Health Insurance and School Districts: No One Solution

An overview of the options for insuring school district employees

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Health insurance is expensive because health care is expensive. We live in an era of medical miracles. Diseases that were once death sentences are now manageable (think HIV/AIDS). What was once incurable is now curable (think hepatitis C).

The question is: Who pays for all of this, and how? America's health insurance marketplace is split into roughly two segments: employer-based insurance for half of us and government-based insurance for the other half (e.g., Medicare, Medicaid, "Obamacare").

There are markets within markets, of course. Our practice is concerned with the New Jersey public school group insurance market, an arena defined by rich plan design, high cost, collective bargaining, government intervention, the influence of centers of medical excellence in New York City and Philadelphia, and an array of competing risk bearers with nuanced value propositions. We review these ingredients in turn before exploring some possible solutions to the inexorable growth in health insurance costs.

Rich Plan Design The typical New Jersey school district insures most of its employees in a high-end PPO (Preferred Provider Organization) plan, with an average office visit copay of $10. Out-of-network coverage is typically available with a deductible as low as $100. Prescription drug copays are low, with annual maximum out-of-pocket limits in the range of $400.

There are exceptions, such as districts in which the board's premium obligation is limited to a managed care plan. One or two districts have even made it worth an employee's while to switch to a high deductible health plan (HDHP).

High Cost Costs vary by district, but it is not an exaggeration to compare group insurance monthly premiums to large monthly mortgage payments. Annual family premiums of $35,000 to $40,000 are not unusual.

When – and if – the dreaded Affordable Care Act (ACA) "Cadillac Tax" comes into play in 2022, more than half of all New Jersey public sector employees will be generating premium costs in excess of the original annual ACA thresholds of $10,200 for single coverage and $27,500 for all other tiers of coverage (subject to annual indexing). Every dollar above these thresholds will generate an excise tax of 40 percent. A school district with 400 employees, as an example, would incur $750,000 of annual "Cadillac Tax" exposure. Regulations have yet to be published, but the bullseye will almost certainly be on the employer.

Some say the "Cadillac Tax" will never come into being, having been pushed back by Congress twice from earlier effective dates (2018 and 2020). We are not so sure. Is it "blue" state or "red" states employers that generate higher group insurance premiums? Which parts of the country would be most negatively impacted?

The new federal tax limit on deductibility of state and local taxes provides a useful template for how different parts of the country can be adversely affected by tax policy compared to others: intentionally or unintentionally. Furthermore, the recent ballooning of the federal budget deficit resulting from this overhaul will put Congress – irrespective of which party controls which chamber(s) – in a predicament relative to passing up the billions of dollars of revenue available from the "Cadillac Tax."

Collective Bargaining We advise our clients on the group insurance component of collective bargaining, either directly or in concert with the board of education's labor negotiator. Nibbling around the edges of plan design has taken a back seat to haggling over Chapter 78 and its mandatory employee premium contributions, the terms of which are now negotiable for almost every district, due to the law's "sunset" provision.

With Gov. Murphy's recent announcement that it is time for Chapter 78 "relief," we are seeing a slowdown of negotiations progress in most districts presently involved in bargaining. Perhaps local units of NJEA are awaiting relief from the Legislature and are reluctant to cut a new deal with their boards, for fear of settling only to find out that a better deal would have been enshrined in their collective bargaining agreements (CBA) had they waited for the governor's signature on a friendly bill. However, at NJSBA's Workshop Legislative Panel in October, a program which featured several state legislators, the Senate president unequivocally stated that a bill that imposes a cap on contributions by public employees for health care benefits would not be posted for a vote.

Centers of Excellence Paraphrasing a turn of phrase attributed to Benjamin Franklin: "New Jersey is a barrel tapped at both ends." This is an understatement relative to health care in the Garden State. While there are many fine New Jersey health care facilities, access to New York and Philadelphia health care providers is considered a "must" by benefits-sensitive school district employees. With access to centers of excellence comes increased health care costs and thereby increased health insurance costs.

Government Intervention The state of New Jersey competes in the market via the School Employees Health Benefits Program (SEHBP). Proponents of the SEHBP point to its value as an "insurer of last resort" and the check it supposedly provides on premium rates charged by other risk bearers. Detractors point to the market distortion created by a plan that sets its rates according to swings in market share and political considerations, rather than on fundamentals. Witness an announcement by the SEHBP consultant July of this year that SEHBP prescription drug rates will increase in 2019 by 17 percent, only to be revised in September to a rate reduction of 25 percent, with no explanation relative to changes in benefits, drug formulary, or pharmacy network.

Risk Bearer Competition Many school board members we meet with are surprised at the number and variety of risk bearers that compete for school district business. The market is diverse, robust, and competitive, although smaller districts have fewer options, especially those with fewer than 100 employees enrolled in their group insurance plan. It is the mission of group insurance brokers and consultants to leverage this competition to the advantage of their clients.

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In addition to the SEHBP, which has about 38 percent of the market, other risk bearers/insurers include the following. Each company's market share of New Jersey school districts is indicated.

- Horizon BCBSNJ (23 percent)
- Schools Health Insurance Fund (11 percent)
- Public Employer Trust (a proprietary Brown & Brown program) (10 percent)
- Aetna (6 percent)
- AmeriHealth (5 percent)
- Coastal Health Insurance Fund (3 percent)
- Self-insured (2 percent)
- CIGNA (1 percent)
- United/Oxford (1 percent)

Each of these entities has strengths and weaknesses, and it is the task of the broker or consultant to marry the client district to the right risk bearer, a complex process that encompasses premium rates, provider network, service metrics, funding mechanisms, and contractual guarantees.

Turning now to some possible solutions, we must all recognize that there are no easy answers to a problem that has so many factors, only some of which we have discussed above. What makes the problem so much more acute in the New Jersey public school group insurance market is the cap on the annual school district tax levy growth of 2 percent, notwithstanding the limited waiver available for the growth in health insurance costs, which many boards of education are not inclined to use.

Risk bearers such as Horizon and United have already indicated that for the right type of district they will compete in the 10 percent corridor space.

Risk Bearer Selection All labor attorneys we work with confirm that the board of education has the unilateral right to select its risk bearer, provided the standard defined in its collective bargaining agreement (CBA) is met, and subject to guidelines in prior decisions by PERC (Public Employer Relations Commission).

We feel strongly that the collective bargaining process should not unduly influence risk bearer selection. There is never a good time to change risk bearer: before, during, or after the collective bargaining cycle.

More smaller New Jersey school districts than ever (generally those with 300 or fewer enrolled employees) are turning to insurance pools that seek to combine buying power, selective underwriting of "good" and "bad" risk districts, and professional management to rein in the growth of health insurance costs. One in four districts (roughly 140) are now members of such pools, which include: The Schools Health Insurance Fund; The Public Employer Trust; and The Coastal Health Insurance Fund.

Annual rate increases in the low- to mid-single digits (3 percent to 7 percent since 2016) have been the norm for such pools, outperforming most of the rest of the market. Unlike the SEHBP, which offers an inflexible menu of plans that may conflict with CBA requirements, these pools can match the specific plan design of any district. Moreover, these pools limit membership to districts with favorable underwriting characteristics, whereas the SEHBP is often "the insurer of last resort" for districts with unfavorable underwriting characteristics.

For larger districts (generally those with 300 or more enrolled employees), a host of traditional carriers are available, each of which purports to offer provider network contracts, case management services, and other features that outperform the others in controlling health care costs. However, despite the actuarial rule of thumb that larger groups should be 100 percent statistically credible (meaning their claims experience should repeat itself year-over-year plus health care inflation), medical miracles such as pre-term neonatal viability, long-term dialysis, and specialty medications can result in wide swings in claim costs from year to year.

Funding Mechanism To insure or self-insure — that is the question more boards of education than ever before are being prompted to ask themselves by their broker or consultant. Despite having the authority since 2007 to self-insure, we estimate that fewer than 2 percent of New Jersey districts do so, even though self-insured plans usually generate lower administrative costs than insured plans, are subject to fewer state and local taxes, and avoid carrier "risk" and "margin" charges.

These efficiencies typically give self-insured plans an advantage of roughly 7 percent versus fully-insured plans, but with the risk that higher-than-expected claim expenses that would have been absorbed by a risk bearer in a fully-insured plan are instead borne by the employer.

The New Jersey Department of Banking and Insurance (NJDOBI) in 2017 changed the "risk-reward" equation for employers throughout the state. NJDOBI now allows group insurance plans to self-insure with a "risk corridor" as low as 10 percent. The former minimum risk corridor was 25 percent. (The risk corridor is the gap between what an underwriter projects as the expected claims level and what an insurer will guarantee as the maximum employer claim liability. What was a risk reward ratio of 25:7 prior to 2017 is now 10:7.)

We expect our clients who have the risk tolerance to consider self-insurance, and the ability to reserve in advance for risk corridor exposure and other liabilities, to look at self-insurance with a much less jaundiced eye. Risk bearers such as Horizon and United have already indicated that for the right type of district they will compete in the 10 percent corridor space. We expect other risk bearers to do so as well.

Consumer-Driven Health Plans The theory here is that employees with more "skin in the game" will use fewer medical resources and choose their providers more wisely when they are enrolled in a high deductible health plan (HDHP).

HDHP can indeed reset the premium base for the employer –decreasing annual

costs by as much as 30 percent – assuming an annual deductible of $2,500 for individuals and $5,000 for families. Employer funding of a portion of the deductible can help mitigate out-of-pocket exposure, via either a tax-exempt health savings account (HSA) or a tax-exempt Health Reimbursement Arrangement (HRA). Care must be taken not to over-commit to cover more than 50 percent of the deductible, otherwise, experience has shown, the behavior change inherent in standard HDHP rates will not occur. If behavior changes don't occur, the result will be large rate correction increases down the road.

Limited Network Plans New Jersey's largest risk bearer, Horizon BCBSNJ, considers the Garden State to be a high-quality, self-contained ecosystem, Benjamin Franklin's viewpoint notwithstanding. Horizon's launch of its OMNIAtm product suite three years ago was the firm's way of leveraging its health care provider relationships to better manage patient populations and "bend the needle" on health care cost increases. Despite premium savings vs. PPO plans of roughly 25 percent, OMNIAtm has made limited penetration in the New Jersey school district group insurance market, given that the plan divides Horizon's provider network into two tiers and charges a premium for out-of-state access to other Blue Cross networks. Out-of-network coverage is not available.

Nevertheless, the significant premium savings available from limited network plans such as OMNIAtm compel the public school employer and other stakeholders to ask an important question: Can a health insurance plan with zero out-of-network coverage (other than in emergencies) be considered palatable by a benefits-sensitive workforce in light of the substantial available premium savings?

There are no easy answers. The escalation in health insurance costs is not a werewolf. It cannot be killed with a silver bullet. It is more like a zombie. Just when you think you have dispatched the problem, it comes back to life. However, we are confident that the right combination of solutions, applied in an appropriate manner at the right time for a well-informed client, will offer a high degree of potential success.

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