

N.D.A.G. Letter to Person (March 17, 1987)

March 17, 1987

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 March 2, 1987, in which you asked my opinion on two issues. First, whether the medical records under N.D.C.C. Ch. 54-52.1 held by the Retirement Board's claims administrator are the property of the Public Employees Retirement System. Second, whether those medical records are open to the public.

N.D.C.C. § 54-52.1-04.2 provides that the Public Employees Retirement System Board may establish a self-insurance plan for providing health insurance benefits coverage for state employees. If the PERS Board opts for self-insurance, N.D.C.C. § 54-52.1-04.2 requires the Board to enter into an administrative services only (ASO) contract or a third-party administrator (TPA) contract for the performance of the administrative functions of the Uniform Group Insurance Program. The PERS Board has elected to self-insure in the area of health insurance and has retained Blue Cross and Blue Shield of North Dakota to administer the claims of the members. The Administrative Agreement entered into between PERS and its administrator states that "all records prepared or maintained by Blue Cross and Blue Shield in the administration/payment of claims shall be the property of PERS and shall be delivered to PERS in the event of termination of this agreement." Administrative Agreement, paragraph II(H). Additionally, paragraph II(I) provides that "all information, records, lists of employers and employees and all other data which may come into the hands of Blue Cross and Blue Shield are to be considered confidential and shall not be divulged by the Blue Cross and Blue Shield unless such is authorized by PERS."

Based on the statutory authority allowing PERS to self-insure and the above-referenced clauses in its Administrative Agreement with Blue Cross and Blue Shield, it is my opinion that the medical records held by Blue Cross/Blue Shield in its capacity as claims administrator for PERS are the property of the Public Employees Retirement System.

Your second question concerning whether or not these medical records are public records is governed by N.D.C.C. § 44-04-18 which states as follows:

44-04-18. ACCESS TO PUBLIC RECORDS--PENALTY.-

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

2. * * *

Although the general requirements of N.D.C.C. § 44-04-18 may be restricted by specific exemptions in other parts of the Century Code, there is no such exemption for the medical records in question. See generally N.D.C.C. Ch. 54-52.1. In the absence of a statutory exemption, the medical records are public records. This is true even though the records may not be in the actual possession of PERS.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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