



Board Meeting Agenda

Location: WSI Board Room, 1600 East Century Avenue, Bismarck ND
By phone: 701.328.0950 Conference ID: 656 843 380#
Date: **Tuesday, February 8, 2022**
Time: 8:30 A.M.

I. MINUTES

- A. January 11, 2022

II. PRESENTATIONS

- A. RIO Executive Director and Chief Investment Officer Introductions
- B. Sanford Health Plan 2021 Quarter 3 Executive Summary

III. GROUP INSURANCE

- A. Over-the-Counter (OTC) COVID-19 Diagnostic Tests – Rebecca (Information)
- B. Insurance Update – Rebecca (Information)
- C. Health Insurance Renewal – Scott (Board Action)
- D. Humana Transition ***EXECUTIVE SESSION** – Scott (Board Action)
- E. Insurance Consultant Request For Proposal (RFP) Draft – Bryan (Information)

IV. MISCELLANEOUS

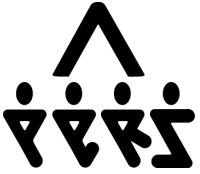
- A. Budget Status – Derrick (Information)
- B. Annual Communication Plan – Aime (Information)
- C. Member Experience Annual Report – Aime (Information)
- D. Appoint Board Election Committee – Aime (Board Action)
- E. Microfiche Conversion Request For Proposal – Bryan (Board Action)
- F. Contracts Under \$10,000 – Scott (Information)
- G. Legislative Relations – Scott (Information)

V. MEMBER ****EXECUTIVE SESSION**

- A. Insurance Appeal Case #726 – Lindsay (Board Action)

*Executive Session pursuant to N.D.C.C. §44-04-19.2(1), §44-04-19.1(1), §44-04-19.1(2), and §44-04-19.1(9) for Attorney Consultation.

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



**North Dakota
Public Employees Retirement System**
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Memorandum

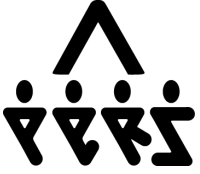
TO: NDPERS Board

FROM: Scott

DATE: February 8, 2022

SUBJECT: RIO Executive Director and Chief Investment Officer Introductions

The transition from a joint Executive Director/Chief Investment Officer position at the Retirement and Investment Office (RIO) to a split of those positions has been concluded with the promotion of Jan Murtha to the Executive Director position and Scott Anderson as the Chief Investment Officer. Jan will be at the Board meeting in person to introduce herself and Scott, who will be virtual.



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 8, 2022

SUBJECT: SHP 2021 Quarter 3 Executive Summary

Sanford Health Plan (SHP) will be at the meeting to review the 2021 Quarter 3 Executive Summary and answer any questions you may have. The Summary is attached for your reference. As part of their presentation, SHP will also be continuing their discussion on current and future trend.

NDPERS Executive Summary

Quarter 3 | 2021

Presented February 2022



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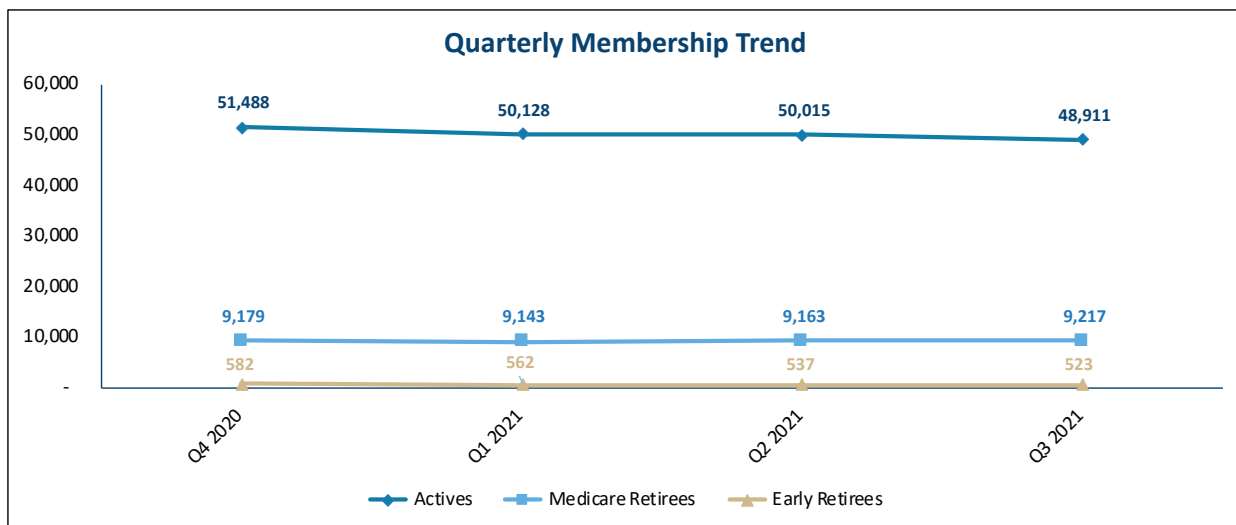
Performance Standards & Guarantees 2019-2021

ANNUAL MEMBERSHIP SUMMARY

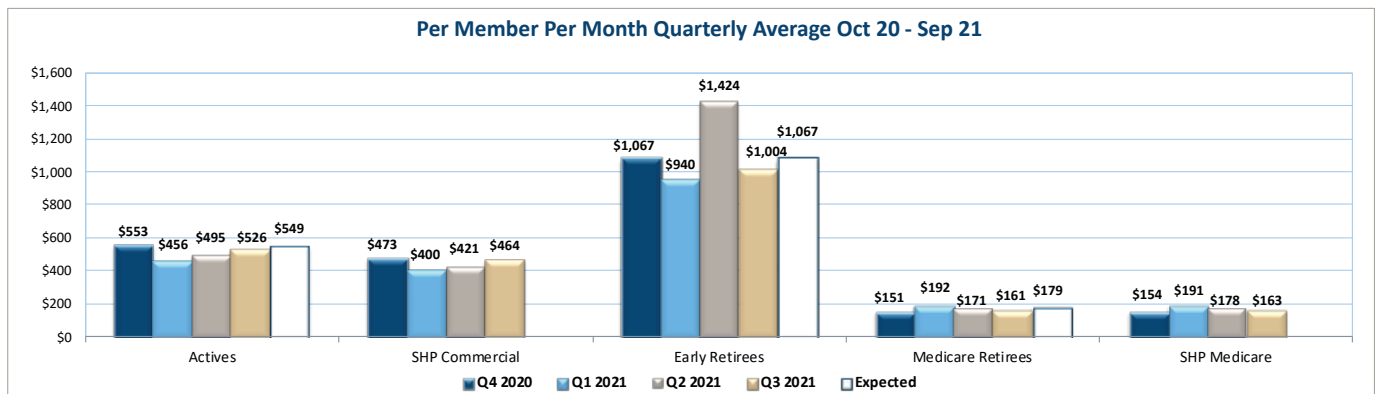
Summary

MEMBERSHIP COMPARISON						PERCENT CHANGE
	Q3 2020	Q4 2020	Q1 2021	Q2 2021	Q3 2021	Q3 2020 - Q3 2021
Actives	51,280	51,488	50,128	50,015	48,911	-4.6%
Medicare Retirees	9,159	9,179	9,143	9,163	9,217	0.6%
Early Retirees	607	582	562	537	523	-13.7%

MEMBERSHIP TREND



PMPM SUMMARY



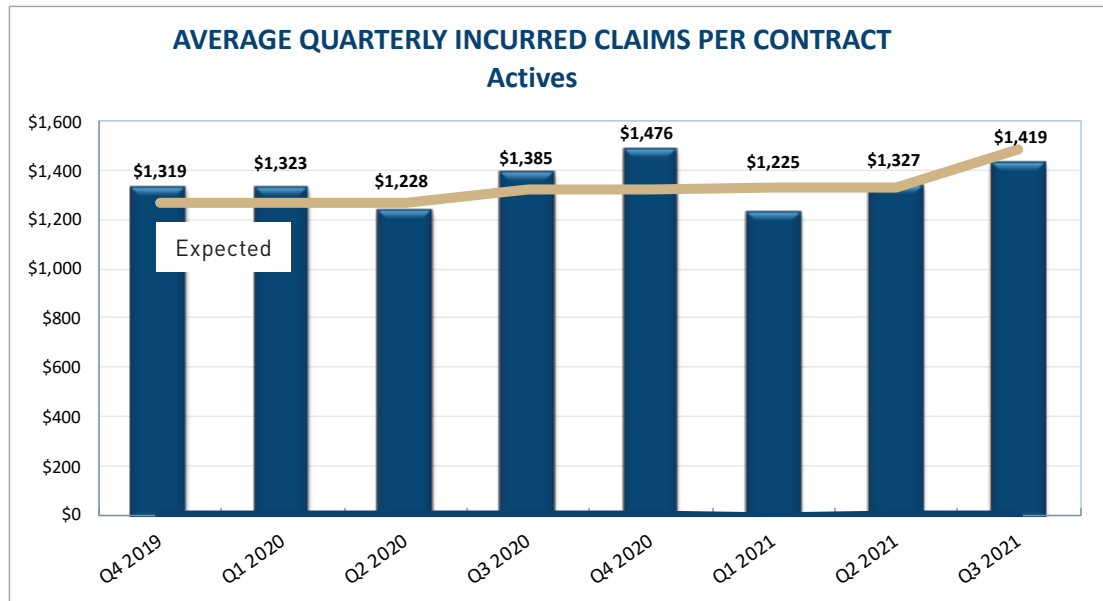
*Incurred between October 1, 2020 and September 30, 2021. Includes IBNR for October 1, 2020 through September 30, 2021, as of November 30, 2021.

*Medicare Retirees PMPM excludes prescription drug coverage (Medicare Part D).

*Expected is October 1, 2020 - September 30, 2021.

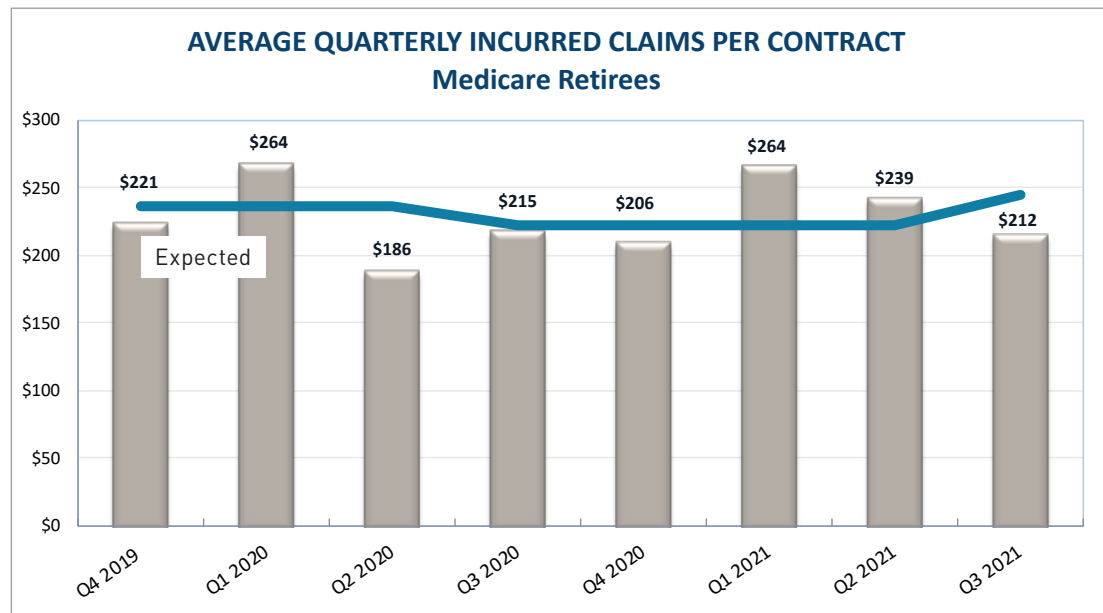
Claims Analysis

PAID CLAIMS PER CONTRACT PER MONTH



*Incurred between October 1, 2020 and September 30, 2021. Includes IBNR for October 1, 2020 through September 30, 2021, as of November 30, 2021.

*NDPERS Active contracts have approximately 2.70 members per contract.

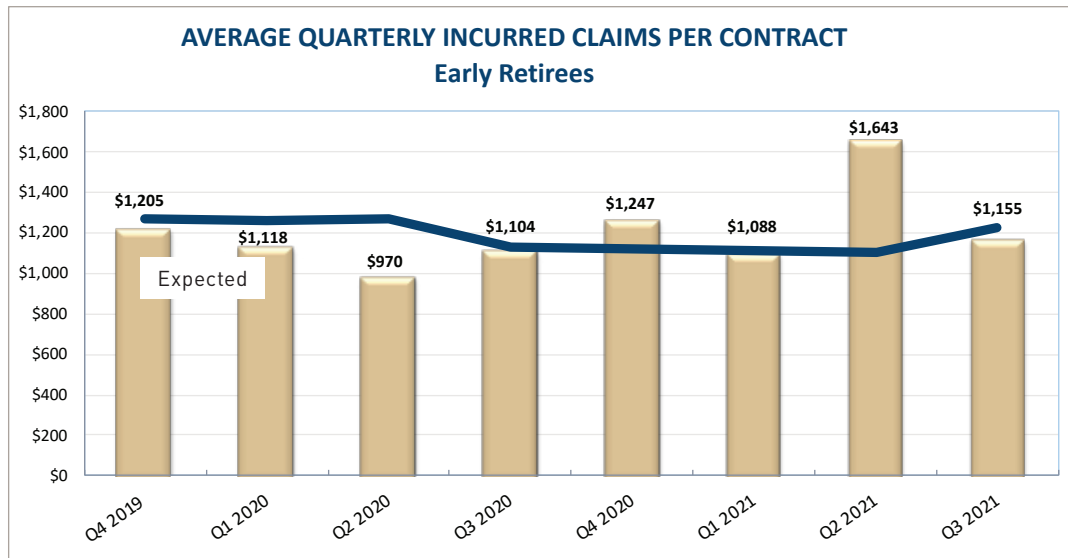


*Incurred between October 1, 2020 and September 30, 2021. Includes IBNR for October 1, 2020 through September 30, 2021, as of November 30, 2021.

*NDPERS Medicare Retirees contracts have approximately 1.36 members per contract.

PAID CLAIMS PER CONTRACT PER MONTH

Claims Analysis

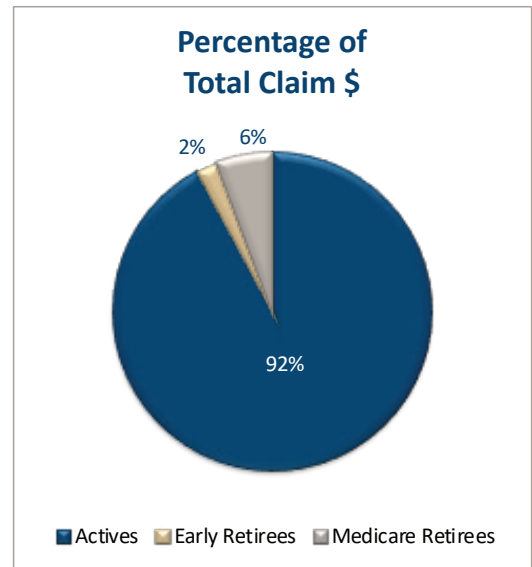
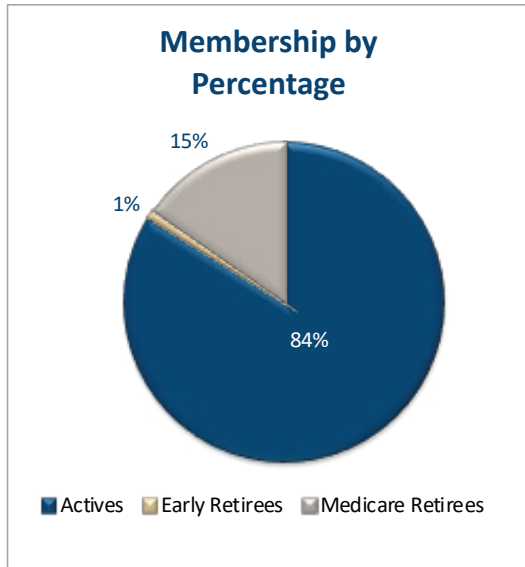
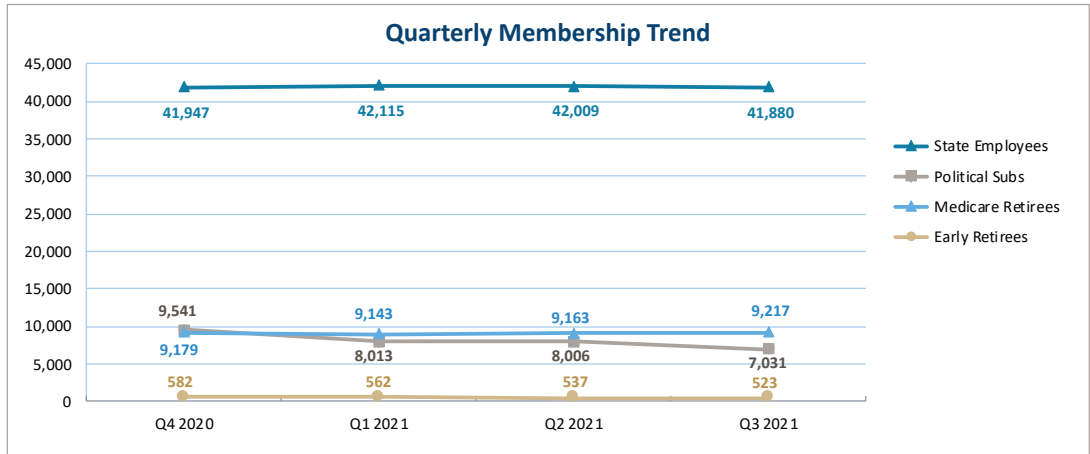


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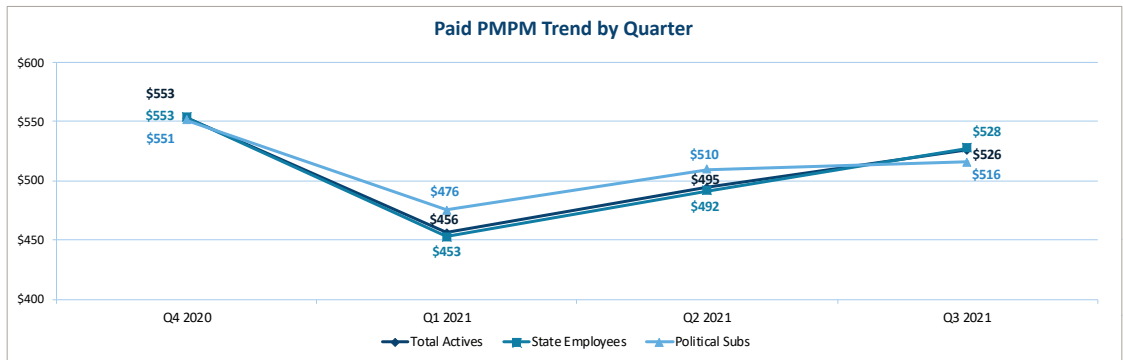
*NDPERS Early Retirees contracts have approximately 1.15 members per contract.

Membership & Utilization

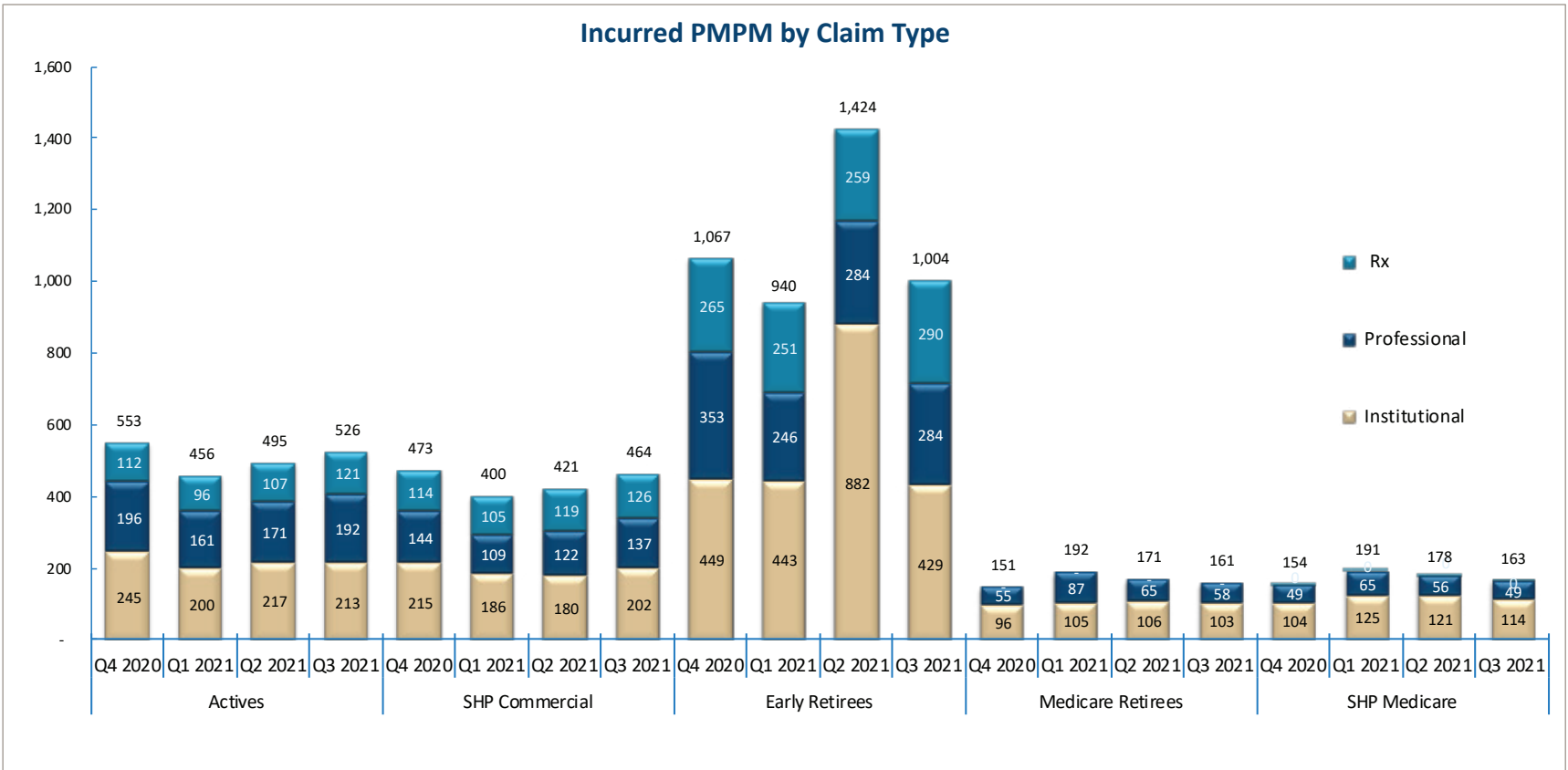
MEMBERSHIP PERCENTAGE



PAID PMPM TREND BY QUARTER

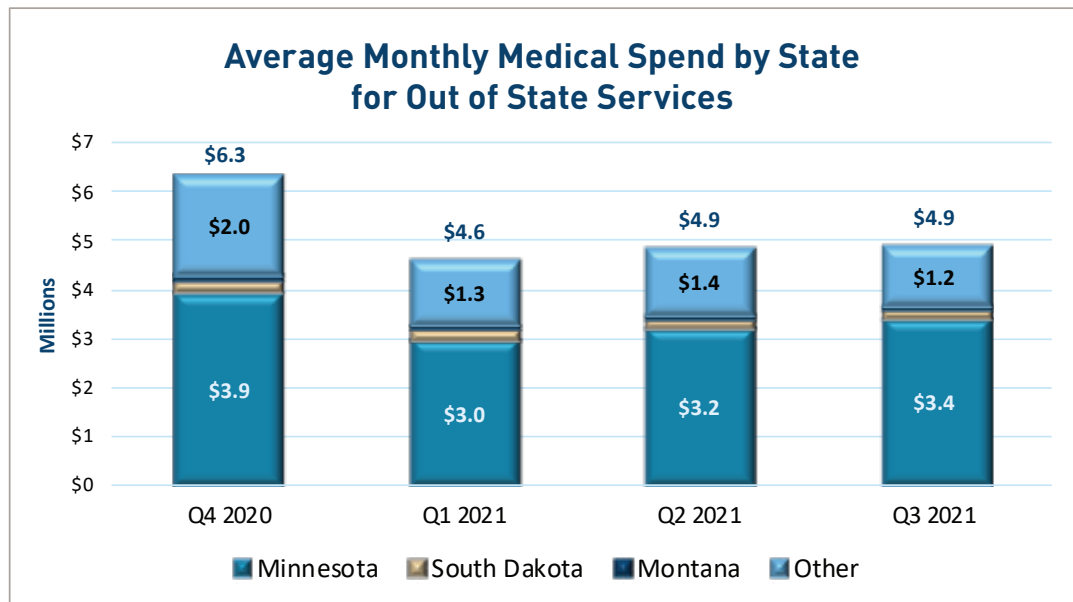
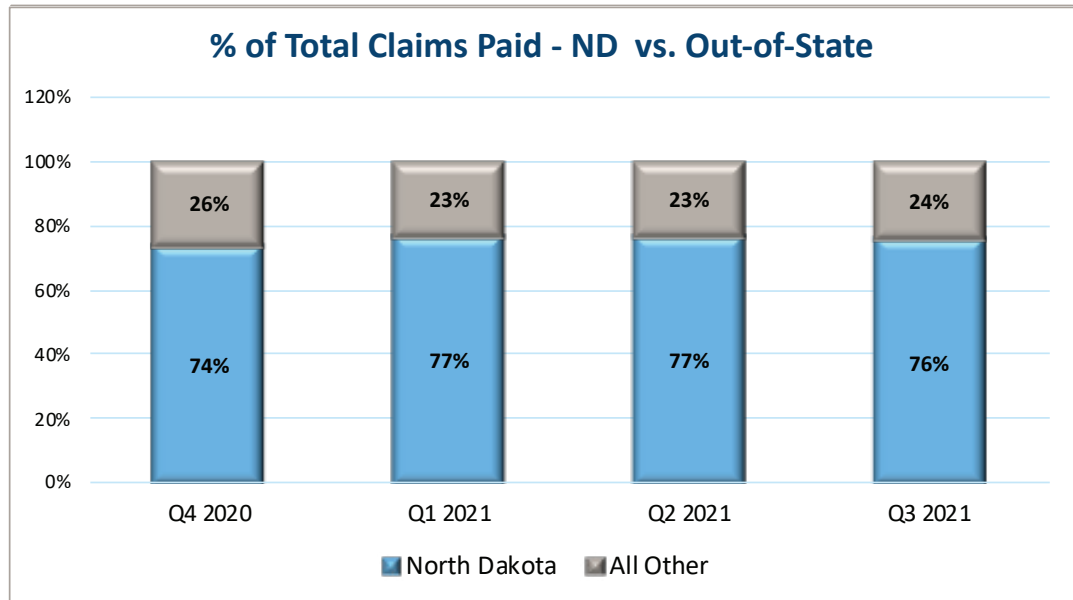


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PAID CLAIMS BY STATE



*Paid Claims by State charts include both active and retiree membership.

* Does Not include IBNR

MEMBER RISK PROFILE & UTILIZATION

Membership
& Utilization

	NDPERS	SHP Commercial
Average Age	35	33
% Male (Current)	49	46
Average Care Gap Index	1.04	0.84
Inpatient Days Per 1000	218	246
Total Admissions Per 1000	53	65
ER Visits Per 1000	178	161
Total Office Visits Per 1000	3,779	3,697
Pharmacy Scripts Per 1000	8,519	8,678

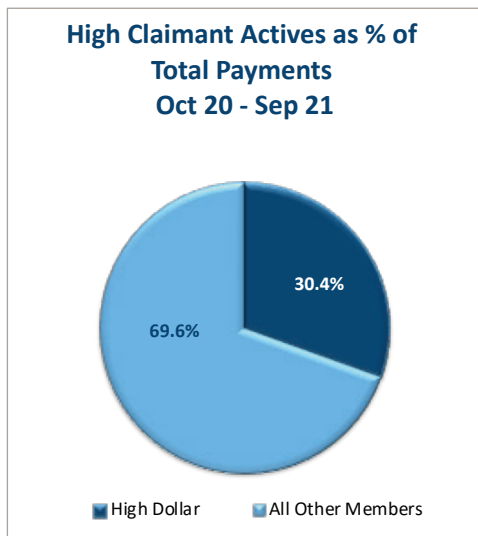
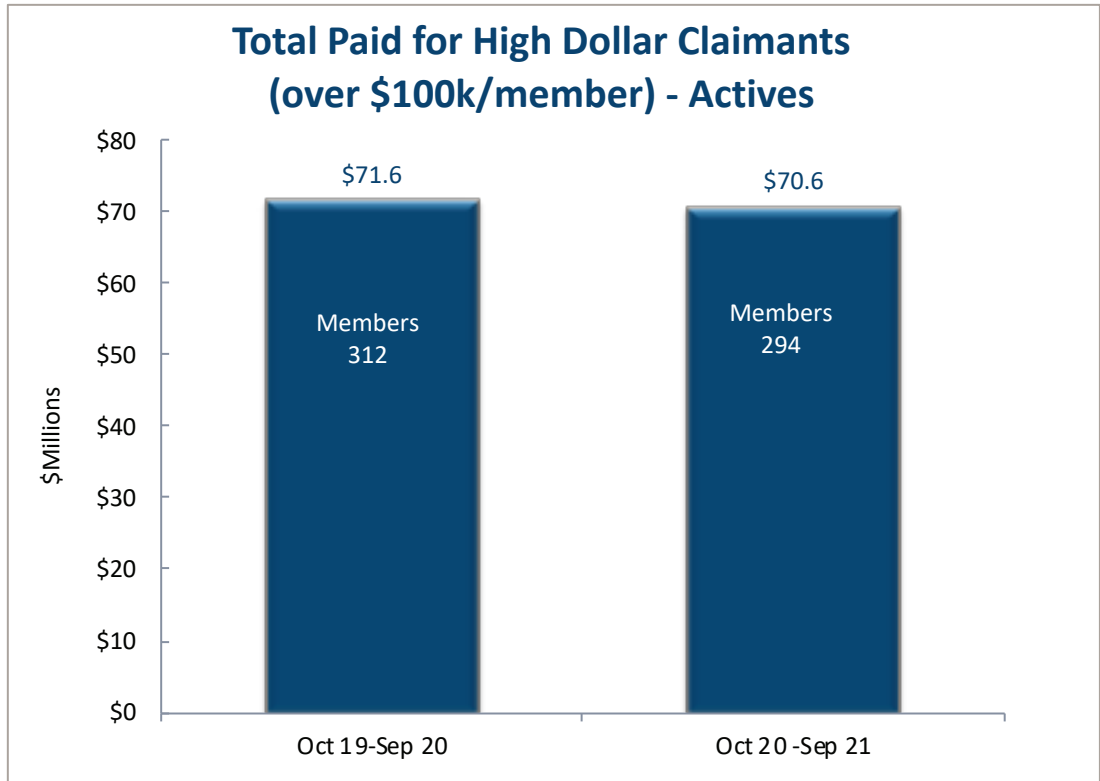
*Incurred between October 1, 2020 and September 30, 2021.

* All data was normalized using Cotiviti's methodologies and algorithms.

* NDPERS includes Political subdivisions, Early (Pre-Medicare) Retirees and State employees.

High Dollar Cases

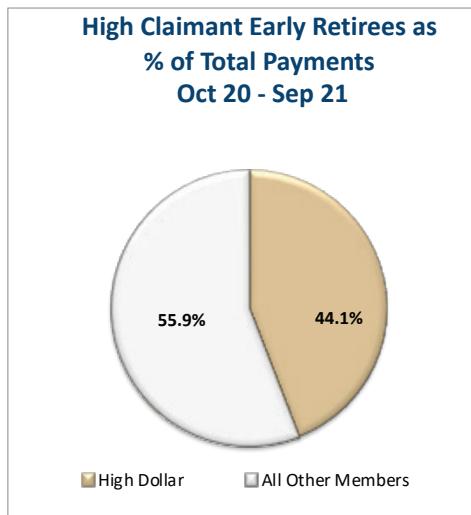
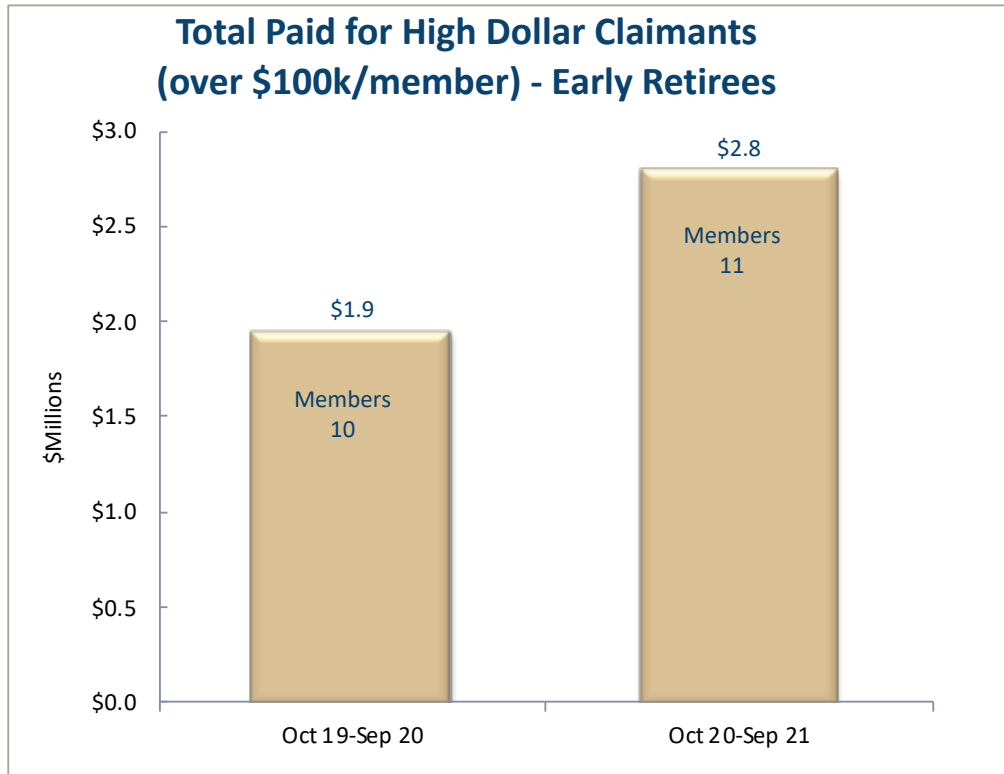
ACTIVES



Avg. Paid/Claimant	\$240,212
% of Total Payments	30.4%

EARLY RETIREES

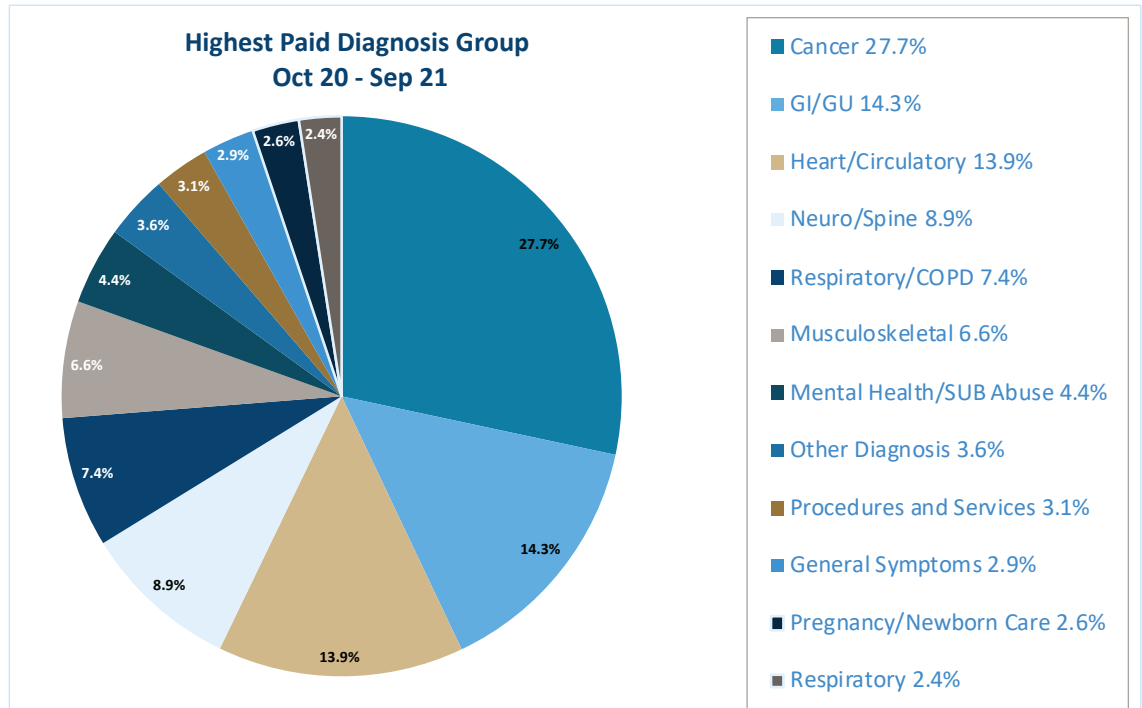
High Dollar Cases



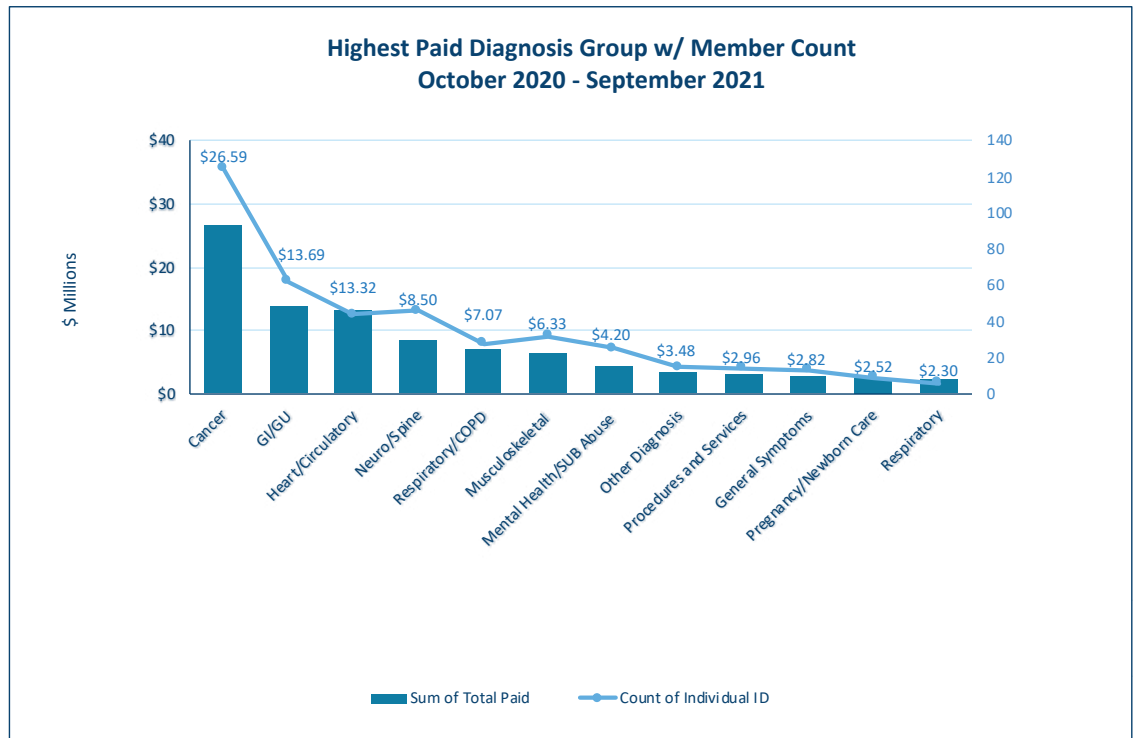
Avg. Paid/Claimant	\$252,803
% of Total Payments	44.1%

High Dollar Cases

PRIMARY DIAGNOSIS



*The remaining 2.7% represent 4 diagnosis groups accounting for less than 1% each.

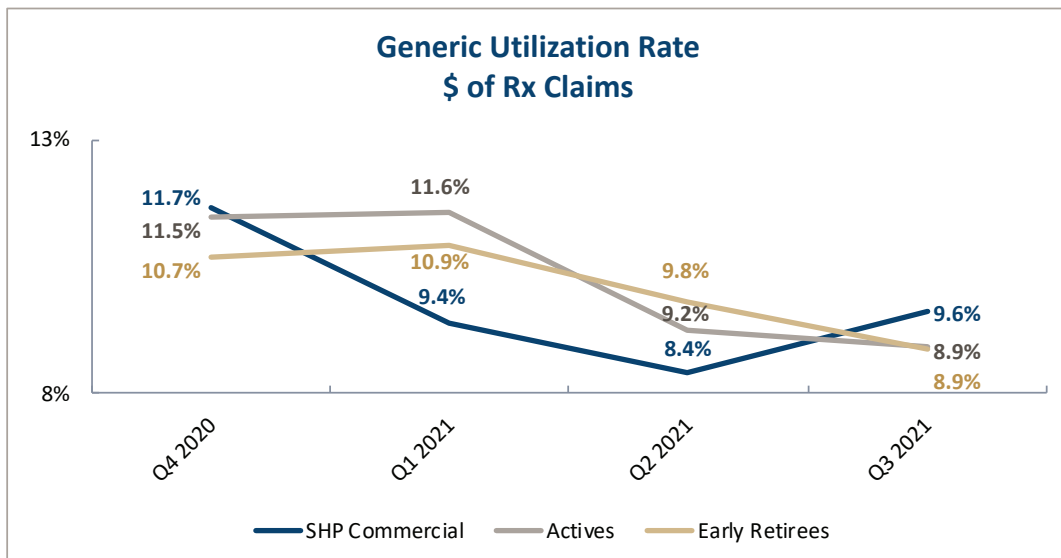
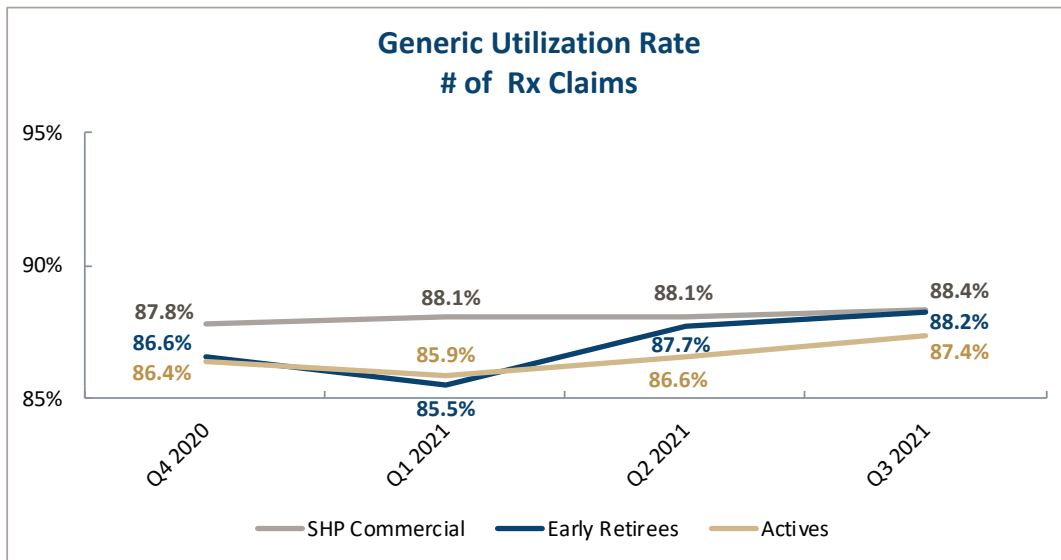
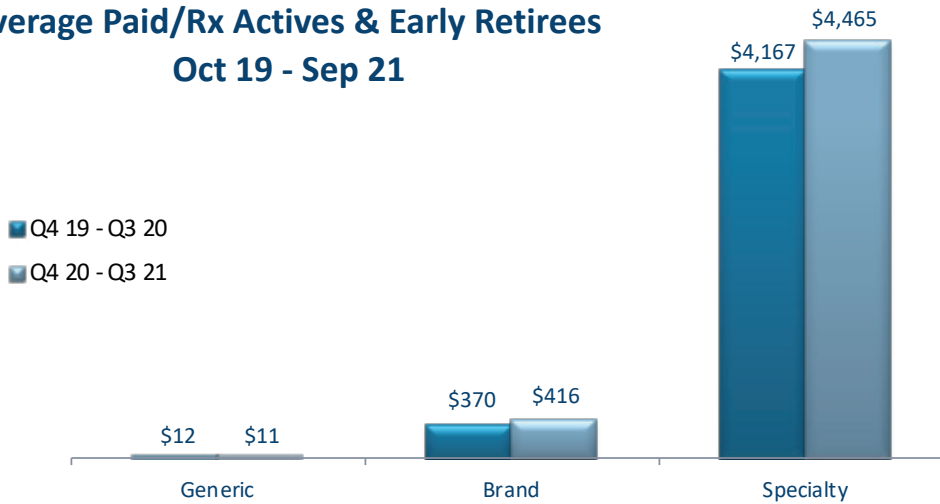


*High dollar cases consist of claims with a total over \$100,000.

GENERIC UTILIZATION

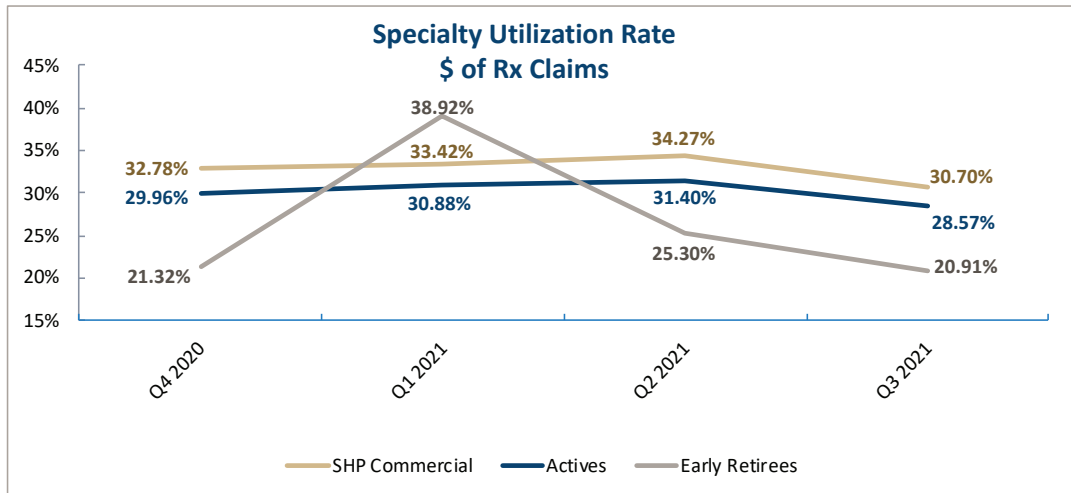
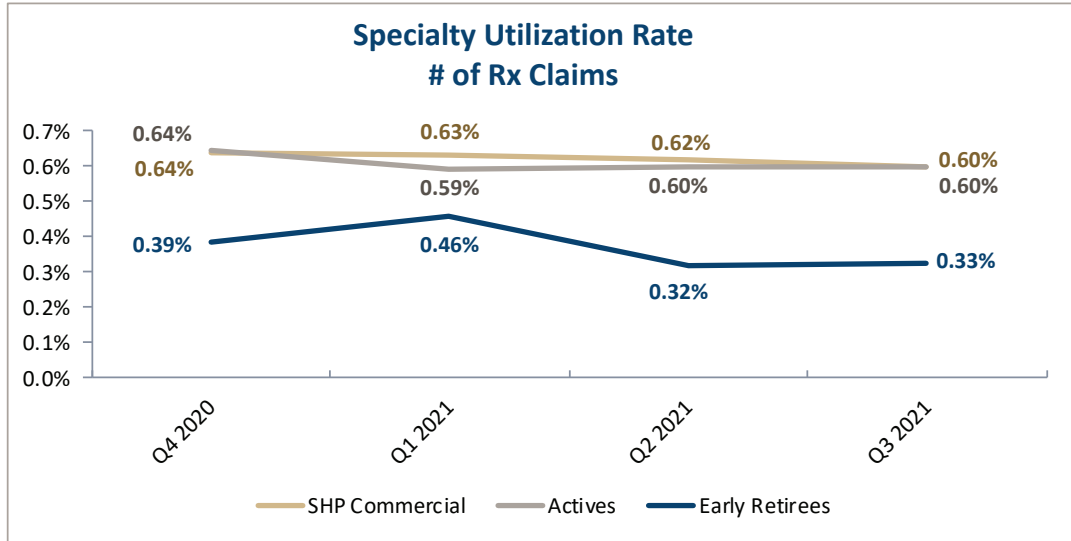
Prescription
Drugs

**Average Paid/Rx Actives & Early Retirees
Oct 19 - Sep 21**



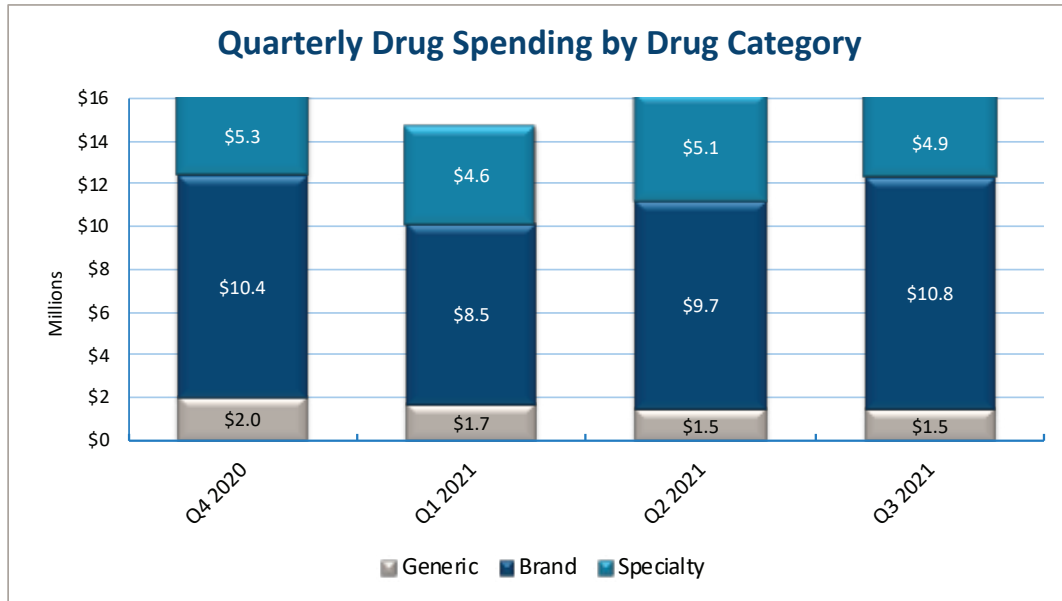
Prescription
Drugs

SPECIALTY PHARMACY



PHARMACY

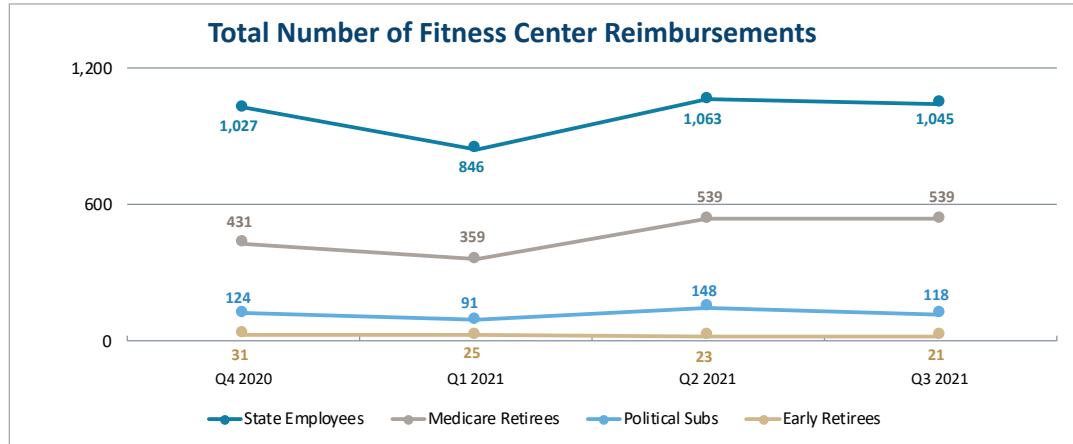
Prescription
Drugs



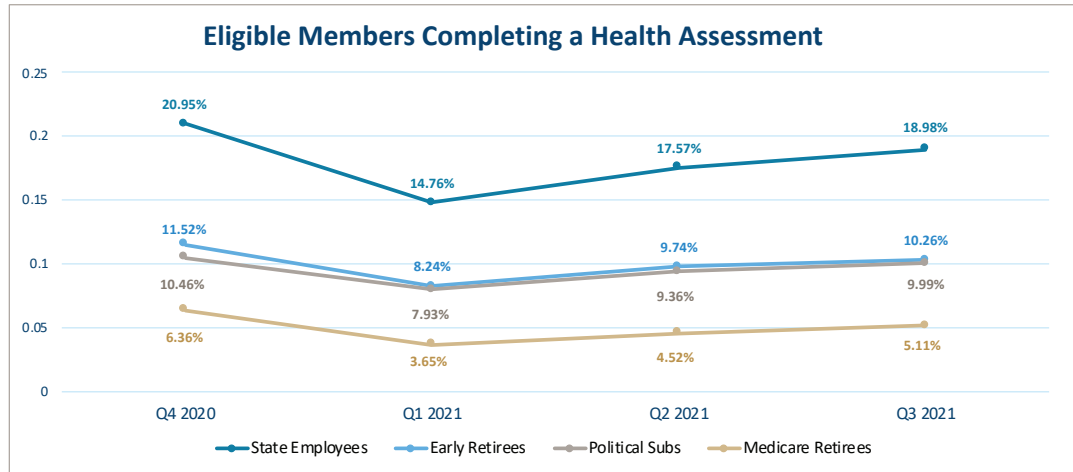
Sanford Health Plan – NDPERS EGWP			
Description	Q3 2021	Q3 2020	Change
Avg Subscribers per Month	9,163	9,120	0.5%
Avg Members per Month	9,163	9,120	0.5%
Number of Unique Patients	8,937	8,929	0.1%
Pct Members Utilizing Benefit	97.5%	97.9%	-0.4%
Total Days	10,563,913	10,492,682	0.7%
Total Adjusted Rxs	381,019	379,222	0.5%
Average Member Age	75.8	75.7	0.2%
Nbr Adjusted Rxs PMPM	4.62	4.62	0.0%
Generic Fill Rate	92.2%	91.9%	0.3%
90 Day Utilization	66.7%	66.6%	0.1%
Retail - Maintenance 90 Utilization	64.6%	64.7%	-0.1%
Home Delivery Utilization	2.0%	1.9%	0.2%
Formulary Compliance Rate	99.2%	99.1%	0.1%

*This data was prepared by Express Scripts Inc. (ESI)

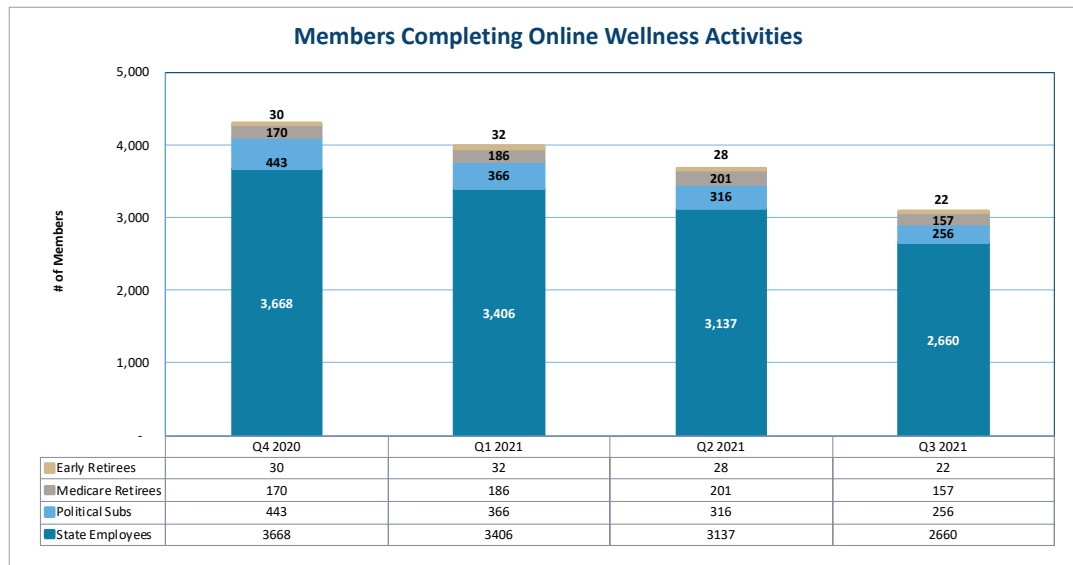
FITNESS CENTER REIMBURSEMENT



HEALTH ASSESSMENT



ONLINE WELLNESS ACTIVITIES



LIFESTYLE MEDICINE PROGRAMS

Dakota
Wellness
Program



Center for Lifestyle Medicine

NDPERS members with qualifying conditions have access to ongoing visits with a Lifestyle Medicine Specialist to create an individualized Lifestyle Medicine plan.

2021 NDPERS Q3 Participants: **37**

Total NDPERS Participants that have completed the program: **24**

Outcomes among all program graduates



Obesity diagnosis graduates reduced their BMI by **4%** on average.



Graduates increased their physical activity by **79%** on average.



Of the Type 2 Diabetes participants, members dropped their average Blood Glucose by **52 points** from 175 pre-program to 123 post program which puts them in a pre-diabetic Blood Glucose Range.



Exercise is Medicine (EIM)

Exercise has endless benefits to our health, including reducing obesity, improving sleep and our emotional well-being while reducing and reversing heart disease, diabetes, and high blood pressure.

Sanford Health patients who have a diagnosis of a BMI of 30 or greater, hypertension, hyperlipidemia, pre-diabetes, type 2 diabetes, metabolic syndrome or depression are eligible for this 12 week group exercise program. The goal of EIM is to increase confidence when it comes to making exercise a habit.

Pre Program Cardiovascular Minutes (N=321)	Post Program Cardiovascular Minutes (N=160)	6 Month Post Program Cardiovascular Minutes (N=104)
Average 64 minutes per week	Average 154 minutes per week	Average 112 minutes per week
92% Average increase in cardiovascular exercise minutes post program completion		

139
Completed the full
program



Diabetes Prevention Program (DPP)

All in-person co-horts have wrapped up, and the program is now being offered virtually with a wireless scale being sent to participants due to Covid.

Weight loss %
5.09%

Number of Participants
192

Reduced Disease Risk
54%

Dakota Wellness Program

MONTHLY WELLNESS THEMES

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



Dakota Wellness Program

Social Well-Being

Learning to have a conversation with someone who shares a different opinion is an important skill for friendships and navigating today's workforce. The first thing to do is to engage with those we disagree with. With a little bit of prep work before your conversation and practicing calm during the interaction—your conversation can end with a resolution or further understanding.

PREPARE FOR YOUR INTERACTION

- Come to the conversation assuming they have good will or neutrality
- In-person or face-to-face on video is the best way to communicate

LISTEN TO UNDERSTAND, MAKE THEM FEEL HEARD

- Ask questions to clarify where opinions may differ
- Learn more about their beliefs and how they developed

CREATE A POSITIVE INTERACTION

- Stay calm and be patient
- Defend your position with empathy in mind

Learn more in the Dakota Wellness Program Newsletter. sanfordhealthplan.com/ndpers

NDPERS 640-326 Rev. 021




Dakota Wellness Program

Children's Nutrition

Getting children to eat balanced meals can be one of parenting's most difficult challenges. Many parents struggle with a picky eater and as a result, family mealtimes can turn into a stressful battle. Parents can help children learn about good nutrition while also learning to trust their bodies. Here are some best practices from child nutrition experts:

THE PARENT PROVIDES, THE CHILD DECIDES:

Parents get to decide what food is included, or not included, in a meal. It is the child's job to decide if and how much of that meal they will eat.

NO PRESSURE:

Avoid rules such as "just take one bite". Avoid positive pressure to eat, such as congratulating a child for eating a vegetable. Instead, try to serve foods in a neutral way. It can take 20+ exposures before a child accepts a new food. This means that even placing a piece of broccoli on the plate is a win. No pressure gives the child time to warm up to the food and the freedom to try it without the pressure to finish it.

FOOD IS FOOD:

Don't place foods on a pedestal. For example, when we overly restrict foods like desserts, children learn that it is "off-limits", which can cause an obsession with that type of food. Instead, try to expose children regularly to a variety of foods, sweets included. When doing so, remember to stay neutral and simply add it to the balanced meal plate.

Learn more in the Dakota Wellness Program Newsletter. sanfordhealthplan.com/ndpers

NDPERS 640-326 Rev. 021




Dakota Wellness Program


Yoga Philosophy

When many of us think of a yoga, we think of yoga poses and stretching, which is only one of the eight parts of yoga. The word yoga literally means union. The full practice of yoga creates a union to connect the mind, body, and spirit through self-study.

The Wellness and Lifestyle Medicine team at Sanford Health Plan invite you to our free virtual yoga classes. We offer these as a FREE wellness benefit. You can join us from the comfort of your office or home. These classes are designed to meet all levels and abilities and are taught live by one of our instructors.

Class times include:

- Tuesdays at 6 a.m. (30 minutes)
- Thursdays at Noon (30 minutes)
- Monday-Thursday at 4:30 p.m. (1 hour)



Ashtanga is the 8 paths and guide to practice yoga

Sign up today at sanfordhealthplan.com/ndpers/dakotawellnessprogram

Learn more in the Dakota Wellness Program Newsletter. sanfordhealthplan.com/ndpers

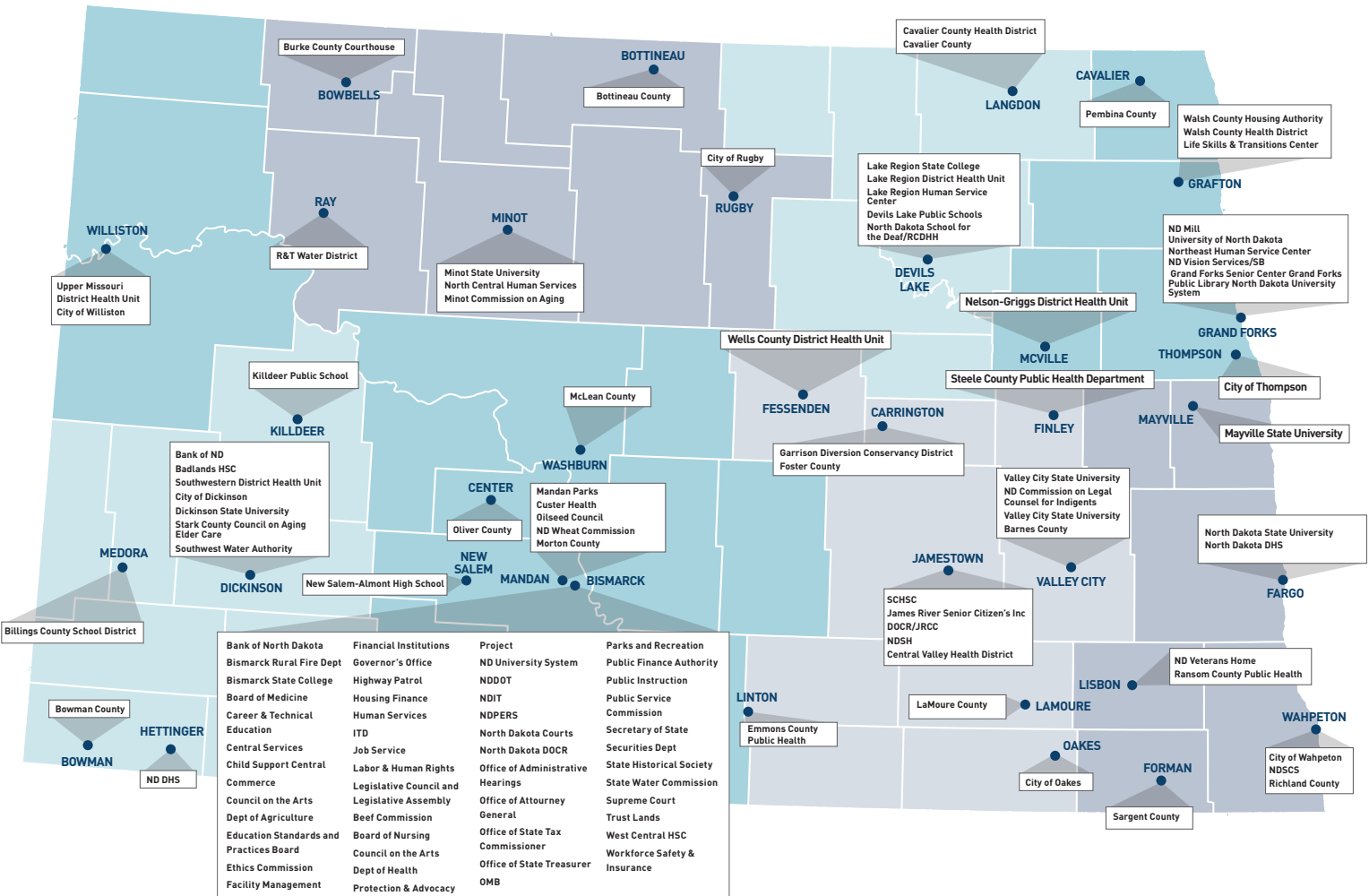
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EVENT ATTENDANCE BY AGENCY

Dakota
Wellness
Program

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 coordinator-related in-person restrictions. Wellness and activities in a virtual format. This map shows where participants are from.



TOTAL MEMBER ATTENDANCE THIS QUARTER:
1,162

PRESENTATIONS/EVENTS:

- July Member Webinar
- Aug. Member Webinar
- Sept. Member Webinar
- July Coordinator
- Aug. Coordinator
- Sept. Coordinator
- COSE
- Recharge
- Nutrition Consult
- Exercise Consult

- Make it Happen
- Nutrition and Hydration
- Flourishing Financially
- Get Moving at Work
- Overcoming Stress
- Working from Home that Works
- Healthy Meals in a Hurry
- Wellness Fair
- Mindful Eating
- Wellbeing for Prevention

TOTAL NUMBER OF AGENCIES VISITED (UNDUPLICATED)
123

Special Events

2021 Wellness Coordinator Recharge Workshop Free Virtual Meetings in July and August

Total attended: 113

Annual Employee Appreciation Month, sponsored by the Council of State Employees (COSE)

YOGA — Sept. 8

Total attended: **42**

STOP AND SMELL THE ROSES — Sept. 22

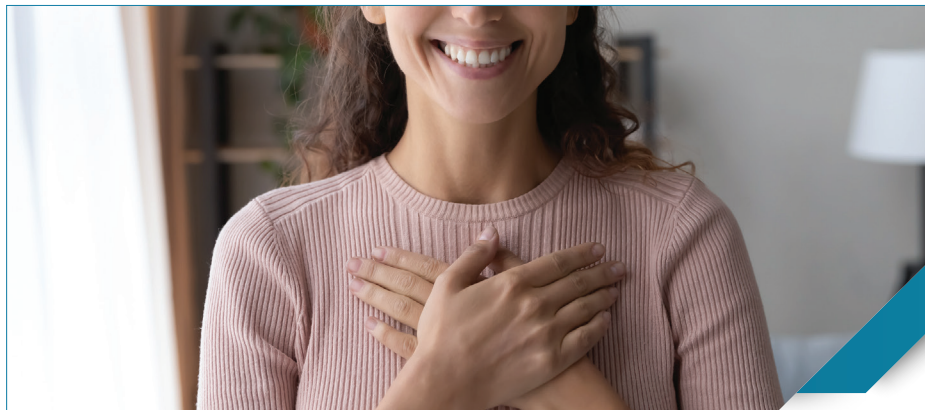
Total attended: **43**

WORK-LIFE BALANCE — Sept. 15

Total attended: **46**

MINDFUL EATING — Sept. 29

Total attended: **60**



Check-In to Check-Off Stress

Join Sanford Health Plan's Wellness and Lifestyle team for these 15-minute wellness talks at 10:00 am each Wednesday for State Employee Recognition Month.



YOGA — September 8 at 10:00 a.m. CST

Try some yoga poses and trigger points with Angie to alleviate pain and fatigue. No equipment or special clothing needed.



WORK-LIFE BALANCE — September 15 at 10:00 a.m. CST

Is work taking over? Join Audra to discuss a key component of balancing and rebalancing your relationship to work- reflexivity.



STOP AND SMELL THE ROSES — September 22 at 10:00 a.m. CST

Turn off that computer, and call into this guided walk with Angie. We will explore the senses — sight, touch, listen, and smell. Tuning into the senses is a great way to override stress and rejuvenate.



MINDFUL EATING — September 29 at 10:00 a.m. CST

Break away from poor eating habits and establish a healthy relationship with food with Alexis.

Register for one, two or all of these valuable 15 MINUTE webinars at <https://bit.ly/3yrBv3Z>

Questions? Contact NDPERSwellness@sanfordhealthplan.com

SANFORD
HEALTH PLAN

240-603-177 Rev. 8/21

MEMBER MANAGEMENT REPORT

Member Management

CASE TYPE	Total Cases	Members	Successful Contact	Unsuccessful Contact	Care Coordination
CARE TRANSITIONS 138 Total Cases					
Behavioral Health Residential	39	39	27	54	65
Behavioral Health Substance	21	21	8	27	36
Medical Acute	78	77	87	161	270
CASE MANAGEMENT 2 TOTAL CASES					
Social Work	2	2	3	2	3
COMPLEX CASE MANAGEMENT 116 TOTAL CASES					
Complicated Case	116	115	266	231	66
SPECIALTY CASE MANAGEMENT 173 Total Cases					
Behavioral Health	41	40	43	100	31
ESRD	32	32	49	82	62
High Risk Pregnancy	33	33	94	116	36
NICU	2	2	2	5	6
Oncology	54	54	135	92	138
Transplant	11	11	14	23	4
VERY HIGH RISK CASE MANAGEMENT 1 TOTAL CASES					
Oncology	1	1	1	1	0

Case Summary

- Total cases – Count of any cases open or closed during the report time frame.
- Individual members – Count of the individual members with a case open.

Member Outreach

- Successful outreach – Includes the following activities: successful telephone call, outreach, site visit, member interaction.
- Unsuccessful outreach – Includes leaving messages for a member or letter sent.

Case Management

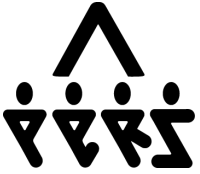
- Case manager activities related to care coordination, including: chart review, referrals to internal Health Plan staff for claim or coverage questions, electronic outreach to providers and educational material mailings.

Performance
Standards &
Guarantees

2021-2023

MEASURE	GOAL	OUTCOME REPORTING DATES	CURRENT
WELLNESS:			
Health Risk Assessment completion	17%	June 30, 2023	On Track
Worksite Interventions agency participation	75%	June 30, 2023	On Track
Fitness Center Reimbursement participation	5%	Dec. 31, 2022	On Track
Redemption Center payments	\$800,000	Dec. 31, 2022	On Track
Redemption Center participation rate	8%	Dec. 31, 2022	On Track
HEALTH OUTCOMES:			
Healthy Pregnancy Program	2.5%	June 30, 2022	2.6%
Diabetes Prevention Program	3%	Dec. 31, 2022	On Track
Exercise is Medicine Program	3% increase	Dec. 31, 2022	On Track
Breast cancer screening rates	80%	June 30, 2022	77.7%
Cervical cancer screening rates	85%	June 30, 2022	78.1%
Colorectal cancer screening rates	60%	June 30, 2022	On Track
PROVIDER NETWORK/CONTRACTING:			
PPO Network participation rate	Hospital, MDs & DOs: 92%	June 30, 2022	100% – Hos 95% – MD/DO
Par Network minimum discount	30%	June 30, 2022	41.88%
Pharmacy network maximum reduction	5%	June 30, 2022	On Track
CUSTOMER SERVICE & CLAIMS:			
Claims financial accuracy	99%	June 30, 2022	99.99%
Claims payment accuracy	97%	June 30, 2022	100%
Claim timeliness	99%	June 30, 2022	98.99%
Claims procedural accuracy	95%	June 30, 2022	99.98%
Average speed of answer	30 seconds	June 30, 2022	1.36
Call abandoned rate	5% or less	June 30, 2022	3.28%
First Call Resolution	95%	June 30, 2022	99.22%
Written Inquiry Response Time	95%	June 30, 2022	99.76%





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

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 8, 2022

SUBJECT: Over-the-Counter (OTC) COVID-19 Diagnostic Tests

On January 10, 2022, the Biden Administration announced a new requirement that health insurance providers cover eight FDA-approved OTC COVID diagnostic tests per member per month at no cost to members. This coverage is required for eligible tests purchased on or after January 15, 2022.

Please find the attached memorandum from Sanford Health Plan (SHP) regarding their implementation of this requirement. Representatives from SHP will be available at the Board meeting to answer any questions you may have.

Memo

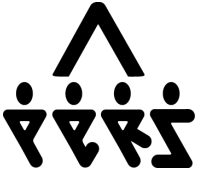
To: Rebecca Fricke
From: Steve Webster
Date: January 20, 2022
Re: Over-the-Counter COVID-19 Diagnostic Tests

On January 10, 2022, the federal government announced it is requiring health insurance issuers to cover eight FDA-approved over-the-counter (OTC) COVID-19 diagnostic tests per member per month at no cost to members. We're pleased to share that Sanford Health Plan has implemented processes to comply with this requirement.

Beginning on January 15, 2022, Sanford Health Plan members may purchase FDA-approved COVID-19 tests at any location where tests are sold and submit a form to Sanford Health Plan for reimbursement. Please find a summary of the benefits below:

- Members can submit claims for up to eight (8) tests per member per calendar month and will be paid in full, regardless of where the tests are purchased.
- COVID-19 tests charges are via paper claim, found on the NDPERS/SHP website.
- Tests are for individual diagnostic testing and do not qualify for employer or other non-diagnostic related use that is not reimbursable.
- COVID-19 diagnostic tests ordered by a provider and performed by a laboratory will continue to be covered at no cost to members.
- Medicare members will receive tests through HHS. HHS is providing up to 50 million free, at-home tests to community health centers and Medicare-certified health clinics for distribution to Medicare members.

<https://findahealthcenter.hrsa.gov/>



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: February 8, 2022

SUBJECT: Insurance Updates

This memo is to provide the Board with updates on two efforts conducted this fall in relation to the NDPERS Insurance plans.

Flu Vaccination Clinics

From late September through early November, NDPERS offered ten flu vaccination clinics to members and dependents in the Bismarck/Mandan area who are covered by the NDPERS health insurance plan. As in previous years, the clinics were conducted by the UND Center for Family Medicine, both at their clinic and also at the Capitol. Similar to last year, the UND Center for Family Medicine modified their registration process to require online pre-registration to ensure that proper Covid-19 protocols, including mask requirements and social distancing, could be maintained. A total of 1,187 individuals received their flu vaccination through this campaign. This amount is more than in 2020, which had a total of 986 individuals vaccinated at the NDPERS sponsored clinics.

Annual Enrollment

Annual enrollment was conducted from October 18 – November 5, 2021. Members were able to provide their elections by supplying paper forms or by using Member Self Service (MSS).

Additional information regarding specific plan enrollments includes the following information:

FlexComp Plan:

	2021	2021	2022	2022
	Participants	Contributions	Participants	Contributions
Medical Spending	2,233	\$3,796,561	2,164	\$3,747,483.03
Dependent Care	358	\$1,457,005	399	\$1,622,166.92
Total	2,591	\$5,253,566	2,563	\$5,369,649.95

Change in participation for medical spending:	-3.1%
Change in participation for dependent care:	11.5%
Change in contribution for medical spending:	-1.3%
Change in contribution for dependent care:	11.3%

Please note that the information provided is a comparison based upon annual enrollment elections made and participation levels as of January 2021 and January 2022. It does not reflect the special enrollment window for Dependent Care Accounts that was conducted in April 2021. The special window allowed employees to enroll or increase their deferral significantly due to a temporary new deduction limit of \$10,500 for the 2021 calendar year. As reported previously, that special enrollment resulted in 159 members enrolling in or increasing their election for their Dependent Care Account. Under IRS regulations, this deduction limit was reduced to the previous deferral amount of \$5,000 for the 2022 calendar year.

Dental & Vision Plans:

The following is the change in enrollment for subscriber contracts in the dental and vision plans:

	<u>2021</u>	<u>2022</u>
Dental	12,207	12,440
Vision	12,687	12,750

High Deductible Health Plan:

The enrollment change for the High Deductible Health Plan is:

<u>2021</u>	<u>2022</u>
563	646

457(b) Deferred Compensation Plan:

Although Deferred Compensation is not normally included as part of the annual enrollment elections, based upon direction by the Board, an active choice enrollment option for this benefit was again offered as part of annual enrollment. The purpose was to incentivize members to enroll or increase their 457(b) Deferred Compensation contributions.

The following summary identifies *unique* members modifying their election.

Provider	Total Unique Members that modified their election	New	Increase	Decrease
TIAA (Companion Plan)	702	216	471	15
Other 457(b) Deferred Compensation Providers	90	10	80	0

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.



Memorandum

TO: NDPERS Board

FROM: Scott

DATE: February 8, 2022

SUBJECT: Health Insurance Renewal

As you will recall, our health plan contract with Sanford Health Plan (SHP) runs for two years (biennium), with two additional possible two-year renewals. The current contract, the first two years of the possible six years, runs through June of 2023. Because an RFP in the event we do not renew takes so much time, we need to begin the process to determine if the Board would like to renew with SHP for another two years.

The timeframe for this process is as follows:

- July/August – obtain renewal estimate from Deloitte
- August – receive and consider the proposed renewal and other required information
- September – determine whether to renew or issue an RFP

If the Board decides to issue an RFP, the timeframe for that is as follows:

- September – issue RFP
- November/December – receive RFPs
- February – award the plan for the 2023-2025 biennium

To expedite the RFP process in the event the Board goes that direction, staff will be reviewing/editing the previous RFP over the next couple of months, and will bring the final product to the Board for its approval prior to the September issue date.

The statutory requirements for renewal are found in NDCC section 54-52.1-05(2):

2. The initial term or the renewal term of a uniform group insurance contract through a contract for insurance, health maintenance

organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.

- a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations, the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.
- b. In making a determination under this subsection, the board shall:
 - (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount.
 - (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance.
 - (3) Consider any additional information the board determines relevant to making the determination.
- c. The board may determine the carrier's performance under the existing contract does not meet the board's expectations, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board therefore may decide to solicit a bid under section 54-52.1-04.

The proposed premium renewal amount has historically been the sticking point in the renewal process. Four years ago the initial renewal numbers from Deloitte and SHP were quite different, and the Board came very close to doing an RFP rather than renewing. We were eventually able to agree on a renewal premium after the continued sharing of information and several negotiation meetings.

As we have in the past, we will have Deloitte prepare a renewal estimate for the Board's use in the negotiation process, as required by subsection 2(b)(1). SHP will also perform its usual customer survey, which it will present to the Board in March, which satisfies some of the requirements in subsection 2(b)(2).

In 2016 and 2018, SHP obtained an outside audit of the performance measures required in subsection 2(b)(2) and provided that information for the Board's consideration. We do not believe that was requested of BCBS in the past. Further, that audit is not required by the statutes – the performance metrics SHP presents to the Board seem to be all that is required. We presume we asked SHP for that additional level of assurance due to the political issues early in our relationship.

Given that those audits showed equal or better performance than SHP initially reported, we question whether we need that additional information going forward. Further, Bryan Reinhardt and Shawna Piatz go to SHP every year to perform an audit of SHP claims processing, which typically goes very well (they will share the most recent results with the Board in March). Thus, the Board should consider whether this additional effort, and the corresponding cost, is something it wants to continue to request.

The “additional information” the Board has typically reviewed to comply with subsection 2(b)(3) includes the information required by NDCC section 54-52.1-04(1) for an RFP:

- a. The economy to be effected.
- b. The ease of administration.
- c. The adequacy of the coverages.
- d. The financial position of the carrier, with special emphasis on the solvency of the carrier.
- e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

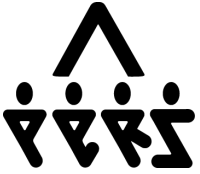
Little has changed since the 2020 RFP process regarding subsections 1(a), 1(b) and 1(c). As such, we may not need additional information on these. SHP’s performance measures and the customer survey should satisfy subsection 1(e). To satisfy subsection 1(d), the financial position of the carrier, in the past we have requested a letter from the President of Sanford Health, the overarching legal entity, confirming the financial stability of Sanford Health and its willingness to financially support SHP if needed. We will also reach out to the Insurance Department to see what information they have.

We have typically asked for the following additional information from SHP, and staff would recommend it for this renewal, as well:

- the effect on the rates of losing our Grandfathered status
- a schedule from Sanford Health Plan of the effect of plan design changes (deductibles, co-insurance, etc.)
- the cost of coverage changes (ACA benefits, coverage for birth control without cost sharing, additional wellness incentives such as smoking deterrents and re-starting the tobacco cessation program, etc.)
- information on the PERS special programs including wellness, About the Patient, and the Healthy Pregnancy Program

Board Action Requested:

1. Confirm the Board wishes to follow the process described above
2. Determine whether to ask SHP to obtain an audit of its performance measurements
3. Confirm requesting the additional information described above



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Memorandum

TO: NDPERS Board
FROM: Scott
DATE: February 8, 2022
SUBJECT: Humana Transition

Staff has continued to research issues involving the Humana Transition and the provision in Humana's contracts with pharmacies related to 340B prescriptions. Last month's memo, which provided some of the background on state law and potential federal preemption of that law, is attached. This topic is noticed for potential executive session for the Board to consult with its attorneys, as it was last month.

I have viewed the testimony provided in support of NDCC section 19-02.1-16.5(3) along with the Senate Human Services Committee's consideration of the proposed language. According to a statement by Senator Anderson, the provision was proposed by Mike Schwab and the North Dakota Pharmacists Association; this does not appear to have been initiated by a Legislator.

In my review of the legislative history of NDCC section 19-02.1-16.5, the question arose regarding whether this section would be affected by NDCC section 54-35-02.4, specifically subsections 5, 6, and 7. Those subsections provide:

5. A legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be introduced in either house unless it is accompanied by a report from the [Employee Benefits Programs] committee. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether any legislative measure affects a program.
6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be considered by a standing committee

unless it is accompanied by a report from the employee benefits programs committee.

7. Any legislation enacted in contravention of this section is invalid and of no force and effect, and any benefits provided under such legislation must be reduced to the level current prior to enactment.

(Emphasis added).

The Employee Benefits Programs Committee was never given the opportunity to evaluate or provide a report on NDCC section 19-02.1-16.5. Our Part D plan is, of course, part of our “public employee retiree health insurance program”. Enforcing NDCC section 19-02.1-16.5 would prevent Humana’s ability to negotiate prices/reimbursement for 340B prescriptions. Humana has stated that having to comply with that statute would result in an increase to both premiums and our participant’s final cost for their prescriptions, which would clearly “affect” the Part D plan. Thus, the question becomes whether NDCC section 54-35-02.4(7) invalidates and, essentially, voids NDCC section 19-02.1-16.5. Dean will be at the meeting to discuss this question.

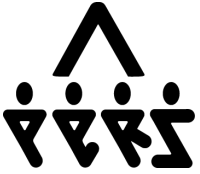
I have also talked with several individuals with much more 340B experience than I. I was apparently incorrect in some of the information I provided the Board last month. During my background discussion, I stated that I wasn’t sure why the pharmacies were so concerned about a lower reimbursement for a 340B prescription when they only received a flat dispensing fee for filling the prescription and did not have any of the risk or reward for the price of the drug. The information on the dispensing fee was incorrect.

Apparently there are no flat dispensing fees paid. Instead, contracted pharmacies have arrangements with covered entities where the covered entity pays the pharmacy a percentage of the “spread” between the price for which the manufacturer sells that drug to the covered entity and the price paid by the PBM or other payor. So in my example from last month, if the manufacturer sells a drug for \$30 and the PBM/payor pays \$300, the “spread” would be \$270, which goes to the covered entity. The covered entity then pays a percentage of that spread to the pharmacy. Thus, if a PBM negotiates a lower payment for that 340B prescription, the spread goes down, and the amount paid to the pharmacy goes down.

Importantly, if our PBM negotiates a lower payment for that 340B prescription, the amount paid by our retired participating member also goes down since they pay a percentage of the amount due as a copay.

Finally, Drew Rasmussen from Deloitte spoke with one of Deloitte’s leaders in the Part D space regarding whether the Centers for Medicaid and Medicare Services (CMS) would permit a mid-year PBM change for a Part D plan. Since 2006, when Part D began, there have only been a very limited number of changes allowed, primarily because the PBM stopped operations. As such, any option that would require a mid-year PBM change is most likely untenable.

This item is noticed for executive session in the event the Board would like to consult with its attorney on these matters.



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Memorandum

TO: NDPERS Board

FROM: Scott

DATE: January 11, 2022

SUBJECT: Humana Transition

The transition of our Part D plan to Humana was completed by the January 1, 2022 start date. During the course of that transition in late 2021, some of the out-of-network pharmacies complained that Humana's proposed contract violated NDCC section 19-02.1-16.5(3), which does not allow a PBM to "reimburse a lower dollar amount for a drug purchased under section 340B than if the drug had been purchased outside section 340B". The pharmacies stated, and Humana confirmed, that the proposed agreement does provide for a lower reimbursement if the drugs are prescribed under a section 340B situation.

Our contract with Humana requires Humana to comply with state law. As written, NDCC § 19-02.1-16.5(3) does not allow a PBM to "reimburse a lower dollar amount for a drug purchased under section 340B than if the drug had been purchased outside section 340B". However, the recent Eighth Circuit Court of Appeals decision in *Pharmaceutical Care Management Association v. Wehbi*, No. 18-2926, (8th Cir. Nov. 17, 2021) indicates that there is a strong possibility that the ND statute may be preempted by federal law: "A better interpretation of 42 U.S.C. § 1395w-111(i)(1) would limit the 'negotiations' that it protects from interference [from states] to negotiations about which drugs the pharmacy must carry and what prices the pharmacy may charge for them." The Eighth Circuit's previous decision in *Rutledge v. Pharmaceutical Care Management Association*, 891 F.3d 1113 (8th Cir 2018), which preempted an Arkansas statute that attempted to interfere with pricing negotiations between a PBM and Arkansas pharmacies for similar reasons, further adds to the possibility that the ND statute is preempted. (Note that while the *Rutledge* decision was appealed to the U.S. Supreme Court, that appeal did not include the Medicare Part D portion of the 8th Circuit's decision, and so that portion of the decision is still the law in the 8th Circuit, which includes North Dakota).

Dean DePountis, the Board's attorney, recommended that we seek advice from Ice Miller, our outside counsel, since they have more experience with 340B. Attached is their attorney-

client protected memo on the topic, which includes background on the 340B program. We will review the memo in closed session to protect the attorney/client communication. However, the Board can, of course, decide to waive that attorney/client privilege and make the memo public. That is the Board's decision as a whole.

The Humana attachment for Executive Session will be sent out under separate cover.



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Memorandum

TO: NDPERS Board

FROM: Bryan Reinhardt

DATE: February 8, 2022

SUBJECT: Insurance Consultant Draft RFP

Attached is a draft request for proposals for a consultant to conduct the Life, Dental and Vision insurance program RFPs. The RFP is an update to the one we used six years ago. The analysis for this will be done in-house. The prior work effort was done by Jim Schaffer at Buck/Conduent. He is no longer working with them, so we will likely have a new firm for these efforts. This is a draft and we plan to bring the RFP back to the Board at the March meeting for approval.

Here is the proposed timeline:

The following is a sequence of activities for this RFP:

April 1, 2022	RFP issued.
April 15, 2022	Deadline for RFP Questions
April 22, 2022	Answers to RFP Questions posted to NDPERS Website
May 2, 2022	RFPs Due 5:00 pm CDT
June 14, 2022	NDPERS Board Reviews Bids
July 1, 2022	Contractor begins work effort

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

REQUEST FOR PROPOSAL

DRAFT

**North Dakota
Public Employees Retirement System**

**Uniform Group Insurance
Request for Proposal for Consulting Services for Dental, Life and
Vision Insurance**

April 2022

Prepared by:

**North Dakota Public Employees Retirement System
1600 E Century Ave, Suite 2
P.O. Box 1657
Bismarck, ND 58502-1657**

**Request for Proposal
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SECTION 1 – INTRODUCTION

This Request for Proposal (RFP) is issued for RFP consulting assistance for the period July, 2022 through December, 2024.

The following is a sequence of activities for this RFP:

April 1, 2022	RFP issued.
April 15, 2022	Deadline for RFP Questions
April 22, 2022	Answers to RFP Questions posted to NDPERS Website
May 2, 2022	RFPs Due 5:00 pm CDT
June 14, 2022	NDPERS Board Reviews Bids
July 1, 2022	Contractor begins work effort

The Board is seeking fixed fee bids for the following anticipated efforts:

1. Development and issuance of an RFP for the life plan, and a review of the subsequent proposals. (effective 7/1/2023)
2. Development and issuance of an RFP for a vision plan, and a review of the subsequent proposals. (effective 1/1/2024)
3. Development and issuance of an RFP for a dental plan, and a review of the subsequent proposals (effective 1/1/2025)

Based on its review, the successful bidder must also be prepared to make a recommendation to the NDPERS Board for each of the above efforts.

Following is a sequence of major activities.

August, 2022	Begin work on life RFP. The consultant and PERS will meet to discuss the upcoming work schedule.
October, 2022	Submit life RFP to PERS Board for approval. Begin work on vision RFP.
November, 2022	Issue life RFP.
January, 2023	Submit vision RFP to PERS Board for approval. Receive & begin evaluation of life RFP proposals.
February, 2023	Issue vision RFP. Submit life evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
March, 2023	Interview and select life vendor. The consultant should plan to attend this NDPERS meeting.

April, 2023	Receive and begin evaluation of vision RFP proposals.
May/June, 2023	Submit vision evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June/July, 2023	Interview and select vision vendor. The consultant should plan to attend this NDPERS meeting.
October, 2023	Begin work on dental RFP.
January, 2024	Submit dental RFP to PERS Board for approval. Consultant should be available either by teleconference or video conference to review and answer questions for the Board.
February, 2024	Issue dental RFP.
April, 2024	Receive and begin evaluation of dental RFP proposals.
May/June, 2024	Submit dental evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June/July, 2024	Interview and select dental vendor. The consultant should plan to attend this NDPERS meeting. <Does Board want consultant at interviews?>

SECTION 2 - BACKGROUND

A. The Agency:

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. This proposal is for assistance in the life, vision, and dental areas.

PERS is managed by a Board comprised of nine members:

- 1-Chairman appointed by the Governor
- 1-Member appointed by the Attorney General
- 1-Member elected by retirees
- 3-Members elected by active employees
- 1-State Health Officer or designee
- 2-Members appointed by Legislative Management

PERS 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.

B. Group , Life, Dental, and Vision Insurance:

1. Group Life:

The Uniform Group Life Insurance Plan is a fully insured plan underwritten by Voya. All state employees are covered under the plan, including the professional staff at colleges and universities. Political subdivisions may participate in the life plan at their option. Premiums collected for the past fiscal year totaled approximately \$4,000,000.

The Uniform Group Insurance programs are under chapter 54-52.1 of the North Dakota Century Code (NDCC).

2. Dental:

The Uniform Group Dental Plan is fully insured by Delta Dental. As of January 2022 there were 8,900 active contracts and 4,000 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$11,000,000.

3. Vision:

The Uniform Group Vision Plan is fully insured by Superior Vision. As of January 2022 there were 9,300 active contracts and 3,800 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$1,900,000.

SECTION 3 - SCOPE OF SERVICES

This Section outlines the scope of services.

A. Bid Solicitation and Evaluation for the, Life, Dental, and Vision Programs

The consultant will be expected to take a lead role in developing and issuing RFPs, and analyzing any proposals for the group dental, vision, and life insurance plans. Three anticipated fixed fee bids are requested (note that it is possible one or more of these efforts may be delayed or not given approval by the NDPERS Board):

1. The first fixed fee bid is for RFP development, solicitation and evaluation for the life insurance plan.
2. The second fixed fee bid is for RFP development, solicitation and evaluation for the vision insurance plan.
3. The third fixed fee bid is for the RFP development, solicitation and evaluation for the dental insurance plan.

These are major and significant tasks for PERS as the proper placement of these programs is critical. The consultant must provide the following service for all of the above efforts:

1. Sections 54-52.1-04 and 54-52.1-04.2 NDCC requires that the PERS Board solicit bids for the insurance programs. The consultant must prepare draft requests for proposals pursuant to the schedule outlined. The consultant will be also responsible for developing a list of firms to be solicited. This list will be supplemented by requests PERS has received and those additional requests that come in as a result of a notice appearing in local newspapers in North Dakota.
2. The Board and staff will review draft RFPs pursuant to the schedule outlined.
3. The consultant shall review all bids within the timeframes outlined. The analysis shall include the following:
 - a) Confirm that all bidders meet the minimum requirements and eliminate any non-qualified bidders.
 - b) Evaluate the financial implications of each bid (quantitative factors). Section 54-52.1-04 of NDCC requires the Board to give consideration to the following:
 - (1) The economy to be effected
 - (2) The ease of administration
 - (3) The adequacy of the coverage
 - (4) The financial position of the carrier, with special emphasis as to its solvency
 - (5) The reputation of the carrier and such other information as is available tending to show past experience with the carrier in matters of claim settlement, underwriting and services.

4. Review the technical aspects of each proposal (qualitative factors).
5. Present findings to the Board pursuant to the schedule previously outlined.
6. The consultant shall assist in developing contracts with the successful bidder.

B. Consultant Services for the, Life, Dental, and Vision Programs

NDPERS may need expertise consulting services for the group dental, vision, and life insurance plans. Federal and State mandates along with proposals and studies may require NDPERS to seek analysis and recommendations from the consultant. These special work efforts would be performed as needed on an hourly basis.

SECTION 4 - INFORMATION REQUESTS

The proposal must comply with the format as set forth below and contain your organization's response to the requested information. The request must be restated followed by your response.

Part I - Executive Summary

Discuss your view of the entire project as requested in this RFP and provide a flow chart depicting your understanding of the major work efforts and timeframes for beginning and completing tasks.

Part II - Minimum Requirements

The successful vendor must have a multidisciplinary staff including an insurance actuary with experience in the work requirements outlined herein. The firm must also have demonstrated experience in doing the work outlined herein. In this section you will summarize your staffing and experience. The individuals/firm shall also summarize any potential conflicts of interest here as well.

Part III – Proposal

1) Technical Approach.

- a) Fixed Fee Work efforts
 1. Life Insurance Plan
 - (a) Generally discuss your understanding of the work requested
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work
 - (e) Outline the product PERS will receive from you
 2. Vision Plan
 - (a) Generally discuss your understanding of the work requested
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
 - (e) Outline the product PERS will receive from you
 3. Dental Plan
 - (a) Generally discuss your understanding of the work requested.
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
 - (e) Outline the product PERS will receive from you

2) Experience.

- a) General firm experience - a brief description of the size, structure and services provided by your organization.
- b) Describe your organization's approach to actuarial/benefit consulting for life, vision and dental insurance programs.
- c) For the fixed efforts:
 1. Detail your experience preparing, issuing and analyzing RFPs for each of the efforts in the fixed fee area (dental, vision, life)
 2. Discuss what you find are the primary considerations for doing these efforts and special considerations of doing it in the public sector
 3. Based upon your experience, detail the expected level of analysis your firm will conduct for each of the fixed efforts, what distinguishes your firm's approach from others, and any special insights your experience will bring to the proposed efforts
 4. Provide a summary of public and private sector clients for whom your organization provides group vision, life and dental insurance program consulting and actuarial services. Provide 3-5 references identifying the appropriate contact person(s), addresses and telephone numbers.
 5. Discuss your firm's responsibilities in similar projects with other public or private clients. Discuss your understanding of the difference between a public bid process versus a private bid process

3) Staffing.

- a) This Section should include individual resumes for the personnel who are to be assigned to the project and should indicate the proposed project role or assignment of each individual. The project team should include staff with experience in developing RFPs of the type requested herein, evaluating responses, doing the required actuarial analysis and assisting with implementation.
- b) The offeror shall provide a schedule at the beginning of this Section that shows the number of hours that each person is assigned to each of the fixed fee projects.
- c) Resume information should identify not only educational and work history but also specific information on what clients the individual has worked for and in what role. Please note we may use this information to contact past clients to gather information on the individual.

Please note that it is critical that the information presented in this section is specific enough for us to understand who is being assigned to each major effort proposed in the RFP and that their role, responsibility and experience demonstrates their ability to successfully complete the required tasks.

4) Additional Information.

- a) This section is optional and can include any additional information the offeror deems relevant to this procurement and the satisfaction of the Board's objectives.

5) Conflicts of interest.

- a) In this Section the offeror shall identify and discuss any potential conflicts of interest. The contractor cannot receive any other compensation relating to this work effort except as provided in the cost proposal. Any other arrangements/relationships/contracts the offeror may have with vendors that could be a part of this solicitation must be identified herein and may serve as cause to disqualify the offeror.

6) Company Literature (if applicable).

- a) If company literature or other material is intended to respond to any RFP requirement, it must be included in this section. The offeror's responses in previous sections of the proposal must include reference to the document by name and page citation.

SECTION 5 – COST PROPOSAL - FEES/HOURS

THE COST PROPOSAL MUST BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS.

Your proposal for fees for the consulting and actuarial services requested must be made as identified below. All services discussed in Section 3 are to be provided on a fixed fee.

Vision Plan
Fixed Fee \$ _____

Staff Assigned	Estimated Hours

Dental Plan
Fixed Fee \$ _____

Staff Assigned	Estimated Hours

Life Plan
Fixed Fee

\$ _____

Staff Assigned	Estimated Hours

Please identify hourly rates for services requested that are not part of the fixed fee (note all such services must have the prior approval of the NDPERS Executive Director):

Fees:

SECTION 6 - SUBMISSION OF PROPOSAL

1. Proposals should be prepared in a straightforward manner to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Costs for developing proposals are entirely the responsibility of the proposer and shall not be chargeable to PERS.
2. Section 8 – Offer, should be signed by a partner or principal of the firm and included with your proposal. If changes are proposed they should be added and then a signed offer included. Each modification shall be identified along with the reason why.

Address or deliver the RFP to: Mr. Bryan Reinhardt
North Dakota Public Employees Retirement System
1600 E Century Ave, Suite 2
PO Box 1657
Bismarck, ND 58502

Questions concerning the RFP shall be directed, in writing, to the above individual or email to breinhar@nd.gov, by 5:00 p.m. CST on June 13, 2022. Responses will be posted on the PERS website (www.nd.gov/ndpers) by June 17, 2022 under “Request for Proposals”.

3. Seven (7) copies and one (1) electronic copy of the proposal must be received at the above listed location by **5:00 p.m. CST on June 24, 2022**. The package the proposal is delivered in must be plainly marked “PROPOSAL TO PROVIDE CONSULTING SERVICES”. Include an electronic version of your entire proposal.

A proposal shall be considered late and will be rejected if received at any time after the exact time specified for return of proposals.

- A. The policy of the PERS Board is to solicit proposals with a bona fide intent to award a contract. This policy will not affect the right of the PERS Board to reject any or all proposals.
- B. The PERS Board may request that representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- C. In evaluating the proposals, price will not be the sole factor.
- D. The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

SECTION 7 – REVIEW PROCESS

Proposals will be evaluated in a three-step approach. The first step will be done by a review team composed of PERS staff and will be an initial screening of each proposal to determine if it is sufficiently responsive to the RFP to permit a valid comparison and meets the minimum qualifications of having completed past projects similar to the efforts requested herein. The qualifying factor will be on a Yes/No basis. The proposal will be dropped from consideration if a majority of reviewers respond “No”.

The proposals that pass the initial screening will then be reviewed by the same review team. Each individual will review the proposal for all areas but price. For the fixed fee efforts each proposal will be awarded points for specified areas by the reviewers. Points for price are awarded automatically. Following is the weighting factor for each area:

- Project Summary (4.1.0) 10 Points
- Technical Approach (4.3.1) 30 Points
- Prior Experience (4.3.2) 15 points
- Staffing/Organization (4.3.3) 15 Points
- Pricing (5.0) 30 points

Please note the Board may award the entire bid to one bidder or may award the fee for service efforts separate from the fixed fee efforts. The Board may also consider awarding the fixed fee efforts separately if the responses warrant such consideration. Please note in the cost proposal any conditions that would limit such consideration by the PERS Board.

The final step will be a review by the PERS Board. The PERS Board will use any and all information in making its determination and will use the staff’s review as a guide but is not bound by that review. The NDPERS Board may also request an interview/presentation from the bidder to better understand the services they are offering.

SECTION 8 – OFFER

AGREEMENT FOR SERVICES BETWEEN (Name of Contractor) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

VENDOR (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement (“Agreement”).

CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2022 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence **July 1, 2022**.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

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

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

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

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

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

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

6) **ASSIGNMENT AND SUBCONTRACTS:**

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

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates 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 NDPERS.

- 7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of NDPERS that return or destruction of confidential information is not feasible, CONTRACTOR shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains the confidential information. CONTRACTOR shall not use or disclose any information it receives from NDPERS under this Agreement that NDPERS has previously identified as confidential or exempt

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

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

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

9) **MERGER AND MODIFICATION:** This Agreement, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

10) **INDEMNITY:** CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims 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.

11) **INSURANCE**

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 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 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.

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.

- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** By entering into this

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

- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

NDPERS:

Scott Miller, Executive Director
ND Public Employees Retirement System
1600 East Century Ave, Suite 2
PO Box 1657
Bismarck, ND 58502-1657

CONTRACTOR:

VENDOR

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

- 18) **NONDISCRIMINATION AND COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.) CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the Term of this Contract all licenses and permits required by law.

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

- 19) **STATE AUDIT:** 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 all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is: _____.

- 21) **PAYMENT OF TAXES BY STATE:** State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the NDPERS.

- 22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

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

**NORTH DAKOTA PUBLIC
EMPLOYEES RETIREMENT SYSTEM**

CONTRACTOR

Executive Director
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

SECTION 9 – BUSINESS ASSOCIATE AGREEMENT

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 the **ENTER BUSINESS ASSOCIATE NAME, ADDRESS OF ASSOCIATE.**

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 the **ENTER BUSINESS ASSOCIATE 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. identify 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.

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, **ENTER DATA PROVIDED AND FOR WHAT PURPOSE** – 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 08/01/2022, 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 **ENTER BUSINESS ASSOCIATE 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:

Scott Miller, Executive Director
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

SECTION 10 – DATA AGREEMENT

MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND **VENDOR** RELATING TO MAINTAINING CONFIDENTIAL INFORMATION

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and **VENDOR** relating to maintenance and destruction of NDPERS Confidential Information held by **VENDOR** and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with **VENDOR** to provide services related to administration of the NDPERS **RFP** (Contracts).

WHEREAS, the services provided by **VENDOR** under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ **54-52-26 and 54-52.1-11, 54-52.1-12** (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required **VENDOR** to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality.

WHEREAS, these Contracts have terminated and **VENDOR** has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time.

WHEREAS, **VENDOR** has provided and NDPERS has reviewed the **VENDOR** records retention policy (Policy) applicable to the Confidential Information and **VENDOR** has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy.

NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. **VENDOR** shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, **VENDOR** shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, **VENDOR** shall provide NDPERS a copy of any change to the Policy provided NDPERS on **DATE**.
4. NDPERS agrees these actions are consistent with **VENDOR** obligations under these Contracts.

5. This Memorandum of Understanding will terminate upon notice to NDPERS by **VENDOR** that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to **VENDOR** if NDPERS determines that the Policy has been modified in a manner that is inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____

Executive Director

Date: _____

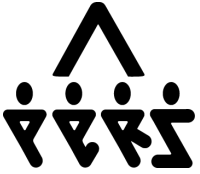
VENDOR

BY: _____

Its: _____

Date: _____

Attach Contractor Records Retention Policy



**North Dakota
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Bismarck, North Dakota 58502-1657

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

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

Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: February 8, 2022

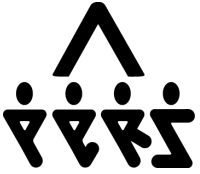
SUBJECT: Budget Status

Twice a year staff provides the Board with an update on the status of the current budget and answers any questions or concerns the Board may have. The expenses for the biennium through December 31, 2021 as well as our total appropriation are summarized in the table below:

	2021-2023 Appropriation	Expenditures to Date	Remaining Appropriation	% Remaining
Salaries & Wages	7,209,060	1,723,008	5,486,052	76%
Operating	2,500,736	546,249	1,954,487	78%
Capital Assets	257,600	128,800	128,800	50%
Contingency	250,000	-	250,000	100%
Total	10,217,396	2,398,057	7,819,339	77%

The biennium runs through June 30, 2023, meaning we have 75% of the biennium remaining for these expenditures.

Please let me know if you have any questions on the summary.



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Memorandum

TO: NDPERS Board

FROM: Aime

DATE: January 8, 2022

SUBJECT: Annual Communication Plan

As a team, each year we develop an annual communication plan. We ensure the plan includes timely communications and also addresses any opportunities identified during the previous year.

This year, we plan to continue our internal newsletter and weekly member experience surveys. Additionally, we will continue to support TIAA by promoting their monthly webinars and free financial consultations. Sanford Health Plan also hosts numerous events throughout the year and distributes monthly newsletters to wellness coordinators and members.

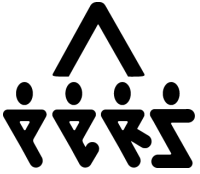
To better serve members, we modified the 2022 communication strategy. Our main change is an increase in outreach to members and a slight modification to the volume and frequency of employer communications. The goal of this change is to build a collection of self-serve educational resources including videos answering the basic questions our members have. This effort will be most evident in the creation of email campaigns around the quarterly Lunch & Learns and other member events.

In 2022 we will also implement an email campaign to enhance the understanding of the plans NDPERS administers throughout the legislative body. The initial plan is to distribute emails quarterly. A timeline has not been finalized.

Green boxes represent the month the event takes place.

Topic	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
How and when to complete retirement forms	•	•	•									
Financial Essentials Workshop (FEW)			•	•	•							
Day 1 Pre-Retirement Education - Retirement Benefits			•	•	•							
Day 2 Pre-Retirement Education - Insurance & Legal Planning			•	•	•	•						
Making MORE out of your Retirement Contributions through PEP				•	•	•						
What can I do on Member Self Service (MSS)?								•	•	•		
Annual Enrollment - Quick Recap all benefits										•	•	
Annual Enrollment – Dates TBD										•	•	
NDPERS Insurance Options upon Retirement										•	•	•

This topic is informational only.



Memorandum

TO: NDPERs Board

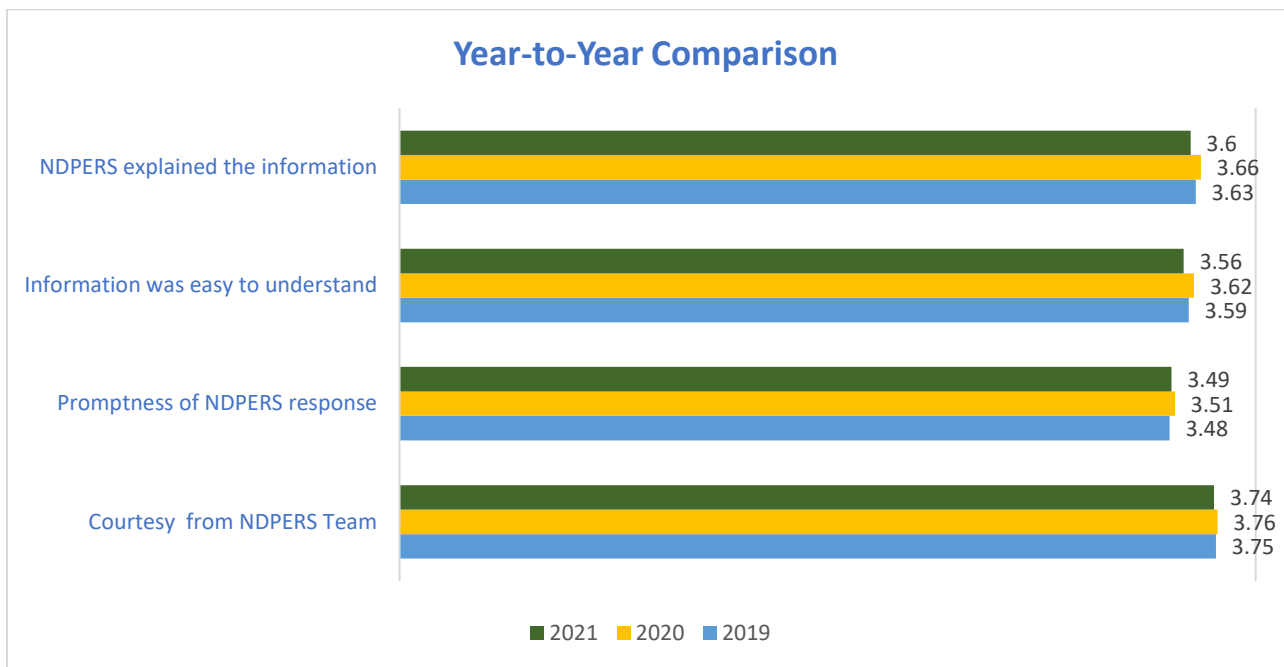
FROM: Aime

DATE: February 8, 2022

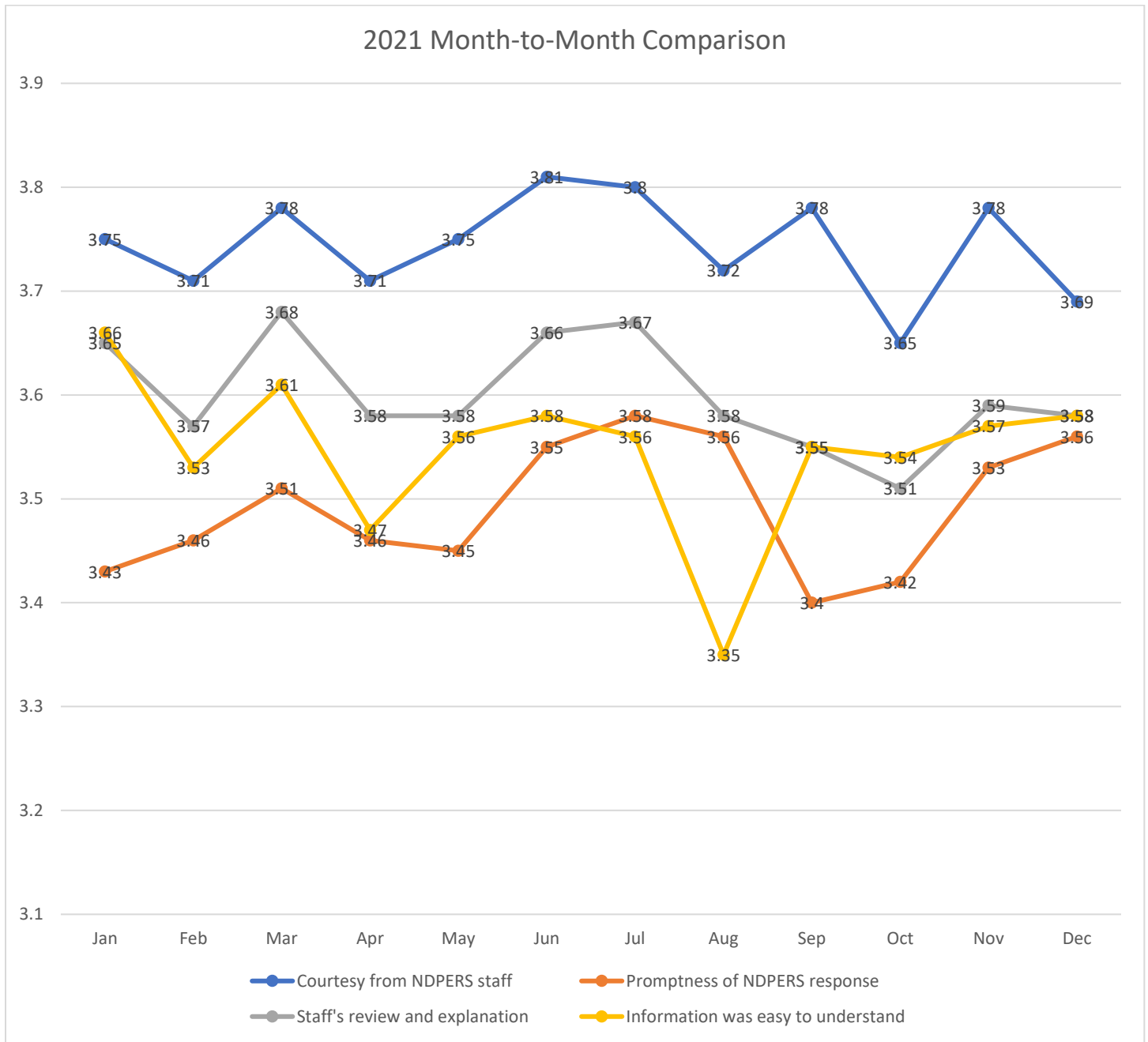
SUBJECT: Member Experience Annual Report

This is the 2021 summary of feedback received from members after contacting NDPERs.

The first graph reflects a year-to-year comparison. The highest score is a 4. We noted a slight decrease in all areas.

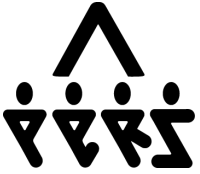


The second graph displays a month-to-month comparison for 2021.



Question	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Courtesy from NDPERS staff	3.75	3.71	3.78	3.71	3.75	3.81	3.8	3.72	3.78	3.65	3.78	3.69
Promptness of NDPERS response	3.43	3.46	3.51	3.46	3.45	3.55	3.58	3.56	3.4	3.42	3.53	3.56
Staff's review and explanation	3.65	3.57	3.68	3.58	3.58	3.66	3.67	3.58	3.55	3.51	3.59	3.58
Information was easy to understand	3.66	3.53	3.61	3.47	3.56	3.58	3.56	3.35	3.55	3.54	3.57	3.58

This topic is informational only.



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Memorandum

TO: NDPERS Board

FROM: Aime

DATE: February 8, 2022

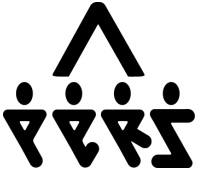
SUBJECT: Appoint Board Election Committee

The term of elected Board member Adam Miller expires on June 30, 2022. In alignment with the election rules in ND Administrative Code, the Board must appoint a committee of three, one of whom must be designated as chair, to oversee the election process.

The Board Election Committee is responsible for validating the candidates' nominations petitions in May and canvassing the election results in June. We anticipate these two efforts will be similar to previous years and will represent a minimal time commitment.

We are collaborating with Sagitec, our PERSLink system provider, to develop an electronic voting function within Member Self Service (MSS). Next month, we will provide a timeline for the election process pending the successful development of the electronic voting functionality.

Board action: Appoint a three-member committee and designate one as chair to oversee the 2022 board election.



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Memorandum

TO: NDPERS Board

FROM: Bryan Reinhardt

DATE: February 8, 2022

SUBJECT: Microfiche Conversion Project RFP

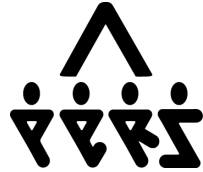
Attached is the NDPERS microfiche conversion project request for proposal. The RFP was compiled by staff and reviewed by legal counsel. This project will not fall under the NDPERS exempt procurement status, so we will be issuing it through the OMB state procurement online system (SPO) and rules. We need to complete the project this biennium. Here is the proposed timeline:

The following is a sequence of activities for this RFP:

March 1, 2022	RFP issued.
March 15 2022	Deadline for RFP Questions
March 31, 2022	Answers to RFP Questions posted to NDPERS Website
April 29, 2022	RFPs Due 5:00 pm CDT
June 14, 2022	NDPERS Board Selects Contractor
July 5, 2022	Contractor begins work effort
December 30, 2022	Contractor conversion project deadline

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

Board Action: Approve the Microfiche Conversion RFP



North Dakota Public Employees Retirement System
Request for Proposal

Project Name:
NDPERS Microfiche Conversion

Date:
March 1st, 2022

1600 E Century Avenue, Suite 2,
PO Box 1657
Bismarck, ND 58503
1-800-803-PERS (7377)
www.ndpers.nd.gov

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G. INSTRUCTIONS FOR SUBMITTING PROPOSALS

A. OVERVIEW

North Dakota Public Employees Retirement System (NDPERS) is seeking the services of a qualified firm experienced in microfiche to file conversion technology. The services should include converting roughly 100 inches of microfiche slides and approximately 85 reels. We are conservatively estimating approximately 250,000 documents may need to be converted.

B. BACKGROUND

1. Retirement Board

NDPERS is responsible for the administration of the State's retirement, health, life, vision, dental, deferred compensation, flex comp, Retiree Health Insurance Credit, and EAP programs.

PERS is managed by a Board comprised of nine members:

- (1) Chairman - appointed by the Governor
- (1) Member - appointed by the Attorney General
- (1) Member - elected by retirees
- (3) Members - elected by active employees
- (1) State Health Officer or designee
- (2) Members - appointed by Legislative Management

PERS 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.

The following is a summary of the benefits administered by NDPERS. A summary of the plan provisions is found on the PERS web site at: <https://ndpers.nd.gov/>

Group Health, Life, Dental, Vision, and EAP Plans:

The Uniform Group Health and Life Insurance programs are under chapter 54-52.1 of the North Dakota Century Code (NDCC).

1. Group Health:

The Uniform Group Health Insurance Plan is a fully insured plan with Sanford Health Plan. All state employees are eligible to be covered under the plan, including the professional staff at colleges and universities. Political subdivisions may participate in the health plan at their option. Eligible retirees on Medicare may be enrolled in secondary coverage through Sanford Health Plan with an EGWP Medicare Part-D plan insured by Humana.

2. Group Life:

The Uniform Group Life Insurance Plan is a fully insured plan underwritten by Voya. All state employees are covered under the plan, including the professional staff at colleges and universities. Political subdivisions may participate in the life plan at their option.

3 Dental:

The Uniform Group Dental Plan is fully insured by Delta Dental. All premiums are paid by the employee.

4 Vision:

The Uniform Group Vision Plan is fully insured by Superior Vision. All premiums are paid by the employee.

5 Employee Assistance Program (EAP):

NDPERS administers an EAP for the state employees with four providers.

Retirement Plans:

1. Defined Benefit Plans:

PERS Retirement Plans:

The PERS system (includes the main system, judges, and public safety plans), the Job Service Plan and the Highway Patrol plan are defined benefit plans and provide benefits under two separate chapters of the North Dakota Century Code (NDCC). NDCC Chapter 54-52 provides the benefits under the PERS, Judges, and Public Safety retirement plans. NDCC Chapter 39-03.1 provides the benefits under the Highway Patrol retirement plan. The Job Service Retirement plan benefits are provided pursuant to that system's plan document.

PERS Retiree Health Insurance Credit Program:

The Retiree Health Insurance Credit program was implemented on July 1, 1989. This program provides for a partial payment of a retiree's medical insurance premium. Eligible members are the PERS (Judges who retired under 27-17 NDCC) and Highway Patrol retirees and is available to apply to any health, dental, vision or long term care plan after tax premium expenses. The benefits are equal to \$5.00 for each of the employee's, or deceased employee's years of credited service not to exceed the premium in effect for selected coverage. The Retiree Health Insurance Credit is also available for early retirement with reduced benefits. The Retiree Health Insurance Credit program is found in Chapter 54-52.1 of the NDCC.

2. Defined Contribution Plans:

Deferred Compensation Plan:

The administration of the Deferred Compensation Plan for public employees was given to the Retirement Board on July 1, 1987. All state employees are eligible to participate, as well as political subdivision employees if the governing authority of the political subdivision elects to have the state plan as their deferred compensation plan.

The Deferred Compensation Plan is found in Chapter 54-52.2 of the NDCC.

Defined Contribution Plan:

The defined Contribution Plan was created by the 1999 legislature as an alternate retirement plan to the defined benefit plan for non-classified state employees. The plan is currently open to non-classified employees to make an election at employment. The plan is presently contracted with TIAA for recordkeeping and investments.

The defined contribution plan is found in Chapter 54-52.6 of the NDCC.

Flexcomp Program – Section 125:

The PERS administers the state's 125 flex comp program. This program offers employees the opportunity to pretax medical, dependent care and certain eligible insurance premiums.

The Flexcomp program is found in Chapter 54-52.3 of the NDCC.

2. Financial Information

The most recent NDPERS Annual Comprehensive Financial Report is available on the NDPERS website at: <https://www.ndpers.nd.gov/sites/www/files/documents/about/financial/acfr-2021.pdf>

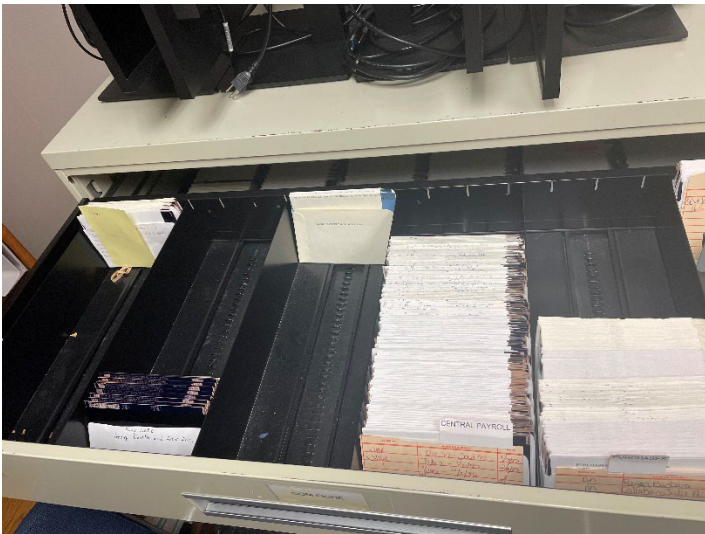
C. SCOPE OF ENGAGEMENT

This proposal is for assistance in converting archived documents on microfiche that relate to the NDPERS members for these programs. These documents have a required records retention, so NDPERS must maintain them in a usable format.

The primary objectives of the microfiche conversion is to convert NDPERS permanent microfiche records into an electronic format. NDPERS has identified ten broad categories of records that our office needs converted. NDPERS requests a folder for each of the ten categories, and that each document be converted to a TIF file within the appropriate folder. The naming convention can be at the vendor's discretion, NDPERS requests the documents be converted in the same order as the microfiche currently exists, so we can logically sort through the information as needed. As an example, one category may be 1099Rs. There may be 100 slides with 10,000 total images. NDPERS requests to receive a 1099R folder with 10,000 TIFs in sequential order within that 1099R folder. The microfiche will be provided to the vendor in the order in which NDPERS wishes the documents scanned and saved.

There is only one version of the records we are converting. As such, we'd prefer to have the work completed on-site in our office, if possible. If the work is to be performed off-site, the effort will need to be coordinated to ensure the documents leaving our office will be converted at a time that is not necessary to conduct normal business operations. The RFP response should include any accommodations (including space requirements) to have the work done on-site, if applicable.

The microfiche and microfilm reels:



Once converted, the original microfiche records will remain the property of NDPERS, and will be returned if the work cannot be completed on-site.

The following is a sequence of activities for this RFP:

March 1, 2022	RFP issued.
March 15 2022	Deadline for RFP Questions
March 31, 2022	Answers to RFP Questions posted to NDPERS Website
April 29, 2022	RFPs Due 5:00 pm CDT
June 14, 2022	NDPERS Board Selects Contractor
July 5, 2022	Contractor begins work effort
December 30, 2022	Contractor conversion project deadline

D. PROPOSAL CONTENT

At a minimum, the proposal must include the following information. For ease of review, each requirement should be addressed in a separate section preceded by an index tab to identify the subject of the section. Each section should be re-stated (including the number), followed by the vendor response. The proposal should be formatted on consecutively numbered pages and include a table of contents.

1. General Information

The Vendor must include a cover letter, which will be considered an integral part of the proposal, in the form of a standard business letter, and must be signed by an individual who is authorized to bind the vendor contractually. It must include:

1.1 A statement regarding the Vendor's legal structure (e.g. a North Dakota corporation), Federal tax identification number, and principal place of business.

1.2 Vendor's primary contact on this RFP, who has authority to answer questions regarding the proposal:

- 1.2.1 Firm Name
- 1.2.2 Contact's Name
- 1.2.3 Additional Contacts
- 1.2.4 Contact's Address
- 1.2.5 Contact's Phone and Facsimile Numbers
- 1.2.6 Contact's E-mail Address

1.3 A statement that the Vendor's proposal meets all the requirements of this RFP.

1.4 A statement that the Vendor has not submitted its proposal with the assumption that there will be an opportunity to negotiate any aspect of the proposal.

1.5 A statement that the Vendor acknowledges that all documents submitted pursuant to this request may be subject to disclosure under North Dakota's Open Records Laws.

- 1.6 A statement that the Vendor acknowledges and agrees that the contract provisions contained in Attachment A shall be included in any contract with NDPERS that may result from this RFP, and such contract provisions shall control in the event of any conflict.
- 1.7 NDPERS shall have full ownership, including copyright interests, in all software, documentations and other related work projects, as applicable.
- 1.8 The Vendor will ensure that the Vendor's subcontractors shall be obligated to assign to NDPERS their ownership rights in any deliverables.
- 1.9 A statement that the Vendor is registered to do business in the State of North Dakota and is registered with the ND Secretary of State's office.

2. Firm Questionnaire

Please provide the following information:

- 2.1 Vendor's domestic office locations, identifying which location will be assigned this project.
- 2.2 Vendor's organizational structure, including subsidiary and affiliated companies, and joint venture relationships.
- 2.3 How many years has Vendor been in business?
- 2.4 Yes/No: Has Vendor undergone any material change in its structure or ownership within the last 12 months? If yes, please describe.
- 2.5 Yes/No: Is any material change in ownership or structure currently under review or being contemplated? If yes, please describe
- 2.6 Please describe any material litigation to which your company is currently a party. In addition, please describe any material litigation that your company has been involved in over the last 3 years.
- 2.7 Please describe if you have ever had a breach of a conversion client's information. Provide a copy of your security policies.
- 2.8 Please describe any relationships that your company has with potential vendors to NDPERS, including any potential fees or other remuneration your company may receive for recommending their products or services.

3. Understanding of Engagement

- 3.1 Please describe in detail your organization's understanding of the services requested in this RFP by NDPERS.

- 3.2 Please describe areas or processes not included in this RFP that your company may suggest in order to provide more complete services.
- 3.3 Please provide a narrative that supports why your company believes that it is qualified to undertake the proposed engagement.

4. Work Plan (including timeline with details of hours)

The proposal should set forth a work plan including:

- 4.1 A tentative schedule for performing the services, including timeline and estimated hours by major task, and a staffing plan to include both Vendor and NDPERS resources including space requirements for vendor's equipment. NDPERS anticipates starting the services August 1, 2022 and completion before December 30, 2022. Provide a statement that work efforts at the NDPERS site will be during normal business hours.
- 4.2 A description of how the Vendor will consult with and make presentations to staff during the engagement.
- 4.3 A description of the service management and quality control procedures to be utilized. These should identify and describe any anticipated potential problems, the Vendor's approach to resolving these problems, and any special assistance that will be requested from NDPERS.
- 4.4 Vendor should allow ample time to review all existing documentation pertaining to the services.

5. Vendor Personnel

- 5.1 For each individual that you propose to assign to this engagement, please provide a narrative with the following information:
 - 5.1.1 Employee name and title.
 - 5.1.2 Proposed position on this engagement (manager, supervisor, officer, etc.)
 - 5.1.3 The month and year that the employee began working for your organization.
 - 5.1.4 Employee work history.
 - 5.1.5 Estimated hours on the project.
 - 5.1.6 Confirmation of Security Background Check.
 - 5.1.7 Employee will be required to sign NDPERS confidentiality agreement.
- 5.2 Vendor is requested to perform all services and may not subcontract without the written consent of NDPERS.

For each of the Vendor's potential subcontractors, please provide a narrative with the following information:

- 5.2.1 The subcontractor's (firm) name and address.
- 5.2.2 A brief description of the work said subcontractors might perform.

5.3 Please describe your firm's procedures in the event that a contact person assigned to this engagement leaves your firm during the term of the engagement.

6. Experience & References

6.1 The names, addresses and telephone numbers of three (3) current clients where similar services have been performed.

6.1.1 The name and telephone number of the client's staff who may be contacted as a reference.

6.1.2 A summary description of the scope of work.

7. Cost

7.1 Please provide a price per document fee for the project in total to include any and all reimbursable expenses (including travel). You can also include a "not to exceed" price in your proposal if you so desire.

8. Sample contract

Vendors are asked to attach a signed NDPERS contract, which can be found on Attachment A. If there are modifications to the contract found in Attachment A, please provide a signed red-lined copy for NDPERS' legal review.

9. Sample work

Provide a description and sample final product from a comparable project similar to what NDPERS could expect from this work effort and explain the file format.

10. Additional Information

The Vendor should provide any other information it believes relevant to the engagement.

E. SELECTION CRITERIA

NDPERS staff will conduct a preliminary evaluation of the proposals, and the Board will make a final decision

During the evaluation process, NDPERS management may, at its discretion, request any or all vendors to make oral presentations to the NDPERS staff or Board. Such presentations will provide Vendors with an opportunity to answer questions regarding the Vendor's proposal. Not all Vendors may be asked to make such oral presentations.

This proposal will be rated by a review team. **Please clearly label and submit your Technical Proposal and Cost Proposal separately.** This evaluation will be submitted to the NDPERS Board for its consideration in determining if a contractor should be selected pursuant to this RFP. The Review Team will rate the proposals received and consider information received from all sources, including the interview of top scoring vendor(s), in making an award recommendation.

In evaluating the proposals, price will not be the sole factor. The Board may consider any factors it deems necessary and proper, including but not limited to: price; quality of service; response to this request; experience; staffing, information from interviews and general reputation

Staff will rate all proposals based on the following criteria:

Technical Proposal:

General Background / Firm (Question D1)	5 points
Firm (Question D2)	10 points
Scope of Work (Questions D3-D4, D9)	30 points
Firm Experience (Questions D6)	10 points
Staffing (Questions D5)	5 points

Cost Proposal: 40 points

F. GENERAL TERMS AND CONDITIONS FOR SUBMITTING PROPOSALS

1. Vendor acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to a public records request. Accordingly, Vendor must identify any material or documents that are confidential and clearly mark those items or documents at the time of submittal. If a request for records is made that includes information Vendor has identified as confidential, NDPERS will make reasonable efforts to contact Vendor in sufficient time to allow Vendor to take appropriate legal steps to protect the information identified as "confidential information" from disclosure. If, as a result of the position taken by Vendor regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Vendor shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Vendor as confidential, Vendor will be deemed to have consented to the release of the document or material, and to have waived any cause of action against NDPERS resulting from the release of the documents or materials.
2. Late proposals, in whole or in part, will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Vendor at the expense of the Vendor, or destroyed if so requested.

3. NDPERS reserves the right, in its sole discretion, to reject any or all proposals submitted, and to waive as to any vendor or as to all vendors, any informality or irregularity in a proposal or proposals or any failure to conform to the instructions in this RFP.
4. This Request for Proposal is not a contract, not meant to serve as a contract, and does not constitute a promise to enter into a contract.
5. All documents, proposals and other materials submitted in response to this RFP will become the property of NDPERS and will not be returned to Vendor.
6. Vendor agrees to comply with all terms, conditions, and requirements described in the RFP. Any failure by any responding Vendor to so comply shall be grounds for rejection of that Vendor's proposal, as determined by NDPERS in its sole discretion.
7. If a contract results from this RFP, neither the successful responding Vendor, nor anyone on its behalf (including its agents, affiliates, subcontractors and/or vendors), shall publish, distribute, or otherwise disseminate any press release, advertising and/or publicity matter of any type or kind (collectively "Advertising Material") having any reference to NDPERS, this RFP or the resulting contract, unless and until such Advertising Material first shall have been submitted to and approved in writing by NDPERS.

G. INSTRUCTIONS FOR SUBMITTING PROPOSALS

1. Please provide Six (6) copies and one electronic copy of your technical and cost proposal (labeled separately) by 5:00pm Central Time, on April 29, 2022, to:

Bryan Reinhardt
breinhar@nd.gov
North Dakota Public Employees Retirement System
1600 E Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58503
2. Questions concerning this Request for Proposal must be submitted in writing or via e-mail to breinhar@nd.gov by March 15, 2022. Questions and answers will be posted on the NDPERS website by March 31, 2022.
3. No Vendor shall attempt to communicate with NDPERS concerning this RFP in any manner or at any time other than during the question and answer period (see G-2) or the finalist presentations, if held (see section E). Communication with NDPERS, other than as previously described, may result in disqualification.
4. This Request for Proposal is issued on March 1st, 2022. NDPERS reserves the right, in its sole discretion, to amend or cancel this RFP.

ATTACHMENT A

AGREEMENT FOR SERVICES BETWEEN VENDOR AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

VENDOR (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement ("Agreement").

CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2022 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence August 1, 2022.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

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

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

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

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

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

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

6) **ASSIGNMENT AND SUBCONTRACTS:**

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

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates 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 NDPERS.

7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by

NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of NDPERS that return or destruction of confidential information is not feasible, CONTRACTOR shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains the confidential information.

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

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by

CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

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

9) **MERGER AND MODIFICATION:** This Agreement, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

10) **INDEMNITY:** CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims 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.

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 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 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.

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.
- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.

- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** By entering into this Contract, NDPERS does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.
- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

NDPERS:

Scott Miller, Executive Director
 ND Public Employees Retirement System
 1600 East Century Ave, Suite 2
 PO Box 1657
 Bismarck, ND 58502-1657

CONTRACTOR:

VENDOR

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

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

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the Term of this Contract all licenses and permits required by law. CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

- 19) **STATE AUDIT:** 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 all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.
- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is:_____.
- 21) **PAYMENT OF TAXES BY STATE:** State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the NDPERS.
- 22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

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

**NORTH DAKOTA PUBLIC
EMPLOYEES RETIREMENT SYSTEM**

CONTRACTOR

Executive Director
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

MEMORANDUM OF UNDERSTANDING BETWEEN THE
NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM
AND **VENDOR**
RELATING TO MAINTAINING CONFIDENTIAL INFORMATION

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and **VENDOR** relating to maintenance and destruction of NDPERS Confidential Information held by **VENDOR** and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with **VENDOR** to provide services related to administration of the NDPERS **MicroFiche Conversion** (Contracts).

WHEREAS, the services provided by **VENDOR** under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ **54-52-26 and 54-52.1-11, 54-52.1-12** (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required **VENDOR** to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality. WHEREAS, these Contracts have terminated and **VENDOR** has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time. WHEREAS, **VENDOR** has provided and NDPERS has reviewed the **VENDOR** records retention policy (Policy) applicable to the Confidential Information and **VENDOR** has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy. NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. **VENDOR** shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, **VENDOR** shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, **VENDOR** shall provide NDPERS a copy of any change to the Policy provided NDPERS on **Date**.
4. NDPERS agrees these actions are consistent with **VENDOR** obligations under these Contracts.
5. This Memorandum of Understanding will terminate upon notice to NDPERS by **VENDOR** that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to **VENDOR** if NDPERS determines that the Policy has been modified in a manner that is inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____

Executive Director

Date: _____

VENDOR

BY: _____

Its: _____

Date: _____

Attach Contractor Records Retention Policy

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 the **ENTER BUSINESS ASSOCIATE NAME, ADDRESS OF ASSOCIATE.**

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 the **ENTER BUSINESS ASSOCIATE 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. identify 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.

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, **Microfiche conversion activities** – 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 08/01/2022, 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 **ENTER BUSINESS ASSOCIATE 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:

Scott Miller, Executive Director
ND Public Employees Retirement System

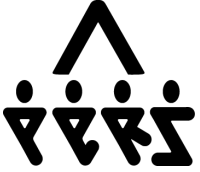
Signature

Printed Name

Title

Date

Date



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

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

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

Memorandum

TO: NDPERS Board

FROM: Scott Miller

DATE: February 8, 2022

SUBJECT: Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that I have signed this calendar year. Please let me know if you have any questions on any of these contracts.

This topic is informational only.

Attachment

Vendor	Amount	Frequency Incurred
*TIAA	\$ -	MOU to reduce DC participant fees

*Newly signed agreements since last board meeting



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

TO: NDPERS Board

FROM: Scott

DATE: February 8, 2022

SUBJECT: Legislative Relations

This is a placeholder for us to discuss any Legislative topics that have arisen the past month.

V. Member Executive Session

A. Insurance Appeal Case #726

Material for the Executive Session will be sent under separate cover.