

NDPERS BOARD MEETING Agenda

Bismarck Location:
ND Association of Counties
1661 Capitol Way
Fargo Location:
Sanford Health Plan
1749 38th Street South

April 10, 2018

Time: 8:30 AM

I. MINUTES

- A. March 13, 2018
- B. March 28, 2018 Special Meeting

II. RETIREMENT

- A. RHIC Processing – Sharon & Derrick (Board Action)
- B. GRS Contract – Sharon (Board Action)
- C. Disability Consultant Contract – MaryJo (Board Action)

III. GROUP INSURANCE

- A. Dental RFP – Bryan (Information)
- B. OPEB Results – Bryan (Board Action)
- C. Disease Management Programs – Sharon (Information)

IV. FLEX COMP

- A. RFP update – Bryan (Information)

V. MISCELLANEOUS

- A. Quarterly Consultant Fee – Derrick (Information)
- B. Legislative Committee Update – Sharon (Information)
- C. Group Health Appeal Case #490 – Rebecca (Board Action) *Executive Session
- D. Executive Director Candidate Discussion (Board Action) **Executive Session

* Executive Session pursuant to NDCC §44-04-19.2(1) and/or §54-52-26 or 54-52.1-11 to discuss confidential records or confidential member information.

**Possible Executive Session pursuant to NDCC 44-04-19.1(9) to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future.

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: Sharon Schiermeister & Derrick Hohbein

DATE: April 3, 2018

SUBJECT: RHIC Processing

The Board has provided staff with direction to study possible implementation of internal processing for the Retiree Health Insurance Credit (RHIC) benefit. Currently, RHIC benefit payments are processed through ASIFlex. We are bringing this information back to the Board as we start to put together initiatives for the 2019-21 biennium budget.

Background

The 2013 session passed HB 1058 which closed the pre-Medicare plan and made the retiree health insurance credit portable. The bill had a delayed effective date of July 2015. In August of 2014 the Board passed the following motion:

MR. TRENBEATH MOVED TO GO OUT TO BID TO OBTAIN A VENDOR ON A SHORT TERM BASIS (2 YEARS) TO PROCESS RETIREE HEALTH INSURANCE CREDIT, AND THAT DURING THE INTERIM, STAFF IS TO DEVELOP A PROPOSAL TO INCORPORATE THE PROCESS INTO THE PERSLINK BUSINESS SYSTEM. THE MOTION WAS SECONDED BY MS. WASSIM.

Pursuant to this motion staff issued a bid for services and in February of 2015 the Board selected ASIFlex as the vendor. We had 4 firms bid on the project with a cost ranging from \$3.15 per month per member to \$1.75 per month per member. ASIFlex was at \$1.75 per member.

At the February 2016 Board planning meeting, staff reviewed with the Board that to bring this effort in-house in 2017 would be a significant effort. It would require additional staffing plus the development of a business processing system to administer the payment of benefits.

The Board passed the following motion at the May 2016 meeting:

MR. SANDAL MOVED TO STUDY AND DEFER POSSIBLE IMPLEMENTATION OF INTERNAL PROCESSING THE RHIC CLAIMS FOR TWO YEARS. THE MOTION WAS SECONDED BY MS. WASSIM.

As a result, the Board renewed the contract with ASIFlex to continue to provide these services for the 2 years ending June 30, 2019.

Analysis

Before the RHIC benefit became portable, this benefit was only available to be applied towards the NDPERS health insurance premium. NDPERS administered this in-house by subtracting the RHIC amount from the health insurance premium being billed to the retiree each month.

With portability, the benefit went from being applied as an offset towards a premium, to a reimbursement that is paid to the retiree each month based on providing proof of an eligible premium expense. This process is very similar to what a member goes through when filing a claim to receive a reimbursement from a FlexComp medical spending or dependent care account.

Based on our past experience with processing FlexComp claims in-house, staff has the following general observations with moving the RHIC reimbursement process in-house:

1. A new FTE would be required to validate and process the RHIC claim reimbursements.
2. The PERSLink system would need to be enhanced significantly to build in "claim reimbursement" functionality. It would need to include functionality such as, ability to submit on-line claims through a web portal or mobile app, ability to issue payments as direct deposit or check, on-line account access, and quarterly reporting.

Staff Recommendation

Staff is recommending that we continue contracting out the Retiree Health Insurance Credit benefit payments based on the following considerations:

1. The current fiscal environment may not be supportive of adding an FTE, especially taking into consideration that we nearly lost an FTE during the last session.
2. We may want to focus our investments in PERSLink to optimize our current functionality to achieve more efficiencies, rather than investing in new "claim reimbursement" functionality.
3. Third party vendors who specialize in this type of functionality should be in a better position to continue to invest in technology to enhance and improve the member experience in a cost-effective manner.

Board Action Requested

Determine whether or not the RHIC benefit payment process should be brought in-house and included as part of the 2019-21 budget request.



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Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: April 2, 2018

SUBJECT: GRS Renewal

In 2015, we went out for bid for retirement plan actuarial and consulting services and awarded the contract to Gabriel, Roeder and Smith (GRS). The term of the contract is from July 2016 through June 2018, with the opportunity to renew the contract for two subsequent two-year periods.

The scope of services provided under this contract include:

1. Annual actuarial valuations for all Defined Benefit Retirement Plans and RHIC Plan
2. Update of Actuarial Reduction Factors
3. GASB 67 and 68 Work
4. Consulting
5. Legislative Work

The fees that are in place for the current contract period are as follows:

FIXED FEE	<u>2016</u>	<u>2017</u>
Retirement plan valuations	\$65,000	\$67,000
RHIC valuations	\$12,000	\$12,400
Actuarial Reduction Factors	\$ 7,500	\$ 0
GASB 67 & 68 work	\$40,000	\$41,000
Fee for Service:	<u>2016</u>	<u>2017</u>
Retirement/RHIC General Consulting	\$300/hr	\$310/hr
Legislative Work	\$275/hr	\$285/hr
DC/Def Comp Consulting (Groom Law)	\$400/hr	\$400/hr
FlexComp Consulting (Groom Law)	\$400/hr	\$400/hr

In addition, we requested GRS to prepare information in 2017 for the RHIC plan related to the new GASB 74 and 75 requirements for a fixed fee of \$7,500

Attached is the renewal proposal from GRS for July 2018 – June 2020.

Board Action Requested:

Accept or Reject the renewal proposal from GRS.

FIXED FEE:**Retirement:**

Fixed Annual Fee	7/1/2018 to 6/30/2019:	\$69,000
	7/1/2019 to 6/30/2020:	\$71,000

Retiree Health Insurance Credit:

Fixed Annual Fee	7/1/2018 to 6/30/2019:	\$12,800
	7/1/2019 to 6/30/2020:	\$13,200

GASB 67 and 68 Work:

Fixed Annual Fee	7/1/2018 to 6/30/2019:	\$42,000
	7/1/2019 to 6/30/2020:	\$43,000

GASB 74 and 75 Work:

Fixed Annual Fee	7/1/2018 to 6/30/2019:	\$7,750
	7/1/2019 to 6/30/2020:	\$8,000

FEE FOR SERVICE:

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

Retirement and Retiree Health General Consulting⁽¹⁾:

Flat Rate Per Hour	7/1/2018 to 6/30/2019:	\$320
	7/1/2019 to 6/30/2020:	\$330

Legislative Work⁽¹⁾:

Flat Rate Per Hour	7/1/2018 to 6/30/2019:	\$300
	7/1/2019 to 6/30/2020:	\$310

Defined Contribution/Deferred Compensation Consulting⁽²⁾⁽³⁾:

Flat Rate Per Hour	7/1/2018 to 6/30/2019:	\$425
	7/1/2019 to 6/30/2020:	\$450

Flex Comp Consulting⁽²⁾⁽³⁾:

Flat Rate Per Hour	7/1/2018 to 6/30/2019:	\$425
	7/1/2019 to 6/30/2020:	\$450

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

⁽²⁾ To be provided by Groom Law Group

⁽³⁾ If total annual fees exceed \$20,000 (approximately 45 hours) on behalf of consulting provided by Groom Law, we suggest that NDPERS contract directly with Groom Law.



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Memorandum

TO: NDPERS Board

FROM: MaryJo

DATE: April 2, 2018

SUBJECT: Disability Consultant Agreement

The agreement with Mid Dakota Clinic for disability consulting services expires June 30, 2018. The Board must determine whether to renew or go out for bid.

Mid Dakota Clinic has indicated they wish to continue to perform these services for NDPERS at the rate of \$200 an hour for the period July 1, 2018 through June 30, 2019. This represents no increase in the hourly rate from the current contract period as no increase was requested. The amount paid in consulting fees for the period beginning July 2017 through March 2018 is \$6,100 involving 30.5 hours and 58 cases. This is an average cost of \$105.17 per case.

Staff is satisfied with the service provided by Mid Dakota and recommends that we renew the disability consulting contract for the period July 1, 2018 through June 30, 2019 at the rate of \$200 an hour.

Board Action Requested

Approve or reject the renewal proposal for disability consulting services



Memorandum

TO: NDPERS Board

FROM: Bryan

DATE: April 10, 2018

SUBJECT: Dental RFP Update

NDPERS staff and Conduent continue working on the dental plan RFP. We should be on track for the following timeline:

October, 2017	Begin work on dental RFP.
January, 2018	Submit dental RFP to PERS Board for approval.
February, 2018	Issue dental RFP.
March, 2018	Respond to RFP vendor questions.
March 30, 2018	Proposals Due
April, 2018	Begin evaluation of dental RFP's.
May, 2018	Submit dental evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June, 2018	Interview and select dental vendor. The consultant should plan to attend this NDPERS meeting.

We have four firms that indicated their intent to submit a proposal.

As of the March 30th deadline, we received three proposals.

The following page is the project summary from Conduent.

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

**Request for Proposal for Group Voluntary Dental PPO Benefits
Project Status as of March 22, 2018**

On February 1, 2018, NDPERS released an RFP for Group Voluntary Dental PPO Benefits. The following 17 potential bidders were notified of the RFP:

Vendor Distribution List	
Aetna	Prudential
Ameritas	Reliance Standard Life (RSLI)
Asset Management Group, Inc.	Securian
BlueCross BlueShield TX	Standard Insurance
Cigna	Sun Life Financial
Delta Dental of Minnesota	United Concordia (UCCI)
Guardian Life Insurance Company	United Healthcare
MetLife	UNUM
Mutual of Omaha	Voya

The following potential bidders returned signed Non-Disclosure Agreement:

Vendors That Completed a Non-Disclosure Agreement
Ameritas
Cigna
Delta Dental of Minnesota
Guardian Life Insurance Company
MetLife
Standard Insurance
Sun Life Financial

The following potential bidders either provided a formal declination notice or did not respond:

Vendor	Notification Method	Reason
Aetna	Formal notice via email	Not able to offer competitively on network and pricing
Ameritas	Formal notice via email	Did not specify
Asset Management Group, Inc.	Did not submit NDA	Unknown
BlueCross BlueShield TX	Did not submit NDA	Unknown
Cigna	Formal notice via email	Not able to offer competitively on network and pricing
Mutual of Omaha	Did not submit NDA	Unknown
Prudential	Did not submit NDA	Unknown
Reliance Standard Life (RSLI)	Did not submit NDA	Unknown
Securian	Formal notice via email	Does not offer dental
Sun Life Financial	Formal notice via email	Non-competitive rates
United Concordia (UCCI)	Did not submit NDA	Unknown
United Healthcare	Did not submit NDA	Unknown
Unum	Did not submit NDA	Unknown
Voya	Formal notice via email	Does not offer dental

Potential bidders were able to submit questions regarding the RFP up until end of day February 24, 2018. NDPERS received 45 vendor questions. Responses to those questions were posted to the NDPERS web site on March 9, 2018.

At this point, we anticipate the following potential bidders will submit a proposal in response to this RFP:

Vendors Expected to Propose
Delta
Guardian
MetLife
The Standard



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Memorandum

TO: NDPERS Board

FROM: Sharon & Bryan

DATE: April 10, 2018

SUBJECT: OPEB Valuation RFP

The Request for Proposal to conduct the actuarial valuation of the NDPERS other post employment benefits (OPEB) was issued on February 1st. This effort is to satisfy the requirement for the Governmental Accounting Standards Board statement 75 for fiscal year ending June 30, 2018 and 2019.

The following is a timeline of activities for this RFP:

February 1, 2018	RFP for consultant services issued
February 9, 2018	Questions to RFP due 5:00 p.m.
February 16, 2018	Responses to questions posted
March 1, 2018	Consultant proposals due at NDPERS office no later than 5:00 p.m. Central Standard Time.
March 13, 2018	NDPERS Board Meeting
April 10, 2018	NDPERS Board selects consultant no later than this date

The due dates for deliverables on this project are:

May 31, 2018	Draft of OPEB valuation report to NDPERS
June 12, 2018	Present draft OPEB valuation report to NDPERS Board
July 1, 2018	Final OPEB valuation report due

Note that on Friday March 16th a Best And Final Offer was sent to the three bidders to clarify the GASB 75 requirements for the work effort (Attachment 1).

We received three responses to the RFP which will be sent under separate cover.

The proposals are from:

- Nyhart Actuary & Employee Benefits
- Bolton Partners
- Foster & Foster Actuaries and Consultants

The PERS staff reviewed the proposals. As in past reviews the cost proposal is separated from the technical proposal. Staff independently reviewed and rated the cost proposals (Bryan, Sharon and Derrick). The ratings were then combined and the cost proposal points were assigned. Here are the ratings:

OPEB BAFO 2018 Proposals		Total		
		Nyhart	Bolton	Foster
	Points			
General				
Required Format	5	4.67	5.00	4.33
Technical				
Understanding of Work Effort	10	10.00	8.67	7.67
Timelines	10	10.00	10.00	10.00
Copy of Similar Report	10	10.00	9.33	9.00
Qualificaions & Staffing				
Firm Information	1	1.00	1.00	1.00
Approach & Timeline	5	4.67	4.33	3.33
Firm Description	1	1.00	1.00	1.00
Staffing	3	2.67	2.67	2.67
Equipment	1	1.00	1.00	1.00
Staff Location	1	1.00	1.00	1.00
Unique Qualifications	1	1.00	1.00	0.67
Service Office	1	1.00	1.00	1.00
Copy of Experience	2	2.00	2.00	1.67
Public Sector Experience	3	2.67	2.33	2.33
State Clients	3	2.33	1.33	2.00
Actuary Resumes	1	1.00	1.00	1.00
Professional Resumes	1	1.00	1.00	1.00
Subcontractors	1	0.67	0.67	0.67
Price	40	31.01	40.00	32.00
		\$12,900	\$10,000	\$12,500
Hours (Initial Valuation)		48	36	55
Total	100	88.67	94.33	83.33
Total w/o price	60	57.67	54.33	51.33
Price per hour		\$268.75	\$277.78	\$227.27

You will note the scoring for the three proposals is very close. Foster has more public sector clients/experience. Nyhart did the most recent studies for NDPERS and has performed 150 GASB 75 valuations already. Bolton has the lower fixed cost, but a lower number of hours in the work effort. All three firms specialize in this type of work and appear able to do the valuation for NDPERS.

Board Action

Select a firm for the NDPERS other post employment benefits (OPEB) analysis.

**STATE OF NORTH DAKOTA
North Dakota Public Employees Retirement System
400 E Broadway, Suite 505, Box 1657
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REQUEST FOR BEST AND FINAL OFFER

March 12, 2018

Subject: Request for Best and Final Offer – NDPERS OPEB RFP – NDPERS-001

Your firm submitted a proposal in response to the above referenced Request for Proposal (RFP). The evaluation committee completed a preliminary evaluation of proposals. The State is requesting that offerors revise their proposals and submit a Best and Final Offer.

Best and Final Offers must be received by the Procurement Officer no later than March 26, 2018 5:00pm Central.

Best and Final Offers can be submitted to the Procurement Officer by email or hardcopy. The Best and Final Offer must identify the RFP number and title. The offeror is responsible for ensuring that the Best and Final Offer is received by NDPERS regardless of the method of dispatch chosen. You may contact the procurement officer to confirm receipt.

The Best and Final Offer should address the following information:

NDPERS received two questions related to GASB 75, Questions #8 and #17. NDPERS stated in the Q&A Amendment that GASB 75 was not applicable to this valuation.

We have learned that the GASB 75 does apply to the Scope of Work. Therefore, we are inviting Offerors to submit revised technical and cost proposals. Provide revised proposals indicating what changes will be made in your technical proposal, staffing, and cost proposal related to the application of GASB 75 to the actuarial valuation. Employer allocation schedules are not required for this valuation.

Request:

This Request for Proposal is soliciting offers to do the actuarial valuation of the North Dakota Public Employees Retirement System (NDPERS) other post employment benefit plan (OPEB) to satisfy the requirement for the Governmental Accounting Standards Board statement 75 for fiscal years ending June 30, 2018 and June 30, 2019. The requirements for this valuation do not include employer allocation calculations or schedules.

Best and Final Offers will be evaluated based upon the evaluation criteria stated in the RFP and as an adjustment to scores already received by offerors on their original proposal response.

The State reserves the right to conduct additional discussions after submission of Best and Final Offers. If offerors do not submit a Best and Final Offer, their original proposal will be considered their Best and Final Offer.

Any questions regarding this request for Best and Final Offer must be directed to the Procurement Officer.

Sincerely,

Bryan T. Reinhardt
Procurement Officer
E-mail: breinhar@nd.gov
Telephone: 701-328-3919



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Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: April 2, 2018

SUBJECT: Disease Management Programs

The PERS health plan includes several disease management programs which are currently optional to participate in. These include the About the Patient Diabetes Management Program, Smoking Cessation Program and Healthy Pregnancy program. As part of several discussions that the Board has had on the disease management programs, the question has been raised as to how to increase participation.

Attached is a memo prepared by Deloitte which provides an overview of the federal regulations that relate to encouraging/coercing employees to participate in disease management programs, as well as a response to some specific questions that have been raised by the Board.

Staff is seeking direction from the Board on any specific approaches to encouraging participation in these programs that you may want to explore further.



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Memo

Date: March 29, 2018
To: Sharon Schiermeister, NDPERS
From: Robert Davis
Subject: Disease Management Programs

Sharon:

You asked me to prepare a summary of the various federal regulations relating to encouraging/coercing employees to participate in disease management programs, and to respond to certain questions about how these rules apply in specific situations. Please note that the following is provided for general information purposes only. It does not represent, and should not be construed as, legal or tax advice.

Although not exhaustive, the 3 federal laws that are most relevant to this issue are the HIPAA nondiscrimination rules, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act. Following is a brief summary of the relevant requirements of each of these laws.

HIPAA Nondiscrimination Rules

The HIPAA nondiscrimination rules generally prohibit group health plans from discriminating with respect to eligibility or contributions on the basis of a "health factor" (health status, medical condition, claims experience, receipt of health care, or disability, et al.) For example, HIPAA generally prohibits group health plans from imposing less favorable eligibility criteria or higher premium contributions (or cost-sharing requirements) based on an individual's health status, among other things.

There is an exception to the HIPAA nondiscrimination rules, however, for certain wellness programs – including disease management programs. The exception is available only if each of the following conditions is satisfied:

- 1) The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
- 2) The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited – generally, it must not exceed 30 percent (or 50 percent for programs designed to prevent or reduce tobacco use) of the cost of employee-only coverage under the plan. If dependents (such as spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 30 percent (or 50 percent) of the cost of the coverage in which an employee and any dependents are enrolled.



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To: Sharon Schiermeister, NDPERS
Subject: Disease Management Programs
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- 3) The program must be reasonably designed to promote health and prevent disease. (Note: different requirements apply for activity-only and outcome-based programs, as described later in this section.)
- 4) The full reward must be available to all similarly situated individuals. This means the program must allow a reasonable alternative standard (or waiver of the otherwise applicable standard).
- 5) The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the otherwise applicable standard).

Significantly, this exemption applies only to the extent the wellness and/or disease management programs would otherwise violate the HIPAA nondiscrimination rules. Examples of programs that would not violate these rules are as follows:

- A program that reimburses employees for all or part of the cost for memberships in a fitness center.
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.
- A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly, no-cost health education seminar.

Americans with Disabilities Act (ADA)

The ADA generally prohibits discrimination based on a "disability." The ADA also specifically prohibits employers from requiring medical exams or make disability-related inquiries unless the exam or inquiry is job-related and consistent with business necessity. There is an exception to this latter rule for voluntary wellness programs, which is explained in regulations issued in 2016 by the Equal Employment Opportunity Commission (EEOC).

The ADA rule applies only to wellness programs that require employees to answer disability-related questions or to undergo medical examinations in order to earn a reward or avoid a penalty. It would not apply, for example, to a wellness program that simply requires employees to engage in a certain activity (such as attending a nutrition or weight loss class or to walk a certain amount every week) in order to earn an incentive.

If the ADA rule does apply to a wellness program, the program must be completely voluntary. Among other things, this means that employers may not take adverse employment action or otherwise retaliate against employees for refusing to participate. Additionally, the maximum incentive that can be offered relating to the program is 30% of the cost of self-only coverage. Other conditions apply as well.

Genetic Information Nondiscrimination Act (GINA)

Title I of GINA generally prohibits group health plans from restricting enrollment or adjusting premiums based on genetic information, requiring or requesting genetic information or genetic testing prior to or after enrollment (unless an exception applies), and using genetic information for underwriting purposes.

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II (employment agencies, labor organizations and joint labor-management training and apprenticeship programs - referred to as "covered entities") from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

To: Sharon Schiermeister, NDPERS
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In the context of disease management programs, the GINA prohibitions make it very difficult for employers to acquire and use genetic information for purposes of identifying high-risk individuals for certain chronic conditions and encouraging those individuals to enroll in the appropriate disease management program(s).

Specific Questions

1. If a member does not participate in a disease management program that is offered through the health plan (such as About the Patient diabetes program, Smoking Cessation, Healthy Pregnancy), can they be subject to higher cost share amounts (higher deductible, co-pay or co-insurance)?

As noted, the HIPAA nondiscrimination rules prohibit group health plans from discriminating against individuals with respect to eligibility or contributions based on their health status. Imposing higher cost-sharing requirements on individuals with specific health conditions (e.g., diabetes, nicotine addiction, or pregnancy) generally is an impermissible form of discrimination. Thus, the plan would need to ensure any such arrangement is consistent with the wellness plan exception to the HIPAA nondiscrimination rules. This would include, among other things, limiting the penalty associated with all the plan's wellness programs to no more than 30% of the cost of self-only coverage (with additional penalties permitted for smoking cessation programs) and offering a "reasonable alternative standard" for avoiding the penalty.

Attempting to compel participation in one or more disease management programs also raises concerns under the ADA. If the programs include disability-related questions or require participants to undergo medical examinations, as those terms are defined for purposes of the ADA, then they must be completely voluntary. Current Equal Employment Opportunity Commission (EEOC) regulations under the ADA establish specific standards for determining if a program is voluntary, including a limit on penalties of no more than 30% of the cost of self-only coverage (with no additional flexibility for smoking cessation programs). Significantly, a Federal district court has ruled this 30% standard is "arbitrary" and has ordered the EEOC to reconsider this rule. The court order also vacates the current rule effective January 1, 2019. Thus, employers should be careful about relying on the current EEOC rule.

Additionally, as noted the ADA includes a general prohibition against discrimination based on a "disability." The wellness plan exception discussed above does not apply with respect to this general nondiscrimination requirement.

2. Can a higher premium be charged when a smoker is covered on the policy? How much more? What if there are multiple smokers on the plan – can an additional amount be charged for each smoker? How does the plan monitor whether a smoker is covered on the policy? Instead of a higher premium, can higher cost share amounts be applied to smokers? Are there any restrictions?

Group health plans may not have a separate premium structure for smokers and nonsmokers. However, subject to the HIPAA nondiscrimination and ADA rules discussed above, plans may impose higher employee premium contribution or cost-sharing requirements on smokers.

The wellness plan exception to the HIPAA nondiscrimination rules includes a special accommodation for smoking cessation programs. In particular, the maximum reward/penalty for all wellness programs increases from 30% to 50% of the cost of self-only coverage to the extent the additional 20 percentage points is attributable to a smoking cessation program.

That is, an employer could offer a smoking cessation program and require smokers to pay an employee premium contribution for self-only coverage up to 50% higher than non-smokers if it did not offer any other wellness programs, and all other requirements of the wellness plan exception were satisfied.

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In the case of an employer offering a smoking cessation program in addition to other wellness programs, the total penalty associated with all wellness programs could be as high as 50% of the cost of self-only coverage as long as at least 20% was attributable to the smoking cessation program.

If the smoking cessation program is available to the employee's family members who are also covered by the health plan, then the maximum penalty will be determined by reference to the cost of family coverage as opposed to self-only coverage. However, a separate penalty cannot be applied for each smoker.

Employers that offer smoking cessation programs often simply ask employees to disclose if they are smokers or non-smokers. Some employers have asked employees to submit to a blood test to identify if they smoke or not. The latter approach involves asking employees to submit to a medical examination, which must be done on a voluntary basis to comply with the ADA. There are at least 2 significant consequences to implicating the ADA rules:

- Unlike HIPAA, the ADA does not permit higher penalties for smoking cessation programs. Thus, the 50% maximum otherwise available under HIPAA will not be available.
- The ADA also does not allow the maximum penalty to be determined by reference to the cost of family coverage, even if the employee's family members are eligible for the smoking cessation program.

Due to these restrictions, employers typically seek to avoid using methods to identify smokers that implicate the ADA rules.

cc: Josh Johnson



**North Dakota
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Memorandum

TO: NDPERS Board

FROM: **Bryan Reinhardt**

DATE: April 10, 2018

SUBJECT: Flexcomp Contractor RFP Update

We released the Flexcomp vendor RFP and are on track for the following schedule.

The following is a sequence of activities for this RFP:

March 16, 2018	RFP issued.
March 30, 2018	Deadline for RFP Questions.
April 13, 2018	Answers to RFP Questions posted to NDPERS Website.
April 27, 2018	RFP's Due.
July/August 2018	NDPERS Board Selects Contractor

As of the March 30th deadline, we received questions from 5 vendors.

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



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Memorandum

TO: PERS Board

FROM: Derrick Hohbein, CPA

DATE: March 27, 2018

SUBJECT: Consultant Fees for the Quarter Ended March 2018

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended March 2018

Attachment

Consultant Fee Attachment

North Dakota Public Employees Retirement System Consulting/Investment/Administrative Fees For the Quarter ended March 31, 2018

Program/Project		Fee Type	Jan-18	Feb-18	Mar-18	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
Actuary/Consulting Fees:							
Conduent	General Consulting		3,778	3,778	3,778	11,333	\$ 29,016
Mid Dakota Clinic	Retirement Disability	Time charges	1,450		950	2,400	\$ 6,100
Ice Miller	Legal fees Employee benefit matters					-	\$ 3,061
Callan & Associates	Travel Expenses					-	\$ -
Deloitte	Consulting		2,984		1,071	4,055	\$ 14,994
Gabriel Roeder Smith & Company	Retirement	Fixed Fee				-	\$ 94,776
Gabriel Roeder Smith & Company	RHIC	Fixed Fee				-	\$ 12,400
Gabriel Roeder Smith & Company	GASB 67/68	Fixed Fee	18,000		18,000	36,000	\$ 36,000
Gabriel Roeder Smith & Company	GASB 74/75	Fixed Fee	3,750		3,750	7,500	\$ 7,500
Gabriel Roeder Smith & Company	Actuarial Factors Update	Fixed Fee				-	\$ 19,700
Gabriel Roeder Smith & Company	Service Purchase Table Update	Fixed Fee	3,750			3,750	\$ 3,750
Gabriel Roeder Smith & Company	Retirement	Time Charges	1,860		22,000	23,860	\$ 45,411
Gabriel Roeder Smith & Company	Legislative Work	Time Charges				-	\$ -
Gabriel Roeder Smith & Company	Group Insurance	Time Charges	1,900			1,900	\$ 2,100
Gabriel Roeder Smith & Company	RHIC	Time Charges				-	\$ 6,944
Gabriel Roeder Smith & Company	Deferred Comp	Time Charges	1,200			1,200	\$ 8,529
Gabriel Roeder Smith & Company	Job Service	Time Charges					\$ -
Gabriel Roeder Smith & Company	Flexcomp	Time Charges				-	\$ -
Audit Fees:							
Clifton Larson Allen	Annual Audit Fee		31,350		30,000	61,350	\$ 106,350
Executive Director Search:							
EFL Associates	Director Search	Fixed Fee	15,000	12,282		27,282	\$ 42,282
EFL Associates	Director Search	Additional Expenses	5,552			5,552	\$ 5,552
Website Redesign							
MABU	Website Redesign	Time Charges				-	\$ 1,216
Legal Fees:							
ND Attorney General	Administrative	Time charges	1,183		5,013	6,195	\$ 27,709
Investment Fees:							
SIB - Investment Fees	Retirement (DB)	% Allocation	164,756	659,015	*	823,771	\$ 4,950,069
SIB - Investment Fees	Ret Health Credit	% Allocation	91,855	94,054	*	185,909	\$ 382,751
SIB - Investment Fees	Insurance	% Allocation	612	619	*	1,231	\$ 55,799
SIB - Administrative Fees	Retirement (DB)	% Allocation	24,777	55,424	*	80,201	\$ 308,269
						1,091,112	\$ 5,696,888
Administrative Fee:							
Sanford Health Plan	Health Plan	Fixed fee	2,160,338	2,159,614	*	4,319,952	\$ 17,717,304



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Memorandum

TO: NDPERS Board

FROM: Sharon Schiermeister

DATE: April 2, 2018

SUBJECT: Legislative Committee Update

The next Employee Benefits Programs Committee is scheduled for Wednesday, May 2, 2018. Following is the agenda:

Presentation of proposals for legislation relating to retirement programs, health programs, and retiree health programs and receipt of testimony and committee work regarding the status of retirement programs, health programs, and retiree health programs.

The proposed legislative bill drafts that were approved at the March 13, 2018 Board meeting were submitted to the committee on March 19, which was in advance of the April 2 deadline for bill submission.

The next Health Care Reform Review Committee is scheduled for Wednesday, May 9, 2018. NDPERS has been asked to provide the Committee with an update on any legislation that the Board may be submitting relating to the health insurance plan. We will also have the opportunity to provide comments on a bill draft that the Insurance Department was requested to draft that would provide for mandated benefits, regulation, and consumer protections in the event the PERS health plan were to be administered on a self-insured basis.