
OLR Bill Analysis

sHB 6308

AN ACT ESTABLISHING THE CONNECTICUT HEALTHCARE PARTNERSHIP.

SUMMARY:

This bill requires the comptroller to offer employee and retiree coverage under the self-insured state employee health insurance plan, to (1) nonstate public employers beginning July 1, 2011; (2) municipal-related and nonprofit employers beginning January 1, 2012; and (3) small employers beginning July 1, 2012. He must do this (1) after the General Assembly receives written consent from the State Employees' Bargaining Agent Coalition (SEBAC) and (2) subject to specified requirements and conditions. Employers that are approved for coverage must agree to benefit periods of at least two years. The bill authorizes the comptroller to adopt regulations related to opening the state plan to these other groups and to implement policies and procedures while in the process of adopting regulations.

The bill requires a health care actuary to (1) review certain employer applications for coverage under the state plan and (2) certify to the comptroller in writing if the group will shift a significantly disproportionate share of its employees' medical risks to the state plan. If so, the bill requires the comptroller to decline the group coverage.

The bill:

1. requires the state to charge employers participating in the state plan the same premium rates the state pays, except it may adjust the rate for a small employer to reflect its group characteristics;
2. allows the comptroller to have state money withheld from a municipality participating in the state plan that fails to pay premiums and, with 10-days notice, terminate any participating

employer group that does not pay its premiums;

3. establishes a “state plan premium account” as a restricted grant fund, into which employer groups’ premiums must be deposited and from which claims must be paid;
4. establishes two advisory committees to make recommendations to the Health Care Cost Containment Committee (HCCCC), a state labor and management committee that exists under agreement with SEBAC, about coverage for nonstate public employees and private sector employees; and
5. excludes from the state insurance law definition of “small employer” a municipality obtaining health care benefits through the self-insured state plan.

EFFECTIVE DATE: July 1, 2011; except for the provision about needing SEBAC’s agreement before opening the state plan to other groups, which is effective upon passage.

§ 1 — DEFINITIONS

The bill defines “nonstate public employer” as a municipality or other state political subdivision, including a board of education, quasi-public agency, or public library. A “nonstate public employee” is an employee or elected officer of a nonstate public employer.

A “municipal-related employer” is a property management, food service, or school transportation business that contracts with a nonstate public employer.

A “nonprofit employer” is (1) a nonprofit corporation organized under federal law (26 USC 501) that contracts with the state or receives a portion of its funding from a local, state, or federal government or (2) a tax-exempt labor or agricultural organization under federal law (26 USC 501(c)(5)).

A “small employer” is a person, firm, corporation, limited liability company, partnership, or association actively engaged in business or

self-employed for at least three consecutive months that, on at least 50% of its working days during the preceding 12 months, employed 50 or fewer employees most working in Connecticut. When counting the number of employees, companies that are affiliates under state law or eligible to file a combined tax return are considered one employer.

§ 2 — OPENING STATE EMPLOYEE PLAN TO OTHERS

The bill requires the comptroller to offer coverage under the self-insured state plan to certain employer groups that submit an application that is approved under the bill's provisions. He must offer coverage to:

1. nonstate public employers beginning July 1, 2011,
2. municipal-related and nonprofit employers beginning January 1, 2012, and
3. small employers beginning July 1, 2012.

The bill specifies that the comptroller does not have to offer coverage from every plan offered under the state plan to every employer.

Open Enrollment

Under the bill, initial open enrollment for nonstate public employers must be for coverage that begins July 1, 2011 and subsequent enrollment periods must also begin July 1. Open enrollment for municipal-related, nonprofit, and small employers must be for periods beginning January 1 and July 1.

Coverage Term, Renewal, and Withdrawal

In order for an employer group to participate in the self-insured state employee plan, the group must agree to benefit periods lasting at least two years. An employer may apply for renewal before the end of each benefit period.

The bill requires the comptroller to develop procedures for an employer group to (1) apply to participate in the plan, including

procedures for self-insured nonstate public employers and for those that are fully insured; (2) apply for renewal; and (3) withdraw from participation. The procedures must include the terms and conditions under which a group can withdraw before the benefit period ends and on how to obtain a refund for any unearned premiums paid. The procedures must provide that nonstate public employees covered under a collective bargaining agreement must withdraw in accordance with any applicable state collective bargaining laws for municipal employees and teachers.

Application Form

The bill requires the comptroller to create an application for employer groups seeking coverage under the state plan. In the application, the employer must disclose whether it will offer any other plan to the employees offered the state plan.

Status as a Governmental Health Plan Under Federal ERISA

It is unclear whether opening the state plan to private sector employers jeopardizes the plan's status as a "governmental plan" under the federal Employee Retirement Income Security Act (ERISA) (see BACKGROUND). ERISA sets certain fiduciary and disclosure standards for private-sector health plans and exempts governmental plans from these requirements.

The bill authorizes the comptroller to deny an employer admission into the state health plan if he determines that granting coverage to the employer will affect the state plan's status as a governmental plan. In addition to denying coverage to an employer for this reason, he must stop accepting applications from all municipal-related, nonprofit, and small employers. Presumably, applications from these employers that are approved, but for which coverage has not yet started, will be admitted to the plan.

The comptroller must resume accepting applications from these employers if he determines that granting them coverage will not affect the plan's ERISA status. The bill does not set criteria for these decisions.

The comptroller must publicly announce any decision to stop accepting applications from certain employers or to resume accepting applications.

Taft-Hartley Exception

The bill prohibits an employee from enrolling in the state plan if he or she is covered through his or her employer under a health insurance plan or arrangement issued to, or in accordance with, a trust established through collective bargaining under the federal Labor Management Relations Act (i.e., the Taft-Hartley Act).

§ 3 — EMPLOYER GROUP PARTICIPATION

Permissive and Mandatory Collective Bargaining for Nonstate Public Employers

The bill makes a nonstate public employer group's initial participation in the state employee plan a permissive subject of collective bargaining. If the union and the employer sign a written agreement to bargain over the initial participation, then the decision to join the plan is subject to binding arbitration.

The bill makes a nonstate public employer group's continuation in the state plan a mandatory subject of collective bargaining, subject to binding interest arbitration in accordance with applicable state collective bargaining laws for state and municipal employees and teachers.

The bill specifies that a board of education and a municipality are considered separate employers and must separately apply for coverage under the state plan.

Application and Decision Process for All Eligible Employers

The bill establishes two different processes for determining whether a nonstate public, municipal-related, nonprofit, or small employer group's application for coverage will be accepted, depending on whether the application covers all or some of the employees.

If the application covers all employees, the bill requires the comptroller to accept the application for the next open enrollment

period and give the employer written notice of when coverage begins. But if the application covers only some employees or it indicates the employer will offer other health plans to employees offered the state health plan, the comptroller must forward the application to a health care actuary within five days of receiving it.

Within 60 days of receiving an application from the comptroller, the actuary must determine whether it will shift a significantly disproportionate part of the employer group's medical risks to the state plan. If so, the actuary must certify this in writing to the comptroller and include the specific reasons for the decision and the information relied upon in making it.

The bill requires the comptroller to consult with a health care actuary to develop actuarial standards for assessing the shift in medical risks of an employer's employees to the state plan. The comptroller must present the standards to the HCCCC for its review and evaluation before the standards are used. (Presumably the comptroller will contract with an actuary for these services although the bill does not specify this.)

Under the bill, if the comptroller receives a disproportionate risk shift certification from the actuary, he must deny the application and give the employer and HCCCC written notice that includes specific reasons for denial. If the comptroller does not receive such a certification from the actuary, he must accept the application and give the employer written notice of when coverage begins.

Exceptions to Actuarial Review

The bill prohibits the comptroller from forwarding to the actuary an application that proposes to cover fewer than all employees because (1) the employer will not cover temporary, part-time, or durational employees or (2) individual employees decline coverage.

Regulations Regarding Actuarial Review

The bill authorizes the comptroller to adopt regulations establishing procedures for the reviews and the standards used in them.

Self-Insured Plan is Not Unauthorized Insurer or “MEWA”

The bill specifies that the self-insured state employee plan is not an unauthorized insurer or a “multiple employer welfare arrangement” (MEWA) (see BACKGROUND).

§ 4 — RETIREES

Employer groups eligible to cover employees under the state plan also may seek coverage for their retirees. The bill states that it does not diminish any right to retiree health insurance under a collective bargaining agreement or state law.

The bill requires the employer to remit premiums for retirees’ coverage to the comptroller in accordance with its provisions. It specifies that a retiree’s premiums for coverage under the state plan must be the same as those the state pays, including premiums retired state employees pay.

Application and Decision Process

The application process and decision notice requirements with respect to covering an employer’s retirees, including actuarial review if the employer proposes to cover fewer than all retirees (even if it covers all employees), is the same as for employees (described in § 3 above).

Exceptions to Actuarial Review

The bill prohibits the comptroller from forwarding an application to the actuary when the only retirees an employer excludes from the proposed coverage are those who (1) decline coverage or (2) are Medicare enrollees.

§ 5 — PREMIUMS, FEES, COST SHARING, AND STATE ACCOUNT

Premiums

The bill requires, with an exception for small employers, that the premiums an employer group pays to participate in the state plan must be the same as those the state pays, including any premiums state employees and retirees pay. The bill requires an employer to pay premiums to the comptroller monthly in an amount he determines for providing coverage for the group’s employees and retirees, if any.

Small Employer Premiums. It permits the comptroller to adjust the premiums charged a small employer to reflect one or more group characteristics specified in state insurance law. These include:

1. age, but age brackets must be five years or more;
2. gender;
3. geographic area, but one smaller than a county is not permitted;
4. industry, within certain variation limits;
5. group size, within certain variation limits;
6. administrative costs saved by participating in the state plan, as long as they are measurable and realized on items such as marketing, billing, or claims paying functions, but not commissions;
7. savings realized by not paying a profit margin to an insurance carrier by participating in the state plan; and
8. family composition, including employee, employee plus family, employee and spouse, employee and child, employee plus one dependent, and employee plus two or more dependents.

Administrative Fee, Fluctuating Reserves Fee, and Employee Contribution

The bill authorizes the comptroller to charge employers an administrative fee calculated on a per member, per month basis. In addition, the comptroller is authorized to charge a fluctuating reserves fee that he deems necessary to ensure an adequate claims reserve. The bill provides no guidance on how he must determine this.

It permits an employer to require a covered employee or retiree to pay part of the coverage cost, subject to any applicable collective bargaining agreement.

Penalties for Late Payment of Premiums

Interest. If an employer does not pay its premiums by the 10th day

after the due date, the bill requires the employer to pay interest, retroactive to the due date, at the prevailing rate the comptroller determines.

State Money Withheld. If a nonstate public employer fails to make premium payments, the bill authorizes the comptroller to direct the state treasurer, or any state officer who holds state money (i. e., grant, allocation, or appropriation) owed the employer, to withhold payment. The money must be withheld until (1) the employer pays the comptroller the past due premiums and interest or (2) the treasurer or state officer determines that arrangements, satisfactory to the treasurer, have been made for paying the premiums and interest.

The bill prohibits the treasurer or state officer from withholding state money from the group if doing so impedes receiving any federal grant or aid in connection with it.

Terminate Plan Participation. With respect to a (1) nonstate public employer that is not owed state money or from which money is not withheld and (2) municipal-related, nonprofit, or small employer, the bill allows the comptroller to terminate the group's participation in the state plan for failure to pay premiums if he gives it at least 10-days notice. The group can avoid termination by paying premiums and interest due in full before the termination effective date.

The bill allows the comptroller to ask the attorney general to bring an action in Hartford Superior Court to recover any premiums and interest owed or seek equitable relief from a terminated group.

State Plan Premium Account

The bill establishes a separate, nonlapsing State Plan Premium Account within the Grants and Restricted Accounts Fund. The comptroller must (1) deposit the premiums collected from employers, employees, and retirees into this account and (2) administer the account to pay claims.

§ 6 — ADVISORY COMMITTEES

Nonstate Public Health Care Advisory Committee

The bill establishes a 12-member Nonstate Public Health Care Advisory Committee, which must make recommendations to the HCCCC regarding health care coverage for nonstate public employees.

The committee consists of three representatives each of (1) municipal employers, (2) municipal employees, (3) board of education employers, and (4) board of education employees. Of the three representatives in each category, one must represent each of the following towns (1) one with 100,000 or more people, (2) one with at least 20,000 but under 100,000 people, and (3) one under 20,000 people. The comptroller appoints the committee members. The bill does not indicate who serves as chair or how the chair is selected.

Private-Sector Health Care Advisory Committee

The bill establishes a 12-member Private Sector Health Care Advisory Committee, which must make recommendations to the HCCCC regarding health care coverage for private sector employees.

The committee consists of two representatives each of (1) municipal-related employers, (2) employees of municipal-related employers, (3) nonprofit employers, (4) employees of nonprofit employers, (5) small employers, and (6) employees of small employers. The comptroller appoints the committee members. The bill does not indicate who serves as chair or how the chair is selected.

§ 7 — REGULATIONS

The bill authorizes the comptroller to adopt regulations to implement and administer the state employee plan and the provisions regarding opening the plan to other groups. It allows the comptroller to implement policies and procedures to open the plan to other groups while in the process of adopting them in regulation. He must publish notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days of implementation. These policies and procedures are valid until the final regulations are adopted.

§ 8 — SEBAC CONSENT

The bill prohibits the comptroller from opening the state employee

plan to the specified employer groups until SEBAC provides the House and Senate clerks written consent to incorporate the bill's terms into its collective bargaining agreement. (Presumably, SEBAC's written consent goes to the clerks for legislative action. By law, if the legislature does not take action within 30 days, the agreement is deemed approved (CGS § 5-278(b)).)

§ 9 — NONPROFIT IS NOT A SMALL EMPLOYER

The bill excludes a nonprofit obtaining health care benefits through the self-insured state plan from the state insurance law definition of "small employer."

BACKGROUND

ERISA

The federal Employee Retirement Income Security Act (ERISA, U.S. Code Title 29) governs certain activities of most private employers who maintain employee welfare benefit plans and preempts many state laws in this area.

ERISA-covered welfare benefit plans must meet a wide range of (1) fiduciary, reporting, and disclosure requirements and (2) benefit requirements (including benefits required under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), Health Insurance Portability and Accountability Act (HIPAA), Mental Health Parity Act, Newborns' and Mothers' Health Protection Act, and Women's Health and Cancer Rights Act.)

ERISA does not apply to a "governmental plan," which it defines as "a plan established or maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." If the state plan permits private-sector employers to join, it may lose its status as a governmental plan, thereby subjecting it to the full requirements of ERISA, including federal oversight.

U.S. DOL Opinion Concerning ERISA Applicability

In 1999, the California School and Legal College Services of the

Sonoma County Office of Education (the office) requested an advisory opinion from the U.S. Department of Labor (DOL) concerning the applicability of ERISA. Specifically, it asked if allowing 28 private-sector employees to participate in the California Public Employees' Retirement System (CalPERS) would adversely affect CalPERS' status as a "governmental plan" within the meaning of ERISA.

In its opinion, DOL stated that "governmental plan status is not affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan" under ERISA (U. S. DOL Advisory Opinion 1999-10A, July 26, 1999). DOL further noted that its opinion related solely to the application of ERISA's provisions and "is not determinative of any particular tax treatment under the Internal Revenue Code." It advised the office to contact the IRS to clarify tax treatment of the proposed arrangement.

Multiple Employer Welfare Arrangement (MEWA)

An employer that self-insures a health benefit plan for its employees is generally not subject to state insurance laws because of federal preemption under ERISA. But a multiple employer plan may not have the same result.

ERISA defines "multiple employer welfare arrangement" as an employee welfare benefit plan, or any other arrangement that is established or maintained for the purpose of offering or providing benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that it does not include a plan or arrangement established or maintained by a collective bargaining agreement, rural electrical cooperative, or rural telephone cooperative association (29 U. S. C. § 1002(40)).

Congress amended ERISA in 1983 to provide an exception to ERISA's preemption provisions for the regulation of MEWAs under state insurance laws (P.L. 97-473). As a result, if an ERISA-covered employee welfare benefit plan is a MEWA, states may apply and

enforce state insurance laws with respect to it.

Related Bill

The Public Health Committee reported out HB 6305, which requires the comptroller, starting July 1, 2011, to offer coverage under the state employee plan to nonstate public employees and their retirees if a nonstate public employer applies for such coverage.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute Change of Reference
Yea 11 Nay 9 (03/03/2011)

Labor and Public Employees Committee

Joint Favorable Change of Reference
Yea 6 Nay 4 (03/11/2011)

Planning and Development Committee

Joint Favorable
Yea 12 Nay 8 (03/23/2011)