

# Health Benefit Reform Update

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# Overview

- Landscape Prior to Bipartisan Health Benefit Reform
- Reform Recap – P.L. 2010, c. 2 & P.L. 2011, c.78
- Sampling of Questions DLGS has Received on Implementing c.78
- Proposed Rules – Approval Process for non-SHBP/SEHBP Plans
- Affordable Care Act – Issues for Local Governments

# Landscape Prior to Health Benefit Reform

- Employee contribution toward healthcare dependent on local policy
- Key barriers to implementing employee contribution
  - Lack of leverage in collective bargaining process
  - Lack of flexibility on health plan design side

*Burden of rising healthcare costs largely fell on the taxpayer*

# P.L. 2010, c.2 – Key Changes

- Enacted May 21, 2010
- Established minimum employee contribution - 1.5% of salary
  - Introduced contribution to post-retirement medical
- Limited maximum compensation for healthcare waivers to 25% of employer savings or \$5,000; whichever is less
- Eliminated multiple coverage under SHBP
  - no waiver if in SHBP and spouse/partner also in SHBP

# Chapter 78 - Furthering Reform

- Effective June 28, 2011 or when CNA in effect as of that date expires
- Establishes the c.78 “Grid” - employee contribution % by salary and coverage tier
  - 1.5% of salary or grid, whichever is higher
- Four-Year phase-in for existing employees
- New employees contribute at full Year 4 rate

# Chapter 78 – Furthering Reform (cont.)

- Contribution to Post-Retirement Medical
  - Minimum 1.5% or Grid, whichever is higher
- Exceptions:
  - Meets age/years of service requirement by c.78 effective date, or
  - Achieves 20 or more years of creditable service in one or more State or locally-administered retirement systems by the effective date
- SHBP Plan Design Changes
- Section 125 Plan – Mandatory for employers to set up cafeteria plan for employee's non-covered medical expenses

# Sampling of c.78

## Implementation Questions

- If the contracting unit has not implemented c.78 as to a collective bargaining unit until the second year after the effective date, do the existing employees of the unit start at Year One or Year Two?
  - Year Two. Implementation Date of c.78 is independent of the Four-Year Phase-In.
  - Example: If the effective date is June 28, 2011, and c.78 was not implemented by local unit until September 1, 2012, contribution starts at Year Two on the grid. See LFN 2011-20R at p.3 for definition of “implementation date”

# Sampling of c.78

## Implementation Questions (cont.)

- For a non-SHBP local unit that has a reimbursement program for eyeglass costs is this subject to employee contribution?
  - Yes. Reimbursements such as these are considered a healthcare benefit. The amount deducted from the reimbursement is based on the employee's level of healthcare contribution (e.g. if 35% of premium, deduct 35% from reimbursement)



# Sampling of c.78

## Implementation Questions (cont.)

- For employees retiring under disability retirement, must they contribute toward post-retirement medical benefits?
  - It depends on employee's status on date of the disability retirement. If the employee has at least 20 years of creditable service, then no. If not, then there still may be no contribution requirement if the retirement date is prior to the expiration of a C.N.A. All absent a more restrictive local policy, of course.
- If an employee is laid off and is called back to work, at what Year of the phase-in does the employee contribute?
  - Year 4, because employer decided whether to bring employee back.

# Sampling of c.78

## Implementation Questions (cont.)

- What year of the phase-in does an existing employee fall under when either transferring collective bargaining units or becoming a non-aligned employee?
  - Employee steps into the same shoes of the new bargaining unit they're joining, or in the same shoes of their non-aligned colleagues.
- What happens when an employee changes public employers?
  - If an employee changes organizations without there being an agreement between the former and subsequent employer, that employee starts at the full Year Four rate.

# Sampling of c.78

## Implementation Questions (cont.)

- In regard to a Section 125 plan for unreimbursed medical expenses, can an employer wait until an employee expresses interest in participating before setting up plan?
  - No. The statutory language says the employer “shall establish such a plan for medical or dental expenses not covered by a health benefits plan”

# Objectives of Health Benefit Reform

- Achieving savings for taxpayers
  - Brings public sector more in line with private sector
- Giving local government greater leverage in collective bargaining
- Providing local government employees with strong stake in controlling healthcare costs
- Promoting greater transparency in healthcare costs

Are you a member of the SHBP for medical coverage? \_\_\_\_\_  
 Yes \_\_\_\_\_ No

Are you a member of the SHBP for prescription coverage? \_\_\_\_\_  
 Yes \_\_\_\_\_ No

	Current year - # Covered under Medical and Rx Plan	Current year - Premium	Total	Previous year - # Covered under Medical and Rx Plan	Previous year - Premium	Total	Change from current year from previous year
<b>Health Benefits - Annual Cost</b>							
Single Coverage			\$ -			\$ -	\$ -
Parent & Child			\$ -			\$ -	\$ -
Employee & Spouse (or Partner)			\$ -			\$ -	\$ -
Family			\$ -			\$ -	\$ -
Less Employee Cost Share							
Subtotal							

	Current year - # Covered under Medical and Rx Plan	Current year - Premium	Total	Previous year - # Covered under Medical and Rx Plan	Previous year - Premium	Total	Change from current year from previous year
<b>Elected Officials Only - Health Benefits - Annual Cost</b>							
Single Coverage			\$ -			\$ -	\$ -
Parent & Child			\$ -			\$ -	\$ -
Employee & Spouse (or Partner)			\$ -			\$ -	\$ -
Family			\$ -			\$ -	\$ -
Less Employee Cost Share							
Subtotal							

	Current year - # Covered under Medical and Rx Plan	Current year - Premium	Total	Previous year - # Covered under Medical and Rx Plan	Previous year - Premium	Total	Change from current year from previous year
<b>Retirees Only - Health Benefits - Annual Cost</b>							
Single Coverage			\$ -			\$ -	\$ -
Parent & Child			\$ -			\$ -	\$ -
Employee & Spouse (or Partner)			\$ -			\$ -	\$ -
Family			\$ -			\$ -	\$ -
Less Employee Cost Share							
Subtotal							

<b>GRAND TOTAL</b>							
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# Proposed Rules Concerning Approval of non-SHBP Plans

- Local Finance Board – NJAC 5:30-18.1 et seq.
- State Board of Education – NJAC 6A:23A-1.1 and 1.2; NJAC 6A:23A-23

- Applies to local units and school districts providing non-SHBP medical, Rx or dental coverage, or any combination thereof, pursuant to a Collective Negotiated Agreement (CNA)
- Measures non-SHBP plan costs against an objective benchmark
  - Weighted average of SHBP plans, which takes into account all individuals in SHBP universe and their various types of coverage
  - If your local unit does not have collective bargaining units, these requirements do not apply to you.

- Before entering into a new CNA, employer must apply to DLGS for approval to incorporate non-SHBP coverage into a CNA.
- Local unit must certify for each bargaining unit that proposed non-SHBP plan achieves aggregate employer savings versus the State Health Benefits Program



# Demonstrating Aggregate Employer Savings

- Local unit must show that the net employer cost of the proposed non-SHBP plan is *less than or equal to* the net SHBP cost.
- **Net employer cost =**  
Proposed Employer Plan Premium (aggregate premium for all employees in bargaining unit)  
*subtracted by*  
Proposed Employee Contribution (aggregate employee contribution for all employees in bargaining unit)  
***Proposed Employer Plan Premium for first year of CNA is assumed constant, and shall be applied to every year during the CNA***

- **Net SHBP cost =**  
Aggregate Weighted Average SHBP Premium  
Subtracted by  
Aggregate Chapter 78 Health Care Contribution Obligation
- **Weighted average SHBP premium**
  - Premium issued by the Division of Pensions and Benefits
  - Represents the average cost by coverage tier of all plans offered by SHBP weighted by enrollment
  - Separate weighted average premiums are calculated for the following coverage tiers: single, employee plus spouse/partner, parent child(ren) and family
  - Weighted average premiums combining all coverage tiers are calculated for SHBP medical, prescription and dental coverage.

- **Aggregate Chapter 78 Health Care Contribution Obligation**
  - The total healthcare contribution obligation for each employee subject to the CNA, over the term of the CNA, pursuant to the c.78 grid.
  - Takes into account Years 1-4 phase-in over the course of the CNA

# Content of the Certification

- Will be in form provided by guidance through Local Finance Notice and must include:
  - Duration of CNA
  - A demonstration of aggregate employer savings by comparing the net employer cost with the net SHBP cost over the term of the CNA.

# Certification Content (cont.)

- An employee-by-employee schedule supporting the local unit's certification of aggregate employer savings. Schedule spans each year of proposed CBA and must include:
  - Each employee's coverage tier (single, family, etc.)
  - Each employee's base salary for each year of the CNA, taking into account any anticipated or actual increases during the CNA, including steps.
  - Proposed employer plan premium for each employee's coverage tier
  - Proposed employee contribution
  - Weighted average SHBP premium for the coverage tier selected
  - Chapter 78-specified employee healthcare contribution

# Certification Content (cont.)

- Local unit may propose an employee contribution less than that required by the C. 78 grid; so long as the local unit can certify to aggregate employer savings
  - Employee contributions lower than c. 78 grid cannot be proposed for non-union employees only, must also be applied to at least one collective bargaining unit.

# Approval Process

- DLGS or DoE must approve or reject the employer's certification of savings within 30 days of receipt.
  - Failure to respond within the statutory timeframe is deemed an automatic approval
  - If rejected because of failure to show savings, local unit can respond by changing employee contribution, plan design to lower net employer cost.
- Division's rejection of a local unit's certification means that the non-SHBP plan as proposed cannot be incorporated into a CNA.

- Cases involving binding arbitration (police and fire)
  - Before an arbitrator can consider a proposed non-SHBP plan for incorporation into final settlement
  - Either the local unit or bargaining unit shall seek approval of a proposed non-SHBP plan (via certification of aggregate employer savings) no later than the time of filing for interest arbitration
- Approval process expedited in these cases



# Select Comments Received on Rule Proposal

- Chapter 78 has a four-year sunset provision, which the proposed Rule does not expressly incorporate.
- Carve out retirees from the equation, which would eliminate the skewing of costs
- The Rule should not only consider price, but also on other criteria including their benefits design, networks and service levels.
- Changing health benefits, even with a “substantially similar” clause, is a mandatory negotiable item. Therefore, the municipality could potentially be subject to an Unfair Labor Practice charge when forced by this Rule to make a unilateral change to health benefit providers.

# Select Comments (cont.)

- Proposed NJAC 5:30-18.4, which addresses DLGS approval of savings certifications, does not appreciate the timeline realities of the health plan quoting process.
- Exempt any entity utilizing a professional healthcare broker working on a flat fee, no commission basis since this would eliminate the broker's incentive to increase healthcare costs.
- Measure the cost savings on an aggregate annual basis, for all employees other than retirees, rather than over the life of the contract, for all of an entity's collective bargaining units.
- Allow the cost comparison to be performed by each union, using annual premium amounts per plan type and comparing the annual amounts to the SHBP annual premiums.
- Allow non-SHBP plans whose costs are within 110% of SHBP rates to satisfy the standard.

# Patient Protection and Affordable Care Act of 2010 (a/k/a “ObamaCare”)

- Employer “shared responsibility” penalty provision
  - Starting on January 1, 2014, employers employing at least a certain number of employees (generally 50 full-time employees and full-time equivalents) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act).
  - Under these provisions, if these employers do not offer affordable health coverage with a minimum level of coverage to their full-time employees, they may be subject to an Employer Shared Responsibility payment if at least one of their full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges.

- To be subject to these Employer Shared Responsibility provisions, an employer must have at least 50 full-time employees, or a combination of full-time and part-time employees that is equivalent to at least 50 full-time employees
  - e.g. 100 half-time employees equals 50 full-time employees.
  - Employers will use information about the employees they employ during 2013 to determine whether they employ enough employees to be subject to these new provisions in 2014.

- Premium tax credits generally are available to help pay for coverage for employees who
  - are between 100% and 400% of the federal poverty level and enroll in coverage through an Affordable Insurance Exchange,
  - are not eligible for coverage through a government-sponsored program like Medicaid or CHIP, and
  - are not eligible for coverage offered by an employer or are eligible only for employer coverage that is unaffordable or that does not provide minimum value

- The law does not mandate coverage of every full-time employee; rather, a financial penalty will be imposed in order to encourage coverage.
- The problem: How does your local unit define “full-time employee” or “part-time employee”?

- The Affordable Care Act defines a “full-time employee” as an **employee who works 30 or more hours per week**.
- Many local units define “part-time employee” or “part-time employment” differently for purposes of health care coverage eligibility. You could be exposed to the penalty if you do not extend coverage to all employees who work 30 or more hours per week.
  - For example, if you define a “full-time employee” as “an employee who works 35 or more hours per week” you are exposed to the penalty because of the five hour gap.

# Opportunity to Comment on Proposed Regulations

Employers and other stakeholders can help shape final regulations at a public hearing on April 23, 2013, and by submitting written comments by March 18, 2013.

IRS Q&A on Employer Shared Responsibility Provisions of the Affordable Care Act:

- <http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>
- IRS Regs: <http://www.irs.gov/pub/newsroom/reg-138006-12.pdf>
- Consult your local unit's Labor Counsel