

NDPERS BOARD SPECIAL MEETING Agenda

Conference Call #: 701.328.0950
Conference ID: 813 983 604#

Tuesday, September 28, 2021

Time: 3:30 P.M.

I. Conflict of Interest Waiver – Scott (Board Action)

Any individual requiring an auxiliary aid or service must contact the NDPERS ADA Coordinator at 328-3900, at least 5 business days before the scheduled meeting.



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Memorandum

TO: NDPERS Board

FROM: Scott

DATE: September 28, 2021

SUBJECT: Conflict of Interest Waiver

Last legislative session, the Legislative Assembly included a requirement in the State Auditor's budget bill (HB 1004, section 6) that the State Auditor conduct an audit of our health plan's pharmacy benefit manager (PBM) for the years 2019, 2020, and 2021.

SECTION 6. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR - PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT - REPORTS TO LEGISLATIVE MANAGEMENT. In lieu of the requirement under section 54-52.1-04.16 that the public employees retirement system contract to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan for calendar year 2021, the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan during the 2021-22 interim, in the same manner as provided for under section 54-52.1-04.16, for calendar years 2019, 2020, and 2021. Audit fees, not to exceed \$375,000, for audits performed under this section must be on a flat fee or hourly basis and be paid by the public employees retirement system board. The state auditor shall provide reports to the legislative management regarding contracts to conduct prescription drug coverage performance audits, performance audit results, and audit reports issued."

The State Auditor will hire an outside firm to conduct that audit through a competitive RFP process. In order to craft an effective RFP, the State Auditor would like to retain a consultant to help with that drafting. The only firm that affirmatively responded to the State Auditor for that consulting work was Pharmacy Benefit Consultants (PBC), for which Linda Cahn works.

PBC apparently noted in its proposal that it had previously provided services to NDPERS. Some of you will recall that PBC and Linda Cahn worked with the NDPERS Board for

several years providing input into contracting and negotiating with PBMs and analyzing proposals by PBMs. The State Auditor's attorney noted that this previous work creates either an actual or a perceived conflict of interest if the State Auditor uses PBC to help craft the RFP to find a consultant to audit NDPERS' PBM. The attorney noted that the conflict could be resolved if NDPERS executed the attached Conflict of Interest Waiver. Because the NDPERS Board approved the earlier contract with PBC and worked with Linda Cahn on the PBM issues, I felt it necessary to obtain the Board's approval of that waiver before signing it. In order to facilitate the RFP, I advised the State Auditor that I would ask the Board to consider the Waiver at a special meeting.

In considering the potential conflict, I can understand why the State Auditor's attorney flagged this situation: PBC provided the NDPERS Board with a great deal of contractual language, advice, and recommendations regarding the Board's PBM award if that award went to a transparent PBM on a self-insured basis. However, because the Board chose a fully-insured, bundled product, we used little of the advice and information provided.

Dean will be available to answer any questions you may have of him.

Board Action: Determine whether to approve the Executive Director's signing of the provided Conflict of Interest Waiver for the State Auditor's office.

Conflict of Interest Waiver

The parties to this conflict of interest waiver are the North Dakota State Auditor’s Office (“Auditor”), and the North Dakota Public Employees Retirement System (“PERS”) (collectively, “the parties”);

WHEREAS, 2021 H.B. 1004, Section 6, requires the Auditor to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan;

WHEREAS, the Auditor seeks to contract with a consultant to assist with drafting the scope of work for a level 4 request for proposal (RFP) for the prescription drug coverage performance audit;

WHEREAS, the contractor selected by the Auditor to assist with drafting the scope of work for the RFP is Pharmacy Benefit Consultants, consisting of Linda Cahn, Robert Gregory, Blake Christensen, and Michael Holzman;

WHEREAS, Pharmacy Benefit Consultants was previously retained by PERS to “draft a PBM contract for a PBM RFP, negotiate the contract during the RFP, and analyze the financial proposals of each PBM contestant using North Dakota PERS’ existing claims data”;

WHEREAS, the parties acknowledge that Pharmacy Benefit Consultants’ previous retention by PERS would create an actual or perceived conflict of interest.

Despite any such actual or perceived conflict of interest, the Parties hereby agree to the Auditor’s use of Pharmacy Benefit Consultants for the specified purpose above and waive any actual or perceived conflict of interest.

Date_____

JOSHUA C. GALLION
North Dakota State Auditor

Date_____

ND PERS