

## PARTICIPATION

## AGENCY

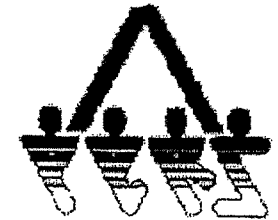
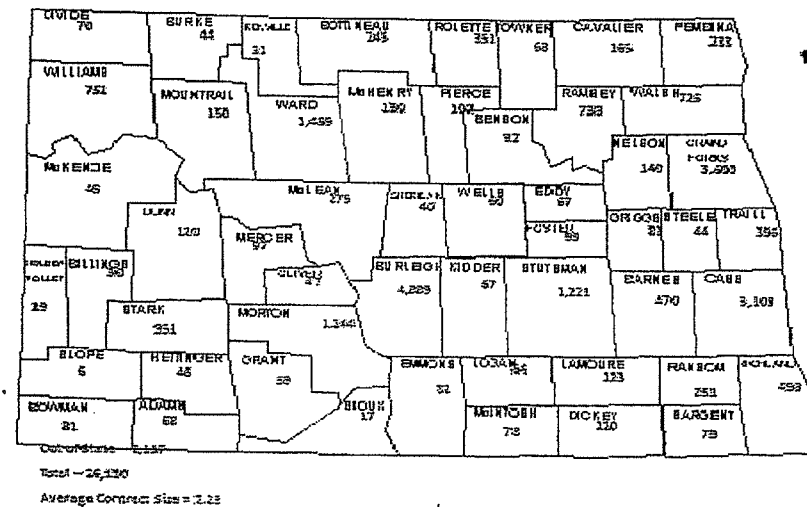
State	93
Counties	40
School Dist	23
Cities	57
Others	71
	<b>284</b>

## EMPLOYEES

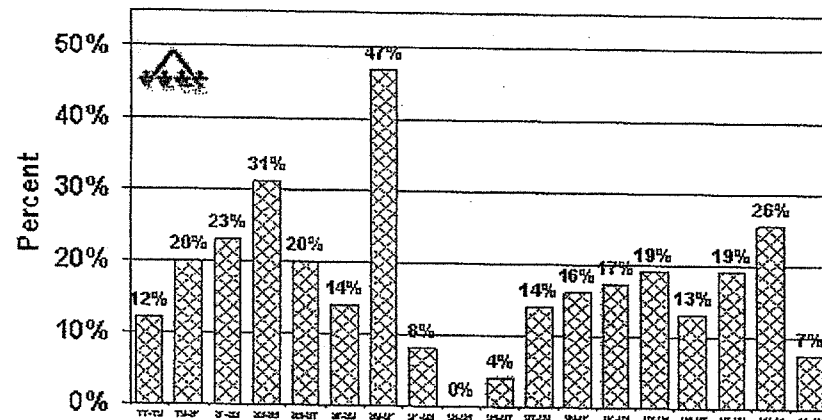
State	15,196
Counties	1,868
School Dist	1,083
Cities	1,636
Others	483
Legislators	130
Retirees	5,843
COBRA	351
	<b>26,590</b>

## NDPERS Health Contracts

January 2011

State Health Premium Percentage Increase  
From Previous Biennium

(See U.S. Map Designation)



## Premium

2009-2011 State Premium

2011-13 Premium

\$825.66

\$886.62

- \*Two year increase is 7.33% or about 3.7% per year
- \*This cost includes extending coverage to dependents and changing the lifetime max
- \*The cost assumes we maintain our grandfathered status



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October 25, 2010

Representative Bette Grande, Chair  
Legislative Employee Benefits Committee  
State Capital  
600 East Boulevard  
Bismarck, North Dakota 58505-0360

Dear Representative Grande:

**RE: REVIEW OF PROPOSED BILL 10036.0200 EXPANDING THE UNIFORM "GROUP INSURANCE PROGRAM" TO ALLOW PARTICIPATION BY PRIVATE SECTOR EMPLOYEES AND CERTAIN PRIVATE CITIZENS BETWEEN THE AGES OF 50 AND 65**

The following summarizes the proposed legislation as well as our assessment of the financial and technical impacts of the bill.

#### OVERVIEW OF PROPOSED BILL

As proposed, this bill would modify the State Century Code relating to the expansion of the uniform group insurance program as follows:

- Extend the benefits of the uniform group insurance program to allow permanent employees, between the ages of 50-65, of private sector employers to participate in the uniform group insurance program.
- Extend the benefits of the uniform group insurance program to allow temporary employees, between the ages of 50-65, of private sector employers to participate in the uniform group insurance program.
- Extend the benefits of the uniform group insurance program to allow certain private citizens, between the ages of 50-65, to participate in the uniform group insurance program.
- Allow licensed agents to sell the uniform group insurance and receive commissions for sales.
- Authorize NDPERS Board to add up to three full-time equivalent positions and appropriate up to \$300,000 to implement the proposed changes to the uniform group insurance program.
- Requires the Board apply for and receive exempt status under the Employee Retirement Income Security Act to allow expansion of the uniform group insurance program. Further the board must determine that the utilization of medical underwriting requirement and risk-adjusted premiums does not violate the Health Insurance Portability and Accountability Act (HIPAA) and enter a contract with an insurer to provide coverage.

#### EXPECTED FINANCIAL IMPACT

The bill expands the uniform group insurance program which is currently fully insured with Blue Cross Blue Shield of North Dakota ("BCBSND") for medical and hospital coverage. As outlined the uniform group may be divided into separate subgroups at the discretion of the board. If the separate subgroups would be allowed to have stand alone premiums based on their expected costs, the financial

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impact to the existing PERS plan would be limited to the additional administrative costs to oversee the plan, operate much like an insurance company, and any required changes to comply with the new legislation (e.g. loss of grandfathered status).

The board has the authority to have one subgroup for all private sector employee and private citizen group medical and hospital benefits coverage. Each of these distinct categories has unique underwriting and legal standards with regards to medical underwriting requirements and risk adjusted premiums. This complexity will make it very difficult to combine all three categories into one subgroup for premiums and find an insurer willing to cover the risk.

#### Permanent Employees of Private Sector Employers

Section 4 of the bill would allow private sector employers to extend the benefits of the uniform group insurance program to a subset of its permanent employees who are at least 50 but not reached the age of 65, with a minimum participation period of sixty months. The employer may determine the amount of the employer's monthly contribution and the board may apply medical underwriting requirements and risk-adjusted premiums to an employer seeking to obtain coverage. As discussed below, HIPAA essentially eliminates the ability for a group health plan to use any individual underwriting for evaluating individual prospective plan participants. However, group underwriting and risk adjusted premiums are permitted.

#### Temporary Employees of Private Sector Employers

Section 5 of the bill would allow private sector employers to extend the benefits of the uniform group insurance program to a temporary employee who is at least 50 but not reached the age of 65. Temporary employees are traditionally excluded from group coverage due to the potential adverse selection. The temporary employee shall be responsible for premiums and the board may deny coverage if the risk of the individual is undesirable for the program. HIPAA portability and non-discrimination standards do not apply to individual coverage. However, insurance carriers can individually underwrite all applicants for underlying risk characteristics and to evaluate individuals for acceptance into the program. This requirement would be labor intensive and require the uniform group insurance program to operate much like a traditional insurance company.

#### Participation by Private Citizens

Section 6 of the bill would allow an individual who is at least 50 but not reached the age of 65 to participate in the uniform group insurance program. The temporary employee shall be responsible for premiums and the board may deny coverage if the risk of the individual is undesirable for the program. Once again, HIPAA portability and non-discrimination standards do not apply to individual coverage. However, individual insurance carriers can individually underwrite all applicants for underlying risk characteristics and to evaluate for acceptance into the program. This requirement would be labor intensive and require the uniform group insurance program to operate much like a traditional insurance company.

The bill did appropriate the sum of \$300,000 and authorized three additional full-time positions to implement this act. It should be noted that administrative costs for individual plans are significantly higher than for group plans. Without a study to determine if the additional funding and staff allocations would be adequate to cover the added administrative services required due to the expansion

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of the program, it is difficult to determine if this funding level is adequate. An additional study is suggested to estimate the administrative requirements to PERS if this bill progresses.

For the biennium beginning July 1, 2011, PERS group health insurance plan intends to be a "Grandfathered Plan". Section 1251 of the Patient Protection and Affordable Care Act ("PPACA") exempts from certain of the PPACA's group health plan reforms any group health plan in existence on March 23, 2010 ("grandfathered plans"). Losing grandfather status means losing the benefit of the exemption and subjecting the plan to additional requirements, such as mandatory coverage for certain preventive services, nondiscrimination rules for fully-insured plans, and special claims procedure requirements.

Interim final regulations (dated June 17, 2010) state that if the principle purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

If PERS were to lose its grandfathered status the following additional mandates may apply (subject to final rules and regulations):

1. Meet the rules on deductible maximums and out of pocket maximums

We believe that this will have little or no impact since the maximums would most likely align with the levels associated with HSA qualified plans.

2. Required coverage of preventive services with no cost sharing (BCBS has indicated that complying with this could cost between \$10 – \$14 per contract per month)

As we understand it, the plan would need to cover additional amounts beyond the \$200 limit currently in place for this benefit. We believe that this will have a cost impact. We don't have the level of claim detail that BCBS has to develop such an estimate at this time. We would be happy to review the information and cost development by BCBS.

3. Internal and external appeal process

We believe that this should be of minimal cost impact, but would increase administrative costs for PERS.

4. No prior authorization for ob-gyn visits

Based on our experience with clients that allow ob-gyn visits without prior authorization, we suspect that this would have minimal cost impact.

5. Emergency care must have same payment in and out of network, authorization

Again, we suspect that the cost impact will be minimal given that it is for emergency care only.

6. Nondiscrimination in both insured and self-insured plans

Should not be an issue for the PERS plan.

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7. Coverage of treatment for those in clinical tests

We would expect that this would have some cost impact, but depends upon the future guidance on clinical trial qualification and coverage levels.

**ADDITIONAL FINANCIAL IMPACTS**

Adverse risk selection is an issue that must be considered when changing eligibility requirements. Adverse risk selection results when individuals or employer groups choose to participate in a plan based upon the knowledge that their individual or group claims will be high. These claims, especially for older and temporary workers, are generally higher than that of the average covered PERS population. The adverse selection is further fueled when individuals or groups can enter and depart from the plan.

The proposed bill provides for a number of safeguards against adverse risk selection:

- ☐ Minimum requirements as established by the PERS Board

The Board is permitted to establish minimum requirements to reduce the potential for adverse selection. These would likely follow established insurance practices such as experience rating, medical underwriting and the authority to deny coverage to private employers or individuals who exceed the risk profile of the existing PERS group.

- ☐ Minimum participation period of 60 months for private sector employer groups

Eligible employer groups would be expected to participate for a minimum of 60 months. However, if a group withdraws from the plan prior to completing the 60-month period, the employer would be liable for additional premium payments to cover expenses incurred by the program exceeding the premium income received. This safeguard will make the PERS plan financially "whole" for those employers attempting to leave in a "deficit" position. However, this safeguard does not protect the PERS plan from the risk of premature withdrawal by better-than-average cost employers. In other words, "healthy" employer groups could leave for lower premiums elsewhere.

- ☐ Health Insurance Portability and Accountability Act (HIPAA)

We do not feel this bill will have a significant impact upon the PERS plan if PERS can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional members will not increase the overall risk profile of the existing plan. The bill as written states that employers/employees/uninsured individuals may participate in the uniform group insurance program "subject to minimum requirements established by the board" and "apply medical underwriting requirements and risk-adjusted premiums.

However, in 1996, the federal government passed the Health Insurance Portability and Accountability Act (HIPAA). In particular, the nondiscrimination rules severely restricted the use of medical underwriting and risk-adjusted premiums for group healthcare coverage. Therefore, the State needs to understand whether HIPAA prohibits PERS from using medical

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underwriting and risk adjusted premiums when adding the new groups to the uniform group insurance program.

Due to the participation requirement of age 50 to 65 years of age for private employees and private citizens, the risk status of the proposed new participants in the uniform group program is likely to be significantly greater than the current program's risk status requiring higher premiums. Typically a 50-65 year old employee will incur claims expenses 50-70% higher than an average employee. The result will be an increase in the total risk of the program, which translates into an increase in average claims cost and potentially administrative fees. In other words, you can expect that premiums for this 50-65 year old group will be 50-70% higher than the existing NDPERS premiums and could require a significant increase in administrative fees.

#### TECHNICAL COMMENTS

The proposed bill includes a provision for the Board to operate the group insurance program as a governmental plan provided that the Board applies to the federal government and receives exempt status under the Employee Retirement Income Security Act (ERISA) for the uniform group insurance plan. Such a waiver would be required to allow a governmental plan to cover non-governmental entities and private citizens without losing its status as a governmental plan. ERISA section 3(32) and Internal Revenue Code section 414(d) define a governmental plan as one established by a governmental unit for its employees. If PERS is unable to get a waiver it is our interpretation that the provisions of this bill would not be effective.

Section 3 of the bill proposes providing "private sector employees and private citizens medical and hospital benefits coverage", however there is no mention of prescription drug, dental or vision coverage. This should be clarified with the bill's sponsor.

Section 10 of the bill requires the board to enter a contract with an insurer to provide coverage pursuant to this Act. This act requires the uniform group insurance program to basically act as an insurance carrier, with underwriting responsibilities for private employers, temporary employees and individuals. We believe it will be a challenge to find an insurer willing to provide the necessary coverage pursuant to this Act.

With the recent enactment of PPACA, State-based health exchanges will become available for individuals and small groups to purchase health insurance by 2014. It is unclear how a group product for groups and individuals between the ages of 50-65 would co-exist with the products that may be offered on the exchanges. This should be considered as this bill moves forward.

Finally, we have one last technical comment regarding state premium taxes. We would expect that premiums for private sector employees would not be exempt from Section 26.1-03-17 NDCC. This should be clarified within the bill.

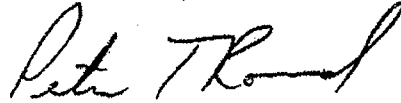
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Sincerely,



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Patrick L. Pechacek, CEBS  
Director



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Peter Roverud  
Senior Manager

CC: Sparb Collins, NDPERS

Introduced by

Senators Taylor, Mathern,

Representatives Kaldor, J. Kelsh

1 A BILL for an Act to create and enact a new subsection to section 54-52-04, five new sections to  
2 chapter 54-52.1, and a new subsection to section 54-52.1-01 of the North Dakota Century  
3 Code, relating to the expansion of the uniform group insurance program to allow participation by  
4 permanent and temporary employees of private sector employers and by certain other  
5 individuals who are otherwise without health insurance coverage; to amend and reenact section  
6 54-52.1-02 of the North Dakota Century Code, relating to subgroups under the uniform group  
7 insurance program; to provide an appropriation; to provide a continuing appropriation; and to  
8 provide an effective date.

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

10 **SECTION 1.** A new subsection to section 54-52-04 of the North Dakota Century Code is  
11 created and enacted as follows:

12 The board shall operate the uniform group insurance program as a governmental  
13 benefit plan. The board shall apply to the federal government to receive exempt status  
14 under the Employee Retirement Income Security Act to allow for the expansion of the  
15 uniform group insurance program under sections 3, 4, 5, 6, 7, and 8 of this Act.

16 **SECTION 2.** A new subsection to section 54-52.1-01 of the North Dakota Century Code is  
17 created and enacted as follows:

18 "Private sector employer" means a person, other than a state or local governmental  
19 agency, department, or board, that regularly pays to one or more employees wages or  
20 salary that is reportable to the internal revenue service for income tax purposes.

21 **SECTION 3. AMENDMENT.** Section 54-52.1-02 of the North Dakota Century Code is  
22 amended and reenacted as follows:



1       **54-52.1-02. Uniform group insurance program created - Formation into subgroups.**

2       In order to promote the economy and efficiency of employment in the state's service, to  
3       reduce personnel turnover, ~~and to offer an incentive to high-grade men and women individuals to~~  
4       enter and remain in the service of state employment, to provide access to health care for  
5       citizens of the state, to attract a highly qualified workforce to the state, and to promote the  
6       general health and well-being of the people of North Dakota, there is hereby created a uniform  
7       group insurance program. The uniform group must be composed of eligible and retired public  
8       employees, permanent employees of private sector employers, temporary employees of private  
9       sector employers, and certain private citizens and be formed to provide hospital benefits  
10      coverage, medical benefits coverage, and life insurance benefits coverage in the manner set  
11      forth in this chapter. The uniform group may be divided into the following subgroups at the  
12      discretion of the board:

- 13      1. Medical and hospital benefits coverage group consisting of active eligible employees  
14          and retired employees not eligible for medicare. In determining premiums for coverage  
15          under this subsection for retired employees not eligible for medicare, the rate for a  
16          non-medicare retiree single plan is one hundred fifty percent of the active member  
17          single plan rate, the rate for a non-medicare retiree family plan of two people is twice  
18          the non-medicare retiree single plan rate, and the rate for a non-medicare retiree  
19          family plan of three or more persons is two and one-half times the non-medicare  
20          retiree single plan rate.
- 21      2. Retired medicare-eligible employee group medical and hospital benefits coverage.
- 22      3. Active eligible employee life insurance benefits coverage.
- 23      4. Retired employee life insurance benefits coverage.
- 24      5. Terminated employee continuation group medical and hospital benefits coverage.
- 25      6. Terminated employee conversion group medical and hospital benefits coverage.
- 26      7. Dental benefits coverage.
- 27      8. Vision benefits coverage.
- 28      9. Long-term care benefits coverage.
- 29      10. Employee assistance benefits coverage.
- 30      11. Retired medicare-eligible employee group prescription drug coverage.

1     12. Private sector employee and private citizen group medical and hospital benefits  
2     coverage.

3     **SECTION 4.** A new section to chapter 54-52.1 of the North Dakota Century Code is created  
4     and enacted as follows:

5     **Permanent employees of private sector employers authorized to join uniform group**  
6     **insurance program - Employer contribution.**

7     A private sector employer in this state may extend the benefits of the uniform group  
8     insurance program under this chapter to its permanent employees, subject to minimum  
9     requirements established by the board and a minimum period of participation of sixty months. If  
10    a participating employer withdraws from participation in the uniform group insurance program  
11    before completing sixty months of participation, that employer shall make payment to the board  
12    in an amount equal to any expenses incurred in the uniform group insurance program which  
13    exceed income received on behalf of the employees as determined under rules adopted by the  
14    board. A participating employer may determine the amount of the employer's monthly  
15    contribution toward the total monthly premium amount for each employee required to be paid by  
16    each eligible participating employee. The board may apply medical underwriting requirements  
17    and risk-adjusted premiums to an employer seeking to obtain coverage under this section and  
18    to deny coverage if, in the board's sole discretion, the risk created by the employer is  
19    undesirable for the uniform group insurance program. Section 54-52.1-10 does not apply to this  
20    section. For purposes of this section, the board may define the term "permanent employee" by  
21    rule.

22    **SECTION 5.** A new section to chapter 54-52.1 of the North Dakota Century Code is created  
23    and enacted as follows:

24    **Participation by temporary employees of private sector employers.**

25    Subject to minimum requirements established by the board, a temporary employee of a  
26    private sector employer participating in the uniform group insurance program pursuant to  
27    section 4 of this Act may elect to participate in the uniform group insurance program by  
28    completing the necessary enrollment forms. The board may use risk-adjusted premiums for  
29    individual insurance contracts to implement this section. A temporary employee participating in  
30    the uniform group insurance program under this section shall pay monthly to the board the  
31    premiums in effect for the coverage being provided. The board may deny coverage if, in the

1 board's sole discretion, the risk created by the individual is undesirable for the uniform group  
2 insurance program. Section 54-52.1-10 does not apply to this section.

3 **SECTION 6.** A new section to chapter 54-52.1 of the North Dakota Century Code is created  
4 and enacted as follows:

5 **Participation by certain private citizens.**

6 Subject to minimum requirements established by the board, an individual who is at least  
7 age fifty but has not reached the age of sixty-five and is a resident of this state and who does  
8 not have health insurance coverage through a private insurer or through a public benefits plan  
9 provided by a governmental entity may elect to participate in the uniform group insurance  
10 program by completing the necessary enrollment forms. The board may use risk-adjusted  
11 premiums for individual insurance contracts to implement this section. For purposes of this  
12 section, "resident" means an individual who has actually lived within this state or maintained a  
13 home in this state for at least six months immediately preceding the date on which the individual  
14 applies to participate in the uniform group insurance plan. An individual may only be a resident  
15 of only one state at a time. An individual participating in the uniform group insurance program  
16 under this section shall pay monthly to the board the premiums in effect for the coverage being  
17 provided. The board may deny coverage if, in the board's sole discretion, the risk created by the  
18 individual is undesirable for the uniform group insurance program. Section 54-52.1-10 does not  
19 apply to the provisions of this section.

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

22 **Use of agents authorized.**

23 The board may use, and pay commissions to, insurance agents licensed under chapter  
24 26.1-26 to sell health insurance for coverage under sections 3, 4, 5, and 6 of this Act. The board  
25 may adopt rules to implement this section.

26 **SECTION 8.** A new section to chapter 54-52.1 of the North Dakota Century Code is created  
27 and enacted as follows:

28 **Acceptance of moneys - Continuing appropriation.**

29 The board may accept grants, donations, legacies, and devises for the purpose of  
30 implementing this chapter. All of these moneys, not otherwise appropriated, are appropriated to  
31 the board for the purpose of implementing this chapter.

1       **SECTION 9. APPROPRIATION.** There is appropriated out of any moneys received by the  
2 North Dakota public employees retirement system board in the form of insurance premiums,  
3 grants, donations, legacies, and devises, not otherwise appropriated, the sum of \$300,000, or  
4 so much of the sum as may be necessary, to the public employees retirement system for the  
5 purpose of expanding the uniform group insurance program, for the biennium beginning July 1,  
6 2011, and ending June 30, 2013. The board is authorized three additional full-time equivalent  
7 positions to implement this Act.

8       **SECTION 10. EFFECTIVE DATE.** Sections 2, 3, 4, 5, 6, and 7 of this Act become effective  
9 when the board receives notification from the federal government of the uniform group  
10 insurance program's exempt status under the Employee Retirement Income Security Act to  
11 allow for the expansion of the uniform group insurance program as required under section 1 of  
12 this Act, the board determines that utilizing medical underwriting requirements and risk-adjusted  
13 premiums does not violate the Health Insurance Portability and Accountability Act, and the  
14 board enters a contract with an insurer to provide coverage pursuant to this Act. The board shall  
15 notify the director of the legislative council of the effective date of this Act.