**Options for Group Health Care**

Since 2001, most Texas school districts have been required by law to offer employees group health insurance through the Teacher Retirement System’s TRS-ActiveCare. As health care costs have risen statewide, so have the costs associated with participating in TRS-ActiveCare. School districts are asking both legal and practical questions about their options to reduce health care costs while offering employees the most comprehensive plans possible. Many of these questions relate to the possibility of opting out of TRS-ActiveCare.

The purpose of this memo is to explain some of the relevant legal and practical issues related to opting out of TRS-ActiveCare.

**LEGAL ISSUES**

**What laws require certain school districts to participate in TRS-ActiveCare?**

**Texas Education Code:**

- The Texas Education Code requires districts to participate in TRS-ActiveCare by subjecting districts to Chapter 1579 of the Texas Insurance Code.

Under Texas Education Code section 22.004, school districts must participate in TRS-ActiveCare in accordance with provisions of the Texas Insurance Code: “A district shall participate in the uniform group coverage program established under Chapter 1579, Insurance Code, as provided by Subchapter D of that chapter.” Tex. Educ. Code § 22.004(a).

- The Texas Education Code prohibits offering comparable group health care to employees through a self-funded plan once a district has elected to enter TRS-ActiveCare.

Once a district begins coverage under TRS-ActiveCare, the Education Code allows the district to offer optional lines of insurance (such as life insurance or dental coverage), but not additional lines of group health insurance. “Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Chapter 1579, Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579, Insurance Code, is implemented.” Tex. Educ. Code § 22.004(i)-(j).

**Texas Insurance Code:**

- The Texas Insurance Code requires or permits participation in TRS-ActiveCare depending on the number of district employees.

Except for districts that maintained certain grandfathered plans, school districts with 500 or fewer employees and regional education service centers are required to participate in TRS-ActiveCare. Tex. Ins.
Code § 1579.151. School districts with more than 500 employees (and those that previously elected to maintain grandfathered plans) may elect to participate in the program. Once a district opts in, the district must participate in the manner prescribed by TRS rule. Tex. Ins. Code § 1579.152.

- A TRS rule prohibits discontinuation of TRS-ActiveCare unless a district is authorized by TRS.

A TRS rule adopted under the authority of Texas Insurance Code Chapter 1579 provides that entities that participate in TRS-ActiveCare may not discontinue participation unless authorized by Chapter 1579 and by appropriate rule or resolution adopted by the TRS Board of Trustees. 34 Tex. Admin. Code § 41.30(a)(4).

As a District of Innovation, can a school district seek exemption from the laws that mandate participation in or prevent discontinuance of TRS-ActiveCare?

- District of Innovation plans allow school districts to be exempt from many provisions of the Texas Education Code.

The district of innovation (DOI) concept was passed into law in 2015 when the 84th Texas Legislature created Texas Education Code chapter 12A, Districts of Innovation. The law allows traditional independent school districts to access most of the flexibilities available to Texas’ open-enrollment charter schools. To access these flexibilities, a school district must adopt an innovation plan, as set forth in Chapter 12A and Texas Education Agency (TEA) rules. To become a DOI, a school district must follow a statutory process that requires notice to the public and TEA. TASB Legal Services’ online resources explain the process in more detail.

- While some provisions of the Texas Education Code are not available for a DOI exemption, Section 22.004 on health care coverage appears to be a DOI option.

An innovation plan cannot seek exemption from:

- a state or federal requirement applicable to open-enrollment charter schools;
- certain parts of Texas Education Code, chapter 11, regarding school district governance;
- state requirements for curriculum and graduation; and
- academic and financial accountability standards.

Districts also may not use an innovation plan to seek exemption from a requirement imposed by a state or federal grant program in which the district voluntarily participates. TEA rules include a detailed list of the statutes from which a DOI cannot claim an exemption. See 19 Tex. Admin. Code § 102.1309.

TEA rules provide, in part, that a DOI may not be exempted from a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under the Texas Education Code Chapter 12, Subchapter D, including, but not limited to, the requirements listed in section 12.104(b) and Texas Education Code Chapter 22, Subchapter B.
Section 22.004 on TRS-ActiveCare is found in Subchapter A of Texas Education Code chapter 22 and does not apply to open-enrollment charter schools. Charter school participation in TRS-ActiveCare is addressed in other provisions of the Texas Education Code, none of which mandate participation.

- A district cannot use a DOI plan to seek an exemption from a provision in the Texas Insurance Code.

**What’s the bottom line? Is it legal to use DOI to opt out of TRS-ActiveCare?**

Districts of Innovation may seek an exemption from Texas Education Code section 22.004. Districts may not, however, use a DOI plan to seek an exemption from provisions in the Insurance Code. Even if a district is exempt from Section 22.004, Texas Insurance Code Chapter 1579 continues to apply. For districts that currently participate in TRS-ActiveCare, Texas Insurance Code Chapter 1579 is silent as to discontinuation and TRS rules do not permit discontinuation without express permission from TRS. Consequently, even for a DOI, Chapter 1579 does not permit a district to opt out of TRS-ActiveCare.

That said, for a DOI, Chapter 1579 does not explicitly indicate that a district is prohibited from offering an alternative health care plan. The statutory prohibition on offering an alternative health care plan is located in Section 22.004.

**PRACTICAL ISSUES**

**What might be the practical implications of current TRS-ActiveCare districts offering alternative health insurance plans?**

- TRS-ActiveCare insure nearly half a million public education employees in Texas, which means the healthcare risk is spread across a significant number of people across the state. If many employees who currently are insured by TRS-ActiveCare choose an alternative health insurance offered by their district, this reduces the number of employees in TRS-ActiveCare across which the risk can be spread. If healthier employees choose the alternative health insurance plans offered by their district and employees with costly medical conditions remain in TRS-ActiveCare, this creates a significant challenge to TRS as it works to maintain a solvent health insurance plan for Texas public education employees.
- Districts looking to offer alternative health insurance plans should consider the additional costs they may incur that are not incurred under TRS-ActiveCare. These costs may include:
  - Increased cost for adding health insurance/benefits staff;
  - Potential high claims resulting in poor experience/loss ratios for the group insurance plan, potentially resulting in high-premium/deductible/out-of-pocket maximum renewal rates;
  - Healthcare consulting fees; and
  - Increased staff time and support for a hands-on health insurance committee.
- Districts that elect to offer an alternative health insurance plan will need to consider the cost of purchasing aggregate stop-loss insurance, which is designed to limit claim coverage (losses) to a
specific amount. This coverage ensures that a catastrophic claim (specific stop-loss) or numerous claims (aggregate stop-loss) do not drain the financial reserves of a self-funded plan. Aggregate stop-loss protects the employer against claims that are higher than expected. These stop-loss insurance premiums can range from $35 to $60 per employee per month. Note: Fully insured plans may or may not need to be coupled with stop-loss insurance coverage; however, the premiums tend to reflect the carrier’s additional risks in assuming a fully insured plan.

- Districts should consider that the cost of insurance for an alternative health insurance plan may be cheaper in the first year than it may be in subsequent years. Favorable premiums and deductibles in the first year could be followed by higher renewal rates in the second year and beyond.
- Districts in TRS-ActiveCare have very little information available about previous-year district claims to use when soliciting bids from health insurance companies. While TRS has agreed to release claims data summarized by Education Service Center (ESC) regions and more detailed claims data for large districts, small- and mid-size districts may not have enough data to get an accurate cost estimate for alternative health insurance coverage. This lack of specific historical claims data per district could cause insurance underwriters to price at higher rates due to the uncertainty.

In conclusion, while the idea of seeking out alternative health insurance solutions for district employees seems well-intended, the legal and practical applications of such might warrant further analysis.

This document was prepared by the Texas Association of School Boards (TASB) and First Public, LLC, a subsidiary of TASB.