

MINUTES

North Dakota Public Employees Retirement System

Brynhild Haugland Room, State Capitol

Tuesday, March 3, 2015

11:00 a.m.

Members Present: Ms. Casey Goodhouse
Mr. Mike Sandal
Ms. Arvy Smith
Ms. Yvonne Smith
Mr. Thomas Trenbeath
Ms. Kim Wassim

Via Teleconference: Chairman Strinden

Others Present: Mr. Sparb Collins, NDPERS
Ms. Cheryl Stockert, NDPERS
Ms. Sharon Schiermeister, NDPERS
Ms. Deb Knudsen, NDPERS
Ms. Kathy Allen, NDPERS
Mr. Bryan Reinhardt, NDPERS
Ms. Rebecca Fricke, NDPERS
Ms. MaryJo Steffes, NDPERS
Ms. Lisa Carlson, Sanford Health Plan
Mr. Jason Hubers, Sanford Health Plan
Mr. Kim Patrick, Sanford Health Plan
Ms. Cindy Morrison, Sanford Health Plan
Representative George Keiser
Mr. Stuart Savelkoul, ND United
Mr. Mike Schwab, ND Pharmacy Association
Ms. Mary Selzler, WSI
Mr. Howard Sage
Ms. Nancy Kopp, ND Optometric Association

Via Teleconference: Mr. Kevin Schoenborn, BCBSND
Mr. Pat Pechacek, Deloitte
Mr. Josh Johnson, Deloitte

Chairman Strinden called the meeting to order at 11:00 a.m.

Sanford Health Plan Contract

Mr. Collins reported that the staff is continuing to review and work with Sanford Health Plan staff in resolving details relating to the Certificate of Insurance and Summary of Benefits. In response to questions, Ms. Carlson, Sanford Health Plan, reviewed various industry standards of practice and other issues with the Board. She continued to answer

specific questions from the Board relating to insurance coverages and how they would be handled by Sanford Health Plan. Mr. Collins indicated that the plan design, co-insurance, deductibles, copayments, will remain standard.

Ms. Carlson stated that Sanford Health Plan is working with Trinity and Essentia, with full intent to have a contract signed by July 1, 2015 in order to include them in the network. The intention is to replicate 100% of the NDPERS PPO network. Ms. Carlson continued to review the areas in the draft Certificates of Insurance that staff have identified need to be updated until they meet the criteria identified and consistent with the current NDPERS health plan schedule of benefits. PERS and Sanford Health Plan will continue review of the draft Certificates of Insurance, Summary of Benefits and Rate Tables.

Ms. Murtha reviewed various motion options with the Board. They were: 1) make no motion and delay in executing the Administrative Services Agreement, 2) move for approval of the contract as presented, acknowledging some of the Exhibits continue to be negotiated and will come back to the Board for additional approval, 3) move for approval of the contract, subject to those issues that need to be further resolved as identified by the Board, giving PERS direction to move forward with no additional approval required by the Board, and 4) move for approval of the Administrative Services Agreement but remove as Exhibits those items that are still being worked on such as the Certificate of Insurance, Summary of Benefits, and Rate Tables, and these items will be presented to the Board for approval when final.

Mr. Collins shared the legislative majority leaders' letter of request to delay finalizing the contract with Sanford Health Plan. The Board asked its attorney what the implications of waiting to sign the agreement would be from a legal perspective. Ms. Murtha reviewed the legal implications of a delay on the transition, noting that NDPERS member information could not be shared with Sanford Health Plan until the parties had an agreement in place for the exchange of information. Ms. Murtha also reviewed the guidance given to NDPERS in a 1991 Attorney General Opinion. The opinion was based on a ND Supreme Court case (the Danzl v. City of Bismarck case) and related to the authority of NDPERS to engage in post bid negotiations. The Attorney General Opinion discussed two categories of post-bid negotiations: situations wherein the bid specifications are changed as a result of post-bid negotiations, and situations wherein the public entity obtains a lower price without any change to the bid specifications. The court opinion concluded it was improper to change the bid specifications as a result of post-bid negotiations, and the Attorney General Opinion confirmed this adding only that it was permissible to obtain a lower price as a result of post-bid negotiations as long as there was no change to the bid specifications. The guidance raises concerns regarding delaying execution of a contract if the primary purpose of the delay is to change bid specifications, and whether doing so deprives other bidders in the process of having the opportunity to submit a different bid.

Ms. Murtha also reviewed Section 6.7 of the Administrative Services Agreement relating to federal or state authority imposing any changes to plan design, plan benefits or other mandate affecting the health plan. This clause anticipates that in the event there is plan design or benefit changes resulting from changes in the law, the parties will come back to

the table and try to find a way to incorporate those changes into the Agreement. This will allow the Board to move forward with implementation, but still be able to address future changes to the law. This clause differentiates between design or benefit changes and process requirements.

Chairman Strinden indicated he had visited with Representative Carlson and it is the legislators' desire to have their concerns at rest without the need for legislation. The Board then asked Sanford Health Plan what the implications would be if the agreement wasn't signed for several weeks. Ms. Cindy Morrison, Sanford Health Plan, reviewed their letter to the PERS Board which outlined concerns should the contract be delayed. Since the Board's decision on the award on February 19, Sanford Health Plan has worked diligently with staff in pursuit of a final agreement, increased local staff presence, secured new North Dakota office space in Fargo and Bismarck, launched specific communication channels for NDPERS members, and outreach to existing North Dakota providers to participate in the NDPERS network. She explained that in the next four months there are processes which need to be accomplished and that delaying the contract could affect timely implementation of the plan. She also indicated that without a contract it would be difficult for Sanford to recruit new providers to the plan.

Representative Keiser was in attendance and spoke to the Board. He noted that proposed legislation was being developed and felt that if the Board could wait a couple of weeks such legislation could be developed and considered by the legislature that could provide guidance to the contracting parties. He noted that he prefers that legislation not be necessary, but they are proceeding at this time. He also indicated that it could be a delayed bill or could be added to the PERS budget bill as an amendment. Mr. Keiser also said this was not an issue with the selection of Sanford Health Plan or retaining BCBS. But rather it is an issue of making sure the benefits are equal to what is in place today for public employees. He noted there are two basic issues, one is what the employees have now and what they will have under the new contract. The other issue relates to defining a very strong firewall between insurance and providers.

The Board had questions and discussed with Representative Keiser the need for legislation at this time. The Board noted that the concerns he mentioned have been the Board's focus as well. The Board questioned whether the proposed amendments could discourage competition in the future. Representative Keiser, indicated that no, this would not discourage competition, but was concerned that employees receive the benefit to which they are entitled. Mr. Collins indicated to the Board that if a bill is developed, it may have to go through the Legislative Employee Benefits Committee and an actuarial and technical analysis would have to be completed.

Mr. Collins indicated that a disruption analysis was done comparing the networks of BCBS and Sanford Health Plan. Ms. Carlson indicated that they did not compare their national network to BCBS national network, but they did take the PERS out of state member's zip codes and compared this against their network. Mr. Johnson, Deloitte, reviewed their findings that had been previously shared with the Board.

Ms. Murtha again reviewed the motion options with the Board. It was discussed that the Administrative Services Agreement and Business Associate Agreement should be signed prior to an exchange of member information with Sanford Health Plan, and that Sanford indicated such information was necessary to continue moving forward with implementation.

MR. TRENBEATH MOVED OPTION 2 APPROVAL OF THE ADMINISTRATIVE SERVICES AGREEMENT AS PRESENTED WITH SANFORD HEALTH PLAN, THAT OPTION 2 ACKNOWLEDGES THAT SOME EXHIBITS WILL BE UPDATED AND BE BROUGHT BACK TO THE BOARD FOR FURTHER APPROVAL AT A LATER DATE. THE MOTION WAS SECONDED BY MS. A. SMITH.

Ayes: Ms. Goodhouse, Mr. Sandal, Ms. A. Smith, Mr. Trenbeath, Ms. Y. Smith, Ms. Wassim, and Chairman Strinden

Nays: None

MOTION PASSED

Health Plan Placement Open Records

Mr. Collins indicated that staff was seeking approval from the Board relating to executive session recordings. Chairman Strinden had to leave the meeting and asked Mr. Sandal to chair. Ms. Murtha explained that state law requires that executive session meeting recordings are not an open record unless the governing body approves the release by majority vote. The Board discussed this issue.

MS. GOODHOUSE MOVED THAT THE EXECUTIVE SESSION RECORDINGS AND MATERIALS RELATING TO THE GROUP HEALTH INSURANCE BID BE RELEASED PURSUANT TO NDCC 44-04-19.2(5). THE MOTION WAS SECONDED BY MS. Y. SMITH.

Ayes: Mr. Sandal, Ms. Y. Smith, Ms. Wassim, Mr. Trenbeath, Ms. Goodhouse, and Ms. A. Smith

Nays: None

Absent: Chairman Strinden

MOTION PASSED

Legislation

Mr. Collins indicated he had previously reviewed and discussed the legislation being proposed relating to group health insurance plan bid process. Mr. Collins indicated that the legislature has requested staff comments which he will provide.

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There being no further business, the meeting adjourned at 1:00 p.m.

Prepared by,

Cheryl Stockert
Assistant to the Board