

November 14, 2023

Barbara Gibson
Deputy Director
North Carolina Office of State Human Resources
116 W. Jones Street
Raleigh, NC 27603

1331 Mail Service Center
Raleigh, NC -27699-1331

Re: OSHR Planned Transition of NCFlex Enrollment from Benefitfocus to Empyrean

Dear Director Gibson:

The North Carolina State Health Plan for Teachers and State Employees (“Plan”) has learned through a third party that the North Carolina Office of State Human Resources (“OSHR”) is planning to transition its NCFlex enrollment from the Benefitfocus platform to the Empyrean platform in 2024 through a contract managed by the University of North Carolina System. Further, the Plan is aware through a third-party that OSHR is targeting a mid-year transition for this project.

As you are aware, the Plan and OSHR have held the longstanding position that it is in the best interest of State employees and their dependents to have a single platform from which to enroll in benefits. In serving the best interest of State employees and their dependents, the Plan has sought to be a helpful partner to OSHR, and the Plan and OSHR incurred legal obligations to this end. The Plan and OSHR memorialized this in the agreement titled “Memorandum of Understanding,” executed on October 5, 2020, and amended on November 10, 2021 (collectively the “Agreement”).

The Plan has met and surpassed these legal obligations. Most recently, in September 2023, OSHR made an urgent request to the Plan to provide “gap” COBRA administration for university employees with NCFlex benefits that are transitioning to the Empyrean platform on January 1, 2024. While the Plan was under no legal obligation to assist in this way, in a spirit of partnership, the Plan responded to OSHR’s needs and developed a process to facilitate the transition.

Unfortunately, OSHR has not shown the same spirit of partnership and compliance with its legal obligations in its current actions to implement a unilateral and surreptitious mid-year transition of NCFlex enrollment to Empyrean. Under the Agreement, OSHR is required to work with the Plan to ensure ongoing service needs are met and notify and cooperate with the Plan in resolving issues with Benefitfocus and iTEDIUM. Clearly, OSHR’s actions fall under these obligations. OSHR has provided the Plan no notice and has neither cooperated nor worked with the Plan to resolve this issue. Accordingly, OSHR is in breach of its obligations under the Agreement, and the Plan provides OSHR thirty (30) days from the date of this letter to cure its breach.

Further, under the Agreement, (A) the Plan is the only entity contracted with Benefitfocus for eligibility and enrollment services and iTEDIUM for COBRA administration and individual billing services and (B) the Plan is the owner of these contracts. The Plan is currently engaged in two complex and critical projects pursuant to these contracts—the migration of group premium billing from the TPA contract to the billing



vendor contract and the implementation of the Aetna TPA transition. Both projects have go-live dates in the latter half of 2024, and Benefitfocus and iTEDIUM project resources are already 100% dedicated to these efforts. OSHR's contemplated mid-year 2024 transition will interfere with both of these projects and thereby cause irreparable harm to the Plan and its members. Therefore, under our fiduciary duty to the Plan, we cannot agree to a mid-year 2024 transition of NCFlex benefits off the Benefitfocus platform.

If OSHR cures its breach, the Plan is willing to develop a transition plan to enable OSHR to enroll NCFlex benefits on the Empyrean platform during open enrollment for 2025; however, NCFlex enrollment will remain on the Benefitfocus platform for 2024. Please note, OSHR will also have to transition any remaining NCFlex COBRA members to NCFlex's new COBRA administrator effective January 1, 2025, since the Plan will no longer maintain data exchanges with the NCFlex vendors for effective dates after December 1, 2024. Any costs associated with the COBRA transition will be paid by OSHR.

The Plan stands ready to help OSHR correct its non-compliance and, thereby, prevent any negative impact to State employees and dependents resulting from OSHR's actions.

Sincerely,



Samuel W. Watts
Executive Administrator
North Carolina State Health Plan

CC:

Caroline Smart
Sr. Director of Plan Integration
North Carolina State Health Plan

Ben Garner
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