

**Sixty-sixth Legislative Assembly of North Dakota  
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1028  
(Legislative Management)  
(Health Care Reform Review Committee)

AN ACT to create and enact chapter 26.1-36.6 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage; to amend and reenact sections 26.1-07.1-01, 54-52.1-01, 54-52.1-04, 54-52.1-04.2, 54-52.1-04.3, 54-52.1-05, and 54-52.1-11 of the North Dakota Century Code, relating to public employee uniform group health benefits coverage; to repeal sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code, relating to public employees retirement system self-insurance plans for health benefits coverage mandated health benefits; and to declare an emergency.

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

**SECTION 1.** Chapter 26.1-36.6 of the North Dakota Century Code is created and enacted as follows:

**26.1-36.6-01. Definitions.**

As used in this chapter, "self-insurance health plan" has the same meaning as provided under section 54-52.1-01.

**26.1-36.6-02. Self-insurance health plans - Regulation.**

The commissioner shall regulate the financial condition, integrity, and equitable administration of a self-insurance health plan established under chapter 54-52.1. All powers granted to the commissioner to regulate insurance companies and insurers under title 26.1 apply to the commissioner to regulate a self-insurance health plan.

**26.1-36.6-03. Self-insurance health plans - Requirements.**

1. The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.
2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43.

**26.1-36.6-04. Rules.**

The commissioner shall adopt rules to administer this chapter. The rules must establish reserve requirements. The rules may provide certain self-insurance health plans are exempt from all or portions of this chapter.

**SECTION 2. AMENDMENT.** Section 26.1-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-07.1-01. Jurisdiction over providers of health care benefits.**

Notwithstanding any other provision of law, and except as provided ~~herein~~under this section, any person ~~or other entity~~, other than an insurance company duly licensed in this or another state which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, ~~must be~~is presumed to be subject to the jurisdiction of the commissioner unless the person ~~or other entity~~ shows that while providing such services ~~it~~the person is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government. A self-insurance health plan formed under chapter 54-52.1 is not subject to this section but is subject to the jurisdiction of the commissioner under chapter 26.1-36.6.

**SECTION 3. AMENDMENT.** Section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement board.
2. "Carrier" means:
  - a. For the hospital benefits coverage, an insurance company authorized to do business in the state, or a nonprofit hospital service association, or a prepaid group practice hospital care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing hospital benefits coverage.
  - b. For the medical benefits coverage, an insurance company authorized to do business in the state, or a nonprofit medical service association, or a prepaid group practice medical care plan authorized to do business in the state, or the state if a self-insurance health plan is used for providing medical benefits coverage.
  - c. For the life insurance benefits coverage, an insurance company authorized to do business in the state.
3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, ~~and. The term~~ includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, district health units, and school districts.
4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by ~~subsection 2 of~~ section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workforce safety and insurance fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least twenty hours per week and at least twenty weeks each year of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

5. "Health insurance benefits coverage" means hospital benefits coverage or medical benefits coverage, or both.
6. "Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter 26.1-18.1.
- 6-7. "Hospital benefits coverage" means a plan ~~which~~that either provides coverage for, or pays, or reimburses expenses for hospital services incurred in accordance with the uniform contract.
- 7-8. "Life insurance benefits coverage" means a plan ~~which~~that provides both term life insurance and accidental death and dismemberment insurance in amounts determined by the board, with a minimum of one thousand dollars provided for the term life insurance portion of the coverage.
- 8-9. "Medical benefits coverage" means a plan ~~which~~that either provides coverage for, or pays, or reimburses expenses for medical services in accordance with the uniform contract.
- 9-10. "Member contribution" means the payment by the member into the retiree health benefits fund pursuant to sections 54-52-02.9 and 54-52-17.4.
- 10-11. "Member's account balance" means the member's contributions plus interest at the rate set by the board.
12. "Self-insurance health plan" means a plan of self-insurance providing health insurance benefits coverage under section 54-52.1-04.2.
- 11-13. "Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

**SECTION 4. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04. Board to contract for insurance.**

1. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and shall accept one or more bids of and contract with the carriers ~~that in the judgment of the board~~ determines best ~~servesserve~~ the interests of the state and ~~its~~the state's eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board ~~that~~which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:
  - 1- a. The economy to be effected.
  - 2- b. The ease of administration.
  - 3- c. The adequacy of the coverages.
  - 4- d. The financial position of the carrier, with special emphasis ~~as to it~~on the solvency of the carrier.

5. ~~e.~~ The reputation of the carrier and any other information ~~that is available~~ tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
2. The board may reject any or all bids and, ~~in the event it does so,~~ received under this section. ~~If the board rejects all bids received, the board shall again solicit bids as provided in this section.~~ The
3. Under sections 54-52.1-04.1 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third-party administrator (TPA) contract health plan.

**SECTION 5. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.2. Self-insurance health plan for hospital and medical benefits coverage.**

1. ~~The board may establish~~ This section applies to a self-insurance health plan for providing:
  - a. Health insurance and prescription drug benefits coverage;
  - b. Health insurance benefits coverage, excluding all or part of prescription drug benefits coverage; or
  - c. All or part of prescription drug benefits coverage.
2. ~~Any~~ A self-insurance health plan established by the board under this section must be provided under an administrative services only (ASO) contract or a third-party administrator (TPA) contract under the uniform group insurance program, and. The board may be established only if it is determined by not establish a self-insurance health plan unless the board that an administrative services only or third-party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third-party administrator contract only every other biennium, and the board is authorized to renegotiate an existing administrative services only or third-party administrator contract during the interim determines the self-insurance health plan best serves the interests of the state and the state's eligible employees. In addition, if the board determines it is in the best interest of the plan, individual stop-loss coverage insured by a carrier authorized to do business in this state must may be made part of any self-insured a self-insurance health plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

**SECTION 6. AMENDMENT.** Section 54-52.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04.3. Contingency reserveSelf-insurance health plan - Reserve fund - Continuing appropriation - Benefits - Insurance commissioner.**

1. ~~The~~ Pursuant to chapter 26.1-36.6, the board shall establish and maintain under a self-insurance health plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. The board shall determine the amount necessary to provide a balance in the contingency reserve fund between one and one-half months and three months of claims paid based on the average monthly claims paid during the twelve-month period immediately preceding March first of each year. The board also shall determine the amount necessary to provide an additional balance in the contingency reserve fund between one month and one and one-half months for claims

~~incurred but not yet reported. The board may arrange for the services of an actuarial consultant to assist the board in making these determinations. Upon the initial changeover from a contract for insurance pursuant to section 54-52.1-04 or a health maintenance organization pursuant to section 54-52.1-04.1 to a self-insurance health plan pursuant to section 54-52.1-04.2, the board must have a plan in place which is reasonably calculated to meet within sixty months of the changeover the funding requirements of this chapter within sixty months~~26.1-36.6. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated to the board for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

2. A self-insurance health plan must comply with section 26.1-36.6-03 and must provide the same benefits required of a fully insured plan.
3. The insurance commissioner shall ensure compliance with and enforce the provisions of this section pursuant to chapter 26.1-36.6.

**SECTION 7.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Self-insurance health plan - Bank of North Dakota line of credit - Continuing appropriation.**

The Bank of North Dakota shall extend to the board a line of credit not to exceed fifty million dollars. The board shall repay the line of credit from health insurance premium revenue or repay the line of credit from other funds appropriated by the legislative assembly. The board may access the line of credit to the extent necessary to provide adequate claims payment funds, to purchase stop-loss coverage, and to defray other expenditures of administration of the self-insurance health plan. All loan funds received by the board from the Bank under this section, not otherwise appropriated, are appropriated to the board for the repayment of claims and other costs of the uniform group insurance program.

**SECTION 8. AMENDMENT.** Section 54-52.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-05. Provisions of contract - Term of contract.**

1. Each uniform group insurance contract entered by the board must be consistent with the provisions of this chapter, must be signed for the state of North Dakota by the chairman of the board, and must include the following:
  - a. As many optional coverages as deemed feasible and advantageous by the board.
  - b. A detailed statement of benefits offered, including maximum limitations and exclusions, and such other provisions as the board may deem necessary or desirable.
2. The initial term or the renewal term of a fully-insured uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.
  - a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations and, the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.
  - b. In making a determination under this subsection, the board shall:

- (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount.
  - (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance.
  - (3) Consider any additional information the board determines relevant to making the determination.
- c. ~~If the~~The board determines~~may determine~~ the carrier's performance under the existing contract does not meet the board's expectations ~~or, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board determines~~therefore may decide to solicit a bid under section 54-52.1-04, ~~the board shall specify its reasons for the determination to solicit a bid.~~

**SECTION 9. AMENDMENT.** Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-11. Confidentiality of employee records.**

~~Information~~In addition to the confidentiality requirements in section 26.1-36-12.4, information pertaining to an eligible employee's group medical records for claims, employee premium payments made, salary reduction amounts taken, history of any available insurance coverage purchased, and amounts and types of insurance applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to ~~whom~~which the eligible employee has given written authorization to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds authorization.
3. A person authorized by a court order.
4. A person ~~or entity~~ to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. Any person ~~or entity~~ if the purpose of the disclosure is for treatment, payment, or health care operations.

**SECTION 10. REPEAL.** Sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code are repealed.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1028 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 92                      Nays 0                      Absent 2

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 37                      Nays 8                      Absent 2

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State