



AGENDA for a *SPECIAL*
FINANCE
STANDING COMMITTEE
VALLEY COUNTY WATER DISTRICT
14521 RAMONA BOULEVARD,
BALDWIN PARK, CALIFORNIA
Friday, November 9, 2012 AT 4:00 P.M.

COMMITTEE MEMBERS:

Director Jonathan Contreras, Chairperson
Vice President Lenet Pacheco, Co-Chair
Director Armando Macias, Alternate

ITEMS FOR DISCUSSION

1. Members of the Board of Directors:
 - a. Directors' Health Coverage - Analysis Completed by Lemieux & O'Neill
 - b. Cost of Director Benefit Premium and Open Enrollment Periods
 - c. Comparison: Director + Dependents versus Director Only Premiums

NEXT MEETING: To be determined.

cc: Board of Directors
 E-Mail Distribution List

In compliance with the Americans with Disabilities Act, if you have a disability, and you need a disability-related modification or accommodation to participate in this meeting, please contact the District at 626-338-7301. Requests must be made as early as possible and at least one full business day before the start of the meeting.

October 25, 2012

Lynda Noriega, General Manager
Valley County Water District
14521 East Ramona Blvd.
Baldwin Park, CA 91706

Re: Directors' Health Coverage

We are asked to answer three questions about directors' health coverage:

1. Is it lawful to eliminate District support for directors' health care?
2. Is it lawful to eliminate health care coverage for directors' dependents?
3. Is it lawful to provide reimbursement to directors for health care costs?

Executive Summary

As explained below, the first two can be done. As for the third, the District can reimburse directors for premiums they have paid or provide a cafeteria plan through which the Directors can be reimbursed. However, they cannot simply pay a director a cash payment each month to cover a director's medical bills.

Analysis

The District may provide health care coverage for directors and their dependents.¹ The District is not required to provide coverage. The District can eliminate all support for directors' health care.

The same analysis applies to elimination of support for dependents.²

The last question is the most difficult. Section 53201 says:

“The legislative body of a local agency, subject to conditions as may be established by it, *may provide for any health and welfare benefits* for the benefit of its officers, employees, retired employees, and retired members of the legislative body...” [Emphasis added]

¹ Government Code Sec. 53201. Further references are to the Government Code.

² Government Code Sec. 53205.1.

Section 53200(e) provides:

“ ‘Employees’ or ‘officers and employees’ mean all employees and officers, including *members of the legislative body*, who are eligible under the terms of any plan of health and welfare benefits adopted by a local agency pursuant to this article.” [Emphasis added]

The District can pay group medical plan premiums, but the question is whether the District can reduce costs by providing reimbursement for medical care in lieu of paying group insurance plan premiums. Many agencies, including Valley County Water District, provide reimbursement for dental and vision care costs.³

Section 53200(d) provides a broad definition of “health and welfare benefit”:

“ ‘Health and welfare benefit’ means any one or more of the following: hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, *whether provided on an insurance or a service basis...*” [Emphasis added.]

The phrase “whether provided on an insurance or a service basis” has not been defined. The Attorney General has stated:

“A ‘service plan’ is distinguished from an ‘insurance’ plan in that the latter features indemnity paid to the ‘insured.’ It reimburses him for all or part of an obligation which he has incurred. The principal feature of a ‘service’ plan, on the other hand, is that as far as the benefits provided by it are concerned, the physician has agreed to look exclusively to the plan for payment. The member owes nothing... We believe that because these particular definitions are so well recognized in the health care field, the Legislature must have intended that they be the definitions.”⁴

On this basis, the Attorney General concluded a school district could not make cash payments in lieu of health insurance benefits.⁵ However, an agency may, rather than contracting itself, choose to approve an existing health care arrangement between its directors and an insurer or health care provider. In doing so, it must follow Section 53202, which states:

³ This practice arose when dental and vision care were not offered by group insurance companies.

⁴ 83 Ops. Cal. Atty. Gen. 124. Attorney General opinions are persuasive but not binding.

⁵ Receiving a cash payment in a manner that violates Government Code sections 53200-53210 can result in a taxpayer or District suit for reimbursement, or if the violation is willful, a misdemeanor. (*Id.*)

“In providing health and welfare benefits the local agency may approve plans of their officers and employees or may contract with one or more admitted insurers, health service organizations, or legal service organizations for such plan or plans of health and welfare benefits as the local agency shall determine to be in the best interests of the local agency and the officers and employees electing to accept the benefits.”
[Emphasis added.]

Thus, the agency must first approve a plan, whether director-chosen or District-chosen. If this is done, the District can pay for the benefit “by way of reimbursement to its officers or employees instead of payment to the insurer.” The plan must adhere to Section 53202.3 which requires that all health and welfare benefits approved by the agency provide “benefits for large numbers of employees.” A cash payment for medical bills incurred by directors would violate Section 53202.3 and 53200(d).

There is another wrinkle. Some medical bills cannot be reimbursed by the District because they are not considered “health care.” The Government Code does not define “health care” for purposes of Section 53200. In other contexts, it is defined as services which are “reasonable and necessary for the prevention, diagnosis or treatment of disease, illness or injury.” (Cal.Admin.Code, 51303(a).) If the District wishes to reimburse employees for medical procedures not covered by an insurance plan, one way to do so is through a “Section 125 plan,” which reimburses costs on a pre-tax basis.⁶ A “Section 125 program” is a plan established under Section 125 of the Internal Revenue Code. These plans allow participating employees to make pre-tax salary contributions to cover the cost of selected benefits, which often include flexible health care spending accounts. Employers may opt to make monthly contributions to the plan. This can weed out claims that are not “health care” under the law and will avoid the necessity of the District obtaining a legal opinion on the reimbursability of particular health expenses for which a director seeks reimbursement.

Conclusion

The District can eliminate all support for directors’ health care. The same is true of elimination of support for dependents. However, the District should check with its carrier on whether it will exclude dependents.

⁶ The Attorney General has also stated that by agreement with a cafeteria plan, an agency may redirect the value of health insurance benefits to a deferred compensation plan that complies with IRS guidelines. (Ops.Cal.Atty.Gen. 05-910 (May 22, 2006) 2006 WL 1420823.)

Lynda Noriega, General Manager
Valley County Water District
October 25, 2012
Page 4 of 4

If the District provides reimbursement for a health and welfare benefit directly to a director, it should first approve the type of plan the director has obtained. Payment should be a reimbursement for the actual cost of a plan incurred by the director, as opposed to a cash blanket payment each month to cover any medical bills.

Very truly yours,

LEMIEUX & O'NEILL



Wayne K. Lemieux

WKL/lms

VALLEY COUNTY WATER DISTRICT
Cost of Director Benefit Premiums and Open Enrollment Periods

CalPERS - Monthly Medical Insurance Premiums

Plan	HMO		PPO	
	Blue Shield	Kaiser	PERS Choice	PERS Care
Director (1)	530.75	502.40	587.46	953.90
Director + 1 Dependent (2)	1,061.50	1,004.80	1,174.92	1,907.80
Director + 2 Dependents (3+)	1,379.95	1,306.24	1,527.40	2,480.14
Open Enrollment Period	Annually - 2nd week in September through 1st week in October			

ACWA - Monthly Dental, Vision, Life Insurance, Employee Assistance Program Premiums

Plan	Delta Dental	Vision Services Plan	Standard Life	EAP
Director (2)	35.35	22.02	1.80 - 8.10	3.54
Director + 1 Dependent (2)	69.81	22.02	-	-
Director + 2 Dependents (3+)	117.71	22.02	-	-
Open Enrollment Period	Annually - October 1 through November 30			

Medicare Programs

Open Enrollment Period	Annually - Mid October through First Week in December
-------------------------------	--

Open enrollment periods allow the following changes to be made to a subscribers premium:

Changing insurance plans (i.e Blue Shield to Kaiser Permanente)

Adding dependents to insurance plan for events other than marriage, domestic partnership, or child birth

VALLEY COUNTY WATER DISTRICT
Board of Director Benefit Expense
Comparison: Director + Dependents vs Director Only

CalPERS - Current Cost based on Monthly Medical Insurance Premiums

Board of Directors	Medical Insurance	Coverage	Annual Cost Director + Dep	Annual Cost Director Only	Difference
Director Contreras	PERS Care	Director + 2	29,391.09	11,304.27	18,086.82
Director Lake	Kaiser	Director + 1	11,836.98	5,918.49	5,918.49
Director Macias	N/A	N/A	-	-	-
Director Pacheco	Blue Shield	Director + 2	16,403.16	6,308.91	10,094.25
Director Vargas	Kaiser	Director	5,918.49	5,918.49	-
Subtotal Board of Director Medical Premium:			63,549.72	29,450.16	34,099.56

ACWA - Current Cost based on Monthly Dental Insurance Premiums

Board of Directors	Dental Insurance	Coverage	Annual Cost Director + Dep	Annual Cost Director Only	Difference
Director Contreras	Delta Dental	Director + 2	1,465.53	440.30	1,025.23
Director Lake	Delta Dental	Director + 1	837.72	440.30	397.42
Director Macias	Delta Dental	N/A	440.30	440.30	-
Director Pacheco	Delta Dental	Director + 2	1,465.53	440.30	1,025.23
Director Vargas	Delta Dental	Director	440.30	440.30	-
Subtotal Board of Director Dental Premiums:			4,649.38	2,201.50	2,447.88