HOUSE RESEARCH ORGANIZATION bill analysis | 5/10/2003 | HB 3257 Delisi (CSHB 3257 by Crownover)

SUBJECT: Health reimbursement arrangement program for active school employees

COMMITTEE: State Health Care Expenditures, Select — committee substitute recommended

VOTE: 6 ayes — Delisi, Crownover, Deshotel, Harper-Brown, Truitt, Wohlgemuth

0 nays

5 absent — Gutierrez, Berman, Capelo, Miller, Uresti

WITNESSES: For — Terry Brown

Against — Eric Hartman, Texas Federation of Teachers; Barbara Tauber, Texas State Teachers Association

On — Ann Fickel, Texas Classroom Teachers Association; David Pore, Association of Texas Professional Educators

BACKGROUND: In 2001, the 77th Legislature enacted HB 3343 by Sadler, creating a state-administered health insurance program for teachers and other public school employees in districts with 500 or fewer employees. Beginning with the 2003-04 school year, all districts will be eligible to join. The Teacher Retirement System manages the active school employee health plan, which is administered by BlueCross BlueShield of Texas. TRS-ActiveCare now covers about 112,500 employees, about 20 percent of all public education employees in Texas and about 25 percent of those with group health coverage. Counting dependents, the plan covers about 183,000 people.

The state's premium contribution to eligible school districts is $75 per month ($900 per year) per participating employee, paid by TEA through the school finance formulas. Districts pay $150 per month per employee toward premiums. Districts that were not paying that level of support prior to the 2001-02 school year have been receiving minimum-effort transition aid from the state, but this hold-harmless clause was not funded in the appropriations process.

In the 2002-03 school year, all school employees, regardless of whether they participated in a group health plan, received $83.33 per month ($1,000 per year) in "passthrough" money from TRS, except for employees of open-enrollment charter schools that chose not to participate in TRS-ActiveCare. At $588.7 million per year, the $1,000 passthrough is the most expensive component of the health plan.

School employees could choose to apply their passthrough to any one or combination of the following options:

- a health care reimbursement (medical savings) account;
- a cafeteria plan under Section 125, Internal Revenue Service (IRS) Code of 1986 (which allows for the spending of pre-tax dollars on premiums, medical reimbursement, dependent child care credits, or transportation expenses); or
- supplemental compensation (salary).

Preliminary results of a recent survey by TRS showed that 75 percent of employees chose to apply some portion of their passthrough to health-care costs (Insurance Code, art. 3.50-8).

Districts that participate in Social Security have been receiving state "hold harmless" funding to help offset the cost of employer matching taxes when employees choose to use their passthroughs for salary; however, the Social Security hold harmless funding was eliminated in the appropriations process.

CSHB 3459 by Pitts would reduce the amount of the employee passthrough effective September 1, 2003 as follows:

- $550 per year for active full-time professional certified employees, other than administrative personnel;
- $300 per year for active full-time educational support employees; and
- $200 per year for active part-time employees.

CSHB 3459 also would subject new school employees to a 90-day waiting period before they could receive the passthrough.

A floor amendment to HB 5 by Grusendorf would have restored the passthrough back to $1,000 for full-time professional certified employees for the first year of the upcoming biennium, but the Senate did a complete substitute of SB 2 by Shapiro for HB 5, effectively stripping this and all other provisions for additional state aid for schools from the bill.

The IRS issued a federal tax opinion in 2002 allowing for employer-provided health reimbursement plans, called Health Reimbursement Arrangements (HRA), in which reimbursements for medical care expenses made from the plan are excluded from employee gross income. An HRA only reimburses employees for medical care expenses of employees, their spouses and dependents; it is solely employer-funded and not paid for directly or indirectly from salary reduction; and although it allows participants to carry forward unused amounts for use in later coverage periods, these amounts may never be used for anything but reimbursements for qualified medical expenses. (IRS Rev. Rul. 2002-41)

DIGEST: Effective with the 2004-05 school year, CSHB 3257 would require that the full amount of the active school employee passthrough be directed toward an employer-paid HRA. The options to use the passthrough for salary compensation, a medical savings account, or a cafeteria plan would be repealed.

An HRA would be defined as a health benefit plan that:

- was paid for solely by the employer;
- was not provided under a salary reduction election;
- reimbursed a participant for a qualified health care expense incurred by the participant or his or her dependent (defined by federal law to include a spouse, child, brother, sister, father, mother, stepchildren, stepparents, in-laws, or any other individual who lived in the household with the taxpayer);
- provided reimbursements up to a maximum dollar amount at the end of a coverage period; and
- provided that any unused portion at the end of a coverage period would be carried forward for use in a subsequent coverage period.

For the purposes of the passthrough only, school employees would be considered employees of the state and the school district, although this would not make an employee a state employee for any other purpose.

The bill would direct the state, through TRS, to contribute to an employee's HRA account $1,000 per year or other amount by appropriation. The contribution would be made in equal monthly installments and only could be used for qualified health care expenses.

Any unspent funds in a cafeteria plan as of September 1, 2003, would have to be spent for qualified health care expenses before the employee could spend any funds from the HRA account. Any unspent funds in a medical savings account would be transferred to the HRA account effective September 1, 2004, and TRS would have to continue to operate the medical savings account program until that date.

No later than September 1, 2004, TRS, in consultation with the comptroller, would have to develop a funding structure that implemented the HRA program, permitted an employee to carry over money allocated to the employee as long as the employee was eligible, and ensured favorable federal tax treatment for the employee.

The comptroller either would have to establish separate individual accounts within the TRS-ActiveCare trust fund, or transfer funds from the TRS-ActiveCare trust fund to trust accounts in the custody of the comptroller to the benefit of employees. On an employee's separation from service, the employee could continue to use any unspent money carried over in the HRA for qualified health care expenses.

TRS would have to adopt rules to implement the bill and could contract with an independent and experienced group insurance consultant or actuary for advice in implementing and administering the program, including the Employees Retirement System.

TRS could not directly administer the HRA program, could not establish, approve, or limit premium rates for health benefit plan coverages made available under the HRA program, and it could not provide coverages on a self-funded basis.

TRS would have to pay administrative expenses for the program out of the passthrough, and it could start collecting an administrative fee on the passthrough in the 2003-04 school year to pay for administrative program expenses in 2004.

TRS would have to meet competitive bidding requirements in contracting with an independent administrator or manager of the HRA. The entity would have to be a qualified, experienced firm of group insurance specialists or an administering firm. TRS would not have to accept the low bid and could consider other relevant criteria, such as experience, financial stability, and ability to service contracts.

An approved plan provider would have to provide a certificate of coverage to each employee covered by the HRA program, explaining the benefits of the program, to whom benefits were payable, to whom a claim would have to be submitted, and the provisions of the plan document that would principally affect the employee. The HRA issuer would have to keep adequate, confidential records, respond to reasonable requests for reports, and permit TRS and the state auditor to examine its records.

During the initial implementation of the HRA program, TRS could amend any agreement in effect on September 1, 2003, that it had entered into in for TRS-ActiveCare in order to comply with the requirements of the HRA program.

The bill would take effect September 1, 2003. The HRA program would take effect September 1, 2004, and would be applicable with the 2004-05 school year.

SUPPORTERS SAY:

CSHB 3257 would create a consumer-directed health benefits model to give active school employees more control over how their out-of-pocket health dollars were spent. Greater control leads to greater responsibility for using health care dollars wisely. The choices provided by an HRA account would allow employees to tailor health care services to their own individual and family needs. Consumers are in a better position than insurance companies to assess their own health care needs.

CSHB 3257 would ensure that all the passthrough dollars went to healthcare rather than to some other non-healthcare related purpose. The Legislature created TRS-ActiveCare to provide health insurance to school employees, not to provide a salary increase. Employees who elect to receive the passthrough as salary may well be using the money for healthcare, but salary compensation is after-tax money, which cuts down on the benefit of the passthrough by up to 20 percent. In the past 20 years, health care costs have risen at twice the rate of income, and health spending is projected to double again by 2007. Allowing employees to receive the money as a salary limits the health care dollars available to employees and could leave health-care needs unaddressed.

The HRA option provided under this bill could be carried forward from year to year, unlike the "use it or lose it" aspect of current cafeteria plans offered to school employees. This creates an incentive to school employees to be better educated health care consumers and to save for major medical expenses. Consumer driven plans motivate consumers to seek out information, assess value versus cost, and understand the economic consequences of their decisions.

The bill would allow employees to be reimbursed for a wide range of qualified medical expenses, including health and dental expenses, eye exams, glasses, contacts, chiropractic care, premiums for spousal or dependent coverage, premiums for long-term care coverage, psychiatric treatment, prescription drugs, and more.

CSHB 3257 would create a more attractive benefits package, helping districts recruit and retain teachers and other school employees. School districts would find that providing customizable health benefits would help them remain competitive with the private sector. The ability to rollover the HRA account would motivate employees to stay on with a district, so that they could keep adding to their savings for future health care expenses.

OPPONENTS SAY:

In the name of consumer choice, CSHB 3257 would restrict employee choices by severely limiting employee options for spending the passthrough. There is no reason to make the HRA mandatory when it could just be added to the list of options for school employees. Rather than strait-jacketing school employees into a one-size-fits-all plan, lawmakers should add the HRA to the list of options and let a natural consumer process unfold. By offering the HRA plan as an additional choice rather than the only alternative, lawmakers could assess how many employees chose the plan over the course of a biennium and could see whether the HRA plan truly had consumer appeal or not.

CSHB 3257 would force employees who currently use their passthrough for child care credits to lose that option. The bill would require employees to spend any unexpended funds in their cafeteria plan toward qualified health care expenses before they could access any money in their health care reimbursement account. If employees had been setting aside a certain amount of tax-free money for day care over a period of time, it would be unfair to make them use that money on health care expenses. They may not have enough health care expenses to use up the rest of the money in the cafeteria plan, and thus, they could lose that investment.

While the rollover feature is an attractive option, it would not be very useful if there was no money to rollover. The passthrough took a major hit in the appropriations process, leaving part-time employees with a total of $16.67 per month to spend on health care. This wouldn't even pay for one doctor's visit, let alone accumulate enough over time for a major medical expense. And since TRS would be deducting a monthly fee to administer the HRA program, it would reduce the benefit for all employees even further.

NOTES: The committee substitute primarily differs from the bill as introduced by directing the school employee passthrough into an HRA rather than establishing a Defined Contribution Plan. The committee substitute reduced the state contribution under the bill from $3,000 annually to $1,000 annually, or an amount specified by appropriation.