

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1004

That the Senate recede from its amendments as printed on pages 1563-1566 of the House Journal and pages 1289-1293 of the Senate Journal and that Engrossed House Bill No. 1004 be amended as follows:

Page 1, line 1, replace "and" with a semicolon

Page 1, line 2, replace "section" with "sections"

Page 1, line 2, after "54-10-10" insert "and 54-52.1-04.16"

Page 1, line 3, after "auditor" insert "and public employees retirement system prescription drug coverage performance audits; and to provide for legislative management reports"

Page 2, after line 6, insert:

"SECTION 4. AMENDMENT. Section 54-52.1-04.16 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.16. Prescription drug coverage - Performance audits - Report to employee benefits programs committee and legislative audit and fiscal review committee.

1. Except for Medicare part D, prescription drug coverage, the board may not enter or renew a contract for prescription drug coverage, whether contracting directly with a pharmacy benefits manager, providing prescription drug coverage through a self-insurance plan, or contracting with a carrier, unless the contract authorizes the board during the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services.
2. During the term of the contract for the prescription drug coverage, the state auditor, in accordance with chapter 54-10, shall contract for a performance audit of the prescription drug coverage and any related pharmacy benefits management service. The contract for prescription drug coverage must provide:
 - a. The board and auditor must have full access to claim-level data regarding:
 - (1) The total amount of dollars paid to the pharmacy benefits manager by the carrier and the board, including detail by prescription to arrive at the aggregate total amounts;
 - (2) The total amount of dollars paid to the pharmacy benefits manager by the carrier and the board which were not subsequently paid to a licensed pharmacy in the state; and
 - (3) Payments made to all pharmacy providers which show line item detail to include product reimbursement and dispensing fees as two separate fields to arrive at the aggregate total amounts

compared to what the board was charged for those same claims; and

- (4) Any recoupment by the pharmacy benefits manager either at the point of sale or retrospectively, including the reason and the reason code.
- b. The board and auditor must have full access to data regarding the average per claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated through any contractual agreement.
 - c. The board and auditor must have full access to data regarding the average per claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state.
 - d. The board and auditor must have full access to data on an individual claim basis regarding any prospective and retrospective direct and indirect fees, charges, or recoupment, or any kind of assessments or effective rates imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated through any contractual agreement.
 - e. The board and auditor must have full access to data on an individual claim basis regarding any prospective and retrospective direct and indirect fees, charges, or recoupment, or any kind of assessments or effective rates imposed by the pharmacy benefits manager, on pharmacies licensed in the state.
 - f. ~~The contract must provide that~~That all drug rebates, financial incentives, fees, and discounts must be disclosed to the ~~board~~auditor at the national drug code level.
 - g. The terms of the contract between the carrier and the pharmacy benefits manager.

2.3. The following apply to conducting a performance audit as required under this section:

- a. ~~The board shall use an independent auditor who has no~~may not have a conflict of interest with the carrier, pharmacy benefits manager, or board, such as an existing contract with that entity. All audit compensation must be on a flat fee or hourly basis paid by the board.
- b. Data and documents provided by the pharmacy benefits manager to the board or the auditor may not be redacted or altered by the pharmacy benefits manager. The board's auditor, the insurance department, and the employee benefits programs committee may access any information the board and the auditor may access under this section. All information accessed by the board, board's auditor, insurance department, or employee benefits programs committee which is trade secret is a confidential record. This subsection/subdivision does not limit the information required to be

disclosed to the board and the auditor under subsection 1. This subdivision does not limit the access to information that is not a trade secret.

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

~~3.4.~~ If the board contracts directly with a pharmacy benefits manager or provides prescription drug coverage through a self-insurance plan, the contract must provide the pharmacy benefits manager shall disclose to the board and the ~~board's~~ auditor all rebates and any other fees that provide the pharmacy benefits manager with sources of income under the contract, including under related contracts the pharmacy benefits manager has with third parties, such as drug manufacturers.

4. ~~Anything the board has access to under this section, the insurance department and employee benefits programs committee has access to.~~

5. The auditor shall report to the employee benefits programs committee and the legislative audit and fiscal review committee the report of each performance audit conducted under this section.

SECTION 5. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR - PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT. In addition to the requirement under section 54-52.1-04.16 that the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit during the term of the contract effective during the 2021-23 biennium, the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit during the 2021-22 interim, as provided under section 54-52.1-04.16 for the periods January 1, 2019, through June 30, 2019; July 1, 2019, through June 30, 2020; and July 1, 2020, through June 30, 2021. All audit compensation for an audit performed under this section must be on a flat fee or hourly basis paid by the public employees retirement system board."

Renumber accordingly

