



FAHEY
SCHULTZ
BURZYCH
RHODES PLC

YOUR TOWNSHIP ATTORNEYS

4151 Okemos Road

Okemos MI 48864

517.381.0100

<http://www.fsblawyers.com>

Township Law *E-Letter*

Publicly Funded Health Insurance Contribution Act: Questions and Answers

The "Publicly Funded Health Insurance Contribution Act," also known as Senate Bill 7, was passed by the Michigan Legislature and signed by Governor Snyder just today. The new law limits township contributions to employee health insurance effective January 1, 2012. The Act provides two mechanisms that limit employer contributions to healthcare: a "hard cap" and an optional "80/20" plan. Some of the most pressing questions about the new law are answered below.

Overview of the New Law

Q: What employers are affected by the Act?

The new law applies broadly to "public employers," including townships and other local units of government, among other public employers.

Q: What kinds of health care benefits are covered by the Act?

The Act applies to "medical benefit plans" that provide payment of medical benefits, including hospital and physician services, prescription drugs, and related benefits. The Act does not apply to dental or vision care plans.

The "Hard Cap"

Q: What is the Hard Cap?

The Act is drafted to apply a maximum that a public employer may pay towards public employee health care costs. The limit on a public employer's total contribution for employee health insurance that will apply, if the public employer's governing body takes no action (see below), will be equivalent to:

- \$5,500 times the number of employees with single coverage, plus
- \$11,000 times the number of employees with two person coverage, plus
- \$15,000 times the number of employees with family coverage.

Any amount above this cap needed to pur-

chase health insurance for employees must be paid by employees.

Q: How is the remaining cost recovered from employees?

The remaining cost is to be recovered through payments by the employees. These payments may be spread evenly or different classifications of employees may be asked to pay a lesser or greater percentage of the cost as long as the total remaining amount is recovered.

Q: What employer costs count toward the cap?

The annual premium or illustrative rate and any payments for reimbursements of co-pays, deductibles, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care are included as employer costs. Benefits provided to retired employees are not included.

Q: Will the caps ever change?

Yes. The State Treasurer will adjust the caps each October 1 based on the change in the medical care component of the U.S. Consumer Price Index. The newly adjusted caps will be effective January 1. The past few years, the medical care component of the Consumer Price Index has risen 12-15% a year, so it is likely that caps will rise significantly.

Q: How can employers and employees plan for and manage the annual change in contributions?

The adjustment of the cap could be viewed as a way to encourage employer-employee cooperation in plan selection and cost maintenance or reduction: if the plan increase for the year is less than the change in the Consumer Price Index, employees may in fact see their contribution rate slow or drop.

The Optional 80/20 Plan

Q: How does an employer elect the 80/20 plan?

The township board may, by a majority vote, elect to limit its healthcare contributions differently. Instead of the hard cap, the township could simply elect not to pay more than 80% of the total annual cost of the medical benefit plans it offers, without regard to how much that means per employee with single, double, or family coverage.

Q: What employer costs are counted toward the 80/20 calculation?

Included. The annual premium or illustrative rate and any payments for reimbursements of co-pays, deductibles, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care.

Not Included.

- Benefits provided to retired employees
- Beneficiary or employee paid copayments, coinsurance, deductibles, other out of pocket expenses, other service-related fees that are assessed to the coverage beneficiary, or payments into Health Savings Accounts, Flexible Spending Accounts, or similar accounts used for health care
- Healthcare contributions for employees covered by a contract or agreement in effect before September 15, 2011.

Q: How are elected officials handled under the 80/20 Plan?

The 80/20 Plan requires an elected official who participates in a medical benefit plan to pay a minimum of 20% of the annual cost of that plan.

Opting Out

Q: What is the opt-out provision?

Although the new law imposes a maximum that public employers may contribute to employee health care costs, it also provides a mechanism for townships and other “local units of government” to opt out of the Act’s requirements—and therefore determine on their own how much to contribute to employee health insurance.

Q: How does a township opt out?

This mechanism permits a township to exempt itself from the requirements of the Act for a one year period by a two-thirds vote of the township board. A new two-thirds vote would be required to extend the exemption in each subsequent year. By opting out, the township would be able to determine on its own how much it contributes to employee health insurance, without reference to hard caps or the 80/20 plan in the Act.

Contrary Contract Terms

Q: Our collective bargaining agreement requires a total payment by the township that exceeds the limits—is this contract term still valid?

The Act will not apply to health insurance for employees covered by a collective bargaining agreement that is in effect **on September 15, 2011**. The Act’s limits will, however, apply when those “grandfathered” contracts are extended, renewed, or amended. In the meantime, amounts expended for medical benefit plans under such contracts are excluded from the calculation of the public employer’s maximum payment under the 80/20 provision, if that provision is applied for other employees.

Q: How will the Act's requirements affect what can be negotiated at the bargaining table?

Beginning **September 15, 2011**, a collective bargaining agreement or other employee contract may not contain terms contrary to the Act. This means that negotiation for contribution term that would result in the employer's overall contributions exceeding the Act's limits is prohibited. There will likely be some debate over the obligation of an employer to bargain over the effect of adopting the 80/20 provision, since the Act allows the employer to apportion the 20% contribution among employees. The Act's language would seem to prohibit even that possibility, however, since it provides that the employer shall apportion its 80% contribution to health care costs "as it sees fit."

Loose Ends

Q: Do public employers have any discretion under the Act?

Aside from the special rules for elected officials under the 80/20 Plan, if a township does not opt out of the Act's requirements, the township generally may allocate contributions among its employees as it sees fit, requiring certain employees to contribute more than others. The force of the Act is an absolute limit on how much an employer may contribute overall, not a hard and fast mandate as to how much each employee must contribute. Therefore, townships may use this discretion to allocate costs to reflect an understanding that some employees may not be able to afford or contribute as much as others, based on salary and hourly wages.

Ultimately, who pays how much is a policy decision, not governed by this new law: as long as overall costs do not exceed the caps or 80/20 limits, each employee or group of employees could be treated differently. An employer could therefore pay \$6,000 toward one employee's single coverage plan, and \$5,000 toward another employee's single coverage

plan, because the overall contribution is not higher than \$5,500 per employee with single coverage. Similarly, an employer may pay 90% of one group of employee's medical benefit plan and 70% of another, so long as the employer's overall contribution does not exceed 80% of the **total costs**.

Q: Are there penalties for failing to comply with the Act or opting out of the Act's requirements?

Opting out and failing to comply with the Act are two different things. If a township opts out, there are no penalties. However, certain employers who do not opt out and still fail to comply with the Act do face penalties. If a township receives payments under the economic vitality incentive program (which replaces the statutory revenue sharing system) and fails to comply with the Act, those payments would be reduced by 10% as long as the township is noncompliant.

It is an open question whether a public employer that is not affected by the penalty provision could be challenged for failure to comply with the law. As yet, it is unclear how such an issue might be raised. The Act does not confer standing on individuals or the Attorney General to challenge a failure to comply and it is difficult to identify a possible special injury or right that would confer standing. That said, we do not encourage you to ignore this Act.

Q: How will employees pay their share?

The Act permits payroll deductions and authorizes employers to condition eligibility for the medical benefit plan on the employee's authorizing the deduction.

Q: How should the township make its contributions: monthly or in a lump sum payment?

This will be up to the township. The Act does not provide guidance on this issue, which raises some practical concerns. If a township reaches its maximum contribution amount before the end of the year, it is unclear what

would happen if an employee somehow stopped paying for coverage. Would the employee be entitled to maintain coverage and, if so, at what rate? Although it is still far too early and difficult to give blanket advice as to a best practice, it is likely that spreading contributions out evenly over the year and deducting the employees' share from payroll in a similar fashion will avoid having to determine what coverage is available to an employee whose coverage lapses for lack of payment and at what rate.

Q: How can townships determine whether and how to use the hard cap or the 80/20 plan, or to opt out of the Act's requirements?

Townships should reflect on a number of factors in making these decisions:

- State of the overall budget.
- Healthcare costs in preceding years—whether some of those costs will be included in calculating the township's contribution under the Act and, if so, what the difference in payments would be.
- Whether and to what extent employees are contributing on average now as a percentage of overall cost or average cost per single, double, and family coverage employee
- Whether employer costs are fairly predictable or are they tied to variable amounts of reimbursement.
- Whether and to what extent penalty provisions will apply if the Act's requirements are not met.

Important note for townships eligible to receive Economic Vitality Incentive Program payments.

As we have noted, failure to comply with the Act will result in a 10% reduction in Economic Vitality Incentive Program payments for as long as the township is noncompliant. Interestingly, the State budget bill for 2011-2012 requires these townships to adopt an "employee

compensation plan" to receive these payments. That plan must include a provision requiring new hires to pay at least 20% of their health care premium costs or a provision for the employer's share of the local health care plan costs to be cost competitive with the new state preferred provider organization health plan, on a per-employee basis.

In other words, unless the township can demonstrate that its health care costs are competitive on a per employee basis, the township **must** elect to share all of its health care costs under the 80/20 Plan for new hires. The hard cap may not be a realistic option if the township wants—or needs—all of its Economic Vitality Incentive Program payments.

Where You Can Learn More

You can read the adopted version of the law (originally Senate Bill 7), on the Michigan Legislature's [website](#). You should also discuss the practical and legal issues surrounding this new law with your township attorney, because it will undoubtedly present many challenges in budget costs and at the bargaining table in the months and years to come.

The Authors

This update was brought to you by Stephen Schultz and Helen "Lizzie" Mills of *Fahey Schultz Burzych Rhodes PLC, Your Township Attorneys™*. Fahey Schultz is a frequent contributor and advisor to townships across Michigan. This publication is intended for informational purposes only. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

—Steve Schultz and Lizzie Mills



Stephen O. Schultz is a founding partner of Fahey Schultz Burzych Rhodes PLC. Steve has represented townships across Michigan for over 30 years. He is a frequent speaker and writer on matters of township law and labor and employment law.



Helen "Lizzie" Mills joined the township and labor and employment practice groups at Fahey Schultz Burzych Rhodes PLC in 2010, after graduating second in her class at the Thomas M. Cooley School of Law.

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4151 Okemos Road
Okemos MI 48864
517.381.0100 main tel
517.381.5151 main fax
www.fsblawyers.com

