



Attorney General Renders Opinion on Labor Health Plans

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With the increased cost of health care benefits, many counties are exploring alternative health care benefit options. Some counties have been approached by labor union organizations who offer what are commonly known as "Taft-Hartley" health care plans. Because (1) ERISA and Taft-Hartley exclude government plans and public employers and (2) government employers only have those powers authorized by law, questions as to a counties ability to enroll in these plans have arisen. Since these health plans do not provide coverage for all of the statutorily mandated health care benefits, they typically have cheaper premiums than those health care plans offered by the traditional market. Counties have questioned their ability to offer these health plans to their employees. Recently, Isanti County asked the Minnesota Attorney General for guidance on this issue. This article will provide a brief history of this issue, discuss the Attorney General's response and provide some risk management suggestions.

History

Generally any health insurance carrier who seeks to offer a health benefit plan in the state of Minnesota must be licensed by the Department of Commerce or, in the case of HMOs, by the Minnesota Department of Health. (Minn. Stat. Ch. 62A, 62C or 62D.) These licensing statutes, in part, mandate that any plan offered by these carriers cover certain health tests/conditions. Recently some counties have been approached by labor organizations that offer health plans. These plans are authorized and organized under the Taft-Hartley Act and ERISA. ERISA regulations "preempt" state laws. In other words, ERISA plans generally do not need to comply with state laws, such as the minimum mandates articulated in Minnesota Statutes, Ch. 62A., 62C or 62D. Because these plans do not offer many of the benefits otherwise mandated, the plan premiums are significantly lower than the premiums of traditional health plans.

Attorney General Request/Opinion

Faced with this specific issue, Isanti County requested an opinion from the Minnesota Attorney General. Specifically, Isanti County inquired:

1. If a Minnesota county contracts with the Welfare Fund to provide health insurance coverage for county employees, is that a self-insurance plan in accordance with Minn. Stat. § 471.617?

2. If the Welfare Fund does not provides all of the benefits that are required of group health insurance plans by Minnesota law, is the Minnesota county in compliance with Minnesota statutes?

The Attorney General answered both of these questions in the negative.

First the Attorney General stated the general proposition, that a government body only has those powers to insure or protect its employees that are expressly authorized by statute. Minnesota Statutes, Section 471.61 authorizes counties to offer its employees health benefits under a “policy or policies or contract or contracts of group insurance or benefits.” Minnesota Statutes, Section 471.6161, subd. 1 defines “group insurance coverage” as benefit coverage provided to a group through a carrier authorized under chapters 61A, 62A, 62C, and 62D to do business in the state. The Attorney General opined that counties may only obtain benefits through carriers licensed under one of those statutes.

Minnesota Statutes, Section 471.617, subd. 1. authorizes counties that have 100 or more employees to provide benefits through self-insurance. The Attorney General noted that any self-insurance policy must obtain certification from the Minnesota Department of Commerce and provide all benefits which are required by law to be contained within group insurance policies. Minn. Stat. § 471.617. The Attorney General also noted that although a public employer and an exclusive representative may agree to a reduction in benefits (Minn. Stat. § 471.6161, subd. 5), counties may not offer benefits through a plan of insurance or self-insurance that is not authorized under Minnesota law.

The Attorney General suggested that questions whether a carrier has obtained appropriate licensure or certification should be directed to the Minnesota Department of Commerce. Finally, the Attorney General noted that ERISA and Taft-Hartley do not appear to impact the analysis of whether Isanti County can purchase coverage from the Welfare Fund because both ERISA and Taft-Hartley exclude government plan and public employers.

Prior to entering into an agreement for health care benefits, members should confirm with the appropriate licensing agency that the organization is duly licensed under Minn. Stats. Ch. 62A, 62C or 62D. If counties have questions regarding the impact of this Attorney General’s Opinion on any of your vendors, current benefits or future offering of benefits, they should consult with their county attorney or employee benefits counsel.

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