

Section 71-01-01-01 is amended as follows:

**71-01-01-01. Organization of public employees retirement board.**

1. **History.** The 1965 legislative assembly created the public employees retirement system by legislation codified as North Dakota Century Code chapter 54-52. The starting date of the program was July 1, 1966. The board acts as the administrating body to manage the public employees retirement system, the judges retirement system, the highway patrol retirement system, the national guard security officers and firefighters system, the uniform group insurance program, the deferred compensation plan, the prefunded retiree health program, and a pretax benefit program for public employees.
2. **Board membership.** The board consists of ~~seven~~nine members. ~~One~~Two are members of the legislative assembly appointed by the chairman of legislative management; one member, the chairman, is appointed by the governor; one member is appointed by the attorney general from the attorney general's staff; one member is the state health officer or state health officer's designee; three members are elected by the active membership of the system; and one member is elected by the retired public employees.
3. **Executive director.** The executive director is appointed by the board and is responsible for the administration of the day-to-day activities of the retirement systems, the prefunded retiree health program, the uniform group insurance program, the deferred compensation program, and the pretax benefit program for public employees.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Executive Director  
Box 1657  
Bismarck, North Dakota 58502

**History:** Amended effective November 1, 1981; November 1, 1985; April 1, 1988; September 1, 1989; January 1, 1992; May 1, 2004, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02.1, 54-52-04

**Law Implemented:** NDCC 28-32-02.1, 54-52-03

Section 71-01-03-04 is amended as follows:

**71-01-03-04. Treatment, payment, or operations.** The board of the public employees retirement system has determined that:

1. Information related to enrollment, participation, benefits, or contributions may be shared with participating employers or public employees retirement system contractors for purposes of maintaining a member's participation and benefits in the public employees retirement system programs. Such sharing of information is limited to that information that is necessary to assure that a member's participation and benefits are properly handled. All such information remains confidential whether in the possession of the public employees retirement system, its participating employers, or its contractors.
2. Information relating to eligibility for retirement benefits may be shared with the social security administration and such other organizations to ensure that the member is still alive and continues to be eligible.
3. Information necessary for the administration and operation of the program may be shared with the public employees retirement system attorney and consultants. To the extent such information is shared it remains confidential.
4. Information relating to the death benefits and beneficiary designations of a deceased member may be shared with an ex-spouse if listed as a beneficiary on a designation of beneficiary form, or any other person listed as a beneficiary on a designation of beneficiary form, subsequent to the death of the member, but in advance of a final determination regarding the applicable designated beneficiaries, only to the extent necessary to accurately identify the appropriate designated beneficiaries.

All other requests for information under this section must first be submitted to the executive director and then reviewed by the public employees retirement system board.

**History:** Effective May 1, 2004, amended effective \_\_\_\_\_.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-26

Section 71-02-01-01 is amended as follows:

**71-02-01-01. Definitions.** As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
  - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
  - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
  - c. The member's mandatory contributions made after July 1, 1977.
  - d. The member's vested employer contributions made after January 1, 2000, pursuant to North Dakota Century Code section 54-52-11.1.
  - e. The interest on the sums determined under subdivisions a, b, c, and d, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
  - f. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board in a way which precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.
4. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
5. "Bonus" means cash compensation for services performed in addition to base salary excluding commission and shift differentials. Bonus does not include lump sum payments of sick leave provided under North Dakota Century Code section 54-06-14 or lump sum payments of annual leave or vacation pay.

6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the executive director, and returns to employment shall be regarded as continuously employed for the period.
8. "Contribution" means the payment into the fund as a percentage of the salary of a member.
9. "Correctional officer" means a person who has completed a correctional officer course approved or certified by the North Dakota department of corrections and rehabilitation and is employed by a correctional facility as defined in North Dakota Century Code chapter 12-44.1.
10. "County judge" means a judge who was elected pursuant to North Dakota Century Code section 27-07.1-01 or an individual holding the position of county judge, county justice, or judge of county court prior to the general election in 1982, who meets all the eligibility requirements established under North Dakota Century Code chapter 54-52.
11. "Interruption of employment" is when an individual is inducted (enlists or is ordered or called to active duty into the armed forces of the United States) and leaves an employment position with a state agency or political subdivision, other than a temporary position. The individual must have left employment to enter active duty and must make application in accordance with the Uniformed Services Employment and Reemployment Rights Act.
12. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years, or indefinitely if the leave of absence is due to interruption of employment.
13. "Medical consultant" means a person or committee appointed by the board of the North Dakota public employees retirement system to evaluate medical information submitted in relation to disability applications, recertifications, and rehabilitation programs or other such duties as assigned by the board.
14. "Normal retirement age", except for members of the national guard and law enforcement, means age sixty-five unless otherwise provided. For

members of the national guard and law enforcement, normal retirement age means age fifty-five, unless otherwise provided.

15. "Office" means the administrative office of the public employees retirement system.
16. "Participating employer" means an employer who contributes to the North Dakota public employees retirement system. For confidentiality purposes, "participating employer" means the person or group of persons with the ultimate authority over personnel decisions within the agency or political subdivision with which the member is employed or the person's or group's official designee.
17. "Pay status" means a member is receiving a retirement allowance from the fund.
18. "Permanent and total disability" for members of the main retirement system and the national guard/law enforcement retirement plan means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. For members of the judge's retirement plan, "permanent and total disability" is determined pursuant to subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code.
19. "Plan administrator" means the executive director of the North Dakota public employees retirement system or such other person or committee as may be appointed by the board of the North Dakota public employees retirement system from time to time.
20. "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
21. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
22. "Regularly funded" means a legislatively authorized full-time equivalent (FTE) position for state agencies. For all governmental units other than state agencies, regularly funded means a similar designation by the unit's governing board which is created through the regular budgeting process and receives traditional employee benefits such as sick leave and annual leave.

23. "Retiree" means an individual receiving a monthly retirement allowance pursuant to chapter 54-52.
24. "Retirement allowance" means a reoccurring, periodic benefit from an eligible employer-sponsored retirement plan as approved by the board.
25. "Service credit" means increments of time to be used in the calculation of retirement benefits. Service credit may be earned as stated in section 71-02-03-01 or may be purchased or repurchased according to section 71-02-03-02.1.
26. "Substantial gainful activity" is to be based upon the totality of the circumstances including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.
27. "Termination of employment" for the purposes of determination for eligibility for benefit payments means a severance of employment by not being on the payroll of a covered employer for a minimum of one month. Approved leave of absence or if reemployed by any covered employer prior to receiving a lump sum distribution of the member's account balance does not constitute termination of employment.
28. "Termination of participation" means termination of eligibility to participate in the retirement plan.

**History:** Amended effective September 1, 1982; November 1, 1990; September 1, 1991; January 1, 1992; September 1, 1992; June 1, 1993; July 1, 1994; June 1, 1996; July 1, 2000; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010; April 1, 2014,

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52

Section 71-02-02-01 is amended as follows:

**71-02-02-01. Membership - General rule.** ~~Each~~When an eligible employee shall ~~become~~becomes a member of the public employees retirement system ~~upon filing a membership form with the office, and the beginning of contributions to the fund.~~ In addition, the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six

months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.

2. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.
6. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

**History:** Amended effective September 1, 1982; November 1, 1990; September 1, 1992; June 1, 1996; July 1, 1998; May 1, 2004; July 1, 2006, \_\_\_\_\_.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-01(3), 54-52-01, 54-52-02.9, 54-52-05

Section 71-02-04-07 is amended as follows:

**71-02-04-07. Amount of early retirement benefit.**

1. Except for ~~members of the~~ national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit for members first enrolled prior to December 31, 2015, shall be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than the age at which the member would be at the member's normal retirement date on the date of the member's early retirement benefit effective date.

2. For ~~members of the~~ a national guard security officer or firefighter or a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, the early retirement benefit must be an amount actuarially reduced from the single life retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age fifty-five on the date of the member's early retirement benefit effective date.

**History:** Amended effective September 1, 1982; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006; July 1, 2010, \_\_\_\_\_.

**General Authority:** NDCC 54-52-04, 54-52-17

**Law Implemented:** NDCC 54-52-17

Section 71-02-04-09.1 is amended as follows:

**71-02-04-09.1. Dual membership limitations.** The following limitations apply when a member elects an option under subsection 1 of section 71-02-04-09.

1. Eligible service credit may be used for vesting purposes and determining when the dual member may begin drawing normal retirement benefits. A member may begin drawing retirement benefits from one fund and use the same years, and any additional years, for reaching retirement from the alternate fund if the service credit is earned at different times.
2. If a dual member elects to receive retirement benefits as provided in subsection 1 of section 71-02-04-09, the final average salary, service credit, and member's age used to calculate the benefit that is applicable at the time retirement benefits begin may not be adjusted after the benefit effective date.
3. The salary used in calculating the retirement benefit must be certified~~provided~~ in writing by the alternate retirement system. Months not employed are excluded for the purpose of computing the final average salary. If a dual member works less than thirty-six months at retirement, the final average salary is the average salary for total months of employment.

**History:** Effective June 1, 1996; amended effective May 1, 2004; April 1, 2012,

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**General Authority:** NDCC 54-52-04, 54-52-17, 54-52-17.2

**Law Implemented:** NDCC 54-52-17, 54-52-17.2



Section 71-02-05-06 is amended as follows:

**71-02-05-06. Determination of disability - Procedures.**

**1. Application.**

- a. If the member is unable or unwilling to file a public employees retirement system application for disability retirement, the member's legal representative may file the member's disability application.
- b. For the main system and the national guard and law enforcement system, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience. For the judges' retirement plan, the application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to mentally or physically fulfill the duties and responsibilities of being a judge. A judge who is determined to be disabled pursuant to subdivision a of subsection 3 of North Dakota Century Code section 27-23-03 shall file an application documenting this determination and the effective date of the disability.
- c. The application must be filed with the public employees retirement system and may not be filed earlier than one hundred twenty days before the expected termination date.

**2. Medical consultant.**

- a. The board may retain a medical consultant to evaluate and make recommendations on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant is responsible to determine eligibility for disability benefits for applicants not approved for social security disability benefits or for judges not approved pursuant to subsection 3 of North Dakota Century Code section 27-23-03 and shall advise the executive director of the decision in writing. Applicants who become eligible for disability benefits under the Social Security Act and who meet the requirements of subdivision e~~h~~ of subsection 3 of

North Dakota Century Code section 54-52-17 are eligible for benefits under subdivision e of subsection 4 of North Dakota Century Code section 54-52-17 without submitting further medical information to the medical adviser, but are subject to recertification requirements specified in this chapter. The social security disability award must provide proof that the member's disability was determined during the member's period of eligible employment. In determining eligibility for judges not approved pursuant to the above, the medical director shall work with a review committee composed of one supreme court judge and a district court judge to review the proposed application. In order for the application to be approved, it must have the concurrence of the medical director and at least one judge. The executive director shall appoint two judges to serve on the review committee.

3. **Medical examination.**

- a. The applicant for disability retirement shall provide the medical examination reports as requested by the medical consultant.
- b. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports necessary for initial determination of eligibility for benefits.
- c.        If determined to be eligible for disability benefits, the member must be reimbursed ~~up to four hundred dollars~~ for the cost of medical examinations specifically requested by the medical adviser and the executive director.

4. **Appeal.**

- a. If the applicant has terminated employment, the public employees retirement system shall notify the applicant in writing of the decision. If the applicant is determined not to be eligible for disability benefits, the public employees retirement system shall advise the applicant of the appeal procedure. If the applicant is determined eligible for disability benefits, benefits must be paid pursuant to subsection 5.
- b. If the applicant has not terminated employment, the applicant must be provided with a preliminary notification of the decision in writing. The preliminary notification remains in effect for a period not to exceed two hundred seventy days. If an applicant does not

terminate employment within two hundred seventy days of the date of termination provided on the disability application, the application must be considered to be vacated but the applicant may reapply as provided in subsection 1.

- c. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within thirty days of the date that the public employees retirement system mailed the decision.
  - d. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend and be represented by legal counsel. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the plan administrator's conclusions and recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.
  - e. If the initial board decision is adverse to the applicant after exhausting the administrative procedure under subdivisions a and b, the applicant may file a request for a formal hearing to be conducted under North Dakota Century Code chapter 28-32. The request for a formal hearing must be filed within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days prior to the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may under North Dakota Century Code section 28-32-15 appeal the final decision resulting from this procedure to the district court.
5. **Payment of annuity.** If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment minus any early retirement benefits that have been paid.

6. **Redetermination and recertification.**

- a. A disabled annuitant's eligibility must be recertified eighteen months after the date the first check is issued and thereafter as specified by the medical consultant. The executive director may waive the necessity for a recertification, based on the recommendation of the medical consultant.
- b. The public employees retirement system will send a recertification form and request for a statement of annual earnings by certified mail with return receipt to the disabled annuitant to be completed and sent back to the office. If completed recertification has not been received by the recertification date set in the recertification request, benefits will be suspended effective the first of the month following that date. Benefits will be reinstated the first of the month following recertification by the medical consultant. The regular accrued disability benefits will commence with a lump sum equal to the amount of missed payments, without interest, retroactive to the first day of the month benefits were suspended, unless otherwise approved by the North Dakota public employees retirement system board.
- c. The medical consultant may require the disabled annuitant to be reexamined by a doctor. The submission of medical reports by the annuitant, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement. Upon recertification, the disabled annuitant must be reimbursed up to four hundred dollars for the cost of the required reexamination if deemed necessary by the medical consultant and the executive director.
- d. The medical consultant will make the recertification decision. The executive director may require additional recertifications, if the facts warrant this action. The decision may be appealed to the board within ninety days of receiving the written recertification decision.
- e. Benefit payments must be suspended immediately upon notice received from the medical consultant that the annuitant does not meet recertification requirements. The executive director shall notify the annuitant of the suspension of benefits by certified mail and shall reinstate benefits back to date of suspension if the annuitant is subsequently found to meet recertification requirements.
- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the

executive director may do all things necessary to recover the erroneously paid benefits.

**History:** Effective January 1, 1992; amended effective July 1, 1994; June 1, 1996; April 1, 2002; May 1, 2004; July 1, 2006, \_\_\_\_\_.

**General Authority:** NDCC 54-52-04, 54-52-17

**Law Implemented:** NDCC 54-52-17, 54-52-26

Section 71-02-05-07 is amended as follows:

**71-02-05-07. Optional benefits.** For the main system and national guard-~~er~~/ law enforcement retirement plans, an individual deemed eligible for a disability benefit may elect, as provided in this section, to receive one of the following optional benefits in lieu of the regular disability benefit.

1. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, provided the beneficiary is still living and has supplied a marriage certificate and the member's death certificate. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced disability retirement benefit as long as the member remains eligible for benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17 and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Payments of benefits to a member's surviving spouse must be made on the first day of each month commencing on the first day of the month following the member's death, providing the beneficiary has supplied a marriage certificate and death

certificate and is still living. Benefits terminate in the month in which the death of the beneficiary occurs. In the event the designated beneficiary predeceases the member or, in the event of divorce, the option must be canceled and the member's benefit must be returned to the single life amount. Payment of the single life amount must commence on the first day of the month following the spouse's death providing written notification of death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

3. **Twenty-year or ten-year certain option.** A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a twenty-year or ten-year certain feature, as designated by the member.

**History:** Effective January 1, 1992; amended effective July 1, 1994; May 1, 2004; July 1, 2006; April 1, 2008; April 1, 2012, \_\_\_\_\_.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-17, 54-52-06.4

Section 71-02-06-07 is amended as follows:

**71-02-06-07. Employer contribution - National guard/law enforcement.**

As part of its annual actuarial evaluation, the board shall determine the amount required to support the level of benefits for national guard/law enforcement specified in North Dakota Century Code section 54-52-17. The board shall set the employer's contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.

**History:** Effective July 1, 1994; amended effective May 1, 2004, \_\_\_\_\_.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 54-52-06.254-52-06.4

Section 71-02-06-12 is created as follows:

**71-02-06-12. Employee paid contributions- Repayment options.** If the office determines that any required employee paid contributions have not been made, the cost of any required employee paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 54-52-04

**Law Implemented:** NDCC 39-03.1-09, 54-52-02.9, 54-52-05, 54-52-06.1, 54-52-06.3, 54-52-06.4

Section 71-03-03-01 is amended as follows:

**71-03-03-01. Enrollment.** An eligible employee is entitled to coverage the first of the month following the month of employment, or the month following meeting eligibility criteria, if the employee submits an application for coverage within the first thirty-one days of employment or eligibility for one of the following special enrollment periods:

1. Loss of coverage under any other health, dental, vision, or prescription drug insurance plan.
2. Marriage. An employee who previously waived coverage must enroll for coverage at the time the employee's spouse is enrolled.
3. Addition of a dependent as a result of birth, adoption, placement for adoption, receiving legal guardianship, or receiving a court order to provide health coverage. An employee who previously waived coverage must enroll for coverage at the same time that the employee's eligible dependent is enrolled.

**History:** Effective October 1, 1986; amended effective July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2010; April 1, 2012, \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03

Section 71-03-03-02 is amended as follows:

**71-03-03-02. Late enrollment.** An eligible employee failing to submit an application for coverage within the first thirty-one days of employment or eligibility for a special enrollment period may enroll during the annual open enrollment ~~and may be subject to a six-month waiting period for preexisting conditions~~. Upon a showing of good cause, the executive director may waive the thirty-one day application requirement.

**History:** Effective October 1, 1986; amended effective June 1, 1996; July 1, 1998; May 1, 2004, \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-03, 42 USC 300gg-3

Section 71-03-03-05 is amended as follows:

**71-03-03-05. Special enrollment for certain qualifying events.** An eligible employee, retiree, or surviving spouse who elects to take a periodic distribution from the defined contribution retirement plan or a monthly retirement benefit from the North Dakota public employees retirement system, North Dakota highway patrolmen's retirement system, the retirement system established by job service North Dakota, the teachers' fund for retirement, or teachers' insurance and annuity association of America - college retirement equities fund, or retirees who have accepted a retirement allowance from a participating political subdivision's retirement plan and provide verification of distribution are eligible for coverage with the health, dental, vision, or prescription drug insurance program.

1. The employee, retiree, or surviving spouse must submit application for coverage within thirty-one days from one of the following qualifying events:
  - a. The month in which the eligible employee or retiree turns age sixty-five or becomes eligible for medicare.
  - b. The month in which the eligible employee's or retiree's spouse turns age sixty-five or becomes eligible for medicare.
  - c. The month in which the eligible employee terminates employment.
  - d. The month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems outlined above.
  - e. The month in which an eligible employee or retiree who is covered through a spouse's plan becomes ineligible for the spouse's plan due to divorce, death, loss of employment, reduction in hours or other events which may cause loss of coverage as determined by the board.
  - f. The month in which the eligible employee or retiree is no longer eligible for employer-sponsored insurance, including coverage provided under the Consolidated Omnibus Budget Reconciliation Act.
2. Coverage will become effective on the first day of the month following the month in which the qualifying event occurred. If an application is not submitted within thirty-one days of a qualifying event, the eligible individual must be considered to have waived coverage and may not be enrolled unless the individual meets the criteria of another qualifying event. Upon a



showing of good cause, the executive director may waive the thirty-one day application requirement.

3. Other individuals eligible for the health, dental, vision, or prescription drug insurance plan include a surviving spouse who is not receiving a qualified monthly retirement benefit from one of the eligible retirement systems outlined above, but who was a covered dependent on the eligible retiree's health, dental, vision, or prescription drug insurance plan at the time of the eligible retiree's death, if there is no lapse in coverage.
4. Individuals not eligible for the health, dental, vision, or prescription drug insurance plan include:
  - a. A former employee who received a refund of the employee's retirement account, including individuals in the defined contribution plan who take a cash withdrawal of the employee's account, roll their account into another qualified plan, or use the moneys in their account to purchase an annuity.
  - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Budget Reconciliation Act).
  - c. A deferred retiree or surviving spouse between the time in which the retiree or surviving spouse's eligibility for the Consolidated Omnibus Budget Reconciliation Act (if eligible) ends and the month in which the eligible retiree or surviving spouse receives the first monthly retirement benefit from one of the eligible retirement systems.
  - d. A formerly deferred retiree who received a refund of the retiree's retirement account.
  - e. A surviving spouse of a nonvested employee eligible for the Consolidated Omnibus Budget Reconciliation Act.
  - f. A surviving spouse of a former employee who received a refund of the employee's retirement account.
  - g. A former participating member of the defined contribution retirement program who would not qualify for one of the retirement dates set forth in subsection 3 of North Dakota Century Code section 54-52-17 if that employee was a member of the defined benefit retirement plan, unless eligible under the Consolidated Omnibus Budget Reconciliation Act, and then only for the required duration of eligibility under the Act.

- h. For the purposes of the medical and prescription drug plan, employees who first retire after July 1, 2015, and are not eligible for medicare upon their retirement and completion of any period of eligibility under the Consolidated Omnibus Budget Reconciliation Act, until such time as they or their spouse become eligible for medicare.

**History:** Effective October 1, 1986; amended effective November 1, 1990; July 1, 1994; June 1, 1996; July 1, 1998; July 1, 2000; May 1, 2004; April 1, 2012,

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-02, 54-52.1-03, 54-52.1-03.1; Pub. L. 99-272; 100 Stat. 222; 26 USC 162 et seq.

Section 71-03-05-07 is amended as follows:

**71-03-05-07. Erroneous payment of premiums - Overpayments.**

1. An "overpayment" means a payment of money to the public employees retirement system for group insurance premiums that exceeds the premiums due for the level of coverage that should have been in effect.
2. If an overpayment occurs, the amount of the overpayment must be paid to the insured in a lump sum within thirty days of the discovery of the error. The payment may be made to any person insured under the policy.

**History:** Effective April 1, 2002, amended effective \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

Section 71-03-05-08 is amended as follows:

**71-03-05-08. Erroneous payment of premiums - Underpayments.**

1. An "underpayment" means a payment of money to the public employees retirement system for group insurance premiums that is less than the premiums due for the level of coverage that should have been in effect. Underpayment of premium is solely an error in the amount of premium billed to the individual.
2. An individual who underpays premiums is liable to pay those premiums upon receiving a request for repayment and an explanation of the amount

due from the executive director. All underpayments must be collected using the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like gains. If the cost of recovering the underpayment is estimated to exceed the amount of the underpayment, the underpayment is considered to be unrecoverable.

3. If an underpayment is discovered in the first month it occurs, the individual must pay the amount due in a lump sum within thirty days of the discovery of the error.
4. If an underpayment is not discovered within the first month it occurs, the following will apply:
  - a. If not the result of any wrongdoing, negligence, misrepresentation, or omission by the individual, then the individual must make arrangements within sixty days of receiving written notification to either pay by lump sum or installments. The installment payment schedule is subject to approval by the executive director with the minimum repayment amount no less than fifty dollars a month. If repayment arrangements are not in place within sixty days of the date of the written request for repayment, the executive director shall authorize payment to be made in three equal installments, using the same payment method the individual has authorized for paying current monthly premiums.
  - b. If underpayment is the result, in whole or in part, of the wrongdoing, negligence, misrepresentation, or omission of the individual, underpayments must be made in full within sixty days of written notification.
5. If an underpayment occurs and the individual no longer participates in the group insurance, any premium amounts due are immediately payable.
6. If the individual dies prior to paying in full, then the public employees retirement system must make application to the estate of the deceased to recover the remaining balance.
7. If the individual refuses to repay the underpayment, or the underpayment is not paid in full, coverage ~~will~~may be canceled retroactive to the first day of the month following the month for which full premium payment was received. ~~The public employees retirement system will provide written notice advising the individual that payment in full must be received within~~

~~thirty days of the written notification to reinstate coverage retroactively to the date that coverage was canceled.~~

**History:** Effective April 1, 2002; amended effective April 1, 2008; July 1, 2010,

**General Authority:** NDCC 54-52.1-08

**Law Implemented:** NDCC 54-52.1-08

Section 71-04-01-01 is amended as follows:

**71-04-01-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code section 54-52.2-04, except:

1. "Beneficiary" means an individual designated by the participant to receive benefits under the plan in the event the participant dies.
2. "Compensation" means the total annual remuneration for employment or contracted services received by the participant from the employer.
3. "Deferred compensation" means the amount of compensation not yet earned which the participant and the employer shall mutually agree shall be deferred from current monthly salary in accordance with the provisions of the plan.
4. "Eligible state deferred compensation plan" means a plan established and maintained by this state that complies with the Internal Revenue Code (IRC) 457(b).
5. "Employer" means the state of North Dakota or any of its political subdivisions, institutions, departments, or agencies.
6. "Participant" is any employee of a participating employer who executes a participant agreement.
7. "Participant agreement" means ~~a written~~ an agreement between the employer and a participant setting forth certain provisions and elections relative to the plan, incorporating the terms of the plan and establishing the participant's deferral and participation in the plan.
8. "Provider" means any insurance company, federally insured financial institutions, Bank of North Dakota, or registered dealer under North Dakota Century Code chapter 10-04 authorized by the retirement board to provide investment vehicles to employees.

9. "Retirement" means separation from service with the employer on a date coincidental with the normal, postponed, early, or disability retirement dates as described in North Dakota Century Code chapter 54-52-17.3.
10. "Retirement board" or "board" means the seven persons described in North Dakota Century Code chapter 54-52-03.
11. "Separation from service" means that term as defined under Internal Revenue Code section 402(d)(4)(A)(3i) and includes termination of employment with the employer by reason of death, disability, retirement, resignation, or discharge.
12. "State" means the state of North Dakota, or any department, institution, or separate agency thereof acting as an employer of the participant.
13. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse or dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

**History:** Effective April 1, 1989; amended effective July 1, 1994; April 1, 2002; May 1, 2004; July 1, 2010, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2, 54-52.2-04

Section 71-04-03-01 is amended as follows:

**71-04-03-01. Enrollment.** Public employees may enroll in the deferred compensation plan by completing and submitting a participant agreement ~~and submitting the agreement to the retirement board office.~~

**History:** Effective April 1, 1989; amended effective April 1, 2014, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03

Section 71-04-03-03 is amended as follows:

**71-04-03-03. Change in monthly deferral.** A participant may change the amount of deferral at any time, as long as a participant agreement is completed and ~~filed with~~ submitted to the retirement board office as set forth in section ~~71-04-03-02~~ 71-04-03-01.

**History:** Effective April 1, 1989, amended effective \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 54-52.2-03.2  
**Law Implemented:** NDCC 54-52.2-03; IRC 457(b)(4)

Section 71-04-03-07 is amended as follows:

**71-04-03-07. Distribution of assets.** Distribution of assets may be made only upon separation from service as defined in section 71-04-01-01, or in accordance with section 71-04-03-05 or 71-04-08-01, or as a direct trustee-to-trustee plan transfer to a tax-qualified governmental defined benefit plan (as defined in Internal Revenue Code section 414(d)) for the purchase of permissive service credit (as defined in Internal Revenue Code section 415(n)(3)(A)) or a repayment to which Internal Revenue Code section 415 does not apply by reason of section 415(k)(3), regardless of whether or not the participant has had a severance from employment, at a time and in a manner prescribed by the board, as set forth in the 457 deferred compensation plan document, and in a manner consistent with section 457(e)(17) of the Internal Revenue Code.

**History:** Effective May 1, 2004, amended effective \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 54-52-03.2  
**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

Section 71-04-04-05 is amended as follows:

**71-04-04-05. Payroll deduction authorization.** ~~The board office shall deliver~~ make available to the payroll division of each employer ~~a copy of~~ direction to begin, modify or discontinue deductions pursuant to the signed ~~completed~~ participant agreement as the payroll division's authorization to begin deductions.

**History:** Effective April 1, 1989; amended effective July 1, 2010, \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 54-52.2-03.2  
**Law Implemented:** NDCC 54-52.2-02, 54-52.2-03

Section 71-04-04-07 is amended as follows:

**71-04-04-07. Separation from service.** The board ~~shall~~ may notify the participant, provider company, and provider representative of the employee's separation from service and eligibility for payment of benefits.

**History:** Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004; July 1, 2010, \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

Section 71-04-04-08 is amended as follows:

**71-04-04-08. Authorization.** The executive director or the executive director's designee is authorized to sign all provider agreements, employer agreements, ~~payroll deduction authorizations~~, or benefit applications that meet the requirements under article 71-04 and under North Dakota Century Code chapter 54-52.2.

**History:** Effective July 1, 1994; amended effective May 1, 2004, \_\_\_\_\_.

**General Authority:** NDCC 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-01, 54-52.2-02, 54-52.2-03, 54-52.2-03.2

Section 71-04-05-02 is amended as follows:

**71-04-05-02. Payroll deductions.** The employer shall authorize employee payroll deductions only after receiving notification from the ~~public employees retirement system office~~. The participant agreement must indicate the date the payroll deduction is to start, the provider, and the contribution amount. Payroll deductions must be remitted to the ~~retirement board office~~ within ten days after each payroll period. Along with each payment, the employer must provide the ~~retirement board office~~ with a listing of deferred compensation deductions for all employees participating in the deferred compensation plan using the deferred compensation transmittal of deduction form or the approved electronic format.

**History:** Effective April 1, 1989; amended effective July 1, 2006; April 1, 2014,

\_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 54-52-03.2

**Law Implemented:** NDCC 54-52.2-02

Section 71-04-05-06 is amended as follows:

**71-04-05-06. Separation from service notice.** The employer shall notify the ~~retirement board office~~ within thirty days of an employee's separation from service. The ~~retirement board shall~~ office may then notify the former employee's provider of the employee separation from service and eligibility for payment options under the plan.

**History:** Effective April 1, 1989; amended effective July 1, 1994; May 1, 2004,

\_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 54-52.2-03.2

**Law Implemented:** NDCC 54-52.2-03, 54-52.2-03.2

Section 71-05-01-01 is amended as follows:

**71-05-01-01. Definitions.** As used in North Dakota Century Code chapter 39-03.1:

1. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board in a way which precludes employer discretion pursuant to Internal Revenue Code section 401(a)(25). Such assumptions and methods adopted by the board, and any table of adjustment factors established in accordance with the assumptions and methods, shall be incorporated herein by reference.
2. "Covered employment" means employment with the North Dakota highway patrol.
- ~~2-3.~~ "Medical examination" means an examination conducted by a doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a highway patrolman.
- ~~3-4.~~ "Normal retirement age" means age fifty-five except as otherwise provided.
- ~~4-5.~~ "Office" means the administrative office of the public employees retirement system.
- ~~5-6.~~ "Permanent and total disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.
- ~~6-7.~~ "Plan administrator" means the executive director of the North Dakota public employees retirement system.
- ~~7-8.~~ "Substantial gainful activity" is to be based upon the totality of the circumstances, including consideration of an individual's training, education, and experience; an individual's potential for earning at least seventy percent of the individual's predisability earnings; and other items deemed significant on a case-by-case basis. Eligibility is based on an individual's employability and not actual employment status.



**History:** Effective November 1, 1990; amended effective October 1, 1991; June 1, 1992; July 1, 2006, \_\_\_\_\_.

**General Authority:** NDCC 39-03.1-06

**Law Implemented:** NDCC ~~39-03.1-07~~39-03.1

Section 71-06-01-02 is amended as follows:

**71-06-01-02. Calculation of retiree health insurance credit.** Retiree health insurance credit will be calculated on actual years and months of service, identical to retirement benefits under North Dakota Century Code chapter 54-52.

1. Retiree health insurance credit will be subject to reduction factors in the event of early retirement. For annuitants of the public employees retirement system defined benefit plan and North Dakota public employees retirement system judges, and for members of the defined contribution retirement plan, excluding national guard/law enforcement and highway patrol retirees, who take a periodic distribution:

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the job service retirement program: This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.

Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor	Age at Retirement	Reduction Factor
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard-~~security police and firefighters~~/law enforcement retirees and national guard-~~security police and firefighters~~/law enforcement retirees who transferred to the defined contribution retirement plan:

Age at Retirement	Reduction Factor
54 to 55	3%

53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision g of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, North Dakota Century Code section 52-11-01, or section 71-02-05-05 will be eligible for full retiree health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under paragraph 2 of subdivision a and paragraphs 2 and 3 of subdivision b of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit based on the deceased member's years of service without any age reduction applied.
4. A surviving spouse receiving benefits under the provisions of subdivision b or d of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-11; or North Dakota Century Code section 52-11-01 will receive retiree health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

**History:** Effective April 1, 1992; amended effective June 1, 1996; July 1, 2000; July 1, 2010, \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

Section 71-06-01-03 is amended as follows:

**71-06-01-03. For retirees receiving more than one benefit entitled to retiree health insurance credit.**

1. If a retiree is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon the retiree's own service credit, the retiree health insurance credit for each benefit will be combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.

2. ~~If a retiree is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the job service retirement program, the individual will not be eligible for retiree health insurance credit until one of the following events occurs:~~
  - a. ~~The active contributor terminates employment, at which time the active contributor may receive the retiree health insurance credit as any other surviving spouse.~~
  - b. ~~The active contributor retires and begins receiving a benefit through an eligible retirement system.~~
3. If the retiree was employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the retiree health insurance credit as any other retiree based upon a retiree premium.
- 4.3. If a husband and wife are both receiving a benefit from a retirement system that provides the retiree health insurance credit, the retiree health insurance credit will be applied as follows:
  - a. ~~If each retiree takes a single health insurance plan under the uniform group health insurance program, each~~Each will have their respective retiree health insurance credit ~~applied to~~reimbursed for their respective premiums.
  - b. If only one retiree takes a family health plan under the uniform group health insurance program, they may make application with the public employees retirement system to combine retiree health insurance credits.

Retirees are responsible for making application with the public employees retirement system to combine and discontinue combining retiree health insurance credits.

- 5.4. Retirees with service credit in more than one of the participating retirement systems will have their respective retiree health insurance credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.1. Surviving spouses receiving multiple benefits from retirement systems that provide the retiree health insurance credit will have their respective retiree health insurance

credit for each benefit combined with an effective date based on eligibility in accordance with North Dakota Century Code section 54-52.1-03.3.

**History:** Effective April 1, 1992; amended effective June 1, 1996; July 1, 1998; April 1, 2008; April 1, 2012, \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

Section 71-06-01-07 is amended as follows:

**71-06-01-07. Optional benefits.** A married member may elect to receive one of the following optional retiree health credit benefits in lieu of the retiree health insurance credit option provided in ~~section 71-06-01-01~~this chapter:

1. **Fifty percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death one-half the rate of the reduced benefit will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount must commence on the first day of the month following the spouse's death if a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.
2. **One hundred percent joint and survivor benefit.** A member shall receive an actuarially reduced retiree health insurance credit during the member's lifetime and after the member's death the same amount will be continued to the member's surviving spouse during the spouse's lifetime. The designated beneficiary is limited to the member's spouse. Benefits shall terminate in the month in which the death of the beneficiary occurs. If the member's spouse predeceases the member or, in the event of divorce, the member's benefit must be returned to the standard option amount. The standard option amount shall commence on the first day of the month following the spouse's death providing written notification of the death and a death certificate has been submitted or, in the event of divorce, a photocopy of the divorce decree.

**History:** Effective July 1, 1998; amended effective April 1, 2008, \_\_\_\_\_.

**General Authority:** NDCC 54-52.1-03.2(b)

**Law Implemented:** NDCC 54-52.1-03.3

Section 71-08-07-03 is created as follows:

**71-08-07-03. Employee paid contributions- Repayment Options.** If the office determines that any required employee paid contributions have not been made, the cost of any required employee paid contributions may be paid in a lump sum or in installments in a manner consistent with installment payments permitted under section 71-02-03-02.2.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 54-52-04, 54-52.6-04

**Law Implemented:** NDCC 54-52.6-09