

LETTER OPINION
98-L-23

March 20, 1998

Mr. Sparb Collins
Executive Director
North Dakota Public Employees
Retirement System
400 East Broadway, Suite 505
Box 1214
Bismarck, ND 58502-1214

Dear Mr. Collins:

Thank you for your January 26, 1998, letter asking whether the North Dakota Public Employees Retirement System (PERS) may, consistent with North Dakota Century Code (N.D.C.C.) chapter 54-52.1, provide Employee Assistance Program (EAP) benefits pursuant to N.D.C.C. § 54-52.1-04.9 through an "Agency-Based" program. In your letter, you describe an agency-based EAP as follows:

each agency would be the focal point for the decision on which EAP vendor would be the most appropriate for their employees. The PERS Board would establish a list of qualified vendors based upon a bid process that would determine their eligibility and ability to meet the necessary plan design and pricing requirements. Vendors would be invited to submit proposals. Those vendors that were able to successfully meet the requirements determined by PERS, for both plan design and pricing, would be placed on a list of qualified vendors. Each agency would then be offered the list of qualified vendors and would be allowed to select one vendor from that list. An agency would be allowed to select multiple vendors only if approved by the PERS Board or staff. Multiple vendors would only be allowed subject to geographical considerations. Specifically, an agency such as the Department of Human Services may need to select more than one vendor in order to provide services to its employees in all areas of the State.

N.D.C.C. ch. 54-52.1 gives PERS the responsibility of obtaining health and health-related insurance for state-agency employees. In 1997, the Legislature gave PERS the additional responsibility of "establish[ing] an employee assistance program available to persons in the medical and hospital benefits coverage group." See 1997 N.D.

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Sess. Laws ch. 467. EAP services are those services that assist "employees and their families in finding help for emotional, drug, alcohol, family, health, and other personal or job-related problems that may be affecting their work performance." N.D.C.C. § 54-52.1-04.9, as amended effective July 1, 1999.

When reviewing an agency's implementation of a statute, one must give deference to the agency's reasonable interpretation of that statute, especially if that interpretation is not contrary to the statutory language. Cass County Co-op v. NSP, 518 N.W.2d 216, 220 (N.D. 1994). In this case, other than defining EAP services, the Legislature placed no restrictions on the type of EAP PERS may establish. See N.D.C.C. § 54-52.1-04.9, as amended effective July 1, 1999. Without any restriction or further legislative guidance, one must conclude the Legislature intended to allow PERS to design and implement a program in the manner PERS determines is most beneficial, within the parameters of the law.

An agency-based EAP does not appear to exceed the minimal statutory framework PERS was given. Since an agency-based EAP does not contradict the plain statutory language, PERS' interpretation of N.D.C.C. § 54-52.1-04.9 to allow such a program is reasonable and, therefore, entitled to deference. See Cass County Co-op v. NSP, 518 N.W.2d at 220. Accordingly, it is my opinion that PERS' provision of EAP services through an agency-based program is consistent with North Dakota Century Code chapter 54-52.1.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

sam/bah