

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.~~for an Act to amend and
4 reenact section 54-52.1-04.16 of the North Dakota Century Code, relating to public employees
5 retirement system prescription drug coverage performance audits.

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

7 ~~—SECTION 1. AUDIT OF PHARMACY BENEFIT MANAGER—AUDIT REQUIREMENTS.~~

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

15 ~~—1.—The public employees retirement system and the auditors each shall execute a~~
16 ~~confidentiality agreement with the pharmacy benefit manager before commencement~~
17 ~~of the audit.~~

18 ~~—2.—The audit must be conducted during normal business hours and must not cause~~
19 ~~undue interference to the pharmacy benefit manager's business activity.~~

20 ~~—3.—The audit must include a review of financial terms and guarantees and performance~~
21 ~~guarantees in which the public employees retirement system and the auditors shall~~
22 ~~select one or more substantive areas to audit which may include:~~

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

1 ~~7. The public employees retirement system may not compensate the auditors based on~~
2 ~~financial findings or recoveries resulting from an audit. All audit compensation must be~~
3 ~~on a flat fee, or hourly, basis.~~

4 ~~**SECTION 2. AUDIT OF PHARMACY BENEFIT MANAGER -- AVAILABILITY OF**~~

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

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

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

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

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

29 ~~a. Passed through the appropriate pro rata share of financial benefits;~~

30 ~~b. Accurately performed an annual reconciliation of financial benefits; and~~

1 ~~_____ c. Kept a detailed accounting of each component of financial benefits, including a~~
2 ~~breakdown by manufacturer and the type of financial benefit, such as~~
3 ~~pharmaceutical manufacture rebates, health management fees, data sales fees,~~
4 ~~and other information requested by the auditors.~~

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

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

25 ~~_____ 7. Data and documents provided by the pharmacy benefit manager to the public~~
26 ~~employees retirement system or the auditors may not be redacted or altered by the~~
27 ~~pharmacy benefit manager.~~

28 ~~_____ **SECTION 3. PHARMACY BENEFIT MANAGER AUDIT -- DISPUTES AND LIABILITY.**~~

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

1 ~~1. If the public employees retirement system or the auditors discover the pharmacy~~
2 ~~benefit manager improperly inputted public employees retirement system benefit plan~~
3 ~~designs, the pharmacy benefit manager is liable for any costs resulting from the~~
4 ~~pharmacy benefit manager's error.~~

5 ~~2. The pharmacy benefit manager shall take appropriate action if the audit reveals fraud~~
6 ~~or overpayment involving a participating pharmacy, including recoupment of~~
7 ~~overpayments from pharmacies for services and products provided to plan~~
8 ~~beneficiaries. If overpayments are detected as part of the audit, the overpayments~~
9 ~~must be adjusted retroactively in the relevant electronic claims data. If the pharmacy~~
10 ~~benefit manager recovers any amounts from a pharmacy related to the public~~
11 ~~employees retirement system claims as a result of the audit, the pharmacy benefit~~
12 ~~manager shall submit all recoveries to the public employees retirement system.~~

13 ~~3. If the auditors conclude the pharmacy benefit manager violated its obligations to the~~
14 ~~public employees retirement system and the pharmacy benefit manager disputes the~~
15 ~~audit findings, the pharmacy benefit manager shall provide the basis of the dispute to~~
16 ~~the public employees retirement system and the auditors, with all supporting~~
17 ~~documentation, within thirty days of the pharmacy benefit manager's receipt of the~~
18 ~~disputed audit findings. The pharmacy benefit manager shall provide sufficient~~
19 ~~documentation to permit adequate review of the disputed issues, and has the burden~~
20 ~~of demonstrating the auditor's findings are incorrect. To the extent the pharmacy~~
21 ~~benefit manager fails to provide documentation substantiating any part of its position,~~
22 ~~or fails to meet its burden of proof, the pharmacy benefit manager waives its right to~~
23 ~~further dispute that matter. After receiving the pharmacy benefit manager's~~
24 ~~documentation, the public employees retirement system and the auditors shall review~~
25 ~~the documentation and advise the pharmacy benefit manager whether the auditors~~
26 ~~have changed the audit findings.~~

27 ~~**SECTION 4. PHARMACY BENEFIT MANAGER AUDIT – LEGISLATIVE MANAGEMENT**~~
28 ~~**REPORT.** The public employees retirement system shall report the findings of the audit~~
29 ~~provided for in section 1 of this Act to the legislative management by July 1, 2022.~~

30 **SECTION 1. AMENDMENT.** Section 54-52.1-04.16 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **54-52.1-04.16. Prescription drug coverage - Performance audits - Report to employee**
2 **benefits programs committee.**

3 1. Except for Medicare part D, prescription drug coverage, the board may not enter or
4 renew a contract for prescription drug coverage, whether contracting directly with a
5 pharmacy benefits manager, providing prescription drug coverage through a self-
6 insurance plan, or contracting with a carrier, unless the contract authorizes the board
7 during the term of the contract to conduct a performance audit of the prescription drug
8 coverage and any related pharmacy benefits management services.

9 2. During the term of the contract for the prescription drug coverage, the board shall
10 conduct a performance audit of the prescription drug coverage and any related
11 pharmacy benefits management service. The performance audit must be conducted
12 directly through the pharmacy benefits manager providing the prescription drug
13 coverage and may not be conducted through an intermediary, such as the carrier. The
14 contract for prescription drug coverage must provide:

15 a. The board and auditor must have full access to claim-level data regarding:

16 (1) The total amount of dollars paid to the pharmacy benefits manager by the
17 carrier and the board, including detail by prescription to arrive at the
18 aggregate total amounts;

19 (2) The total amount of dollars paid to the pharmacy benefits manager by the
20 carrier and the board which were not subsequently paid to a licensed
21 pharmacy in the state; ~~and~~

22 (3) Payments made to all pharmacy providers which shows line item detail to
23 include product reimbursement and dispensing fees as two separate fields
24 to arrive at the aggregate total amounts; and

25 (4) Any recoupment by the pharmacy benefits manager either at the point of
26 sale or retrospectively, including the reason and the reason code.

27 b. The board and auditor must have full access to data regarding the average per
28 claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any
29 other fee paid by a pharmacy benefits manager to licensed pharmacies with
30 which the pharmacy benefits manager shares common ownership or control or is
31 affiliated through any contractual agreement.

- 1 c. The board and auditor must have full access to data regarding the average per
2 claim detail of reimbursement, by drug ingredient cost, dispensing fee, and any
3 other fee paid by a pharmacy benefits manager to pharmacies licensed in the
4 state.
- 5 d. The board and auditor must have full access to data on an individual claim basis
6 regarding any prospective and retrospective direct and indirect fees, charges, or
7 recoupment, or any kind of assessments or effective rates imposed by the
8 pharmacy benefits manager on pharmacies licensed with which the pharmacy
9 benefits manager shares common ownership or control or is affiliated through
10 any contractual agreement.
- 11 e. The board and auditor must have full access to data on an individual claim basis
12 regarding any prospective and retrospective direct and indirect fees, charges, or
13 recoupment, or any kind of assessments or effective rates imposed by the
14 pharmacy benefits manager, on pharmacies licensed in the state.
- 15 f. ~~The contract must provide that~~ That all drug rebates, financial incentives, fees,
16 and discounts must be disclosed to the board at the national drug code level.
- 17 g. The terms of the contract between the carrier and the pharmacy benefits
18 manager.
- 19 2-3. The following apply to conducting a performance audit as required under this section:
- 20 a. The board shall use an independent auditor who has no conflict of interest with
21 the carrier, pharmacy benefits manager, or board such as an existing contract
22 with that entity. The board may not compensate the auditor based on financial
23 findings or recoveries resulting from an audit. All audit compensation must be on
24 a flat fee or hourly basis.
- 25 b. Data and documents provided by the pharmacy benefits manager to the board or
26 the auditor may not be redacted or altered by the pharmacy benefits manager.
27 The ~~board's auditor, the~~ insurance department, and the employee benefits
28 programs committee may access any information the board and the auditor may
29 access under this section. All information accessed by the board, ~~board's~~ auditor,
30 insurance department, or employee benefits programs committee which is trade
31 secret is a confidential record. This ~~subsection~~ subdivision does not limit the

1 information required to be disclosed to the board and the auditor under
2 subsection 1. This subdivision does not limit the access to information that is not
3 a trade secret.

4 c. The performance audit must include a review of financial terms and guarantees
5 and performance guarantees, including administrative fees, annual brand
6 prescription guarantees, annual generic prescription guarantees, annual specialty
7 drug guaranteed discounts, and financial benefit guarantees listed in the
8 pharmacy benefits manager contract to validate the terms of the contract are
9 being met.

10 d. The performance audit must include a review of medical prescription drug claim
11 rebates at the national drug code level and the amounts and verify who retained
12 the rebates for such drugs.

13 e. The pharmacy benefits manager shall disclose to the board and the auditor the
14 terms of any contract or arrangement the pharmacy benefits manager has with a
15 rebate aggregator, regardless of whether self-owned or with an outside entity that
16 functions as a rebate aggregator for the pharmacy benefits manager, regardless
17 of whether self-described as a rebate aggregator.

18 f. The pharmacy benefits manager shall provide all data and documents necessary
19 to enable the board and the auditor to calculate any compensation the pharmacy
20 benefits manager shall pay to the public employees retirement system if a
21 program or contract guarantee was not properly implemented.

22 ~~3. If the board contracts directly with a pharmacy benefits manager or provides~~
23 ~~prescription drug coverage through a self-insurance plan, the contract must provide~~
24 ~~the pharmacy benefits manager shall disclose to the board and the board's auditor all~~
25 ~~rebates and any other fees that provide the pharmacy benefits manager with sources~~
26 ~~of income under the contract, including under related contracts the pharmacy benefits~~
27 ~~manager has with third parties, such as drug manufacturers.~~

28 4. ~~Anything the board has access to under this section, the insurance department and~~
29 ~~employee benefits programs committee has access to~~ The board shall report to the
30 employee benefits programs committee the report of each performance audit
31 conducted under this section.