

Introduced by

1 A BILL for an Act to create and enact chapter 26.1-36.6 and a new section to chapter 54-52.1 of
2 the North Dakota Century Code, relating to public employees retirement system self-insurance
3 plans for health benefits coverage; to amend and reenact sections 26.1-07.1-01, 54-52.1-01,
4 54-52.1-04, 54-52.1-04.2, 54-52.1-04.3, and 54-52.1-11 of the North Dakota Century Code,
5 relating to public employee uniform group health benefits coverage; to repeal sections
6 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10, 54-52.1-04.11, 54-52.1-04.12,
7 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century Code, relating to public
8 employees retirement system self-insurance plans for health benefits coverage mandated
9 health benefits; and to declare an emergency.

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

11 **SECTION 1.** Chapter 26.1-36.6 of the North Dakota Century Code is created and enacted
12 as follows:

13 **26.1-36.6-01. Definitions.**

14 As used in this chapter, "self-insurance plan" has the same meaning as provided under
15 section 54-52.1-01.

16 **26.1-36.6-02. Self-insurance plans - Regulation.**

17 The commissioner shall regulate the financial condition, integrity, and equitable
18 administration of a self-insurance plan established under chapter 54-52.1. All powers granted to
19 the commissioner to regulate insurance companies and insurers under title 26.1 apply to the
20 commissioner to regulate a self-insurance plan.

21 **26.1-36.6-03. Self-insurance plans - Requirements.**

22 1. The following policy provisions apply to a self-insurance plan and to the administrative
23 services only or third-party administrator, and are subject to the jurisdiction of the
24 commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12.

1 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18,
2 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41,
3 26.1-36-44, and 26.1-36-46.

4 2. The following health benefit provisions applicable to a group accident and health
5 insurance policy under chapter 26.1-36 apply to a self-insurance plan and are subject
6 to the jurisdiction of the commissioner: 26.1-36-06, 26.1-36-06.1, 26.1-36-07,
7 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3,
8 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10,
9 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15,
10 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and
11 26.1-36-43.

12 **26.1-36.6-04. Rules.**

13 The commissioner shall adopt rules to administer this chapter. The rules must establish
14 reserve requirements. The rules may provide certain self-insurance plans are exempt from all or
15 portions of this chapter.

16 **SECTION 2. AMENDMENT.** Section 26.1-07.1-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **26.1-07.1-01. Jurisdiction over providers of health care benefits.**

19 Notwithstanding any other provision of law, and except as provided ~~herein~~under this
20 section, any person ~~or other entity~~, other than an insurance company duly licensed in this or
21 another state which provides coverage in this state for medical, surgical, chiropractic, physical
22 therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric
23 expenses, whether such coverage is by direct payment, reimbursement, or otherwise, ~~must be~~is
24 presumed to be subject to the jurisdiction of the commissioner unless the person ~~or other entity~~
25 shows that while providing such services ~~it~~the person is subject to the jurisdiction of another
26 agency of this state, any subdivisions thereof, or the federal government. A self-insurance plan
27 formed under chapter 54-52.1 is not subject to this section but is subject to the jurisdiction of the
28 commissioner under chapter 26.1-36.6.

29 **SECTION 3. AMENDMENT.** Section 54-52.1-01 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-52.1-01. Definitions.**

2 As used in this chapter, unless the context otherwise requires:

3 1. "Board" means the public employees retirement board.

4 2. "Carrier" means:

5 a. For the hospital benefits coverage, an insurance company authorized to do
6 business in the state, or a nonprofit hospital service association, or a prepaid
7 group practice hospital care plan authorized to do business in the state, or the
8 state if a self-insurance plan is used for providing hospital benefits coverage.

9 b. For the medical benefits coverage, an insurance company authorized to do
10 business in the state, or a nonprofit medical service association, or a prepaid
11 group practice medical care plan authorized to do business in the state, or the
12 state if a self-insurance plan is used for providing medical benefits coverage.

13 c. For the life insurance benefits coverage, an insurance company authorized to do
14 business in the state.

15 3. "Department, board, or agency" means the departments, boards, agencies, or
16 associations of this state, ~~and~~ The term includes the state's charitable, penal, and
17 higher educational institutions; the Bank of North Dakota; the state mill and elevator
18 association; and counties, cities, district health units, and school districts.

19 4. "Eligible employee" means every permanent employee who is employed by a
20 governmental unit, as that term is defined in section 54-52-01. "Eligible employee"
21 includes members of the legislative assembly, judges of the supreme court, paid
22 members of state or political subdivision boards, commissions, or associations,
23 full-time employees of political subdivisions, elective state officers as defined by
24 ~~subsection 2 of~~ section 54-06-01, and disabled permanent employees who are
25 receiving compensation from the North Dakota workforce safety and insurance fund.
26 As used in this subsection, "permanent employee" means one whose services are not
27 limited in duration, who is filling an approved and regularly funded position in a
28 governmental unit, and who is employed at least seventeen and one-half hours per
29 week and at least five months each year or for those first employed after August 1,
30 2003, is employed at least twenty hours per week and at least twenty weeks each year
31 of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8,

1 and 54-52.1-11, "eligible employee" includes retired and terminated employees who
2 remain eligible to participate in the uniform group insurance program pursuant to
3 applicable state or federal law.

4 5. "Health insurance benefits coverage" means hospital benefits coverage or medical
5 benefits coverage, or both.

6 6. "Health maintenance organization" means an organization certified to establish and
7 operate a health maintenance organization in compliance with chapter 26.1-18.1.

8 ~~6.7.~~ "Hospital benefits coverage" means a plan ~~which~~that either provides coverage for, or
9 pays, or reimburses expenses for hospital services incurred in accordance with the
10 uniform contract.

11 ~~7.8.~~ "Life insurance benefits coverage" means a plan ~~which~~that provides both term life
12 insurance and accidental death and dismemberment insurance in amounts determined
13 by the board, with a minimum of one thousand dollars provided for the term life
14 insurance portion of the coverage.

15 ~~8.9.~~ "Medical benefits coverage" means a plan ~~which~~that either provides coverage for, or
16 pays, or reimburses expenses for medical services in accordance with the uniform
17 contract.

18 ~~9.10.~~ "Member contribution" means the payment by the member into the retiree health
19 benefits fund pursuant to sections 54-52-02.9 and 54-52-17.4.

20 ~~10.11.~~ "Member's account balance" means the member's contributions plus interest at the
21 rate set by the board.

22 12. "Self-insurance health plan" means a plan of self-insurance providing health insurance
23 benefits coverage under sections 54-52.1-04.2 and 54-52.1-04.3.

24 ~~11.13.~~ "Temporary employee" means a governmental unit employee who is not filling an
25 approved and regularly funded position in an eligible governmental unit and whose
26 services may or may not be limited in duration.

27 **SECTION 4. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **54-52.1-04. Board to contract for insurance.**

30 1. The board shall receive bids for the providing of hospital benefits coverage, medical
31 benefits coverage, life insurance benefits coverage for a specified term, and employee

1 assistance program services; may receive bids separately for the prescription drug
2 coverage component of medical benefits coverage; and shall accept one or more bids
3 of and contract with the carriers that in the judgment of the board best serves the
4 interests of the state and ~~the state's~~ eligible employees. Solicitations must be made
5 not later than ninety days before the expiration of an existing uniform group insurance
6 contract. Bids must be solicited by advertisement in a manner selected by the board
7 that will provide reasonable notice to prospective bidders. In preparing bid proposals
8 and evaluating bids, the board may utilize the services of consultants on a contract
9 basis in order that the bids received may be uniformly compared and properly
10 evaluated. In determining which bid, if any, will best serve the interests of eligible
11 employees and the state, the board shall give adequate consideration to the following
12 factors:

- 13 1. a. The economy to be effected.
- 14 2. b. The ease of administration.
- 15 3. c. The adequacy of the coverages.
- 16 4. d. The financial position of the carrier, with special emphasis ~~as to its~~ on the
17 solvency of the carrier.
- 18 5. e. The reputation of the carrier and any other information ~~that is~~ available tending to
19 show past experience with the carrier in matters of claim settlement,
20 underwriting, and services.
- 21 2. The board may reject any or all bids and, in the event it does so, if the board rejects
22 all bids, the board shall again solicit bids as provided in this section. The
- 23 3. Under sections 54-52.1-04.1, 54-52.1-04.2, and 54-52.1-04.3 the board may contract
24 for health benefits coverage through a health maintenance organization or establish a
25 plan of self-insurance for providing health insurance benefits coverage only under an
26 administrative services only (ASO) contract or a third-party administrator (TPA)
27 contract plan.

28 **SECTION 5. AMENDMENT.** Section 54-52.1-04.2 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage.**

- 31 1. The board may establish a self-insurance plan for providing:

- 1 a. Health insurance benefits coverage;
- 2 b. Health insurance benefits coverage excluding all or part of prescription drug
- 3 coverage; or
- 4 c. All or part of prescription drug coverage.
- 5 2. ~~Any~~ self-insurance plan under this section must be provided under an administrative
- 6 services only (ASO) contract or a third-party administrator (TPA) contract under the
- 7 uniform group insurance program, and may not be established ~~only if it is determined~~
- 8 ~~by~~unless the board ~~that~~determines an administrative services only or third-party
- 9 administrator plan is less costly than the lowest bid submitted by a carrier for
- 10 underwriting the plan with equivalent contract benefits. Upon establishing a
- 11 self-insurance plan, the board shall solicit bids for an administrative services only or
- 12 third-party administrator contract only every other biennium, and the board is
- 13 authorized to renegotiate an existing administrative services only or third-party
- 14 administrator contract during the interim. ~~In addition,~~If the board determines it is in the
- 15 best interest of the plan, individual stop-loss coverage insured by a carrier authorized
- 16 to do business in this state ~~must~~may be made part of ~~any~~a self-insured plan. All bids
- 17 under this section are due no later than January first, and must be awarded no later
- 18 than March first, preceding the end of each biennium. All bids under this section must
- 19 be opened at a public meeting of the board.

20 **SECTION 6. AMENDMENT.** Section 54-52.1-04.3 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **54-52.1-04.3. Contingency reserveSelf-insurance plan - Reserve fund - Continuing**
23 **appropriation - Benefits - Insurance commissioner.**

- 24 1. ~~The~~Pursuant to chapter 26.1-36.6, the board shall establish and maintain under a
- 25 self-insurance plan a ~~contingency~~ reserve fund to provide for adverse fluctuations in
- 26 future charges, claims, costs, or expenses of the uniform group insurance program.
- 27 ~~The board shall determine the amount necessary to provide a balance in the~~
- 28 ~~contingency reserve fund between one and one-half months and three months of~~
- 29 ~~claims paid based on the average monthly claims paid during the twelve-month period~~
- 30 ~~immediately preceding March first of each year. The board also shall determine the~~
- 31 ~~amount necessary to provide an additional balance in the contingency reserve fund~~

1 ~~between one month and one and one-half months for claims incurred but not yet~~
2 ~~reported. The board may arrange for the services of an actuarial consultant to assist~~
3 ~~the board in making these determinations. Upon the initial changeover from a contract~~
4 for insurance pursuant to section 54-52.1-04 to a self-insurance plan pursuant to
5 section 54-52.1-04.2, the board must have a plan in place which is reasonably
6 calculated to meet within sixty months of the changeover the funding requirements of
7 this chapter ~~within sixty months~~26.1-36.6. All moneys in the ~~contingency~~ reserve fund,
8 not otherwise appropriated, are appropriated to the board for the payment of claims
9 and other costs of the uniform group insurance program during periods of adverse
10 claims or cost fluctuations.

11 2. A self-insurance plan must comply with section 26.1-36.6-03 and must provide the
12 same benefits required of a fully-insured plan.

13 3. The insurance commissioner shall ensure compliance with and enforce the provisions
14 of this section pursuant to chapter 26.1-36.6.

15 **SECTION 7.** A new section to chapter 54-52.1 of the North Dakota Century Code is created
16 and enacted as follows:

17 **Self-insurance plan - Bank of North Dakota line of credit - Continuing appropriation.**

18 The Bank shall extend to the board a line of credit not to exceed one and one-half months
19 of claims paid, based on the average monthly claims paid during the twelve-month period
20 immediately preceding March first of each year. The board shall repay the line of credit from
21 health insurance premium revenue or repay the line of credit from other funds appropriated by
22 the legislative assembly. The board may access the line of credit to the extent necessary to
23 provide adequate claims payment funds, to purchase stop-loss coverage, and to defray other
24 expenditures of administration of the self-insurance plan. All loan funds received by the board
25 from the Bank under this section, not otherwise appropriated, are appropriated to the board for
26 the repayment of claims and other costs of the uniform group insurance program.

27 **SECTION 8. AMENDMENT.** Section 54-52.1-11 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **54-52.1-11. Confidentiality of employee records.**

30 ~~Information~~In addition to the confidentiality requirements in section 26.1-36-12.4,
31 information pertaining to an eligible employee's group medical records for claims, employee

1 premium payments made, salary reduction amounts taken, history of any available insurance
2 coverage purchased, and amounts and types of insurance applied for under the supplemental
3 life insurance coverage under this chapter is confidential and is not a public record. The
4 information and records may be disclosed, under rules adopted by the board, only to:

- 5 1. A person to ~~whom~~which the eligible employee has given written authorization to have
6 the information disclosed.
- 7 2. A person legally representing the eligible employee, upon proper proof of
8 representation, and unless the eligible employee specifically withholds authorization.
- 9 3. A person authorized by a court order.
- 10 4. A person ~~or~~entity to which the board is required to disclose information pursuant to
11 federal or state statutes or regulations.
- 12 5. Any person ~~or~~entity if the purpose of the disclosure is for treatment, payment, or
13 health care operations.

14 **SECTION 9. REPEAL.** Sections 54-52.1-04.4, 54-52.1-04.5, 54-52.1-04.6, 54-52.1-04.10,
15 54-52.1-04.11, 54-52.1-04.12, 54-52.1-04.13, and 54-52.1-04.14 of the North Dakota Century
16 Code are repealed.

17 **SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.