

HOUSE BILL NO. 1233

Introduced by

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

1 A BILL for an Act to provide for the public employees retirement system to contract for an audit
2 of pharmacy benefit managers providing contract services for the state uniform group health
3 insurance program; and to provide for a legislative management report.

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

5 **SECTION 1. AUDIT OF PHARMACY BENEFIT MANAGER - AUDIT REQUIREMENTS.**

6 During the 2021-22 interim, the public employees retirement system shall contract for an audit
7 of every pharmacy benefit manager providing contract services for the uniform group health
8 insurance program under chapter 54-52.1. The audit must be conducted in accordance with
9 chapter 19-03.6. The public employees retirement system may not select a vendor that is a
10 competitor of the pharmacy benefit manager, a pharmaceutical manufacturer representative, or
11 any retail, mail, or specialty drug pharmacy representative or vendor. The contract for the audit
12 must include the following provisions:

- 13 1. The public employees retirement system and the auditors each shall execute a
14 confidentiality agreement with the pharmacy benefit manager before commencement
15 of the audit.
- 16 2. The audit must be conducted during normal business hours and must not cause
17 undue interference to the pharmacy benefit manager's business activity.
- 18 3. The audit must include a review of financial terms and guarantees and performance
19 guarantees in which the public employees retirement system and the auditors shall
20 select one or more substantive areas to audit which may include:
 - 21 a. Fees and financial guarantees, including administrative fee and additional fee
22 requirements, average annual guarantees, specialty drug minimum guaranteed
23 discounts, and financial benefit guarantees;

- 1 b. Performance guarantees if the public employees retirement system or plan
- 2 beneficiaries believe performance guarantees are not being satisfied;
- 3 c. Passthrough pricing requirements for covered item ingredient costs and for
- 4 dispensing fees;
- 5 d. Passthrough pricing requirements for financial benefits;
- 6 e. Pharmacy benefit manager requirements of any program implemented by the
- 7 public employees retirement system; and
- 8 f. Eligibility.
- 9 4. The audit must ensure all benefit plan designs and each program and program
- 10 protocol have been loaded accurately into the pharmacy benefit manager's computer
- 11 systems for the public employees retirement system. If there are material subsequent
- 12 changes by the pharmacy benefit manager to the public employees retirement system
- 13 benefit setup, the public employees retirement system or the auditors may conduct an
- 14 additional setup review on reasonable notice after the pharmacy benefit manager
- 15 makes changes to verify the subsequent changes were properly set up by the
- 16 pharmacy benefit manager.
- 17 5. The audit must include a review of the pharmacy benefit manager's enrollment,
- 18 eligibility, and invoicing for eligible plan beneficiaries. The public employees retirement
- 19 system shall execute the necessary attestation indicating its compliance with the
- 20 federal Health Insurance Portability and Accountability Act of 1996, enabling the public
- 21 employees retirement system or the auditors to conduct an audit of the pharmacy
- 22 benefit manager's enrollment, eligibility, and invoicing, subject to the federal Health
- 23 Insurance Portability and Accountability Act of 1996 privacy requirements for providing
- 24 minimum necessary data.
- 25 6. The audit must include a review of the pharmacy benefit manager's fraud, waste, and
- 26 abuse program to allow the public employees retirement system and the auditors to
- 27 verify the pharmacy benefit manager has an adequate program for the prevention,
- 28 detection, and correction of pharmaceutical fraud, waste, and abuse.
- 29 7. The public employees retirement system may not compensate the auditors based on
- 30 financial findings or recoveries resulting from an audit. All audit compensation must be
- 31 on a flat fee, or hourly, basis.

1 **SECTION 2. AUDIT OF PHARMACY BENEFIT MANAGER - AVAILABILITY OF**

2 **INFORMATION.** As provided for in section 1 of this Act, within thirty days of requesting the
3 information, the pharmacy benefit manager shall produce and grant access to the public
4 employees retirement system and the auditors to all documents and data needed to audit the
5 pharmacy benefit manager's performance with the state, including:

6 1. Claims data and transactions for the audit period, including the pharmacy benefit
7 manager's invoiced costs for each item dispensed from a retail pharmacy, mail order
8 pharmacy, or a specialty drug pharmacy, and the pharmacy benefit manager's
9 reimbursement costs to each pharmacy for each item.

10 2. Retail pharmacy, mail order pharmacy, and specialty pharmacy dispensed claim
11 transactions. For all specialty pharmacy dispensed claim transactions selected, the
12 public employees retirement system and the auditors must be able to verify the
13 pharmacy benefit manager's payment to the vendor through examination of the
14 relevant and unredacted American national standards institute 835 health care claims
15 payment and advice records and the pharmacy benefit manager's bank statements.

16 3. Other data needed by the public employees retirement and system and the auditors to
17 verify all programs identified as part of the audit have been properly implemented by
18 the pharmacy benefit manager. The pharmacy benefit manager also shall provide all
19 data and documents necessary to enable the public employees retirement system and
20 the auditors to calculate any compensation the pharmacy benefit manager shall pay to
21 the public employees retirement system if a program was not properly implemented.

22 4. All information necessary for the public employees retirement system and the auditors
23 to audit passthrough pricing requirements related to financial benefits. The information
24 provided must be sufficient for the auditors to assess whether the pharmacy benefit
25 manager has:

26 a. Passed through the appropriate pro rata share of financial benefits;
27 b. Accurately performed an annual reconciliation of financial benefits; and
28 c. Kept a detailed accounting of each component of financial benefits, including a
29 breakdown by manufacturer and the type of financial benefit, such as
30 pharmaceutical manufacture rebates, health management fees, data sales fees,
31 and other information requested by the auditors.

1 5. Documents transmitted to third parties. The pharmacy benefit manager shall transmit
2 all electronic and other data requested by the public employees retirement system or
3 the auditors. To enable the public employees retirement system and the auditors to
4 verify public employees retirement system claims data is not being sold to third
5 parties, the pharmacy benefit manager shall provide relevant documents transmitted
6 to specific third parties and copies of pharmacy benefit manager and pharmaceutical
7 manufacturer contracts, pharmacy benefit manager invoices to pharmaceutical
8 manufacturers, and pharmaceutical manufacturers' payments, credits, discounts, or
9 other financial benefits made to the pharmacy benefit manager, including remittance
10 statements. All documents must be produced by the pharmacy benefit manager at the
11 pharmacy benefit manager's offices. The public employees retirement system and the
12 auditors may make notes of the contents of all referenced documents but may not
13 make copies of these documents.

14 6. The pharmacy benefit manager's roster of all plan beneficiaries and pertinent
15 information, including plan beneficiary number, date of enrollment, and date of
16 disenrollment. If any discrepancies between the pharmacy benefit manager and public
17 employees retirement system enrollment data are discovered, the pharmacy benefit
18 manager shall produce relevant claims data for those plan beneficiaries for whom
19 there is a discrepancy, as permitted under the federal Health Insurance Portability and
20 Accountability Act of 1996.

21 7. Data and documents provided by the pharmacy benefit manager to the public
22 employees retirement system or the auditors may not be redacted or altered by the
23 pharmacy benefit manager.

24 **SECTION 3. PHARMACY BENEFIT MANAGER AUDIT - DISPUTES AND LIABILITY.**

25 As provided for in section 1 of this Act, the pharmacy benefit manager shall comply with the
26 following dispute and liability provisions related to the audit:

27 1. If the public employees retirement system or the auditors discover the pharmacy
28 benefit manager improperly inputted public employees retirement system benefit plan
29 designs, the pharmacy benefit manager is liable for any costs resulting from the
30 pharmacy benefit manager's error.

- 1 2. The pharmacy benefit manager shall take appropriate action if the audit reveals fraud
2 or overpayment involving a participating pharmacy, including recoupment of
3 overpayments from pharmacies for services and products provided to plan
4 beneficiaries. If overpayments are detected as part of the audit, the overpayments
5 must be adjusted retroactively in the relevant electronic claims data. If the pharmacy
6 benefit manager recovers any amounts from a pharmacy related to the public
7 employees retirement system claims as a result of the audit, the pharmacy benefit
8 manager shall submit all recoveries to the public employees retirement system.
- 9 3. If the auditors conclude the pharmacy benefit manager violated its obligations to the
10 public employees retirement system and the pharmacy benefit manager disputes the
11 audit findings, the pharmacy benefit manager shall provide the basis of the dispute to
12 the public employees retirement system and the auditors, with all supporting
13 documentation, within thirty days of the pharmacy benefit manager's receipt of the
14 disputed audit findings. The pharmacy benefit manager shall provide sufficient
15 documentation to permit adequate review of the disputed issues, and has the burden
16 of demonstrating the auditor's findings are incorrect. To the extent the pharmacy
17 benefit manager fails to provide documentation substantiating any part of its position,
18 or fails to meet its burden of proof, the pharmacy benefit manager waives its right to
19 further dispute that matter. After receiving the pharmacy benefit manager's
20 documentation, the public employees retirement system and the auditors shall review
21 the documentation and advise the pharmacy benefit manager whether the auditors
22 have changed the audit findings.

23 **SECTION 4. PHARMACY BENEFIT MANAGER AUDIT - LEGISLATIVE MANAGEMENT**

24 **REPORT.** The public employees retirement system shall report the findings of the audit
25 provided for in section 1 of this Act to the legislative management by July 1, 2022.