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Does your township offer health care benefits?

Recently, MTA asked the following online poll question: *Does your township offer health care benefits to its employees and/or elected officials?* Of the 130 responses, nearly half—46 percent—of respondents indicated that their township does offer health care benefits, while some 54 percent reported that their township does not offer such benefits at this time.

Health care coverage has been a hot topic at both the state and federal levels over the past several months. Although townships are not required by law to provide medical benefits to employees or officials, if a township chooses to do so, it must comply with the applicable statutes, including laws governing townships and The Public Employees Health Benefit Act.

AUTHORITY TO PROVIDE BENEFITS

MCL 41.110b provides that a township board may provide fringe benefits to its employees or board members by ordinance. MCL 41.110b authorizes townships to:

“(a) Establish a retirement system for its employees and provide for financing, funding, and the payment of benefits in the same manner and to the same extent as permitted counties under section 12a of 1851 PA 156, MCL 46.12a, or make contracts of insurance with an insurance company authorized to transact business within this state.

(b) Make arrangements with a prepayment plan authorized to transact business within the state, insuring and covering 1 or more of the following under policies of group insurance or prepayment plan contracts, or both, covering life, accident, dental care, vision care, health, hospitalization, and medical and surgical service and expense insurance:

(i) Elected or appointed township officers and employees, and dependents of those officers or those employees.

(ii) Any classes of elected or appointed township officers and employees, and dependents of those officers or those employees.

(iii) Any classes of retired township officers and employees, and dependents of those officers or those employees.

(c) Establish a cafeteria plan authorized under section 125 of the internal revenue code of 1986 for its elected or appointed officers and employees, any classes of elected or appointed officers and employees, and dependents of those officers and those employees. As used in this subdivision, “cafeteria plan” means that term as defined in section 125 of the internal revenue code of 1986.

(d) Contract with a company that grants annuities or pensions for the pensioning of the officers and employees and for these purposes pay any part of the premiums or charges for insurance, prepayment plan coverage, annuities, or pensions.

(e) Offer any other employment benefit authorized by state or federal law.”

The statute states that the township may elect to cover all of its appointed and elected officers and employees, or any “classes” of elected or appointed officers or employees. The township may, therefore, provide benefits to a “class” of officers or employees, but must treat everyone in the class equally, even if someone is eligible for group insurance through another person.

An individual who does not wish to elect the township’s health coverage may make a written request to opt out of the coverage. It is often common practice in public and private industry to offer cash in lieu of health coverage, but township elected or appointed officers or employees cannot simply receive cash in lieu of health benefits. A township must establish a Section 125 cafeteria plan that allows it to offer a premium conversion benefit (i.e., cash in lieu of the premium that the township would have paid for the benefit), and to allow for payment of the benefit with pre-tax dollars. Townships interested in establishing this type of plan should contact their health insurance carrier/broker or some other third-party administrator.

GROUP INSURANCE PLAN ORDINANCE

MCL 41.110b authorizes the township to exercise the powers granted under the statute by ordinance. The purpose of the ordinance is to formally establish the provisions of the plan so that beneficiaries and the public generally will have access to those provisions, and appropriate administrative procedures will be followed.

A sample ordinance can be found on MTA's website, www.michigantownships.org (click on "Member Info," then "Sample Documents," "Ordinances" and "Group Insurance Plan"). The ordinance must be published in a newspaper of general circulation within 30 days after its adoption by the township board, and the ordinance must also be placed in the township's official ordinance book within seven days under the clerk's certificate of adoption. The ordinance is effective on the date of its publication. A copy must be filed with the county clerk if the township does not maintain a township office open to the public during regular business hours on regular business days. In a charter township, the ordinance or a summary must be published before its adoption, as well as following its adoption.

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INSIDE THE PUBLIC EMPLOYEES HEALTH BENEFIT ACT

The Public Employees Health Benefit Act, Public Act 106 of 2007, MCL 124.71, *et seq.*, places some conditions on how public employers, including townships, may provide medical benefits for elected and appointed officials and employees.

PA 106 defines a medical benefit plan as "a plan, established and maintained by a carrier of 1 or more public employers, that provides for the payment of medical, optical, or dental benefits, including, but not limited to, hospital and physician services, prescription drugs, and related benefits, to public employees." (MCL 124.73)

The act also states that, subject to collective bargaining agreements, a public employer may provide medical, optical or dental benefits to public employees and their dependents by any of the following methods (MCL 124.75):

By establishing and maintaining a self-insured plan.

By joining with other public employers to establish and maintain a public employer pooled plan to provide medical, optical or dental benefits to no less than 250 public employees on a self-insured basis as provided in the act.

(c) By procuring insurance coverage or benefits from one or more carriers (an insured plan), either on an individual basis or with other public employers. (*This is the most common approach, where the township contracts with a medical benefits insurance company.*)

Unless a township has an individual, self-insured plan, it is subject to the bid requirements of PA 106:

1) Before a township begins to offer a medical benefit plan, the township must solicit (request) four or more bids, including at least one bid from a "voluntary employees' beneficiary association" (VEBA) as described in section 501(c)(9) of the Internal Revenue Code (26 USC 501(c)(9)).

2) Once a township is offering a medical benefit plan, **the township must solicit four or more bids every three years** when renewing or continuing the medical benefit plan, including at least one bid from a VEBA.

A township is not required to change plans when it is subject to the bid requirements, and contracts already in place remain in effect until their normal expiration.

A township may shop around and solicit bids from different carriers, and it may also solicit bids from different plans offered by one carrier.

According to the Michigan Office of Insurance and Financial Services (OIFS), a township can meet the bid requirements by soliciting three different plans from a single carrier, including its current carrier. For example, if a township has a traditional "fee-for-service" insurance plan with a carrier that offers other types of plans, such as a health maintenance organization (HMO), managed care network, point-of-service plan or preferred provider organization, the township could solicit bids for its existing plan, plus the other plans the carrier offers.

PA 106 places no restriction on which bid a township accepts, and the act does not prevent a township from continuing or renewing its current plan.

So, is there a list of VEBAs? No, because a VEBA is an IRS designation, and Michigan doesn't regulate or track VEBAs. But according to the OIFS, a township unable to locate a VEBA may meet the requirements of PA 106 by publishing a public notice or advertisement in a trade or general circulation publication inviting VEBAs to submit bids in response to the notice. A township is not required to actually receive a bid from a VEBA.

For more information on PA 106, visit the Michigan Department of Labor & Economic Growth Web page at www.michigan.gov/dleg and click on "Financial and Insurance Regulation," "Frequently Asked Questions," and "Public Employers Health Benefit Act (PA 106) FAQs." Or, phone Ian McLaughlan at OIFS at (517) 335-5902. You can also learn more at MTA's Employment Benefits Web page, www.michigantownships.org/employbene.asp. ■