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Susanne R. Young, Secretary

MEMORANDUM, H.81, AN ACT RELATING TO STATEWIDE PUBLIC SCHOOL EMPLOYEE HEALTH BENEFITS

TO: Honorable Brian Campion, Chair, Senate Committee on Education

FROM: Susanne Young, Secretary, Agency of Administration
Susanne R. Young
Digitally signed by Susanne R. Young
Date: 2021.03.17 11:54:24 -04'00'
Daniel French, Secretary, Agency of Education
Craig Bolio, Commissioner, Department of Taxes
Mike Pieciak, Commissioner, Department of Financial Regulation

SUBJECT: H.81 & Reasonable Cost Containment Provisions in Statewide School Employee Health Care Negotiations

DATE: March 17, 2021

CC: Senate Committee on Education
Senate Committee on Finance

The Administration provided a similar memo to the Committee on General, Housing and Military Affairs, as they worked on H.81, providing its perspective on the evolution of a statewide bargaining construct for school employees' health insurance. We wanted to share this information with your Committee along with some of our concerns with the bill as passed by the House.

We were disappointed H.81 was not committed to either the House Ways and Means or House Education Committees. After reviewing the fiscal note, which was presented to your Committee yesterday, it is clear there are financial consequences to taxpayers by changing the rules around bargaining that ought to be reviewed by the Senate Finance Committee.

Legislative Evolution of the Commission on Public School Employees Health Benefits:

As you may recall, the conversation around state-level negotiations over increasingly complex benefits began in the Spring of 2017 and was spurred by the redesign of school employee health benefits to conform with the provisions of the Affordable Care Act. Specifically, the benefits and their cost structure needed to change to avoid the ‘Cadillac Tax’ in the Affordable Care Act, levied on plans with actuarial values above 94 percent.

The base actuarial value of the new Gold Consumer Driven Health Plan (CDHP) is around 84 percent; however, with the employers’ first dollar contribution to an employees’ health reimbursement account (HRA), the true actuarial value is around 98 percent.

In 2017, the Governor proposed a uniform plan construct, which included an 80/20 split on premiums between employers and employees. But it was predicated on the use of health savings accounts, which roll over into subsequent years, and employees bearing first dollar exposure to health care costs up to $400 for an individual plan and $800 dollars for two-person and family plans to compensate for the high-deductibles associated with these plans. This framework would have roughly accomplished the same plan value while changing utilization assumptions, ultimately reducing expected premium growth year-over-year.

Realizing potential savings from these plans, establishing sustainability of the plan’s cost for employees and taxpayers alike, and creating uniformity in cost-sharing arrangements to make the benefit easier to administer were the underlying goals of the 2017 proposal from Governor Scott.

In late April 2018, a year later, a bill was introduced in the Senate Education Committee establishing a statewide Commission to bargain school employee health benefits. The Senate Education Committee never passed the bill; however, in late June 2018 as the Administration debated the state budget with the Legislature, the final draft of the Senate Education Committee bill materialized in H.18, which became Act 11 of 2018 (Special Session), an act relating to making appropriations for the support of state government, financing education and vital records (“Act 11”). The bill went into law without the Governor’s signature.

Unfortunately, the first round of negotiations in 2019 did not yield a sustainable plan design. For example, the VEHI Gold CDHP plan rate grew by 10.1 percent in FY19, 11.8 percent in FY20, 12.9 percent in FY21 and has been requested to grow by 9.8 percent in FY22. This is outpacing premium growth of exchange plans and the state employees’ health benefits and it drastically outpaces grand list growth, which is the primary revenue source for school district budgets.

This bargaining construct, the rules governing it, and the outcomes it has produced are a product of the Legislature’s construct, which differed from the Governor’s, in Act 11. But to the extent this is an evolution of the Administration’s 2017 proposal, then the foundational principles of cost containment, financial sustainability of the plans for employees and taxpayers, and simplified plan administration ought to apply.

H.81, An Act Relating to Statewide Public School Employee Health Benefits:

We agree that changes to the bargaining structure established in Act 11 should be made, specifically when it comes to impasse proceedings and establishing reasonable costs containment principles.

For example, the first negotiation under this new Commission, unfortunately, ended in an impasse with both sides submitting last best offers to the arbitrator.

Under law, the arbitrator was tasked with deciding which offer to implement according to the following provisions:

(i) the interests and welfare of the public;
(ii) the financial ability of the Education Fund and school districts across the State to pay for the costs of health care benefits and coverage;
(iii) comparisons of the health care benefits of school employees with the health care benefits of similar employees in the public and private sectors in Vermont;
(iv) the average consumer prices for goods and services commonly known as the cost of living; and
(v) prior and existing health care benefits and coverage for school employees.

However, based on the arbitrator's explanation, it is unclear how he considered any of these factors, least of all the capacity of either the Education Fund or taxpayers to pay for the costs of health care benefits and coverage.

This is the critical issue – the lack of transparency into how a decision was made; that it was made by a single, unaccountable individual; and that it has had a major impact on school district budgets. The Commission's employer representatives estimate the initial contract added $25 to $30 million in costs to the Education Fund.

The bill before your Committee makes some constructive changes in sections 5a and 6a to impasse and dispute resolution proceedings. It does not, however, address cost containment. To the contrary, the changes to the Commission structure will likely result in districts – and taxpayers – covering a greater percentage of employee health care benefits.

For example, section 4 of the House bill strikes the provision for uniform cost-sharing arrangements for premiums and out-of-pocket costs. This change may result in the Commission negotiating a sliding health care contribution. The Administration is not opposed to this concept in the abstract, however, if the premium and out-of-pocket contributions only slide one way toward lower-paid employees – and higher paid teachers and administrators do not offset the cost through higher health benefit contributions, then employers – or taxpayers – are left making up the difference.

We recommend the Committee consider including a provision to this bill that would tie the employer's total health care benefit liabilities to a uniform 80/20 split and the current out-of-pocket contributions. That way, if the Commission negotiates for income-sensitized premiums and out of pocket costs then taxpayers are not picking up a greater share of the cost than under the status quo, and instead, equity is achieved with higher paid employees covering a greater percentage of the premium and out-of-pocket costs.

Additionally, the effective dates of the sections are implemented inconsistently. The change in section 4, which could add costs for school districts and taxpayers, takes effect upon passage; however, the changes in sections 5a and 6a, which improve bargaining procedures, take effect next year, after the upcoming negotiation has been settled. Not wanting to change the rules for the upcoming negotiation over health benefits is an understandable principle, but it should be applied consistently across all changes.

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We hope that in your efforts to improve the rules governing statewide health bargaining for school employees, you will consider the legislative evolution of this policy and see how we can better implement measures that will ensure the financial sustainability of these plans for both beneficiaries and taxpayers.

While the bill deals with laws around the negotiation, there is a clear nexus to the cost of the benefits, which our school districts provide to every employee – and their families – who works a minimum of 17.5 hours/week during the school year. It is a growing expense for our diverse school districts, who are not equally positioned to simply absorb the cost without consequences on educational programming and the many other student enrichment expenses within their budgets.

This is the single biggest self-insured group in the state of Vermont, and it is publicly funded. This is very important work.

Thank you for your consideration of our concerns and we look forward to further discussions on this bill.

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