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Sixty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1539

Introduced by

Representatives Weisz, Lefor, M. Ruby, Vigesaa

(Approved by the Delayed Bills Committee)

A BILL for an Act to amend and reenact sections 54-35-02.4 and 54-52.1-04.16 of the North Dakota Century Code, relating to duties of the employee benefits programs committee and the public employees prescription drug coverage performance audit; to provide for a prescription drug coverage performance audit; and to provide for a legislative management report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.4 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.4. Employee benefits programs committee - Powers and duties.

1. ~~The~~During each interim, the employee benefits programs committee shall consider and report on ~~those~~the legislative ~~measures and~~ proposals over which ~~it~~the committee takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative proposal affects a program. The committee shall make a thorough review of ~~any measure or~~each proposal ~~which it~~the committee takes under its jurisdiction, including an actuarial ~~review~~report. The committee shall take jurisdiction over ~~any measure or~~a proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee ~~must~~shall include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report ~~its~~the findings and recommendations of the committee, along with any necessary legislation, to the legislative management and to the legislative assembly.

2. To carry out ~~its~~the responsibilities of the committee, the committee, or ~~its~~the designee of the committee, may:
   a. Enter contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. Each retirement, insurance, or retiree insurance program shall pay, from ~~its~~the program's retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of ~~any~~an actuarial report required ~~by the committee~~under this section which relates to that program.
   b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time may request.
   c. Establish rules for ~~its~~the operation of the committee, including the submission and review of proposals and the establishing of standards for actuarial ~~review~~reports.
3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and ~~may~~ also may study measures and proposals referred to ~~it~~the committee by the legislative assembly or the legislative management.
4. A copy of the committee's report concerning ~~any~~a legislative measure ~~shall~~, if that measure is introduced for consideration by a legislative assembly, must be appended to the copy of that measure ~~which is referred to a standing committee~~.
5. ~~A~~If a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program ~~may not be~~is introduced in either house ~~unless it is accompanied by~~without a report from the committee, the chairman and vice chairman of the employee benefits programs committee shall request an actuarial report from the program affected and shall provide the report to the standing committee to which the measure is referred. ~~A majority of the members of the committee, acting through the~~During the legislative session, the employee benefits programs committee chairman~~, has~~ and vice chairman, working together, have sole authority to determine whether ~~any~~a legislative measure or amendment affects a program under this subsection and subsection 6.

6. ~~Any~~During a legislative session, if an amendment is made ~~during a legislative session~~ to a legislative measure ~~affecting~~which affects a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program ~~may not be considered by a standing committee unless it is accompanied by a report from,~~ the employee benefits programs committee chairman and vice chairman may request from the affected program an actuarial report on the amendment and shall provide the report to the standing committee to which the bill is referred.
7. ~~Any legislation~~Legislation enacted in contravention of this section is invalid ~~and of no force and effect~~, and any benefits provided under ~~such~~the legislation must be reduced to the level current ~~prior to~~before enactment of the legislation.

SECTION 2. 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.

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~~for the term of the contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services. For each contract for prescription drug coverage, the board shall conduct a performance audit under this section. The contract must provide:
   a. The board must have full access to data regarding:
      (1) The total dollars paid to the pharmacy benefits manager by the carrier and from all other sources under the contract with the carrier and the board;
      (2) The total amount of dollars paid to the pharmacy benefits manager by the carrier which were not subsequently paid to a licensed pharmacy in the state; and
      (3) Payments made to all pharmacy providers.
   b. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, administration 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.

c. The board must have full access to data regarding the average reimbursement, by drug ingredient cost, dispensing fee, administration fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state.

d. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments, effective rates, or other price concessions imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated.

e. The board must have full access to data regarding any direct and indirect fees, charges, or recoupment, or any kind of assessments, effective rates, or other price concessions 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, from all sources, must be disclosed to the board.

g. The board must have full access to data to determine whether spread pricing occurs, and if spread pricing occurs, full access to data regarding the spread pricing.

h. The board must have full access to the contract and any subcontract by the carrier and the pharmacy benefits manager or other entity regarding the plan members.

i. The board must have access to all documents necessary for the board to conduct the performance audit under this section.

j. That failure to comply with the terms of the contract relating to access to data is a breach of the contract with the board. Upon a finding of breach of contract under this subdivision, the board is entitled to liquidated damages in the amount of twenty thousand dollars per violation.

2. The board shall use an independent auditor who has no conflict of interest with the carrier, pharmacy benefits manager, or board. Data and documents provided by the pharmacy benefits manager to the board may not be redacted or altered by the

pharmacy benefits manager. The board's auditor, the insurance department, and the ~~employee benefits programs committee~~legislative management may access any information the board may access under this section. All information accessed by the board, board's auditor, insurance department, or ~~employee benefits programs committee~~legislative management which is a trade secret is a confidential record. The pharmacy benefits manager shall provide all data and documents necessary to enable the board to calculate any compensation the pharmacy benefits manager pays to the public employees retirement system if a program or contract guarantee was not properly implemented. The pharmacy benefits manager shall disclose to the board all retained manufacturer administrative fees. This subsection does not limit the information required to be disclosed to the board under subsection 1.

3. Except for Medicare part D, 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~~legislative management have access to.

SECTION 3. PUBLIC EMPLOYEES RETIREMENT SYSTEM - STATE AUDITOR - PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT - REPORT TO LEGISLATIVE MANAGEMENT. In lieu of the requirement under section 54-52.1-04.16 that the public employees retirement system contract to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan for the 2021-23 contract, the state auditor shall contract in accordance with chapter 54-10 to conduct a prescription drug coverage performance audit of the main public employees retirement system health benefit plan during the 2023-24 interim, in the same manner as provided for under section 54-52.1-04.16, for contract years 2021-23. The retirement board, carrier, and pharmacy benefits manager shall provide the state auditor with access to information in the same manner as provided for a performance audit under section 54-52.1-06. The state auditor may pursue the liquidated damages for failure to provide the auditor access to data for the performance audit

conducted under this section. Performance audit fees, not to exceed $375,000, for performance audits performed under this section must be on a flat fee or hourly basis and be paid by the public employees retirement system board. The state auditor shall provide reports to the legislative management regarding contracts to conduct the prescription drug coverage performance audits, performance audit results, and audit reports issued.