Strategic Partner Analysis

Breaking News: New State Law Limits Employer Contributions to Public Employee Health Insurance

Governor Snyder is expected to sign a new law that will limit public employer contributions to employee health insurance, effective January 1, 2012. This law will apply to all public libraries in the state. The "Publicly Funded Health Insurance Contribution Act" provides two mechanisms that limit employer contributions to healthcare: a "hard cap" and an optional "80/20" plan. The Act applies to "*medical benefit plans*" that provide payment of medical benefits, including, but not limited to, hospital and physician services, prescription drugs, and related benefits. Unlike an earlier version of the bill that eventually became this law, the Act does not apply to dental or vision care plans.

Q: What employers are affected by the Act?

The new law applies broadly to "public employers." Legislators appear to have set their sights on every public employer, because the Act will apply to local units of government, political subdivisions of the state, and "any intergovernmental, metropolitan, or local department, agency, or authority, or other local political subdivisions." Also included are school districts, community or junior colleges, and certain other institutions of higher education. Although not specifically mentioned in the Act, it is reasonable to include public libraries in the broad definition of "public employer."

The Default Limit: The Hard Cap

The Act is drafted to apply a maximum that a public employer may pay towards public employee health care costs. The limit on a public employer's total contribution for employee health insurance that will apply, if the library's governing body takes no action (see below), will be equivalent to:

- $5,500 times the number of employees with single coverage, plus
- $11,000 times the number of employees with two person coverage, plus
- $15,000 times the number of employees with family coverage.

The amount necessary to purchase health insurance for employees that exceeds this "cap" must be paid by employees.

Q. How is the remaining cost recovered from employees?

The remaining 20% of the cost is to be recovered through payments by the employees. These payments may be spread evenly or different classifications of employees may be asked to pay a lesser or greater percentage of the cost as long as the total 20% is recovered.

Q: What employer costs count toward the cap?

The annual premium or illustrative rate and any payments for reimbursements of co-pays, deductibles, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care are included as employer costs. Benefits provided to retired employees are not included.

Q: Will the caps ever change?

Yes. The State Treasurer will adjust the caps each October 1 based on the change in the medical care component of the U.S. Consumer Price Index. The newly adjusted caps will be effective January 1. The past few years, the medical care component of the Consumer Price Index has risen 12-15% a year, so it is likely that caps will rise significantly.

Q: How can employers and employees plan for and manage the annual change in contributions?

The adjustment of the cap could be viewed as a way to encourage employer-employee cooperation in plan selection and cost maintenance or reduction: if the plan increase for the year is less than the change in the Consumer Price Index, employees may in fact see their contribution rate slow or drop.

The 80/20 Plan

Q: How does an employer elect the 80/20 plan?

The employer's governing body may, by a majority vote, elect to limit its healthcare contributions differently. Instead of the hard cap described above, the employer could simply elect not to pay more than 80% of the total annual cost of the medical benefit plans it offers, without regard to how much that means per employee with single, double, or family coverage.

Q: What employer costs are counted toward the 80/20 calculation?

Included. The annual premium or illustrative rate *and* any payments for reimbursements of co-pays, deductibles, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care.

Not Included.

- Benefits provided to retired employees
- Beneficiary- or employee paid copayments, coinsurance, deductibles, other out-of-pocket expenses, other service-related fees that are assessed to the coverage beneficiary, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care
- Healthcare contributions for employees covered by a contract or agreement in effect **before September 15, 2011**.

Opting Out

Although the new law imposes a maximum that public employers may contribute to employee health care costs, it also provides a mechanism for public employers to opt out of the Act's requirements—and therefore determine on their own how much to contribute to employee health insurance. Not all public employers will be able to take advantage of it, however.

Q: How does an employer opt out?

This mechanism permits a "local unit of government" to exempt itself from the requirements of the Act for a one year period by a **two-thirds** vote of its governing body. A new two-thirds vote would be required to extend the exemption in each subsequent year. By opting out, the local unit of government would be able to determine on its own how much it contributes to employee health insurance, without reference to hard caps or the 80/20 split set out in the Act.

Q: Who can opt out?

The Opt Out provision is available only to "local units of government," defined as cities, villages, townships, or counties, municipal energy utilities, public airport authorities, and the Huron-Clinton

Metropolitan Authority. Thus, libraries, other authorities, drain commissions, and school districts will be **unable** to opt out. This puts libraries in the difficult position of having to balance the cost of health care with their employees' ability to pay. In some cases, libraries may have to reduce benefits in order to make health insurance affordable for some employees.

Special Issue: Contrary contract terms

Q: A collective bargaining agreement requires employer contribution that results in total contribution that exceeds the limits—is this contract term still valid?

The Act will not apply to health insurance provisions for employees covered by a collective bargaining agreement or other contract that is in effect on **September 15, 2011**. The Act's limits will, however, apply when those "grandfathered" agreements or contracts are extended, renewed, or amended. In the meantime, amounts expended for medical benefit plans under such contracts or agreements are excluded from the calculation of the public employer's maximum payment under the 80/20 provision, if that provision is applied for other employees.

Q: How will the Act's requirements affect what can be negotiated at the bargaining table?

Beginning **September 15, 2011**, a collective bargaining agreement or other employee contract may not contain terms contrary to the Act. This means that negotiation for contribution term that would result in the employer's overall contributions exceeding the Act's limits is prohibited. There will likely be some debate over the obligation of an employer to bargain over the **effect** of adopting the 80/20 provision, since the Act allows the employer to apportion the 20% contribution among employees. The Act's language would seem to prohibit even that possibility, however, since it provides that the employer shall apportion its 80% contribution to health care costs "as it sees fit."

Loose Ends

Q: Do public employers have any discretion under the Act?

Although there are some special rules for elected officials, if a public employer does not opt out of the Act's requirements, which libraries may not, a public employer generally may allocate its contributions among its employees as it sees fit, requiring certain employees to contribute more than others. The force of the Act is an absolute limit on how much an employer may contribute overall, not a hard and fast mandate as to how much each employee must contribute. Therefore, employers may use this discretion to allocate costs to reflect an understanding that some employees may not be able to afford or contribute as much as others, based on salary and hourly wages.

> The Act establishes an absolute limit on amounts an employer may contribute *overall*, not necessarily a mandate as to how much *each employee must contribute*.

Ultimately, 'who pays how much' is a policy decision, not governed by this new law: as long as overall costs to do not exceed the caps or 80/20 limits, each employee or group of employees could be treated differently. An employer could therefore pay $6,000 toward one employee's single coverage plan, and $5,000 toward another employee's single coverage plan, because the overall contribution is not higher than $5,500 per employee with single coverage. Similarly, an employer may pay 90% of one group of employee's medical benefit plan and 70% of another, so long as the employer's overall contribution does not exceed 80% of the *total costs*.

Q: Are there penalties for failing to comply with the Act or opting out of the Act's requirements?

Opting out and failing to comply with the Act are two different things. If an employer is a "local unit of government" and opts out, there are no penalties. However, certain employers who do not opt out and still fail to comply with the Act do face penalties. If an employer receives state school aid or payments under the economic vitality incentive program (which replaces the statutory revenue sharing system) fails to comply with the Act, those payments would be reduced by 10% as long as the employer is noncompliant. No other forms of state aid, including aid to libraries, appear to be affected or reduced.

There remains an open question as to the consequences for a public employer who is not affected by the penalty provision, who chooses not to comply with the Act's requirements, including whether the public employer could be challenged for failure to comply with the law. As yet, it is unclear how such an issue might be raised. The Act does not confer standing on individuals or the Attorney General to challenge a library's failure to comply and it is difficult to identify a possible special injury or right or substantial interest that would be detrimentally affected in a manner different than any other person, as is required to satisfy standing requirements in Michigan courts. That said, we do not encourage libraries to ignore this Act.

Q: How will employees pay their share?

The Act permits payroll deductions and authorizes employers to condition eligibility for the medical benefit plan on the employee's authorizing the deduction.

Q: How should the employer make its contributions: monthly or in a lump sum payment?

This will be a matter up to the employer. The Act does not provide guidance on this issue, which raises some practical concerns. If an employer reaches its maximum contribution amount before the end of the year, it is unclear what would happen if an employee somehow stopped paying for coverage: would the employee be entitled to maintain coverage and if so at what rate. Although it is still far too early and difficult to give blanket advice as to a best practice, it is likely that spreading contributions out evenly over the year and deducting the employees' share from payroll in a similar fashion will avoid having to determine what coverage is available to an employee whose coverage lapses for lack of payment and at what rate.

Q: How can employers determine whether and how to use the hard cap or the 80/20 plan, or, if possible, opt out of the Act's requirements?

Employers should reflect on a number of things:

- State of the overall budget
- Healthcare costs in preceding years—whether some of those costs will be included in calculating employer contribution under the Act and if so what the difference in payments would be
- Whether and to what extent employees are contributing on average now as a percentage of overall cost or average cost per single, double, and family coverage employee
- Whether employer costs are fairly predictable or are they tied to variable amounts of reimbursement
- Whether and to what extent penalty provisions will apply if the Act's requirements are not met

If you would like more information about this new law, don't hesitate to ask!

You can read the most recent version of the bill (originally Senate Bill 0007), on the Michigan Legislature's website at http://www.legislature.mi.gov.

You can—and should—discuss the practical and legal issues surrounding this new law with your attorney, as well, because it will undoubtedly present many challenges in budget costs and at the bargaining table in the months and years to come.

The Authors

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