

MINUTES

North Dakota Public Employees Retirement System

Tuesday, November 22, 2005
ND Association of Counties, Bismarck
BCBS, 4510 13th Ave SW, Fargo
8:30 A.M.

Members Present: Mr. Ron Leingang
Mr. Howard Sage
Ms. Arvy Smith
Ms. Sandi Tabor

Via Video Conference Ms. Rosey Sand
Chairman Jon Strinden

Others Present: Mr. Sparb Collins, Executive Director, NDPERS
Ms. Kim Humann, NDPERS
Ms. Cheryl Stockert, NDPERS
Ms. Kathy Allen, NDPERS
Mr. Bryan Reinhardt, NDPERS
Ms. Deb Knudsen, NDPERS
Ms. Sharmain Dschaak, NDPERS
Ms. Rebecca Fricke, NDPERS
Ms. Cheryle Masset, NDPERS
Ms. Diane Heck, NDPERS
Ms. Sharon Schiermeister, NDPERS
Mr. Scott Miller, Attorney General's Office
Mr. Bill Kalanek, AFPE/INDSEA
Ms. Jodee Buhr, NDPEA
Mr. Weldee Baetsch
Ms. Onalee Sellheim, BCBSND
Mr. Howard Anderson, ND Pharmacy Association
Mr. David Peske, ND Medical Association

Via Video Conference Mr. Larry Brooks, BCBSND
Mr. Kevin Schoenborn, BCBSND
Mr. Gary Dauenhauer, BCBSND
Mr. Mark Tschider, BCBSND
Mr. Tom Christensen, BCBSND
Ms. Sharmayne Smith, BCBSND
Ms. Kamie Kueneman, Prime Therapeutics
Ms. Leslie L. Thompson, Segal
Mr. Bill Robinson, Gallagher Benefit Services

Chairman Jon Strinden called the meeting to order at 8:35 a.m.

MINUTES

Chairman Strinden called for any questions or comments regarding the minutes of the October 20, 2005 meeting.

THERE BEING NONE, MR. LEINGANG MOVED APPROVAL OF THE OCTOBER 20, 2005 NDPERS BOARD MINUTES. MS. TABOR SECONDED THE MOTION. THE MINUTES WERE APPROVED.

RETIREMENT

Disability (Board Action Requested)

Ms. Sharmain Dschaak stated that at the January 2005 meeting the Board heard an appeal relating to denial of disability benefits based on the applicant applying outside the 12 month application period and at that time the Board requested further investigation of the issue. Staff surveyed 128 systems regarding their application periods and found many systems have stricter application periods than NDPERS. Of the systems surveyed, many require disability applications prior to a member's termination of employment. Some systems have different criteria for occupational disability versus non-occupational disability.

MR. LEINGANG MOVED TO CONTINUE WITH THE CURRENT POLICY AND NOT MAKE ANY CHANGES TO THE CURRENT STATUTE. MS. SAND SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Smith, Tabor, and Strinden

Nays: None

PASSED

Experience Study (Board Action Requested)

Mr. Collins stated that Segal recently completed work on our experience review. Ms. Leslie Thompson from Segal summarized information from their report. One of their recommendations was to set back one year on the healthy male mortality table for 2005. Segal provided the Board with the 2005 assumption changes with alternate normal cost method information.

MR. SAGE MOVED TO ACCEPT THE RECOMMENDATIONS FROM SEGAL ON THE EXPERIENCE STUDY. MS. TABOR SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Tabor, and Strinden

Nays: None

Absent for Vote: Smith

PASSED

Part-Time Temporary Participation (Board Action Requested)

Mr. Collins stated this issue surfaced at the March meeting, at which time the Board requested staff prepare information regarding the participation of temporary employees in the retirement plans. Ms. Rebecca Fricke reported that effective July 1, 1989, the Board, through legislation, elected to allow participation of part-time/temporary employees in the Defined Benefit Plan. Legislation was passed this session (HB1069) to allow individuals that become part-time/temporary employees to continue their participation in this plan if they elect to do so. As of the end of September, 270 members are in this category. It was discussed that one option would be to not change the law, rules or policies that allow part-time/temporary employees to participate with no additional liability issues for the system. Another option would be to remove the opportunity for part-time/temporary employees to participate in the retiree health credit fund. Mr. Collins reiterated the fact the one of the issues relates to adverse selection to the retiree health plan. Ms. Sand stated that the purpose of our programs is to provide retirement opportunities to state employees. It was noted that temporary employees are a broad mix of individuals, such as full-time temporary or 25% or 50% temporary. A final option was discussed to establish a core number of hours and have an actuary look at this. Mr. Sage commented that the contributions by the highly paid employees exceed the amount of benefits they receive under retiree health credit, which covers the temporary employee benefits paid out. Mr. Leingang stated that we should treat temporary employees the same way we do permanent part-time employees within the system, where permanent part-time employees are required to work 20 or more hours per week, 20 days a year.

BY GENERAL CONSENSUS THE BOARD AGREED NOT TO CHANGE THE LAW, RULES OR POLICIES.

GROUP INSURANCE

District Health Units (Board Action Requested)

Ms. Cheryle Masset reported there are changes relating to district health units and the Board may want to revisit our current policy. The issue is that district health units are treated by NDPERS as state agencies relating to their participation in the group health plan. They receive the state rate (flat rate) rather than the rate for political subdivisions. However, unlike state agencies they are not required to participate in the NDPERS health plan, but can make an election to do so. Health districts are not treated as a state agency for purposes of the voluntary programs such as dental, vision, long term care, and the

employee assistance program. It was noted they seem to operate more like a political subdivision not a state agency and the question becomes why we differentiate the rates for them. The latest Letter Opinion 2004-L-05 by Attorney General Wayne Stenejhem stated “. . . but are instead officers of the health district, a separate political subdivision.” Mr. Scott Miller reiterated the fact that district health units have never been a state agency; they have always been a political subdivision. Staff provided the Board with several options to move forward regarding the treatment of health units/districts/departments. Recommendation 3 (suggested by staff) includes targeting a date as to when all health units/districts/departments would be transitioned to the political subdivision status and transferring them from the state premium rate structure to the political subdivision premium rate structure. Before implementing this change, NDPERS would communicate with the health units/districts/departments the intention to implement this change, solicit their comments and allow them an opportunity to appear before the Board if they desire to do so. After we have received the comments, the Board would make a final determination and decide on an implementation date.

MS. SAND MOVED TO ACCEPT RECOMMENDATION NUMBER 3 WITH A JANUARY 1, 2007 IMPLEMENTATION DATE. MS. TABOR SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Smith, Tabor, and Strinden

Nays: None

PASSED

HIPAA Privacy Compliance (Informational)

Ms. Kathy Allen presented the Board with an update of PERS current status with regard to HIPAA compliance.

OPEB (Informational)

Mr. Bill Robinson presented the Board with a report from GBS relating to North Dakota's liability for retiree health benefits. The purpose of the actuarial analysis is to develop the expected plan liability and annual expense assuming implementation on July 1, 2005 and document actuarial assumptions and plan provisions. The plan they evaluated was the fully insured Dakota pre-Medicare retiree medical plan, including prescription drugs. They did not evaluate retiree life insurance plans. Two accounting rules affect NDPERS – Governmental Accounting Standards Board (GASB) Statement No. 43 and Statement 45. NDPERS is a Phase 1 government plan because we have annual revenues of over \$100,000,000 a year. Mr. Robinson reported that the Unit Cost method provides the most logical correlation between accruing and expensing of the retiree benefits. This is a snapshot and reflection of what the GASB 43 and 45 would be as of July 1, 2005 and gives the Board information regarding the future of NDPERS funds. Mr. Collins stated that he will share this report with the Office of Management and the Legislative Council.

Gallagher Benefit Services (Board Action Requested)

Mr. Collins indicated we received a letter from Bill Robinson (sent to the Board via e-mail yesterday) concerning a situation involving Gallagher Benefit Services. Specifically, we are being asked if we agree with a settlement provision, and if we do, we must sign a General Release to be reimbursed \$564.73. In doing so, we would give up any right to pursue our own claim against Gallagher to seek further punitive damages. The Attorney General in the state of New York has undertaken investigations focusing on several of the largest employee benefit consulting brokerage firms. Several of the firms were found guilty of some major disclosure failures. Gallagher was investigated by the Attorney General in Illinois. The AG did criticize Gallagher for not doing a good enough job disclosing to their clients the existence of overrides (which are commissions paid by carriers based on overall volume). The allocated amount of the distribution to eligible policyholders is \$26,962,500. We will have until December 31, 2005 to request a distribution from the Fund. The \$564.73 we are eligible for comes from our dealings with ING Reliastar and with BCBSND. Mr. Scott Miller stated he has reviewed the information and has forwarded it to the litigation division for their review. There is also a class action against Gallagher in the state of New Jersey. Mr. Robinson suspects it relates to the same issue, but does not know definitively. Mr. Miller stated that if we sign the Release, we may possibly take ourselves out of the class action suit. Chairman Strinden stated we do not have sufficient information regarding the class action in the state of New Jersey, consequently we will discuss this issue at a subsequent Board meeting. Mr. Collins stated we will include this issue on the December Board meeting agenda and have Mr. Miller report.

Medicare Rx (Board Action Requested)

Mr. Collins updated the Board on the implementation of the Medicare Rx program and also asks the Board to address an issue on the rating structure for one of the categories. Just to highlight one positive thing is that the rates will be approximately 20% lower for our retirees as of January 1, 2006. The plan design is almost identical to our present plan; however, the formulary will be slightly more restrictive than our present plan with 67% of the name brand drugs on the new plan versus the current 78%. The network of pharmacies that are in this program is smaller. In our Medicare rate categories, we currently have the single rate and the family rate. We also have a category that is a catchall category – one or more Medicare and one or more nonMedicare. That has been a single category and that may end up with one Medicare, one nonMedicare contract; two Medicare contracts. Now with the new rating structure in place, and the way that the subsidy works, if we continue to leave that category as a single category, we're not going to be able to optimize the funds that those members can get. We are suggesting we break that category down into four categories – Family One 1, Family One 2, Family One 3, and Family One 4. Members would save premium costs. If you approve these rates, BCBS can implement this immediately.

It was also discussed that in the next week a mailing explaining the Medicare Blue Rx will be going out to members. Mr. Larry Brooks stated that members that are enrolled with

Medicare in the current health plan will be automatically enrolled in the Group PDP. Because of that we have been informed by CMS, or Medicare, we must give members the option of opting out of PERS. Consequently, BCBS needed to develop an opt out letter along with a form. That mailing must go out next week on or before November 30, 2005. The member has 15 days to reply to BCBS before they automatically enroll. When NDPERS receives an opt out form from a member, we will follow-up with that individual by phone, just to make sure they understand the consequences of their decision (loss of their NDPERS Dakota Plan health coverage). It may be to the member's benefit to stay with the program if at all possible. Also included in the mailing will be the Medicare Blue Rx 2006 Summary of Benefits brochure. Mr. Collins stated that one of the areas that will cause some confusion is the members will be told their new rate is going to be X less any applicable retiree health credit. Approximately half of our retirees receive a health credit. BCBS will refer all members that have a qualifying retiree health credit directly to NDPERS. NDPERS will follow-up with these retirees again by phone.

There was some concern from Board members regarding the pharmacies participating in this program regarding how best to inform members. Mr. Brooks stated those participating pharmacies will change daily. BCBS can send a list out to members twice a year. If a member goes to a nonparticipating pharmacy, they will have to submit a separate claim. The nonparticipating pharmacy bills what they feel they need to for the drug and the member may end up paying more. BCBS wants to encourage members to use participating pharmacies and CMS encourages use of mail order if the member must get their prescriptions at the participating pharmacy rate. If a member purchases a nonformulary medication after January 1, 2006, the first time they go to the pharmacy it will be paid at a formulary rate and they will be told that this is a nonformulary drug and they have 30 days to switch to a formulary medication. The pharmacist should assist the member with this. Ms. Tabor asked if this plan includes the option for a member to call BCBS and request a drug that is not on the formulary list to be put on the list. She had reviewed many plans, and most include this provision. Ms. Kamie Kueneman stated she will have to check into this to get more information, but Mr. Brooks stated he didn't know why it would not be included.

MS. SAND MOVED TO APPROVE THE FOUR RATE OPTIONS TO MAXIMIZE THE FEDERAL MATCH AS WELL AS MAXIMIZE PREMIUM SAVINGS FOR THE MEMBERS. MR. SAGE SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Smith, and Strinden

Nays: None

PASSED

Mr. Collins stated since we are in the implementation stage, if the Board approved, he would send a letter to the Medicare retiree committee thanking them for their efforts and give them an update as to where we are at and extend our appreciation for their ten months worth of work. By general consensus the Board approved.

Rx Network (Informational)

Mr. Collins reported he has received correspondence and phone calls from pharmacies regarding the Rx Network operated through Prime Therapeutics Medicare Network expressing frustration with the program. Mr. Collins will have the letters scanned and forwarded to the Board for their information. Mr. Brooks reported there are 30 pharmacies electing not to participate in the Prime Therapeutics Network. This affects 30,047 members across the state. NDPERS' total business, 10-12%, would equate to about 3,200 members. Thirty-seven pharmacies are currently undergoing further negotiations; about 112 pharmacies remain status quo. Negotiations are ongoing. Employer notification letters were mailed on Monday, November 14. Member letters were sent on Monday, November 21. We are hoping that the number of participating pharmacies will increase. Mail order is offered as part of your plan and continues to be an option for your members, so if they are located in an underserved area, this may be an option for them.

Mr. Collins stated that many pharmacies he has been in contact with feel there are no negotiations going on, that they are given a particular offer which they can either accept or reject. Mr. Christensen stated that based on the location of pharmacies and the distance of another pharmacy, there are different tiers of offers that are going out. The directive has been to remain fairly firm on these offers. Mr. Collins reported that a pharmacy located at the fringe of an urban area might be on a rural rate and can't get into the more urban rate. Mr. Brooks stated that higher rates are offered in the rural areas versus the urban areas. As we move closer to the transition date and even beyond that, negotiations will continue to go on, how much flexibility there will be is difficult to predict. The basis of the whole transition was to take a look at the marketplace, with the goal to bring our reimbursement rates more in line with the marketplace. BCBS stated their goal is to have all pharmacies on board. It may not occur on December 1, but that is their continuing goal.

Medical Review Report Update (Informational)

BCBS presented the Medical Review Report update, last updated November 8, 2005. Ms. Sharmayne Smith presented information on what changed, what significant issues were identified. One change was that the report is broken down into retirees and nonretirees.

Dental Plan (Board Action Requested)

Mr. Collins reported we received a letter from ING Reliastar and they are getting out of the dental insurance business. Effective December 31, 2006 they will not provide services to NDPERS on the dental insurance plan. Mr. Scott Miller indicated we will have to go out for bid again. To start that process, Mr. Collins asked the Board how they would like to proceed. The first step is for us to get a consultant on board as has been done in the past. The consultant will prepare the bid specifications, distribute those bids and analyze the bids. Our present group insurance consultant is Gallagher Benefit Services. We could go with them as part of that overall contract. If we were to go with Gallagher Benefit

Services, they would estimate it would cost around \$12,000, plus travel expenses. The second option would be to distribute a request for proposals to consultants to submit bids. Once we have a consultant, the first step would be preparation of the request for proposal, then interviews of the vendors. Open enrollment information will start in August, with the mailing going out in September. We are going to have a new vendor on by probably July, no later than August 2006. When we go to bid on the dental insurance plan, we will want it to go out to market for at least six weeks to allow an opportunity for vendors to reply as well. During the last bidding process, there were three providers who submitted bids.

BY GENERAL CONSENSUS THE BOARD REQUESTED SPARB REPORT TO THEM AT THE DECEMBER MEETING WITH THE AMOUNT OF THE LAST CONSULTANT EFFORT SO THEY CAN MAKE A DECISION REGARDING WHETHER TO HIRE GALLAGHER BENEFIT SERVICES, NDPERS PRESENT GROUP INSURANCE CONSULTANT, TO ASSIST WITH SECURING ANOTHER DENTAL INSURANCE PLAN PROVIDER.

Health Insurance Report (Informational)

Bryan Reinhardt presented the group medical plan surplus/affordability update to the Board. The projection for the 2003-2005 biennium shows an ending balance of \$15.2 million. The amount targeted for 2005-2007 buy down is \$14.3 million. The NDPERS surplus should finish very close to the required \$14.3 million.

DEFERRED COMPENSATION

Training Compliance (Board Action Requested)

Ms. Kathy Allen reported that staff conducted provider training sessions in June in Bismarck, Fargo, and Williston and in October in Bismarck, Minot, and Grand Forks. The meetings were well attended; however, there were several providers who did not satisfy the training requirements specified in the NDPERS administrative contract. On November 2, 2005 NDPERS sent letters to the home office contacts for each of the companies not in compliance with the contract, with a response requested by December 5, 2005. The Board will be updated at the December meeting. Because of the unique relationship with the Bank of North Dakota (BND), staff contacted them by phone to discuss its noncompliance. The Bank's authorized representative was not able to attend the required provider training session. BND's deferred compensation product is not a registered product such as a mutual fund or an annuity. The BND representative is not required to be licensed to service this product. In reviewing the Bank's agreement signed in 1998, it excluded language with reference to the licensing requirements. The amended contracts in 2001 and 2005 did not have this exclusion. Mr. Sage stated we excluded this provider in 1998 and it was the intent to exclude them from thereon.

MR. SAGE MOVED THAT WE EXCLUDE THE BANK OF NORTH DAKOTA FROM THE PROVIDER TRAINING AND LICENSING REQUIREMENTS. MS. TABOR SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Tabor, and Strinden

Nays: None

Absent for Vote: Smith

PASSED

Chase Insurance (Board Action Requested)

Ms. Kathy Allen reported to the Board that Chase Insurance had been issued a Loss of Active Provider Status and is currently under suspension. Chase Insurance submitted a Provider Administrative Agreement, and since the last Board meeting has made a good faith effort to comply with the reporting requirements. Staff recommends Chase Insurance be reinstated. The Board raised the question regarding Chase's noncompliance with the training requirements and why would we reinstate Chase at this time when they are in noncompliance. It was suggested that it would be in PERS' best interest to wait to determine their compliance with the educational requirements before they are reinstated. Upon general consensus the Board decided to review Chase's compliance at the next Board meeting and take action at that time.

MISCELLANEOUS

Quarterly Consultant Fees

The Board was presented with a quarterly consultant fees report for the quarter ending September 30, 2005.

Personnel Policy Manual (Board Action Requested)

Ms. Kathy Allen stated that during the 2005 payroll audit, our internal audit division noted that several employees had recorded time off without pay because they did not have accrued leave benefits. The agency is not required to approve leave without pay unless there is written substantiation for the need to take more time off than is accrued. It was suggested that guidelines be written to address this issue because it is not clearly defined in our current personnel policies. Staff checked with other state agencies and it was determined that some employers have a policy that employees with a pattern of being consistently overdrawn on their annual and sick leave go from regular, full-time status to hourly status (payroll processing status). For regular full-time employees, monthly time reports are due to payroll the last working day of the month and employees are paid for all hours worked in the month, assuming accumulated leave is available for any time taken during the month. Supplemental payroll is not paid until the 10th day of the month for the previous month's hours which allows for payroll to adjust for any leave reported and the salary can be reduced accordingly for any unpaid leave. This is consistent with statute

because paying an employee a salary when there is no leave available could be considered an advance or a gift since the employee is being paid for something that has not been earned. In order to avoid administrative problems for payroll, the proposed policy also includes the requirements an employee must meet in order to be returned to the advanced payroll. The proposed changes deal with the fact if a medical need arises and the employee has exhausted accumulated sick leave, other options such as use of annual leave, comp time, leave of absence without pay, family medical leave, or being placed on the supplemental payroll will be reviewed with the employee's immediate supervisor. If an employee is placed on the supplemental payroll, the employee must accumulate 40 hours of combined leave before being returned to the advance payroll. The updated policy was distributed and discussed with staff and no comments or concerns were received. Mr. Leingang suggested that donated leave be added to the list of leave options that may be available. Ms. Sand suggested staff check with Tag Anderson relating to employees who are exempt versus nonexempt and the applicability of this policy.

MS. SAND MOVED TO ACCEPT THE UPDATED PERSONNEL POLICY PENDING TAG ANDERSON'S REVIEW. MR. LEINGANG SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Smith, and Strinden.

Nays: None

Absent for Vote: Tabor

PASSED

2006 Board Meeting Dates

Mr. Collins stated we are asking for approval of the 2006 Board meeting dates. Generally, Board meetings occur on the third Thursday of the month. Upon approval of the meeting dates, we will file the information with the North Dakota Secretary of State.

MR. SAGE MOVED TO APPROVE THE 2006 BOARD MEETING DATES AS INDICATED. MS. SMITH SECONDED THE MOTION.

Ayes: Leingang, Sage, Sand, Smith, and Strinden.

Nays: None

Absent for Vote: Tabor

PASSED

Chairman Strinden called for any other business or comments. Hearing none, the meeting adjourned at 11:30 a.m.

Prepared by,

Cheryl Stockert
Secretary to the NDPERS Board