

Christopher J. Petrini
cpetrini@petrinilaw.com

Barbara J. Saint André
bsaintandre@petrinilaw.com

372 Union Avenue | Framingham, MA 01702
(Tel) 508-665-4310 | (Fax) 508-665-4313
www.petrinilaw.com

Peter L. Mello
pmello@petrinilaw.com

Heather W. Kingsbury
hkingsbury@petrinilaw.com

Christopher L. Brown
cbrown@petrinilaw.com

September, 2011

RE: P&A CLIENT ADVISORY (2011:04)
Municipal Health Insurance Reform
Recent Amendments to Massachusetts General Laws Chapter 32B

We are writing to advise our public sector clients of recent significant amendments to G.L. c. 32B, the statute under which municipalities and other political subdivisions in Massachusetts provide health insurance to employees and retirees.

I. Executive Summary

On July 12, 2011, Governor Patrick signed Chapter 69 of the Acts of 2011, titled “An Act Relative to Municipal Health Insurance,” (“the Act”). The Act, which became effective immediately upon its passage, contains several important legislative changes to G.L. c. 32B that may benefit the various public clients that Petrini & Associates, P.C. (“P&A”) has represented. The most significant changes will allow cities, towns and certain other political subdivisions to offer their employees and retirees copayments, deductibles and other cost-sharing plan design features that are less than or equal to the amounts offered by the Group Insurance Commission (“GIC”), or to transfer employees and retirees to the GIC, without bargaining such decisions with individual bargaining units or a public employee committee (“PEC”). Below is a more detailed explanation of the Act as well as other important changes to Chapter 32B contained within the FY2012 state budget that was also recently signed by Governor Patrick based upon our review of the legislation.

Much of the Act’s impact is through nine new sections added to Chapter 32B, sections 21 through 29. These sections set forth the two options available to governmental units as well as the process to implement either option.

II. Analysis

A. Pre-Implementation Process

Before a political subdivision can implement cost-sharing plan design features or transfer employees and retirees to the GIC, it must comply with a number of procedural steps, which are generally set forth in G.L. c. 32B § 21:

1. First, the political subdivision must vote in favor of changing the unit's current health care system. The statute provides the specific board or council vote required depending upon the political subdivision involved. For example, a town can vote in favor of changing its current health care system by a majority vote of its board of selectmen. Once the political subdivision has accepted Section 21, it need not accept it again to implement plan design changes or a transfer of employees and retirees to the GIC in the future. However, each time any such plan design change or transfer is proposed, the Act requires the unit to follow the other steps set forth in Section 21. Specifically, this means that in each instance where a city, town or other political subdivision under Chapter 32B seeks to make a plan design change permitted by the new law, it will need to share part of the savings with the subscribers.

2. Once such approval is obtained, the political subdivision must evaluate its current insurance coverage and determine the estimated savings that can be realized if changes are implemented to plan design, or if the unit's employees and retirees are transferred to the GIC. The Act defines "savings" as "the difference between the total projected premium costs for health insurance benefits provided by a political subdivision with changes made to health insurance benefits under section 22 or 23 for the first 12 months after the implementation of such changes and the total projected premium costs for health insurance benefits provided by that subdivision without such changes for the same 12 month period." Importantly, the use of "total projected premium costs" in this definition appears to require consideration of both the unit employer's and the unit employee's share of premiums and any resulting reductions to the premium expenses from the contemplated changes or transfer to the GIC.

3. After such savings are determined, the governmental unit must notify its insurance advisory committee ("IAC") of the estimated savings, and further be prepared to "provide any reports or other documentation with respect to the determination of estimated savings" that are requested by the IAC. The IAC is a committee previously authorized by G.L. c. 32B s. 3, which consists of "eight members as follows: seven persons to be duly elected or appointed to membership on such committee by organizations of the employees affected, and one person who shall be a retiree of a governmental unit who shall be duly appointed to membership on said committee by the appropriate public authority."¹ Under the existing G.L. c.

¹ "Appropriate public authority" is defined in G.L. c. 32B § 2, as amended in the Act, and varies depending upon the relevant political subdivision.

32B, this committee advises the governmental unit with regard to recommendations for the purchase of insurance. The IAC may already be in existence with regard to your community's existing procedures for determining insurance policies to make available.

4. Following discussion with the IAC,² the governmental unit must notify the PEC of its intent to negotiate the implementation of the changes. The PEC is established pursuant to G.L. c. 32B § 19, and is comprised of one member of each collective bargaining unit and one retiree representative, who is selected by the Retired State, County and Municipal Employees Association. Some communities may already have established a PEC under previous versions of Section 19. Others may establish a PEC for purposes of implementing the plan design changes or transfer to the GIC permitted by the Act. The notice to the PEC must contain the following information: (a) a description of the proposed changes, (b) the estimated savings, and (c) a proposal to mitigate, moderate or cap the impact of the proposed changes.

5. The governmental unit and the PEC then have 30 days following the PEC's receipt of the notice to negotiate all aspects of the unit's proposal. The PEC can approve an agreement by majority vote (this is an amendment to G.L. c. 32B § 19, which previously required 70% of the PEC's membership to approve an agreement), with the retiree representative accounting for 10% and the remaining 90% divided by the total number of unions.

6. If an agreement cannot be reached within 30 days, the matter will be submitted to a "municipal health insurance review panel," made up of three members: (a) one member appointed by the political subdivision, (b) one member appointed by the PEC, and (c) one member selected by the parties from a list of 3 neutrals provided by the secretary of administration and finance. If the parties cannot agree on the neutral within 3 business days, the secretary selects the neutral. The governmental unit and the PEC must split any fee for submission of the matter to the panel.

7. The panel can approve the immediate implementation of proposed plan design changes so long as those proposed changes comply with the newly-enacted G.L. c. 32B § 22. The panel can only approve transfer to the GIC if the political subdivision demonstrates that it will save at least 5% more in selecting that option as opposed to simply opting to make plan design changes. If the panel does not approve the implementation of either option, the political subdivision may submit a new proposal to the PEC for review under the same procedure outlined above.

8. Within 10 days of receiving the political subdivision's proposed changes, the panel must do three things: (a) confirm that the estimated savings are substantiated by the

² The Act is silent on how much time, if any, a governmental unit must spend discussing the estimated savings with the IAC before proceeding to the next step. This omission and others may be addressed in the regulations that are expected to be promulgated in the near future regarding this process.

governmental unit's documentation, (b) review the proposal to mitigate, moderate or cap the impact of the proposed changes, and (c) determine if it concurs with the unit that the proposal will sufficiently mitigate the impact of the proposed changes. If the panel finds the unit's mitigation proposal insufficient, it may require the political subdivision to share additional savings with the subscribers. In so doing, it may consider alternative mitigation proposals from the PEC. The panel cannot require a political subdivision to designate more than 25% of the savings to subscribers. While these additional savings may be designated to subscribers by the panel in a number of ways, the Act specifically bars the panel from making changes to premium contribution ratios. The panel's decision is final and binding on all parties. Significantly, all obligations on behalf of a political subdivision relative to the mitigation proposal expire after the initial amount of savings has been expended. However, we anticipate that a community's PEC and/or individual unions in non-Section 19 communities may seek to maintain any benefits received through the mitigation plan that is ultimately approved through the bargaining process that will still be necessary with regard to contribution ratios and other aspects of health insurance outside of the newly-enacted sections.

Further details on the Section 21 procedures are likely to come in the near future from regulations that the secretary of administration and finance is directed to promulgate under G.L. c. 32B § 21(h).

B. Options for Changing Municipal Health Care Under the Act

As noted above, the Act contains two options for a political subdivision to achieve cost savings, making local plan design changes, or transferring subscribers to the GIC.

1. Plan Design Changes – G.L. c. 32B § 22.

Under Section 22, a political subdivision may offer “copayments, deductibles, tiered provider network copayments and other cost-sharing plan design features that are no greater in dollar amount than the...cost-sharing plan design features offered by the [GIC].” Importantly, political subdivisions can decide to implement these changes without bargaining the decision with the PEC under G.L. c. 32B § 19 or individual bargaining units under G.L. c. 150E.

There are some important limitations on implementing plan design changes, however. Such changes cannot be obtained by offering health care plans with a reduced or selective network of providers unless the governmental unit also offers a plan that does not contain a reduced or selective provider network. The first time changes are implemented, either under Section 22 or through a transfer to the GIC under Section 23, premium contributions for retirees generally cannot increase to levels above those approved or in effect as of July 1, 2011, until July 1, 2014.

While a political subdivision may propose plan design changes that are greater in dollar amount than the GIC's plan design features, those proposals are still subject to bargaining under G.L. c. 32B § 19 or G.L. c. 150E, as all such proposals would have been prior to the Act.

2. Transfer to GIC – G.L. c. 32B § 23.

Alternatively, a political subdivision may choose to transfer its subscribing employees and retirees to the GIC. It could do so after complying with all the pre-requisites set forth in Section 21, discussed above, and notifying the GIC. Such a transfer would include all elderly governmental retirees (previously covered by G.L. c. 32A § 10B), as well as all retired municipal teachers (previously governed by G.L. c. 32A § 12).

As with the implementation of plan design changes under Section 22, the governmental unit's decision to transfer subscribers to the GIC is not subject to bargaining with the PEC or collective bargaining with individual units under G.L. c. 150E. Further, the coverage provided by the GIC to employees and retirees after transfer is determined solely by the GIC and is not subject to collective bargaining. Premium contribution ratios would remain subject to bargaining under G.L. c. 32B § 19 or G.L. c. 150E. The Act provides that the contribution ratios effective at the time of the transfer must be used upon transfer, unless the parties agree otherwise.

Another important distinction in transferring subscribers to the GIC is with regard to Medicare coverage. After transfer to the GIC, any subscribers who are eligible or become eligible for Medicare must transfer to Medicare coverage as required by the GIC. Such transfer is required under the GIC regardless of whether the retiree has a spouse or dependent who is not eligible for no cost Medicare Part A coverage. Despite amendments to the statutory sections pertaining to Medicare coverage for retirees who are provided health insurance through a governmental unit, currently and going forward, such retirees do not have to transfer to Medicare coverage if they have a spouse or dependent who is not eligible for Medicare Part A coverage. Under either system, once the retiree is required to transfer (either upon transfer to the GIC, or upon meeting the conditions set forth in G.L. c. 32B § 18A, newly enacted in the FY2012 Budget) to Medicare coverage, a political subdivision must pay any premium penalties assessed by the federal government for Medicare Part B coverage at the time of transfer.³

In addition to premium contributions and potential Medicare Part B premium penalties, a political subdivision is also responsible for all costs related to its subscribers' coverage in the GIC, including administrative expenses. The Act also empowers the GIC to charge governmental units an administrative fee not exceeding 1% of the total cost of premiums for the particular unit.

³ If your political subdivision previously accepted G.L. c. 32B § 18, that statute was repealed as part of the recent legislative amendments to Chapter 32B. However, the newly enacted G.L. c. 32B § 18A essentially mirrors the provisions of the now-repealed Section 18, and is now generally applicable to all political subdivisions, removing the local option element of this particular statute.

There are special notification provisions in the Act relative to transferring subscribers to the GIC. Going forward, a political subdivision generally must notify the GIC on or before October 1 that it wants to transfer its subscribers to be covered starting July 1 the following year. During FY2012, however, the following notification schedule will be utilized: (a) transfer effective January 1, 2012 if notice is provided on or before September 1, 2011, (b) transfer effective April 1, 2012 if notice is provided on or before December 1, 2011, or (c) transfer effective July 1, 2012 if notice is provided on or before March 1, 2012.

A decision to transfer subscribers to the GIC is not permanent. The Act permits political subdivisions to withdraw their subscribers from the GIC at 3 year intervals after transfer, with the same notice requirements as for transfer (providing notice by October 1 for the withdrawal to be effective July 1 of the following year). If a governmental unit withdraws its subscribers from the GIC, it returns to the previous system of bargaining over health insurance, but can re-join the GIC again after compliance with G.L. c. 32B § 21.

C. Other Important Provisions of the Act and FY2012 Budget

Prior to implementing any changes under the Act, a political subdivision must delay the changes “as to those subscribers covered by a collective bargaining agreement or section 19 agreement that is in effect on the date of implementation of such changes, of any changes to the dollar amounts of copayments, deductibles or other cost-sharing plan design features that are inconsistent with any dollar limits on copayments, deductibles or other cost-sharing plan design features that are specifically included in the body of that [agreement], until the initial term stated in that [agreement] has ended.” Accordingly, under the Act, some political subdivisions may be unable to immediately implement changes to specific plan design features. This provision of the Act does not necessarily preclude a political subdivision from beginning the process under Section 21 prior to the end of the initial term of the applicable CBA or Section 19 agreement, it would just delay the actual effective date of the changes.

The Act also permits political subdivisions to provide flexible spending accounts (if they do not opt to transfer subscribers to the GIC) and health reimbursement accounts to their employees and retirees. The Act further requires political subdivisions to conduct an enrollment audit at least every 2 years to review the continued eligibility of employees and retirees for coverage.

As noted earlier in this memorandum, there are also important changes to Chapter 32B that were contained within the state’s FY2012 Budget. These include the following:

1. Medicare Supplement Plans by Political Subdivisions.

G.L. c. 32B § 18 was repealed, and Section 18A (a different version of this former local option) was replaced with a new section that eliminates the local option nature of this part of Chapter 32B. Thus, with limited exceptions, all retirees are required to transfer to a Medicare plan offered by a political subdivision pursuant to G.L. c. 32B §§ 11C or 16. If your community previously accepted G.L. c. 32B § 18, the new statute mirrors the previous requirements, so there should be no impact on your community from this particular change in Chapter 32B. Other communities should review the new statute in detail to determine its particular impact.

2. Changes to Section 19.

The notice requirements to convene meetings of the PEC were altered. Initial meetings can be convened with 7 days notice and subsequent meetings with 3 days notice, down from 30 days notice in the previous version of Section 19. The vote necessary for the PEC's approval of agreements has also been changed from 70% to a majority.

III. CONCLUSION

The provision of cost-effective health insurance for public employees and retirees has been an increasingly difficult task for cities, towns and other political subdivisions in Massachusetts. Potentially significant savings may be achieved through the recent amendments to Chapter 32B that ultimately do not require the agreement or acquiescence of your community's PEC or individual bargaining units. We suggest taking the following steps, working collaboratively with your political subdivision's health insurance consultant, to evaluate this opportunity and determine whether Section 21 should be adopted by your political subdivision:

1. Determine any specific plan design constraints from your existing collective bargaining or Section 19 agreements that might delay changes to those specific features.
2. Identify co-pays, deductibles and other cost-sharing features of the most-subscribed GIC plan, which will provide the upper limit on potential plan design changes.
3. Develop potential plan design changes within the identified limits.
4. Determine the anticipated cost savings that would be achieved by implementing these design changes and compare to the anticipated health insurance costs absent such changes and to the anticipated savings realized if your political subdivision transferred its covered employees to the GIC.

5. Develop a proposed mitigation plan to address the potential plan design changes.

Please contact Christopher Petrini, Christopher Brown or one of the other attorneys at P&A at (508) 665-4310 or info@petrinilaw.com if you have any questions regarding this advisory. Thank you.