

N.D.A.G. Letter to Person (April 27, 1988)

April 27, 1988

Mr. Alan Person
Executive Director
North Dakota Public Employees Retirement System
1930 Burnt Boat Drive
Box 1214
Bismarck, ND 58502

Dear Mr. Person:

Thank you for your letter of April 11, 1988, in which you request my opinion on two issues that have arisen with respect to the retiree subgroup of the uniform group insurance program. First, you ask whether retirees may be separated into a distinct group for premium rating purposes. Second, you ask whether the premium for retirees may be adjusted on an annual basis.

As amended by the 1987 Legislative Assembly, N.D.C.C. § 54-52.1-02 allows the uniform group to be divided into subgroups at the discretion of the NDPERS Board. N.D.C.C. § 54-52.1-02 specifically authorizes a "retired eligible employee(s)" subgroup for medical and hospital benefits coverage. Under N.D.C.C. § 54-52.1-03, retirees may continue as members in the uniform group insurance program but the state "may not make a contribution for this coverage, and each [retired] eligible employee or the surviving spouse of that employee shall pay directly to the board the premiums in effect for the coverage then being provided."

The purpose of the 1987 Legislative Assembly's amendment of N.D.C.C. § 54-52.1-02 permitting the NDPERS Board to establish a retirees subgroup was to enable the Board to experience rate the retirees separately from the active employees so that the appropriate premium can be readily determined. See Hearings on H. 1094 Before the State and Federal Government committee, 50th Leg., (January 19, 1987) (Statement of Al Person) ("Retirees will have a separate plan with a separate premium. We can place them in a sub-group and experience rate them on their own basis.") Additionally, N.D.C.C. § 54-52.1-03(3) clearly contemplates that there is to be no state funding for the retirees' health insurance premiums.

In accordance with the statutory requirements discussed above, it is my opinion that the retirees may be separated into a distinct subgroup for premium rating purposes.

Your second question asks whether the NDPERS Board may make premium adjustments to the retirees on an annual basis. The North Dakota Century Code does not specifically address this issue. In administering the uniform group insurance program, however, the NDPERS Board has implemented an annual open enrollment program which allows

active employees and retirees to choose between the state plan and the various HMO's. In recent years, the Board has adjusted benefits on an annual basis to correspond with the open enrollment session. Additionally, the HMO's are allowed to adjust their premiums on an annual basis that corresponds to the open enrollment session. See N.D. Admin. Code § 71-03-02-03. Therefore, the NDPERS Board has administered the health insurance plan on a one-year operating cycle.

In reviewing the North Dakota Century Code and the group insurance application form completed by the retirees, there is nothing that prohibits the premium structure from being adjusted on an annual basis. Additionally, a failure to adjust the premium on an annual basis may result in inequities to the retirees (in the case where retirees' premiums should be lowered) or in violation of the policy set forth in N.D.C.C. § 54-52.1-03(3) which forbids the state from contributing toward the retirees' premiums (in the case where the retirees' premiums should be raised).

Therefore, it is my opinion that the NDPERS Board may experience rate retirees on an annual basis and make appropriate premium adjustments.

Sincerely,

Nicholas J. Spaeth