



Buyer Beware (When Purchasing Employee Benefits)

Author: Darcy L. Hitesman, Esq.–Hitesman & Associates, P.A.

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Members are cautioned that when considering changes in health coverage for employees you carefully review:

your statutory obligations as a public sector employer in Minnesota with respect to providing health coverage, and

information provided by vendors to ensure the program offered meets all of the state mandated requirements.

Whether you are issuing a Request for Proposal (RFP) for employee health coverage OR are being directly solicited by a vendor attempting to sell you its health program, you need to be aware of the requirements.

MCIT has learned that a union-sponsored health coverage program, marketing itself in Minnesota, does not meet the Minnesota requirements including the provision of mandated benefits. It appears the health program complies with federal law, namely the Taft-Hartley Act and the Employee Retirement Income Security Act (ERISA). However, the health program does not offer the benefits required by Minnesota law to be provided by a public sector employer. In other words, purchasing that health program would not satisfy the employer's obligations under Minnesota law.

As a purchaser of health coverage, each county needs to consider the following:

Has the County done its due diligence? The county needs to consider more than just the proposed cost of coverage. It is crucial that the county evaluate what is being provided for that cost. A county's lack of due diligence might result in creating an unfunded exposure or risk for which the county is responsible. For example, if the health coverage does not cover mandated benefits, the county will have to make up the difference between what was paid and what is required by statute. Therefore, the employer must carefully evaluate the plan design offered to ensure it meets the employer's mandated obligations.

Keep in mind, the vendor is NOT obligated to disclose areas in which it is deficient. The vendor is selling a product for a price. It is the responsibility of the county, as the purchaser, to review what is being offered and to make sure the proposed health coverage meets the

necessary requirements. If the health coverage is lacking, it is the county that is not fulfilling its statutory obligations.

Even the most artfully drafted Request for Proposal requires careful review of the responses. For example, a representation that the responder complies with “all applicable law” presumes the county and the responder are referring to the same thing.

In short, what looks like a good deal based on price may not be such a good deal based on the benefits provided.

Has the vendor filed its health coverage program for certification with the Minnesota Department of Commerce? Before a self-insured plan is “issued or delivered to any person in this state,” it must be filed with the Department of Commerce. The Minnesota Department of Commerce reviews self-insured plans to determine whether they provide the required benefits and certifies them as qualified or nonqualified plans. The filing requirement is placed upon the employer, not the vendor.

Does the health coverage program include Minnesota mandated benefits? Minnesota law specifically permits a public sector employer to self-insure the health coverage it provides to its employees. In order to do this, the employer must assure that the self-insured medical coverage meets certain requirements. Even though a health coverage program is self-insured, the county must make sure that the program provides the same benefits as if the benefits were being provided through insurance. With respect to public sector employers, Minnesota specifically places self-insured plans on the same playing field as insured plans. The focus is on the benefits provided to the employee.

The language of the statute has been construed as requiring a self-insured plan to include all mandated benefits (e.g., mental health, TMJ, Lyme disease, cleft lip and cleft palate, etc.). This language has also been construed as requiring state insurance continuation of coverage requirements (e.g., potentially indefinite continuation coverage in divorce, death and disability situations).

Public employers in Minnesota are also subject to a variety of laws simply because they are public sector employers in Minnesota. Some of these laws include:

Special continuation of coverage for firefighters and peace officers under Minnesota Statutes Section 299A.465,

Retiree coverage for persons who leave employment and are entitled to a public pension under Minnesota Stat. § 471.61, subd. 2b,

Recognition of medical child support orders under Minnesota Statute § 518A.41, and

Compliance with the Minnesota Government Data Practices Act under Minnesota Statute Chapter 13.

Note: This is not an exhaustive list of requirements. It is illustrative of the types of requirements that apply to Minnesota public sector employers that self-insure medical coverage.

A health program offered by a vendor must reflect all of these requirements otherwise there will be a gap in what the vendor provides and what the county is obligated to provide under Minnesota law.

Who is responsible if the health coverage is deficient? As previously noted, Minnesota law permits an employer to provide health coverage on a self-insured basis. In return, the law places the responsibility for making sure the health coverage meets certain requirements on the employer. In other words, it is the employer's responsibility if the choice it makes is not a good one. In essence, the employer would have to bridge the gap between what the vendor provides and what the law requires the employer to provide.

Employers should consider consulting with a benefits attorney when concerned with a health plan's compliance with state mandates. For more information on this issue contact Joan Grotjahn at MCIT 651.209.6421.

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