

Introduced by

Representatives Kasper, Jones, Keiser, Lefor, Louser, Meier, Rohr, Schauer, Steiner

1 A BILL for an Act to amend and reenact section 54-52.1-04.16 of the North Dakota Century  
2 Code, relating to public employees retirement system prescription drug coverage performance  
3 audits.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 54-52.1-04.16 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **54-52.1-04.16. Prescription drug coverage - Performance audits - Report to employee**  
8 **benefits programs committee.**

- 9 1. Except for Medicare part D, prescription drug coverage, the board may not enter or  
10 renew a contract for prescription drug coverage, whether contracting directly with a  
11 pharmacy benefits manager, providing prescription drug coverage through a self-  
12 insurance plan, or contracting with a carrier, unless the contract authorizes the board  
13 during the term of the contract to conduct a performance audit of the prescription drug  
14 coverage and any related pharmacy benefits management services.
- 15 2. During the term of the contract for the prescription drug coverage, the board shall  
16 conduct a performance audit of the prescription drug coverage and any related  
17 pharmacy benefits management service. The performance audit must be conducted  
18 directly through the pharmacy benefits manager providing the prescription drug  
19 coverage and may not be conducted through an intermediary, such as the carrier. The  
20 contract for prescription drug coverage must provide:
- 21 a. The board and auditor must have full access to claim-level data regarding:
- 22 (1) The total amount of dollars paid to the pharmacy benefits manager by the  
23 carrier and the board, including detail by prescription to arrive at the  
24 aggregate total amounts;

- 1                   (2) The total amount of dollars paid to the pharmacy benefits manager by the  
2                   carrier and the board which were not subsequently paid to a licensed  
3                   pharmacy in the state; ~~and~~
- 4                   (3) Payments made to all pharmacy providers which shows line item detail to  
5                   include product reimbursement and dispensing fees as two separate fields  
6                   to arrive at the aggregate total amounts; and
- 7                   (4) Any recoupment by the pharmacy benefits manager either at the point of  
8                   sale or retrospectively, including the reason and the reason code.
- 9                   b. The board and auditor must have full access to data regarding the average per  
10                  claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any  
11                  other fee paid by a pharmacy benefits manager to licensed pharmacies with  
12                  which the pharmacy benefits manager shares common ownership or control or is  
13                  affiliated through any contractual agreement.
- 14                  c. The board and auditor must have full access to data regarding the average per  
15                  claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any  
16                  other fee paid by a pharmacy benefits manager to pharmacies licensed in the  
17                  state.
- 18                  d. The board and auditor must have full access to data on an individual claim basis  
19                  regarding any prospective and retrospective direct and indirect fees, charges, or  
20                  recoupment, or any kind of assessments or effective rates imposed by the  
21                  pharmacy benefits manager on pharmacies licensed with which the pharmacy  
22                  benefits manager shares common ownership or control or is affiliated through  
23                  any contractual agreement.
- 24                  e. The board and auditor must have full access to data on an individual claim basis  
25                  regarding any prospective and retrospective direct and indirect fees, charges, or  
26                  recoupment, or any kind of assessments or effective rates imposed by the  
27                  pharmacy benefits manager, on pharmacies licensed in the state.
- 28                  f. ~~The contract must provide that~~That all drug rebates, financial incentives, fees,  
29                  and discounts must be disclosed to the board at the national drug code level.
- 30                  g. The terms of the contract between the carrier and the pharmacy benefits  
31                  manager.

- 1     2-3.   The following apply to conducting a performance audit as required under this section:
- 2           a.   The board shall use an independent auditor who has no conflict of interest with  
3                the carrier, pharmacy benefits manager, or board such as an existing contract  
4                with that entity. The board may not compensate the auditor based on financial  
5                findings or recoveries resulting from an audit. All audit compensation must be on  
6                a flat fee or hourly basis.
- 7           b.   Data and documents provided by the pharmacy benefits manager to the board or  
8                the auditor may not be redacted or altered by the pharmacy benefits manager.  
9                ~~The board's auditor, the insurance department, and the employee benefits~~  
10              programs committee may access any information the board and the auditor may  
11              access under this section. All information accessed by the board, board's auditor,  
12              insurance department, or employee benefits programs committee which is trade  
13              secret is a confidential record. This subsection subdivision does not limit the  
14              information required to be disclosed to the board and the auditor under  
15              subsection 1. This subdivision does not limit the access to information that is not  
16              a trade secret.
- 17           c.   The performance audit must include a review of financial terms and guarantees  
18                and performance guarantees, including administrative fees, annual brand  
19                prescription guarantees, annual generic prescription guarantees, annual specialty  
20                drug guaranteed discounts, and financial benefit guarantees listed in the  
21                pharmacy benefits manager contract to validate the terms of the contract are  
22                being met.
- 23           d.   The performance audit must include a review of medical prescription drug claim  
24                rebates at the national drug code level and the amounts and verify who retained  
25                the rebates for such drugs.
- 26           e.   The pharmacy benefits manager shall disclose to the board and the auditor the  
27                terms of any contract or arrangement the pharmacy benefits manager has with a  
28                rebate aggregator, regardless of whether self-owned or with an outside entity that  
29                functions as a rebate aggregator for the pharmacy benefits manager, regardless  
30                of whether self-described as a rebate aggregator.

1           f. The pharmacy benefits manager shall provide all data and documents necessary  
2           to enable the board and the auditor to calculate any compensation the pharmacy  
3           benefits manager shall pay to the public employees retirement system if a  
4           program or contract guarantee was not properly implemented.

5           g. A document or information provided to the board or the auditor under this section  
6           is confidential commercial information and a trade secret, is exempt from public  
7           inspection, and is not a public record under section 44-04-18. A document or  
8           information provided to the board or the auditor under this section and the  
9           performance audit report prepared under this section may not be released to  
10           another person in a manner that allows for the identification of an individual drug  
11           or manufacturer or in a manner that has the potential to compromise the  
12           financial, competitive, or proprietary nature of the information.

13       ~~3. If the board contracts directly with a pharmacy benefits manager or provides~~  
14       ~~prescription drug coverage through a self-insurance plan, the contract must provide~~  
15       ~~the pharmacy benefits manager shall disclose to the board and the board's auditor all~~  
16       ~~rebates and any other fees that provide the pharmacy benefits manager with sources~~  
17       ~~of income under the contract, including under related contracts the pharmacy benefits~~  
18       ~~manager has with third parties, such as drug manufacturers.~~

19       4. ~~Anything the board has access to under this section, the insurance department and~~  
20       ~~employee benefits programs committee has access to~~The board shall report to the  
21       employee benefits programs committee the report of each performance audit  
22       conducted under this section.