

AD HOC COMMITTEE ON PSEBA ISSUE
Meeting Minutes

Thursday, January 8, 2009
IRMA Office
2:00 p.m.

PRESENT: Kelly Amidei, Chair
Lisa Jepson
Jason Bielawski
Art Malinowski, Vice Chair
Sandra Mikel

ALSO PRESENT: Chuck Vaughn
Robert Buhs
Larry Bush
Susan Garvey
Larry Bury
Rick Curneal
Mary Henzler
Patty Mailer

ABSENT: Bill Brimm
Andri Peterson
Jeff Moline
Barry Krumstok
Paula Schumacher
Colleen Nigg

I. CALL TO ORDER

The meeting was called to order by at 2:05 p.m.

II. WELCOME

Garvey introduced Patty Mailer from Seyfarth Shaw, who was joining the meeting via telephone. Garvey explained that Mailer works with some of her clients on this issue and felt it might be beneficial for her to join in the discussion. Garvey noted that Mailer had done some work with Bill Anderson last year running some language.

Garvey asked Chuck Vaughn to update the committee on his conversations with the unions and where we are going. Garvey noted out that she handed out a basic proposal for language to be added to the statute for discussion.

III. UPDATE FROM CHUCK VAUGHN, VAUGHN CONSULTING SERVICES

Vaughn stated that there were several issues that had to be covered. One of the issues was, were people under a duty to notify you that they had a second opportunity to work. Were they under a duty to accept the insurance at that second work opportunity? Another issue was, if they left you and went to work for someone else and accepted insurance and left your insurance, were they guaranteed the right to come back to you if that second job ended. If they wanted to come back, would there be an adverse selection problem with them having a right of reentry.

Vaughn stated that he had met with both the police and firefighter unions, who wanted to know about the above issues. They also wanted to know about whether we were going to do anything to affect the benefits of those people who are presently annuitants in this program – people who presently get the benefit of having been declared catastrophically disabled.

Vaughn stated that what we are not going to do is get into the definition of catastrophic disabled, because they have a Supreme Court case that they won. Vaughn commented that the only way we could do that would be to change the membership of the General Assembly. Vaughn stated that it is his opinion that under the present status with the Democrats controlling both houses, the opportunity to make that change is zero.

Vaughn noted that working within that framework, he went to the police and firefighter unions and talked with them about working on something that meets the obvious abuses Vaughn reported that they met with the head of the Firefighters Union at the IRMA office and he has met with the Federation of Police, and various groups and there is a willingness on all of their parts to go after obvious abuses. The second thing there was there was a willingness to listen to solutions from us provided we would keep it very limited and focused on the problems we wanted to solve and not go off in another direction. Vaughn noted that there was a great fear on the unions' part because of conflicts they have had with the Illinois Municipal League over the years, especially with the police and fire boards, that these things disintegrate into cat fights between two groups that really don't like each other very much. Vaughn noted that he has had discussions with the unions and with the IML that if we do a bill, we need to do a very clean bill that is not amended by anybody unless 100% of the people involved in the creation of the bill sign off on an amendment. Vaughn stated that what we take to Springfield for this upcoming session will stay as it is unless we find a legal conflict in it and it has to be changed.

Vaughn stated that the solution he has been proposing is what everyone else in the world is doing – coordination of benefits. Almost everybody who works for anybody gets a form once a year asking whether you have any other insurance available to you. The way you solve the problem of reentry is that you say to someone who takes another job:

- a) You have a duty to notify us, if you take another job.
- b) If you take another job that has insurance available, you have to take it.

Now we get into two questions:

- a) What happens to your primary insurance you have with the police/fire department?
- b) What happens to the amount of coverage you get in the new policy?

By making your original policy that you have with the police/fire department secondary coverage, which is in effect an umbrella policy. That brings some other questions such as do you get a reduction in rate because the risk on that person is less now? We will probably need to have legislation to direct the insurance companies to do this. It eliminates the problem of reentry because you never really leave the insurance.

Vaughn stated that at this point, the firefighter unions have signed-off on this by giving him their verbal assurance that they are okay with this. Vaughn noted that the police union gave him a semi-verbal assurance, but he doesn't see any problems here. Vaughn stated that because this is in the best interest of their membership, he believes that the Illinois Municipal League will sign off on this. Vaughn stated that the only wildcard he sees is with the insurance industry not wanting to be told anything. Vaughn commented that the only weakness the insurance industry will have here is that it is not very difficult to get a bill introduced in the Illinois General Assembly that punishes HMOs and PPOs. If we bring in regulatory matters that tell the insurance industry that we have to be "more fair" with their annuitants, it will be easy to pass.

Vaughn stated that we will have to give bill drafting guidelines to the Legislative Review Board (LRB), who will draft the bill. Vaughn suggested that if the committee comes to consensus

today, next week we should have draft guidelines ready for him to submit to the LRB. The LRB should have a draft bill completed by January 20th. During that time, Vaughn indicated that he would be looking around both chambers to find sponsors for the bill. He would also be asking the Ad Hoc Committee members whether they have representatives/senators that they have worked with for him to contact. Vaughn anticipated that it would start in the House, go into committee by the second week of February, and out of committee by the second week of March. Then into the Senate and go into committee by the fourth week of March and get it out by the end of the first week of May and have it signed by the Governor in July. Vaughn stated that he thought this would be a workable schedule.

During this entire schedule, Vaughn indicated that he would be meeting with members of both the House and Senate to make sure there is nothing in the bill that they have controversy with. Vaughn indicated that he would be taking some members of organized labor to those meetings with him. If there are no problems, Vaughn stated that he would ask for an expedited process in both the House and Senate to get this through the process in the earliest possible committee meetings. He doesn't want to get caught up into the budgetary crunch at the end of the session.

Vaughn stated that he was 85% sure that we would get something done and, if we get something done, it will reduce the cost to your members because we will have somebody else picking up some of the cost of the insurance, protect the rights of the people on the policy, and make sure that the member is aware of information that may not be shared by the former employee.

IV. COMMITTEE DISCUSSION

Jepson commented that a member would then have to keep an employee on their insurance, and the member's insurance would become secondary. Vaughn replied that, yes, if you don't keep them on your insurance, he wasn't sure they would ever be able to come back. This is an issue about reentry and adverse selection. Both Jepson and Amidei commented that the cost of insurance, even though it would be secondary, would still be the full premium. Bush commented that there was something from "e" in the proposed language – "...Coordination of benefits at a cost reflecting secondary coverage...." This is what will have to be mandated for insurance companies.

Vaughn noted that the hardest thing we have to do is to get the insurance companies to agree to mitigate the costs. If they don't agree, a member may get to the point where the only way they will get their costs mitigated would be at the end of a year, when it's time to get re-rated for your next policy and you have significantly reduced the outflow that came from that person because you have someone else paying the majority of the insurance costs. At least theoretically, you should get it back at some point in time.

Bush asked how many of the committee members' entities were largely self-insured on their medical. Several of them were. Bush stated that if a member is self-insured, they should get the benefits.

Vaughn stated that the plan that he is proposing gets away from something that he thinks would be terribly difficult – establishing what comparable benefits of plans are. Jepson & Amidei agreed, as most members who are self-insured have the base plan as an HMO.

Bush asked Mailer whether she new anything about litigation on "what is a basic plan." Mailer stated that there hasn't been any litigation that has resulted in a reported decision. There is no case law on this. Mailer commented that one of the most favorable points for us is the language

in the statute because there is no definition, which gives us leeway. Mailer indicated that she has clients that are already implementing cheaper plans to encourage as a practical matter that employees take other insurance.

Mailer commented that she did think there will be a significant issue in coordination of benefits between a primary PPO and a new employer and if the basic plan is an HMO from the municipality, because the secondary employer may not be liable under the insurance contract, if the employee did not meet their qualifications in the first place. It's possible that they would have a big issue with that. How are we sure that a secondary employer is really going to be on the hook for anything if they are an HMO.

Vaughn stated that if you had that happen, perhaps we could engineer something that would allow the fire district or municipal fire or police department come in and pay the difference, energizing that policy with a higher level of coverage.

Mailer asked Vaughn whether the unions have agreed, at least in theory, to require their members to accept other coverage and an available source, such as spouse or new employment even though there will be a premium to pay? Vaughn stated that he did not bring up the issue of spouse insurance. The only coordinated benefits he talked to the unions about was having two policies being held by the annuitant – the one he holds as a firefighter and the one he has with new employment. The issue of also having other family insurance is a whole other issue and we haven't gotten that far with the unions. Bush noted that it was in the proposed language.

Bielawski asked whether there was going to be anything in the language on enforcement. Vaughn stated that this was something that still needed to be worked out. Vaughn stated that up to this point the unions have agreed that requiring these people to notify the municipality of new employment and accepting the insurance is something that they can live with.

Bielawski asked whether anyone from the health insurance industry looked at the proposed language. Vaughn stated that he talked to the representative who represents Blue Cross Blue Shield health care plans in the General Assembly. He is also an insurance professional, who spoke with a great deal of knowledge on this. He has run this back to the General Assembly and they are still reviewing it. Vaughn stated that there was a general feeling on the representative's part that this is something that we could accomplish. Bush reported that staff had initially met with some health insurance representatives from HUB that IRMA uses and the plan was to meet with them again after we had language drafted.

Mailer added that she has already had a client do this with Blue Cross Blue Shield, who got an acknowledgement that if they had a PSEBA person on that plan and he loses that job, they will accept him back. Also, their general consensus was that if the law required reentry, they wouldn't have any choice. Mailer stated that this may be something to put into the amended language.

Bush stated that maybe the right of reentry is the way to go rather than coordination of benefits. Vaughn noted that if you don't include coordination of benefits, then you are going to have to pay a difference in value. With coordination of benefits, the two insurance companies work it out.

Mailer stated that she would really be amazed if the unions would agree to force their members to accept comparable insurance programs and pay the premiums without being reimbursed by the municipality.

Vaughn stated that if there is a participatory fee on the new insurance and their wasn't on the previous insurance, then the member would have to pay the participatory fee. Mailer stated that if we do that without getting them off our plan, then you are increasing the costs. Vaughn stated that in most cases the administrative fee you would pay for a member of your insurance program is dwarfed by the amount of coverage that person could potentially receive every year for medical services.

Bush stated that maybe it should be an either/or. We either pay the premium for the new employers insurance or we go with coordination of benefits. Bush noted, however, that we would have to get the right of reentry then from the insurer. Vaughn stated this would work if you can get the unions to agree.

Bury asked whether this would be retroactive. Vaughn stated that this wouldn't do anything to influence the benefits of existing annuitants. No present annuitant would have their benefit level go down.

Mailer stated that she knew the committee hadn't talked about spousal coverage yet, but she felt it would be integral to this. Vaughn stated that on the sheet handed out Garvey also had the issue of divorce from or death of a spouse as other issues to discuss. Vaughn noted that these are very tough issues and we may not be able to get to them in this first session.

Bush asked Vaughn what the process on the guidelines would be. Would he take them to the unions and then they would work on them. Vaughn indicated that the committee has to have a real clear message in our head and a baseline of how much we want to do now and then Garvey would give him the agreed upon guidelines to present. Bush asked whether we should put something in about us paying the premium, or wait for the unions to bring this up. Vaughn recommended that we wait and make the unions ask us about it.

Garvey stated that part of this process is to make sure we are all on the same page, especially with the cogs, so when this gets down to Springfield we don't have other people trying to add anything to it.

Vaughn commented that one of the reasons for the meeting of the committee was to determine if there were any weaknesses in our case before we put it up. Just sending out a survey and getting your answers back didn't give us all the information that we wanted. The responses to Susan's previous inquiries and the responses from today's meeting have told us what we need to add to the equation.

Bury stated that the Northwest Municipal League's primary position is that they would love to see the federal language mirrored in the state law. Bury noted that after the proposed language is completed, he would bring it to their attorney committee for their opinion and then bring a recommendation back to their legislative committee.

Vaughn indicated that when he brings this to the committees in Springfield he would like to have representatives from the ad hoc committee accompany him as an expert witnesses to testify before the committees to relay how this works procedurally where they live.

Bush noted that if the police and firefighter unions are on board, it shouldn't be too difficult to sell this.

Bush stated that the biggest outstanding question is qualified reentry versus coordination of benefits. Vaughn noted that if the counselor's suggestion is that we can actually get the insurance companies to sign a guaranteed reentry, then it will be twice as easy as he thought it was.

Bush stated that the ramifications of not doing it have not been discussed. Vaughn stated that this will be one of the most difficult things to discuss. We have to make sure that these people are aware of the fact that they have a duty to follow the procedure of whatever plan they are under. There will also have to be some kind of a notification that gives them the right to correct their defect. Vaughn noted that coming up with penalties will be like walking through a mine field.

Mailer stated that there is some good language already in the statute that will help us there. Any knowingly false or willfully improper statements in trying to obtain these benefits results already in a Class A misdemeanor and forfeiture of benefits, so they will be really careful of that.

Amidei asked whether the ad hoc committee makes a recommendation to move forward with this. Buhs stated that we need to get the language from the Legislative Review Board first. Amidei explained that she didn't want the language to result in all the discussion that went on today when it was sent to the members. Amidei stated that maybe we should get something out to the membership with the language and a synopsis of what was discussed at this meeting, and ask them if they have any other issues to get back to the committee, it would move this forward quicker.

Vaughn suggested that Garvey give him the draft of what this committee agrees upon and he can get it to the LRB and get things started. If the committee wants to add something or delete something at a later date, that can be done at any point in time. If we are going to meet the fairly ambitious schedule presented at the beginning of this meeting, then Vaughn indicated that he would need to have something soon.

Garvey stated that she would get something basic put together to send to the IRMA membership as well as the cogs. Garvey indicated that she would appreciate help from Mailer in drafting the language.

Amidei cautioned that we want to be sure the language includes that under no circumstances will the employer pay more than they did prior for insurance coverage.

Bush reported that staff would work on revising this language quickly and would also meet with our insurance broker, HUB, to find out their thoughts on coordination of benefits.

Amidei stated that she would talk to the IPBC committee at their meeting on the next day.

Vaughn stated that it was critically important that any information he is given be valid and correct.

Vaughn also asked for references from the ad hoc committee, if they had a senator or representative that their municipality/jurisdiction worked who might be interested in co-sponsoring the bill. Buhs stated that Patty Bellock would be interested. Amidei suggested Susan Garrett.

Bush stated that the language would be revised and circulated to the ad hoc committee next week.

V. ADJOURNMENT

The ad hoc committee meeting was adjourned at 3:05 p.m.

Submitted by:

Approved by:

Susan Garvey
Director of Legal Services

Kelly Amidei
Ad Hoc Committee on PSEBA Chair