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## LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

Thursday, February 16, 2023  
Pioneer Room, State Capitol  
Bismarck, North Dakota

Senator Jerry Klein, Chairman, called the meeting to order at 4:15 p.m.

**Members present:** Senators Jerry Klein, Sean Cleary, David A. Clemens, Jordan L. Kannianen, Judy Lee; Representatives Cole Christensen, Liz Conmey, Dori Hauck, Scott Louser, Mike Nathe, Emily O'Brien, Jeremy Olson, Karen M. Rohr

**Members absent:** Senator Kyle Davison; Representatives Keith Kempenich and Gary Kreidt

**Others present:** Mr. Joshua C. Gallion, State Auditor, Bismarck

**It was moved by Representative Nathe, seconded by Representative Christensen, and carried on a voice vote that the minutes of the August 19, 2021, meeting be approved as distributed.**

At the request of Chairman Klein, Mr. Allen H. Knudson, Legislative Budget Analyst and Auditor, distributed a memorandum entitled [Summary of Major Items in Audit Reports for the February 16, 2023, Meeting](#).

### PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT

At the request of Chairman Klein, Mr. Joshua C. Gallion, State Auditor, presented a performance audit report entitled [Public Employees Retirement System Prescription Drug Coverage Performance Audit](#). Mr. Gallion noted the State Auditor's office contracted with Myers and Stauffer, LC, to conduct the audit. He noted the audit report has been finalized and includes the following major audit findings:

- Average annual dispensing fees for both brand and generic drugs demonstrated an increase.
- Average annual ingredient costs by national drug code for both brand and generic drugs had several claims where codes were misapplied.
- Full remittance advices were not provided to reconcile administrative and additional fees to paid prescription claims.
- Potential spread pricing for claims filled at retail pharmacies during 2019 and 2020 were not examined as Sanford Health and OptumRx did not provide prescription remittance advices.
- Remittance advices were not provided for 2019 and 2020 claims; therefore, comparisons between drug costs reimbursed to paid claims data could not be done for both retail pharmacies and mail order and specialty pharmacies.
- Certain drugs demonstrated a higher cost to the plan compared to equivalents.
- Rebate guarantee levels were exceeded in plan years 2019 through 2021.
- Network pharmacy surveys indicated clawback payments were received in the 2019-21 plan years.

Mr. Gallion noted:

- The contractor identified scope limitations on many of the findings due to lack of information being provided by Sanford Health and OptumRx.
- Auditors are concerned with the lack of documentation provided by Sanford Health and OptumRx.

- State law and the state's agreement with Sanford Health allows examination of information by the State Auditor; however, even after involving the Attorney General, OptumRx declined to provide the requested data.

In response to a question from a committee member, Mr. Gallion noted the State Auditor's office is continuing to evaluate its options for accessing the OptumRx data.

### **AUDITS OF STATE AGENCIES, BOARDS, AND COMMISSIONS**

Representatives of the State Auditor's office presented the following audit reports:

- [\*Department of Transportation Audit Report for the Biennium Ended June 30, 2021\*](#); and
- [\*North Dakota Department of Health Audit Report for the Biennium Ended June 30, 2021\*](#).

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

It was moved by Senator Lee, seconded by Representative Christensen, and carried on a roll call vote that, pursuant to North Dakota Century Code Section 54-35-02.2, the committee accept the following reports reviewed by the committee at its February 16, 2023, meeting:

1. Prescription drug coverage (December 31, 2021)
2. Department of Transportation (June 30, 2020 and 2021)
3. State Department of Health (June 30, 2021)

Senators Klein, Cleary, Clemens, Kannianen, and Lee and Representatives Christensen, Conmy, Hauck, Louser, Nathe, O'Brien, Olson, and Rohr voted "aye." No negative votes were cast.

No further business appearing, Chairman Klein adjourned the meeting at 5:15 p.m.

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Toby S. Mertz  
Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor