

## **CHAPTER 54-52.3 PRETAX BENEFITS PROGRAM**

### **54-52.3-01. Pretax benefits program for public employees.**

The public employees retirement system board may establish a pretax benefits program for all state employees and employees of district health units, including members of the legislative assembly, under which an employee may reduce the employee's salary and elect benefits to the extent of the reduction. A participating district health unit shall comply with the program conditions and pay all fees established by the board.

### **54-52.3-02. Authority of board.**

The board shall determine benefits to be offered under the pretax benefits program, accept proposals from qualified providers, retain consultants, and do all things necessary to administer the pretax benefits program and preserve its tax-exempt status.

### **54-52.3-03. Employer savings used to defray expenses of administering program - Continuing appropriation.**

The office of management and budget shall transfer funds from the savings accruing to the agencies' salaries and wages line item, as a result of the diminution of the state's employer contribution for the Federal Insurance Contribution Act tax, to a payroll clearing account. The office of management and budget shall transfer funds from the payroll clearing account to the board as necessary to defray the reasonable expenses of administering the pretax benefits program established under this chapter, including expenses associated with the program's medical spending account. Any revenue collected by the board from participating district health units must be used, and is hereby appropriated, to defray the expenses of administering the program. The amount necessary to pay consultants retained by the board, vendors retained by the board to provide claims administration services, any insurance costs associated with the medical spending account, and medical reimbursements for the medical spending account if funds are insufficient to pay claims are hereby appropriated from the savings and revenue generated by the program. All other expenses of administering the program must be paid in accordance with the agency's appropriation authority as established by the legislative assembly. The director of the office of management and budget may decrease or suspend the transfer of the savings accruing to the agencies' salaries and wages line item to the payroll clearing account upon determination that the funds deposited under this section are sufficient to offset anticipated obligations. Notwithstanding other provisions in this section, the public employees retirement system board, or any successor state agency, may not establish, enroll, or administer any pretax benefits program for a political subdivision or any other public or private business or entity, except for any program established specifically for employees of the state and employees of district health units.

### **54-52.3-04. Effect of participation on other state-administered employee benefits programs.**

For all purposes under any state-administered retirement program, disability program, life insurance program, or other employee benefits program, the compensation or gross compensation of any employee participating in any pretax benefits program is deemed to be the compensation or gross compensation which the employee would have received if the employee was not participating in the pretax benefits program.

### **54-52.3-05. Confidentiality of program records.**

Any records and information pertaining to a public employee's medical and dependent care reimbursement under the pretax benefits program are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The records and information may be disclosed, under rules adopted by the board, only to:

1. A person to whom the employee has given written authorization to have the information disclosed.

2. A person legally representing the employee, upon proper proof of representation.
3. A person authorized by a court order.
4. A person or entity to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. Any person or entity if the purpose of the disclosure is for health care treatment, payment, or operations.

**54-52.3-06. Deposit of program moneys - Appropriation.**

All moneys collected pursuant to elections made by public employees under the pretax benefits program for the medical spending account and the dependent care account must be deposited in an account with the Bank of North Dakota. All moneys deposited in the account, not otherwise appropriated, are hereby appropriated for the purpose of making payments to employees participating in the program. The board shall transfer any surplus in the pretax benefits account at the end of the plan year to the payroll clearing account.