

State Law Sets Process for Cost-Saving Changes to Municipal Health Benefits

BY PAUL MULKERN

Faced with ever-increasing health insurance costs, municipal employers are searching for relief. Frustrated by attempts to implement changes through traditional collective bargaining, many cities and towns have used the statutory process provided by Sections 21 through 23 of Chapter 32B.

Sections 21 through 23 were enacted as part of the 2011 municipal health insurance reform legislation to offer a process by which a municipality may modify health insurance benefits (aka “plan design”) without engaging in the traditional bargaining process.

Sections 21 and 23 provide a procedure by which a municipality may transfer its subscribers to the Group Insurance Commission (GIC). Section 22 permits a governmental unit that has followed the procedures outlined in Section 21 to include in its health plans “copayments, deductibles, tiered provider network copayments and other cost-sharing plan design features that are no greater in dollar amount than the copayments, deductibles, tiered provider network payments and other cost-sharing plan design features” offered by the GIC in, as applicable, the non-Medicare or Medicare plan with the largest subscriber enrollment (i.e., the GIC “benchmark” plans). Presently, the GIC non-Medicare benchmark is the Tufts Navigator plan, while the GIC Medicare benchmark is the Unicare State Indemnity Plan/Medicare Extension OME.

While many municipalities have decided to include in their plans all of the

features (at the maximum dollar amounts) that Section 22 allows, a municipality may elect to include only certain of the allowed features and/or may include features at a lower dollar amount than the amounts in the benchmark plan.

Under Section 23, a governmental unit may only transfer its subscribers to the GIC if it can demonstrate that the anticipated savings that it would realize would be at least 5 percent greater than the maximum possible savings that it could realize if it made the full plan design changes allowed by Section 22.

of Chapter 32B, Sections 21 to 23. In a town, these sections are accepted by vote of the board of selectmen. In a city with a Plan D or Plan E charter, the sections are accepted by majority vote of the city council and approval by the manager. In any other city, the sections are accepted by majority vote of the city council and approval by the mayor.

Prepare Implementation Notice: State regulations governing Sections 21 through 23, issued by the secretary of Administration and Finance, require that the governmental unit’s appropriate public

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As the GIC benchmark plans contain features that are not contained in most municipal plans (for example, an upfront deductible) and/or that are considerably higher in cost to subscribers than similar features in many municipal plans, adopting the GIC plan design features or transferring subscribers to the GIC can have a significant impact on a municipality’s health care costs.

The Process

Accept Sections 21 to 23: Section 21 sets out the procedures that a municipality must follow in order to implement the changes allowed by Sections 22 and 23. The first step involves the acceptance

authority (APA) prepare an Implementation Notice. (In a town, the APA is the board of selectmen; in a city, it is the mayor.) The Implementation Notice includes, among other things, information concerning the changes to cost-sharing features that the APA is proposing to make to health plans, the estimated premium savings that will be realized during the first twelve months following implementation (including the analysis that the APA has generated to support those estimated savings), the percentage of those savings that the APA is proposing to share with subscribers, and the vehicles that the APA is proposing to use to share the savings. (Such vehicles could

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include health reimbursement arrangements, wellness programs, health care trust funds for emergency medical care or inpatient hospital care, out-of-pocket caps, Medicare Part B reimbursements, or reimbursements for other qualified medical expenses.) If the APA is proposing a transfer of subscribers to the GIC, it must include estimates regarding the plan choices that subscribers will make if transferred.

Meet with Insurance Advisory Committee: Following the acceptance of the sections, the municipality will schedule a meeting with its Insurance Advisory Committee to discuss the estimated savings that will be realized if (1) the plan design changes being proposed are implemented, or (2) subscribers are transferred to the GIC. The Implementation Notice will be forwarded along with the notice for that meeting. (If the municipality does not yet have an IAC, the regulations direct the town or city to notify the president of each collective bargaining unit of the meeting as well as a designated retiree.)

Provide notice of intention to proceed: Within two business days following that meeting, or within ten days after the IAC's receipt of the Implementation Notice, whichever occurs first, the APA must provide the president of each collective bargaining group and the Retired State, County and Municipal Employees Association of Massachusetts (RSCME) with a notice of its intention to proceed with the plan change process. If the municipality does not already have a Public Employee Committee (PEC), the notice must request that each union and the RSCME designate a representative to serve on the PEC and provide contact information for that designee. If a union or the RSCME does not respond within five business days, that union's "principal officer" or, in the case of the RSCME, its president, shall be the group's representative on the PEC.

Begin negotiation period: No later than two days after all of the PEC's members have been designated, the APA must provide the Implementation Notice to each member. A thirty-day negotiation period commences upon receipt of the Implementation Notice by every member of the PEC.



Sometimes, municipalities have found that, while the PEC objects strenuously to the Navigator plan design features (particularly the upfront deductible), the PEC would be willing to accept, in lieu of those features, an alternative plan design (perhaps including higher co-pays than the Navigator in certain areas) or changes to contribution ratios. A number of municipalities have accepted such alternative arrangements, often agreeing to waive the right to use the Section 21 through 23 processes for a stated period. Any such alternative agreement should be embodied in (1) a collective agreement to which all of the municipality's unions are signatory, or (2) an agreement with the PEC that conforms with the provisions of Section 19 of Chapter 32B.

Section 21 also requires that a portion of the total savings that the employer expects to realize from the plan design changes or transfer of subscribers to the GIC be used to mitigate the impact of the changes upon subscribers, "including retirees, low-income subscribers, and subscribers with high out-of-pocket health care costs..." (In calculating savings, both the employer's and employ-

ees' reductions in premium expenses are included.) The statute prohibits the arbitration panel from designating more than 25 percent of the savings for mitigation. It can be expected, however, that during the thirty-day negotiation period, the PEC will propose that a full 25 percent of the savings be designated for that purpose.

Draft agreement and approve: If, by the end of the thirty-day negotiation period, the parties have reached an agreement with regard to the plan design changes or the transfer of subscribers to the GIC, as well as on mitigation, the agreement must be reduced to writing and approved by a weighted majority vote of the PEC.

Health Insurance Review Panel: If an agreement cannot be reached within the thirty-day period (or such longer period to which the parties mutually agree), the matter is submitted to the Health Insurance Review Panel. This panel consists of a member appointed by the APA, another appointed by the PEC, and a third impartial member who will be appointed by the state (Administration and Finance) if the parties cannot agree

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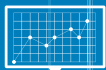
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the library or staff break room is one example.

- Leadership engagement and modeling healthy behaviors, which are keys to a successful wellness program. One example would be the mayor or town manager/administrator walking with employees in a Fitbit challenge.

- Fire and police personnel attending a “building resilience” training. Training opportunities build employee skills.

- Teachers sharing healthy recipes with each other. Engagement around mutual interests boosts morale, and opportunities for sharing increase well-being.

In their 2014 book *How to Build a Thriving Culture at Work*, Rosie Ward

and Jon Robison write: “The right culture makes all the difference for every stakeholder—the employer, employees and customers/clients. Employers get more productive workers who think critically and creatively to ensure they are contributing everything they can. Employees feel valued and appreciated, so they enjoy and are engaged in their work, and this promotes their physical and emotional health as well. Customers/clients receive top-quality products and/or service from workers who take pride in what they do.”

Wellness today means bringing about a cultural shift in the workplace. When this is done, everybody wins. 🌟

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upon that third member. Within three business days following the end of the negotiation period, the APA is required to provide the panel with its original proposal. Within that same three-day period, the PEC may submit an alternate mitigation proposal.

The regulations anticipate that the panel will meet and render its decision within ten days after receiving the APA’s proposal. Provided that (1) the dollar amounts of the APA’s proposed changes to the cost-sharing features of its plans do not exceed the corresponding features of the GIC benchmark plan, or (2) the anticipated savings from a transfer of subscribers to the GIC would be at least 5 percent greater than the maximum possible savings that could be realized by the plan design changes authorized by Section 22, the panel *must approve* the APA’s proposed changes. The panel may, however, in consultation with the GIC’s actuary, review the APA’s calculation

of its monetary savings. The panel may also conclude that the APA should share additional savings with subscribers (but no more than 25 percent of savings).

As PECs have recognized that the panel is *required* to confirm the APA’s proposed plan design changes (as long as the changes are within the allowable limits) or proposed transfer of subscribers to the GIC if the required savings can be established, and as municipal representatives have assumed that the panel would decide that the maximum percentage (25 percent) of savings should be shared with subscribers, the overwhelming majority of cases have settled with the execution of a written agreement.

Simply stated, Sections 21 through 23 have provided substantial relief to cities and towns throughout Massachusetts. Cities and towns that have not yet used the opportunities to change health insurance benefits embodied in those sections are urged to consider them. 🌟

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