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Bar Beat

Are Municipal Health Insurance Cooperatives the Future for Public Sector Health Insurance Coverage?

“By clarifying the requirements for establishing Muni Coops and providing technical assistance, we are empowering local governments to better serve their employees and more efficiently provide vital health care insurance coverage.”

– Maria T. Vullo, Superintendent, NYS Department of Financial Services

The rapid increases in public employer provided health insurance costs are a grim reality for most municipalities. NYCOM members are continually looking for ways to trim expensive healthcare costs while still providing acceptable insurance coverage to their workforce. One option that currently exists is for municipalities to form a municipal health insurance cooperative (hereinafter muni co-op). However, the road to formation is long and not guaranteed. This article will address some of the reasons why a municipality may want to consider joining a muni co-op as well as highlight some of the major roadblocks that could prevent some NYCOM members from creating one, and outlined Governor Cuomo’s new directive to ease some of the regulatory barriers.

Introduction

The legal authority for municipalities to come together and form a muni co-op has existed since 1994, when “Governor Mario Cuomo signed into

law Chapter 689 of the Laws of 1994.” The intent of the 1994¹ legislation was to “protect the financial stability and solvency of municipalities.”² The NYS Department of Financial Service’s (DFS) 2011 report on the subject cited this exempt from “the statement in support of the legislation”:

The bill provides safeguards necessary to keep municipal cooperatives that provide health benefits to employees of participating municipal corporations on a shared-funding basis from exposing municipalities and their taxpayers to unpredictable and potentially catastrophic liabilities. It establishes minimum reserve and surplus requirements, stop-loss (reinsurance) requirements to allow for reductions in these reserves, and filing and reporting requirements to ensure that municipal cooperative health benefits plans are operated on an actuarially sound basis.³

However, due to the complexity in forming a muni co-op, only a handful exist in the State. The Greater Tompkins County Municipal Health Insurance Consortium, the only non-school muni co-op, is a shining example of one that is succeeding.⁴ In fact, several NYCOM members including the Cities of Ithaca and Cortland along with the Villages of Cayuga Heights, Dryden, Groton, Trumansburg, Homer and Union Springs are members of the Consortium. (<http://tompkinscountyny.gov/hconsortium/membership>)

In 2015, Don Barber, executive director of the Greater Tompkins County Health Consortium, stated “the cost of health insurance is going up much faster than the property tax cap or anything else, including the Consumer Price Index.”⁵ Executive Director Barber further explained “[T]he reason we formed an Article 47 is because it was the only vehicle for the small municipalities to join. There’s nothing else. There’s no other way in New York State for a municipality to join in a

risk pool with others."⁶ According to a news report published in the Westfield Republican, in its first year of operation (2011), the Greater Tompkins County Health Consortium "saved Tompkins County taxpayers \$928,000. From 2011 to 2014 the savings added up to \$5.5 million with \$1.7 million in savings in 2014 alone."⁷

Article 47 of the New York State Insurance Law grants municipalities the authority to create a muni co-op. There are numerous potential benefits to forming such an insurance pool. For example, municipalities could form a co-op to "share the costs of self-funding employee health benefit plans; provide an alternative approach to stabilize health claim costs; lower per unit administration costs; and enhance negotiating power with health providers by spreading such costs among a larger pool of risks."⁸

Regulatory Requirements to Forming a Muni Co-op

While Article 47 of the Insurance Law grants municipal authority to form a muni co-op, it also outlines a series of requirements that must be achieved before a co-op can be established. Some argue that the overly stringent requirements prevent more co-ops from being formed in the State.⁹

At NYCOM's 2018 Winter Legislative Meeting in Albany, Troy Oeschner, Deputy Superintendent for Health, NYS Department of Financial Services, provided attendees with an informative and detailed presentation on *Health Insurance: Options for Savings from Shared Services* and in that presentation he outlined several of the requirements and potential misconceptions associated with muni co-ops. NYCOM members can obtain a copy of the presentation by contacting John Mancini, NYCOM Counsel at jmancini@nycom.org. Several of the items covered in the presentation are addressed below.

One of the biggest challenges to forming a muni co-op pertains to Article 47's reserve fund requirement, which mandates "a muni co-op to have a reserve fund necessary to satisfy all contractual obligations and liabilities of the plan. The reserve fund must include: a reserve for payment of unpaid and incurred but not reported claims and expenses equal to 25% of expected incurred claims and expenses for the current plan year."¹⁰ In the Department of Financial Services Article 47 document, it is noted that "there is language in the law that allows for flexibility with respect to the required reserve for claims related expenses. The statute grants DFS authority, if merited, to approve a lesser reserve for claims and claim related expenses if a qualified actuary for the muni co-op can demonstrate, to the Superintendent's satisfaction, that a lesser amount will be adequate."¹¹

Stop-Loss Coverage

Stop-loss insurance is an insurance product that "protects insurers against large claims."¹² Employers that offer "health insurance for their employees through a self-insured plan often subscribe to stop-loss policies in order to protect themselves against catastrophic claims."¹³

The Insurance Law contains specific "requirements for stop-loss insurance applicable to muni co-ops."¹⁴ As a general rule, the "stop-loss coverage must: be issued by a licensed carrier; provide aggregate stop-loss with an attachment point not greater than 125% of expected claims for year; and provide specific stop-loss at an attachment point no greater than 4% of expected claims for the year."¹⁵

Under certain circumstances the muni co-op could request a waiver or modification of the stop-loss insurance requirement. Under the law, the Department of Financial Services "has the authority to waive the requirement for stop-loss insurance, in whole or in part, or modify the maximum retention amounts or attachment points for

stop-loss insurance if the muni co-op can make a satisfactory case for doing so."¹⁶ DFS acknowledges that obtaining a stop-loss waiver for a newly formed muni co-op might be difficult because the co-op would not have "sufficient claims experience."¹⁷

Geography

The Insurance Law does not require or "impose geographic requirements when forming a new municipal co-op."¹⁸ However, it does require that the municipal cooperation agreement "specify the eligibility requirements for membership, including reasonable geographic boundaries (if any)."¹⁹

Covered Individuals

There are two key criteria that must exist for all newly established muni co-ops. The co-op must "be comprised of at least 3 different municipal corporations, and that the participating corporations consist of at least 2,000 covered lives total (including retirees, not including dependents)."²⁰ While the law requires at a minimum 2,000 covered individuals, there is no "minimum covered lives requirement for each individual municipal corporation in the insurance law."²¹

Governance of the Municipal Co-op

A municipal co-op is required to have a "governing board to be responsible for the management, control and administration of the municipal cooperative health benefit plan ..."²² In addition, the law establishes criteria for union representation on the governing board. The Greater Tompkins County Municipal Health Insurance Consortium's mission statement nicely summarizes the overarching goals of the consortium, which is to be "an efficient inter-municipal cooperative that provides high quality, cost-stable health insurance for our members and their employees and retirees."²³

The Road Forward

For municipalities that want to create a muni co-op the road forward will not necessarily be easy. However, there appears to be synergy a


the State and local level to overcome existing statutory roadblocks that may currently prevent municipalities from forming a sustainable muni co-op. In February 2018, Governor Cuomo directed the State's Department of Financial Services to "publish guidance and provide technical assistance to local governments to ease the process of creating health consortia called muni co-ops."²⁴ According to the release, "DFS will dedicate expert staff to help local governments explore consortium arrangements that could help address rising health costs"²⁵ The Guidance document is available at http://www.dfs.ny.gov/insurance/health/muni_coop_guidance.htm. Currently, DFS has already begun working with "municipalities around the state, including Otsego, Saratoga, and Suffolk counties. The Department approved a new muni co-op in Rochester that started last month."²⁶ While municipalities have been sharing services for decades in a plethora of areas, muni co-cops may represent a new frontier in a municipality's ability to share services, lower healthcare costs and provide quality healthcare coverage to public employees. Please contact

NYCOM Counsel John Mancini at (518) 463-1185 or by email at jmancini@nycom.org if you would like additional information relating municipal health insurance cooperatives.

Endnotes

1. *Report on Municipal Cooperative Health Benefit Plans: Impact of Claim Reserve Requirements Under Section 4706 of the Insurance Law, New York State Department of Financial Services, 2011, p.2, <http://www.dfs.ny.gov/reportpub/muni-coop-resv.pdf>.*
2. *Id.*, at p.2.
3. *Id.*, at p.3.
4. *Greater Tompkins County Health Insurance Consortium, see: <http://tompkinscountyny.gov/hconsortium>.*
5. *Izzio, Jeremy. "Countywide health insurance group mulled." Westfield Republican. October 8, 2015. <http://www.westfieldrepublican.com/page/content.detail/id/524512/Countywide-health-insurance-group-mulled.html?nav=5004>.*
6. *Id.*
7. *Id.*
8. *NYSDFS: Guidance – Improving Local Government Health Insurance Options (2018), at http://www.dfs.ny.gov/insurance/health/muni_coop_guidance.htm.*
9. *Governor Cuomo Takes Action to Help Local Governments Improve Health Insurance Options and Address Rising Health Costs, Press Release, February 20, 2018, at <https://www.governor.ny.gov/news/governor-cuomo-takes-action-help-local-governments-improve-health->*

- insurance-options-and-address.*
10. *NYSDFS: Guidance – Improving Local Government Health Insurance Options (2018), at http://www.dfs.ny.gov/insurance/health/muni_coop_guidance.htm.*
 11. *Id.*
 12. *"Stop-loss insurance." Wikipedia: The Free Encyclopedia, at https://en.wikipedia.org/wiki/Stop-loss_insurance.*
 13. *Id.*
 14. *NYSDFS: Guidance – Improving Local Government Health Insurance Options (2018), at http://www.dfs.ny.gov/insurance/health/muni_coop_guidance.htm.*
 15. *Id.*
 16. *Id.*
 17. *Id.*
 18. *Id.*
 19. *Id.*
 20. *Id.*
 21. *Id.*
 22. *Id.*
 23. *Consortium Connection, The quarterly newsletter of the Greater Tompkins County Municipal Health Insurance Consortium, Volume 3, Number 1 – March 2018, <http://tompkinscountyny.gov/files2/healthconsortium/Newsletter/2018/Newsletter%20March%202018.pdf>.*
 24. *Governor Cuomo Takes Action to Help Local Governments Improve Health Insurance Options and Address Rising Health Costs, Press Release, February 20, 2018, at <https://www.governor.ny.gov/news/governor-cuomo-takes-action-help-local-governments-improve-health-insurance-options-and-address>.*
 25. *Id.*
 26. *Id.*



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