



Texas Association of School Boards

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Options for Group Health Care after the 87th Legislative Session

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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. For the past several years, school districts have sought additional options to reduce health care costs while offering employees the most comprehensive plans possible. In 2021, the 87th Legislature created the option for school districts to opt out of TRS-ActiveCare, but only after following specific procedural requirements. The purpose of this memo is to explain the recent legislation and its impact on school district health care coverage.

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 and prohibits offering comparable group health care to employees through a self-funded plan once a district has elected to enter TRS-ActiveCare.**

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).

Once a district begins coverage under TRS-ActiveCare, the Texas 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, Texas 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, Texas 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 maintain 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.

- **The Texas Insurance Code now authorizes districts to opt out of TRS-ActiveCare.**

Effective September 1, 2022, districts are authorized to elect to discontinue participation in TRS ActiveCare by following the process created by TRS. Tex. Ins. Code § 1579.155; 34 Tex. Admin. Code § 41.30.

As a district of innovation, can a school district offer both TRS-ActiveCare and another competing group health care coverage option?

Some district of innovation (DOI) plans currently include an exemption from Texas Education Code section 22.004, prohibiting a district from offering comparable group health care to employees. However, because of changes to the Texas Insurance Code, this DOI exemption will only be available through the September of 2021 plan year.

In 2021, the 87th Texas Legislature added a provision to the Texas Insurance Code prohibiting districts participating in TRS ActiveCare from offering competing coverage. Tex. Ins. Code § 1579.1045; 34 Tex. Admin. Code § 41.30(e). This provision takes effect on September 1, 2022. Because districts may not use a DOI plan to seek an exemption from provisions in the Insurance Code, any exemption from Texas Education Code section 22.004 in a DOI plan will be ineffective for a plan year beginning September 2022.

OPTING OUT OF TRS-ACTIVECARE

Can districts opt out of TRS-ActiveCare after Texas Insurance Code section 1579.155 becomes effective?

- Starting with the plan year beginning September 1, 2022, districts may opt out of participation in TRS ActiveCare. If a district decides to leave TRS, the election to opt out will be in effect for a minimum of five years. The district can elect to opt out by submitting notice to TRS by December 31 of the year preceding the plan year in which the district will end participation. Specific details on the [opt-out process](#) are available on the TRS website.

PRACTICAL ISSUES

What might be the practical implications of opting out of TRS-ActiveCare and offering other coverage?

- Districts looking to offer other health insurance plans should consider the potential of incurring additional costs 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 other health insurance plans 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 also consider that the cost of insurance for another 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 may have little information available about previous-year district claims to use when soliciting bids from health insurance companies. TRS has taken steps to make claims data available to participating districts requesting information through the Reporting Entity portal. These forms were made available August 15, 2021. For more information about [getting claims data](#) see the TRS website.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-essource/personnel/documents/options-for-group-health-care-coverage.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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