average Bid driven by IRA.

Given we have a number of newer Board members, staff felt it would be helpful to share some recent history related to the Part D premiums. In 2021, the Board awarded the bid for the product and the plan was transitioned from Express Scripts Incorporated (ESI) to Humana for the 2022 plan year. The following table provides information on the premiums since that time:

Plan Year	Vendor	Premium PMPM	% Change
2021	ESI	\$89.32	N/A
2022	Humana	\$66.72	-25.3%
2023	Humana	\$69.72	4.5%
2024	Humana	\$64.72	-7.7%

Staff have asked Deloitte for analysis regarding the reasonableness of the preliminary projection and will have information at the meeting regarding their analysis for the Board’s consideration.

The normal process for renewal is that Humana will finalize the premium for the upcoming plan year after the Center for Medicaid and Medicare Services (CMS) releases the federal subsidy level for Part D plans. This occurs in late July each year. Humana then determines if they need to adjust premiums accordingly based on the subsidy amount and the experience of the plan. Per the terms of the contract, Humana must provide the final premium for the Board’s consideration by August 15 for consideration at the August Board meeting. Deloitte will again be utilized to analyze the reasonableness of the final premium.

At this time, staff would recommend that the Board defer a decision on whether to bid the Medicare Part D Plan in order to consider the final renewal premium offered by Humana in August. This recommendation is made due to:

- The overall ease of administration of the product for NDPERS processes
- The minimal disruption our members continue to experience with Humana
- The responsiveness of Humana when questions regarding NDPERS processes or members have been raised
- An understanding that a substantial amount (\$10.45 of the \$12.66 total) of the increase is due to the IRA and would likely be included in any vendor quote should the product be bid since any vendor bidding on the product would have to build in the same significant changes in the plan design.

Should the Board approve, staff will continue to review the information provided by Humana to confirm consistent plan design to the current plan year and will also work with Humana on 2025 Performance Guarantees. If staff have questions, we will work with Humana to have these resolved prior to the final decision by the Board in August.

If in August the final renewal premium exceeds the projected premium and is a rate that the Board does not wish to renew, then staff will have the final Medicare Part D RFP prepared for the August Board meeting so that it can be approved for immediate release.

If the Board does not agree to the staff recommendation, then staff provide Attachment 2 which is the Request for Proposal (RFP) for this product for the Board to approve so that the RFP can be released in June.

Board Action Requested:

Provide direction on whether to defer a bid for the Medicare Part D Plan until after Humana provides their final renewal premium in August 2024.

Group Medicare Renewal

Humana is pleased to deliver the 2025 Group Medicare Advantage Plan renewal for North Dakota Public Employee Retirement system. Attached you will find the 2025 rates, 2025 Performance Guarantee Agreement, and the pharmacy plan design for your review.

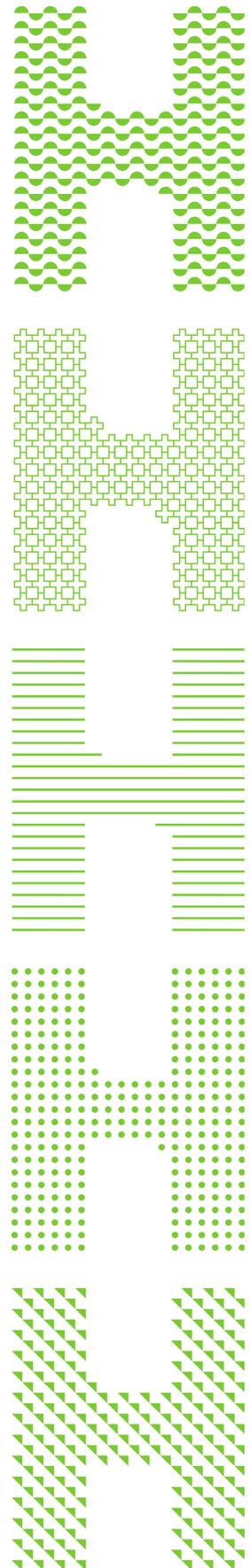
As far as the pharmacy component, the dollar limits have changed. These limits are set by CMS and are listed below for your reference.

As you review the 2025 renewal, please let me know if you have any questions. If there are no questions, please provide the contract amendment for signature, and sign the included Performance Guarantee Agreement. We can then begin processing the renewal for 2025.

Thank you!

CMS defined standard parameter changes:

Stage	2024	2025
Deductible	\$545	\$590
Initial Coverage Limit (ICL)	\$5,030	\$2,000
Out-of-pocket threshold	\$8,000	\$2,000 (required by IRA)





Humana Medicare Group Plan – Premium Information

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM - PDP

*Preliminary Rating

Date: 4/29/2024
Humana Medicare Group Plan
Plan Names: Custom PDP
Rx Formulary: Group Plus Formulary - 25800
Additional Medication Buy-Ups: Coughs and Colds, EDs Enhanced

Table with 2 columns: Plan Year, Final Billed Premium (Per Member Per Month). Row 1: 1/1/2025 - 12/31/2025, \$77.38

*Rates are provided on a preliminary basis only and may be revised after receipt of 2025 Part D Benchmarks.

PDP 037 161 Rx Benefit Overview

Prescription Drugs (Retail 30 day supply) Custom PDP \$5 copay plus 15% coinsurance/\$15 copay plus 25% coinsurance/\$25 copay plus 50% coinsurance/\$25 copay plus 50% coinsurance from \$0 to Catastrophic

See attached sheet for rating assumptions and stipulations. The benefits presented above are a high-level summary. Please consult the Plan Design Exhibit for a more detailed list of covered services, member cost shares, services subject to deductibles and any plan limitations.

Rx benefits displayed do not include impacts of benefit changes that will occur as a result of the Inflation Reduction Act (IRA) of 2022, applicable for 2025 and beyond.

HUMANA MEDICARE EMPLOYER PDP PLAN

2025 PDP for North Dakota Public Employees Retirement System (NDPERS) Plan 037 Option 161

Group Plus Formulary - PDG 50

With Package(s): 2 (Cough/Cold), 7 (Erectile Dysfunction)

Effective Date: 01/01/2025 - 12/31/2025

30 day Supplies

PDP Option Number	30 day Standard Retail from \$0 to Catastrophic (1)				30 day Standard Retail from Catastrophic to Unlimited	MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$0 copay	\$2,000

PDP Option Number	30 day Standard Mail Order from \$0 to Catastrophic (1)				30 day Standard Mail Order from Catastrophic to Unlimited	MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$0 copay	\$2,000

Note: Part D vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for adults may be available at no cost.

Note: Plan covered insulin products will not exceed \$35 for a one-month supply no matter what cost-sharing tier it's on.

*Tier 1: Generic or Preferred Generic - Generic or brand drugs that are available at the lowest cost share for this plan.

Tier 2: Preferred Brand - Generic or brand drugs that Humana offers at a lower cost than Tier 3 Non-Preferred Drug.

Tier 3: Non-Preferred Drug - Generic or brand drugs that Humana offers at a higher cost than Tier 2 Preferred Brand drugs.

Tier 4: Specialty Tier - Some injectables and other higher-cost drugs.

90 day Supplies

PDP Option Number	90 day Standard Retail (3) from \$0 to Catastrophic (1)				90 day Standard Retail (3) from Catastrophic to Unlimited	MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	N/A	\$0 copay	\$2,000

PDP Option Number	90 day Standard Mail Order (3) from \$0 to Catastrophic (1)				90 day Standard Mail Order (3) from Catastrophic to Unlimited	MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	N/A	\$0 copay	\$2,000

Note: Part D vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for adults may be available at no cost.

Footnotes

- 1 Catastrophic: When a member's Maximum Out-of-Pocket (MOOP) cost reaches \$2,000.
- 2 Plan MOOP (Maximum Out-of-Pocket): After a member's Plan Maximum Out-of-Pocket cost reaches \$0 Humana pays 100%.
- 3 Retail and Mail Order: The benefit for a 90-day supply is limited to Rx formulary Tiers 1-2 and most drugs on Tier 3. Regardless of tier placement, Specialty drugs are limited to a 30-day supply.

Out of Network: Emergency Situations

When a member purchases a drug at an out-of-network pharmacy in an emergency situation:

- a. the member will pay the same coinsurance as would have applied at a network pharmacy, but at the out-of-network pharmacy price, and/or,
- b. the member will pay the same copayment as would have applied at a network pharmacy, plus the difference between the out-of-network pharmacy price and the network pharmacy price.

This information is not a complete description of benefits. Contact the plan for more information. Limitations, copayments and restrictions may apply. Benefits, premiums and/or member cost-share may change each year. The formulary and pharmacy network may change at any time. You will receive notice when necessary. Please refer to the Evidence of Coverage for additional information regarding covered services and limitations or any other contractual conditions. For a complete description of benefits, exclusions and limitations please refer to the actual Evidence of Coverage. If a discrepancy arises between this information and the actual Evidence of Coverage, the Evidence of Coverage will prevail in all instances.

Humana is a Medicare Employer Prescription Drug plan with a Medicare contract. Enrollment in this Humana plan depends on contract renewal.

North Dakota Public Employees Retirement Systems



2025 Group Medicare Performance Standards for PDP Only

Effective January 1, 2025 through December 31, 2025

Minimum Annual Average Membership Requirement: None

PG#	Category	Target	Standard & Measurement Criteria	Amount at Risk
1	Plan Performance Review	Measurement methodology shall be measured from date of delivery of the plan performance review in calendar days	Within ten (10) calendar days following delivery of performance reviews to NDPERS, vendor shall develop and submit a corrective action plan (CAP) of issues identified for approval by NDPERS, and implement such plan within the time prescribed in the approved CAP.	Semi- annually \$1,000 per calendar day beyond the due date
2.1	Customer Satisfaction Surveys	Vendor will provide annual survey results to confirm compliance with performance standard	Member satisfaction surveys will be designed by the vendor and approved by NDPERS. Vendor will invite a random sample of members to participate in the survey to collect a statistically significant number of completed surveys. Member satisfaction rate will meet 90% or higher using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied. Final survey questions and methodology will be agreed upon by vendor and NDPERS.	Annually \$25,000 per year
2.2	Customer Satisfaction Surveys - Illustrative Only	Illustrative Group Specific Results Only - see 2.1	Illustrative Group Specific Results Only - see 2.1	Illustrative Group Specific Results Only - see 2.1
3	Team Meetings	Compliance to be monitored and assessed by NDPERS	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs	Monthly \$5,000 for each meeting missed
4	NDPERS board meetings	Compliance to be monitored and assessed by NDPERS	Vendor will participate in quarterly performance reviews to examine operational and financial performance	Quarterly \$5,000 for each quarter missed
5	Electronic Eligibility	Vendor will provide quarterly reports to confirm compliance with performance standard	Eligibility files will be installed in an electronic medium, logged within eight (8) hours and status will be effective within vendor's system within eighteen (18) hours from date of receipt, seven (7) days per week.	Quarterly \$500 for each missed file deadline
6	Manual Eligibility	Vendor will provide quarterly reports to confirm compliance with performance standard	Manual eligibility will be loaded within eight (8) hours upon receipt or notification and must be applied and active in the vendor's system within one (1) business day.	Quarterly \$500 for each missed file deadline
7	Error Reports	Vendor will provide quarterly reports to confirm compliance with performance standard	An error report on all eligibility file updates will be produced within eighteen (18) hours from the update.	Quarterly \$500 for each missed file deadline
8	Data Files	Will be available to NDPERS on request	Monthly data files (membership, medical, pharmacy) will be available by the 15th of the following month.	Monthly \$1,000 for each month not met
9	Claims Financial Accuracy	Claims Financial Accuracy will be 99% or greater, each year of the biennium. Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on quarterly internal audit of statistically valid sample.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
10	Claims Payment Accuracy	Vendor will provide annual reports to confirm compliance with performance standard	Claims Payment incidence Accuracy will be 98% or greater, each year of the biennium. Measured as the percent of Claims processed without financial payment error.	Annually \$12,500 per year

North Dakota Public Employees Retirement Systems



2025 Group Medicare Performance Standards for PDP Only

Effective January 1, 2025 through December 31, 2025

Minimum Annual Average Membership Requirement: None

PG#	Category	Target	Standard & Measurement Criteria	Amount at Risk
11	Claims Processing Accuracy	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
12	Claim Timeliness	Clean claims processing within 14 calendar days will be 95% or greater, each year of the biennium. Measured from the date the claim is received to the date claim is processed	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
13	Average Speed to Answer (ASA)	Vendor will provide semi-annual reports to confirm compliance with performance standard	Average Speed of Answer will be 30 seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS	Semi-annually \$10,000 per year
14	Call Abandonment	Vendor will provide annual reports to confirm compliance with performance standard	Call Abandonment rate will be 5% or less, each year of the biennium	Annually \$10,000 per year
15 a	Accuracy and Timelines/	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	a.) 95% percent of callers receive accurate information. Calls requiring additional research is excluded from the computation of this metric.	15a, 15b, and 15c Annually \$12,500 per year
15 b	First Call Resolution	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	b.) 95% percent of inquiries must be resolved during the initial call (excluding appeals, billing, errors and escalations).	15a, 15b, and 15c Annually \$12,500 per year
15 c	Written Inquiry Response Time	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	c.) ≥ 90% response to written inquiries within 30 calendar days	15a, 15b, and 15c Annually \$12,500 per year
16	Prescription drug turnaround time – clean prescriptions	Vendor will provide quarterly reports to confirm compliance with performance standard	98% within two (2) business days if no intervention required	Quarterly \$1,000 for each point below standard-
17	Prescription drug mail dispensing accuracy	Vendor will provide annual reports to confirm compliance with performance standard	99.9% Mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity and prescriber name.	Annually \$12,500 per year
18	Prescription drug home delivery member notifications	Vendor will provide annual reports to confirm compliance with performance standard	Vendor is required to notify a member when a mail service prescription is changed or there is any expected shipping delay and provide reporting details to NDPERS capturing all occurrences by member/DOS/Issue	Annually \$12,500 per year

North Dakota Public Employees Retirement Systems



2025 Group Medicare Performance Standards for PDP Only

Effective January 1, 2025 through December 31, 2025

Minimum Annual Average Membership Requirement: None

PG#	Category	Target	Standard & Measurement Criteria	Amount at Risk
19	Prescription drug specialty pharmacy delivery	Vendor will provide annual reports to confirm compliance with performance standard	98% of prescriptions will be delivered and received by patients on the specified date of delivery	Annually \$12,500 per year
20	Network Pharmacy Access	Vendor will provide annual reports to confirm compliance with performance standard	Pharmacy network composition will not be reduced by more than 5% in North Dakota compared to the network submitted in the RFP	Annually \$12,500 per year
21	Data Systems Availability and Adjudication	Book of business level	Guarantees an annual average 99% system availability of the point-of-sale adjudication system on a book of business basis. This standard excludes downtime attributed to regularly scheduled systems maintenance or systems downtime	Annually \$12,500 per year

Humana agrees to meet the performance standards as outlined above in providing administrative services for North Dakota Public Employees Retirement Systems. This agreement is contingent upon Humana being the only Part D Prescription Drug option for Medicare eligible retirees. The agreement will be for the contract period beginning January 1, 2025. This Performance Guarantee offering is based on a PDP Only plan offering. Performance results will be reported quarterly based upon center results for the member and claims services categories, not client specific results (except where otherwise stated) within 60 days after the end of the reporting period. Results will be assessed based on the annual results with payment of any penalties due following the end of the plan year. Please note that the performance standards are influenced by key market indicators (including changes in rules and standards from CMS) which could impact our performance standard metrics.

During implementation if significant changes to the Client's Plan, or in the event a benefit change notification is not received from the Client on a timely basis, Humana will not be responsible for performance results or penalty amounts as described within this Agreement.

ACCEPTED AND AGREED:

By: _____ Date: _____

In order for this contract to be binding, signatures are required from the client. This signed exhibit must be returned to the Humana Account Executive prior to implementation and no later than 30 days post effective date.

Attachment 2



Request for Proposal

Fully Insured and Self-Insured Medicare Part D Employer Group Waiver Plan (EGWP) + Wrap

Release Date: May 20, 2024

Due Date: July 3, 2024

Effective Date: January 1, 2025

Contents

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Appendix A	Response Template	Attached
Appendix B	Medicare Part D EGWP+Wrap Questionnaire	Attached
Appendix C	Medicare Part D EGWP+Wrap Cost Proposal	Attached
Appendix D	Medicare Part D EGWP+Wrap Formulary & Network Match	Attached
Appendix E	Medicare Part D EGWP+Wrap Model Contract	Attached
Appendix F	Medicare Part D EGWP+Wrap Services to be Performed	Attached
Appendix G	Medicare Part D EGWP+Wrap Performance Guarantees	Attached
Appendix H	Medicare Part D EGWP+Wrap Confidential Information	Attached
Appendix I	Medicare Part D EGWP+Wrap Proposed Deviations	Attached
Exhibit 1	2022 Medicare Part D EGWP+Wrap Prescription Drug Claims	Attached*
Exhibit 2	2023 Medicare Part D EGWP+Wrap Prescription Drug Claims	Attached*
Exhibit 3	2022 & 2023 Medicare Part D EGWP+Wrap Enrollment	Attached
Exhibit 4	2024 Medicare Part D EGWP+Wrap Utilization Management	Attached
Exhibit 5	2024 Member Roster as of March 2024	Attached
Exhibit 6	Medicare Part D Eligibility File Layout	Attached

**Password to access protected files may be requested from the RFP Coordinator via email*

I. Proposed Timetable

The timeline is provided below for informational purposes. NDPERS reserves the right to change the dates. Every effort will be made to notify Vendors of changes to the proposed timeline. Proposed 2024 schedule:

Activity	Date/Time
RFP Published	May 20, 2024
Questions Due	June 7, 2024
Question Answers Posted	June 14, 2024
Proposals Due	July 3, 2024
NDPERS Staff Interviews	August 2024
NDPERS Board Presentations, if deemed necessary by the NDPERS Board	August 2024
Selection of Vendor	August 2024
Contract Effective Date	January 1, 2025

II. Delivery of Proposals

Instructions

All proposals should be submitted simply and economically providing a direct, concise delineation of the vendor's proposal and qualifications adhering to the proposal format guidelines outlined below.

- Proposals should be typed or printed on 8.5" x 11" paper.
- All proposals must include the transmittal letter/statement which includes the following:
 - An acknowledgment of receipt of the EGWP Drug Plan RFP specifications.
 - This letter must include the title and signature of a Duly Authorized Officer of the company.
- All proposals must include a table of contents and appropriate page number references.
- All pages of proposals must have consecutive page numbers.
- Responses to questions must include a restatement of the question (number and text) with the response immediately following.
- Appendices and other supplemental information provided with your proposal must be clearly identified.
- Cost proposal must be submitted in a **separate, sealed envelope, and clearly marked**, "Cost Proposal". Cost Proposal Exhibits will be all-inclusive.
- NDPERS will not be billed any additional amounts for services, including commissions or brokerage fees.
- North Dakota insurance law 54-52.1-10 (Exemption From State Premium Tax) provides that "All premiums, consideration for annuities, policy fees, and membership fees collected under this chapter are exempt from the tax payable pursuant to section 26.1-03-17". Thus, Offeror's responses should not reflect any amounts for premium taxes.
- Any and all deviations must be clearly noted and submitted as defined in this RFP. If you do not identify and explain deviations, your proposal will be deemed a certification that you will comply in every respect with the requirements and contractual language set forth in this RFP.

Proposal Format and Contact Information

From the date of issuance until the announcement of the finalist, Vendors should only contact the Deloitte RFP coordinators. All correspondence and questions must be submitted in writing via e-mail to Deloitte Consulting in accordance with the timeline set

forth in this RFP. NDPERS personnel are not authorized to discuss this RFP with a vendor; doing so may result in disqualification. Vendors may continue to communicate with NDPERS staff regarding other relevant business matters.

Proposals should be submitted in two parts, with the cost proposal separate from the qualitative proposal (qualitative to NDPERS, complete proposals to Deloitte Consulting, see below). Late proposals will not be considered unless approved by the NDPERS Board. Proposals will be sent to two parties, as described below:

- Qualitative proposals should include:
 - Appendix A
 - Appendix B
 - Appendix D
 - Appendix E
 - Appendix F
 - Appendix G
 - Appendix H
 - Appendix I

- Cost proposal should include Appendix C and any other documentation supporting your bid financials and cost proposal deviations.

Vendors are required to submit one (1) unbound original and six (6) paper copies of the *qualitative proposals* along with one (1) electronic copy (USB flash drive) as well as one (1) electronic, editable, PDF redacted copy of the qualitative proposal on a separate flash drive (note that the electronic redacted copy may not be a picture) to:

Katheryne Korom
North Dakota PERS
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502

A full electronic copy of the *qualitative proposal, cost proposal, and deviations* must be emailed to Deloitte Consulting. All appendices provided in Microsoft Word or Excel with the RFP must be provided along with your proposal in Word or Excel.

PLEASE NOTE: Cost proposals should only be submitted to Deloitte Consulting. Cost proposals should follow the Confidential/Proprietary Information instructions in Appendix H. Any provisions of the Vendor's proposal that are desired to be confidential must be identified specifically on each page of the proposal and included in the table provided in Appendix H.

Ford Edgerton
Deloitte Consulting
fedgerton@deloitte.com

&

Karno Sarkar
Deloitte Consulting
karsarkar@deloitte.com

III. Objective of RFP

North Dakota Public Employees Retirement System – Strategic Objectives

The North Dakota Public Employees Retirement System (NDPERS) covers approximately 60,000 lives including 9,100 members that participate in the Medicare Part D EGWP+Wrap plan. NDPERS has retained Deloitte Consulting LLP (“Deloitte Consulting”) to assist with the RFP process. NDPERS is issuing this RFP with the intention of finding a PBM partner that:

- Provides exceptional service, from both a member’s and NDPERS’ experience
- Adheres to Centers for Medicare & Medicaid Services (CMS) regulations for the administration of EGWP products
- Manages pharmacy costs for members and NDPERS
- Champions transparency (and other innovations) in contracting
- Brings innovation to the PBM services provided by NDPERS
- Seamlessly integrates with NDPERS medical plans and analytical partners
- Complies with North Dakota Century Code 54-52.1 and other applicable state laws

Partnership Considerations

Our goal is to select a partner that will provide the highest quality service at the most competitive price while offering industry-leading compliance controls, data security protection, and financial disclosures.

- Administration of CMS required operations, subsidies, compliance, and reporting
- Competitive fully-insured or self-insured pricing
- Pharmacy claims processing and plan administration
- Network Management
- Formulary Management
- Customer Service excellence
- Clinical programs development and administration that focus on specialty drugs and chronic conditions
- Reporting and data analytics capabilities
- Administration of late enrollment penalties (LEP) and low-income premium subsidies (LIPS)

This request for proposal is intended to provide NDPERS with the necessary information to assess your capabilities and strategic fit. To the extent that you see opportunities to add value that we have not explicitly identified in the RFP, please provide additional information.

We thank you for your engagement in the process and look forward to reviewing your thoughtful responses to our request for proposal.

Special Self-Insurance Requirements for a Self-Insured Plan

The North Dakota Insurance Commissioner has oversight of PERS and its vendors under a self-insured arrangement:

26.1-36.6-03. Self-insurance health plans - Requirements.

The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46

All self-insured arrangements must comply with the above and other applicable direction from the North Dakota Insurance Commissioner.

Pharmacy Benefit Manager (PBM) Requirement

North Dakota Century Code chapter 54-52.1 includes specific provisions for pharmacy benefits disclosures. Proposals are expected to comply with the law.

If you are unable to comply with the provisions described in North Dakota Century Code chapter 54-52.1 or other applicable state laws, you may still submit a proposal that specifies which provisions you are unable to comply with, why you are unable to comply, additional costs associated with compliance, and a recommended approach to meeting the intent of the law.

North Dakota statutes provide a preference for proposals with PBM efforts that meet the following requirements:

54-52.1-04.15. Health insurance benefits coverage – Prescription drug coverage - Transparency - Audits - Confidentiality.

1. *If the prescription drug coverage component of a health insurance benefits coverage contract received in response to a request for bids under section 54-52.1-04 utilizes the services of a pharmacy benefits manager, either contracted directly with a pharmacy benefits manager or indirectly through the health insurer, in addition to the factors set forth under section 54-52.1-04 the board shall consider and give preference to an insurer's contract that:*
 - a. *Provides the board or the board's auditor with a copy of the insurer's current contract with the pharmacy benefits management company which controls the prescriptions drug coverage offered as part of the health insurance benefits coverage, and if the contract is revised or a new contract is entered, requires the insurer to provide the board with the revision or new contract within thirty days of the change.*

- b. *Provides the board with monthly claims data and information on all programs being implemented or modified, including prior authorization, step therapy, mandatory use of generic drugs, or quantity limits.*
 - c. *Describes the extent to which the board may customize the benefit plan design, including copayments, coinsurance, deductibles, and out-of-pocket limits; the drugs that are covered; the formulary; and the member programs implemented.*
 - d. *Describes the audit rights of the board.*
2. *The board may conduct annual audits to the extent permitted under the contract terms agreed to under subsection 1. The audits must include:*
- a. *A review of a complete set of electronic prescription coverage claims data reflecting all submitted claims, including information fields identified by the board.*
 - b. *A review of a list of all programs that have been implemented or modified during the audit period under subsection 1, and in connection with each program the auditor shall report on the cost, the cost savings or avoidance, member disruption, the process for and number of overrides or approvals and disapprovals, and clinical outcomes.*
 - c. *Recommendations for proposed changes to the prescription drug benefit programs to decrease costs and improve plan beneficiaries' health care treatment.*
3. *Information provided to the board under the contract provisions required under this section are confidential; however, the board may disclose the information to retained experts and the information retains its confidential status in the possession of these experts.*
4. *The board may retain an auditor of the board's choice which is not a competitor of the pharmacy benefits manager; a pharmaceutical manufacturer representative; or any retail, mail, or specialty drug pharmacy representative or vendor.*

Model Contract

NDPERS has provided in Appendix E a model contract, NDPERS proposes to use this contract as a starting point for discussions with bidders. Please review the attached and redline this contract with any changes you would propose as part of the terms of your proposal. Include the marked-up contract with your proposal submission. Firms offering this contract may be eligible for the preference provided in this section. Firms that substantially alter this contract or offer a new contract will not be eligible for this preference.

Contract Term and Renewals

The term of this contract is one year, January 1 through December 31, 2025. The NDPERS Board intends that the successful bidder will have the opportunity to renew this

contract five (5) additional times. The NDPERS Board will consider the following when determining whether to renew for subsequent plan years:

1. Satisfactory renewal price
2. Whether vendor performance has met the Board's expectations, and
3. Any other information the Board chooses to consider

The above are outlined in more detail NDCC 54-52.1-05. The renewal process will begin at the end of April when the PBM partner will submit an estimated renewal to the Board. The NDPERS Board may determine at this point to go out to bid or to defer a decision until August when the carrier will submit a formal renewal proposal and the NDPERS Board will decide to renew or go to bid.

IV. Overview of the NDPERS Program

NDPERS

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

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

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

PROGRAMS

To review the benefit programs administered by NDPERS visit the NDPERS website at:

<https://www.ndpers.nd.gov/>

Current EGWP Benefit

The following table provides a summary of the current (2024) NDPERS EGWP benefit, including cost-sharing information. This plan provides coverage across all stages of an individual's benefit. Please be advised that NDPERS will update the Initial Coverage Limit, Out-of-Pocket Threshold, and Catastrophic Coverage Benefit consistent with the CMS Standard Benefit in 2025.

Deductible

Pharmacy (Part D) deductible This plan does not have a deductible.

Prescription Drug Benefits

Initial coverage (after you pay your deductible, if applicable)

You pay the following until your total yearly drug costs reach **\$5,030**. Total yearly drug costs are the total drug costs paid by both you and our Part D plan.

Tier	Standard Retail Pharmacy	Standard Mail Order
30-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the remaining cost share	\$5 copay and you pay 15% of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the remaining cost share	\$15 copay and you pay 25% of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
4 (Specialty Tier)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
90-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the remaining cost share	\$5 copay and you pay 15% of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the remaining cost share	\$15 copay and you pay 25% of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
4 (Specialty Tier)	N/A	N/A

There may be generic and brand-name drugs, as well as Medicare-covered drugs, in each of the tiers. To identify commonly prescribed drugs in each tier, see the Prescription Drug Guide/Formulary. To view the most complete and current Drug Guide information online, visit www.humana.com/SearchResources, locate Prescription Drug section, select www.humana.com/MedicareDrugList link; under Printable drug lists, click Printable Drug lists, select future plan year, select Group Medicare under Plan Type and search for GRP49.

Coverage Gap

Most Medicare drug plans have a coverage gap (also called the "donut hole"). The coverage gap begins after the total yearly drug cost (including what our plan has paid and what you have paid) reaches **\$5,030**. After you enter the coverage gap, you pay a portion of the plan's cost for covered brand name drugs and covered generic drugs until your costs total **\$8,000**, which is the end of the coverage gap. Not everyone will enter the coverage gap.

Tier	Standard Retail Pharmacy	Standard Mail Order
30-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the cost of the remaining cost share	\$5 copay and you pay 15% of the cost of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the cost of the remaining cost share	\$15 copay and you pay 25% of the cost of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 25% of the cost of the remaining cost share	\$25 copay and you pay 25% of the cost of the remaining cost share
4 (Specialty Tier)	\$25 copay and you pay 25% of the cost of the remaining cost share	\$25 copay and you pay 25% of the cost of the remaining cost share

Tier	Standard Retail Pharmacy	Standard Mail Order
90-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the cost of the remaining cost share	\$5 copay and you pay 15% of the cost of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the cost of the remaining cost share	\$15 copay and you pay 25% of the cost of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 25% of the cost of the remaining cost share	\$25 copay and you pay 25% of the cost of the remaining cost share
4 (Specialty Tier)	N/A	N/A

Catastrophic Coverage

After your yearly out-of-pocket drug costs (including drugs purchased through your retail pharmacy and through mail order) reach **\$8,000**, you have a **\$0** copayment.

For complete details on the plan, please review the Benefits Overview at <https://www.ndpers.nd.gov/retired-members/insurance-plans-retired-members/health-insurance-plans-retired-members/medicare>

Services

Refer to Appendix F for details about current services the current EGWP provider is administering.

Eligibility

Retirees or surviving spouses who are age 65 or entitled to Medicare and are receiving a retirement benefit from the Public Employees Retirement System, the Highway Patrolmen's Retirement System, the Teachers' Insurance and Annuity Association of America (TIAA), the Job Service Retirement System, the Judges' Retirement System, the Teachers' Fund for Retirement (TFFR), or from a participating political subdivision are eligible to receive benefits. The NDPERS supplemental medical plan and prescription drug plan (EGWP) are currently bundled products.

Thus, a retiree electing to enroll with NDPERS must participate in both the NDPERS supplemental plan (Dakota Retiree Plan) and the NDPERS EGWP plan. NDPERS expects that this requirement will continue; however, if your proposed quote would change based on an "unbundled" benefit (or if the proposal would change based on higher or lower enrollment), please describe how your proposal would change in your Appendix C submission.

If the retiree elects to enroll, their Medicare eligible spouse is also eligible to enroll for coverage within the same timeframe, as long as the retiree provides coverage for the spouse on their medical supplemental plan. NDPERS does not conduct an annual open enrollment for Medicare eligible individuals.

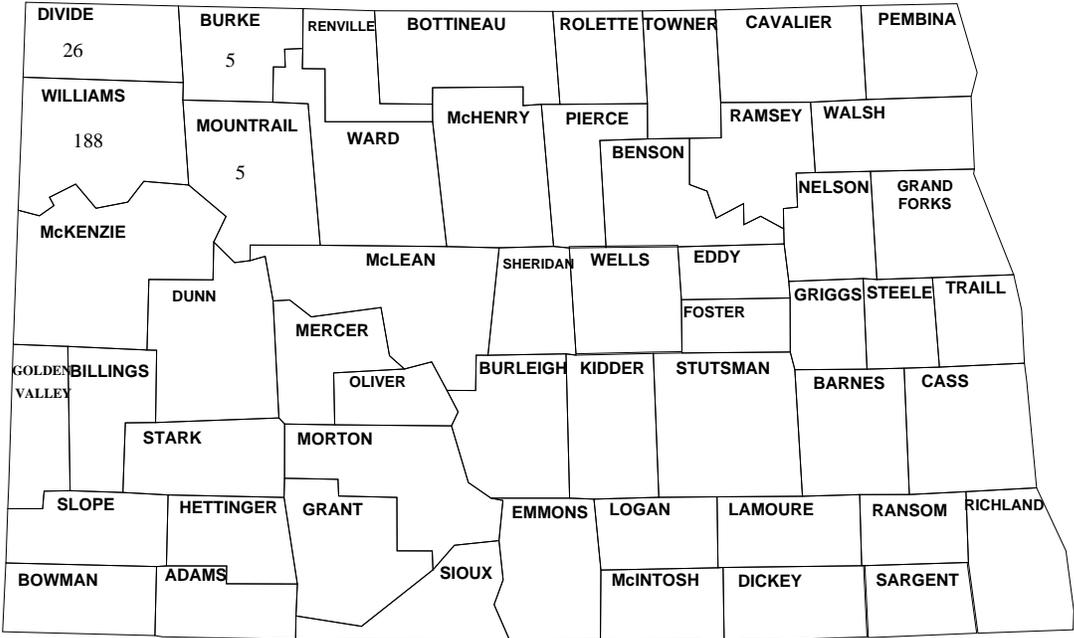
Applications for coverage must be submitted within 31 days of Medicare entitlement or an NDPERS-approved qualifying event. The retiree and/or spouse must have both Medicare A & B in order to be eligible for coverage. The NDPERS qualifying events are:

- Date of retirement, defined as either:
 - The last day of active employment if member does not defer his/her retirement benefit or take a lump-sum refund of his/her retirement account, or
 - Date of first retirement check if member deferred his/her retirement benefit.
- Member's 65th birthday or eligibility for Medicare;
- Member's spouse or eligible dependent's 65th birthday or eligibility for Medicare;
- The loss of coverage in a health plan sponsored or provided by member's employer or member's spouse's employer, if covered through spouse's employer group plan. This includes loss of coverage due to the death of, or divorce from, a spouse as well as completion of COBRA continuation coverage.
- Marriage
- Birth, adoption, or appointment of children for legal guardianship.

If a member or surviving spouse does not enroll within 31 days of any one of the above qualifying events or does not meet one of the above qualifying events, he/she will have forfeited his/her rights to enroll in the Plan.

Eligibility to receive benefits under the Benefit Plan is initially determined by the Plan Administrator and is subject to CMS requirements. NDPERS has the ultimate decision-making authority regarding eligibility to receive benefits.

Geographic Distribution of the Population



V. Confidentiality

All materials submitted in response to this RFP will become property of NDPERS and, upon receipt by NDPERS, are subject to the North Dakota open records law. If the bidder submits information in response to this RFP that it believes to be confidential financial, commercial, proprietary, or trade secret information, the bidder must:

- a. Clearly mark in the body of the proposal each provision that respondent believes to be confidential. Merely marking the entire page as confidential is not sufficient, and will not be recognized as an assertion of confidential information.
- b. Complete the table provided in Appendix H, using the format provided, identifying the specific information that the responder asserts is confidential, the page and section number(s), and the reason the responder believes the information is confidential, including a specific citation to the North Dakota Public Records Law. Only confidential or propriety information on this table will be considered confidential by NDPERS. All other information not on this table will be considered an open record by NDPERS.
- c. Offeror must submit a redacted copy of the proposal on a USB flash drive labeled "REDACTED" that accurately and completely redacts the information noted on the table in Appendix H.
- d. Attest whether the information sought to be protected has ever been previously publicly disclosed.
- e. Indicate the response has been reviewed by the responder's legal counsel and is so attested.

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

Appendix A: Response Template

1. Face Sheet

Name of Proposer's Firm: _____

Federal Tax I.D. Number: _____

Principal Place of Business: _____

Address: _____

City: _____

State and Zip: _____

Contact Person: _____

Title: _____

Telephone: _____

Fax: _____

E-mail address: _____

2. Minimum Requirements. Indicate in the table that you will meet these requirements. If you are not able to meet these requirements, your proposal may be dismissed from consideration.

#	Minimum Requirements	Response (Will Meet / Will Not Meet)
1	Bidder must be able to provide required coverages and services by January 1, 2025.	
2	Bidder must have all applicable licenses required by North Dakota or agree to obtain necessary licensure prior to the effective dates of coverage.	
3	Bidders must maintain compliance with all CMS requirements applicable to the Medicare Part D Prescription Drug Plan and EGWP+Wrap benefit.	
4	Bidder must support NDPERS with all legislative reporting requirements as a result of the Consolidated Appropriations Act (CAA) and any future transparency requirements.	
5	Proposals should match the existing plan design and member cost share.	
6	Premium and Administrative Fee Rates: Preliminary estimates for Medicare Part D EGWP+Wrap premiums (fully-insured proposals), administrative fees (self-insured proposals), CMS subsidies, and funding estimates (both fully-insured and self-insured) must be submitted to NDPERS no later than April 30 of the year preceding the contract renewal date	
7	Final renewals must be submitted to NDPERS no later than August 15 of the year preceding the contract renewal date	

#	Minimum Requirements	Response (Will Meet / Will Not Meet)
8	Bidders agree to comply with all provisions of the Health Insurance Portability Act of 1996 including, but not limited to providing certificates of creditable coverage. Bidders must also be in compliance with all HIPAA Privacy and HIPAA EDI requirements and be able to conduct all applicable employer/plan sponsor and provider transactions consistent with those requirements. Bidders will be expected to meet HIPAA security requirements when applicable to NDPERS. Bidders will also be expected to be in compliance with all ACA requirements.	
9	Bidder must be able to take current 834 electronic enrollment file (containing member eligibility) at no cost.	
10	Bidders agree, should they be selected, they will proactively manage the transition of coverage from the current carrier including the costs of managing the transition.	
11	Bidder must meet all requirements in the North Dakota Century Code including 54-52; 54-52.1 and all requirements in the North Dakota Administrative Code and other applicable State Laws. Bidder must also comply with all applicable statutes of the North Dakota Insurance Commissioner.	
12	Bidder must provide subject matter experts and other appropriate personnel to attend board meetings, legislative hearings, etc. as needed.	
13	Bidder must report insights and trends of plan back to NDPERS annually in form of an annual review meeting.	
14	Bidders have completed the requested information in Appendix H if they have asserted that any information is proprietary.	

3. Affidavit of Non-collusion

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the Medicare Part D EGWP+Wrap Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment, or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public: _____

My commission expires: _____

4. Conflicts of interest list

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

5. Compliance with Federal and State Laws Form

NDPERS — Federal and State Law Compliance Certification

1. The company shown below is or will be in compliance with Federal and State laws and does not knowingly violate North Dakota or United States Laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract; and

I certify that the company shown below is in compliance with items 1 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone Number: _____

Printed Name: _____ Title: _____

6. Location of Service Disclosure and Certification

STATE OF NORTH DAKOTA

LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION

LOCATION OF SERVICE DISCLOSURE
<p>Check all that apply:</p> <ul style="list-style-type: none"><input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of North Dakota.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal will be performed in part within North Dakota and in part within another state within the United States.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of<ul style="list-style-type: none">(1) the identity of the company (identify if subcontractor) performing services outside the United States;(2) the location where services under the contract will be performed; and(3) the percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location.

CERTIFICATION

<p>By signing this statement, I certify that the information provided above is accurate and that the location where services have been indicated to be performed will not change during the course of the contract without prior, written approval from the State of North Dakota.</p> <p>Name of Company: _____</p> <p>Authorized Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____ Telephone Number: _____</p>

Appendix B Medicare Part D EGWP+Wrap Questionnaire

To be considered and accepted, your organization must provide answers to the questions presented in this section. Each question must be answered specifically and in detail. An electronic copy of this questionnaire has been provided to facilitate your response. If you choose not to respond directly in this document and instead will submit a formatted response document, you must include both the question and the answer in your proposal response and the question order must be maintained.

Question responses should not include references to prior questions. Bidders may include additional information that you consider relevant or useful to NDPERS. If you elect to provide additional information on services in response to a question, please specifically indicate that it is not included in the covered services offered in your proposal.

If this proposal results in your company being awarded a contract and if, in the preparation of that contract, there are inconsistencies between what was proposed and accepted versus the contract language that has been generated and executed, any such discrepancy will be resolved in favor of the language contained in the proposal or correspondence relating to your proposal. Bidders are reminded that **any and all deviations must be clearly identified and described in the RFP and the deviations worksheet provided in Appendix I.**

The questionnaire is broken down into the following categories:

1. Organizational Information
2. EGWP Operations
3. Clinical Management
4. Pharmacy Network
5. Account Management
6. Member Services
7. Implementation

1. Organizational Information

- 1.1 Please provide the legal name of the company that will be providing the pharmacy benefit management services in this contract.
- 1.2 Provide a brief description of your organization, including the length of time you have been in business, corporate structure, services provided, number of employees, and location of headquarters.
- 1.3 Please provide your year-end Part D membership for 2022 and 2023. Please provide your membership for "Group" and "Individual" separately. Please explain significant changes to membership.
- 1.4 How many prescription drug plan clients (plan sponsors) do you provide EGWP services to?
- 1.5 How many prescription drug plan clients (plan sponsors) that you provide EGWP services to are via an MAPD plan and how many are stand-alone PDPs?
- 1.6 How many EGWP clients do you serve with 9,000 or more Part D members?
- 1.7 Do you provide EGWP services to any State clients? If so, please name them.
- 1.8 How many government/public sector clients engage you to provide EGWP services?
- 1.9 Please provide the number of fully-insured and self-insured EGWP clients.
- 1.10 What percentage of your self-insured EGWP clients have "pass-through" financial contracts and how many have "spread/traditional" contracts?
- 1.11 Are the EGWP services proposed in this contract owned or subcontracted? If subcontracted, please identify the subcontractor, how long you have subcontracted services, and the expiration date of the current agreement.
- 1.12 If you are proposing a fully-insured EGWP option, please name the risk-bearing entity responsible for the EGWP.
- 1.13 In addition to EGWP services, please identify any other services that are currently outsourced or subcontracted and the name of the vendor/partner.
- 1.14 Describe any acquisitions, mergers, or partnerships your organization has entered into in the last three (3) years or is planning to enter into during the term of this agreement.

- 1.15 Describe any intent to either move exclusively into Medicare or terminate your Medicare business within the next 2 years.
- 1.16 You must be able to substantiate your financial stability. Provide a copy of your audited financial statement or other financial information. Include, at a minimum, a Balance Sheet and a Profit and Loss Statement, together with the name and address of the bank(s) with which you conduct business and the public accounting firm(s) that audit your financial statements. Other sufficient information may include a written statement from a financial institution confirming the creditworthiness and financial stability of the organization.
- 1.17 Please provide the most recent ratings from the following agencies, if applicable.

Rating Organization	Rating	Date of Last Accreditation / Rating
A.M. Best		
Standard & Poor's		
Moody's		

- 1.18 Please describe the accreditations you maintain (URAC, JCAHO, NCQA).
- 1.19 Please provide information regarding your latest internal controls and security audit, including a SOC 1, Type II and/or SOC 2, Type II report resulting from your most recent Statement on Standards for Attestation Engagements No. 22 (SSAE 23) audit.
- 1.20 Describe your privacy protection and data security standards as they relate to HIPAA and HITECH.
- 1.21 How do you maintain data security across your various worksites? How do you manage access and data security for employees that work offsite/virtually?
- 1.22 Describe your organization's usage of Generative AI and the controls in place when using this technology.
- 1.23 Do you maintain controls so that no single employee can use, change, or access protected data without authorization?
- 1.24 Describe certifications and other external audits. Describe the test criteria used

- to ensure the standards are met. Have you completed external ethical hacking tests, etc.?
- 1.25 Have you had any security breaches involving electronically protected health information or personal financial information? If so, what was the scope of the breach? Were disclosures made to affected individuals? What changes in operations, if any, were implemented after the breach? Describe your capabilities to support the management of PHI data.
 - 1.26 Do you have insurance to cover a breach or loss?
 - 1.27 Are any of the services you are proposing to provide to NDPERS contracted outside the United States? If so, please describe any business services performed outside the United States and the financial impact, if any, of requiring those services to be provided within the United States.
 - 1.28 Are there any major system enhancements or conversions planned or being considered within the next 24 months (specifically of interest are adjudication platform migrations or other services that may impact member or provider service or CMS adherence)?
 - 1.29 Describe your business continuity and disaster recovery plans. Please be sure to address data security and file backup, claims processing, customer service centers, mail service, and specialty fulfillment operations.
 - 1.30 The NDPERS Part D plan product is “bundled” with its medical supplement plan. The board may consider unbundling the product and offering the Part D plan and the supplement independently. Please discuss your perspective on this including but not limited to:
 - 1.30.1 Do you think this would increase the possibility of adverse selection in the future?
 - 1.30.2 If fully insured, would it affect your underwriting for future premium renewals?
 - 1.30.3 Do you have any direct experience with clients that have addressed this issue, and, if so, what was the outcome of those discussions?
 - 1.31 Provide the following information on a maximum of three (3) of your EGWP clients for whom you provide services similar to those proposed in this proposal. References of similar size and scope to NDPERS are preferred. Also provide the following for two former governmental clients similar to NDPERS or larger, if possible.

- 1.31.1 Name of employer sponsoring plan and location
 - 1.31.2 Type of services provided to plan sponsor
 - 1.31.3 Plan inception date
 - 1.31.4 Length of time as a client
 - 1.31.5 Number of contracts and members participating in the plan
 - 1.31.6 Contact information (name, title, phone number, email address)
- 1.32 Include a description of your organization's short-term strategic initiatives and your long-term strategic business plan as it relates to retiree pharmacy benefits.
- 1.33 Describe how your organization differentiates itself from your competitors.
- 1.34 What makes your organization the best partner for NDPERS retirees? Do you have strategic advantages in North Dakota that make you a better choice for NDPERS than others?

2. EGWP Operations

- 2.1 What was the CMS star rating for your PDP for 2020, 2021, 2022, 2023, and 2024?
- 2.2 Have you been sanctioned by CMS in the past 5 years? If yes, please explain.
- 2.3 Please describe the Part D enrollment process under your PDP.
- 2.4 How do you manage missing or incorrect information during enrollment? Do you provide a process by which a member can correct missing or incorrect information in an expedited way? Is there a time limit for corrections?
- 2.5 If a member's information does not match CMS records and you contact the member for updated information, please discuss if there is a process to share the updated information back to NDPERS for correction in the NDPERS system.
- 2.6 Please describe your Part D disenrollment process for both voluntary and involuntary disenrollments. What is the timing for enrollments/disenrollments to go into effect?
- 2.7 Can NDPERS choose not to effectuate the optional involuntary disenrollments (e.g., failed to pay a premium on a timely basis, disruptive behavior, etc.)?
- 2.8 Please confirm that you will manage member communications related to terminations required by CMS

- 2.9 Please confirm that you will manage all CMS required pre-enrollment, post-enrollment, and renewal member communications.
- 2.10 Please confirm that Evidence of Coverage (EOC) and the Annual Notice of Change (ANOC) will be available to members prior to open enrollment.
- 2.11 Describe your handling of members who are eligible for the low-income premium subsidy available under Medicare Part D, specifically:
 - 2.11.1 How are the members identified, and how are they informed of their enhanced benefits?
 - 2.11.2 Please describe if the low-income premium subsidies will be paid directly to members.
 - 2.11.3 Will you process low-income premium subsidy refunds to members, and low-income cost-sharing refund requests at no additional cost?
- 2.12 Describe your recommended billing and premium payment cycle.
- 2.13 Describe your handling of members who are subject to the late enrollment penalty under Medicare Part D, specifically:
 - 2.13.1 How are the members identified, and how are they informed of their penalty?
 - 2.13.2 Please describe how the late enrollment penalty will be invoiced/collected directly from members.
 - 2.13.3 Will you process the collections at no additional cost?
 - 2.13.4 Outline your process for delinquent payments of the late enrollment penalty. Please describe your process for notifying the plan sponsor of members who are delinquent.
 - 2.13.5 How do you administer any reconsideration requests for members who are subject to the late enrollment penalty?
- 2.14 Please describe your ability to support NDPERS related to Income-Related Adjustment Amount (IRMAA) tracking and notifications (e.g., terminations, reinstatements)
- 2.15 Please describe how you work with CMS related to member risk scores.
 - 2.15.1 Describe the data reported to CMS.

- 2.15.2 How do you track member risk scores?
- 2.15.3 Do you reconcile member risk scores with CMS?
- 2.16 Describe your straddle claim process.
- 2.17 Describe your process and adherence to Prescription Drug Event (PDE) requirements with CMS.
- 2.18 What was your book-of-business PDE error rate in 2022 and 2023?
- 2.19 Describe your procedures to detect and prevent Fraud, Waste and Abuse (FWA) and ensure claims are paid accurately. Please outline such procedures and how you implement and monitor FWA in the plan operation.
- 2.20 Please confirm that you will manage all CMS required reporting requirements related to FWA compliance.
- 2.21 Please confirm that you will manage all CMS required reporting requirements related to medication therapy management (MTM).
- 2.22 Please confirm that you will manage all initial internal and external appeals compliant with CMS requirements.
- 2.23 Please confirm you will manage all grievances compliant with CMS requirements.
- 2.24 Please describe your process of reporting rebates consistent with CMS requirements.
- 2.25 Describe audit rights for EGWP plans. What types of audits will NDPERS be entitled to perform (e.g., financial guarantees, plan design, PDE reconciliation, subsidy payments, etc.)?
- 2.26 How is CMS compliance monitored on an ongoing basis? Please describe your remediation process associated with areas of non-compliance.
- 2.27 Describe the support that you give clients during CMS audits.

3. Clinical Management

- 3.1 Describe your ability to provide and maintain a CMS compliant formulary program for NDPERS.
- 3.2 What is the name of the formulary proposed for NDPERS?
- 3.3 Does the tier structure of your proposed formulary align with the current tier

- structure of the NDPERS plan? If not, please describe.
- 3.4 Please provide a copy of your proposed Formulary including NDC, drug name, and formulary tier in Excel format.
 - 3.5 How frequently is your proposed formulary updated?
 - 3.6 Does NDPERS have the ability to customize their formulary within the CMS limits?
 - 3.7 Does the proposed formulary require compliance with formulary utilization management controls (prior authorization and/or step therapy and/or quantity limits) or are all formulary and clinical utilization management programs an "add-on" after the formulary is selected?
 - 3.8 Does your formulary include all generics in the lowest cost tier and all brands in the preferred or non-preferred tiers or does your proposed formulary tier brand and generic products according to different criteria?
 - 3.9 Please confirm you will provide a copy of the MAC list, including NDC and drug prices upon request.
 - 3.10 If desired, could you grandfather existing members for a select period of time (1-3 fills, 1 year, indefinitely)?
 - 3.11 How are Part B drugs treated on your proposed formulary?
 - 3.12 How do you manage claims with overlapping coverage between Part D and Part B?
 - 3.13 Is Part B claims management included in your proposal?
 - 3.14 How are lifestyle drugs treated on your proposed formulary? Does NDPERS have the flexibility to include or exclude this category of drugs?
 - 3.15 Does your EGWP formulary account for AGS Beers Criteria® for Potentially Inappropriate Medication Use in Older Adults? If so, please explain if drugs are excluded or if there are other clinical controls.
 - 3.16 Please provide a list of your clinical programs, with a short description of each, and the associated cost for each program available to EGWP plans. This may be provided as a separate exhibit or included in this questionnaire. At a minimum, please include your Medication Therapy Management (MTM) program, prior authorization, step therapy, quantity limits, drug utilization review, opioid

management, diabetes management, compound management, and any distinct specialty drug management programs.

- 3.17 How do you target and enroll members in your MTM program?
- 3.18 Do you use any automated technology or predictive analytics to target members for MTM programs?
- 3.19 Please describe the outcomes reporting available for the MTM program.
- 3.20 Describe your quality assurance measures for your prior authorization process. What reports and tools do you provide for clients to assess if state/federal/NCQA quality measures (e.g., timeliness, overturn rates, accreditation) are met?
- 3.21 Explain your process around instances when your prior authorization team cannot immediately contact the provider (i.e., how often do you attempt to contact the provider, what methods do you use to contact the provider, what do you do when you get no response).
- 3.22 Please describe how members are notified of denials and the expiration of prior authorizations. How does the appeals process for prior authorization denials work?
- 3.23 Please discuss your strategies/programs related to the following:
 - 3.23.1 High-Risk Medications in the Elderly
 - 3.23.2 Statin Use in Persons with Diabetes
 - 3.23.3 Medication Adherence for Diabetes Agents
 - 3.23.4 Medication Adherence for Hypertension
 - 3.23.5 Medication Adherence for Hypercholesterolemia
- 3.24 Please discuss how you measure adherence; do you track medication possession ratio (MPR) and/or proportion of days covered (PDC)? Are there other factors you evaluate for certain therapeutic classes?
- 3.25 Do you align your performance measurement with national quality measures (e.g., HEDIS)?
- 3.26 Describe your clinical programs for managing high-cost, high-risk populations including but not limited to Cystic Fibrosis, Cholesterol, Diabetes, Growth Deficiency, Hemophilia, Hepatitis, HIV, Inflammatory conditions (e.g., Rheumatoid arthritis), Medical reconciliation post-discharge, Multiple Scleroses, Oncology, Pulmonary Conditions

- 3.27 Do you have a vaccine administration program? If so, please describe the specifics of the program including if there are fixed prices for vaccine administration.
- 3.28 Please describe your approach to specialty pharmacy. Focus on the aspects that differentiate your services in the market.
- 3.29 Are members contacted before each specialty fill? If so, is the outbound call made by a representative or an automated call?
- 3.30 What is the average length of time spent with a member prior to the first fill of their specialty medication?
- 3.31 Please describe any specialty patient assistance programs that are offered. Describe how you can maximize the value of these programs for the member and the plan.
- 3.32 If you are bidding on self-insured business, do you have any stop loss measures to protect specifically against specialty drug costs?

4. Pharmacy Network

- 4.1 What is the name of your proposed pharmacy network?
- 4.2 How many retail pharmacies are in your EGWP network nationally?
- 4.3 How many retail pharmacies are in your EGWP network in North Dakota?
- 4.4 How often is your pharmacy network vetted for quality? Which quality metrics are used in the vetting process?
- 4.5 Does your proposed pharmacy network have sufficient pharmacy participation across North Dakota to service the NDPERS membership considering there are no national chains in the State?
- 4.6 Please confirm your network offering meets CMS requirements, including convenient access to long-term care (LTC) pharmacies, adequate access to home infusion pharmacies, and convenient access to I/T/U pharmacies for American Indian enrollees.
- 4.7 Please confirm you are compliant with CMS requirements to offer standard LTC pharmacy network contracts to any pharmacy willing to participate in the LTC network so long as the pharmacy is capable of meeting the performance and service criteria defined by CMS.

- 4.8 If necessary, please describe any modifications to your network in North Dakota that will need to be made to meet requirements.
- 4.9 Describe your 90-day retail network in North Dakota (i.e., number and percent of pharmacies that participate in 90-day fills in the State).
- 4.10 Is the mail service pharmacy owned or subcontracted?
- 4.11 Where are the centers located that will service NDPERS?
- 4.12 What are the operating hours of the mail centers?
- 4.13 What is protocol if the mail center does not have a drug in stock? Do you have a program at the mail facility to align and bundle shipment for members with more than one prescription?
- 4.14 Does your mail service pharmacy perform any interventions that are not performed in retail or are the interventions the same?
- 4.15 Confirm you offer expedited delivery of mail order prescriptions and who is responsible for paying for the expedited service (the plan or the member).
- 4.16 Please provide the name of your primary expedited shipping vendor.
- 4.17 How many specialty pharmacies do you operate?
- 4.18 Are the specialty pharmacies owned or subcontracted?
- 4.19 Where are the specialty pharmacies located? Which specialty pharmacy would primarily service the NDPERS account?
- 4.20 North Dakota law restricts prescriptions from being required to be filled at a specialty pharmacy and must be permitted by plans to be filled at retail pharmacies within the State. Please confirm your proposal will be in compliance.
- 4.21 Please confirm your proposal includes an "open" specialty pharmacy network. If your proposed EGWP network is not an "open" specialty network, please describe how your specialty network does not limit access to Part D in such a manner that it contravenes convenient access protections.
- 4.22 Please confirm that specialty products shipped in error, damaged in shipment, lost in transit, left by courier without confirmation of receipt, and rendered unusable by NDPERS to due negligence or error in the delivery process will not be the financial responsibility of NDPERS. How are these types of shipment errors reported to NDPERS?

- 4.23 What percentage of Limited Distribution Drugs commercially available do you have access to?
- 4.24 What is the process for procuring any limited distribution drugs that you currently do not have access to?
- 4.25 Do you have infusion services? Can you arrange for nurses or other assistance on behalf of the member?
- 4.26 Please provide a copy of your proposed specialty drug list including national drug code (NDC), drug name, and formulary tier in Excel format. Please include on the specialty drug list, or provide as a separate list, indicators for limited distribution drugs and include a separate indicator if you are an authorized distributor for that product.

5. Account Management

- 5.1 Provide an overview of how the NDPERS relationship will be managed, both strategically and on a day-to-day basis. Include an organizational chart. Please provide the names, titles, locations, telephone numbers, and email addresses of the representatives listed below. For the account service individuals listed, provide brief biographical information, such as years of service with your company, experience as it relates to this proposal, and the number of clients for which they perform similar services:
 - 5.1.1 The individual representing your company during the proposal process;
 - 5.1.2 The individuals on your proposed implementation team;
 - 5.1.3 The individual assigned to overall contract management;
 - 5.1.4 The individual or team members responsible for day-to-day account management and service;
 - 5.1.5 The individual or team members responsible for Part D compliance;
 - 5.1.6 The individual or team members responsible for clinical oversight;
 - 5.1.7 Executive sponsor assigned to NDPERS (as applicable)
- 5.2 Will you agree to let NDPERS switch account team members if NDPERS is dissatisfied with service or fit?
- 5.3 If desired, can NDPERS update and maintain eligibility and check employee claim status online? Are there charges for access to and use of these tools?
- 5.4 Confirm your ability to accept a weekly enrollment file from NDPERS. Please see Exhibit 6 for a sample of the file layout.

- 5.5 Do you have any restrictions to the eligibility file layouts that you can support?
- 5.6 What is the timeframe that the file will be processed and loaded?
- 5.7 What happens if a record on file is rejected via the load process? What is the process to reconcile a file load? How quickly is the report/reconciliation regarding the file load returned to the Plan?
- 5.8 Please describe how you handle manual eligibility updates and the turn-around/timing of such updates.
- 5.9 Please provide samples of standard utilization management reports that can be accessed by NDPERS via your portal.
- 5.10 Please describe the frequency of the reporting and the flexibility NDPERS will have in determining when they receive reports.
- 5.11 Please confirm that you will provide a monthly prescription drug file feed, at no cost, to an NDPERS specified vendor to integrate with medical claims and laboratory data.
- 5.12 If requested, please confirm you will provide complete pharmacy claims data to other authorized third parties at no cost.
- 5.13 Please provide a sample of a quarterly/semi-annual review.
- 5.14 Please provide a sample of your rebate reconciliation report.
- 5.15 Please confirm that you will support NDPERS in the development of machine-readable files and RxDC reporting pursuant to Transparency in Coverage regulations. Provide a sample of both report formats.

6. Member Services

- 6.1 Where are the primary and secondary customer service centers located that would provide services to the NDPERS membership?
- 6.2 Describe your use of Interactive Voice Response (IVR).
- 6.3 Will you have a dedicated phone number for NDPERS?
- 6.4 Is your pharmacy call center available to members 24/7/365?
- 6.5 What is the protocol for reaching a customer service representative?

- 6.6 What is the average wait time to speak with a live person? Please provide a response for peak and non-peak hours.
- 6.7 How are the telephone calls serviced/routed for after-hours customer service calls (after normal business hours)?
- 6.8 Can a pharmacist be reached 24/7/365?
- 6.9 Is it a standard procedure to provide direct contact to NDPERS for referring member issues for resolution?
- 6.10 How would your call center assist requests for members or potential members who are comparing the NDPERS EGWP and need specific information on drug coverage prior to the new plan year starting or being enrolled in the plan?
- 6.11 Are multi-lingual services available? If so, which languages?
- 6.12 Please explain if training is provided to customer service representatives to accommodate individuals who have age-related deficiencies in perception and sensory limitations.
- 6.13 Does your customer service inquiry system allow representatives to record comments so other customer service representatives can view previous notes to assist members?
- 6.14 What is your first call resolution rate in the pharmacy call center?
- 6.15 How do you monitor customer service representatives for compliance and behavior? Do you record 100% of the calls?
- 6.16 Can a designated NDPERS representative listen to call recordings and receive call transcripts if requested?
- 6.17 Please describe the process associated with members who want to file a complaint about the behavior of a customer service representative. Please include how the complaint is made, resolved, and reported to NDPERS.
- 6.18 Do you provide single sign-on access to a link to third parties?
- 6.19 Please describe your member website and member portal that the NDPERS EGWP members would have access to.
 - 6.19.1 Can your website provide NDPERS-specific plan information?
 - 6.19.2 Does your website offer a pharmacy locator? Does the site offer information on retail stores that are open 24 hours/day?

- 6.19.3 Can members see their prescription drug claim history on the website?
- 6.19.4 Describe the web-enabled pricing comparison tools available to your members. Will the pricing tool account for NDPERS plan design?
- 6.19.5 Does your web-enabled pricing comparison tool provide pricing detail by pharmacy?
- 6.20 Do you have a smart phone mobile application or a mobile-optimized website?
- 6.21 Does your mobile app and/or mobile enabled website include the following:
 - 6.21.1 Formulary information
 - 6.21.2 Network pharmacy lookup
 - 6.21.3 Plan design information
 - 6.21.4 Member ID card
 - 6.21.5 Claims history
 - 6.21.6 Family claims history
 - 6.21.7 Drug price lookup by pharmacy
- 6.22 Are ID cards the sole means of determining member eligibility? If not, please describe.
- 6.23 Describe your Coordination of Benefits (COB) process for secondary claims processing/payment.
- 6.24 Please provide a sample member welcome packet.

7. Implementation

- 7.1 Please confirm you can provide a CMS-compliant transition for NDPERS given the expected contract start date of January 1, 2025.
- 7.2 Please provide a Gantt chart of the implementation process to ensure a January 1, 2025 start date. Please outline in detail the specific activities and tasks necessary to implement the NDPERS program, as well as indicate any CMS requirements of a carrier transition. Be specific with regard to the following:
 - 7.2.1 Amount of total time needed to effectively implement the program, including benefit testing, etc.
 - 7.2.2 Activities/tasks and corresponding timing
 - 7.2.3 Responsible parties and amount of time dedicated to implementation,

- broken out by vendor, current vendor, and NDPERS staff
- 7.2.4 Any transition activities required with incumbent carriers, including data transfers, and providing members adequate notice regarding current care or treatment plans at least 60 days prior to a change
 - 7.2.5 Length of time implementation team lead and members will be available to NDPERS
 - 7.2.6 Provide the data layouts that your organization would need for the various inputs during installation.
- 7.3 What files would you require from the legacy EGWP provider in order to transition the plan to your organization? If you are provided with prior pharmacy claims history, will you load open prior authorization files, specialty pharmacy claims histories, open mail order refills, and accumulator files to avoid member disruption? If yes, explain the recommended process to follow and data specifications for transfer of data.
- 7.4 Please describe how you will transition members that will be subject to formulary disruption (e.g., non-preferred/not covered drugs, prior authorization, step therapy, quantity limits).
- 7.5 Please confirm the customer service call center can be set up to go live on or before November 1, 2024, to be able to take calls and answer questions from NDPERS members related to benefits, formulary changes, enrollment, etc.
- 7.6 How much lead time is necessary for you to guarantee that ID cards will be received by members prior to the plan year effective date of January 1, 2025?
- 7.7 What is your member communication plan that you use for accounts? Provide a sample of similar communications used when transitioning an EGWP client from another carrier.
- 7.8 Can you provide training to NDPERS staff on EGWP administration and compliance?
- 7.9 Please confirm that you are in compliance with all relevant provisions of the Inflation Reduction Act for 2023, 2024, and 2025 including:
- 7.9.1 Prescription Drug Inflation Rebates (effective 2023)
 - 7.9.2 Beneficiary cost sharing for a monthly supply of insulin capped at \$35 (effective 2023)
 - 7.9.3 Part D vaccines have a \$0 copay (effective 2023)

- 7.9.4 Part D beneficiary premium growth capped at 6% annually (effective 2024)
- 7.9.5 Low-Income Subsidy extended to enrollees up to 150% of Federal Poverty Level (FPL) (effective 2024)
- 7.9.6 No beneficiary cost sharing in Catastrophic Phase. Liability shifted to plan (effective 2024)
- 7.9.7 Out-of-pocket spending capped at \$2,000 (effective 2025)
- 7.9.8 Replacement of the coverage gap discount program with the Manufacturer Discount Program (effective 2025)

Appendix C

North Dakota Public Employees Retirement System Request for Proposals Medicare Part D EGWP+Wrap

Please complete the tabs applicable to your cost proposal(s). The exhibits must be submitted in the prescribed format. Bidders may provide supplemental information but may not deviate from utilizing the provided Excel worksheets.

Fully-Insured Cost Proposals must complete the following exhibits:

1. Fully-Insured EGWP Premium
3. Specialty Drug List
5. Pricing Questionnaire

Self-Insured Cost Proposals must complete the following exhibits:

2. Self-Insured EGWP Pricing
3. Specialty Drug List
4. Self-Insured EGWP Cost Estimate
5. Pricing Questionnaire

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap
Fully-Insured Proposal

YOUR COMPANY NAME: _____

- Premium estimate to be based on current enrollment and plan design
- Product should be CMS-endorsed, insured PDP product with fully-insured wrap-around coverage that covers any gaps between what is covered by the PDP product and the existing plan benefits available to qualifying members
- Bidders are required to populate the underwriting template below illustrating rate development.

Line	Premium Component	Response	Comments
1	Estimated Incurred Allowed Claims		
2	Member Months		
3	Experience Period Allowed Claims PMPM [(1) / (2)]		
4	Trend (Drug Cost & Utilization)		
5	Benefit Adjustment Factor (Plan design, clinical mgmt, etc.) *		
6	Rating Period Allowed Claims PMPM [(3) x (4) x (5)]		
7	Member Cost Share PMPM		
8	Manufacturer Discount PMPM		
9	CMS Federal Reinsurance Payment		
10	Rating Period Plan Paid PMPM [(6) - (7) - (8) - (9)]		
11	Rebate PMPM		
12	Plan Payments PMPM [(10) - (11)]		
13	Administration		
14	Fees and Taxes		
15	Risk Charges		
16	Profit		
17	Gross Premium [(12) + (13) + (14) + (15) + (16)]		
18	CMS Direct Subsidy (Risk Adjusted)		
19	Calculated Member Premium [(17) - (18)]		

* Clearly explain what is incorporated into any adjustment factor (if applicable)

List all clinical management programs assumed to be included (e.g. step therapy, prior authorization, etc.)

Comments/Assumptions/Caveats

List all pricing assumptions associated with changes to the IRA in 2025

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Self-Insured Proposal

YOUR COMPANY NAME: _____

Self-insured EGVP

I. Guaranteed Ingredient Discounts	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	
30 Day Retail							
Brand (AWP - %)							
Generic (MAC & Non MAC - %)							
90 Day Retail							
Brand (AWP - %)							
Generic (MAC & Non MAC - %)							
Mail Order							
Brand (AWP - %)							
Generic (MAC & Non MAC - %)							
Specialty (Retail & Mail)							
Guaranteed Overall Effective Discount							
II. Guaranteed Dispensing Fees (Per Paid Script)	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	
30 Day Retail							
Brand							
Generic							
90 Day Retail							
Brand							
Generic							
Mail Order							
Brand							
Generic							
Specialty (Retail & Mail)							
Guaranteed Overall Effective Discount							
III. Administrative Fees	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	
EGVP Administration Fee (PMPM)							
IV. Guaranteed Minimum Manufacturer Derived Revenue	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	
30 Day Retail							
Per Brand Script							
Estimated Annual Manufacturer Revenue Earned (Total)							
90 Day Retail							
Per Brand Script							
Estimated Annual Manufacturer Revenue Earned (Total)							
Mail Order							
Per Brand Script							
Estimated Annual Manufacturer Revenue Earned (Total)							
Specialty (Retail & Mail)							
Per Brand Script							
Estimated Annual Manufacturer Revenue Earned (Total)							
V. Other Fees	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	
Enrollment Management (including eligibility submissions, initial enrollment, age-in members)							
All required reporting to CMS							
Medicare required member communications							
Coordination of benefits between Part D and the wrap plan							
CMS required Medication Therapy Management							
File feed transmission to 3rd party (consultant, data warehouse, wellness or disease management, accumulators, stop loss) (per feed per transmission basis)							
Prior claim history, prior authorization, specialty claims histories, open mail order refills, accumulator file intake fees (to accept from incumbent during implementation)							
Electronic prescribing (per claim basis)							
Administrative Prior Authorization (per PA basis)							
Clinical Prior Authorization (per PA basis)							
Custom Reporting Programming (per hour basis)							
Other (please list)							
VI. Add-On solutions	2025	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5	Description of
List out all potential clinical solutions available to NDPERS along with their fees and a description of the program							

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Self-Insured Proposal

YOUR COMPANY NAME: _____

Plan cost estimate for 2025

Please assume the parameters set forth in the RFP (your network, your financial proposal, your proposed formulary, your clinical programs)

Include, as appropriate, drug interchanges as well as utilization changes based on formulary or utilization management controls

2025	Prescription Count	AWP	Ingredient Cost	Dispensing Fees	Rebates	Administration Fees	Estimated CMS Payments*	Total Cost
30 Day Retail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
90 Day Retail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
Mail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
Specialty								
Total	0	\$ -	\$ -	\$ -				
Limited Distribution Drugs								
Total	0	\$ -	\$ -	\$ -				
Excluded Claims								
Total	0	\$ -	\$ -	\$ -				
Total	0	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -

*Includes Direct Subsidy, Coverage Gap Discount Payments, Federal Reinsurance

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Fully-Insured & Self-Insured Proposals

YOUR COMPANY NAME: _____

#	Question	Required Response (Confirmed / Not Confirmed)	Details / Explanation
1	Please confirm your proposal is based on the plan design included with this RFP and the proposal parameters.		
2	Please confirm your proposal does not require any plan design changes to qualify for the terms in your offer (e.g., specific differential between preferred and non-preferred brands to qualify for rebates).		
3	Please confirm your self-insured proposal pricing is based on a 1-year contract with 5 renewal options.		
4	Please confirm you will use Medi-Span as the sole source of AWP (excepting a change in the industry that would require a change).		
5	Please confirm Usual and Customary (U&C) will be defined as: the retail price at a retail pharmacy on the date the drug is dispensed based on the NDC-11 dispensed.		
6	Please confirm that Average Wholesale Price (AWP) will be defined as Medi-Span's unit price for the 11-digit national drug code (NDC) of the product dispensed on the date-of-service for the quantity dispensed.		
7	Please confirm "Generic Drug" will be defined according to Medi-Span classification (Medi-Span Multisource Code field is a "Y" indicator).		
8	Please confirm "Brand Drug" will be defined according to Medi-Span classification (Medi-Span Multisource Code field is a "M", "N", or "O" indicator).		
9	Please confirm that once a drug product is defined as "Generic" or "Brand" at adjudication, it will remain classified as such for purposes of all financial measurements including AWP discounts, manufacturer revenue reporting and payment, management reporting and guarantee reconciliation.		
10	Please confirm that rebates will be defined as all revenue received from pharmaceutical manufacturers, whether from the manufacturer directly, rebate aggregator, or other third party and will include all monies received as a result of the formulary utilization which includes but is not limited to rebates, manufacturer administration fees, inflation or price protection payments, and pro rata share of monies received for services provided to manufacturers that depends on the inclusion of NDPERS' claim utilization or data.		

11	Please confirm postage increases will not be passed on to NDPERS.		
12	Please confirm you have indicated on the specialty drug list which drugs have exclusive or Limited Distribution classification.		
13	Please confirm you have included limited distribution drugs in the specialty drug guarantees OR have provided separate discount and rebate guarantees for exclusive or limited distribution drugs.		
14	Please confirm 100% of revenue earned from manufacturers will be passed through to NDPERS, which includes but is not limited to rebates, manufacturer administration fees, inflation or price protection payments, and pro rata share of monies received for services provided to manufacturers that depends on the inclusion of NDPERS's claim utilization or data.		
15	Please confirm that all revenue resulting from price protection / inflation protection contracts will be included in the 100% pass-through requested for NDPERS?		
16	Please confirm that manufacturer revenue collected as a result of utilization from biosimilars or limited distribution drugs will be paid to NDPERS.		
17	Please confirm that your rebate guarantees are not conditioned on utilization of Hepatitis C products.		
18	Please confirm that your rebate guarantees account for known patent expirations and the proposed guarantees will not be modified on the basis of patent expirations that can be reasonably known at the time of this proposal.		
19	Please confirm that OTC exclusions (to the extent applicable) are not applicable to insulin or diabetic supplies (such as test strips) for purposes of rebate guarantees.		
20	Please confirm that if changes are made to the safe harbor provision governing rebates is eliminated, or if other regulatory changes are implemented that impact the payment of manufacturer revenue to the plan sponsor, the contract resulting from this RFP may be re-opened.		
21	Please confirm that for purposes of discount and rebate guarantees, all HIV medications will be included as "specialty."		
22	Please confirm that for purposes of discount and rebate guarantees, all transplant medications will be included as "specialty."		
23	Please confirm that rebate guarantees are not subject to aggregate day supply minimums and will be reconciled according to distribution channel.		
24	Please confirm rebate guarantees will not include any funds collected through patient assistance programs.		
25	Please describe any requirements, terms, exclusions, or other caveats related to your rebate guarantee.		

26	What percentage of all generics are included on your MAC list?		
27	Please confirm generic discount guarantees are inclusive of MAC and Non-MAC discounts.		
28	Please confirm that the MAC list for mail order will be equivalent or lower price than the MAC list for retail claims.		
29	Please confirm that dispensing fees are assessed on paid claims only and not reversed or rejected claims.		
30	Please confirm member cost share will always be the lowest of the U&C, MAC, AWP discount, or member cost share.		
31	Please confirm that any coupons used by members will be excluded from ingredient cost calculation.		
32	Please confirm guarantees will include "Zero Balance Due" (100% member paid) claims at the ingredient cost prior to application of the member cost share and shall not be counted as AWP-100%.		
33	Please confirm that guarantees will exclude all claims that adjudicate at U&C.		
34	Please confirm there is no dispensing fee assessed for U&C claims.		
35	In your extended supply retail networks (90-day network) are there different pricing provisions based on pharmacy (e.g. a subset of the pharmacies in the 90-day network receive "mail equivalent" pricing)? Please describe any differences that would be applicable to your pricing proposal.		
36	Please confirm that discount guarantees are not subject to aggregate day supply minimums and will be reconciled according to distribution channel.		
37	Please confirm your proposal includes either a specialty drug list with drug level discounts or an overall effective specialty discount guarantee.		
38	How will newly introduced specialty drugs be included in the specialty drug discount guarantee? Will new specialty products automatically default to a minimum discount in the therapeutic class?		
39	Please describe how a claim with a DAW codes (0 through 9) are reconciled in your Brand/Generic discount guarantees.		
40	Please confirm the proposed discounts, dispensing fees, and rebates are guaranteed by distinct component within the retail, mail, and specialty distribution channels such that a guarantee surplus in one guarantee component is not offset by a shortfall in another guarantee component.		
41	Please confirm that any shortfall determined during guarantee reconciliation will be paid to NDPERS on a dollar-for-dollar basis with no maximum limit of liability.		

42	Describe your reconciliation process and timing (in terms of reconciling a manufacturer revenue guarantee against actual payments)		
43	Please confirm that pricing guarantee reconciliation will take place within 90 days of the close of the contract year (including discounts, dispensing fees, admin fees (as applicable), as well as a preliminary analysis of manufacturer revenue paid compared to guarantees with a full reconciliation of manufacturer revenue after all manufacturer revenue has been collected and remitted from the manufacturers (no later than 270 days after the end of the contract year)).		
44	Do you collect point-of-sale (POS) price concessions from pharmacies or pay incentives to pharmacies connected to performance criteria? If so, please describe the performance measures tied to payments.		
45	Do you collect retroactive DIR fees or assess copay clawbacks from pharmacies in your network? If so, please describe the situations where these fees or clawbacks are assessed.		
46	If you collect Direct or Indirect Revenue (DIR) from pharmacies in the network, is that DIR passed through to NDPERS in a self-insured contract?		

Appendix D

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

Please complete each of the tabs in this workbook. The exhibits must be submitted in the prescribed format. Bidders may provide supplemental information but may not deviate from utilizing the provided Excel worksheets.

The Network & Formulary Match consists of the following components and related exhibits:

1. EGWP Network Match
2. EGWP Network Access
3. EGWP Formulary Match

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Using the pharmacy ID number, please insert the pharmacy name and answer if the pharmacy is in your proposed broad national network (Y) or if it is out of network (N)

Unique ID #	Pharmacy NABP	Pharmacy NPI	Pharmacy Name	Pharmacy City	Pharmacy State	Pharmacy Zip	In Network (Y/N)	Notes (Closed, Not Found, etc.)
-------------	---------------	--------------	---------------	---------------	----------------	--------------	------------------	---------------------------------

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Please provide the GeoAccess summaries in the table below as well as back-up detail (back-up detail in electronic submission only, no hard copies) for employees who fall both within and outside the access standards. Your match should include all valid zip codes in each of the counties in North Dakota that your network serves and in which participants reside.

Please summarize the results of your analysis in the table below.

Retail Pharmacy Access	Participating Retail Pharmacy Network Standard	NDPERS Members Categorized as "Urban", "Suburban", "Rural"		NDPERS Members that Meet the Convenient Access Standard		NDPERS Members that Do Not Meet the Convenient Access Standard	
		Number of Members (#)	Percent of Members (%)	Number of Members (#)	Percent of Members (%)	Number of Members (#)	Percent of Members (%)
Urban	90% of members within 2 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Suburban	90% of members within 5 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Rural	70% of members within 15 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Total		0	#DIV/0!	0	#DIV/0!	0	#DIV/0!

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Indicate the tier on your proposed open formulary for each NDC.

You must include a "key" or your responses will not be considered (e.g. 1 = Tier 1 (Generic), 2 = Tier 2 (Preferred Brand), 3 = Tier 3 (Non-Preferred Brand), 4 = Not Covered)

Unique ID #	NDC	Drug Product Label Name	Tier on Proposed Formulary (Tier as most recent update)	Comments
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Appendix E
PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT

THIS PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT (hereinafter referred to as the "Agreement") is entered into this _____ day of _____ 20__, between _____ (hereinafter referred to as "PBM"), with principal offices at _____, and the State of North Dakota acting through its Public Employees Retirement System(NDPERS) ("the Plan Sponsor"), and North Dakota Public Employees Retirement System (NDPERS) ("the Plan Administrator"), with principal offices at 1600 East Century Avenue, Suite 2, Bismarck, North Dakota 58502-1657 (hereinafter referred to as "NDPERS"). [PBM to complete all "blanks" in paragraph, other than date]

WHEREAS, NDPERS wants to offer cost-effective prescription benefit services and cost-effective dispensing of prescription drugs and other covered products to its eligible employees and their eligible beneficiaries and dependents; and

WHEREAS, PBM has contracted with retail [mail order and specialty] pharmacies [and operates its own mail order and specialty drug pharmacy subsidiaries] for the purpose of providing prescription benefit services to its clients, including NDPERS; [PBM to select correct text and delete incorrect text, here, and in all other similar provisions in contract where orange font provides alternatives] and

WHEREAS, NDPERS desires to engage PBM to perform pharmacy benefit management services relating to (i) prescription claims processing; (ii) eligibility verification; (iii) negotiation and execution of contracts with retail [mail and specialty] pharmacies [and operation of its own mail order and specialty drug pharmacy subsidiaries]; (iv) negotiation and execution of contracts with pharmaceutical manufacturers, wholesalers, distributors, and other third parties to obtain favorable Financial Benefits for its clients, including NDPERS [or negotiation and execution of a contract with a third-party rebate aggregator to obtain favorable Financial Benefits for its clients, including NDPERS]; (v) creation of cost-effective and safe formularies for its clients, including NDPERS; (vi) management and administration of other prescription drug programs to benefit its clients, including NDPERS; and (vii) performance of other pharmaceutical benefit management services identified herein; and

WHEREAS, PBM agrees to perform all such services on a fully transparent basis in accordance with the terms of this Agreement, enabling NDPERS (and its agents) to have complete and full access to all information necessary to determine and verify that PBM has met all terms of this Agreement, and satisfied all Pass-Through Pricing requirements set forth herein; and

WHEREAS, PBM and NDPERS agree to satisfy all terms set forth in this Agreement subject to the terms and conditions hereof:

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, PBM and NDPERS hereby agree as follows:

ARTICLE 1 - DEFINITIONS

Additional Fee(s) – The term “Additional Fee(s)” shall have the meaning set forth in Section 4.3 of the Agreement.

Administrative Fee(s) - The term “Administrative Fee(s)” shall have the meaning set forth in Section 4.2 of the Agreement.

ANOC (Annual Notice of Change) – The term “ANOC” shall mean the Annual Notice of Change that is required by CMS and will be provided by PBM to the then-current Members enrolled in a Medicare Part D Plan through NDPERS. The ANOC will be timely provided, as required by federal regulations and guidelines, and will provide the Member with all required change notifications that will be made in benefits and costs, including without limitation, cost shares, if any. The ANOC will also include a new, and if necessary, revised EOC, LIS Rider, Formulary and Wrap Certificate of Coverage, if any, for the new Medicare Part D Contract Year.

Audit(s) - The term “Audit(s)” shall mean (1) NDPERS’ assessment of PBM’s satisfaction of all terms under this Agreement; and (2) PBM’s verification that all third parties referenced in this Agreement (including but not limited to Participating Pharmacies, the Mail Order Pharmacy, the Specialty Drug Pharmacy and Pharmaceutical Manufacturers) have satisfied their obligations under this Agreement.

Average Annual Guarantee(s) - The term “Average Annual Guarantee(s)” shall have the meaning set forth in Exhibit A of the Agreement.

Average Wholesale Price or AWP - The term “Average Wholesale Price” or “AWP” shall mean the average wholesale price of a prescription drug or medication dispensed, on the date the prescription or medication is dispensed, as set forth in the most recent edition of the Medi-Span pricing guide or supplement as of that date. The applicable AWP for all prescriptions dispensed at retail pharmacies, the Mail Order Pharmacy and the Specialty Drug Pharmacy shall be based on (i) the Unit AWP using the NDC from which the medication was dispensed (not the package size of the prescription dispensed); and (ii) the actual manufacturer’s AWP (repackager AWP’s shall not be substituted for manufacturer AWP’s); and (iii) the actual Unit prescribed (and an alternative Unit measure shall not be substituted, such as capsules for tablets, or tablets for capsules.). PBM shall not process any repackagers’ AWP’s in connection with any Claims.

In the event there is a change in the marketplace in connection with AWP reporting or any methodology impacting pricing and/or guarantees (including but not limited to a change in Medi-Span’s information fields related to brand drug and generic drug classification), the Parties will be obligated to meet and agree upon changes in the pricing terms and guarantees contained in the Agreement so as to enable PBM and NDPERS to maintain the same financial relationship and obligations as set forth in the Agreement. PBM may not make any changes in pricing terms or guarantees in the Agreement unless NDPERS agrees to such changes in writing, and the changes are memorialized as a written amendment to the Agreement.

Benefit Change Form or BCF - The term “Benefit Change Form” or “BCF” shall mean the agreed upon form to make modifications to NDPERS’ Benefit Plan Design. NDPERS’ Benefit Change Form must be executed by NDPERS. PBM and NDPERS will each maintain a file of all Benefit Change Forms, but PBM will provide NDPERS with said BCFs upon request for Audits.

Benefit Effective Date or Medicare Part D Benefit Effective Date – The term “Benefit Effective Date” or Medicare Part D Benefit Effective Date shall mean January 1, 2025, which is the date when NDPERS will begin receiving services for its Medicare Part D Members from PBM’s Medicare Part D Insurance Company.

Benefit Plan Design(s) or Plan Design(s) - The term “Benefit Plan Design(s)” or “Plan Design(s)” shall mean all matters described in Exhibit D to the Agreement and/or in a Benefit Specification Form or Benefit Change Form.

Benefit Specification Form or BSF - The term “Benefit Specification Form” or “BSF” shall mean the form that is completed by NDPERS that specifies the terms and provisions of NDPERS’ Benefit Plan Design(s) and the configuration of system edits, including but not limited to which prescription and OTC medications are covered by NDPERS (and/or are not covered); Copayments and Coinsurance requirements; the Medicare Part D Formulary selected; the Benefit Plan Design tier structure; any limitations on coverage such as deductibles; and any Programs selected for any Plan, together with the relevant protocols and services that must be rendered in connection with each Program.

Each Benefit Specification Form must be executed by PBM and NDPERS. PBM and NDPERS will each retain a copy of all Benefit Specification Forms, but PBM will provide NDPERS with said Forms upon request for Audits.

Biosimilar – The term “Biosimilar” shall mean a type of biological product that is licensed by the FDA because it is similar to an already FDA approved biological product, the reference product, and has been shown to have the same clinical outcomes as the reference product. Biosimilar products will be included as Specialty Drug(s) in this Agreement.

Bona Fide Service Fees – Bona fide service fees means fees paid by a manufacturer to an entity, that represent fair market value for a bona fide, itemized service actually performed on behalf of the manufacturer that the manufacturer would otherwise perform (or contract for) in the absence of the service arrangement, and that are not passed on in whole or in part to a client or customer of an entity, whether or not the entity takes title to the drug. The fee includes, but is not limited to, distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative service agreements and patient care programs (such as medication compliance programs and patient education programs).

Brand Drug(s) - The term “Brand Drug(s)” shall mean the following: The Multisource Code field in Medi-Span contains a “M” (co-branded product), “O” (originator brand) (except where the Claim is submitted with a DAW Code of “3”, “5” or “6”, in which case it shall be considered a Generic Drug), or a “N” (single source brand). The Parties agree that when a drug is identified as a Brand Drug, it shall be considered a Brand Drug for all purposes by PBM, including but not limited to adjudicating the Claim, reimbursing the relevant pharmacy, invoicing NDPERS, determining the Copayment or Coinsurance to be paid by the Member, calculating the satisfaction of Average Annual Guarantees as further described in Exhibit A of the Agreement, calculating the satisfaction of Financial Benefit Guarantees as further described in Exhibit A of the Agreement, and calculating the satisfaction of generic fill rates (if any).

Claim(s) - The term “Claim(s)” shall mean all claims transmitted or sent to PBM by any pharmacies or by Members as a result of dispensing Covered Items to Members, including reversed and rejected Claims.

Claim Adjudication System – The term “Claims Adjudication System” means PBM’s claims processing system.

Claim Processor Fee(s) or Click Fee(s) - The term “Claim Processor Fee(s)” or “Click Fee(s)” shall mean a payment made by retail pharmacies to PBM, or a fee withheld by PBM from retail pharmacy reimbursement when PBM processes an aggregated payment to a retail pharmacy. Claim Processor Fees shall be considered Financial Benefits or DIR and shall not be factored into Average Annual Guarantees for either Ingredient Costs or Dispensing Fees.

CMS (Centers for Medicare & Medicaid Services) – The term “CMS” references the federal agency within the United States Department of Health and Human Services that is responsible, among other matters, for administering various Medicare Plans.

Compound Drug(s) - The term “Compound Drug(s)” shall mean a drug that needs to be made by a pharmacist because it is not commercially available in the required form and strength. A Compound Drug must consist of two or more solid, semi-solid or liquid ingredients, at least one of which is a Covered Item. PBM is obligated to provide Pass-Through Pricing for every Compound Drug. PBM’s invoiced Ingredient

Cost to NDPERS for each Compound Drug shall be the same as PBM's reimbursed Ingredient Cost to the retail pharmacy (and both shall be net of any Copayments, Coinsurance, and deductible, and if relevant, any LICS or Medicare Part D coverage gap rebate) PBM may also invoice NDPERS for the precise professional or compounding fee that PBM has paid to the dispensing pharmacy, if any. However, PBM shall not be allowed to make any profit spread on any Compound Drugs and shall pass through to NDPERS the exact Ingredient Cost and professional or compounding fee that PBM pays the dispensing pharmacy. Compound Drugs are excluded from the calculation of all Average Annual Guarantees, Minimum Guaranteed Discounts, the Default Discount Guarantee, Maximum Guaranteed Prices, and Financial Benefit Guarantees.

In submitting a Benefit Specification Form or a Benefit Change Form, NDPERS may state that if any pharmacy transmits a Claim for a Compound Drug where the total Ingredient Cost is above a dollar amount specified in the Form (e.g., \$100), PBM will be required to (a) conduct a Prior Authorization evaluation to evaluate and verify that the cost of the Compound Drug is appropriate, and/or (b) block the dispensing of the Compound Drug.

Contract Year – The term “Contract Year” shall mean for NDPERS the period from January 1st to December 31st in any year.

Cost Share – The term “Cost Share” shall mean the amount of money that a Member must pay to the pharmacy to obtain a Covered Item in accordance with the terms of the Benefit Plan Design of NDPERS.

Copayment(s) or Coinsurance - The term “Copayment(s)” or “Coinsurance” shall mean those amounts collected from Members by the relevant pharmacy pursuant to NDPERS' Benefit Plan Design as specified in its Benefit Specification Form, and if relevant, as amended in a Benefit Change Form. “Copayment” shall mean any flat amount that a Member is required to pay. “Coinsurance” shall mean any percentage amount that a Member is required to pay.

Covered Item(s) - The term “Covered Item(s)” shall mean the covered drugs, supplies and small durable medical equipment (“DME”) items listed in NDPERS' Benefit Plan Design, as specified in its Benefit Specification Form, and if relevant, as amended in a Benefit Change Form. PBM understands and agrees that it shall not be entitled to invoice or collect reimbursement from NDPERS for any Covered Item that is not included in, or that is excluded from, NDPERS' list of Covered Items.

Default Discount Guarantee - The term “Default Discount Guarantee” shall mean the automatic discount that must be provided by PBM on any and all new-to-market Specialty Drugs, as further described in Exhibit A of this Agreement.

Direct and Indirect Remuneration or DIR - The term “Direct and Indirect Remuneration” or “DIR” is defined to mean any and all rebates, subsidies, or other price concessions from any source (including manufacturers, pharmacies, enrollees, or any other person) that serve to decrease the costs incurred by NDPERS (whether directly or indirectly) for Medicare Part D Covered Items, including without limitation: discounts, chargebacks, rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, legal judgment amounts, settlement amounts from lawsuits or other legal action, and other price concessions or similar benefits. DIR shall always have the same definition as the definition identified by CMS.

Dispensed Claim(s) - The term “Dispensed Claim(s)” shall mean each Claim that is actually dispensed to a Member. With respect to any Claim, if the Claim is not dispensed, but is instead denied, rejected or reversed, the Claim shall not constitute a Dispensed Claim. If the Claim is adjusted in any way, the original Claim and the adjusted Claim(s) shall together constitute only one Dispensed Claim. If a Claim is partially filled, and subsequently the remainder of the Claim is filled, the fills will together constitute only one Dispensed Claim. PBM may only invoice NDPERS for Dispensed Claims, may not invoice NDPERS for denied, rejected or reversed Claims, and may invoice only once for adjusted or partially filled Claims.

Dispensing Fee(s) - The term “Dispensing Fee(s)” shall mean the per prescription dispensing fee paid by the PBM to the dispensing pharmacy. Dispensing Fees shall only be invoiced to NDPERS for Dispensed Claims and shall be based on Pass-Through Pricing for retail pharmacy and Mail Order Pharmacy dispensed drugs, with said Pass-Through Pricing satisfying the Average Annual Guarantees for Dispensing Fees identified in Exhibit A of the Agreement. Dispensing Fees for Specialty Drugs dispensed from the Specialty Drug Pharmacy shall be based on the stated Dispensing Fee identified in Exhibit A of the Agreement. For every Dispensed Claim that PBM reimburses to the retail pharmacy based on U&C, PBM shall allocate the entire U&C charge to the Ingredient Cost and shall not allocate any of the U&C charge to the Dispensing Fee.

Effective Date - The term “Effective Date” shall mean the date upon which this Agreement becomes effective, namely the date upon which it has been executed by all Parties.

EGWP Plan – The term “EGWP Plan” shall mean an Employer Group Waiver Plan under Medicare Part D that is provided by PBM’s Medicare Part D Insurance Company via a Medicare Employer Group Policy (“EGWP Policy”), for a fully-insured plan, or a Medicare Employer Group Agreement (ASO) for a self-insured EGWP plan.

Eligibility Change(s) - The term “Eligibility Change(s)” shall mean a change in Member eligibility as reported to PBM by NDPERS whether in paper or electronic format.

Eligibility File – The term “Eligibility File” shall mean the file created by NDPERS and transmitted to PBM listing the names and other pertinent information necessary for PBM to enroll Members, terminate enrollment, or to make changes to existing Member records.

EOC (Evidence of Coverage and Disclosure Information) – The “EOC” is a document based on the CMS provided standardized model, supplied by PBM, approved by NDPERS, and thereafter issued by PBM to enrolled EGWP or EGWP + Wrap Members. The EOC discloses and sets forth the prescription drug benefits and terms and conditions of coverage to which NDPERS’ Members are entitled.

Exhibit(s) - The term “Exhibit(s)” shall mean an Exhibit to the Agreement, and all written amendments to any such Exhibits. Any Agreement Exhibit must be mutually agreed upon in writing by PBM and NDPERS.

Extended AWP - The term “Extended AWP” shall mean the product of the Unit AWP for a Dispensed Claim multiplied by the quantity of Units dispensed by the pharmacy for that Dispensed Claim.

Financial Benefits - The term “Financial Benefits” shall mean NDPERS’ Pro Rata Share (as Pro Rata Share is defined herein) of all financial benefits received by PBM (as PBM is defined herein) from all Pharmaceutical Manufacturers (as Pharmaceutical Manufacturers is defined herein), including without limitation NDPERS’ Pro Rata Share of all: rebates, discounts, administrative or other fees, chargebacks, grants, all other monies of any kind whatsoever paid by Pharmaceutical Manufacturers, all discounts or credits or reimbursements of any kind provided by Pharmaceutical Manufacturers, all financial benefits paid by Pharmaceutical Manufacturers to PBM for Covered Items dispensed on NDPERS’ behalf from retail pharmacies, the Mail Order Pharmacy, and the Specialty Drug Pharmacies, and all goods (or in kind services) provided by Pharmaceutical Manufacturers.

Financial Benefit Guarantee(s) - The term “Financial Benefit Guarantee(s)” shall mean the minimum amount that PBM has guaranteed will be passed through as Financial Benefits to NDPERS, as further described in Exhibit A of the Agreement.

Financial Guarantee(s) – The term “Financial Guarantee(s)” shall mean every financial guarantee in the Agreement (as opposed to Performance Guarantee identified in Exhibit C), including without limitation: every Average Annual Guarantee, every Specialty Drug Minimum Guaranteed Discount, the Specialty Drug Default Discount Guarantee and every Financial Benefit Guarantee.

Formulary - The terms “Formulary” shall have the meaning set forth in Article 5 of the Agreement.

Generic Drug(s) – The term “Generic Drug(s)” shall mean the following: The Multisource Code field in Medi-Span contains a “Y” (generic). Claims submitted with a Multisource Code field in Medi-Span containing the value of “O” and also submitted with a DAW Code of “3”, “5”, or “6” shall also be considered a Generic Drug. PBM agrees that when a drug is identified as a Generic Drug, it shall be considered a Generic Drug for all purposes, including but not limited to adjudicating the Claim, reimbursing the relevant pharmacy, invoicing NDPERS, determining the Copayment or Coinsurance to be paid by the Member, calculating the satisfaction of Average Annual Guarantees as further described in Exhibit A of the Agreement, calculating the satisfaction of Financial Benefit Guarantees as further described in Exhibit A of the Agreement, and calculating the satisfaction of generic fill rates (if any).

Identification Card(s) or ID Card(s) - The term “Identification Card(s)” or “ID Card(s)” shall mean the printed plastic identification cards, and digital identification cards accessible online or via a mobile application, that contain specific information about the prescription drug benefits to which Members are entitled.

Ingredient Cost(s) - The term “Ingredient Cost(s)” shall mean the amount charged for each Dispensed Claim – prior to the deduction of any Copayment or Coinsurance or deductible (if any) – not including Dispensing Fees or any sales or use taxes – and without factoring in any Financial Benefits. For every Dispensed Claim that PBM reimburses to a retail pharmacy based on U&C (as defined herein), PBM shall allocate the entire U&C charge to the Ingredient Cost, and shall not allocate any of the U&C charge to the Dispensing Fee.

Limited Distribution Drug – The term “Limited Distribution Drug” shall mean Specialty Drug(s) that Pharmaceutical Manufacturer(s) distribute through a limited number of pharmacies and wholesalers selected by the Pharmaceutical Manufacturer(s).

Mail Order Pharmacy - The term “Mail Order Pharmacy” shall mean _____, [PBM to fill in the name of the pharmacy] which shall be the mail order pharmacy that PBM uses to service NDPERS.

MAC - The term “MAC” shall mean the maximum allowable cost of a Brand Drug or Generic Drug, as established by PBM for certain drugs in connection with reimbursing Participating Pharmacies. PBM’s inclusion (or exclusion) of a drug on its MAC list(s) shall not in any way impact any of PBM’s obligations in the Agreement, including without limitation its Pass-Through Pricing obligations, Average Annual Guarantees for Brand Drugs and Generic Drugs, since all such Guarantees and obligations are to be applied as specified in the Agreement.

Manufacturer Discount Program – The term ‘Manufacturer Discount Program’ is a term for the replacement program for the Coverage Gap Discount Program that will be sunset in 2025. It is a program intended to lower consumer costs by providing discounts directly to them from manufacturers rather than through a PBM.

Medicare Part D Formulary - The term “Medicare Part D Formulary” shall mean the list of CMS approved drugs and other items covered under an EGWP Plan.

Medicare Part D Insurance Company – The term “Medicare Part D Insurance Company” or “_____” [PBM to identify actual name of its Med D insurance company provider] shall mean PBM’s affiliated insurance entity that will provide self-insured or fully-insured Medicare Part D EGWP coverage to NDPERS. Although the Medicare Part D Insurance Company will be providing said EGWP coverage, when requested, and the Medicare Part D Insurance Company will be contractually responsible for all such EGWP coverage, for simplicity of reference the term “PBM” has also been used throughout this Agreement to reference services that will be provided by, and obligations that must be satisfied by, the Medicare Part D Insurance Company for Medicare Part D matters.

Member(s) – The term “Member(s)” shall be defined as any retired Member eligible for and receiving Medicare Part D services. More specifically, a Member shall be defined as: a Medicare-eligible individual who has been enrolled in an EGWP by NDPERS and accepted for membership by CMS. The following individuals are NOT eligible to be a Member in an EGWP (or supplemental Wrap):

- (i) Non-Medicare Eligible spouses and dependents of Eligible Individuals; or
- (ii) Current employees of NDPERS Employer Group (i.e., active employees) or their eligible spouses and dependents, even if eligible for Medicare Part D.

To be a Member, i.e., a Medicare-eligible individual in an EGWP (and Wrap), the individual must also be eligible for Medicare Part A and/or Medicare Part B and must have a place of permanent residence inside the fifty United States or Washington, D.C. or any territories where PBM is authorized to do business. Individuals who are incarcerated and identified as such by CMS, or by NDPERS, cannot be Members and are not eligible for an EGWP (or Wrap), and may be retroactively disenrolled if PBM receives confirmation that the date incarceration began was prior to the Member’s Benefit Effective Date.

Each individual who satisfies all of above standards shall, for purposes of an EGWP or Wrap Plan, be defined as an “Eligible Individual” and a “Member,” regardless of whether that individual is a spouse or dependent of another Medicare eligible retiree.

Member List(s) - The term “Member List(s)” shall mean the initial Eligibility File provided by NDPERS for Medicare-eligible Members enrolling in NDPERS’ EGWP, if any, and supplemental Wrap, if any.

Minimum Guaranteed Discount(s) - The term “Minimum Guaranteed Discount(s)” shall mean the minimum discount that PBM has guaranteed will be provided for each Specialty Drug when it is dispensed from the Specialty Drug Pharmacy, as further described in Exhibit A of the Agreement.

NCPDP - The term “NCPDP” shall mean National Council for Prescription Drug Programs.

New Eligibility Implementation Date(s) - The term “New Eligibility Implementation Date(s)” shall mean the date on which PBM services for new eligible Members are to begin, or end. PBM shall be obligated as of the New Eligibility Implementation Date to begin providing Covered Items for NDPERS’ new Members, and, upon ineligibility of NDPERS’ Members, to no longer provide Covered Items.

Over-the-Counter Drug(s) or OTC Drug(s) - The term “Over-the-Counter Drug(s)” or “OTC Drug(s)” shall mean a drug covered under NDPERS’ Benefit Plan that is not required by law to be dispensed pursuant to a prescription and which is generally recognized as safe and effective because it meets each of the conditions contained in 21 C.F.R. Part 330 and each of the conditions contained in any applicable monograph.

Participating Pharmacy(ies) and Pharmacy Network - The term “Participating Pharmacy(ies)” shall mean those retail pharmacies that have contracted with PBM to create a “Pharmacy Network,” together with the specified Mail Order Pharmacy and Specialty Drug Pharmacy. In the event that NDPERS limits in a Benefit Specification Form or Benefit Change Form the retail pharmacies that can dispense Covered Items to NDPERS’ Members, the Participating Pharmacies and Pharmacy Network for NDPERS will be only those pharmacies allowed by NDPERS.

Party(ies) - The term “Party” shall refer either to NDPERS or PBM. The term “Parties” shall refer to both NDPERS and PBM.

Pass-Through Pricing - The term “Pass-Through Pricing” shall mean PBM’s agreement that it shall not derive any profits whatsoever from the difference between amounts invoiced to NDPERS by PBM and amounts incurred by PBM for any Covered Item dispensed from any retail pharmacy, mail order pharmacy or specialty drug pharmacy (including the Mail Order Pharmacy and Specialty Drug Pharmacy). For purposes of clarification: For each pharmacy, PBM agrees to invoice for every Dispensed Claim - both for the Ingredient Cost and for the Dispensing Fee - the actual cost incurred by PBM. Said agreement includes

those Covered Items included within Average Annual Guarantees, and those Covered Items excluded from Average Annual Guarantees. Pass-Through Pricing shall also mean PBM's agreement to invoice for every Coordination of Benefit Claim based on PBM's exact amount paid for the Covered Item. Pass-Through Pricing shall also mean PBM's agreement that it shall invoice NDPERS for every vaccine, LTC dispensed, and home infusion therapy Covered Item based on PBM's exact amount reimbursed for that Covered Item. Pass-Through Pricing shall also mean that PBM shall invoice NDPERS for every Compound Drug based on PBM's exact reimbursement to the retail pharmacy for the Compound Drug, including PBM's exact reimbursement for the compounding fee.

For any EGWP Plan, Pass-Through Pricing shall mean (i) PBM's agreement that if NDPERS selects a self-insured EGWP Plan PBM shall pass through NDPERS' Pro Rata Share of all DIR, and if NDPERS selects a fully-insured EGWP Plan PBM shall pass through to CMS the legally required DIR allocable to that EGWP Plan; (ii) PBM shall properly allocate and retain only Bona Fide Service Fees; and (iii) PBM shall file accurate DIR and Bona Fide Service Fee reports with CMS. For any Wrap Plan, Pass-Through Pricing shall mean that to the extent that PBM receives any Financial Benefits, PBM agrees to pass through to NDPERS its Pro Rata Share of all such Financial Benefits.

Pass-Through Pricing shall also mean that PBM's only profits shall be those that may be embedded in (i) Administrative Fees; and (ii) Additional Fees.

Pharmacy Network – See Definition of “Participating Pharmacies.”

PBM - The term “PBM” shall mean _____ *[PBM to identify its name]*, and all subsidiaries and affiliates providing PBM Services to NDPERS.

PBM Services - The term “PBM Services” shall mean claims processing, eligibility verification, all contracting and management and administration of contracts with Participating Pharmacies and/or Pharmaceutical Manufacturers, Formulary and clinical support, and all other services described in or performed by PBM as a result of the Agreement.

PBM/Participating Pharmacy Contract(s) - The term “PBM/Participating Pharmacy Contract(s)” shall mean all contracts, amendments or addendums thereto, letter agreements, or other written or oral agreements in any form, setting forth any terms between PBM and any retail, mail order pharmacy or specialty drug pharmacy, whether independent, or owned by or affiliated with PBM.

PBM/Pharmaceutical Manufacturer Contract(s) - The term “PBM/Pharmaceutical Manufacturer Contract(s)” shall mean all contracts, amendments or addendums thereto, letter agreements, or other agreements, providing that any Financial Benefits shall be paid or provided by any Pharmaceutical Manufacturer to PBM. PBM/Pharmaceutical Manufacturer Contracts shall include, but not be limited to, all: rebate agreements, administrative fee agreements, inflation protection payments, indication and/or outcomes based pricing arrangements, other fee agreements, service agreements, health or disease management agreements, data sales agreements, discount agreements, prompt payment agreements, bulk purchase agreements, pricing sheets/term sheets/or discount sheets providing pricing terms, etc.

Pharmaceutical Manufacturer(s) - The term “Pharmaceutical Manufacturer(s)” shall mean any pharmaceutical manufacturer or company, any drug wholesaler or distributor, or any other third party, that provides Financial Benefits.

Plan(s) – NDPERS may provide prescription coverage to one Plan or several different Plans. NDPERS shall have the right to add or eliminate a Plan or Plans during the period when this Agreement is in effect.

Prescriber – The term “Prescriber” means a licensed Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Podiatry (D.P.M.), Doctor of Dentistry (D.D.S.), or other licensed health practitioner with independent prescribing authority in the state in which the dispensing pharmacy is located.

Program(s) - The term “Program(s)” shall mean any pharmacy benefit management program that NDPERS chooses to implement, in writing, via this Agreement, a Benefit Specification Form and/or Benefit Change Form, based on specified written protocols provided to the PBM.

Pro Rata Share - The term “Pro Rata Share” shall mean the proportion of total Financial Benefits that PBM collects from third parties that PBM is required to pass through to NDPERS, as further described in Exhibit A of the Agreement.

Protected Health Information or PHI – The term “Protected Health Information” or “PHI” shall mean individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:

1. is created by or received from a Prescriber, health care employer, or health care clearinghouse;
2. relates to a Member’s past, present or future physical or mental health or condition;
3. relates to the provision of health care to a Member;
4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
5. identifies a Member or could reasonably be used to identify a Member.

Specialty Drug(s) - The term “Specialty Drug(s)” shall mean each drug identified on Exhibit B of the Agreement. The term “Specialty Drug” shall also include any new-to-market specialty drug that NDPERS allows to be dispensed. NDPERS shall have the right to select which Specialty Drugs on Exhibit B shall (or shall not) be dispensed to its Members. NDPERS shall also have the right to determine whether (i) to allow a new-to-market specialty drug to be dispensed automatically from the Specialty Drug Pharmacy at the Default Discount Rate prior to the specialty drug being added to Exhibit B; or (ii) to prohibit and block the dispensing of a new-to-market specialty drug until it has been added to Exhibit B, or NDPERS has specified in writing that it wants the drug added.

Specialty Drug Pharmacy - The term “Specialty Drug Pharmacy” shall mean _____, *[Each PBM to fill in the name of its proposed Specialty Drug Pharmacy]* which shall be the only specialty drug pharmacy that PBM uses to service NDPERS.

State – The “State” means the State of North Dakota.

Successful Security Incidents - The term “Successful Security Incidents” shall mean security incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

Supplemental Formulary – The term “Supplemental Formulary” shall mean the Covered Items that NDPERS is providing to its Members as supplemental benefits (i.e., as Bonus Drugs and a Wrap), as specified in its Supplemental Benefit Plan.

U&C or Usual and Customary - The term “U&C” or “Usual and Customary” shall mean the walk-in price charged by a retail pharmacy to customers who are without prescription drug coverage. NDPERS shall never be charged for more than the U&C for a transaction. For every Dispensed Claim that PBM reimburses to the retail pharmacy based on U&C, PBM shall allocate the entire U&C charge to the Ingredient Cost and shall not allocate any of the U&C charge to the Dispensing Fee. PBM represents and warrants that each of its contracts with retail pharmacies requires each retail pharmacy to include as its transmitted U&C price to the PBM any and all U&C discounted prices that the pharmacy provides to non-insured customers.

Unit(s) - The term “Unit(s)” shall mean the unit of measure dispensed, such as tablet, capsule, ml of liquid, gm of cream, or other unit measure.

Unit AWP - The term “Unit AWP” shall mean the Unit of measure price, as defined by the NCPDP, with the Unit of measure being per tablet, or per capsule, or per ml of liquid, or per gm of cream, or per other Unit, dispensed.

Unsuccessful Security Incidents – The term “Unsuccessful Security Incidents” shall mean security incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

Wrap Plan – The term “Wrap Plan” shall mean the self-insured supplemental benefit plan that NDPERS may arrange for Medicare-eligible Members by executing a Coordination of Benefits Agreement.

ARTICLE 2 – GENERAL DUTIES TO BE PERFORMED BY NDPERS

2.1 NDPERS’ Duty to Provide Member List. At least forty-five (45) days before NDPERS’ Benefit Effective Date, NDPERS shall provide to PBM electronic files reflecting all Members as of that date (the “Member List”). NDPERS shall be solely and exclusively responsible for ensuring the accuracy of its Member List.

2.2 NDPERS’ Duty to Provide Eligibility Changes in the Member List. NDPERS shall be solely and exclusively responsible for creating and providing Eligibility Files to PBM to update its Member List to reflect all additions and terminations (“Eligibility Changes”). For all eligible Members, NDPERS has determined that it wishes to update its Member List: once a week.

NDPERS’ additions or deletions to a previously existing Eligibility File will be input and made operable by PBM within at least one (1) business day.

2.3 Information Required on Initial Member List, and For Eligibility Changes. NDPERS’ Member List and Eligibility Changes shall contain the following minimum “information fields,” each of which shall be incorporated into PBM’s information system, and each of which shall be available to NDPERS via PBM’s internet portal:

- a. Each Member’s identification number and social security number when available
- b. Each Member’s full name (last, first, and middle initial)
- c. Each Member’s date of birth
- d. Each Member’s address
- e. The date the Member became eligible for coverage (Member’s Effective Date)
- f. The date the Member’s eligibility for coverage under the Benefit Plan is terminated
- g. The Benefit Plan Design identification number
- h. Each Member’s gender
- i. Each Member’s Person Code(s)
- j. Each Member’s Relationship Code(s)
- k. A coordination of benefits Code or Indicator (as primary or secondary) for each Member
- l. A Medicare Part D identifier (if relevant)
- m. An active/retiree identifier (if relevant)

This data shall be provided to PBM in the industry standard, HIPAA-mandated 834 file format. PBM also agrees to provide additional “information fields” as required in writing by NDPERS.

NDPERS shall be responsible for the resolution of any errors identified by PBM in any error report that PBM transmits to NDPERS. Any Claims processed due to incorrect eligibility information transmitted by NDPERS to PBM will be the responsibility of NDPERS.

2.4 Benefit Plan Design Information and Changes. NDPERS’ Benefit Plan Design(s) shall be provided to PBM and attached as Exhibit D hereto. NDPERS shall have the right to implement any Benefit Plan Design(s) of its choosing. NDPERS must provide its initial Benefit Plan Design(s) to PBM in writing at least sixty (60) days before NDPERS’ Benefit Effective Date.

After NDPERS’ Benefit Effective Date, NDPERS must provide all Benefit Plan Design changes to PBM at least forty-five (45) days prior to the date when such changes shall be made effective. PBM shall be obligated to input and perform a test run on any benefit changes identified by NDPERS as

requiring said test run prior to the date of required implementation, notifying NDPERS in writing of the results of its test run, and making all Benefit Plan Design changes operative within thirty (30) days of having received NDPERS' Benefit Plan Design changes. NDPERS and PBM may mutually agree, in writing, on different time frames for the implementation of Benefit Plan Design changes.

The specifics of how NDPERS directs PBM to configure the processing of benefits shall be provided to PBM using PBM's Benefit Specification Form (BSF), and any changes to the configuration using PBM's Benefit Change Form (BCF). PBM shall rely on the terms and provisions provided by NDPERS in the written and executed Benefit Specification Form and written and executed Benefit Change Forms. The most recent executed Benefit Specification Form or Benefit Change Form shall supersede any prior dated executed form to the extent the content of any prior form has been altered.

- 2.5 Cooperation. NDPERS and PBM shall promptly provide to each other all information that is reasonably requested and that is reasonably necessary for each to complete its obligations hereunder, and for NDPERS to provide the PBM Services it decides to provide.
- 2.6 Good Faith Negotiation Obligation. PBM and NDPERS agree that all conferences, meetings and negotiations will take place in good faith by balancing (i) PBM's obligation to provide low-cost pricing to NDPERS, with (ii) PBM's right not to expose itself to financial liability by promising to provide Covered Items and services on terms that PBM cannot satisfy.

Should PBM believe any NDPERS changes in a Formulary or Program require that any financial guarantee(s) be adjusted, PBM shall have the obligation to (i) provide evidence of the need for the change, and (ii) demonstrate through the evidence the extent of the adjustment that is needed as a result of the change, and the Parties thereafter shall negotiate in good faith and make any adjustment that PBM has demonstrated is needed. Similarly, if unforeseeable marketplace events or changes in government laws or regulations require an adjustment in any financial guarantee(s), PBM shall have the same obligations, and the Parties thereafter shall in good faith make any adjustment that PBM has demonstrated is needed. NDPERS may also request adjustments in financial guarantees and ask for documents or data related to its request. In connection with any change in any financial guarantee requested by either Party, PBM agrees that given that PBM retains most information related to the need for, or appropriateness of, any change, PBM shall be obligated to share the requisite information with NDPERS.

In connection with all of the above-described changes, each Party shall be required to consider in good faith the other Party's request, including all supporting PBM evidence that PBM must provide. NDPERS shall also be entitled to consult with outside experts to evaluate: the need for changes, PBM's supporting evidence, and other mitigating circumstances.

If the Parties cannot mutually agree on a requested adjustment within thirty (30) days of either Party's request for an adjustment then NDPERS may terminate this Agreement pursuant to the termination procedures set forth in Article 8.

ARTICLE 3 – GENERAL DUTIES TO BE PERFORMED BY PBM

- 3.1 Compliance with Laws, etc. PBM agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. PBM agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. PBM shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.
- PBM is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) PBM represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that PBM 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 PBM has fewer than ten full-time employees.
- 3.2 Standards of Performance. PBM shall perform its obligations under this Agreement with care, skill, prudence, and diligence, and in accordance with the standards of conduct applicable to a fiduciary. PBM shall also disclose to NDPERS any activity, policy, or practice of which PBM is aware that presents a conflict of interest with the performance of its obligations hereunder. PBM represents and agrees that NDPERS is relying on PBM's expertise to ensure all PBM Services are rendered in accordance with applicable statutes and regulations.
- 3.3 Disaster Recovery Program. PBM shall establish and maintain a disaster recovery program consistent with industry practice and provide a copy of its disaster recovery program policies and procedures, if requested, to any party executing this Agreement and/or any government entity.
- 3.4 Provision of Basic Documents. PBM shall provide its latest SAS 70 report and any publicly available information on an annual basis, upon reasonable request by any party executing this Agreement and/or any government entity.
- 3.5 Indemnification. PBM 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. The legal defense provided by PBM 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. PBM also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against PBM in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.
- 3.6 Insurance. PBM shall 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 coverage:
- a. 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.
 - b. 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.
 - c. 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.

- d. 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.
- e. Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, PBM shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, PBM 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:

- a. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of PBM.
- b. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- c. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- d. The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of PBM.
- e. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- f. PBM 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.
- g. Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- h. PBM shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. PBM 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. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

3.7 PBM Provision of Services to NDPERS.

- a. General Terms. PBM shall provide to NDPERS the Prescription Benefit Services detailed in this Agreement. All such services shall be provided at the agreed upon Administrative Fees and Additional Fees specified in this Agreement.
- b. Pass-Through Pricing, Subject to Guarantees. PBM represents and agrees that all PBM Services will be performed using Pass-Through Pricing for every Covered Item dispensed, which Pass-Through Pricing shall be subject to all of the financial guarantees referenced in this Agreement, including (i) the Average Annual Guarantees (ii) Minimum Guaranteed Discounts and Default Discount Guarantees for Specialty Drugs, and (iii) rebate guarantees (referenced as Financial Benefit Guarantees).

c. Claims Processing, Retail Pharmacy Contracting, and Other Basic Services. PBM shall be solely responsible for all PBM Services detailed in this Agreement including the following:

1. Adjudicating all Claims accurately, including by correcting all pharmacy errors, including but not limited to pharmacy quantity errors
2. Contracting with and administering a national and local retail Pharmacy Network
3. Providing for the coordination of benefits
4. Being solely responsible for the timely accepting, inputting, and processing of all Eligibility Files that are transmitted in the appropriate format; Also, reporting back to NDPERS any errors or omissions in any Eligibility File that prevent timely inputting by the PBM
5. Accurately inputting the beginning and ending date of eligibility for each Member (“New Eligibility Implementation Date”), as provided by NDPERS
6. Timely processing all new eligibility information provided by NDPERS as further described in this Agreement
7. Providing the standard and customized reports
8. Providing additional ad hoc reports (if requested by NDPERS, at the Additional Fees identified if IT Programming time is required)
9. Performing concurrent and retrospective DUR
10. Performing all identified rebate/Financial Benefit activities
11. Providing EOBs (if requested by NDPERS)
12. Providing specified Website services for NDPERS and all Members
13. Providing E-Prescribing (as requested by NDPERS)
14. Operating a Customer Call Service Center with a toll-free number, 24/7/365 other than when the Center is unavailable for routine maintenance, for NDPERS, Members, Prescribers and Participating Pharmacies
15. Providing a service team that includes at minimum: an executive sponsor, an account manager, and a clinical account manager
16. Providing a complete set of Claims data to NDPERS with each Invoice Statement
17. As requested, conferring and/or meeting monthly, quarterly, semi-annually and annually with NDPERS to enable NDPERS to monitor, update and improve the Prescription Drug Services provided to NDPERS, and to enable PBM to educate NDPERS about new developments so as to assist NDPERS in making core choices, including about its Benefit Plan Design.

d. Retail, Mail Order Pharmacy and Specialty Drug Pharmacy. PBM represents and agrees that PBM currently includes ___ retail pharmacies in its national Pharmacy Network. PBM also represents that having reviewed NDPERS’ Claims data, PBM currently includes ___ retail pharmacies in PBM’s Pharmacy Network in NDPERS’ region (defined as the State of North Dakota), and PBM binds itself to maintain ___ retail pharmacies in said Network throughout the duration of this Agreement. *[PBM to fill in all “blanks” above and below]*

PBM agrees to use _____ as the Mail Order Pharmacy for NDPERS, as further described in the definition of Mail Order Pharmacy. PBM also agrees to use _____ as the Specialty Drug Pharmacy for NDPERS, as further described in the definition of Specialty Drug Pharmacy.

e. Programs. Subject to Medicare Part D requirements for the EGWP Program, if NDPERS selects any Program for implementation, PBM will implement said Program based on the protocols agreed to by NDPERS in writing. In connection with any and every Program that PBM implements, the following general terms shall control:

1. Program Protocols and Program Changes. NDPERS may determine which Programs it wants to implement and identify specific protocols for each Program. All such protocols will be memorialized in writing.

2. Changes in Programs or Program Protocols. During the term of this Agreement, NDPERS may request Program or Program protocol changes on no more than a quarterly basis. PBM agrees to confer with NDPERS concerning all such requests, to provide whatever information is necessary to evaluate each request, and to make suggestions concerning Programs and Program protocols within thirty (30) days of NDPERS' initial request. All agreed upon Program and Program protocol changes will be implemented by PBM within no more than thirty (30) days, unless the Parties mutually agree on a greater delay.
3. PBM Suggestions for Program Changes. If at any time PBM believes NDPERS should expand or eliminate or alter any Program or Program protocol, PBM may inform NDPERS of all recommended changes to the Program or Program protocol. PBM will thereafter evaluate and discuss said recommendations with NDPERS. However, PBM may not implement any PBM recommendation unless NDPERS has approved the changes in writing.
4. Adherence to Protocols. PBM shall be obligated to implement each Program as specified by NDPERS' standard written requirements as set forth in NDPERS' Benefit Specification Form or Benefit Change Form. If all information necessary for PBM to implement a Program is not provided to PBM, PBM shall notify NDPERS of a need for additional written protocols and obtain said protocols from NDPERS in writing. PBM shall not implement its own protocols for any Program, unless PBM has obtained written approval from NDPERS to do so.
5. Program Implementation and Program Changes. The Parties agree that on or before thirty (30) days prior to NDPERS' Benefit Effective Date, NDPERS may choose which Programs to implement, and in connection with which Covered Items. The Parties also agree that at any time during the period when a Program is in effect, NDPERS may terminate any Program, in whole or in part, on thirty (30) calendar days' notice. The Parties also agree that NDPERS' Program choices will be memorialized in NDPERS' Benefit Specification Form and/or Benefit Change Forms.
6. PBM's Obligation to Provide Requested Information. At any time during the term of this Agreement, at NDPERS' request (but no more often than quarterly), in connection with any implemented Program, PBM shall provide information to NDPERS concerning the relative "net costs" of specified drugs, factoring in the Financial Benefits to be passed through on those drugs, to enable NDPERS to assess the savings that might be realized from including (or not including) certain specified drugs in a Program. If requested, PBM will also provide a disruption analysis to NDPERS to enable NDPERS to assess the disruption to Members if certain specified drugs are added to or deleted from a Program. If requested, PBM shall also provide a financial analysis to NDPERS to enable it to assess the savings that might result if certain specified drugs are added to or deleted from a Program.
7. Potential Program Impact on Guarantees. Should NDPERS choose to implement a Program or make changes to the protocols related to a Program, and PBM believe that any of the above could impact any guarantees stated in this Agreement, the Parties agree that changes may be made in the impacted guarantees, but only based on the procedures set forth in Section 2.6 of this Agreement.
8. Timing of Compensation Payment. In the event that NDPERS (or its auditor) determines that PBM has improperly implemented any Program, and its improper implementation results in a financial loss to NDPERS, and PBM is obligated to

compensate NDPERS as more fully described in Exhibit D, PBM's payment shall be made within thirty (30) days of the Parties' resolution of the issue.

3.8 General Responsibilities In Connection With Medicare Part D Plans. PBM's Medicare Part D Insurance Company will be contractually responsible for satisfying all matters related to NDPERS EGWP Plan. NDPERS acknowledges that this Agreement summarizes the services offered by PBM's Medicare Part D Insurance Company and that the provision of EGWP services will be governed by the agreements entered into between NDPERS and said Medicare Part D Insurance Company. The Parties represent and agree that PBM will be contractually responsible for coordinating all matters related to NDPERS supplemental Wrap Plan.

- a. Initial Enrollment. NDPERS will provide a Member List to PBM containing all eligible Members.
- b. Member Eligibility. Each Member's Benefit Effective Date will always fall on the first day of a month. The Parties agree that CMS regulations require that new enrollment information received by a Plan Sponsor on or before the last calendar day of the month must be processed with an effective date of the first day of the following month. For purposes of ensuring that a Member's enrollment is processed and materials are sent in advance of the Member's Benefit Effective Date (including the Member's ID Card), PBM recommends that enrollment information be submitted by NDPERS by the fifteenth (15th) of the month prior to the desired Member Benefit Effective Date. If PBM receives enrollment information after the fifteenth (15th) of the month, but before the end of the month, while enrollment will still be effective on the first day of the following month, PBM will not be obligated to ensure that the newly enrolled Member receives enrollment materials before enrollment begins, but rather will be required to provide such materials within fifteen (15) business days of its receipt of enrollment notification.
- c. Involuntary Disenrollment of Individual Members by NDPERS. In the event a Plan Beneficiary no longer meets NDPERS' eligibility requirements. PBM shall assist NDPERS in dis-enrolling the Member in conformance with Medicare Laws and Regulations. In the event NDPERS manages the disenrollment, NDPERS shall notify PBM in writing or electronically of the date upon which the disenrollment is requested to be effective. NDPERS must notify PBM by the twenty fifth (25th) day of the month in order for disenrollment to be effective as of the last day of that month. If PBM does not receive a disenrollment request by the twenty fifth (25th) of the month, disenrollment may not be effective until the last day of the month that follows. The disenrollment process of individual Members must include notification to each Member as follows:
 - i. Every Member who is to be disenrolled must be notified; and
 - ii. The notice must be provided not less than twenty-one (21) calendar days prior to the effective date of the Member's disenrollment; and
 - iii. The information provided must include an explanation on how to contact Medicare for information on other Part D options that might be available to the Member.
- d. Voluntary Disenrollment by Member. Members may only dis-enroll from NDPERS' Medicare Part D Plan during an AEP (Annual Enrollment Period) or SEP (Special Enrollment Period). Members may voluntarily dis-enroll in any of the following three (3) ways:
 - i. Enrolling in another plan (during a valid enrollment period);
 - ii. Providing written notice to PBM or NDPERS;
 - iii. Calling 1 800 MEDICARE.
- e. Disenrollment Due to Member's Death or Loss of Medicare Eligibility. Pursuant to Medicare Laws and Regulations, CMS will dis-enroll a Member upon his/her death or due to loss of Medicare eligibility, and CMS will provide notification that the Member has died or lost eligibility. Upon receipt of notice of a Member's death or loss of eligibility from CMS, PBM will notify the NDPERS via a monthly enrollment/disenrollment transmitted report. Disenrollment will take place as of the date of death.

- f. NDPERS' Group Disenrollment. Pursuant to Medicare Laws and Regulations, NDPERS may disenroll an entire group of Members from coverage through a group disenrollment process. The group disenrollment process must comply with CMS requirements.
- g. PBM's Monthly Enrollment Reporting Obligation. PBM shall provide to NDPERS a monthly report to capture enrollment, which shall include but not be limited to: new enrollment, new disenrollment, CMS' rejections of enrollment and the reasons for those rejections, retroactive enrollment and disenrollment, and causes for disenrollment (including voluntary, involuntary, and disenrollment due to death/loss of eligibility).
- h. LIP and LIC Subsidies. PBM will reimburse Members eligible for LIP and/or LIC Subsidies in accordance with the processes set forth in the applicable fully-insured EGWP Policy or self-insured EGWP Agreement.
- i. DIR. PBM agrees to invoice for, and to attempt to collect, all DIR from all third parties, and to pass through to each self-insured Medicare Part D EGWP Plan its Pro Rata Share of all collected DIR. PBM further agrees to retain for its own account only Bona Fide Service Fees, as said Fees are defined by CMS and as is required by law. PBM also agrees to timely and accurately file all reports related to DIR (and Bona Fide Service Fees) to CMS on NDPERS' behalf, and in connection with self-insured EGWPs to provide all such reports (without redacting any NDPERS-related information) to NDPERS, if requested. If PBM contracts with and relies on a third party in connection with any DIR-related matters, PBM agrees that it will be fully liable for the above-described matters, and PBM further agrees that it will contractually bind the third party to comply with the above-described matters.
- j. Monitoring and Pass-Through Of CMS and Other Revenues. PBM agrees to: (i) collect from CMS in connection with each NDPERS EGWP Plan all CMS and third party monies (including, without limitation, all CMS direct subsidies, LIPs, LICs, and Catastrophic Coverage reinsurance, and all Manufacturer Discounts and DIR); and (ii) monitor and analyze the accuracy of the amounts paid and received. PBM also agrees to timely and fully pass-through to NDPERS all such revenues as are required to be passed through no later than one month after receiving such revenues, except for LIPs which shall be passed through to those Members entitled to receive them within forty (45) days after receiving said revenues.
- k. PBM's Obligation to Provide All Relevant Data and Reports. PBM agrees to provide on a monthly basis to NDPERS the following data/reports for EGWP Plans (redacted for NDPERS-related information only): PDE, MMR and MOR data/reports. Upon request, PBM also agrees to provide to NDPERS all other data/reports that NDPERS (or its advisors) reasonably believes to be necessary to monitor and evaluate NDPERS EGWP Plan.
- l. PBM's Obligation To Periodically Review and Provide Analytical Cost Analyses. PBM agrees to provide to NDPERS a cost analysis (as described below) for each Medicare Part D Contract Year of coverage, containing cost information broken down on a monthly basis, for each of the following line items of information:
 - i. Revenue
 - 1. NDPERS' Drug or Premium Payments
 - 2. CMS Direct Subsidy
 - 3. Total Revenue
 - ii. Claims
 - 1. Allowed Claims
 - 2. Member Copay
 - 3. NDPERS Plan Liability (or underlying fully-insured Premium costs)
 - iii. Claim Offsets

1. DIR
 2. Coverage Gap Manufacturer Discounts
 3. Catastrophic CMS Reinsurance
 4. LIPs
 5. LICs
- iv. Net Claims Costs (or underlying fully-insured Premium net costs)
 - v. Administrative Fees (for self-insured EGWP)
 - vi. Profit Margin
 - vii. Plan Beneficiaries (per month)
- m. NDPERS may request that each of the above line items will be provided (i) based on the total dollar cost; and/or (ii) based on the PMPM cost.
 - n. NDPERS may also request that cost information be subdivided between (i) the Covered Items provided under the EGWP Plan that was covered by CMS under Medicare Part D; and (ii) the Bonus Drugs covered by NDPERS under its supplemental WRAP Plan.
 - o. The Parties understand and agree that NDPERS may rely on the cost analysis to:
 - i. understand NDPERS' costs;
 - ii. to make modifications to its Medicare Part D Plan;
 - iii. to determine a reasonable Premium for a fully-insured EGWP for the following Medicare Part D Contract Year and/or
 - iv. to audit PBM's compliance with its pass-through obligations and all other terms of this Agreement and the agreements executed in connection with its Medicare Part D Plan. Accordingly, PBM represents and agrees that it will provide accurate cost analysis information, and all projections will be provided in good faith.

3.9 Implementation Services. PBM shall provide the following implementation services for NDPERS, without limitation:

- a. As soon as is feasible for PBM and NDPERS, PBM and NDPERS shall meet or confer to finalize an agreed-upon transition plan and implementation schedule.
- b. Perform all tasks necessary to upload eligibility data, and timely "test" the upload as required by the agreed-upon implementation schedule.
- c. Perform all tasks necessary to upload NDPERS' Benefit Plan Design, and timely "test" the upload as required by the agreed-upon implementation schedule.
- d. Review PBM's Formulary, Medicare Part D Formulary, and Supplemental Formulary.
- e. Review with NDPERS its proposed Programs; assist NDPERS in determining to what extent it wishes to implement its existing Programs or add new Programs; memorialize in writing all protocols for all Programs; and timely "test" the Program upload as stated in the agreed-upon implementation schedule.

- f. Develop comprehensive reporting capability on Prior Authorization activities to include the following:
 - 1. Turn-around-time
 - 2. Number of total approvals
 - 3. Number of total denials
 - 4. Number of requests pending to NDPERS
 - 5. Number of requests cancelled by PBM
 - 6. Number of Prior Authorization requests by drug, drug class, or therapeutic category
- g. Perform all tasks necessary to provide on-line access for Members.
- h. Prepare to provide quarterly EOB Statements, automatically, to Members in a form to be reviewed by NDPERS.
- i. Perform all tasks necessary to enable NDPERS to generate reports using its on-line access, with access to all Claim data elements.
- j. Perform all tasks necessary to generate any customized reports identified in this Agreement.
- k. Prepare and finalize the on-line and mobile access to be used by NDPERS, as well as the on-line and mobile Formularies that Members can access and ensure that all matters on the website accurately reflect all matters relevant to NDPERS.
- l. Provide training for PBM's online portal usage to NDPERS.
- m. Provide Member ID cards for approval by NDPERS, and timely print and distribute all ID cards, as required by the agreed-upon implementation schedule.
- n. Train and ready a sufficient number of Customer Call Service Center representatives to ensure they are knowledgeable about all matters related to NDPERS, as required by the agreed-upon implementation schedule.
- o. Load detailed Member Claim history in all instances where data is available from the incumbent vendor, including without limitation, Member history related to: Step Therapy, Prior Authorization, quantity limits, and drug utilization review.
- p. Ensure that all Members then undergoing drug treatment for any therapeutic condition be transitioned without disruption in drug therapy or Program involvement, provided the data identified in subparagraph "o" has been made available to PBM.

3.10 NDPERS' Access to and Use of PBM's Computer Systems through an online portal. NDPERS will have access to PBM's computer systems via an online portal, in accordance with PBM's policies and procedures to maintain the confidentiality of such systems, for the following purposes: (a) adding, updating, or terminating eligibility; (b) generating overrides, as further detailed in this Agreement or as agreed upon by the Parties; (c) generating Standard Reports, as further detailed in this Agreement or as agreed upon by the Parties. The on-site "screen" information provided by PBM to NDPERS shall be identical to the "screen" information and access available to PBM and shall include at least the following: an eligibility screen, Prior Authorization screen, claims view screen, pricing screens and such other screens that are needed and identified by NDPERS. PBM shall provide assistance and training to NDPERS concerning use of its on-line access as needed. NDPERS acknowledges that PBM's computer systems are proprietary and agrees to maintain the systems in complete confidentiality and to access said systems with appropriate security in place.

3.11 Claims Data

- a. PBM agrees that it is obligated to transmit to NDPERS a complete electronic Claims file, in the then-current NCPDP standard claims billing format monthly or upon request. All Claims shall be included on the file. Claims data shall be produced in one of the following formats: Access, fixed-length flat file or delimited flat file. Any data submitted in flat file format must either have a data layout attached, or the first line of the file must contain field names. File formats must remain constant from submission to submission, unless additional fields need to be added.

- b. PBM shall provide at least the following information fields on the electronic Claims file. In providing such claims data, where “Brand Drug” and “Generic Drug” definitions are relevant, PBM will use the definitions contained in the Agreement.
 1. Claim Number
 2. Patient Date of Birth (DOB)
 3. Patient Gender
 4. Service Provider Qualifier
 5. Service Provider Number Prescriber Identifier Qualifier
 6. Prescriber Identifier
 7. DAW
 8. Fill #
 9. Dispensing Status
 10. Drug Coverage Status Code (Partial or Completion or blank)
 11. Catastrophic Coverage Code - Attachment Point met on this event, Above Attachment Point, or attachment point not met
 12. GDCB – Gross Drug Cost Below OOP Threshold
 13. GDCA – Gross Drug Cost Above OOP Threshold
 14. TrOOP Amt – True Out of Pocket Amount
 15. Other TrOOP Amt - Other payments by TrOOP eligible payers
 16. LIC Status – Low Income
 17. LIC Amt – Low Income Cost Sharing Subsidy Amount
 18. CPP – Covered Plan Paid
 19. NPP – Non Covered Plan Paid
 20. Received Date of Original Claim
 21. Claim Adjudication Began Timestamp/Date
 22. Brand/Generic Code (based on the definitions contained in this Agreement)
 23. Beginning Benefit Phase
 24. Ending Benefit Phase
 25. Reported Gap Discount
 26. Tier
 27. Mail/retail/specialty indicator
 28. Unique claims identifier
 29. Unique claims identifier cross-reference (for reversals)
 30. Claim status
 31. Client subaccounts (carrier, group)
 32. Date submitted
 33. Date filled
 34. Cycle Date
 35. Rx#
 36. Refill #
 37. Compound Code
 38. Member Submitted Identifier
 39. NDC#
 40. Drug Description
 41. Metric Decimal Quantity

42. Days' Supply
43. DAW Code
44. Pharmacy Number (NABP or NPI)
45. Pharmacy Name
46. Unit AWP Used
47. Usual and Customary
48. Pharmacy Ingredient Cost
49. Pharmacy Dispensing Fee
50. Pharmacy Sales Tax
51. Pharmacy Patient Pay
52. Pharmacy Amount Due
53. Pharmacy Basis of Adjudication
54. Client Basis of Adjudication
55. Client Ingredient Cost Paid
56. Client Dispensing Fee Paid
57. Client Sales tax
58. Client Patient Pay
59. Client Amount Due
60. COB Indicator
61. COB Amount
62. PA#

3.12 Standard Reports.

- a. General Terms. PBM shall provide the standard reports identified through PBM's online portal. The Parties agree that the specific layout for these reports will be mutually agreed to during implementation. PBM agrees to provide to NDPERS any standard reports that it provides to other clients and that NDPERS may view as useful or necessary to monitor its prescription drug benefit. All standard reports will be provided at no extra Additional Fee.
- b. Ability of NDPERS to Obtain and Prepare Reports Via Online Portal. PBM represents and agrees that its online portal will enable NDPERS to have access to self-service reporting software and all Claim data fields. Said access will enable NDPERS to analyze Claims data in a [near] real-time environment, with Claims data available for analysis _____ *[PBM to state when Claims data becomes available, e.g.: immediately after Claim has been adjudicated, the day following any Claims processing by PBM, etc.]* In addition to the standard reports, PBM represents and agrees that the above-referenced access will enable NDPERS to generate reports concerning numerous matters without consultation with PBM, including but not limited to the following:
 1. **Enrollment, Termination and Disenrollment Report:** A report sortable by Member, Plan, etc.
 2. **Prior Authorization Report:** A report related to Prior Authorizations, sortable by Prior Authorizations, or by Covered Item, or by Member
 3. **Utilization Report:** A report related to the utilization of Covered Items, sortable by Covered Item, therapeutic class, cost, Member
 4. **Member Claims Report:** A report related to Member Claims history, sortable by Covered Item, prescriber, pharmacy, and therapeutic class
- c. Timing of Online Portal Access to Standard Reports. PBM agrees that standard reports shall be available on the online portal based on the specified time frame (monthly, quarterly, or annually), and also capable of being run on demand by NDPERS at any time thereafter for an alternative time period. In the event NDPERS requests that standard reports be posted to

a secure FTP website, said reports will be provided no later than ten (10) business days after the end of each month for monthly reports and fifteen (15) business days after the close of the identified period for quarterly or annual reports.

- d. Ad Hoc Reports. At NDPERS' request, PBM will assist NDPERS with generating ad hoc reports within seven (7) days of a request. All such reports will be provided at no cost, unless IT programming time is required, in which case the reports will be considered Customized Reports.
- 3.13 Customized Reports: PBM shall prepare and deliver to NDPERS Customized Reports. Certain of these Customized Reports may require PBM to provide IT Programming Time, which will result in the IT Programming Fee identified in Exhibit A of this Agreement.
- 3.14 Eligibility Changes and Benefit Plan Changes.
- a. Eligibility Changes. PBM shall load and make operable all Eligibility Changes electronically submitted by NDPERS in appropriate format no later than one (1) business day from receipt of such data. Eligibility information will be loaded in the order received. In the event PBM receives electronic Eligibility Changes that it cannot process for any reason, PBM will be responsible for notifying NDPERS within one (1) business day that the information that was transmitted cannot be processed. PBM shall also identify with specificity the deficiency in the eligibility information that prevents processing.
 - b. Benefit Plan Changes. PBM shall electronically load all Benefit Plan Changes submitted by NDPERS into PBM's systems no later than ten (10) business days after receiving said information, unless a different time period is mutually agreed upon in writing by the Parties. The electronic loading of all Benefit Plan Changes shall enable NDPERS to view the changes on-line through the portal. In the event PBM receives electronic submitted Benefit Plan changes that it cannot process for any reason, PBM will be responsible for notifying within twenty-four (24) hours of PBM's receipt of the data that the Benefit Plan information transmitted cannot be processed. PBM shall also identify with specificity the deficiency in the Benefit Plan information that prevents processing.
- 3.15 Standardized Edits. PBM shall be responsible for maintaining standardized "edits" to enable the necessary dispensing of Covered Items on behalf of NDPERS.
- a. Standardized "edits" shall include the following: Vacation overrides, lost/stolen/spilled overrides, emergency overrides, and school supply and facility overrides, in accordance with NDPERS' directions.
- 3.16 Clinical Services. The following Clinical services will be provided by PBM:
- a. Concurrent and Retrospective Drug Utilization Reviews. PBM shall provide concurrent and retrospective drug utilization evaluation on all Claims based on an agreed-upon PBM/NDPERS policy.
 - b. Evaluation of Recalls. For prescription and non-lot-specific OTC Drugs, where the FDA or manufacturer has issued a drug recall, PBM shall perform and complete an evaluation to communicate a "hard edit" recommendation to NDPERS within five (5) business days of a recall. If NDPERS elects to accept the "hard edit" recommendation, PBM shall implement such edit within seventy-two (72) hours of NDPERS' decision. Additionally, PBM shall draft Member and prescriber communication regarding the specific recall, and upon approval and authorization by NDPERS, PBM will coordinate the mailing of the communication to the affected Members and/or their prescribing physicians and other qualified prescribing professionals.

- 3.17 Medi-Span Data. PBM agrees to rely on current (updated weekly by PBM), electronic data provided by Medi-Span to calculate all pricing related to this Agreement, including without limitation, all: invoices to NDPERS, reimbursements to Participating Pharmacies and non-network pharmacies, and the calculation of PBM's satisfaction of all Financial Guarantees in this Agreement. PBM further agrees that all such calculations shall be based on Medi-Span data (that has been timely loaded weekly into the system by PBM) as of the date each prescription is dispensed to Members. For all Covered Items (whether retail pharmacy, Mail Order Pharmacy or Specialty Drug Pharmacy dispensed Covered Items), the dispensing date shall be the date the pharmacy filled the prescription for the Member (the fill date), not the date the transaction is submitted to the PBM (the adjudication or submittal date).
- 3.18 Regular Conferences and Meetings between the Parties. PBM shall confer and/or meet with NDPERS on a monthly, quarterly, semi-annually, or annual basis, as requested by NDPERS.
- 3.19 Customer Service Center for Pharmacies, Providers and Members. PBM shall be responsible for responding to inquiries from Participating Pharmacies, providers and Members through a PBM toll-free phone line that will be accessible 24/7/365, except for scheduled maintenance. The Customer Service Center shall meet the following standards:
- a. The Customer Service Center shall be responsible for answering questions on the following services, as applicable, without limitation: Member eligibility, Benefit Plan guidelines, deductibles, Copayments/Coinsurance, outstanding Copayments/Coinsurance that may be owed, maximum benefit status, instructions on completing a direct member reimbursement claim form, status of direct member reimbursement claims, Claims processing, Claims submission, Claims payment, benefit coverage, and all Programs.
 - b. PBM shall make interpretation services available free of charge in Spanish. PBM shall maintain the availability of services, such as TTY services or comparable services for the deaf or hard of hearing.
- 3.20 Survey. PBM shall work with NDPERS to develop an Annual Customer Satisfaction Survey that shall be transmitted by PBM to a sample of NDPERS Members. PBM agrees that, if requested by NDPERS, PBM will tally the responses of the Survey and report the results to NDPERS.
- 3.21 Performance Guarantees. PBM shall provide PBM Services in accordance with the Performance Guarantees stated in Exhibit C of this Agreement.

ARTICLE 4 – PBM’s INVOICE REQUIREMENTS AND NDPERS’ PAYMENT OBLIGATIONS

- 4.1 Invoice Statements. The Parties agree that PBM’s invoicing procedures for (a) the costs of Covered Items, and (b) Administrative Fees and Additional Fees, in connection with Members are set forth in this Article 4.

All Invoice Statements shall be transmitted to NDPERS within three (3) days of the period specified below. PBM will submit invoices to NDPERS at the following address: PO Box 1657, Bismarck, North Dakota 58502-1657.

- a. **PBM’s Invoicing Procedure For The Cost of Covered Items For NDPERS’ Retiree Medicare Part D Self-Insured EGWP Plan.** PBM shall provide a monthly Invoice Statement, accurately reflecting the costs for all Covered Items (Ingredient Costs and Dispensing Fees) that were dispensed by PBM to NDPERS’ Members.
- b. **PBM’s Invoicing Procedure for Its Administrative Fees and Additional Fees.** PBM shall provide a monthly invoice to NDPERS for the Administrative Fees as well as for all Additional Fees owed for services performed during the previous month.
- c. **NDPERS’ Obligation In Connection with All Payments.** NDPERS shall pay each PBM Invoice Statement no later than thirty (30) business days from receipt of said Invoice Statement (inclusive of the day of invoicing) via wire transfer to PBM. Invoice Statements shall be deemed received by NDPERS upon the earliest delivery of the invoice by electronic copy or mail.
- d. **PBM’s Obligation to Provide Specified Summary Information with Each Invoice Statement.** Each Invoice Statement shall contain the following line item summary information, to the extent applicable for that Statement:
 1. The amount owed for the costs of Covered Items during the period
 2. The Administrative Fees
 3. The Additional Fees
 4. The total amounts owed, adding items 1) through 3) above.
- e. **PBM’s Obligation to Pass through Financial Benefits and DIR.** PBM agrees to pass through Financial Benefits and DIR disclose such pass-through on Invoice Statements, at least quarterly. PBM will provide NDPERS with a report within thirty (30) days after the end of each calendar quarter that will indicate the DIR that PBM’s Medicare Part D insurance company expects to receive for the previous quarter for NDPERS self-insured EGWP Plan Claims identified on Invoice Statements during that previous quarter. In addition, based on the actual DIR collected by PBM’s Medicare Part D insurance company by the end of each month, PBM will provide a credit to NDPERS during the following month, and identify said credit on the Invoice Statement of that following month.
- f. PBM will separately invoice for the LICs amounts that are paid by PBM to pharmacies and that PBM anticipates collecting from CMS. PBM shall also separately invoice other monies that PBM’s Medicare Part D Insurance Company anticipates collecting from CMS and that PBM’s Medicare Part D Insurance Company is required to pass through to NDPERS based on its monthly processed Prescription Drug Event records (e.g., CMS direct subsidy payments, CMS catastrophic reinsurance and coverage gap manufacturer discounts). PBM agrees to provide a final true-up of all monies paid by CMS, which NDPERS will be entitled to audit.

4.2 Administrative Fees.

- a. Amounts Owed. Commencing on NDPERS' Benefit Effective Date, NDPERS shall pay PBM an Administrative Fee as described in Exhibit A of this Agreement.
- b. Calculation of Number of "Members" for Each Month's Payment. For purposes of determining the number of NDPERS' Members, the Parties agree that they will rely on the number of eligible Members for NDPERS as of the Monday following the fifteenth (15th) day of each month.
- c. NDPERS' Annual Right to Renegotiate Administrative Fees. As long as this Agreement remains in effect, NDPERS shall have the right, at least annually, to renegotiate PBM's Administrative Fees. Should NDPERS choose to exercise said right, NDPERS' newly negotiated Administrative Fees shall be at least as favorable as the Administrative Fees stated above, unless forces outside the control of PBM preclude PBM from providing such Administrative Fees. Should PBM claim that its Administrative Fees must be increased, PBM shall have the obligation to demonstrate the need for the increase. The newly negotiated Administrative Fees shall be memorialized in writing by the Parties as an amendment to this Agreement.

4.3 Additional Fees.

- a. Amount of Additional Fees. Commencing at the end of the first month after NDPERS' Benefit Effective Date, and to be paid at the end of each month thereafter, NDPERS shall pay to PBM any Additional Fees incurred during the previous month as described in Exhibit A.
- b. Limit on Additional Fees. PBM represents and agrees that the Additional Fees listed in Exhibit A constitute the only Additional Fees that PBM shall seek during the initial two years of this Agreement. PBM further represents and agrees that PBM's agreed-upon Administrative Fees and profits constitute sufficient compensation to PBM for its administrative overhead and profits during this period, and no further Additional Fees shall be requested.

4.4 NDPERS' Payment Obligations in Connection with Disputed Amounts. The Parties agree that NDPERS shall be entitled to review Claims data and question any invoiced amounts – or Financial Benefit credits provided – in any Invoice Statement.

4.5 Failure to Question Invoices Does Not Constitute Waiver. Notwithstanding the provisions of Section 4.4, NDPERS shall not be obligated to raise any questions concerning any Invoice Statement, and NDPERS shall not waive its future right to do so, should NDPERS fail to transmit questions to PBM after receipt of an Invoice Statement.

ARTICLE 5 – FORMULARY OBLIGATIONS AND RIGHTS

- 5.1 Selection of Formulary. NDPERS may use PBM's standard formulary or customize its own formulary subject to Medicare Part D requirements. NDPERS understands and agrees that if NDPERS chooses to use PBM's standard formulary, NDPERS may not change said formulary. However, if NDPERS customizes its formulary, NDPERS shall have sole discretion how to do so, subject to PBM's right to request and obtain changes to Financial Guarantees.

If NDPERS wishes to consider customization of its Formulary for its Members, or implements a customized Formulary, PBM agrees to provide the following information to NDPERS: (a) the safety and efficacy of any identified Covered Items; (b) the net drug cost of any identified Covered Items, factoring in potential Financial Benefits that might be passed through; and (c) a disruption analysis for NDPERS to assess the likely impact of using PBM's standard formulary or customizing PBM's standard formulary, or implementing changes to its customized Formulary.

- 5.2 Change in Formulary. Unless otherwise agreed between PBM and NDPERS, NDPERS shall have the right each Contract Year to alter its selection of its Formulary. If NDPERS creates its own customized Formulary, NDPERS may alter its customized Formulary monthly. PBM agrees to provide requested information to NDPERS to enable NDPERS to change its customized Formulary, as requested by NDPERS.

ARTICLE 6 – AUDIT OBLIGATIONS AND RIGHTS

- 6.1 Audits shall be conducted pursuant to NDCC 54-52.1-04.15 and NDCC 54-52.1-04.16
- 6.2 Audits on Behalf of NDPERS. NDPERS and PBM agree that NDPERS shall have the right to conduct audits via its own internal auditor or a third-party auditor.
- a. NDPERS will be entitled to conduct an audit to ascertain whether PBM has complied with the terms of this Agreement, including those provisions concerning:
1. Set-Up Audit. NDPERS will be entitled to conduct a Set-Up Audit for purposes of verifying that NDPERS' Benefit Plan Designs were properly input as of each date by PBM. NDPERS (or its auditor) may conduct a set-up Audit to verify, among other matters, that its Benefit Plan Design, and every Program and Program protocol, has been accurately loaded into PBM's computer systems. In the event subsequent changes by PBM are necessary to NDPERS' Benefit Plan Design or Program set-up, NDPERS (or its auditor) will be entitled to conduct an additional set-up Audit on reasonable notice after PBM makes requested necessary changes. Notwithstanding NDPERS' right to conduct a set-up Audit, should PBM later be discovered to have improperly input NDPERS' Benefit Plan Design or Programs, PBM shall be liable for any costs resulting from PBM's error, as further described in this Agreement.
 2. Pass-Through Pricing Audit. If requested to conduct a Pass-Through Pricing Audit, NDPERS (or its auditor) shall be permitted to make a selection of retail pharmacy, Mail Order Pharmacy and Specialty Pharmacy Dispensed Claim transactions, as determined in NDPERS' discretion. In the event that any discrepancies are found, NDPERS (or its auditor) shall work with PBM to develop a plan to extend the selection. In the event that the parties are not able to agree on such a process, or the parties agree to such an extension and additional discrepancies are found, the parties agree that NDPERS (and its auditor) shall have the right to extrapolate from the results of the initial sample or the extended sample to determine the estimated total error and the amount owed to NDPERS as a result of the findings .

In connection with NDPERS' Pass-Through Pricing Audit of Mail-Order Dispensed Claims – and NDPERS' Pass-Through Pricing Audit of Specialty Drug Pharmacy Dispensed Claims: The Parties agree that the Parties will calculate and determine whether PBM satisfied its Pass-Through Pricing requirements by measuring the Mail Order Pharmacy's and Specialty Drug Pharmacy's contractual agreements with the PBM and comparing costs to PBM's invoiced costs for each Dispensed Claim from the relevant Pharmacy.

3. Financial Benefits Audit. As requested for an Audit(s) related to Pass-Through Pricing and Guarantee requirements for Financial Benefits PBM shall provide information to NDPERS (or its auditor) sufficient to allow NDPERS to assess whether PBM (i) has passed through the appropriate Pro Rata Share of Financial Benefits to NDPERS; (ii) has satisfied its Financial Benefit Guarantee obligations; (iii) has performed PBM's Annual Reconciliations of all of the above matters accurately. Upon request, PBM shall break out each of the components of Financial Benefits by the type of Financial Benefit (e.g., Pharmaceutical Manufacturer rebates, health management fees, data sales fees, etc.) and by the manufacturer. PBM shall transmit all such electronic and other data to NDPERS, or to NDPERS' auditor, as directed by NDPERS. NDPERS' auditor may also request for review – and PBM shall be obligated to provide – copies of (i) PBM/Pharmaceutical Manufacturer Contracts, and/or (ii) PBM's invoices to

Pharmaceutical Manufacturers, and/or (iii) Pharmaceutical Manufacturers' payments or credits or discounts (or other Financial Benefits) made to PBM, including remittance statements. All such documents shall be produced by PBM solely at PBM's offices. NDPERS (or its auditor) may make notes of the contents of all referenced documents, however, neither NDPERS nor its auditor will be permitted to make a copy of any such documents.

4. Eligibility Audit. NDPERS (or its auditor) will be entitled to conduct an Audit of PBM's enrollment, eligibility and invoicing for eligible Members. PBM will produce its roster of all Members, together with identifying pertinent information about the demographics, including but not limited to, Member number, date of enrollment, and date of disenrollment, if any. In the event of any discrepancies between PBM's enrollment data and NDPERS', PBM will produce relevant Claims data for those Members for whom there is a discrepancy, as permitted under HIPAA. The Parties agree that NDPERS has executed the necessary attestation indicating its compliance with HIPAA thereby enabling NDPERS or its auditor to conduct an Audit of PBM's enrollment, eligibility and invoicing, subject to HIPAA privacy requirements for providing minimum necessary data.
 5. Low Income Subsidies (LIPs and LICs). NDPERS will be entitled to audit (i) Member LIS status, and (ii) PBM's provision of accurate LIPs and LICs payments to Members to verify PBM is passing through to NDPERS (or Member) all appropriate monies, as required under this Agreement and under Medicare Laws and Regulations. PBM will produce its roster of all Members, including LIS indicator for all LIS Members, and its Claims data, with all fields necessary to enable NDPERS (or its auditor)) to conduct the above Audit.
 6. TrOOP Calculations. NDPERS will be entitled to audit PBM's TrOOP calculations. PBM will produce its Claims data, with all fields necessary to enable NDPERS (or its auditor) to conduct said Audit.
 7. Audit of Additional Medicare Part D and EGWP Plan Terms. NDPERS will be entitled to audit PBM's compliance with all other Medicare Part D requirements, including those related to EGWP Plans, such as PBM's provision to each self-insured Medicare Part D plan of the accurate amount of (i) CMS direct subsidies; (ii) Manufacturers' Coverage Gap discounts; (iii) CMS' Catastrophic Coverage reinsurance; and (iv) Manufacturers' payment of rebates/DIR to PBM, and PBM's receipt of Bona Fide Service Fees. PBM will provide PDE, MMR and MOR files/data, as requested, to enable the above Audit.
 8. Fraud, Waste and Abuse Program. NDPERS will be entitled to audit PBM's Fraud, Waste and Abuse Program. PBM will produce its audit report to enable NDPERS to verify that PBM has an adequate Fraud, Waste and Abuse program of prevention, detection and correction.
 9. Performance Guarantee Audit: NDPERS may conduct Audits of a Performance Guarantee(s). If it appears necessary for NDPERS to audit several Performance Guarantees, NDPERS will work with PBM to combine its Performance Guarantee Audits. Performance Guarantee Audits may be performed at any time within the contract period
- b. NDPERS may determine which of the above areas to audit at the end of each Contract Year, or thereafter, but may decide to delay auditing certain areas in its own discretion until several months or years have passed. When any area is audited for any Contract Year, NDPERS may not re-audit that particular area for that Contract Year in a subsequent audit.

6.3 General Terms Related To Who May Audit, and How Audits Will Be Conducted. The following individuals and/or entities may conduct Audits related to this Agreement, based on the following general guidelines:

- a. NDPERS shall have the right to use its own auditor or select any audit firm, as long as NDPERS' auditor shall not be an individual or entity that is: a competitor of PBM, a Pharmaceutical Manufacturer representative, or any retail, mail, or specialty drug pharmacy representative or vendor.
- b. All Audits conducted by NDPERS (or any auditors retained by NDPERS) shall be made during normal business hours. All Audits shall be conducted without undue interference to the audited Party's business activity, and in accordance with reasonable audit practices.
- c. NDPERS (or its auditors) shall be entitled to commence an Audit within thirty (30) days after NDPERS has provided written notice to PBM of its intention to conduct an Audit. PBM shall be obligated to provide all electronic data identified in Article 6 to NDPERS (or its auditor) within thirty (30) days of PBM's receipt of said notice. PBM shall be obligated to provide – or make available at its offices – as specified herein, all other documents and data identified in Article 6 no later than forty-five (45) days after PBM's receipt of said notice.
- d. With respect to all data and documents produced by PBM to NDPERS or to its agents or auditors, PBM's production shall be made without redacting or altering any information from the data and documents produced. When electronic data is produced by PBM, all fields created or maintained or used by PBM shall be produced, and none shall be withheld, redacted or deleted. In addition, appropriate manuals and/or guides identifying the meaning of each field shall be produced.
- e. As requested for an Audit, PBM shall provide to NDPERS (or its auditor) an electronic data file reflecting all Claims transactions for NDPERS for the specified Audit period. Said electronic file shall include (i) PBM's invoiced costs for NDPERS for each item dispensed from a retail pharmacy and the Mail Order Pharmacy and the Specialty Drug Pharmacy, and (ii) PBM's reimbursement costs to each pharmacy for each such item. Claims data shall be produced in one of the following formats: Access, fixed-length flat file or delimited flat file. Any data submitted in flat file format must either have a data layout attached, or the first line of the file must contain field names. File formats must remain constant from submission to submission, unless additional fields need to be added. PBM shall transmit all such electronic data to NDPERS or to its auditor, or to both, as directed by NDPERS.
- f. In the event any questions are raised, or any additional requests for information or documents or data are requested, by NDPERS (or its auditor) during any Audit, PBM shall be obligated to respond to all such questions, and produce all additional information, documents and/or data within seven (7) business days of receipt of such questions or requests. If PBM cannot respond in said time period, PBM shall provide a written statement as to when PBM will respond, but in any event, PBM's response must be no later than twenty (20) days after receiving NDPERS' (or its auditor's) written request.
- g. In the event that an Audit concludes that PBM has violated its obligations or the terms of this Agreement, and PBM disputes said Audit findings, PBM must set forth the basis for its dispute, with all supporting documentation, within thirty (30) days of PBM's receipt of the disputed Audit findings. PBM shall provide sufficient documentation to permit adequate review of the disputed issues and shall have the burden of demonstrating that NDPERS' (or its auditor's) conclusions are incorrect. To the extent PBM fails to provide documentation substantiating any part of its position, or fails to meet its burden of proof, PBM shall waive its right to further dispute that matter. After receiving PBM's documentation, NDPERS (or its auditor) shall review said documentation and advise PBM whether NDPERS has changed its Audit findings or conclusions. If the Parties do not resolve a dispute over Audit findings

within sixty (60) days of PBM's receipt of the disputed Audit findings, NDPERS may terminate the Agreement as set forth in the Agreement.

- h. In the event that PBM disputes NDPERS' (or its auditor's) Audit findings, and PBM's basis for dispute is that NDPERS required or authorized certain activity, procedures, mechanisms or calculations to occur that are the subject of the dispute, PBM shall have the burden of providing written documentary evidence demonstrating its allegations. If PBM is unable to provide such evidence, PBM shall waive its right to assert such allegations.

6.4 PBM's Agreement to Pay Interest on Amounts Owed As A Result Of An Accurate Audit Finding

- a. PBM acknowledges that should NDPERS (or its auditor) determine in an Audit that PBM has failed to satisfy certain obligations in this Agreement, PBM's subsequent payment to NDPERS will not make NDPERS whole, given the time lag between PBM's violation of terms in this Agreement, and its payment to NDPERS.
- b. PBM agrees that should NDPERS (and its auditor) accurately conclude in an Audit that PBM has failed to satisfy any of the contract provisions included in Exhibit A, PBM will be required to pay interest on all amounts that are found due and owing, from the date that PBM's failure occurred (as more fully described below), until the date that PBM reimburses NDPERS for the damages caused. Interest shall be calculated at three percent (3%) per annum over the 10 Year Treasury Rate as of January 1st of the year that the Audit leading to the reimbursement concluded.
- c. Timely Payment of Amounts Owed. Should NDPERS (or its auditor) accurately conclude that PBM has failed to meet any of the terms identified in this Agreement, PBM shall be obligated to reimburse NDPERS for the appropriate amount of interest within thirty (30) days after the Parties have resolved any dispute. After NDPERS (or the auditor) provides PBM with Audit findings, should PBM dispute any finding, the Parties will first attempt to resolve the dispute through discussion with the business managers of the respective Parties. If the business managers cannot successfully resolve the dispute, then NDPERS may terminate the Agreement under the terms of the Agreement.

ARTICLE 7 - CONFIDENTIALITY

- 7.1 Confidentiality of Information. PBM and NDPERS shall maintain the confidentiality of all Claims data and eligibility information to the full extent required by applicable law, including without limitation the provisions of the Health Insurance Portability and Accountability Act of 1996 (hereinafter, "HIPAA"), and may not use or disclose the information in any way prohibited by this Agreement or the law.
- 7.2 Treatment of Confidential Information NDPERS and PBM agree that all participation by NDPERS Members and their dependents in programs administered by NDPERS is confidential under North Dakota law. PBM may request and NDPERS shall provide directly to PBM upon such request, confidential information necessary for PBM to provide the services described in Article 3. PBM shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of PBM to maintain the confidentiality of such information may be considered a material breach of the Agreement and may constitute the basis for additional civil and criminal penalties under North Dakota law. PBM shall not disclose any individual employee or dependent information without the prior written consent of the employee or family member. PBM has exclusive control over the direction and guidance of the persons rendering services under this Agreement.
- PBM understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from PBM. PBM further understands that any records that are obtained or generated by PBM under this contract, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. PBM agrees to contact NDPERS immediately upon receiving a request for information under the open records law and to comply with NDPERS' instructions on how to respond to the request.
- 7.3 Protected Health Information. NDPERS and PBM will have access to Protected Health Information (PHI) (as defined by HIPAA). Each party agrees, for itself and all of its officers, directors, management, employees, and any third parties it employs or with which it consults, that PHI shall not be used for any impermissible purpose, including, without limitation, the use of PHI for disciplinary or discriminatory purposes, and any user names and passwords assigned to designated individuals shall not be shared with non-designated individuals. Each Party, for itself and all of the above-identified agents, authorizes the other Party to use and share PHI as necessary to carry out its obligations in this Agreement, subject to each Party's obligation to fulfill all confidentiality requirements of HIPAA and all other applicable law.
- 7.4 HIPAA Compliance. NDPERS and PBM will comply with HIPAA and all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:
- a. All services provided by PBM under this Agreement will be provided in such a manner as to enable every other Party to remain at all times in compliance with all HIPAA regulations applicable to the other Party to the extent that the other Party's compliance depends upon the manner in which such services are performed by PBM; and
 - b. All software, application programs and other products licensed or supplied by PBM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that each Party's use of such software, application programs and other products and associate documentation from PBM, when utilized by any Party in the manner directed by PBM, will fully comply with the HIPAA regulations.
- 7.5 Ownership of Information. All Claims data and other data arising from implementation of this Agreement shall solely be the property of NDPERS pursuant to N.D.C.C. § 54-52.1-12. PBM shall not be allowed to sell such data in any form, to any third party. Upon termination of this Agreement,

for any reason, PBM shall return or destroy all confidential information received from NDPERS, or created or received by PBM on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of PBM. PBM shall retain no copies of the confidential information. In the event that PBM asserts that returning or destroying the confidential information is not feasible, PBM shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of NDPERS that return or destruction of confidential information is not feasible, PBM shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as PBM maintains the confidential information.

ARTICLE 8 – TERM AND TERMINATION

- 8.1 Term of this Agreement. This Agreement shall become effective as of the execution of the Agreement by PBM and NDPERS. This Agreement shall remain in effect for a term of one Contract Year from the Benefit Effective Date of January 1, 2025, unless terminated by the Parties as described herein. NDPERS may terminate this Agreement, with or without cause, with written notice at least ninety (90) days prior to the termination date.
- 8.2 Termination of this Agreement due to NDPERS' Non-Payment. In the event NDPERS fails to timely pay PBM the full amounts owed as set forth in Article 4, PBM may issue a written Notification of Non-Payment informing NDPERS that (i) it is in material breach of the terms of this Agreement; and (ii) NDPERS will have thirty (30) days to cure its breach. Should NDPERS fail to comply with the above requirement, PBM shall be entitled to cease all PBM Services thirty (30) days after NDPERS receives PBM's Notification of Non-Payment. During the above-referenced period when NDPERS is in breach of its obligations to pay non-disputed amounts, PBM agrees to continue to provide PBM Services to NDPERS and its Members. However, PBM may set off any amounts owed for Financial Benefit Guarantees or to compensate PBM during that period for those undisputed amounts that have not been paid. In the event that NDPERS makes payment on or before the referenced thirty (30) day period, to be entitled to continue to receive PBM Services NDPERS must make payment for all amounts owed, less any amounts that PBM has previously set off. In the event that NDPERS fails to make full payment of all amounts owed as of the end of the thirty (30) day period, PBM shall be allowed to cut off all PBM Services to NDPERS, and PBM shall provide NDPERS with a Notice identifying the full amounts owed, less any amounts that PBM has previously set off. PBM shall also be entitled to continue to collect and retain all Financial Benefits until PBM has collected the amounts still owed, after which any additional Financial Benefits that PBM collects that represent NDPERS' Pro Rata Share of Financial Benefits must be passed through by PBM to NDPERS.
- 8.3 Termination by Mutual Agreement or with Notice. This Contract may be terminated at any time by mutual consent of both parties executed in writing, or by either party with ninety (90) days' notice.
- 8.4 Termination for Lack of Funding or Authority. NDPERS by written notice to PBM, may terminate the whole or any part of this Contract under any of the following conditions: 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract. 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed. Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- 8.5 Effect of Termination. Termination shall have no effect upon the rights and obligations of the Parties arising out of any transactions occurring prior to the effective date of such termination. Upon termination: (i) all further obligations of the Parties under this Agreement shall terminate as of the termination date (except as provided in this Agreement); (ii) all Confidential Information provided by any Party (except for Confidential Information required by any law, or by a contractual relationship to be retained by a Party) shall be immediately returned to a requesting Party, or the Party from whom information is requested shall certify to the requesting Party that all requested materials have been destroyed; (iii) no Party shall be relieved of any obligation or liability arising from any prior breach by such Party of any provision of this Agreement; and (iv) the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Agreement, to the extent necessary to satisfy this Agreement's terms.
- 8.6 PBM's Agreements Concerning Documents, Data and Information, Should This Agreement Be Terminated. PBM hereby agrees to provide, without delay, but in any event no later than thirty days

prior to the expiration of the Agreement between NDPERS and PBM, and at no cost, in electronic or other standard PBM formats requested by NDPERS, all reasonably requested documents, data and information that are necessary to enable transition of the services being performed hereunder to any replacement PBM selected by NDPERS. PBM acknowledges that time is of the essence for providing the necessary documents, data and information described herein to effectuate a transition to any replacement PBM. At a minimum, such information shall **include**: (i) All Member enrollment information, including demographic information; (ii) Electronic claims prescription records from NDPERS' Benefit Effective Date(s) onwards; (iii) Hard copy claim transaction records as requested by NDPERS; and (iv) Information on Prior Authorization and Step Therapy and any other "accumulator benefit," for example, Member deductibles and maximum benefit amounts and refill information, all in electronic format.

ARTICLE 9 – RIGHT TO IMPLEMENT PLAN MANAGEMENT PROGRAMS

- 9.1 NDPERS’ Right to Develop Programs, and PBM’s Obligation to Assist NDPERS in the Development of Programs. Notwithstanding PBM’s right to serve as NDPERS’ prescription benefit provider, PBM acknowledges that NDPERS may implement new programs to improve drug coverage benefits, improve the health of Members, and/or reduce costs, provided said programs are in accordance with any CMS, federal or state statutes and/or regulations or rules

Should NDPERS request PBM's assistance with any of the matters identified in the above two paragraphs, PBM agrees to provide said assistance.

The Parties acknowledge that any of the above-described initiatives by NDPERS may impact PBM's ability to satisfy guarantees contained in this Agreement. Accordingly, NDPERS shall discuss all such initiatives with PBM prior to their implementation, and PBM shall thereafter provide a formal written notification to NDPERS of the extent to which any such initiative might impact guarantees in this Agreement. PBM represents and agrees that its notification will reflect the actual impact of NDPERS’ initiatives on PBM’s ability to satisfy any identified guarantees. Should an adjustment to a guarantee be necessitated due to NDPERS’ initiative, PBM shall bear the burden of demonstrating the need for, and amount of, said adjustment.

ARTICLE 10 – MISCELLANEOUS ADDITIONAL PROVISIONS

- 10.1 Choice of Law and Venue. This agreement shall be construed, interpreted, and governed according to the laws of the State of North Dakota without regard to its conflict of laws and rules. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.
- 10.2 Attorneys Fees. In the event a lawsuit is initiated by NDPERS to obtain performance due under this contract, and NDPERS is the prevailing party, PBM shall, except when prohibited by N.D.C.C. § 28-26-04, pay NDPERS's reasonable attorney fees and costs in connection with the lawsuit.
- 10.3 Use of the Name and all Symbols, Trademarks, and Service Marks. Each Party reserves the right to control the use of each of its own names and all symbols, trademarks, and service marks presently existing or subsequently established. Each Party further agrees that it will not use any other Party's name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the other Party's prior written consent and will cease any and all usage immediately upon another Party's request or upon termination of this Agreement.
- 10.4 Force Majeure. A Party's performance obligations under this Agreement shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes that are outside the control of the Party. Without limiting the generality of the foregoing, such causes include acts of God, acts of a public enemy, acts of any person engaged in a subversive or terrorist activity or sabotage, wars, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, and comparable causes. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as said conditions abate sufficiently to allow the resumption of operations, the Party affected thereby shall fulfill its obligations as set forth under this Agreement.
- 10.5 Consent to Amend. This Agreement may be amended at any time during the term of this Agreement, but only by mutual written consent of duly authorized representatives of each or the signatory Parties required to amend this Agreement.
- 10.6 Severability. In the event that any provision of any executed Agreement shall be determined to be invalid, unlawful, void, or unenforceable to any extent, the remainder of said Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.7 Successors and Assigns. No rights or benefits under this Agreement are assignable by any Party to any third party unless approved, in writing, by the other Parties executing this Agreement. Any assignment by any Party without the express prior written consent of all other executing Parties shall be void and shall not relieve the assigning Party of any of its obligations or liabilities arising from the attached Agreement. Notwithstanding the foregoing, PBM may assign any functions to be performed under this Agreement to its respective wholly-owned subsidiaries, provided all other provisions in the attached Agreement are honored.

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

- 10.8 Prior Agreements Invalid. As of the execution date of this Agreement, this Agreement replaces and supersedes all other prior Agreements between the parties executing this Agreement, as well as any other prior written or oral understandings, negotiations, discussions, or arrangements between those parties, related to matters covered by this Agreement or the documents incorporated herein.

- 10.9 Entire Agreement. PBM agrees to provide the service(s) as specified in the 2024 RFP and proposal (attached hereto and incorporated by reference Exhibit A). The provisions of this Agreement, including all the Exhibits attached hereto, shall bind and inure to the benefit of the identified Parties executing this Agreement, and to their heirs, legal representatives, permitted successors and permitted assignees. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence:
- a. The terms of this Agreement.
 - b. Bidder's written responses provided as part of the Request for Proposal;
 - c. Bidder's Proposal for 2025
- 10.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the necessary Parties and delivered to the other necessary signing Parties, it being understood that each Party need not sign the same counterpart. The failure to deliver the original signature copy and/or the non-receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.
- 10.11 Representations. Each Party signing this Agreement represents and warrants that he or she (i) has read this Agreement and fully understands and agrees to the content herein; (ii) has entered into this Agreement voluntarily; (iii) has not transferred or assigned or otherwise conveyed in any manner or form any of the rights, obligations or claims which are the subject matter of this Agreement; and (iv) has the full power and authority to execute this Agreement. This Agreement is not binding unless executed by all signatories identified in this Agreement.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed under seal effective as of the date set forth in the opening paragraph of this Agreement.

PBM: _____

By: Date:

Name and Title: _____

North Dakota Public Employees Retirement System (Plan Sponsor):

By: Date:

Name and Title: _____

EXHIBIT A

PRESCRIPTION DRUG PRICING AND GUARANTEES

1. PBM's General Representations and Agreements. PBM agrees to provide to NDPERS, in full compliance with CMS and North Dakota law which contains certain restrictions related to pharmacies: (a) a Retail Pharmacy Network, and the ability for Members to process paper claims from retail pharmacies that may not be part of its Retail Pharmacy Network; (b) ongoing dispensing from its Mail Order Pharmacy; (c) ongoing dispensing from its Specialty Drug Pharmacy; (d) ongoing negotiations by PBM with its Retail Pharmacy Network and with Pharmaceutical Manufacturers to attempt to improve its pricing continuously; (e) Pass-Through Pricing for every Covered Item from each of the above pharmacies; and (f) PBM's agreement that to the extent it negotiates multiple contracts with the same pharmacy with different pricing, PBM will provide its "best pricing available" for NDPERS as its Pass-Through Pricing to NDPERS. The Parties agree that said "best pricing available" shall mean PBM will pass through to NDPERS the terms most favorable for (and least expensive to) NDPERS, unless PBM's multiple contracts or alternative financial terms were negotiated by PBM for purposes of providing terms to PBM clients that use limited pharmacy networks or have particular business terms acceptable to a pharmacy for one-off pricing, or that are "dissimilar" to NDPERS, such as Workers Compensation providers, 340(b) providers, a Staff Model Pharmacy, a long term care pharmacy provider or the pricing is for Medicaid or Dual Eligible clients.

2. In connection with any Medicare Part D Plan, PBM agrees to comply, and to contractually require all Related Entities and Downstream Entities (as those terms are defined by CMS) to comply, with all CMS Requirements, which require that PBM (and all Related Entities and Downstream Entities)
 - i. pass through in connection with each self-insured EGWP Plan one hundred percent (100%) of all DIR, and
 - ii. retain only those financial benefits that satisfy CMS Requirements concerning Bona Fide Service Fees,
 - iii. properly allocate DIR as set forth in CMS requirements; and
 - iv. properly report to CMS concerning all of the above. In connection with any fully-insured EGWP Plan, PBM agrees to adhere to the same standards as described above and to accurately account for all DIR and Bona Fide Service Fees to CMS.

3. Compliance with North Dakota Century Code. PBM agrees to comply with all provisions of North Dakota Century Code Chapter 54-52.1-04.

4. Average Annual Guarantees:

I. Average Annual AWP Discounts – Minimum Guarantees	1/1/2025
30 Day Retail	
Brand (AWP - ___%)	
Generic (MAC & Non MAC - ___%)	
90 Day Retail	
Brand (AWP - ___%)	
Generic (MAC & Non MAC - ___%)	
Mail Order	
Brand (AWP - ___%)	
Generic (MAC & Non MAC - ___%)	

Specialty	
Guaranteed Overall Effective Discount	
Limited Distribution Drugs	
Guaranteed Overall Effective Discount	
II. Average Annual Dispensing Fees – Maximum Guarantees	1/1/2025
30 Day Retail	
Brand	
Generic	
90 Day Retail	
Brand	
Generic	
Mail Order	
Brand	
Generic	
Specialty	
Brand	
Generic	
Limited Distribution Drugs	
Brand	
Generic	
III. Fixed Monthly Administrative Fees	1/1/2025
EGWP Administrative Fee <i>(insert basis here e.g. PEPM, PMPM, Per Rx)</i>	
IV. Financial Benefits – Minimum Per Brand Claim Guarantees	1/1/2025
Per Brand Prescription - 30 Day Retail	
Per Brand Prescription - 90 Day Retail	
Per Brand Prescription - Mail	
Per Brand Prescription - Specialty Excluding Limited Distribution Drugs	
Per Brand Prescription - Specialty Limited Distribution Drugs	
V. Other Fees	1/1/2025
Intake and load claim history files, prior authorization files, open mail order refill files, accumulator files during implementation	
Ongoing file feed transmission to 3rd party (consultant, data warehouse, wellness and/or disease management, accumulators, stop loss)	
Paper Claim Processing (per claim basis)	
Electronic prescribing (per claim basis)	
Administrative Prior Authorization (per authorization basis)	
Clinical Prior Authorization (per authorization basis)	
Nursing Charges (per visit (if applicable))	
Online Reporting Platform Access (per user basis)	
Custom Reporting Programming (per hour basis)	
Replacement of ID Card	
Other <i>(insert rows and list additional fees)</i>	

VI. Optional Clinical Programs	1/1/2025
<i>(insert program name)</i>	

5. The Measurement and Calculation of the Satisfaction of All Average Annual Guarantees. In measuring and calculating whether PBM satisfied every Average Annual Guarantee, all of the following parameters shall be used:
 - a. In calculating each Average Annual Guarantee for Ingredient Costs: PBM shall categorize “Brand Drugs” and “Generic Drugs” based on the definitions contained in this Agreement, and shall include all Dispensed Claims for Covered Items, including, if they are Covered Items, all insulin supplies, all test strips and insulin products, but excluding all (i) coded and uncoded Compound Drugs; (ii) drugs dispensed at the Specialty Drug Pharmacy; (iii) Claims that are from LTC pharmacies or government owned or operated pharmacies (e.g. Veterans Administration); (iv) Claims paid at government required amounts (e.g. Medicaid); (v) 340B Claims; (vi) vaccines; and (vii) Claims processed and paid through another insurer as a result of the coordination of benefits. PBM shall include all of the Dispensed Claims described as being “included” in this paragraph, regardless of whether PBM reimbursed a pharmacy using an AWP discount price, a MAC price or a non-MAC price or U&C; In instances where PBM used U&C to reimburse the retail pharmacy, PBM will allocate its entire cost to the Ingredient Cost, as described in the Definition for Ingredient Cost.
 - b. In calculating each Average Annual Guarantee for Dispensing Fees: PBM shall categorize “Brand Drugs” and “Generic Drugs” based on the definitions contained in this Agreement, and shall include all Dispensed Claims for Covered Items, including, if they are Covered Items, all insulin supplies, all test strips and insulin products, but excluding all (i) coded and uncoded Compound Drugs; (ii) drugs dispensed at the Specialty Drug Pharmacy; (iii) Claims from LTC pharmacies or government owned or operated pharmacies (e.g. Veterans Administration); (iv) Claims paid at government required amounts (e.g. Medicaid); (v) 340B Claims; (vi) vaccines; and (vii) Claims paid through another insurer as a result of the coordination of benefits. PBM shall include all Dispensed Claims described as being “included” in this paragraph, regardless of whether PBM reimbursed a pharmacy using an AWP discount price, a MAC price or a non-MAC price or U&C; In instances where PBM used U&C to reimburse the retail pharmacy, PBM will be entitled to credit itself with a \$0 Dispensing Fee, as described in the Definition for Dispensing Fee.
 - c. Treatment of Financial Benefits: In calculating each Average Annual Guarantee, PBM shall also not include any Financial Benefits.
 - d. Exclusion of Program Savings: In calculating each Average Annual Guarantee, PBM shall also not include any savings brought about by any Program implemented by and for NDPERS. The AWP discount for the Brand Drug dispensed shall be factored into the applicable Brand Drug Average Annual Guarantee, and PBM shall not also include NDPERS’ savings resulting from the differential between the cost of the Generic Drug and Brand Drug. Similarly, in connection with Programs such as a Prior Authorization and Step Therapy, the invoiced cost to NDPERS of the drug dispensed shall be the only figure used to determine PBM’s satisfaction of Average Annual Guarantees, and any savings resulting from the Program shall not also be factored into calculating satisfaction of Average Annual Guarantees.

- e. PBM's Payment for Failure to Satisfy Any Average Annual Guarantee. In addition to the parameters set forth herein, the Parties agree that the following methods shall be used by PBM, NDPERS and/or NDPERS' auditor to determine whether PBM has satisfied each of the Average Annual Guarantees for NDPERS:

1. For each of the Ingredient Cost Guarantees (one (1) brand, and two (2) generic, in each of three (3) drug categories – retail, Retail 90 and mail): The total sum of the Extended AWP's shall be calculated for all Dispensed Claims based on the parameters set forth herein and shall be called "Total AWP's." The total Ingredient Costs invoiced to NDPERS for the same Dispensed Claims shall be calculated and shall be called "Total Invoiced Costs." The following formula shall thereafter be applied:

$$1 - (\text{Total Invoiced Costs} / \text{Total AWP's}) = \text{Actual Average Annual Rate}$$

If the Actual Average Annual Rate is less than the Guaranteed Average Rate stated for any Guarantee, than the overcharge that the PBM must reimburse to NDPERS shall be:

$$(\text{Guaranteed Average Rate} - \text{Actual Average Annual Rate}) \times (\text{Total AWP's})$$

2. For each of the Dispensing Fee Guarantees (retail brand, retail generic, Retail 90 brand, Retail 90 generic, mail brand, and mail generic): The total number of Dispensed Claims shall be calculated based on the parameters set forth herein, and the total Dispensing Fees associated with those Dispensed Claims shall be calculated, and the latter shall be divided by the former to determine the actual average Dispensing Fee for that Guarantee.

If the actual Average Annual Dispensing Fee is greater than the Guaranteed Average Dispensing Fee stated, than the overcharge that PBM must reimburse to NDPERS shall be:

$$(\text{Actual Average Annual Dispensing Fee} - \text{Guaranteed Average Dispensing Fee}) \times (\text{total numbers of Dispensed Claims})$$

- f. Non-Offsetting Guarantees. Should PBM be found by NDPERS (or NDPERS' auditor) to have failed to satisfy any of the Average Annual Guarantees (or any renegotiations of said Guarantees), PBM shall pay NDPERS the amounts reflected by the formulas stated in this Exhibit. PBM shall not be allowed to offset any failure to satisfy any Financial Guarantee against PBM's excess satisfaction of any Financial Guarantee. In the event that PBM fails to satisfy any Average Annual Guarantee, PBM shall be fully liable for its failure to satisfy that Guarantee, regardless of PBM's success in exceeding any other Financial Guarantee in this Agreement.
6. PBM's Agreement to Provide Annual Reconciliations. PBM agrees to provide to NDPERS (and its auditors) Annual Reconciliations of PBM's Actual Average Rates as compared to its Guaranteed Average Rates. Should PBM's Actual Average Rates be weaker than its Guaranteed Average Rates, PBM further agrees to pay the difference to NDPERS at the time of its Annual Reconciliation.
 7. On or about the beginning of the tenth (10th) month of each Medicare Part D Contract Year - beginning in the second year after the Effective Date of this Agreement and continuing until the year after termination of this Agreement, PBM agrees to perform an Annual Reconciliation calculating the difference between (i) the Financial Benefits or DIR that were passed through up until that date for the previous relevant Contract Year in connection with Invoice Statements, and the (ii) actual Financial Benefits or DIR collected by PBM from Pharmaceutical Manufacturers and due and owing to NDPERS as NDPERS' Pro Rata Share of Financial Benefits or DIR for the previous relevant Contract Year. Should the amounts passed through in item (i) above be less than the amounts calculated in item (ii)

above, PBM shall pay NDPERS the difference, at the time PBM transmits its Annual Pass-Through Reconciliation. Should the amounts passed through in item (i) above be more than the total amounts calculated in item (ii) above, NDPERS will not owe PBM the differential, but said amount shall be used as an offset against PBM's pass-through obligations in the future. Notwithstanding PBM's obligation to provide Annual Pass-Through Reconciliations, NDPERS shall have the right to conduct its own Audit to determine whether PBM has satisfied its Financial Benefit and DIR Pass-Through obligations under this Agreement.

8. Specialty Drugs.

- a. Management and Administration. Subject to the requirements of any regulatory authority, PBM is required to (i) ensure that Specialty Drugs are dispensed using the pricing and guarantees described in this Agreement; (ii) apply any agreed upon protocols established by PBM and NDPERS including but not limited to protocols concerning quantity limits and refill/renewal practices.
- b. Specialty Drug Minimum Guaranteed Discounts for Specialty Drugs Dispensed from the Specialty Drug Pharmacy. The Parties agree that the Minimum Guaranteed Discounts identified on Exhibit B shall constitute "Minimum Guaranteed Discounts" for each Specialty Drug, when it is dispensed from the Specialty Drug Pharmacy. For every Claim, PBM agrees to invoice for each Specialty Drug that is on Exhibit B and that is dispensed from the Specialty Drug Pharmacy using Pass-Through Pricing, with such Pass-Through Pricing being as favorable as, or more favorable than, the Minimum Guaranteed Discounts identified on Exhibit B. *[Each PBM Contestant must provide a Specialty Drug Pricing Schedule and thus identify its drug-by-drug Minimum Guaranteed Discount for each Specialty Drug when said Specialty Drug is dispensed from the Specialty Pharmacy.]*
- c. Default Discount Guarantee for New-to-Market Specialty Drugs Dispensed from the Specialty Drug Pharmacy. PBM agrees to provide a Default Discount Guarantee of AWP-____% for all new-to-market Specialty Drugs dispensed from the Specialty Drug Pharmacy. *[Each PBM to fill in blank with proposed Default Discount Guarantee]*
- d. Protocol for Dispensing New-to-Market Specialty Drugs. In connection with dispensing new-to-market Specialty Drugs (that are not yet listed on Exhibit B), NDPERS has decided that: NDPERS will allow PBM to dispense new-to-market Specialty Drugs from retail pharmacies or the Specialty Drug Pharmacy without the NDPERS' prior approval. For all such dispensed drugs, PBM will be obligated to invoice using Pass-Through Pricing whether the Drugs are dispensed from retail Pharmacies or the Specialty Drug Pharmacy. If the new-to-market Specialty Drug is dispensed from the Specialty Drug Pharmacy, PBM will also be obligated to ensure said pricing is at least as favorable as the Default Discount Guarantee.
- e. PBM's Payment for Failure to Satisfy Any Specialty Drug Minimum Guaranteed Discount, or Default Discount Guarantee. The Parties agree that the following method shall be used by PBM, NDPERS or NDPERS' auditor to determine whether PBM has satisfied each of the Specialty Drug Minimum Guaranteed Discounts stated on Exhibit B, or when applicable, PBM's Default Discount Guarantee: For each Specialty Drug dispensed from the Specialty Drug Pharmacy each Dispensed Claim shall be re-priced according to the Minimum Guaranteed Discounts identified on Exhibit B (or an amendment thereto) or if the Specialty Drug was dispensed from the Specialty Drug Pharmacy but was a new-to-market Specialty Drug not yet listed on Exhibit B with an agreed upon Minimum Guaranteed Discount, based on application of the Default Discount Guarantee. Should the amount calculated be less than the amount invoiced to NDPERS, PBM shall pay the difference to NDPERS.
- f. PBM shall not be allowed to offset its failure to satisfy any Specialty Drug Minimum Guaranteed Discount or Default Discount Guarantee against PBM's excess satisfaction of any other

Specialty Drug Minimum Guaranteed Discount or the Default Discount Guarantee (or any other Financial Guarantee in this Agreement).

9. PBM's Pass-Through of Financial Benefits. PBM agrees to pass-through 100% of NDPERS' Pro Rata Share of all Financial Benefits that PBM receives from all third parties. PBM agrees to pay its Financial Benefit Guarantees at the end of each quarter, beginning at the end of the second quarter after NDPERS' Benefit Effective Date and continuing until after NDPERS' termination date when all Financial Benefits are paid according to this contract.
 - a. PBM's Agreement To Pass Through - and Report - To NDPERS Its Pro Rata Share of Financial Benefits. PBM agrees to pass through to NDPERS 100% of NDPERS' Pro Rata Share of all Financial Benefits that PBM receives from all Pharmaceutical Manufacturers, and as are reflected in all PBM/Pharmaceutical Manufacturer Contracts.
 - b. Definition of Pro Rata Share of Financial Benefits. NDPERS' Pro Rata Share of Financial Benefits shall be defined to include, but not be limited to, the following:
 1. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of a flat amount per prescription (or per Dispensed Claim), PBM shall pass through to NDPERS that amount times the number of prescriptions (or Dispensed Claims) dispensed to NDPERS' Members.
 2. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of a percentage amount (of the total AWP, or total WAC, or total ASP, etc.) dispensed, PBM shall pass through to NDPERS the percentage amount times the total AWP, or total WAC, or total ASP (or other identified amount) dispensed to NDPERS' Members.
 3. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of tiered additional payments based on any factor (such as the added market share, or added number of prescriptions dispensed, etc.), PBM shall multiply the total amount paid as a tiered additional payment, by the "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents (as described below in subparagraph v).
 4. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for a flat payment of money related – or unrelated - to any drugs dispensed (e.g., the payment by a Pharmaceutical Manufacturer of a health management fee, or data sales fee, or educational grant, etc.), PBM shall calculate NDPERS' Pro Rata Share of said payment by multiplying the amount of the payment, by the "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents (as described below in subparagraph v).
 5. The "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents shall be measured by the total amount paid to Participating Pharmacies (Ingredient Costs plus Dispensing Fees) by PBM on behalf of NDPERS, divided by the total amount paid to Participating Pharmacies (Ingredient Costs plus Dispensing Fees) by PBM on behalf of all PBM's clients including NDPERS. The time frame for the calculations identified herein shall be the same time frame used by the Pharmaceutical Manufacturer to pay the PBM.
 - c. PBM's Obligation To Pass Through To NDPERS Its Pro Rata Share of All Financial Benefits. In connection with any Financial Benefits that may be collected by PBM from Pharmaceutical Manufacturers, PBM agrees that it is obligated to pass through to NDPERS the appropriate amount of Rebates, including if said Rebates are collected after any Annual Reconciliation or after the termination of this Agreement.
 - d. The Parties agree that in calculating PBM's satisfaction of any Financial Benefit Guarantees, the Parties will determine what constitutes a Brand Drug based on the Definitions in this

Agreement, and the Parties will not include: member submitted paper Claims, or Claims submitted to and paid by another provider based on coordination of benefits programs, or Compound Drugs or VA Claims or 340b Claims. However, the Parties will include: OTC Claims and insulin and test strips. The Parties further agree that in calculating PBM's satisfaction of any Financial Benefit Guarantees, the Parties will not include any Dispensed Claims representing drugs dispensed in connection with government programs that receive rebates, discounts or other forms of price reduction and that therefore preclude PBM from payment of Financial Benefits to NDPERS.

- e. Annual Reconciliation of Financial Benefit Guarantees and NDPERS' Right to Audit All Such Guarantees. Within 90 days after the end of each Contract Year, PBM agrees to perform – and transmit to NDPERS – an annual Reconciliation calculating the difference between the amount of payments that were owed during the previous Contract Year based on the Financial Benefit Guarantees stated in this Agreement, and the total amount that was actually passed through during the previous Contract Year. Should the total amounts passed through in connection with Invoice Statements be less than the guaranteed amounts, PBM will pay NDPERS the differential at the time that the Reconciliation is transmitted. Should the total amounts passed through in connection with Invoice Statements be more than the guaranteed amounts, no exchange of funds will take place as a result of this Annual Guarantee Reconciliation, since the guaranteed amounts are in fact guaranteed.

EXHIBIT B

LIST OF SPECIALTY DRUGS, AND MINIMUM GUARANTEED DISCOUNTS FOR SPECIALTY DRUGS

The Parties agree that the drugs identified on this Exhibit shall be categorized as Specialty Drugs during the term of the Agreement. The Parties also agree that the drugs identified on this Exhibit can be modified by mutual, written agreement of the Parties on a quarterly basis, as described in Exhibit A of the Agreement.

The Parties further agree that the discounts specified below shall constitute Specialty Drug Minimum Guaranteed Discounts, as described in Exhibit A of the Agreement. The specified Minimum Guaranteed Discounts are exclusive of any Financial Benefits that are passed through by PBM to NDPERS, exclusive of Dispensing Fees or sales taxes or use taxes, but inclusive of any Copayment or Coinsurance to be paid by the Member.

The Parties also agree that assuming that a Specialty Drug identified on this Exhibit is a Covered Item for NDPERS, and allowed by NDPERS to be dispensed from the Specialty Drug Pharmacy, when said Specialty Drug is dispensed by PBM's Specialty Drug Pharmacy PBM shall invoice NDPERS for each such Specialty Drug using Pass-Through Pricing, with said invoiced cost being no more than the cost resulting from application of the Specialty Drug Minimum Guaranteed Discount identified below (or in mutually agreed upon written amendments hereto), less the appropriate Copayment or Coinsurance. In referencing drugs "dispensed from PBM's Specialty Drug Pharmacy" in this paragraph, the Parties agree that said reference includes certain Specialty Drugs that may be dispensed from an alternative specialty drug pharmacy if said pharmacy is the exclusive provider of said drugs.

The Parties also agree that in the event the PBM receives a prescription for a new-to-market Specialty Drug that has not yet been added to this Exhibit, PBM will adhere to NDPERS' protocols, by **delaying the dispensing of said new-to-market Specialty Drug until such time as NDPERS has granted approval in writing for the Specialty Drug to be dispensed, at which time PBM will dispense and invoice for the Drug using the agreed-upon Minimum Guaranteed Discount.**

If a Specialty Drug with a different NDC or J Code, but the same "Label Name" as identified below is a Dispensed Claim, and the Specialty Drug is dispensed by PBM's Specialty Drug Pharmacy, PBM guarantees that NDPERS shall be invoiced using the above-described protocols, but relying on the AWP discount identified below for that Specialty Drug with that Label Name.

Specialty Drug List to be attached here. *List must include NDC, Label Name, and Minimum Guaranteed Discount. The PBM's Specialty Drug Spreadsheet will represent a binding contractual commitment, and will be included and incorporated into this contract prior to NDPERS' execution of the contract.*

EXHIBIT C

PERFORMANCE GUARANTEES

PBM acknowledges its understanding that NDPERS values outstanding and timely performance and services to NDPERS and to all Members. Accordingly, PBM provides the following Performance Guarantees *[Appendix G – Performance Guarantees to be inserted below]*

EXHIBIT D
NDPERS BENEFIT PLAN DESIGN

[Plan Design to be inserted here by NDPERS]

EXHIBIT E

Business Associate Agreement

This Business Associate Agreement, which is an addendum to the underlying contract, is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and *[PBM to identify its name]*.

1. Definitions

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

2. Obligations of Business Associate

2.1. The Business Associate agrees:

- a. To use or disclose PHI and ePHI only as permitted or required by this Agreement or as Required by Law.
- b. To use appropriate safeguards and security measures to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement, and to comply with all security requirements of the HIPAA Security rule.
- c. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security rule.
- d. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of the requirements of this Agreement.
- e. To report to Covered Entity (1) any use or disclosure of the PHI not provided for by this Agreement, and (2) any “security incident” as defined in 45 C.F.R. § 164.304 involving ePHI, of which it becomes aware without unreasonable delay and in any case within thirty (30) days from the date after discovery and provide the Covered Entity with a written notification that complies with 45 C.F.R. § 164.410 which shall include the following information:
 - i. to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach;
 - ii. a brief description of what happened;
 - iii. the date of discovery of the breach and date of the breach;
 - iv. the nature of the Protected Health Information that was involved;
 - v. identity of any person who received the non-permitted Protected Health Information;
 - vi. any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - vii. a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - viii. any other available information that the Covered Entity is required to include in notification to an individual under 45 C.F.R. § 164.404(c) at the time of the notification to the State required by this subsection or promptly thereafter as information becomes available.

- f. With respect to any use or disclosure of Unsecured Protected Health Information not permitted by the Privacy Rule that is caused by the Business Associate's failure to comply with one or more of its obligations under this Agreement, the Business Associate agrees to pay its reasonable share of cost-based fees associated with activities the Covered Entity must undertake to meet its notification obligations under the HIPAA Rules and any other security breach notification laws;
- g. Ensure that any agent or subcontractor that creates, receives, maintains, or transmits electronic PHI on behalf of the Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to the Business Associate.
- h. To make available to the Secretary of Health and Human Services the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Privacy Rule, subject to any applicable legal privileges.
- i. To document the disclosure of PHI related to any disclosure of PHI as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- j. To provide to Covered Entity within 15 days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- k. To provide, within 10 days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
- l. Make amendments(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 C.F.R. § 164.526 or take other measures as necessary to satisfy the covered entity's obligations under that section of law.
- m. To participate in The Third Party Risk Management (TPRM) program in order to identify and reduce risks associated with third party security breaches and protect North Dakota state citizen data, unless Business Associate is able to provide FedRAMP, StateRAMP, or HiTrust certifications. Business Associate will be reassessed at least every one to two years based on the risk associated with their service or the data they handle.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure Provisions

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

3.2. Specific Use and Disclosure Provisions

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

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

- c. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

4. Obligations of Covered Entity

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

Covered Entity shall notify Business Associate of:

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

4.2. Additional Obligations of Covered Entity. Covered Entity agrees that it:

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

4.2. Permissible Requests by Covered Entity

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

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of January 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Underlying Agreement.

- c. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- d. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and ePHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI or ePHI.
 - 2. In the event that Business Associate determines that returning or destroying the PHI or ePHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of Covered Entity that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and ePHI and limit further uses and disclosures of any such PHI and ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains that PHI or ePHI.

6. Miscellaneous

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

7. Entire Agreement

This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the

terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

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

For Covered Entity:

For Business Associate:

Board Chair
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

Appendix F – This section identifies NDPERS’ EGWP plan requirements. Please indicate if you can match these benefits/services and if so with what resources and if not what specifically you would not be able to provide.

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>PDP Plan</u></p> <ul style="list-style-type: none"> • Maintain a Medicare Part D Prescription Drug Plan with EGWP+Wrap, compliant with CMS requirements and will incorporate all required updates for 2025 	
<p><u>Pharmacy Benefit Manager Programs</u></p> <ul style="list-style-type: none"> • Perform the following services: <ul style="list-style-type: none"> • Perform claims adjudication • Maintain retail pharmacy network (compliant with CMS requirements). • Maintain specialty pharmacy program • Maintain mail-order pharmacy program • Administer clinical programs (compliant with CMS requirements) • Maintain Formulary (compliant with CMS requirements) • Drug utilization reviews <ul style="list-style-type: none"> • Retrospective DUR • Concurrent DUR • Prospective DUR • Provide Medication Therapy Management Program (compliant with CMS requirements) • Administer Coordination of Benefits 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> • Allow NDPERS to conduct periodic performance audits 	
<p><u>Enrollment Services</u></p> <ul style="list-style-type: none"> • Provide enrollment specialists to be available 24 hours a day 7 days a week to answer questions from members wishing to enroll in a plan or get further information on their enrollment • Provide weekly member enrollment/disenrollment report that includes: <ul style="list-style-type: none"> - Out-of-country address - Not entitled to Medicare A or B - Disenroll due to incarceration - Member denied due to no response - Cancel enrollment/disenrollment - Deaths - HICN discrepancies - Enrollment in another PDP • Complete enrollment verification of entries by NDPERS staff and sent through NDPERS electronic file • Notify NDPERS if there are problems with processing the electronic file • Conduct ongoing communication with NPERS including on problems with processing electronic files • Rush enrollments with immediate updates • Provide ongoing administrative enrollment process support such as: <ul style="list-style-type: none"> - Send notice to members who report address changes 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> - Generate and mail ID cards - Mail benefit books • Administer late enrollment penalties (LEP) and low-income subsidies (LIS) directly to members on behalf of NDPERS • Provide ongoing reporting of members approved for the low-income subsidy and the effective date • Provide ongoing reporting of members with late enrollment penalties (LEP) including listing of delinquent participants • Notifications and tracking of Income-related monthly adjustment amount (IRMAA) • Notify PERS of Annual Adjustment to Part D rates based on the Federal subsidy and the Low-Income Subsidy (LIS) • Designate a point of contact for questions on enrollments/discrepancies 	
<p><u>Plan Communication Services</u></p> <ul style="list-style-type: none"> • Help Desk: Provide toll-free access to Participating Pharmacies to obtain assistance with eligibility, claims processing, DUR, and other troubleshooting • Provide communications to members including: <ul style="list-style-type: none"> - All CMS required notices - Benefit Overview - Formulary List - Formulary updates or changes - Previous coverage attestation notice to members - IRMAA required notices 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>Member Services</u></p> <ul style="list-style-type: none"> • Provide a toll-free telephone number for members, and individuals interested in enrolling, to speak to a licensed pharmacist or other appropriate representative • Provide a toll-free telephone number for Members 24 hours a day, 7 days a week, answering questions regarding eligibility, claims, prior authorization status, drug coverage, enrollment status, and other PBM related services • Manage member appeals • Administer communication and educational materials to Members about plan details • Set up and maintain a member portal to allow users to look up drugs, pharmacies, and formularies, and mail order and claim information • Provide reporting on customer service metrics including online and telephonic call types and volume 	
<p><u>Billing</u></p> <ul style="list-style-type: none"> • Carrier provides monthly billing to NDPERS to include: <ul style="list-style-type: none"> • Detailed listing of each participant (in Excel format) • LEP detail • PERS assigned member ID • Retro billing amount and coverage period • Carrier provides monthly LIS report and corresponding rebate to NDPERS 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> Designate point of contact for questions on billing 	
<p><u>Information Technologies</u></p> <ul style="list-style-type: none"> Maintain secure data protection protocols Maintain a secure file transfer system Facilitate NDPERS specific enrollment file Update and maintain NDPERS specific benefit matrix and claims processing logic Provide access for NDPERS staff to online plan sponsor portal 	
<p><u>Legislative and Legal Services</u></p> <ul style="list-style-type: none"> Actively monitor State and Federal legislation for changes affecting NDPERS, with corresponding analysis of potential impact of legislation on the plan (costs, design requirements, etc.) Adhere to CMS compliance requirement related to Medicare Part D and EGWP+Wrap benefits Perform internal audit functions Monitor prescriber and provider trends to maintain compliance with CMS standards Update NDPERS on pharmacy class action lawsuits or settlements that may be applicable to the NDPERS benefit 	
<p><u>Account Management Staff</u></p> <ul style="list-style-type: none"> Designate individuals for each of the following positions: 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> • NDPERS Implementation Manager • NDPERS Enrollment Specialists • NDPERS Account Executive with EGWP expertise • NDPERS Account Manager (day-to-day) • NDPERS Clinical Account Manager • NDPERS Executive Sponsor <ul style="list-style-type: none"> • Provide access to all subject matter experts and other appropriate personnel and make them available for attending board meetings, legislative, hearings, etc., as needed • Attend NDPERS Board meetings upon request (remotely or onsite) • Attend Monthly team meetings to pinpoint any pain points, discuss future plan design and other ongoing items. 	
<p><u>Reporting</u></p> <ul style="list-style-type: none"> • Provide an Annual Review Report • Provide monthly data files through secure file transfer system • As requested by NDPERS, perform ad-hoc reporting including cost, utilization, and risk analysis • Provide reporting on member utilization across all phases of the Part D Standard Benefit to identify the benefits provided by the PDP and the benefits provided by the EGWP+Wrap • Report and disclose all Direct and Indirect Remuneration (DIR) including manufacturer rebate payments, CMS subsidies, and any other price concessions • Reconcile and report on all Performance Guarantees at least annually 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>Actuarial Services</u></p> <ul style="list-style-type: none"> • Complete actuarial services to determine the performance of the plan annually • Communicate prescription drug cost and utilization trends used for analysis, estimates, and underwriting • If requested by NDPERS, provide plan design options with impacts to cost (either self-insured claims or fully-insured premium) • Conduct actuarial services to determine improvements to plan design or program savings • For a fully-insured EGWP, provide a preliminary renewal premium projection for a potential renewal (typically provided by the end of April for the upcoming year). Premium projection must include the underwriting elements used to establish the premium (claims, plan design adjustments, risk adjustments, other adjustments (as necessary), trend factors, rebate estimates, subsidy estimates, administration fees, etc.) • For a fully-insured EGWP, provide a final premium calculation for the renewal no later than August 15 prior to the upcoming plan year. Premium projection must include the underwriting elements used to establish the premium (claims, plan design adjustments, risk adjustments, other adjustments (as necessary), trend factors, rebate estimates, subsidy estimates, administration fees, etc.) • Other services as requested 	

Appendix G – Performance Standards and Guarantees

This section identifies the NDPERS performance standards and guarantees requested. Please confirm compliance with each guarantee. Some performance guarantees may not be applicable based on the services proposed. If the performance guarantee is not applicable, please note “N/A”.

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
1.	Implementation Team	Vendor will provide NDPERS with an implementation team no later than 14 days after award of contract to be responsible for accurate installation of all administrative, clinical, and financial parameters	14 days after award of contract by NDPERS board	\$1,000 per day from day 15 forward for which a team has not been appointed		
2.	Project Plan	Vendor will provide an implementation project plan no later than 20 days after contract award to be responsible for accurate installation of all administrative, clinical, and financial parameters	20 days after award of contract by NDPERS board	\$1,000 per day from day 20 forward for which a team has not been appointed.		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
3.	Customer service call center will “go-live” on or before December 1, 2024	Vendor’s customer service call center will be fully-operational to respond to member inquiries prior to the effective date to assist members with questions related to the new service and transition	Compliance to be monitored and assessed by NDPERS	\$1,000 for each calendar day after December 1, 2024		
4.	All services will “go-live” and be fully-operational on January 1, 2025	All services will be fully operational and the implementation plan complete on or before January 1, 2025	Compliance to be monitored and assessed by NDPERS	\$25,000 if not operational on January 1, 2025, and \$1,000 for each calendar day after January 1, 2025		
5.	Systems Training for NDPERS Staff	Vendor will provide training on the utilization of systems and reporting tools sixty (60) days prior to implementation	Compliance to be monitored and assessed by NDPERS	\$1,000 for each day less than 60 days prior to implementation		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
6.	Plan Performance Review	Within ten (10) calendar days following delivery of performance reviews to NDPERS, vendor shall develop and submit a corrective action plan (CAP) of issues identified for approval by NDPERS, and implement such plan within the time prescribed in the approved CAP.	Measurement methodology shall be measured from date of delivery of the plan performance review in calendar days	Semi- annually \$1,000 per calendar day beyond the due date		
7.	Identification Cards	For the initial implementation, accurate identification cards will be mailed	At least ten (10) days before the effective date	\$5,000 for each day less than 10 days before the effective date		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
8.	Customer Satisfaction Surveys	<p>Member satisfaction surveys will be designed by the vendor and approved by NDPERS. Vendor will invite a random sample of members to participate in the survey to collect a statistically significant number of completed surveys.</p> <p>Member satisfaction rate will meet 90% or higher using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied.</p> <p>Final survey questions and methodology will be agreed upon by vendor and NDPERS.</p>	Vendor will provide annual survey results to confirm compliance with performance standard	<p>Annually</p> <p>\$25,000 per year</p>		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
9.	Team Meetings	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs	Compliance to be monitored and assessed by NDPERS	Monthly \$5,000 for each meeting missed		
10.	NDPERS board meetings	Vendor will participate in quarterly performance reviews to examine operational and financial performance	Compliance to be monitored and assessed by NDPERS	Quarterly \$5,000 for each quarter missed		
11.	Electronic Eligibility	Eligibility files will be installed in an electronic medium, logged within eight (8) hours and status will be effective within vendor's system within eighteen (18) hours from	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$500 for each missed file deadline		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		date of receipt, seven (7) days per week.				
12.	Manual Eligibility	Manual eligibility will be loaded within eight (8) hours upon receipt or notification and must be applied and active in the vendor's system within one (1) business day.	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$500 for each missed file deadline		
13.	Error Reports	An error report on all eligibility file updates will be produced within eighteen (18) hours from the update.	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$500 for each missed file deadline		
14.	Data Files	Monthly data files (membership, medical, pharmacy) will be available by the 15 th of the following month.	Will be available to NDPERS on request	Monthly \$1,000 for each month not met		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
15.	Claims Financial Accuracy	Claims Financial Accuracy will be 99% or greater, each year of the biennium. Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on quarterly internal audit of statistically valid sample.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
16.	Claims Payment Accuracy	Claims Payment incidence Accuracy will be 98% or greater, each year of the biennium. Measured as the percent of Claims processed without financial payment error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
17.	Claims Processing Accuracy	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
18.	Claim Timeliness	Clean claims processing within 14 calendar days will be 95% or greater, each year of the biennium. Measured from the date the claim is received to the date claim is processed	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
19.	Average Speed of Answer	Average Speed of Answer will be 30 seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS	Vendor will provide semi-annual reports to confirm compliance with performance standard	Semi-annually \$10,000 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
20.	Call Abandonment	Call Abandonment rate will be 5% or less, each year of the biennium	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$10,000 per year		
21.	Accuracy and Timelines/First Call Resolution Written Inquiry Response Time	<p>a.) 95% percent of callers receive accurate information. Calls requiring additional research is excluded from the computation of this metric.</p> <p>b.) 95% percent of inquiries must be resolved during the initial call (excluding appeals, billing, errors and escalations).</p>	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	Annually \$12,500 per year		
22.	Overpayment Recovery	One hundred percent (100%) of all confirmed overpayments identified shall be recovered and returned to the	Vendor will provide annual reports to confirm compliance with	Annually \$12,500 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		<p>Department within ninety Calendar Days.</p> <p>Measured as the number (count) of overpayments identified by monthly Overpaid Claims Report and paid to the State (not an offset of Claims) within ninety (90) Calendar Days.</p>	performance standard			
23.	Prescription drug turnaround time - clean prescriptions	98% within two (2) business days if no intervention required	Vendor will provide quarterly reports to confirm compliance with performance standard	<p>Quarterly</p> <p>\$1,000 for each point below standard-</p>		
24.	Prescription drug mail dispensing accuracy	99.9% Mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity, and prescriber name.	Vendor will provide annual reports to confirm compliance with performance standard	<p>Annually</p> <p>\$12,500 per year</p>		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
25.	Prescription drug home delivery member notifications	Vendor is required to notify a member when a mail service prescription is changed or there is any expected shipping delay and provide reporting details to NDPERS capturing all occurrences by member/DOS/Issue	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
26.	Prescription drug specialty pharmacy delivery	98% of prescription will be delivered and received by patients on the specified date of delivery	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
27.	Network Pharmacy Access	Pharmacy network composition will not be reduced by more than 5% in North Dakota compared to the network submitted in the RFP	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
28.	Data Systems Availability and Adjudication	Guarantees an annual average 99% system availability of the point-of-sale adjudication system on a book-of-business basis. This standard excludes downtime attributed to regularly scheduled systems maintenance or systems downtime	Book of business level	Annually \$12,500 per year		

**Appendix H
Confidential/Proprietary Information
Request for Redaction Chart**

The Responder submitting a proposal to the attached RFP is required to complete the following. Any provisions of the company's proposal that are desired to be confidential must be identified specifically on each page of the proposal and in a table format as provided below. Information not identified in the table will be considered an open record by NDPERS, regardless of whether the information is marked confidential in the body of the proposal.

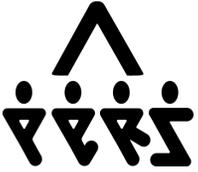
In response to the Request for Proposals entitled _____ (please check one):

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

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

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

_____ (Signature) _____ (Vendor)



Memorandum

TO: NDPER Board

FROM: Rebecca

DATE: May 23, 2024

SUBJECT: Proposed Legislation

The Employee Benefits Programs Committee met on April 25, 2024. The Committee took jurisdiction of the six draft bills submitted by the NDPER Board that were approved at the March Board meeting. In addition, the Committee took jurisdiction over the following additional thirteen draft bills submitted by other sponsors:

Draft Bill #	Summary/Description of Bill	Sponsor	Link to View Draft Bill
40	Public Safety – expands participation to include correctional officers of governmental unit	Representative Porter	Interim Committee Bill Draft - LC Number 25.0040.01000 (ndlegis.gov)
41	Public Safety – revises correctional officer definition and expands eligibility to include dispatchers and medical services personnel	Representative Porter	Interim Committee Bill Draft - LC Number 25.0041.01000 (ndlegis.gov)
45	Public Safety – expands participation to include correctional officers of governmental unit, dispatchers and medical services personnel	Representative Porter	Interim Committee Bill Draft - LC Number 25.0045.01000 (ndlegis.gov)
68	Out-of-pocket maximums – Prescription Drugs	Representative Karls	Interim Committee Bill Draft - LC Number 25.0068.01000 (ndlegis.gov)
69	Fertility Treatment	Representative Brandenburg	Interim Committee Bill Draft - LC Number 25.0069.02000 (ndlegis.gov)
70	Fertility Preservation Services	Representative Brandenburg	Interim Committee Bill Draft - LC Number 25.0070.03000 (ndlegis.gov)

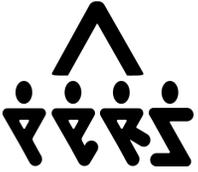
75	Coverage for Diagnostic or Supplemental Breast Exam Cost-sharing Restrictions	Representative Karls	Interm Committee Bill Draft - LC Number 25.0075.02000 (ndlegis.gov)
84	Medical Assistance Benefits	Senator Lee	Interm Committee Bill Draft - LC Number 25.0084.01000 (ndlegis.gov)
115	Public Safety – revises definition of firefighter	ND State Forester	Interm Committee Bill Draft - LC Number 25.0115.01000 (ndlegis.gov)
124	Step Therapy for Metastatic Cancer	Representative Mock	Interm Committee Bill Draft - LC Number 25.0124.01000 (ndlegis.gov)
134	Public Safety – revises definition of correctional officer to not require certification/completion of coursework	Representative Porter	Interm Committee Bill Draft - LC Number 25.0134.01000 (ndlegis.gov)
138	Step Therapy Exceptions	Senator Barta	Interm Committee Bill Draft - LC Number 25.0138.01000 (ndlegis.gov)
142	PERS Health – ACA Coverage for State Employees	Senator Davison	Interm Committee Bill Draft - LC Number 25.0142.01000 (ndlegis.gov)

The Committee declined to take jurisdiction over the following bill: [Interm Committee Bill Draft - LC Number 25.0104.02000 \(ndlegis.gov\)](#) – this bill relates to the Department of Corrections and Rehabilitation and was determined to not have an impact on NDPERS retirement, health insurance or retiree health insurance benefits.

In addition, upon further review of Draft Bill # 84, legal counsel has confirmed that the bill does not have an impact on NDPERS retirement, health insurance or retiree health insurance as it relates to Medicaid. The Committee will be provided this analysis at their next meeting as NDPERS will not be providing technical or cost analysis on the bill.

Staff have forwarded the draft bills to our various consultants and requested that they prepare technical and cost analysis of the bills. The Employee Benefits Programs Committee tentatively plans to meet again on June 17, 2024. At the upcoming meetings, staff will provide the Committee with information related to the consultant analysis on each of the draft bills.

This item is informational 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

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

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 2024

SUBJECT: Proposed Administrative Rules Update

The Notice of Intent was sent to pertinent legislators and Legislative Council as required. The Notice was also published in all required newspapers, with the exception of one, The Sargent County Teller newspaper, which published after the 20 day period. The North Dakota Newspaper Association provided NDPERS with an Affidavit of Publication (Attachment 1) .

The Public Hearing was held on April 29th at 11:00 A.M. in the NDPERS Conference Room. As you can see from the attached Minutes (Attachment 2), there were not any verbal comments received at the hearing. Written comments were to be received by May 13, 2024. There were not any written comments received.

As discussed in previous meetings, I've been working with the Chair of the Administrative Rules Committee, Representative Pyle, on the most effective way to move these rules through her Committee in hopes to avoid holds at the December Committee meeting. This is to ensure that the rules become effective with the implementation of House Bill 1040 on January 1, 2025. Representative Pyle has requested that I appear before the Committee at their upcoming June and September meetings. This will allow me to review the rules with them and be available to respond to questions that they may have. However, the Committee will not take action until their December Committee meeting.

As a reminder, the following is the schedule:

2024 Proposed Administrative Rule Revision/Addition/Deletion Schedule

January 9 Initial Board review of proposed rules.

February 13	Second Board review.
March 12	Third and Final Board review.
March 14	Post copy of proposed rules on NDPERS website, notify all employer groups that rules are on website, send formal notice and materials to Legislative Council.
March 14	Notify North Dakota Newspaper Association (NDNA) of upcoming notice and verify timing of printed notice.
April 8	(Week of) Notice has been printed in all required newspapers and notice sent to any pertinent legislator with proposed rule changes.
April 29	Public Hearing at 11:00 a.m. in NDPERS Conference Room
April 29	Hearing held and comment period opened.
May 13	Comment period closed.
June 11	Board review of comments. Final approval of proposed rules.
June 12	Send to Attorney General's office for review.
August/ September	After receipt of Attorney General review, send to Legislative Council.
October 31	Deadline to submit proposed rules to Legislative Council.
December TBD	Administrative Rules Committee Meeting held.
January 1	New rules take effect, provided there are no holds placed on them by the committee.

As noted in the above highlight, we will be discussing the rules at the next meeting in June. At that time, I will be asking the Board for final approval of the proposed rules, subject to whether the Administrative Rules Committee does not raise specific concerns at the June 13th Administrative Rules Committee meeting. If there are, then we would need to hold a special meeting in June to discuss the items raised and continue moving the rules forward to meet the deadlines required for a January 1, 2025 effective date.

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

Affidavit of Publication

Liz Prather, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **ND Public Employees Retirement System, NDPERS, North Dakota Public Employees Retirement System 1** time(s), as required by law or ordinance, except for Milnor, The Seargent County Teller, who published after the 20 day period.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

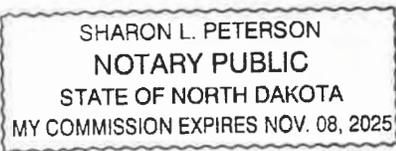
Signed: Liz Prather

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 1st day of May, 2024.

Sharon L. Peterson



Attachment 2

Public Hearing Minutes
North Dakota Administrative Code
April 29, 2024 - 11:00 A.M.
NDPERS Conference Room
1600 East Century Avenue, Suite 2, Bismarck, ND

Staff Present: Ms. Jan Lund
Ms. Rebecca Fricke
Ms. Brittany Berreth

Ms. Jan Lund acted as the hearing officer for this public hearing.

The hearing was opened at 11:00 A.M. on Monday, April 29, 2024, in the conference room of the Public Employees Retirement System at 1600 East Century Avenue, Suite 2, Bismarck, North Dakota.

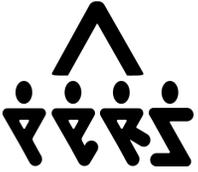
The public hearing was called for the purpose of allowing all interested individuals an opportunity to submit information concerning proposed additions and amendments to the following sections of the North Dakota Administrative Code:

71-01-01-01(2). Organization of public employees retirement board.
71-01-02-02(2). Eligible voters.
71-01-02-03(2). Candidate eligibility.
71-01-02-04(1). Election notification.
71-01-02-05(1). Petition format.
71-01-02-06(5). Procedure for completing and filing petitions.
71-01-02-08(1). Election.
71-01-02-11. Special elections.
71-01-02-13. Election voting.
71-02-03-06. Conversion of sick leave.
71-02-05-03. Cancellation of disability benefits.
71-02-05-10. Converting disability retirement benefit to normal unreduced retirement benefit.
71-02-08-01. Participation.
71-03-03-01. Enrollment.
71-03-03-08. Continuation of life insurance after retirement.
71-03-05-01. Premium billing.
71-03-06-01. Enrollment.
71-03-06-08. Employee contribution.
71-04-01-01. Definitions.
71-04-03-01. Enrollment.
71-04-03-03. Change in monthly deferral.
71-05-02-06. Cancellation of disability benefit.
71-05-04-08. Conversion of sick leave.
71-08-01-01. Ability to elect to transfer into the defined contribution plan.
71-08-01-05. Transfer amount of persons transferring into eligible employment after 12/31/99.
71-08-01-07. Late election opportunity.
71-08-08-01. Temporary employee participation.
71-08-10-01. Permanent employee participation.
71-08-10-02. Contribution.
71-08-10-03. Designation of beneficiary.
71-08-11-01. Contributions.

- 71-08-11-02. Basis for calculating contributions, salary reduction, salary deferral arrangements.
- 71-08-11-03. Employer payment of employee contributions.
- 71-08-11-04. Retirement contributions for individuals working less than a 40-hour workweek.
- 71-08-11-05. Individual employee incentive payments.
- 71-08-11-06. Contributions transferred from defined benefit retirement plan.
- 71-08-11-07. Employer paid additional contribution for transferees.
- 71-08-11-08. Employer obligations; employee eligibility.

A registration sheet was placed on the end of the table. Two individuals attended for the purpose of observing. No information was gathered nor were any comments received at this hearing to be passed along to the NDPERS Board.

Any comments received through May 13, 2024, will be provided to the NDPERS Board for its consideration. The hearing was closed at 12:00 noon.



Memorandum

TO: NDPERS Board

FROM: Aime

DATE: May 23, 2024

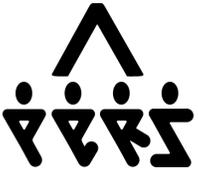
SUBJECT: Board Election Update

The NDPERS Election Subcommittee met on May 16 to validate the nomination petitions. Three nomination petitions were received, and the three candidates were added to the electronic ballot accessible through the NDPERS Member Self Service (MSS) portal. The election period started on May 20 and will conclude on June 7.

<i>Candidates</i>	<i>Agency/department</i>
<i>Stacey Geiger</i>	Bismarck Public Schools
<i>Casey Goodhouse</i>	Office of State Tax Commissioner
<i>Kayla Trzruc</i>	Health & Human Services

The Election Subcommittee will meet on June 10 to canvass the electronic ballots, and the results will be presented to the NDPERS Board during the next meeting on June 11.

This item is informational only.



**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

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

Memorandum

TO: NDPERS Board

FROM: Representative Jason Dockter, Chair
Executive Director Performance Review
and Compensation Subcommittee

DATE: May 23, 2024

SUBJECT: Executive Director Performance Review & Compensation
Subcommittee Recommendations

The Executive Director Performance Review and Compensation Subcommittee met on May 2, 2024. The Subcommittee discussed and approved that given the unique situation of Rebecca only acting as the Interim Executive Director from November 14 to December 31, 2023 with the rest of 2023 serving as the Chief Benefits Officer, the evaluation form with ratings should be handled differently for this transitional year. Specifically, the template was completed by Derrick, as Chief Financial and Operating Officer, and Shawna, as Chief Audit Officer, with their comments and ratings approved by the subcommittee.

The subcommittee discussed the results of the Year 2023 performance review with Rebecca. Attachment 1 is the evaluation form with the ratings. The overall average rating was 2.4 on a scale of 3, with 3 being the highest rating. The subcommittee requests approval of the Executive Director's Year 2023 performance review.

The evaluation of the Executive Director for Year 2024 will return to the normal process, with the full Board completing the evaluation template with the input of a self-evaluation from Rebecca and input from Shawna as Chief Audit Officer. The subcommittee also recommended reviewing the evaluation template to streamline the evaluation process and to adjust the scoring from a 1-3 scale to a 1-5 scale to be consistent with the rating scale of NDPERS staff. An additional change made is to have Shawna providing input on all sections of the evaluation, rather than limited areas as provided previously. Please see Attachment 2 regarding the updated template.

In addition, the Legislative Assembly granted salary increases of 4% for the second year of the 2023-2025 biennium, to be distributed on a performance basis.

Rebecca's current salary is \$18,333.33 per month. The Committee discussed the performance increase with Rebecca and has recommended a 4% salary increase. That would raise Rebecca's salary to \$19,066.66 per month.

The final item discussed by the Committee was regarding a Charter for the subcommittee. Attachment 3. You may recall that a strategic goal of the Board was to develop a Charter for each subcommittee that did not have one already. The subcommittee approved the attached Charter and is seeking Board approval of the Charter. If approved, the subcommittee will review the Charter annually to determine if modifications are needed.

Board Action Requested:

Approve the Executive Director Performance Review and Compensation Subcommittee's recommendations:

- 1) Approve the Year 2023 Performance Evaluation (Attachment 1)
- 2) Approve the revised Performance Evaluation Template (Attachment 2)
- 3) Approve a 4% salary increase for the second year of the 2023-2025 biennium
- 4) Approve the Charter for the Executive Director Performance Review and Compensation Subcommittee (Attachment 3)

Attachment 1

NDPERS Executive Director Evaluation For the Year 2023 (Completed in 2024)

There are nine major evaluation categories. When evaluating, rate each using the following categories (**indicate a rating of 1, 2, or 3 in each evaluation category**):

- 1. DOES NOT MEET EXPECTATIONS:** Executive Director is not performing acceptably and expectations are not being met. Goals for improvement must be set and performance review date established (3-6 months).
- 2. MEETS EXPECTATIONS:** Executive Director is performing acceptably and is meeting all standards and expectations.
- 3. EXCEEDS EXPECTATIONS:** Executive Director is performing beyond and exceeds the established standards and expectations

CIE - Critical Job Element	INTERNAL AUDIT COMPLETES CATEGORIES 3, 5, and 9 (for 2023 eval, Internal Audit will score all categories)	Comments	Ratings			
			Becca Self Eval	Derrick Hohbein	Shawna Piatz	Average
Category 1 Board Meetings	Expectation					
	1. Agenda items are prepared with supporting information.		2	2	2	2
	2. Board materials are distributed at least 3 days before the meeting.	Becca: This is typically met unless there are late materials provided once initial board material distribution has occurred. Derrick: Meeting deadlines for our Board books is difficult. We have a large agenda, and it takes a lot of coordination with Staff/Vendors/Consultants in order to timely prepare the agenda topics. Once preparation is done, it is also a large lift to consolidate everything into a presentable Board book. I think overall we do our best, but we routinely have items that need to be distributed after the original book is published including distribution at the Board meeting itself.	2	2	2	2
	3. Appropriate information is provided to Board either orally/verbally to aid the Board in arriving at a decision.	Becca: Given my experience with PERS, I feel I am able to contribute to discussions or materials with historical details that assist the Board as they review topics. Derrick: My perception is staff is confident in their ability to provide accurate information to the Board to provide the necessary background to make informed decisions.	2	3	3	3
	4. Board material identifies items which need "Board Action", and makes a staff recommendation where appropriate.		2	2	2	2
	5. Education is provided at Board meetings in order that the Board may adequately perform its policy setting role.	Derrick: Rebecca has a well rounded understanding of each agenda item, and the impact the decision(s) have to our agency. She also understands the order of importance, and can strategically decide what order topics should be presented to provide meaningful outcomes for the agency.	2	3	3	3
	average rating category 1	2.0	2.4	2.4	2.4	
Category 2 Board Relations	1. The Director is responsive to Board requests. 2. The Director is adaptable to Board direction on PERS policy and able to work with the board as a team member. 3. The Director keeps Board members aware of current issues and when appropriate provides information to Board members between board meetings. 4. The Director provides timely and accurate problem identification to the Board as well as providing solutions and options for the Boards consideration.	Derrick: As an agency, this is an area we've made significant strides in. Having our laptops at the Board meeting allows staff the flexibility to research agenda topics as discussion is taking place. If there is a question that Staff does not have an answer to, we've made it a priority to get information on the question to the Board prior to the next meeting taking place.	2	3	3	3
	2. The Director is adaptable to Board direction on PERS policy and able to work with the board as a team member.	Becca: I've felt that I work collaboratively with Board members to ensure their policies are administered Derrick: I feel like Rebecca understands her role as Director is to implement the guidance provided by the Board. Even if she personally would disagree with a direction we've been instructed to do, she'd still perform the action in a proper manner to instill confidence in our agency.	2	3	3	3

	3. The Director keeps Board members aware of current issues and when appropriate provide information to Board members between Board meetings.		2	2	3	2.5
	4. The Director provides timely and accurate problem identification to the Board as well as providing solutions and options for the Board's consideration.		2	2	3	2.5
	average rating category 2		2.00	2.50	3.00	2.75
Category 3 Operations	1. Accurate Records 1.1 Maintain appropriate, accurate and accessible data for individual members and benefit recipients. 1.2 Accurate accounting records and a system of internal controls is maintained to result in an annual, unqualified opinion by the System's auditor. 1.3 An application to GFOA for the Certificate of Achievement for Excellence in Financial Reporting is submitted annually. 1.4 The Public Pension Coordinating Council's Award of Excellence is submitted biennially. 2. Biennial Budget 2.1 Biennial budget is prepared pursuant to OMB guidelines and submitted pursuant to guidelines established by the Governor. 2.2 Board is provided opportunity to review the budget before it is submitted. 2.3 Expenditures for budget items do not exceed appropriation without approval of the Board. 3. Timely and Understandable Service 3.1 Member inquiries are responded to in a timely manner. (Survey information shall be reported to the board relating to this from the "How are we doing" cards and the biennial survey). 3.2 Participating employers shall be provided the necessary support to administer the PERS programs in which they participate. (Biennial surveys shall be done relating To this and reported to the Board). 4. Staffing 4.1 All applicable personnel rules of the State of North Dakota shall be followed.					
	1.1 Maintain appropriate, accurate and accessible data for individual members and benefit recipients.		2	2	2	2
	1.2 Accurate accounting records and a system of internal controls is maintained to result in an annual, unqualified opinion by the System's auditor.	Derrick: With the help of a high-performing internal audit division, I believe the controls we have in place today are greater than they've ever been. Each year we do a risk analysis with each division in our agency, identify areas of concern, and work towards implementing processes on those with the greatest risk.	2	3	2	2.5
	1.3 An application to GFOA for the Certificate of Achievement for Excellence in Financial Reporting is submitted annually.	Derrick: We have received this award for 27 consecutive years, and have submitted FY 2023 to the GFOA for consideration.	2	2	2	2
	1.4 The Public Pension Coordinating Council's Award of Excellence is submitted biennially.	Derrick: We receive this award annually as a recognition for our plan administration effectiveness set forth in the Public Pension Standards.	2	2	2	2
	2. Biennial Budget					
	2.1 Biennial budget is prepared pursuant to OMB guidelines and submitted pursuant to guidelines established by the Governor.		2	2	3	2.5
	2.2 Board is provided opportunity to review the budget before it is submitted.	Derrick: Thanks to our robust strategic planning process, the Board is made aware of Staff concerns relating to our budget well ahead of the budgeting process. Typically, the budget is reviewed over two to three months before a final decision is made to ensure the Board is comfortable with the path Staff is moving forward in.	2	3	2	2.5

	2.3 Expenditures for budget items do not exceed appropriation without approval of the Board.		2	2	2	2
	3. Timely and Understandable Service					
	3.1 Member inquiries are responded to in a timely manner. (Survey information shall be reported to the board relating to this from the "How are we doing" cards and the biennial survey).	Becca: I closely monitor the monthly customer feedback survey results, following up with managers as appropriate when specific team members receive comments that may be opportunities for improvement. Derrick: Over the past year our customer service scores have increased across the Board. The last three to four years have been stressful with staff reaching capacity in our office from a workload perspective. These challenges have been dampened with the additional staff we received last session. Our electronic process also allows us to capture input from a larger membership pool than we previously were able to do.	2	3	3	3
	3.2 Participating employers shall be provided the necessary support to administer the PERS programs in which they participate. (Biennial surveys shall be done relating to this and reported to the Board).		2	2	2	2
	4. Staffing					
	4.1 All applicable personnel rules of the State of North Dakota shall be followed.		2	2	2	2
	4.2 Staff performance evaluations are completed at least annually.		2	2	2	2
	4.3 Employees receive recognition, direction or discipline as appropriate.		2	3	3	3
		average rating category 3	2.0	2.3	2.3	2.3
Category 4 Investment Programs	1. Maintain board approved Investment Objectives and Policies for: 1.1 The defined benefit plan 1.2 The defined contribution plan 1.3 The deferred compensation plan 2. Performance 2.1 Produce and report investment return information for the defined contribution plan and the PERS Companion Plan. 2.2 Accurate yearly reports are given to the Board concerning the defined benefit plan and its progress and compliance with the investment policies. 2.3 Advice and recommendations are given to the board on investment matters to support Board decision making. 2.4 Recommend corrective actions including termination of funds in the deferred comp plan and the defined contribution plan. 3. Provider Monitoring 3.1 Monitor the various providers in the defined contribution plan and deferred compensation to insure that all contract provisions are being followed. 3.2 Identify and report to the board all infractions of the contract provisions. 4. Fiduciary Standards Discharge investment duties solely in the interest of the members and benefit recipients With the care, skill, prudence, and diligence					
	1.1 The defined benefit, defined contribution, and deferred compensation plans		2	2	2	2

2. Performance						
2.1 Report investment return information for the defined contribution plan and the PERS Companion Plan.		2	2	2	2	
2.2 Accurate yearly reports are given to the Board concerning the defined benefit plan and its progress and compliance with the investment policies.		2	2	2	2	
2.3 Advice and recommendations are given to the board on investment matters to support Board decision making.	Derrick: Having an independent investment consultant has been invaluable to Staff during this record keeper transition. They understand the nuances of everything that is taking place, and are doing a phenomenal job explaining what is happening so Staff can articulately relay the information to the Board on a monthly basis.	2	3	2	2.5	
2.4 Recommend corrective actions including termination of funds in the deferred comp plan and the defined contribution plan.		2	2	2	2	
3. Provider Monitoring						
3.1 Monitor the various providers in the defined contribution plan and deferred compensation to insure that all contract provisions are being followed.		2	2	3	2.5	
3.2 Identify and report to the board all infractions of the contract provisions.		2	2	2	2	
4. Fiduciary Standards						
Discharge investment duties solely in the interest of the members and benefit recipients 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.		2	2	2	2	
average rating category 4		2.0	2.1	2.1	2.1	
Category 5 Benefit Program Operations	1. Actuarial Management					
	1.1 Provide accurate member, retiree and asset data necessary for the Actuary to perform the annual actuarial valuation for the four PERS defined benefit plans.	2	2	2	2	
	1.2 Provide accurate member and retiree data for the actuary to perform biennial premiums estimates for the group insurance plans.	2	2	2	2	
	1.3 Maintain knowledge of actuarial methods, the current status of the actuarial makeup of the various retirement and group insurance plans and the impact of benefit enhancements to the contribution rates.	2	2	2	2	
	1.4 Provide actuarial information to the Board, Legislature, employers, members and retirees so they have sufficient background to make knowledgeable decisions.	Derrick: Overall, the Legislature has been more involved than ever before with the details of our actuarial reports. Quarterly updates are being presented to the Retirement Committee, presentations are being made to the Employee Benefits Committee, and these conversations will continue as we move into Session. I think we've setup a solid foundation to have in place as we start moving towards hard decisions that will need to be made with funding the legacy DB plan.	2	2	2	2
	2. Contract Management					
	2.1 Distribute and analyze bids for services for the various retirement, group insurance, EAP and Flex Programs to facilitate Board decision making.	Becca: My experience working on a broad volume of RFPs has allowed me to develop expertise in their evaluation and I feel I am a trusted voice in sharing input and/or concerns with the Board. Derrick: Rebecca does a phenomenal job balancing her duties to accommodate a thorough review of all the RFPs taking place in our office.	2	3	3	3

	2.2 Monitor contractor performance and advise the Board of any issues, including options for responding and recommended action plan.		2	2	3	2.5
	2.3 Provide direction to all contractors to insure that board objectives are achieved.		2	2	3	2.5
	2.4 Insure that all contractors comply with contract provisions, state law and administrative rules.		2	2	2	2
	average rating category 5		2.0	2.1	2.4	2.3
Category 6 Public Relations	1. Provide informational programs to employers, members, retirees, and public groups.	Derrick: Rebecca does a phenomenal job understanding NDCC and NDAC, and what flexibility our agency does or does not have. Where our process doesn't fit, I think she also does a phenomenal job bringing the concerns forward for Board consideration in amending.	2	2	2	2
	2. Represent the System with appropriate affiliate organizations and functions.		2	2	2	2
	3. Maintain availability to the news media.		2	2	2	2
	average rating category 6		2.0	2.0	2.0	2.0
Category 7 Legislative Relations	1. Develop Legislative proposals in concert with the Board and its advisory committee.		2	3	3	3
	2. Present requests for legislative changes to the Legislature.		2	2	2	2
	3. Make the Board's position known to members, employers and the legislature.		2	2	3	2.5
	4. Keep the Legislature, through the Interim Committee, informed regarding the financial, legislative and administrative status of the system.	Derrick: Rebecca has been visible and present at all relevant committee meetings this interim since taking over in November. She goes out of her way to connect with Legislators, and does what she can to establish sound relationships.	2	3	3	3
	5. Develop adequate rapport with Legislators so that the legislative body as a whole has a sense of credibility with the positions taken by the Board on behalf of the System.	Becca: This is an area that I recognize is a priority for me, to ensure that PERS is viewed with credibility and that the input provided is valued as industry experts, while recognizing that policy decisions may be made that differ from the guidance or recommendation. I understand that my role is to develop relationships to allow my input to be heard, but that ultimately, many are policy decisions in the end. Derrick: Since November, this has been the biggest breathe of fresh air for our agency. The level of support on the Legislative front is stronger than ever. I think overall the members of the Legislative Assembly appreciate her humble and confident demeanor.	2	3	3	3
average rating category 7		2.0	2.6	2.8	2.7	
Category 8 Professional and Personal Development	1. Maintain membership and involvement in professional organizations.	Becca: I am currently a Board member on the State and Local Government Benefits Association (SALGBA). I have been added to NCPERS, NASRA and NIRS.	2	2	2	2
	2. Be dependable.	Derrick: Our agency is in great hands with Rebecca at the helm. I could depend on her if my life was in the balance.	2	3	3	3
	3. Exhibit stability/reaction to pressure.	Derrick: Rebecca and I have had to navigate some very stressful events in our 6 year history as executive management in PERS. I have no doubt that we can accommodate anything thrown our way, given what we've been through in our past together.	2	3	3	3
	4. Have strong leadership skills.	Derrick: I have nothing but respect and confidence in Rebecca as a leader. If she told me that running through a wall was in the best interest of our agency, I'd put my head down and run. I wouldn't even have to look at the wall because I know she'd never put in a place that we'd be vulnerable.	2	3	3	3
	average rating category 8		2.0	2.8	2.8	2.8
Category 9 General	1. Follow safety procedures.		2	2	2	2
	2. Adhere to all laws, rules, policies, procedures and professional ethics.	Derrick: Rebecca is a humble servant of the Board. She understands our NDCC, and can recite most of it without looking anything up. From an ethical perspective, I do not envision her ever putting herself ahead of the agency or our members.	2	3	2	2.5
	3. Work as part of a team.	Becca: I really appreciate all the teams at PERS and how they support one another, as well as being part of the larger Team ND.	2	2	3	2.5

4. Use courtesy and respect in all interactions.	Derrick: If I could give Rebecca a 10 out of 3, I would. I feel like this is the biggest obstacle our agency is having to overcome in the transitions that have taken place recently. She is exactly what our organization needs to navigate the political environment we are currently in.	2	3	3	3
5. Maintain a well-organized work area and a business like appearance.		2	2	3	2.5
6. Foster good working relations by being responsive to requests.	Derrick: I'm not sure Rebecca ever gets a break/vacation. Even if she is out of the office, staff can expect a response from her. She has made it a point (even in her CBO role) to always put staff questions ahead of whatever project she is working on to ensure their needs are taken care of first.	2	3	3	3
7. Maintain confidentiality policy.		2	2	3	2.5
average rating category 9		2.0	2.4	2.7	2.6
OVERALL AVERAGE		2.0	2.4	2.5	2.4

Attachment 2

NDPERS Executive Director For the Year: 202x Completed in 202x

There are nine major evaluation categories. When evaluating, rate each using the following categories (indicate a rating of 1, 2, 3, 4 or 5 in each evaluation category):

1. FAILS TO MEET EXPECTATIONS
2. NEEDS IMPROVEMENT
3. MEETS EXPECTATIONS
4. EXCEEDS EXPECTATIONS
5. EXCEPTIONAL

CIE - Critical Job Element	Expectation	Comments	Rating														
			Executive Director Self Eval	Internal Audit	Board #1	Board #2	Board #3	Board #4	Board #5	Board #6	Board #7	Board #8	Board #9	Board #10	Board #11	Committee Average	
Category 1 Board Meetings	1. Agenda items are prepared with supporting information. 2. Board materials are distributed at least 3 days before the meeting. 3. Appropriate information is provided to Board either orally/verbally to aid the Board in arriving at a decision. 4. Board material identifies items which need "Board Action", and makes a staff recommendation where appropriate. 5. Education is provided at Board meetings in order that the Board may adequately perform its policy setting role.	Executive Director Comments: Board/Other Comments:															
Category 2 Board Relations	1. The Director is responsive to Board requests. 2. The Director is adaptable to Board direction on PERS policy and able to work with the board as a team member. 3. The Director keeps Board members aware of current issues and when appropriate provides information to Board members between board meetings. 4. The Director provides timely and accurate problem identification to the Board as well as providing solutions and options for the Boards consideration. 5. Strategic Plan - Prepare, present & receive direction	Executive Director Comments: Board/Other Comments:															
Category 3 Operations	1. Accurate Records 1.1 Maintain appropriate, accurate and accessible data for individual members and benefit recipients. 1.2 Accurate accounting records and a system of internal controls is maintained to result in an annual, unqualified opinion by the System's auditor. 1.3 An application to GFOA for the Certificate of Achievement for Excellence in Financial Reporting is submitted annually. 1.4 The Public Pension Coordinating Council's Award of Excellence is submitted biennially. 2. Biennial Budget 2.1 Biennial budget is prepared pursuant to OMB guidelines and submitted pursuant to guidelines established by the Governor. 2.2 Board is provided opportunity to review the budget before it is submitted. 2.3 Expenditures for budget items do not exceed appropriation without approval of the Board. 3. Timely and Understandable Service 3.1 Member inquiries are responded to in a timely manner. (Survey information shall be reported to the board relating to this from the "How are we doing" cards and the biennial survey). 3.2 Participating employers shall be provided the necessary support to administer the PERS programs in which they participate. (Biennial surveys shall be done relating To this and reported to the Board). 4. Staffing 4.1 All applicable personnel rules of the State of North Dakota shall be followed. 4.2 Staff performance evaluations are completed at least annually. 4.3 Employee's receive recognition, direction or discipline as appropriate.	Executive Director Comments: Board/Other Comments:															
Category 4 Investment Programs	1. Maintain board approved Investment Objectives and Policies for: 1.1 The defined benefit plan 1.2 The defined contribution plan 1.3 The deferred compensation plan 2. Performance 2.1 Produce and report investment return information for the defined contribution plan and the PERS Companion Plan. 2.2 Accurate yearly reports are given to the Board concerning the defined benefit plan and its progress and compliance with the investment policies. 2.3 Advice and recommendations are given to the board on investment matters to support Board decision making. 2.4 Recommend corrective actions including termination of funds in the deferred comp plan and the defined contribution plan. 3. Provider Monitoring 3.1 Monitor the various providers in the defined contribution plan and deferred compensation to insure that all contract provisions are being followed. 3.2 Identify and report to the board all infractions of the contract provisions. 4. Fiduciary Standards	Executive Director Comments: Board/Other Comments:															

	4.1 Discharge investment duties solely in the interest of the members and benefit recipients 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.																			
Category 5 Benefit Program Operations	1. Actuarial Management 1.1 Provide accurate member, retiree and asset data necessary for the Actuary to perform the annual actuarial valuation for the four PERS defined benefit plans. 1.2 Provide accurate member and retiree data for the actuary to perform biennial premiums estimates for the group insurance plans. 1.3 Maintain knowledge of actuarial methods, the current status of the actuarial makeup of the various retirement and group insurance plans and the impact of benefit enhancements to the contribution rates. 1.4 Provide actuarial information to the Board, Legislature, employers, members and retirees so they have sufficient background to make knowledgeable decisions.	Executive Director Comments:																		
	2. Contract Management 2.1 Distribute and analyze bids for services for the various retirement, group insurance, EAP and Flex Programs to facilitate Board decision making. 2.2 Monitor contractor performance and advise the Board of any issues, including options for responding and recommended action plan. 2.3 Provide direction to all contractors to insure that board objectives are achieved. 2.4 Insure that all contractors comply with contract provisions, state law and administrative rules.	Board/Other Comments:																		
Category 6 Public Relations	1. Provide informational programs to employers, members, retirees, and public groups. 2. Represent the System with appropriate affiliate organizations and functions. 3. Maintain availability to the news media.	Executive Director Comments:																		
		Board/Other Comments:																		
Category 7 Legislative Relations	1. Develop Legislative proposals in concert with the Board and its advisory committee. 2. Present requests for legislative changes to the Legislature. 3. Make the Board's position known to members, employers and the legislature. 4. Keep the Legislature, through the Interim Committee, informed regarding the financial, legislative and administrative status of the system. 5. Develop adequate rapport with Legislators so that the legislative body as a whole has a sense of credibility with the positions taken by the Board on behalf of the System.	Executive Director Comments:																		
		Board/Other Comments:																		
Category 8 Professional and Personal Development	1. Maintain membership and involvement in professional organizations. 2. Be dependable. 3. Exhibit stability/reaction to pressure. 4. Have strong leadership skills.	Executive Director Comments:																		
		Board/Other Comments:																		
Category 9 General	1. Follow safety procedures. 2. Adhere to all laws, rules, policies, procedures and professional ethics. 3. Work as part of a team. 4. Use courtesy and respect in all interactions. 5. Maintain a well-organized work area and a business like appearance. 6. Foster good working relations by being responsive to requests. 7. Maintain confidentiality policy.	Executive Director Comments:																		
		Board/Other Comments:																		
		OVERALL AVERAGE																		

Attachment 3

 <p>NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM</p>	Original Effective Date: May 23, 2024
	Revised:
	Approved by Board: May 23, 2024
	Page 1 of 1
Executive Director Performance Review and Compensation Subcommittee Charter	

PURPOSE

The Executive Director Performance Review and Compensation Subcommittee (“Committee”) is appointed by the Board of Trustees (“Board”) Chair of the North Dakota Public Employees Retirement System (“Agency”) to provide oversight of the performance and compensation of the Agency’s Executive Director. The Committee will also serve as a Transition Subcommittee in the event the Agency’s Executive Director position is vacated and a transition plan needs to be developed.

STRUCTURE

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.

MEETINGS

The Committee will be appointed and meet on an ad hoc basis to review the performance and compensation of the Agency’s Executive Director and assist/coordinate the appointment of a new Executive Director in the event of a vacant position. Members of the Committee will be compensated for attendance at Committee meetings in accordance with NDPERS’ policy for compensation in effect at the time for Board members.

DUTIES AND RESPONSIBILITIES

The Committee will carry out the following responsibilities:

1) Executive Director Performance Review:

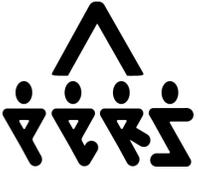
- a. Conduct annual performance reviews of the Board appointed Executive Director
- b. Conduct surveys of agency staff to help analyze the performance of the Board appointed Executive Director

2) Executive Director Compensation Review:

- a. Perform market analysis on the appropriate level of compensation of the Executive Director, as necessary.
- b. Report recommendations on compensation adjustments to the full Board.

3) Other Responsibilities:

- a. Serve as the Board’s Transition Subcommittee if the Executive Director position is vacated for any reason. This includes retaining an executive recruitment consultant, if deemed necessary by the full 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

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

Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 23, 2024

SUBJECT: External Audit Contract

The State Auditor's Office has completed the RFP process for our external audit for Fiscal Year 2024. They have selected UHY LLP to conduct the audit of both RIO and PERS. Please note this is a one year contact, and the State Auditor's Office will go through another RFP next year due to significant changes taking place within the RIO office.

UHY LLP has significant pension experience, and both the Partner and the Manager with oversight on the audit both came from CliftonLarsonAllen, and both were previously assigned to the RIO/PERS audits in the past.

Our legal counsel has reviewed the contract, provided input, and does not have any legal concerns with the document.

Board Action Requested:

Review and approve the contract for UHY LLP, and give the Director authority to sign.

CONTRACT

1. PARTIES

The parties to this contract (Contract) are the State of North Dakota, acting through its **Public Employees Retirement System** ("PERS"), the State of North Dakota, acting through its **Retirement and Investment Office** ("RIO"), and State of North Dakota, acting through its **Office of the State Auditor** ("STATE") and **UHY LLP** (Maryland CPA Limited Liability Partnership), having its principal place of business at 8601 Robert Fulton Dr, STE 210, Columbia, MD 21046 (CONTRACTOR).

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by PERS and RIO under this Contract, shall provide the following:

To fulfill the scope of work for both PERS and RIO for fiscal year 2024 as described in RFP #117-24-03 issued on February 16, 2024.

Final Report Date to RIO and STATE: November 15th, 2024.

Final Report Date to PERS and STATE: November 22nd, 2024.

3. COMPENSATION-PAYMENTS

a. Contractual Amount

PERS shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$123,600 (PERS Contractual Amount).

RIO shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$123,600 (RIO Contractual Amount).

The total Contractual Amount of \$247,200, for both PERS and RIO, 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) PERS and RIO shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by PERS and RIO will not prejudice their right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to a reduction for amounts included in any invoice or payment made which are determined by PERS or RIO, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At PERS' or RIO'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 PERS or RIO by CONTRACTOR, PERS and RIO 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 PERS or RIO for travel costs.

d. **Prepayment**

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

e. **Payment of Taxes by STATE**

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

f. **Taxpayer ID**

CONTRACTOR'S federal employer ID number is: 20-0694403.

4. TERM OF CONTRACT

This Contract term (Term or Initial Term) begins when signed by all parties and continues until performance of the scope of work is fulfilled.

a. **No Automatic Renewal**

This Contract will not automatically renew.

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 for Convenience or by Mutual Agreement**

This Contract may be terminated by STATE, PERS, or RIO upon thirty (30) days' written notice to CONTRACTOR. This Contract may be terminated by mutual consent of all 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, PERS, or RIO 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 any Party already accrued prior to termination.

d. Termination for Cause

STATE, PERS, or RIO 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, PERS, and RIO 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 and/or PERS and/or RIO may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE and/or PERS and/or RIO 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

Each party each agrees to assume its own liability for any and all claims of any nature, including all costs, expenses, and attorneys' fees, which may in any manner result from, or arise out of, this Contract.

9. INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, 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, with minimum liability limits of \$2,000,000 per occurrence.
- 2) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, CONTRACTOR shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, CONTRACTOR shall purchase an extended reporting period to meet the time periods required in this section.
- 3) Automobile liability, including Owned, Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed must meet the following additional requirements:

- 1) 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 rate "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.
 - 2) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
 - 3) The CONTRACT shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement.
 - 4) Failure to provide the insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.
- 5) CONTRACTOR shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy. CONTRACTOR shall provide certificate of insurance and any endorsements to STATE electronically to:

Name: James Carroll

Email Address: jpcarroll@nd.gov

Email Subject Line: Certificate of Insurance – 117-24-03 PERS and RIO

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 deliverables created for PERS, RIO, and STATE or purchased by PERS or RIO under this Contract belong to STATE, PERS, and RIO and must be immediately delivered to STATE, PERS, and RIO at STATE, PERS', or RIO's request upon termination of this Contract. STATE shall have access to CONTRACTOR's working papers for twenty-four (24) months following the completion of the Contract.

12. NOTICE

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

STATE	CONTRACTOR
James Carroll, CPA	Thomas R. Rey, Jr., CPA
Procurement Officer	Partner
600 E Boulevard Dept 117	8601 Robert Fulton Dr, STE 210
Bismarck, ND 58505	Columbia, MD 21046
jpcarroll@nd.gov	trey@uhy-us.com

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

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to clauses 13 of this Contract, certain records may be open to the public upon request.

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

CONTRACTOR agrees to contact PERS, RIO, and STATE immediately upon receiving a request for information under the public records law and to comply with PERS, RIO, and 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 PERS, RIO, or 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 PERS, RIO, or STATE is prohibited from conducting business, PERS, RIO, or 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 PERS, RIO or STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify PERS, RIO, and 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 PERS, RIO and 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 as may be amended;
- b. The STATE's Best and Final Offer issued April 23, 2024;
- c. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number 117-24-03 dated February 29, 2024;
- d. STATE's Request for Proposal ("RFP") number 117-24-03, dated February 16, 2024;
- e. CONTRACTOR's best and final offer dated April 29, 2024;
- f. CONTRACTOR's proposal dated April 1, 2024, in response to RFP number 117-24-03.
- g. All terms and conditions contained in any automated end-user agreements (e.g., click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Contract.

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 PERS, RIO, or STATE to obtain performance due under this Contract, and PERS, RIO, or STATE is the prevailing Party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay PERS, RIO, and 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.

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 PERS, RIO, or 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 (10) full-time employees.

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.

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

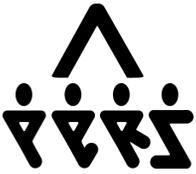
This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together shall constitute one and the same contract.

26. EFFECTIVENESS OF CONTRACT

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

CONTRACTOR	STATE OF NORTH DAKOTA
UHY LLP	Acting through its Office of the State Auditor
BY:	BY:
Printed Name:	Printed Name: Joshua C. Gallion
Title:	Title: State Auditor
Date:	Date:

STATE OF NORTH DAKOTA	STATE OF NORTH DAKOTA
Acting through its Public Employees Retirement System	Acting through its Retirement and Investment Office
BY:	BY:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:



Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 23, 2024

SUBJECT: Budget

On May 9, 2024, Governor Burgum released the budget guidelines for the 2025-2027 biennium. The Governor is urging agencies to create budgets that focus on efficiencies that create savings while improving outcomes for citizens. Agencies that have appropriation authority exceeding \$10 million a biennium (which includes NDPERS), will be asked to identify savings of 3% of their budget. Staff is currently analyzing the Big Hairy Audacious Goals that were presented to the Board in January to identify which goals may need to be accelerated to meet the requirement for our Base budget.

Below is the agency appropriation authority for the 2023-2025 biennium:

<u>Line Item</u>	<u>Appropriation</u>	<u>% of Appropriation</u>
Salaries and Wages	\$ 9,064,289	74%
Operating Expenses	2,542,712	21%
DB Closure	372,027	3%
Contingency	250,000	2%

As you can see, 74% of our appropriation is for staff.

Looking into our operating line item for this biennium:

- 72% in IT and shared services related (software, Sagitec, Statewide Cost Allocation)
- 8% is office rent
- 10% is printing and postage
- 10% are all other operating categories

The DB closure line item is one-time funding that our agency received during the 2023 – 2025 biennium, and will not be included in our agency appropriation on an on-going basis.

BASE BUDGET RECOMMENDATIONS:

There are fairly minimal changes as it relates to our base budget that Staff would like the Board to consider moving forward for consideration at the Legislative level.

Salaries and Wages:

- The permanent change at the Executive Director level will impact our ongoing budget, and will cause permanent workload shifts within our Executive Management team. Staff would like to bring forward responsibility increase considerations for the Executive Management team, including the Chief Benefits Officer, which we will be recruiting for after Session when we know the level of funding we have to fill the position.
- There is also one support staff position that is significantly below where they should be from a peer perspective, and Staff would like to get that key position in line with similar positions in the State.
- Staff is interested in leveraging the State's internship program in the future. This would be a part-time temporary position that we could use throughout the agency as meaningful work efforts are identified.

Operating Expenses:

- WSI informed us that an increase in our rent will occur for 2025-2027.
- Technology costs are expected to increase, including the fees assessed on utilizing our business system, the development of our business system, and the cost of NDIT.

Optional Change Package Considerations:

1) Full-Time Equivalent (FTE) Staff.

- a. One (1.0) Accounting FTE – This FTE would be used as an “Employer Onboarding Specialist,” and would hand-hold new authorized agents through their payroll reporting and employee maintenance responsibilities. We average roughly 85 new authorized agents a year, and given the complications in the matching provisions of our DC plans, the importance of becoming aware of new hires as they arrive at an employer, and the complexities of the other benefits that we administer, we feel this position is essential for the long-term success of the new DC plan.
- b. One (1.0) Benefit Enrollment FTE – This FTE would be used as an Enrollment Specialist in our agency. Our enrollment division is the division whose job and workload will be changing the most with the matching provisions of the DC plans. This is also the leanest division our agency currently has, so adding the additional enrollment position to support our member elections is also critical to the long-term success of this new DC plan.

2) One-Time Funding Request to Continue the Additional Sagitec Developer.

As discussed in our Board Planning Meeting, Staff is interested in continuing with additional resources on the Sagitec team to help us progress in Business Process Management, and helping us implement all the comprehensive wizards currently in process.

Staff is interested in pricing the base arrangement we have with Sagitec (one business analyst with three developers), adding one developer (one business analyst with four developers), adding both a developer and a business analyst (two business analysts with four developers), and adding both an additional developer and an additional business analyst (two business analysts with five developers). Staff is interested in adding an additional developer, in addition to the developer discussed at the Board planning meeting, that can be used to build the FlexComp payroll reporting process into PERSLink.

3) Self-Funded Staffing.

If the PERS Health Insurance Plan and/or pharmacy benefits were to be awarded on a self-funded basis, the administrative efforts would substantially increase in addition to PERS' accountability for the plan. Today, most of the administrative and financial/operational risk resides with Sanford Health Plan. However, on a self-funded basis that would become the Board's responsibility.

We are unsure what the administrative impact of this award would be on our Agency. We've previously done a survey of surrounding states (South Dakota, Iowa, Montana and Wisconsin responded) to see what they have internally for staff directly responsible for the health insurance plan and they have anywhere from 5 FTE to 20 FTE dedicated to a self-insured product.

Staff will bring forward a recommendation of what we feel will be needed to the June meeting in the event the contract is awarded on a self-funded basis, and will mimic the requests we've historically had.

4) IRS Determination Letter/Letter of Ruling on the DC Plans

Given the level of changes taking place on both our 401(a) Defined Contribution Plan, and our 457 Deferred Compensation Plan, Staff believes it would be prudent to receive an IRS Determination Letter on our 401(a) Plan, and a Private Letter Ruling on our 457(b) Plan.

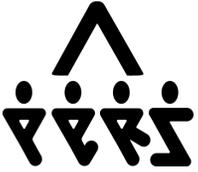
Staff is also seeking input if there are other initiatives that the Board would like to hear cost proposals on that were not discussed during the Board planning meeting.

2023-2025 Budget Update

We currently do not anticipate the need to transfer any other contingency funds unless there are unforeseen initiatives, retirements, or mandates over the next year. It is possible that an IRS Determination Letter/Letter of Ruling may require the use of contingency funds 1) if that is an initiative the Board wishes to pursue, and 2) if the application needs to be submitted prior to the go-live date in January.

Board Action Requested:

The staff is seeking guidance on the above initiatives. Based on that guidance, we will develop a specific budget proposal for your final consideration at the June Board meeting.



**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

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

Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 23, 2024

SUBJECT: Consultant Fees for the Quarter Ended March 2024

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended March 2024.

This is informational only.

Attachment

**North Dakota Public Employees Retirement System
Consulting/Investment/Administrative Fees
For the Quarter ended March 31, 2024**

Attachment

<u>Program/Project</u>	<u>Fee Type</u>	<u>Jan-24</u>	<u>Feb-24</u>	<u>Mar-24</u>	<u>Fees Paid During The Quarter</u>	<u>Fees Paid Calendar Year-To-Date</u>	<u>Last Calendar Year-to-Date</u>
<u>Actuary/Consulting Fees:</u>							
Insurance Plans:							
Deloitte	Insurance Legislative Analysis	Time Charges			-	\$ -	28,925
Deloitte	Health & Part D Claims Projections	Time Charges			-	\$ -	-
Deloitte	Insurance Consulting	Time Charges	975		975	\$ 975	10,481
Buck Consulting	Life/Dental/Vision RFP	Fixed Fee	5,000	5,000	5,000	\$ 15,000	\$ 17,499
Deferred Compensation/Defined Contribution:							
Callan & Associates	Asset Allocation & Liability Study	Fixed Fee			-	\$ -	-
Callan & Associates	Investment Consultant Expenses	Fixed Fee	12,824		12,824	\$ 12,824	\$ 12,450
Callan & Associates	Record Keeper Search	Fixed Fee			-	\$ -	-
Defined Benefit:							
Gabriel Roeder Smith & Company	Retirement Actuarial Valuation	Fixed Fee			-	\$ -	26,000
Gabriel Roeder Smith & Company	GASB 67/68 (Retirement) Valuation	Fixed Fee	19,000		19,000	\$ 19,000	\$ 6,750
Gabriel Roeder Smith & Company	Actuarial Factor Updates for 1040	Fixed Fee	3,000	600	2,000	\$ 5,600	\$ 5,600
Gabriel Roeder Smith & Company	Retirement Legislation	Time Charges		6,000	10,000	\$ 16,000	\$ 16,000
Gabriel Roeder Smith & Company	Retirement Consulting/Actuarial Analysis	Time Charges	9,345	12,025	6,845	\$ 28,215	\$ 28,215
Mid Dakota Clinic	Retirement Disability Consultant	Time charges			-	\$ -	-
RHIC:							
Gabriel Roeder Smith & Company	RHIC Actuarial Valuation	Fixed Fee			-	\$ -	-
Gabriel Roeder Smith & Company	GASB 74/75 (RHIC) Valuation	Fixed Fee	6,750		6,750	\$ 6,750	\$ 5,000
Gabriel Roeder Smith & Company	RHIC	Time Charges			-	\$ -	5,580
All Plans:							
Nexus	IT Consulting	Per Hour Fee			-	\$ -	-
<u>Audit Fees:</u>							
Clifton Larson Allen	Annual Audit Fee	Fixed Fee		24,348	24,348	\$ 24,348	\$ 25,891
<u>Legal Fees:</u>							
ND Attorney General	Legal Fees on All Plans	Time charges	8,255	8,574	5,266	\$ 22,095	\$ 22,095
Ice Miller - Federal Tax Consultant	Legal Fees on All Plans	Time charges	378	5,247		\$ 5,625	\$ 5,625
<u>Investment Fees:</u>							
SIB - Investment Fees	Retirement (DB)	% Allocation	639,145	1,151,163	276,464	\$ 2,066,772	\$ 2,066,772
SIB - Investment Fees	Ret Health Credit	% Allocation	2,869	2,869	3,932	\$ 9,670	\$ 9,670
SIB - Investment Fees	Insurance	% Allocation	6,976	830	10,482	\$ 18,288	\$ 18,288
SIB - Investment Fees	Job Service	% Allocation	1,432	63,690	1,857	\$ 66,979	\$ 66,979
SIB - Administrative Fees	Retirement (DB)	% Allocation	71,133	59,031	94,560	\$ 224,724	\$ 224,724
<u>Administrative Fee:</u>							
Sanford Health Plan	Health Plan	Fixed fee	1,263,798	1,266,006	1,266,350	\$ 3,796,154	\$ 3,796,154



**North Dakota
Public Employees Retirement System**
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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 23, 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

Contracts Signed Since Last Reported:

Vendor	Amount	Notes
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 acocunts on both the 457 and 401(a) Plans
Empower Brokerage Transfer Request Form	\$ -	Authorizes the transfer of brokerage acocunts on both the 457 and 401(a) Plans
Empower Plan Asset Transfer & Investment Direction	\$ -	Directs the investments of brokerage acocunts on both the 457 and 401(a) Plans

X. MEMBER ** EXECUTIVE SESSION

A. Retirement Appeal Case #812 Follow-up – Rebecca (Information)

Material for this topic will be sent under separate cover.

**Executive Session pursuant to N.D.C.C. 54-52-26 to discuss confidential member information and N.D.C.C. 44-04-19.1(2) & (5) for attorney consultation.