

MINUTES

**North Dakota Public Employees Retirement System
Tuesday, August 15, 2023
8:30 A.M.**

Members In Person: Chairperson Mona Rindy
Ms. Casey Goodhouse
Rep. Greg Stemen
Mr. Gerald Buck
Mr. Jeffry Volk
Mr. Joe Morrissette
Rep. Jason Dockter
Sen. Dick Dever
Mr. Adam Miller
Mr. Tyler Erickson

Members Via Teams: Sen. Shawn Vedaa

Others: Mr. Scott Miller, NDPERS
Mr. Derrick Hohbein, NDPERS
Ms. Rebecca Fricke, NDPERS
Ms. Katheryne Korom, NDPERS
Ms. Allyson Hicks, Office of Attorney General
Mr. Craig Chaikin, Callan
Ms. Julie Bodenski, Humana
Ms. Rebekah Ferstadt, Buck Consulting
Mr. Robert Klausner, Klausner, Kaufman, Jensen & Levinson

Chairperson Rindy called the meeting to order at 8:30 A.M. Roll call was taken, and a quorum was present.

Chairperson Rindy called for questions or comments regarding the July 11, 2023, meeting minutes.

SENATOR DEVER MOVED TO APPROVE THE MINUTES OF THE JULY 11, 2023, MEETING. THE MOTION WAS SECONDED BY MS. GOODHOUSE AND CARRIED BY A VOICE VOTE. THE MINUTES WERE APPROVED.

CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

Staff was advised by Allyson Hicks from the Attorney General's Office that this will need to be on the agenda every meeting for the Board to consider any conflict of interest disclosures we received concerning any of the agenda topics. Ms. Hicks included a review of the form and State Government Ethics code in the Fiduciary Responsibility presentation.

PRESENTATIONS

State Government Ethics and Fiduciary Responsibility Presentation

A copy of the slide deck from the presentation was included in the board material for Trustees to retain as a resource.

Ms. Hicks opened the presentation by defining the job of a NDPERS board member as a Trustee to manage the system and public employees' money following ND Century Code laws, Internal Revenue Code, ND Administrative Code, and PERS Board-adopted policies in accordance with statute. Trustees manage someone else's property for their benefit only. Ms. Hicks stated the obligation to administer a trust (the retirement plans) for the benefit of the beneficiaries (the public employees participating in the plan) is called a "fiduciary duty." She reviewed the Duty of Loyalty, Duty of Care, Duty of Prudence, and Duty of Obedience. When discussing the Duty of Loyalty, Ms. Hicks provided information related to recognizing and disclosing conflicts of interest in accordance with the ND Ethics Commission. The presentation included types of conflicts and in a collaborative effort with the Ethics Commission, the process to declare a conflict.

Ms. Hicks wrapped up the presentation with a discussion of Fiduciary Liability, including Co-Fiduciary Liability, and the Mitigation of Risk.

Discussion followed.

Code of Ethical Responsibility

Mr. Scott Miller presented an update Code of Ethical Responsibility form that board members are asked to annually review and sign. Ms. Lund will collect the forms and keep them on file.

The Board took a short break from 10:00 A.M. to 10:10 A.M.

Sanford Health Plan Executive Summary Quarter 1 2023

Mr. Steve Webster reviewed membership data and trend for the first quarter. He provided claims analysis and utilization information for Actives and Medicare Retirees.

Mr. Craig Beers discussed prescription drugs, generic utilization, and specialty medications.

Ms. Julie Bodenski reported on year-over-year data on prescription drugs relative to the Medicare Part D Plan with Humana.

Mr. Webster concluded the Quarter 1 Executive Summary with a review of the performance standards and guarantees and survey scores.

DEFERRED COMPENSATION / DEFINED CONTRIBUTION

Mr. Scott Miller updated the board on the implementation of HB 1040 including staffing, PERSLink business systems updates, and the recordkeeper Request for Proposal.

Recordkeeper Request For Proposal (RFP)

Ms. Katheryne Korom shared a draft copy of the request for proposal and corresponding timeline for the RFP process. The RFP is to provide defined contribution recordkeeping, trustee/custodial, and administrative services for the 457 supplemental savings plan, the current 401(a) defined contribution plan, and the new defined contribution plan.

MR. ERICKSON MOVED TO APPROVE THE TIMELINE AND DRAFT PROPOSAL FOR THE RECORDKEEPER REQUEST FOR PROPOSAL. THE MOTION WAS SECONDED BY MR. ADAM MILLER.

Ayes: Mr. Erickson, Mr. Volk, Mr. Buck, Mr. Adam Miller, Mr. Morrissette, Senator Vedaa, Representative Stemen, Senator Dever, Ms. Goodhouse, Representative Dockter, and Chairperson Rindy

Nays: None

Absent: None

MOTION PASSED

DEFINED BENEFIT

Retiree Health Insurance Credit (RHIC) Program Contract Amendment

The board reviewed the contract amendment prepared by staff, reviewed by legal counsel, and approved by ASIFlex.

MR. VOLK MOVED TO APPROVE THE CONTRACT AMENDMENT FOR THE RETIREE HEALTH INSURANCE CREDIT (RHIC) PROGRAM FOR THE JANUARY 1, 2024 THROUGH DECEMBER 31, 2025 CONTRACT PERIOD. THE MOTION WAS SECONDED BY MR. BUCK.

Ayes: Mr. Erickson, Representative Stemen, Mr. Volk, Mr. Buck, Mr. Morrissette, Senator Vedaa, , Senator Dever, Ms. Goodhouse, Mr. Adam Miller, Representative Dockter, and Chairperson Rindy.

Nays: None

Absent: None

MOTION PASSED

GROUP INSURANCE

Administrative Services Agreement Exhibit B - Performance Guarantees

Ms. Rebecca Fricke shared a document illustrating significant changes made to seven of the Performance Guarantees from the previous biennium in the Administrative Services Agreement (ASA) with Sanford Health Plan. Exhibit B includes all 38 of the Performance Guarantees within the ASA with Sanford Health Plan.

REPRESENTATIVE STEMEN MOVED TO APPROVE EXHIBIT B – PERFORMANCE GUARANTEES FOR INCLUSION WITH THE ADMINISTRATIVE SERVICES

**AGREEMENT WITH SANFORD HEALTH PLAN FOR THE 2023-2025 BIENNIUM.
THE MOTION WAS SECONDED BY MR. MORRISSETTE.**

Ayes: Mr. Morrissette, Representative Dockter, Mr. Erickson, Ms. Goodhouse, Mr. Volk, Representative Stemen, Senator Vedaa, Mr. Buck, Senator Dever, Mr. Adam Miller, and Chairperson Rindy.

Nays: None

Absent: None

MOTION PASSED

Medicare Part D Renewal and Request For Proposal (RFP)

At the May meeting, the board had deferred the decision on whether to renew the Medicare Part D Plan with Humana or go out to bid based on a hold-even premium projection that Humana provided. Humana submitted its final renewal premium of \$64.92 per member per month, which is a \$5.00 reduction. Ms. Fricke stated that staff are satisfied with the services provided to our members by Humana and their responsiveness to staff when issues or questions arise. Additionally, Humana met the Performance Guarantees for the 2022 Plan Year and is on track to meet these guarantees for the 2023 Plan Year.

Ms. Fricke provided background on the Part D Plan. ESI was the Medicare Part D Plan provider prior to Humana. The switch to Humana was a 25% reduction in premium; retirees pay 100% of the Medicare Part D plan premium. The Part D Plan is on a one-year renewal requirement because Centers for Medicare & Medicaid Services (CMS) releases Calendar Year Medicare Part D premium and bid information each September. This annual release provides information to help Part D plan sponsors finalize their offerings. The Medicare Part D Plan follows the typical 6-year bid timeline with potentially five renewals. The Part D Plan is a lengthy bid process.

SENATOR DEVER MOVED TO APPROVE THE RENEWAL WITH HUMANA FOR THE MEDICARE PART D PLAN FOR THE 2024 PLAN YEAR, AND APPROVE THE UPDATED PERFORMANCE GUARANTEES AS PROVIDED BY HUMANA AND VERIFIED BY STAFF. THE MOTION WAS SECONDED BY REPRESENTATIVE STEMEN.

Ayes: Mr. Morrissette, Ms. Goodhouse, Representative Stemen, Senator Vedaa, Mr. Volk, Mr. Buck, Senator Dever, Mr. Adam Miller, Representative Dockter, Mr. Erickson and Chairperson Rindy.

Nays: None

Absent: None

MOTION PASSED

FlexComp Voluntary Insurance Products

Staff has completed the annual review of voluntary insurance products approved for pretax premiums. AFLAC, Central United, Colonial Life, Total Dental Administrators

(TDA), and USABLE responded and confirmed their ongoing eligibility. The premiums are 100% employee paid through payroll deduction.

MR. ADAM MILLER MOVED TO APPROVE THE INCLUSION OF THE PRODUCTS ELIGIBLE TO BE PRE-TAXED FOR THE FLEXCOMP PLAN FOR THE 2024 PLAN YEAR. THE MOTION WAS SECONDED BY MS. GOODHOUSE.

Ayes: Senator Dever, Mr. Morrissette, Ms. Goodhouse, Representative Stemen, Senator Vedaa, Mr. Volk, Mr. Buck, Mr. Adam Miller, Representative Dockter, Mr. Erickson and Chairperson Rindy.

Nays: None

Absent: None

MOTION PASSED

Vision Insurance Plan Update on Dakota Eye Institute

Ms. Rebecca Fricke informed the board that Buck Consultants received word from Dakota Eye Institute that it would not be rejoining the network for the group vision plan. Ms. Rebekah Ferstadt with Buck Consulting indicated that the network information presented to the board at the time of awarding the contract to Superior Vision/Met Life was accurate. Staff and Supervisor Vision will continue to work towards successful negotiation with Dakota Eye Institute.

Group Voluntary Vision Benefits Plan Contract

In follow-up to board action taken at the July meeting to award the vision contract to Superior Vision/Metropolitan Life Insurance Company (MetLife), Ms. Kathyne Korom shared the contract for the 2024-2025 period drafted by legal staff and approved by representatives from MetLife.

SENATOR DEVER MOVED TO APPROVE THE CONTRACT WITH SUPERIOR VISION/METLIFE FOR THE NDPERS GROUP VOLUNTARY VISION BENEFITS PLAN FOR JANUARY 1, 2024, THROUGH DECEMBER 31, 2025, CONTRACT PERIOD. THE MOTION WAS SECONDED BY MR. BUCK.

Ayes: Senator Dever, Mr. Morrissette, Ms. Goodhouse, Representative Stemen, Senator Vedaa, Mr. Volk, Mr. Buck, Mr. Adam Miller, Representative Dockter, Mr. Erickson, and Chairperson Rindy.

Nays: None

Absent: None

MOTION PASSED

Uniform Group Insurance Consultant Request For Proposal

Ms. Korom reported that several questions have been received from bidders in response to the Request For Proposal for the Uniform Group Insurance Consultant services released on July 3, 2023. She reviewed the timeline for the RFP process and

noted that the Best And Final Offers would be due in November and selection and awarding the contract is slated for December 2023.

2022 Active Health Care Report

Mr. Derrick Hohbein shared the Active health care report for the 2022 calendar year. The report highlights the breakdown of utilization data for hospital, clinic, and pharmacy and noted that an agency-specific report for groups larger than 100 employees will be shared with those agencies.

The Board took a short break from 11:55 A.M. to 12:10 P.M.

MISCELLANEOUS

Budget Status

Mr. Hohbein updated the board on the status of the budget ending June 30, 2023. When discussing Salaries & Wages, he noted that 18 staff are new or new in a position in the last year and there wasn't a month where the agency was fully staffed, resulting in 3% remaining for that line item. Under Operating, the office move to the WSI building in June/July 2021 was a significant savings in rent and remodeling costs were incurred prior to the start of the 2021-2023 biennium. Those savings offset the expense of technology enhancements. Derrick explained that NDPERS is not a General Fund agency and money that is left over remains in the trust and is not returned to the general fund. NDPERS has appropriation authority as a Special Fund agency.

Contracts Under \$10,000

Mr. Scott Miller provided an updated list of contracts he has signed during 2023.

Assurance NM Testing

Staff conducted a test of AssuranceNM which is the state's emergency communication. The test for board members is done twice a year.

Litigation Update

Dean DePountis left the meeting at 12:25 P.M. in recognition of a conflict of interest.

Before discussion began, Chairperson Rindy identified a conflict of interest for this agenda item for the legislator members on the board, and stated that she believed the legislators should be recused from this topic. She would like the Board to act as a neutral reviewer to determine if the reported conflict of interest would appear as a reasonable bias to an outside individual. Ms. Allyson Hicks provided procedural advice for the discussion. Special Assistant Attorney General (SAAG) Mr. Robert Klausner (Klausner, Kaufman, Jensen & Levinson) was present by phone to provide guidance to the board in the matter. Mr. Klausner is outside counsel representing the board of the ND Public Employees Retirement System in the pending litigation.

MR. ADAM MILLER MOVED TO ACKNOWLEDGE THE CONFLICT OF INTEREST OF THE FOUR LEGISLATOR MEMBERS AND TO RECUSE THOSE MEMBERS ON

THIS AGENDA TOPIC DUE TO PENDING LITIGATION. THE MOTION WAS SECONDED BY MS. GOODHOUSE.

[the individuals that the motion is about do not get to vote on the matter]

Ayes: Ms. Goodhouse, Mr. Adam Miller, Mr. Erickson, and Chairperson Rindy.

Nays: Mr. Morrisette, Mr. Volk, and Mr. Buck.

Absent: None

MOTION PASSED

The board discussed the standards of conflict, the appearance of impropriety, and whether this perceived conflict would materially affect the independence of judgement.

Senator Dever, Representative Stemen, Senator Vedaa, and Representative Dockter were recused from participating in discussion related to this topic.

Mr. Robert Klausner shared the following sequence of events related to the litigation:

- Oral arguments were presented to the ND Supreme Court on June 28, 2023; the Court took the matter under advisement.
- After the Court took the matter under advisement, a series of emails (legislator board members) expressing a conflict were filed with the court, along with a request to include them in the consideration of the matter. The Court issued a letter notice that said the Justices would take the additional material under advisement and address it in the opinion itself.
- There is no expected timeline for a response from the Court.

Mr. Volk inquired about the source of funding used for attorney fees for outside counsel and the appropriation authority. Mr. Hohbein provided a response to the questions. Ms. Hicks reminded the Board that the original motion that was passed to pursue the litigation and the costs thereof was procedurally correct. Mr. Volk expressed concern regarding how the decision to pursue the litigation and the costs thereof was made, and the guidance that was given. Ms. Hicks suggested Mr. Volk and Scott Miller discuss those concerns.

With no further agenda items to discuss, Chairperson Rindy adjourned the meeting at 1:18 P.M.

Prepared by,

Jan Lund
Assistant to the Board