SJR 372: Joint Subcommittee to Study the Feasibility of a Statewide Health Insurance Experience Pool for Educators and Local Government Employees

October 10, 2007 - Meeting Summary

Senate Joint Resolution 372 (Norment) establishes a joint subcommittee to study the feasibility of a statewide health insurance experience pool for educators and local government employees. The joint subcommittee held its second meeting on Wednesday, October 10, 2007, in Richmond.

Constitutional Issues Regarding Local School Boards

Staff presented an overview of the constitutional issues regarding General Assembly mandates to local school boards. At the September 5, 2007 meeting, the joint subcommittee asked staff to explore such issues.

To begin, staff explained that Article VIII of the Constitution of Virginia governs public educational policy in the Commonwealth. Accordingly, the state constitution divides public educational responsibility among three entities: the General Assembly; the Board of Education; and the local school boards. Under Virginia constitutional law, the General Assembly is responsible for the (1) provision of free public primary and secondary schools and (2) establishment and maintenance of a high quality educational program. The Board of Education, however, is responsible for the general supervision of the Commonwealth's public school system. In contrast to the Board of Education, a local school board is required to supervise just those schools in its respective school division.

Educational jurisprudence is not clear as to the constitutionality of a General Assembly mandate that local school boards participate in The Local Choice, the state's health insurance program created exclusively for local governments, authorities, school divisions, and constitutional officers. Staff discussed several cases in which the Virginia Supreme Court limited another entity's (e.g., Board of Education) authority over local school boards. For instance, the court in *School Bd. of City of Richmond v. Parham*, 218 Va. 950, struck down a binding arbitration provision of the State Board of Education's Procedure for Adjusting Grievances. In finding that such a provision violates § 7 of Article VIII of the Constitution of Virginia, the court ruled that "the function of applying local policies, rules, and regulations, adopted for the management of a teaching staff, is a function essential and indispensable to exercise of the power of supervision vested by § 7 of Article VIII." The Court further held that "[i]t would be wholly unrealistic to say that Article VIII was designed to inject the State Board directly into the daily management of a local teaching staff."

Demonstrating the complexity of Virginia's educational law, staff discussed other cases in which the Virginia Supreme Court held that local school boards are not constitutionally autonomous. That is, the powers of local school boards are dependent upon a lawful grant of authority. For instance, in *Comm. v County Bd. of Arlington County*, 2217 Va. 558 (1977), one year before *Parham*, the school board claimed a constitutional prerogative to bargain collectively with labor organizations, a power the General Assembly had not expressly granted to that or any school board. The court reaffirmed that "[s]chool boards…constitute public quasi corporations that exercise limited powers and functions of a public nature granted to them expressly or by necessary implication, and none other." Specifically, the court held that "the general power of

school boards to supervise does not necessarily include the right to deal with labor relations of employees in any manner the boards might choose, unfettered by legislative restriction." Staff analyzed this holding and its applicability to the hypothetical legislative mandate that school boards purchasing health insurance for its employees must purchase such insurance through a state program.

Staff concluded its presentation by exploring the General Assembly's authority over the Virginia executive branch. In particular, staff suggested that if the General Assembly could constitutionally require certain action of the Governor and the executive branch, then the General Assembly could also constitutionally require certain action of local school boards. Staff concluded that a General Assembly mandate that local school boards participate in a state-created health insurance program *with choices for specific coverage* may avoid some constitutional questions.

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Presentations

Overview of Health Insurance Programs in Other States

Ms. Carol Malone, Senior Health Care Specialist for the National Education Association (NEA), provided the joint subcommittee with an overview of health insurance programs in other states. The specific topics of Ms. Malone's presentation were manifold: (1) goals of statewide health insurance pooling; (2) overview of state health insurance pools for public education employees established by state legislatures, NEA state affiliates, and states (combined with state employee plans); (3) state pooling legislation; (4) feasibility studies; (5) pooling issues and considerations; and (6) other types of pooling opportunities.

The first part of Ms. Malone's presentation dealt with the goals of statewide health insurance pooling. The goals of statewide health insurance pooling are the expansion of health plan bid opportunities, the creation of greater leverage with carriers and providers, the spreading of pool risks across a larger group of people, and the restraint and stabilization of health insurance premium and administrative costs. Additional goals include the reduction and/or elimination of broker, consultant, and other commission payments, the achievement of better health plan cost management, and the assurance of long-term health plan solvency and viability. The most important goals, however, are the improvement of school employee health status, the provision of the highest quality plan, benefits, and provider choices, and the attraction and retention of qualified educators.

The second part of Ms. Malone's presentation centered on education employee-only insurance pools. She discussed those pools established by state legislatures (e.g., Alabama, New Mexico, and Texas) that pool employees statewide. In these pools, the same rates exist throughout the state for the same plan, but there may be some regional rate differences for HMOs. Characteristics common to these pools in Alabama, New Mexico, and Texas include little to no stakeholder opposition, central administration, one main carrier with one or more smaller carriers, and the existence of pool boards that include teachers and support professionals. Also, prescription drugs are carved out of the programs. Further, Ms. Malone listed NEA state affiliate pools, including those in existence in Indiana, Maine, Michigan, Vermont, Washington, and Wisconsin. Ms. Malone further listed those states that pool education employees and state employees. Delaware, Georgia, Kentucky, and North Carolina mandate that education employees

and state employees be pooled together. By contrast, the pooling of education employees and state employees is voluntary in Oklahoma, Tennessee, New Jersey, Utah, and Massachusetts.

Next, Ms. Malone discussed state pooling legislation. Legislation before the legislatures in Massachusetts, Michigan, Oregon, Pennsylvania, and Montana was specifically discussed. The passage of state pooling legislation depends on the vital support of large localities and school districts, NEA state and local associations, and other stakeholders. However, Ms. Malone stated that deal breakers for state pooling legislation turn on whether pooling is mandatory or voluntary, the choice of plans and providers or lack of choice, and whether the insured see benefits cut or costs increased. In considering state pooling legislation, Ms. Malone suggested that legislators identify opposition and supporters early and identify all current health plan, service, and prescription drug providers.

Ms. Malone's presentation then turned to a discussion of feasibility studies. Feasibility studies compare and contrast localities and school districts by cost and utilization experience, benefit package and value, and premiums, contributions and other costs. Also, current plans are compared to more standardized offerings when conducting a feasibility study. To do such comparing and contrasting, feasibility studies usually require at least three years worth of health plan data. The goal of a feasibility study is to estimate any savings when considering legislative proposals. After highlighting several states, namely New Mexico and Pennsylvania, which mandate school districts provide health data for feasibility studies, Ms. Malone stated that states without legislation requiring data collection and submission strongly noted such as a problem to conducting a thorough feasibility study.

The goal of a feasibility study is to determine whether savings will result in pooling. That is, the savings should be from the creation of a large pool and not from any cuts to benefits or shifting of costs to employees. Also, projected savings depend on whether participation in the pool is mandatory or voluntary, the plan design, start-up costs, the existence of a statewide standard for procurement, administration, and evaluation, and the existence of any carve out for statewide pharmacy benefit. Interestingly, projected savings also correlate with the existence of a state wellness and health management program because states with such programs estimate higher savings. Ms. Malone cautioned that who conducts a feasibility study and how such study is conducted will influence the validity of any projected savings. Also included within this segment of Ms. Malone's presentation was a discussion of projected savings in Oregon, Minnesota, and Pennsylvania from statewide pooling.

Ms. Malone continued her presentation by noting that too many plan options can create two pools--a pool for the sick and a pool for the healthy. She further suggested that the joint subcommittee consider, in any formulation of a statewide pool, whether the pool should (1) be mandatory or voluntary, (2) have centralized administration, (3) combine or separate active and pre-Medicare eligible retirees, and (4) self-insure, fully insure, or both. Whether financial penalties attach to groups leaving the pool and who should operate the pool were further questions Ms. Malone suggested the joint subcommittee consider in any creation of a statewide health insurance experience pool for educators and local government employees.

The presentation concluded with a discussion of other types of pooling opportunities and steps the joint subcommittee may wish to consider taking. With regard to other types of pooling opportunities, Ms. Malone stated that some states look at statewide carve-outs and/or pooling of (1) prescription drug benefits, (2) mental health, dental and vision benefits, (3) mandatory regionalized consortia, and (4) reinsurance/stop loss. Finally, Ms. Malone suggested that the joint subcommittee may wish to discuss (a) a vision for pooling and ways to accomplish such, (b)

necessary legislation for such pooling, and (c) a feasibility study for pooling, and then draft an RFP for a feasibility study.

Issues Facing Various Localities

Mr. Dean A. Lynch, Director of Intergovernmental Affairs for the Virginia Association of Counties (VACo), and Mr. Wayne Faddis, Administrator of Risk Management Programs for VACo, delivered an overview of the issues facing various localities throughout the Commonwealth.

To begin, Mr. Lynch shared the specific difficulties faced by Northumberland County with respect to its provision of health insurance to its employees. Northumberland County's health insurance plan covers both Northumberland County School Board employees and Northumberland County employees; the total number of policies under the plan is around 245. Nearly seven years ago, in response to the escalating costs for health insurance, Northumberland County unsuccessfully sought legislation for its school board employees and county employees to be pooled in the state employees' health insurance plan. Moreover, the county was unable to self-insure its county employees and school board employees because the costs were too high when it only had a $25 million budget. Because the Northumberland County health insurance group is small, one severe claim significantly affects its rates. The county claims that its rates increased 31.9% in 2002 due to one heart surgery and one kidney disease. The county further states that its average annual increase in health insurance coverage costs have increased approximately 15% over the past 10 years; moreover, the county predicts that, at the current rate, its rate of coverage will double every seven years. As a result of the escalating costs, the Northumberland County board of supervisors considered dropping certain benefits and increasing an out-of-pocket co-payment of $1,000 before any benefits are obtained.

By contrast, Mr. Faddis shared information about health insurance costs common to all localities in the Commonwealth. First, Mr. Faddis acknowledged that the VACo health insurance trust available to localities throughout the Commonwealth will cease operations at the end of the calendar year. Second, Mr. Faddis testified that the cost of prescription drugs is one of the major contributors to the skyrocketing costs of healthcare insurance. He further testified that while costs of health insurance rise because insurance companies seek profit, the increased utilization of benefits greatly contributes to the increased costs. In fact, Mr. Faddis postulated that the costs of health insurance will steadily increase even if local government employees and educators were all pooled under a state health insurance experience pool if the number of benefits and the amount of utilization remains constant or increases. Mr. Faddis did, however, suggest that such an experience pool may be made more attractive by highlighting to purchasers the lower broker and administrative fees. Finally, Mr. Faddis concluded that a formal study of the feasibility of creating a statewide experience pool for local government employees and educators may result in the disclosure of certain insurance programs' proprietary secrets or carefully negotiated benefits. Thus, recipients of such benefits may be disadvantaged in the future because the insurance companies may no longer be able to offer such benefits that are now well-known to all potential purchasers who may likely demand the same.

No future meeting of the joint subcommittee has been set. Members of the joint subcommittee, however, reached a consensus in recommending that a college or university conduct a feasibility study of a statewide health insurance experience pool for educators and local government employees before the joint subcommittee recommends the creation of, or the General Assembly creates, such a pool. Meeting materials, for this meeting, are available on the joint subcommittee's website at: http://dls.state.va.us/insurance.htm.