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OPINION NO. 2016-01

LOCAL GOVERNMENT EMPLOYEES' HEALTH INSURANCE; RETIREES' PREMIUM RATES; Local governmental employers may not offer a health plan option only available to retirees. County contracts with another Nevada state agency to provide benefits to active employees through the County's self-funded plan, per NRS 287.025(1)(b); retirees from other agency would be eligible per NRS 287.0205. Local government employer required to commingle claims experience of active employees and retirees in determining premium rates for retirees; not required to do so for determining premium rates of active employees; premium rates of two groups not required to be the same. Commingling for purposes of determining retiree rates required for plans created pursuant to NRS 287.010 and 287.015.

Mr. Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Dear Mr. Wolfson:

You have requested an opinion from the Office of the Attorney General on various questions concerning local governments' programs of health insurance for their retirees.

QUESTION ONE

May a public employer provide a health plan option to retirees, which option is not available to active employees, if the election of that alternative retiree coverage is optional to the retiree? Can the employer mandate that retirees move to the retiree health plan option?

SUMMARY CONCLUSION TO QUESTION ONE

Local government employers may only offer to retirees coverage that is also available to active employees.

ANALYSIS

Under Nevada law, local government employers may offer group health insurance coverage or health or medical benefits to their active employees by, *inter alia*, (1) adopting, purchasing, or funding group insurance, NRS 287.010; (2) establishing a trust fund for medical, hospital and dental benefits through collective bargaining with a local government employer, NRS 287.015; (3) adopting a system of medical or hospital services, NRS 287.020; or (4) contracting with Public Employees' Benefits Program (PEBP) or other local governments for group insurance, or entering into arrangements with nonprofit co-ops to facilitate provision of medical services, NRS 287.025.

An employee of a local government providing such benefits pursuant to NRS 287.010, 287.015, 287.020, and 287.025 may, on retirement, "continue any such coverage" to the extent such coverage is not available to such person through Medicare. NRS 287.023(1) states as follows:

Whenever an officer or employee of the governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada retires under the conditions set forth in NRS 1A.350 or 1A.480, or 286.510 or 286.620 and, during the period in which the person served as an officer or employee, was eligible to be covered or had dependents who were eligible to be covered by any group insurance, plan of benefits or medical and hospital service established pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025 or under the Public Employees' Benefits Program pursuant to paragraph (a) of subsection 1 of NRS 287.025, the officer or employee has the option upon retirement to cancel or continue any such coverage to the extent that such coverage is not provided to the officer or employee or a dependent by

the Health Insurance for the Aged Act, 42 U.S.C. §§ 1395 et seq.

A retired officer or employee, or his or her surviving spouse, may, in any even-numbered year, reinstate insurance available from the former public employer pursuant to NRS 287.010, 287.015, 287.020, and 287.025. NRS 287.0205(1) states as follows:

1. A public officer or employee of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada who has retired pursuant to NRS 1A.350 or 1A.480, or 286.510 or 286.620, or is enrolled in a retirement program provided pursuant to NRS 286.802, or the surviving spouse of such a retired public officer or employee who is deceased, may, except as otherwise provided in NRS 287.0475, in any even-numbered year, reinstate any insurance, except life insurance, that, at the time of reinstatement, is provided by the last public employer of the retired public officer or employee to the active officers and employees and their dependents of that public employer:

(a) Pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025; or

(b) Under the Public Employees' Benefits Program, if the last public employer of the retired officer or employee participates in the Public Employees' Benefits Program pursuant to paragraph (a) of subsection 1 of NRS 287.025.

The retiree or survivor must accept "the public employer's current program or plan of insurance and any subsequent changes thereto" NRS 287.0205(2).

When a statute is clear on its face, a court is required to apply its plain meaning. *Public Employees' Benefits Program v. Las Vegas Metropolitan Police Department*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008). The provisions that (1) retirees or dependents have "the option to . . . cancel or continue such coverage" and (2) retirees or their surviving spouses "may . . . reinstate coverage" within the confines of the last "public employer's current program or plan of insurance" unambiguously restrict the availability of coverage to that which is available to active employees. The use of the words "option" and "may" in NRS 287.023 and 287.0205 means only that the retiree, dependent, or survivor has the option of obtaining the coverage that is extended to the active employees of his or her last employer. Neither NRS 287.023 nor 287.0205 grants to local government employers the power to offer health benefits to retirees that they do not currently make available to active members. The lack of a grant of authority

for local government employers to make available to retirees health benefits other than as specified in NRS 287.023 or 287.0205 suggests that local government employers have no such authority outside of those two provisions. *Department of Taxation v. DaimlerChrysler Services North America, LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) (applying the canon of construction *expressio unius est exclusio alterius*; “Nevada law . . . provides that omissions of subject matters from statutory provisions are presumed to have been intentional”).

This conclusion is supported by the commingling requirements in NRS 287.023 and 287.0205. Pursuant to NRS 287.023(5) and 287.0205(5), actuarial determination of retiree premium rates must be based on commingled active employee and retiree claims experience. Such commingling is not possible unless there are both active employees and retirees in the plan or program. The commingling requirement presupposes a potential class of active employees with the same benefit.

QUESTION TWO

If, after a non-Clark County public employee becomes a retiree, the retiree's last public employer changes health coverage providers and joins the Clark County Self-Funded Plan (CCSF Plan), does the non-Clark County retiree have a right under NRS 287.0205 to join the Clark County Self-Funded plan in an even numbered year?

SUMMARY CONCLUSION TO QUESTION TWO

If Clark County and another local governmental entity enter into an agreement pursuant to NRS 287.010(1)(b) whereby active employees of the other local government of the State of Nevada may participate in the CCSF Plan, retirees of that other local government entity may participate in the CCSF Plan pursuant to NRS 287.0205.

DISCUSSION

An agreement between Clark County and another local government for that other local government's active employees to participate in the CCSF Plan may occur under the authority of NRS 287.025. NRS 287.025 provides in pertinent part as follows:

(1) The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada may, in addition to the other powers granted in NRS 287.010, 287.015 and 287.020:

(b) Negotiate and contract with another county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State

of Nevada to secure group insurance for its officers and employees and their dependents by participation in any group insurance plan established or to be established by the other local governmental agency.

As provided in NRS 287.0205, a retiree of one of the local governments enumerated therein who seeks to reinstate health insurance offered by the entity may enroll in:

[A]ny insurance, except life insurance, that, at the time of reinstatement, is provided by the last public employer of the retired public officer or employee to the active officers and employees and their dependents of that public employer:

(a) Pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025. . . .

NRS 287.0205(1).

Therefore, by the express terms of NRS 287.0205, if a person retires from another entity that subsequently enters into an agreement to have that other entity's active employees participate in the CCSF plan, that person must be allowed to reinstate health insurance by signing on to the CCSF plan.

QUESTION THREE

Do the NRS 287.0205(5)¹ and NRS 287.023(5) requirements that claims experience of active and retired health benefit plan members be commingled for purposes of establishing actuarial data also require blending of premium rates for active employees and retirees, such that a retiree premium rate must be the same as the premium rate for active employees? Does that requirement apply to both NRS 287.010 (Local Government Plans) and NRS 287.015 (Employee Organization Plans)?

SUMMARY CONCLUSION TO QUESTION THREE

NRS 287.0205(5) and NRS 287.023(5) only require that rates and coverage for local government *retirees*, including those receiving health benefits through plans or programs under NRS 287.010 and NRS 287.015, be based on the commingled claims experience of both active members and retirees. The commingling requirements of NRS 287.0205(5) and NRS 287.023(5) do not legally require the same rates for retirees as active employees. The mandates in NRS 287.0205(5) and NRS 287.023(5) for basing premiums of retirees on a commingling of their claims experience with active

¹ NRS 287.0205(5) becomes subsection (4) when the Affordable Care Act ceases to allow grandfathered plans to exclude preexisting conditions. See Act of June 16, 2011, chapter 453, § 15, 2011 Nev. Stat. 2746.

employees is applicable to NRS 287.010 and NRS 287.015 plans alike.

DISCUSSION

NRS 287.023(5) provides in pertinent part that local governments offering coverage pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025:

[S]hall, for the purpose of establishing actuarial data to determine rates and coverage for persons who continue coverage for group insurance, a plan of benefits or medical and hospital service with the governing body pursuant to subsection 1, commingle the claims experience of those persons with the claims experience of active officers and employees and their dependents who participate in the group insurance, a plan of benefits or medical and hospital service.

Similarly, NRS 287.0205 provides in pertinent part that local governments providing benefits pursuant to NRS 287.010, 287.015, 287.020 or paragraph (b), (c) or (d) of subsection 1 of NRS 287.025:

[S]hall, for the purpose of establishing actuarial data to determine rates and coverage for [persons reinstating coverage], commingle the claims experience of such persons with the claims experience of active and retired officers and employees and their dependents who participate in that group insurance, plan of benefits or medical and hospital service.

These two provisions apply only to persons continuing coverage upon, or reinstating coverage after, retirement. They thus only require that *retiree* premium rates be determined by using the combined experience of both active employees and retirees.² These provisions do not prescribe how *active employee* premium rates are to

² NRS 287.043(2)(a), in comparison, provides that, with respect to active employees and nonmedicare retirees under PEBP, the rates for both groups be determined according to the combined data from both groups:

2. In establishing and carrying out the Program, the Board shall:
 - (a) For the purpose of establishing actuarial data to determine rates and coverage for active and retired state officers and employees and their dependents, commingle the claims experience of such active and retired officers and employees and their dependents for whom the Program provides primary health insurance coverage into a single risk pool.

Steve Wolfson
March 16, 2016
Page 7

be determined,³ leaving the decision to the local government on whether to base active employee premium rates (1) solely on the active employees' experience or (2) on the combined experience of retirees and active employees, *inter alia*. Only the second option would necessarily result in identical premium rates for active employees and retirees.

The requirements of commingling claims experience in NRS 287.0205 and NRS 287.023 apply by their terms to plans under NRS 287.010 and 287.015, both. NRS 287.0205(5), NRS 287.023(1) and (5).

CONCLUSION

Local governments may not offer a health plan option that is only available to retirees. If Clark County contracts with another local government of the state of Nevada to provide benefits to the other local government's active employees through Clark County's self-funded plan, pursuant to NRS 287.025(1)(b), retirees from that other local government would be eligible to become participants of that plan through the reinstatement process of NRS 287.0205. A local government employer is required to commingle claims experience of active employees and retirees for purposes of determining premium rates for retirees, but is not so required for determining premium rates of active employees; therefore the premium rates of the two groups are not required to be the same. Commingling for purposes of determining retiree rates is required for plans created pursuant to both NRS 287.010 and 287.015.

Sincerely,

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By:



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DLB/bdc

³ If the active employee premiums are determined solely on their experience and the claims experience of retirees is more expensive than that of active employees, commingling of the two groups only for setting retiree rates but not for active rates will of course result in premiums below what is necessary to fund the two groups' total claims experience. Any such shortfall would have to be offset with a subsidy, a charge, or another funding mechanism compatible with the county's existing obligations to its employees.