

Paul Henderson, IRS Retiree

8/22/2016

Chairman Gonzales and Members

Sunset Advisory Commission

P.O. Box 13066

Austin, Texas 78701

Dear Friends,

Thank you very much for inviting me to advise you of malpractices within the Employees Retirement System of Texas (ERS). I believe that you wish to know what changes need to be implemented in order to eliminate those harmful practices. I have found several items wrong with the prescription drug program that beg for your attention as follows:

**1a. Problem:** The Texas Insurance Code, Section 1551.209 "Coverage Exempt from Insurance Law" allows the ERS to administer its prescription drug plan **outside the law**. This malpractice has cost the employees and retirees millions of "out of pocket" dollars in unnecessary copayments every year during the past 17 years. It is tragic to find persons and organizations misusing the laws of the State of Texas to embezzle, steal, cheat, and extort money from weakest citizens in the State by applying arbitrary decisions to the terms of insurance plans. Most other insurance plans nationwide, including the State of Texas Insurance code, follow the "National Association of Insurance Commissioners" (NAIC) rules. NAIC rules state that in the event of dual insurance, the Primary Insurance pays its fair share of costs first, and the Secondary Insurance pays all costs not otherwise paid by the Primary Insurance, thereby leaving the insured whole. Members with dual insurance wish to receive earned benefits in an amount as near 100% as possible. We do not expect to receive more than 100% of the cost of drugs.

**1b. Solution:** Change the rules of coordination being applied to dual insurers. Prevent the ERS from unfairly charging copayments on top of Primary Insurers' copayments. Eliminate the invalid argument that the lack of State funding justifies the failure of the State to regulate the ERS. Pass a law that funds ERS by One Dollar or more. That will justify regulating ERS. Require ERS to operate in compliance with the rules of the National Association of Insurance Commissioners. This change shall cost the ERS zero dollars, while preventing the insurance companies and others from fraudulently commandeering Secondary Insurance copayments. This change will grant **EQUAL JUSTICE** to the members of ERS.

**2a. Problem:** Members who have no extra insurance other than the ERS plan are required to pay all cost of prescription drugs that cost \$15.00 or less. To say that the ERS prescription drug plan pays 70% of the purchase price of drugs is a false statement. On an annual basis, the ERS prescription drug plan pays no more than 55% of the member's cost. The fact is, members of ERS pay "out-of-pocket", no less than 15% of the costs of drugs in the name of "deductions" and another 30% of costs are paid "out-of-pocket" by the members as copayments. These percentages of payments were implemented by the previous Director of ERS with a brag that a raise in Insurance Premiums was avoided. Previous numbers were: 80%, 75%, 0% and 20% respectfully. A raise in Insurance Premiums would have cost the members no more than \$6,000,000 per year. Instead, the actual raise in deductions and copayments is costing the members no less than \$130,000,000 extra per year. This windfall in extra income to the insurance companies is highly suspect and I fail to understand how these extra charges benefit the members of ERS.

**2b. Solution:** Require ERS's Director of Benefit Contracts to explain exactly who benefits from the above described windfalls, and explain how these windfalls benefit the members of the ERS. Order a complete and comprehensive audit of the entire operation of the ERS with instructions to vigorously hunt for fraud and bribery. Require the ERS to operate in compliance with the rules of the State of Texas Insurance Code. This change shall cost the ERS zero dollars while preventing the insurance companies and others from fraudulently commandeering Secondary Insurance copayments. This change will grant **EQUAL JUSTICE** to the members of ERS.

**3a. Problem:** When the ERS plan is the Secondary Insurance, the members usually ask for reimbursement of Primary copayments in amounts equal to no more than 20% of the price of drugs. The Secondary Insurance "saves" the Secondary insurer as much as 50% of the costs of drug purchases, yet, ERS requires the members to pay additional copayments on claims for reimbursement of the Primary Insurers copayments. I have been unable to find who is keeping the "savings". I have, however, found that the Secondary Insurer is required to calculate the Primary

costs of this type of claim as though there have been no other insurers involved. The Secondary Insurer then pays reimbursements up to no more than that amount. It appears that an error occurs at this point in the automated systems such that the imaginary calculated costs are fraudulently reported to ERS and the IRS as real costs. Fraud of this nature exaggerates the justification for higher premiums and magnifies cost deductions reported to the IRS.

**3b. Solution:** Require ERS to operate Under the rules of the State of Texas Insurance Code. This change will cost the ERS zero dollars while preventing the insurance companies and others from fraudulently collecting Secondary Insurance copayments. This change will grant **EQUAL JUSTICE** to the members of ERS. Order a detailed investigation into the computerized reporting systems of CVS/CareMark, the contract administrator of ERS insurance programs, and Instruct the investigators to hunt for errors in calculated cost entries vs. actual costs.

**4a. Problem:** The ERS's Director of Benefit Contracts justified the award of a pharmaceutical insurance contract to "SilverScript" based upon a devious agreement that claims to save \$7.00 per month for each member in reduced insurance premiums. The fact is that the contractor has been handed total freedom to charge outrageous prices for drugs. The contract administrator, CVS/CareMark has failed to protect the members of ERS from insurance malpractice. Research beginning January 1, 2014 thru December 31, 2015 found that SilverScript, with the approval of CVS/CareMark, is charging the members of ERS as much as 230% more than BCBS is charging for those same of drugs. This research is based on the comparison of identical prescription drug purchases, in the same quantities and on the same day. There appears to be collusion of malpractice among the several decision makers. Over the past two years, it is estimated that Silver Script has extorted no less than \$279,360,000 from members of the Retirement System of Texas. It appears that some aspects of the ERS are out of control.

**4b. Solution:** Assign an appropriate Branch of the State Government to assume temporary control of the Retirement System of Texas. Cancel the Pharmaceutical Contract with SilverScript and demand a refund of all unjustifiable over charges. Cancel the contract with CVS/CareMark and negotiate a temporary contract with the previous administrator to administer the ERS Pharmaceutical Drug Program.

**5a. Problem:** The installation of Medicare as Primary Insurer into the "independent" Retirement System of Texas is contrary to the Laws of the State of Texas. Medicare has replaced the legal Primary insurance providers and forced them to be Secondary. This action by Medicare allows CVS/CareMark to declare that the previous Secondary Insurer, now the third insurer, has no standing

and is therefore null and void. The result of CVS/CareMark's arbitrary declaration is that any claim by a third insurer shall be denied and no reimbursement shall be forthcoming to the third insurer. The following situation exists among thousands of ERS members:

- (1) Some members of ERS are insured dependents of Federally Insured persons. ERS insurance is then Secondary to Medicare/HealthSelect and the Federal insurance is also secondary or "third" insurer. CVS/CareMark falsely denies reimbursement of the insured dependents' Primary copayments on the mistaken grounds that the Federal Insurance has been declared Primary to the ERS member.
- (2) Some members of ERS are also Federal Retirees. The Federal Insurance is now Primary and ERS is Secondary. Again, CVS/CareMark, by order of ERS's Director of Benefits Contracts, demands copayments be paid on the Primary's copayments.

**5b. Solution:** Require the ERS to operate in compliance with the rules of the State of Texas Insurance Code. This change shall cost the ERS zero dollars while preventing the insurance companies and others from fraudulently commandeering unjustified copayments.

**6a. Problem:** Medicare/HealthSelect has been installed as Primary Insurer thereby relieving ERS insurance of the obligation to pay 70% of the price of drug purchases. That leaves only 20% of the purchase price to be paid by the Secondary insurer. The reduction in cost of ERS's insurance obligations during the time that Medicare/HealthSelect has been Primary amounts to more than \$82,000,000 dollars over payment of insurance premiums. No members have received refunds of any of those over payments.

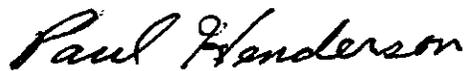
**6b. Solution:** Require CVS/CareMark to refund all over payments of insurance premiums. Also Require ERS to operate in compliance with the rules of the National Association of Insurance Commissioners. This change shall cost the ERS zero dollars, while preventing the insurance companies and others from continuing to withhold refunding of overcharged insurance premiums.

**7a. Problem:** There are multiple conflicts of interests between the Contract Administrators, various Insurance interests, and claims departments. There is a question of conflict of interests regarding the ownership of Humana, CVS/CareMark, CVS/Pharmacy, SilverScript, and unknown organizations.

**7b. Solution:** Eliminate any and all organizations, companies, departments, clubs, and parties that have conflicts of, or the appearance of conflict of interest.

Thank you for your time and consideration.

Sincerely Yours,

A handwritten signature in cursive script that reads "Paul Henderson".

Paul Henderson, ERS Retiree

**From:** [Sunset Advisory Commission](#)  
**To:** [Janet Wood](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Thursday, August 04, 2016 8:20:18 AM

---

-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]  
Sent: Thursday, August 04, 2016 5:23 AM  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: BOARD TRUSTEES EMPLOYEES RETIREMENT SYSTEM TEXAS ERS

First Name: Paul

Last Name: Henderson

Title: Retiree

Organization you are affiliated with: Texas Department of Transportation

Email:

City: Haltom City

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed: Very good report, however, the report could be improved by an in-depth investigation into the unfair coordination of prescription drug benefits for retirees and employees with dual insurers: The Secondary insurer should pay ALL costs not otherwise paid by the Primary insurer. The insured should be "left whole".

Any Alternative or New Recommendations on This Agency: ERS should not be totally exempt from the Insurance Code of Texas. The current ERS rules do not benefit the members, rather, the insurers are unjustly rewarded a windfall "saving" of several millions of dollars each year. All 50 states have agreed to abide by the National Association of Insurance Commissioners' rules!

My Comment Will Be Made Public: I agree

MAY 09 2016

**PAUL HENDERSON**

**May 2, 2016**

**Chairman Gonzales and Members  
Sunset Advisory Commission  
P.O. Box 13066  
Austin, TX 78701**

**Dear Friends,**

**Again, congratulations on your appointment to the Sunset Advisory Commission. This is my second letter to you outlining things that are wrong with Employees Retirement System of Texas and again I beg you to do all you can to correct the errors. There is at least one other error that should be added to my previous four items of error to be investigated.**

**Please investigate the probable conflict of interest that has occurred since CareMark became the Contract Manager of ERS Health Programs. Is it true that the Firms, CareMark, HUMANA, Silver Script, and CVS are owned by each other? Is it also true that Members of each Board of Trustees, including ERS Managers own large blocks of stock (less than 5%) in some or all of the various Firms? Why would anyone approve a contract that allowed the Contractor to escalate the price of products 230% above the previous Contractor's prices? How deep into our State government and how many years can a conspiracy go without being caught?**

**There will be better oversight ERS when they are placed under the "National Association of Insurance Commissioners" (NAIC) rules. These rules have been accepted by all 50 States, including the State of Texas and the change will cost ERS nothing.**

**Thank you for your consideration of this request.**

**Sincerely,**



**Paul. J. Henderson, P.E., Retired**