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Document Submitted
By
Rebecca Scarborough

Dear Members of the SEBC and the RHBAS,

I have several concerns about the Draft RHBAS Report to be submitted to the Governor and the Legislature but at the moment will only address the following for your consideration:

1. On p. 9 under "Areas of Focus Requiring Further Action/Analysis.." is this statement: "The analysis will include **options** for pre- and post 65 retirees and will consider **changes to grandfathered and non-grandfathered sub-populations** (my bold emphases)." I have no idea what this entails and suggest that it be cut from the report.
2. I feel that the report glossed over the plethora of excellent public comments consisting of research, valuable analyses and viable suggestions. This is why I think that the appendix should include all the written comments presented and not have them hidden in the SEBC website, which few people will bother to access.
3. Under "Report Background" on p.1, "Over the past several years the SEBC and the RBSC held many public meetings to study current and future underfunded State retiree healthcare coverage." This is misleading at best. Although some organizations such as DRSPA sent representatives to several of these earlier meetings and even gave some input, when the pandemic hit everything apparently went on Zoom or was discussed behind closed doors and the public wasn't made aware of the SEBC's deliberations or how to access them. Why not add after "public meetings" *attended by xxxx number of members of the public* if you insist on justifying the alleged openness to these deliberations?

Rebecca Scarborough
Pensioner

Document Submitted

By

Bob Clarkin

**PUBLIC COMMENTS FOR THE 9/27/2023 SEBC RETIREE HEALTHCARE
BENEFITS ADVISORY SUBCOMMITTEE (RHBAS) MEETING - SUBMITTED
BY ROBERT CLARKIN, 9/24/23**

The agenda for the 9/27/2023 RHBAS meeting includes an item titled “Discussion and Recommendations on October 1 Status Report”. Below are a number of topic areas that I would like to bring to the attention of the RHBAS for your consideration during your discussion of the Status Report.

Before I begin, I would like to establish that:

First, and Foremost, We Retirees Know that but for the established and continuing protection of the stay ordered by the Superior Court, we would be suffering under a Medicare Advantage Plan today and into the future. **We Also know** that the State continues to challenge the court order.

We Retirees Expect to be grandfathered, as a life time entitlement, into a self-funded employer-sponsored group Medicare supplement plan that includes all the features of a Medicare Plan F, as well as any additional features included in the current Special Medicfill plan and any other features that a bidder might choose to offer.

We Retirees Expect complete, good faith transparency during the upcoming RFP and contracting cycle.

We Retirees Expect the scope of the upcoming RFP to be one self-funded employer-sponsored group Medicare supplement plan that includes all the features of a Medicare Plan F, as well as any additional features included in the current Special Medicfill Plan and other features that a bidder might choose to offer.

We Retirees Expect the term of the contract resulting from the upcoming RFP to be three years with two optional one year extensions.

We Retirees Understand the importance of a fully funded, revenue generating OPEB Trust Fund modeled after our exemplary Pension Trust Fund.

We Retirees Expect that the Legislature will live up to the OPEB funding levels established by the Delaware Code and will fully fund these levels in future annual Budget Acts.

We Retirees Stand Shoulder to Shoulder with our active employee brothers and sisters hired prior to 1/1/2025.

RHBAS Draft Report, Pages 2 and 3

The last paragraph on page 2 of the report and continuing on the top of page 3 reads: “Of the seventeen RHBAS meetings, one full meeting and one half of another were dedicated solely to public comment, and all other meetings provided time for the public to speak. The Subcommittee also offered an opportunity for **the group RISE Delaware** to conduct a 30-minute presentation during the March 22, 2023, meeting”.

Comment: The 30-minute presentation was not conducted by RISE Delaware. The 30-minute presentation, and the accompanying 32 page document placed into the public record for the 3/22/2023 meeting, was conducted/created by an independent, concerned workgroup consisting of three retirees and the spouse of a retiree (Steven LePage, Karen Peterson, Robert Clarkin, and Mary Graham).

RHBAS Draft Report, Page 3

The forth paragraph on page 3 reads as follows: “Background information on the OPEB Fund, options to reduce the OPEB Liability, prior OPEB funding, and the 1% carveout initiated in Fiscal Year 2023 (\$48 million) and at the time proposed Fiscal Year 2024 (\$51 million) were reviewed. As previously mentioned, amid ongoing Subcommittee meetings, SB 175 was signed into law requiring that, every year, at least 1% of the total of all General Fund operating budget appropriations for the prior fiscal year is appropriated to the OPEB Fund”.

Comment: During the most recent RHBAS meeting, Secretary Geisenberger announced that \$101 million in escheat funds, made available through language in the Bond Bill, have been deposited into the OPEB trust fund. He further stated that this was the largest single contribution ever made to the fund. This contribution should be mentioned in the above paragraph. **The Subcommittee should also consider adding an additional recommendation to the Draft Report encouraging this contribution, whenever practical, to become standard practice.**

RHBAS Draft Report, Page 8

The last paragraph on page 8 under the heading “Recommendations to SEBC” reads as follows:

“While the RHBAS Subcommittee has listened to public input, reviewed and discussed many options, and is offering the below **recommendations to SEBC**, there is still further

analysis to be completed. The Subcommittee will use these recommendations as guiding principles as it continues to evaluate options to provide high-quality healthcare benefits to State retirees and address the OPEB trust fund. While the Subcommittee has more work to do, **given the need to provide some findings and recommendations for consideration with the upcoming RFP, the Subcommittee is recommending the following at this time:**”

Comment: The draft report is not addressed to the SEBC. It is rightfully addressed to the Governor and to the Members of the Delaware General Assembly. The Subcommittee makes six (6) recommendations. Recommendations #1, #2, and #6 speak to issues that are not within the purview of the SEBC. Only recommendations #3, #4, and #5, addressing the upcoming RFP cycle, are within the purview of the SEBC. This section needs to be reworked so that recommendations #1, #2, and #6 are addressed to the Governor and the Delaware General Assembly; and, recommendations #3, #4, and #5 are addressed to the SEBC. The addressee section of the cover letter for the Draft Report needs to be revised to include the Members of the Delaware SEBC. The cover letter for the Draft Report needs to be updated to indicate that three (3) RHBAS recommendations concerning the upcoming RFP cycle are being made to the members of the SEBC.

The next meeting of the SEBC has been scheduled for Monday, October 2nd. This will be the last SEBC meeting prior to the release of the upcoming Medicare retiree RFP. The anticipated release date for the RHBAS report is Sunday, October 1st. The proximity of these dates will obviously not allow SEBC members to study the report prior to their next meeting. The Chair and Co-Chairs of the RHBAS should reach out to the Co-Chairs of the SEBC and strongly request that a member of the RHBAS, who is not also a member of the SEBC, be scheduled to present the applicable recommendations in the Report to the SEBC during the October 2nd meeting.

RHBAS Draft Report, Page 9

The following recommendations are found on page 9 under the heading “Recommendations to SEBC”. Below please find comments for each of the recommendations.

General Comment: Due to the importance of the recommendations, as well as to achieve maximum exposure and impact, consideration should be given to moving the recommendations up to the front of the report — possibly right after the “Subcommittee Membership” section.

1. **The RHBAS recommends that 1% minimum of the prior year’s State operating budget is set aside each year to fund OPEB.**

Comment: This recommendation should be addressed to the Governor and Members of the Delaware General Assembly and not to the SEBC. With the enactment of SB 175, this recommendation has already been accomplished. The RHBAS should enhance this recommendation by stressing to the Legislature the importance of fully funding the 1% set aside in future annual Budget Acts.

2. **The RHBAS recommends that current Medicare-eligible and pre-Medicare State retirees and State employees who retire prior to 1/1/2025 shall be entitled to Special Medicfill/Rx benefits (or a substantially equivalent Medicare Supplement with prescription plan) with no changes to the State Share percentage of payments when they are Medicare eligible.**

Comment: As the intent of this recommendation is to grandfather the defined populations into defined, entitled medical/Rx coverage for life, this recommendation should be addressed to the Governor and Members of the Delaware General Assembly and not to the SEBC. The SEBC does not have the authority to establish grandfathering conditions.

As this is a critical recommendation, it should be expanded to include language requesting the Delaware General Assembly take all necessary actions to codify the recommendation into the Delaware Code when they reassemble in January 2024.

Discussions at recent RHBAS and SEBC meetings have raised the notion that no-one needs to be “grandfathered” at this time because the upcoming RFP cycle calls for a single Medicare Supplement plan. This notion is antithetical to the intent of the recommendation which is to “grandfather”, as an entitlement, the defined retiree populations into the defined medical/Rx coverage for life to include the upcoming RFP cycle and each and every future RFP cycle. **Establishing this essential entitlement is one of the unwavering expectations of the retiree community.**

3. **The RHBAS recommends that Delaware neither request nor consider a Medicare Advantage Plan in its Request for Proposal (RFP) for Medical Third-Party Administrator (TPA) Services and/or a Carrier for providing healthcare to its eligible retirees in the upcoming cycle.**

Comment: This recommendation should be addressed specifically to the members of the SEBC prior to their 10/2/2023 meeting.

4. The RHBAS recommends that the SEBC hold a vote in public session in order to adopt the final and approved RFP and that the SEBC share a draft final RFP at least one week in advance of the public session at which the agenda includes the discussion and vote. We also recommend that for that public session, the SEBC agenda includes public comment before the vote on the RFP. Finally, we recommend that this final RFP be provided to all members of this Subcommittee as soon as practicable after approval.

Comment: This recommendation should be addressed specifically to the members of the SEBC prior to their 10/2/2023 meeting. As witnessed by actions to date, it appears that SEBC leadership does not intend to comply with this recommendation.

5. The current contract was originally bid with a three-year term, with two optional one-year extensions. The RHBAS recommends that this final RFP utilize the same three-year term with two optional one-year extensions.

Comment: This recommendation should be addressed specifically to the members of the SEBC prior to their 10/2/2023 meeting. DHR leadership is well aware of this recommendation, yet they have stated during recent SEBC meetings that the RFP will use a two-year term with a optional one-year extension in order to align Medicare coverage with the current active employee/pre-65 retiree TPA contract. Without substantiation by an independent cost/benefit analysis, there does not appear to be a compelling argument for aligning the two contracts, especially when Medicare retirees participate in a program that is defined and administered by the Federal government. The fact that retiree benefits are paid for via the OPEB trust fund is a compelling reason to keep the two contracts separate.

6. The RHBAS recommends that any changes to plan design, eligibility requirements, or contribution share/percentage be limited to those employees hired on or after January 1, 2025.

Comment: As the intent of this recommendation is to grandfather the defined population into defined medical/Rx coverage for life, this recommendation should be addressed to the Governor and Members of the Delaware General Assembly and not to the SEBC. The SEBC does not have the authority to establish grandfathering conditions.

As this is a critical recommendation, it should be expanded to include language requesting the Delaware General Assembly to take all necessary actions to codify the recommendation in the Delaware Code when they assemble in January 2024.

Discussions during and following the most recent RHBAS meeting raise the notion that this recommendation establishes a “non-grandfathered group” entitled to lessor benefits.

I believe that the intent of this recommendation is to amplify recommendation #2 by adding those employees hired prior to January 01, 2025 to the group defined in recommendation #2. This recommendation **entitles** active employees hired prior to 1/1/25 to the medical retiree benefits defined in recommendation #2. In my opinion, these employees are not a lesser, “non-grandfathered” group. The non-grandfathered group is those employees hired on or after 1/1/25.

RHBAS Draft Report, Page 9

The paragraph at the bottom of page nine under the heading “Areas of Focus Requiring Further Action/Analysis” reads as follows:

“The Subcommittee will continue to meet to review and model combinations of funding, **eligibility, and plan design options** to meet the goal of an OPEB-funded ratio target at a minimum of 80% and in adherence to the recommendations provided in this report. **The analysis will include options for both pre- and post-65 retirees and will consider changes to grandfathered and non-grandfathered subpopulations.**”

Comment: In light of “grandfathering” recommendations #2 and #6, the above language in red is very problematic. It should be noted that the phrase “**eligibility, and plan design**”, other than offering plans in addition to the defined medical/Rx plans, only applies to those hired on or after 1/1/2025.

What does the phrase “**and will consider changes to grandfathered and non-grandfathered subpopulations**” mean? What are the anticipated changes to the grandfathered subpopulation? Without specific definition and examples, this phrase should be removed from the report.

RHBAS Draft Report, Page 10

Page 10 includes a chart titled “Table A1: GHIP Long-Term Health Care Cost Projections, March 2023 update - Hold premium rate flat FY24+”

Comment: This chart reflects long-term health care projections for the entire GHIP, with data for active employees and retirees lumped together. As retiree medical/Rx benefits are the scope and concern of the draft report, it is disingenuous to include a chart that does not detail the data for each of the three plan groups: active employees, pre-65 employees, and Medicare retirees. This chart is especially inappropriate as the Medicare retiree plan is the only plan operating at a surplus year after year after year. This chart

should be replaced with a chart that reflects the data for each of the three groups, allowing for the data to be compared and analyzed.

RHBAS Draft Report, Pages 10 Through 16

Pages 10 through 16 contain various charts with funding, eligibility, and benefit design options. The options have been modeled for three Model groups. Model A, those employees hired after 1/21/2015; Model B, those employees hired after 1/1/2025; and Model C, those employees who retire after 1/1/2025.

Comment: With the adoption of “grandfathering” recommendations #2 and #6, it should be footnoted at the bottom of each page (10 through 16) that only the Model B eligibility and benefit design data is in play.

Sharing the RHBAS October 1 Report with Retirees

Over 100,000 retirees and active employees have a compelling interest in the work of the RHBAS and the October 1 Report. There is nothing more important than unfettered access to quality health care as we age during our fix-income retirement years.

In order to foster transparency and universal awareness, I believe it is imperative that the RHBAS take affirmative steps to inform all current retirees, including all pre-65 retirees and Medicare eligible retirees, as well as all active employees hired prior to 1/1/25, of the recommendations contained in the RHBAS October 1 Report to the Governor and Legislature.

During August, I received the first mailing of the new “Retiree Healthcare Newsletter” from the Office of Pensions. This newsletter should serve as the vehicle for informing retirees of the RHBAS recommendations. The newsletter should present an executive summary of the recommendations and list links to the full report and the RHBAS website.

The Office of Pensions also mails a similar newsletter to active employees. A special edition of this newsletter should serve as the vehicle for informing active employees of the RHBAS recommendations.

In order to reach out to the maximum number of retirees and active employees, the mailings should include retirees and active employees from/at school districts, DTCC, and affiliated employers (U of D, Del State, Charter Schools, etc).

Document Submitted
By
Lynda Hastings

**PUBLIC COMMENTS FOR THE 9/27/2023 SEBC RETIREE HEALTHCARE BENEFITS ADVISORY
SUBCOMMITTEE (RHBAS) MEETING - SUBMITTED BY Lynda Hastings, 9/23/23**

Out of respect for your limited time, here is the Executive Summary of this message:

- Please add an Executive Summary to front of the RHBAS Status Report which will list action items/adopted recommendations.
- Make a final vote on the Interim report on Sept.27 and make that the date of the report (not Oct. 1)
- Complete the production of the report on Sept 28 and send it to every member of the SEBC, because they need time to digest it and think.
- Do a facebook review of the adopted Status Report ASAP
- Act now to get on the Agenda of the Oct 2 SEBC meeting for presentation of the RHBAS Status Report by the Lt. Gov. with the assistance of one or both co-vice chairs (similar to SEBC getting support from WTW). Address specifically how recommendations would affect any changes needed in the RFP.

The details:

By scheduling the next SEBC meeting (presumably the voting meeting on the RFP) for Oct. 2, organizers have allowed for virtually no time for members to THINK about how the RHBAS recommendations can/should be reflected in the RFP. So now, time is of the essence for the work of RHBAS to have any impact.

I fully endorse the very clear recommendations for your Report that Bob Clarkin sent to you in his email, today. They should be adopted. BUT WILL ANY OF THIS MATTER? The draft of the Status Report, so far, is formal, thoughtful, thorough and the recommendations you adopted are buried in the report. The SEBC members don't have time for thoughtful and thorough. They need the bottom line. **I'd like to suggest that you format the report to lead on page one with an Executive Summary of the action items/recommendations adopted so far. That should be the front page,** followed by the thoughtful thorough explanation of how you got to them.

Then, the final version of the Status Report should be **completed on Sept. 28** and **sent to all members of the SEBC on that same day** by the Lt. Gov. and the co-vice chairs. That is an additional 72 hours for the SEBC members to digest the report. The Report is due BY Oct. 1; nothing says that it can't be completed sooner.

I'd like to also suggest that RHBAS request to be an agenda item on the SEBC Oct. 2 meeting, for the purpose of reviewing the Status Report with the SEBC before they consider the RFP. Since she is the chair, I presume that the Lt. Gov. should nominally be the presenter; but, as SEBC does with WTW experts, I believe that she should use the expertise of the vice-co chairs to make the detailed presentation. For any SEBC members who did not get enough "think time" on this Report, it may help them to understand how the Report relates to the RFP that they are about to adopt. Unlike the last time, when the SEBC issued an RFP and subsequent contract which resulted in a Court Stay Order, this time they (and we) deserve for them to have the fullest possible understanding of what they are adopting before they authorize DHR to take action.

Thanks to the RHBAS subcommittee you for all your hard work,
Lynda Hastings

Document Submitted
By
Nancy Alteri

September 27, 2023 RHBAS Public Comment by Nancy

Alteri

My name is Nancy Alteri. My husband, Jeff, and I are retired State of Delaware pensioners.

We have lived the past 45 years in a house that Jeff helped build. We hope to stay in our present home as long as we possibly can. But without family support available, we have put down monies at a life care community in Ohio for the time when independent living is no longer viable.

Jeff and I were relieved to hear the RHBAS assure us that we would be grandfathered into a Medicare supplement equivalent to our current Medicfill supplement. Yet at the September 18, 2023 SEBC meeting I heard Secretary DeMatteis state that there would be no grandfathering. I no longer feel assured.

If we are no longer assured of receiving the supplement benefit we were promised by the State of Delaware, Jeff and I will have to give up any idea of moving to Ohio as we can no longer be certain that doctors or facilities in Ohio will accept us as patients in the future. If that happens, we will remain in Delaware with our current doctors and facilities and hope that services will continue to be easily accessed in an uncertain healthcare future.

Dear Representative Baumbach,

I found the following (see below) in the draft of the report and don't know if you noticed them as well.

Take care,
Nicki Alteri

Nancy Alteri
Retired CRSD reading specialist
Current State of Delaware Medicare eligible retiree

Under the heading, Report Background, on p. 1 the wording, "Over the past several years, the SEBC and the RBSC held many public meetings to study current and future underfunded State retiree healthcare coverage." continues to appear in documents with an implied openness which is misleading if not just plain false as there was never any information about the significant changes to Medicare eligible retiree healthcare when changing from a Medicare supplement to a Medicare Advantage plan. In the same paragraph the wording, "... woefully underfunded and unsustainable." is over the top.

Under the heading, Summary of Subcommittee Activity, on p.5 the statement, "Additionally, the Subcommittee reviewed salary data for state and public education employees of these states." is simple not true. The document was presented in the materials under the title Requested Follow-up but was not discussed at the July 10, 2023 meeting. There was even a comment in the mailing that this document would not be discussed but I can't locate it.

Document Submitted

By

Tom Pledgie

The 'Missing' Executive Summary RHBAS Draft Status Report

The RHBAS was created because of SB 29 to solicit input, review options, and to make recommendations to the Legislature and Governor concern the OPED Liability.

The Subcommittee between March 6, 2023, and September 27, 2023, met 16 times, and though there are duplicates, over 1,000 persons viewed the Meetings and over 100 made Written Comments.

Retiree and Public Input (see Appendix A for ALL Public Comments):

- • Throughout the 16 sessions, NOT one person stated they wanted to join a MA Plan.
- • Additionally, NOT one positive Comment was made in support of MA Plans.
- • Numerous Commenters voiced their distrust of the SEBC, DHR & SBO Leadership, as well as any RFP process to be used in the future without good faith 'full transparency'.

Options reviewed (Funding, Eligibility, Plan Design, and Combinations):

- • Extensive modeling was done and is available in Appendix B. Changes to Eligibility and Plan Design individually or in combination yielded only minor budgetary impact, while negatively impacting State recruitment efforts.
- • The ONLY way to have a fully funded, revenue generating OPEB Trust Fund (like the Pension Trust Fund) is to fund it either through a greater annual State Budget set-aside, increases in the OEC from the current 0.36% or both.
- • When modeled, the 2021 disastrous changeover from the current Medicfill Plan to a MA Plan only produced a 7% impact on liabilities, and really NO SIGNIFICANT long-term impact. Apparently insufficient and shotty staff work was done to justify this major change!

Future Recommendations:

- • To address the massive amount of distrust of the SEBC, DHR, SBO Leadership, a fully open and transparent RFP process should be mandated.
- • The definition for the next RFP should be for a self-funded employer-sponsored group Medicare supplemental plan that includes all the features of a Medicare Plan F, as well as any additional features 'identical' to those included in the current Special Medicfill Plan and other features that a bidder might choose

to offer. RFP should be for a three-year period with and additional 2 years of options to extend.

- • All current Retirees should be 'Grandfathered' into the next system.
- • The DE Legislature must review the SEBC operations, functions and make major changes to this 'uncontrolled' organization.
- • The over 100,000 State Active Employees and Retired Employees all have a right to know what happened during these Committee deliberations.

Tom Pledge

Document Submitted
By
Barbara Philbin

**PUBLIC COMMENTS FOR THE 9/27/2023 RHBAS MEETING
SUBMITTED BY BARBARA PHILBIN (9/24/2023)**

#1. The last paragraph on page 4 concerning the review of Medicare plan options by State reads the “**public**” provided the subcommittee with an analysis of Medicare options State with a summary of key findings.”

Comment. Delete the “**nebulous**” word public and replace it with the following:

An analysis and completed report entitled **Medicare Options by State** to comply with SB 29 was submitted to the RHBAS by a group of in and out of state retirees from Ohio and Delaware (Annette Shine, a retiree from the University of Delaware, Barbara Philbin, a retiree from the Department of Education and Nicki Alteri, a retired Reading Specialist from the Caesar Rodney School District) who worked tirelessly for many days and hours to clarify and correct unclear and misleading information presented by WTW concerning state Medicare options. The findings were subsequently agreed upon and thus confirmed by the same WTW company at the following RHBAS meeting. All without the assistance of a third party \$1,000,000 consulting agency.

#2. The first paragraph on page I claims that the SEBC and RHBAS held many public meeting to study current and future underfunded state retiree health coverage.

Comment. Delete the word SEBC and retain RHBAS and add the following on page I.

It was not until the establishment of the RHBAS by SB 29 that the public was educated honestly and intelligence about the underfunded state retiree health coverage that led the SEBC to move Delaware Medicare retirees into a Medicare Advantage plan.

Including the SEBC in this sentence is misleading. There was no SEBC trustworthy public process to educate the public as evidenced by the fact that Judge Scott (the Court) ruled that the SEBC violated the FOIA and APA when adopting the Medicare Advantage plan leading him to stay the SEBC order. The State never contested this fact evidenced by not going to trial to refute or disprove it. So there was no attempt to educate the public by the SEBC about the underfunded health care fund that, according to the State bureaucracy, justified the movement of retirees into a fully funded Medicare Advantage plan. Further and worse, it was done surreptitiously.

#3 The Kafkaesque sentence on page 9 about further analysis and action about grandfathered and non grandfathered is specious at best. Better said it “makes makes no sense.”

Comment: Delete this sentence on page 9 or revise it so that it makes sense.

However, since the word **action about grandfathering** is mentioned, I strongly suggest that the RHBAS recommend the following to the Governor and General Assembly beginning with the January 2024 session.

The RHBAS recommends that the Governor and Delaware General Assembly take timely action to codify into Delaware law the grandfathering of all Medicare retirees, pre-retirees and active workers hired before January 1, 2025 into a “**life-time entitled**” self funded employer sponsored group Medicare supplement plan that includes all the features of a Medicare F plan as well as any additional features included in a Special Medicfill plan and any other features that a bidder might choose to offer along with a prescription drug plan. **It is important to note that the establishment of this entitlement is the cornerstone of the Delaware retiree community and should not be omitted** from the report.

To conclude, it is important to read the Delaware retirees doctrine of established beliefs set forth in Bob Clarkin’s public comments to the RHBAS dated 9/27/2023.

Prepared by Barbara Philbin

Document Submitted
By
Retired Senator Karen
Peterson

Comments from Karen Peterson on Draft RHBAS Report
9/24/23

(1) Report Background (Numbered p. 1; pdf p. 3).

(a) Use of the word “public”

“Over the past several years, the SEBC and the RBSC held many public meetings to study current and future underfunded State retiree healthcare coverage.” (1st ¶)

“After several public meetings in early 2022, the SEBC awarded Highmark Blue Cross Blue Shield Delaware a contract . . .” (2d ¶)

REVISION: The term “public” should be removed as applied to the RBSC and SEBC as it would bring the RHBAS into contradicting court findings.

REASON: Using the term “public” is not appropriate as there was not a true public process. The Court found that the SEBC violated FOIA and the APA when adopting Medicare Advantage and the State waived the right to contest those facts when it decided not to go to trial. **it has already been found**, and cannot be challenged on appeal, **that Sec. DeMatteis and the SEBC did not give proper public notice (as required by Delaware's open meetings laws) of the SEBC's vote to adopt Medicare Advantage and did not follow Delaware's open government laws (under the APA) when the SEBC adopted its *de facto* regulation to change to MA.**

The RHBAS, by contrast, did properly hold truly public meetings and should be a model for others.

(b) Statutory language.

“The budget included language that recategorized the State plan to Medicare Advantage and included one-time supplemental funding for the OPEB trust fund equal to one percent of the prior year’s budget.” (2d ¶)

REVISION: This sentence in the report should be removed. There is no reason for the RHBAS to get caught up in the Administration’s alternative facts.

REASON: *The sentence is flatly not true.* The FY23 budget epilogue language did not recategorize the State plan. It amended only 29 Del.C. §5202 pertaining to double state-share recipients – 266 of 30,000 retirees! It did not “recategorize the State plan to Medicare Advantage” for anyone, let alone the remaining 29,734 Medicare-eligible retirees. The State in the litigation did not even argue that the SEBC’s secretive switch to Medicare Advantage was statutorily approved after the fact and therefore proper.

(2) Summary of Subcommittee Activity (Numbered pp. 2-3; pdf pp. 4-5).

(a) “The Subcommittee also offered an opportunity for the group RISE Delaware to conduct a 30-minute presentation during the March 22, 2023, meeting.”

REVISION: Revise this to say “for **Retirees** to conduct.”

REASON: While we fully support Rise and appreciate very much the opportunity that was given by the RHBAS, the 30-minute presentation was not given by RISE Delaware. This was made clear at the time. Rather, it was given by a group of four retirees who spent hundreds of hours analyzing financial reports published by the State and its consultants, along with several years’ of minutes and reports from various State committees.

Our presentation showed that Medicare-eligible retirees are paying substantially more in “premiums” than they actually cost the State and that this cohort is actually subsidizing the other two cohorts of healthcare beneficiaries (pre-Medicare retirees and active employees), contrary to slides presented by the State. It made clear that the promised benefit of a Medicare Supplement plan to retirees is the best value around, as it only needs to cover the 20% of medical claims not paid for by Medicare. It also focused on exactly what is of concern to the bond rating agencies (i.e. “progress”). And it showed that Medicfill totally avoids the built-in problems plaguing Medicare Advantage. We showed conclusively that there was no good reason from a finance (or any other) perspective to go to Medicare Advantage.

Notably, Secretary Geisenberger only ever found *one* very minor error in our finance presentation (having to do with background on certain historical funding amounts years ago) which we promptly corrected..

(b) Public Comments

“The Subcommittee found that public comments during meetings expressed dissatisfaction ...”

REVISION: Replace the entire existing paragraph with:

The Subcommittee found helpful the many public comments during meetings relating to (a) appropriate financing to continue the existing Medicare Supplement benefit and (b) Medicare Advantage. As to Medicare Advantage, the public comments expressed strong dissatisfaction with:

- the unilateral and secretive manner in which the State handled the process of choosing Medicare Advantage;
- the 2,030 prior authorizations required by Medicare Advantage;
- the provider network limitations of Medicare Advantage;
- the co-pays, deductibles, cost-sharing, and co-insurance fees required by Medicare Advantage not charged under Medicfill;

- the loss of access to major healthcare institutions such as Mayo Clinic, Johns Hopkins, University of Pennsylvania, and Sloan-Kettering that do not accept Medicare Advantage;
- the fact that healthcare decisions would be made by an insurance company rather than by retirees' doctors;
- the fact that Medicare Advantage plans make their profits by delaying and denying necessary medical care to participants;

REASON: The description of the roughly 100 comments made by retirees is woefully understated. Written public comments submitted to the RHBAS should be added to the Appendices as a matter of fairness and balance. In addition, this paragraph should be changed, as noted, to better reflect what was actually discussed.]

(3) Studied Area of Focus. (Numbered p. 6; pdf p. 8)

- (a) “The RBSC previously evaluated options to address the State’s OPEB liability, grouped into three categories: increased funding, eligibility changes, and plan design/benefit delivery. **The RBSC concluded that combining options from each bucket will most significantly reduce the OPEB liability while potentially minimizing negative disruption to any cohort.**”

REVISION: Remove the second sentence about what the RBSC concluded.

REASON: No cite for this is given and we cannot find where any such alleged conclusion was reached by the RBSC. We do not believe that the RBSC ever concluded that it was necessary to make changes to all three “buckets.” That was a goal of the finance secretary and the RBSC only recommended, before the SEBC decided unilaterally to adopt Medicare Advantage, to study further design changes such as MA. And certainly the RHBAS has not adopted the three bucket combo.

- (b) **Under Plan Design/Benefit Delivery Options (numbered p. 7; pdf. P. 9):**
“Offer a Medicare Advantage Plan similar to the formerly proposed Highmark BCBS Delaware Freedom Blue PPO: State Share remains at 95%, Pensioner Share at 5% for retirees with 20 years of State Service at the time of retirement.”

This makes no sense, since the premiums for Medicare Advantage are \$0.

(4) Recommendations to SEBC (numbered p. 9; pdf p 11)

“The analysis will include options for both pre- and post-65 retirees and will consider changes to grandfathered and non-grandfathered subpopulations.”.

REVISION: If retirees are to be “grandfathered” into a Medicfill-like plan, why would the RHBAS consider changes? This sentence should be removed.

DHR Secretary
Claire DeMatteis
Response to
Retired Senator Karen
Peterson
Public Comments

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Point 1. Alleged FOIA Violations. With regard to the SEBC meeting, the Superior Court never held that there was a FOIA violation. In a footnote, the Court stated:

Defendants have suggested the only remedy available to Plaintiffs was a Freedom of Information Act violation of the validity of SEBC's action and Plaintiffs are time-barred as six months has elapsed since the February 28, 2022. 29 Del. C. § 10005 requires Plaintiffs to contest the alleged violations of Delaware Freedom of Information Act, in the *Court of Chancery*, within 60 days of learning of such action, but in no event later than six months after the date of the action. The date of action is when retirees knew or should have been expected to know about the terms of the contract because no reasonable person would be expected to contest action of a public body relating to terms of a contract of a contract in which was not discussed nor executed. Additionally, under 10 Del. C. § 1902, no civil action brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter and if the action is transferred to the appropriate court, Plaintiffs' original filing date in this Court will be considered the date Plaintiffs brought the action in *Court of Chancery*.

This is certainly not a finding of a violation of FOIA. The Court did, however, hold that the adoption of Medicare Advantage is a “policy change [which] is a regulation under the APA.” Naturally, it is this finding that the State is challenging in our appeal. We did not award the contract under APA regulation requirements. It is our view that under state law and caselaw, the APA regulation requirements do not apply.

Point 2. The Public Meeting Contention. The SEBC actions of which Plaintiffs complain (e.g. adoption of Medicare Advantage on Feb. 28, 2023) were conducted in a public process with required public notice. At least seven days prior to the meeting, the SEBC posted its agenda including notice that, “Health Third Party Administrative Services RFP Award Recommendations... (c.) Medicare Plan Effective January 1, 2021,” would be discussed. The agenda noted that this particular agenda item “may require action and approval by the Committee,” further alerting potential attendees that action on the Medicare Plan was likely to occur. Further, included with the posting was a document titled “FY23 Outstanding Decisions,” including charts comparing Medicfill to Medicare Advantage and a discussion of consideration when deciding between the two. In Court filings, the Plaintiffs' brief

Response to Karen Peterson Public Comments

des not dispute the finding that the February 28, 2023 meeting was public; rather, they maintain the notice was improper.

Point 3. The Superior Court did not fact find. The State did not waive the right to challenge any facts. In fact, the Superior Court chastised Plaintiffs for this same contention in its February 8, 2023 decision. In that decision, the Superior Court *rejected* Plaintiffs contention that “the Court's October 19, 2022 Opinion ‘made important findings of fact about the SEBC's adoption and Defendants’ communications of Medicare Advantage for State retirees.” A348 ¶7. The Superior Court stated plainly that it “did not make any findings of fact” and “therefore no final determination of facts occurred under these circumstances.” *Id.* ¶¶7-8.

Point 4. Subcommittee Comments. The subcommittee found that public comments during meetings expressed dissatisfaction. The proposed comments are argumentative. The record and facts show that the process for Medicare Advantage was **not** done in “a unilateral and secretive manner.” In fact, the SEBC meetings were public, properly publicly noticed, and the vote to implement Medicare Advantage was unanimously adopted.

Response from
Retired Senator Karen
Peterson
to
DHR Secretary Claire
DeMatteis

Response to Claire DeMatteis Public Comments

Sec. DeMatteis' odd Response to my public comments for the 9/27/23 RHBAS meeting is just one more example (in a long list) of how the State continues to twist the facts to carry out its misguided agenda. This campaign of misinformation, that began with the secretive adoption of Medicare Advantage on 2/28/22, has now dragged on for the last year in the Courts where it is costing Retirees hundreds of thousands of dollars of their own money -- while the State uses our tax dollars against us.

Sec. DeMatteis wrongly claims that the SEBC agenda of February 28, 2022 gave actual notice of the State's intentions to change Retirees' healthcare coverage from Medicfill to Medicare Advantage. The Court disagreed and stated that "there was no indication coverage would change."

It was the State's unlawful and obstinate conduct -- in failing to comply with basic open meetings and open government laws -- that lead to Retirees' successful lawsuit and the Court's injunctions which, by the way, remain in place today.

Sen. Karen E. Peterson (Ret.)

Document Submitted

By

Linda Hardy

It was with much disappointment that I heard your comment about grandfathering the older retirees at the recent SEBC meeting. Maybe if I tell you my situation, you might understand why grandfathering is important to me.

I taught for a bit more than 28 years—mostly Red Clay schools where I taught English to students in middle school and then in high schools. I was able to retire after my mother died.

Now I'm seventy-six and I've been diagnosed with cirrhosis of the liver [the non-drinking kind] and I have a much shortened life span. Its main symptom is fatigue. Once diagnosed, I've had to spend much more time with doctors, and the fatigue plus a doctor appointment wear me out.

I'm afraid of what will happen if I have to ask permission for appointments and procedures; in fact, I feel overwhelmed at that possibility. I can manage my energy just enough to take care of me and my apartment. I have no relatives closer than a five-hour drive.

This is just one person's story. Please take other people's situations into account, because everyone has a story. I hope you see why grandfathering is useful and why we push for it so much.

Thanks for reading this letter.

Sincerely,
Linda D. Hardy

Document Submitted

By

Deldra Gregory-

Colvin

Hey there,

I would like to make comment. I am not sure if I can stay the entire time due to other meetings. If I am not able, please take note of my comments.

My name is Deldra Gregory-Colvin and I am the Benefits Coordinator for Colonial School District. In addition to managing the benefits for the district, I am accountable for the functionality of retirement which includes teaching employees and administering the paperwork to help employees transition into retirement. I want the committee to understand that many of us have played the long game which means we have waived and/or delayed other opportunities to secure our future income and benefits.

In my case, I attained a State job while my son was younger. This employment aligned with my son's school schedule. As my son matured, I did not need to continue with a strict schedule, thus allowing me to expand my job search which would include more advancement (**the glass ceiling in State Employment was a real thing- clearly documented on the front page by the former Governor**) and money. At the time I reviewed the long-term benefits of state employment which included its retirement plan and retirement benefits. I calculated that it would be in my best interest to secure my retirement and retirement benefits and complete my 20 years. I intentionally waived other opportunities that would have provided more money, and more advancement to secure my future. It appears that this committee's plan includes threatening employees' plans, this is not fair.

As I mentioned before, I am also accountable for teaching retirement. It is important to note that I often teach employees that 20 years of employment is the "**sweet spot**". I explain how at this point benefits are most affordable. In addition, I also explain that the retirement Medicare Supplement plan is worth its weight in goal.

Please know that employees have PLANNED for their future based on the available information. The information about the **sweet spot** is everywhere. I understand that the rate of insurance can change, but the availability of insurance (in accordance to the percentage tables) should not change. It is not fair at this junction, to change things that we have planned for.

Might I make a suggestion, if you need to make a change do not touch the plans of the employees who are VESTED into the pension plan. Vested employees have an **AGREEMENT**... in writing... The benefits percentages are clearly stated and we understand the value of the sweet spot.

Evidence of Agreement - <https://open.omb.delaware.gov/PDF/2023/State-Employees-Pension-Plan-Summary-Plan-Description.pdf>

Evidence of Agreement of Percentage of Healthcare

Table 6: Understanding the Monthly State Share Cost of Health Insurance

The following portion of the State Share will be paid by the State, except for those receiving a disability pension or an LTD benefit 100% of State Shared is paid.	
Eligible Pensioners Hired by the State on or After July 1, 1991 through December 31, 2006	
Years of Service	State share paid by the State
Less than 10 years	0%
10 years – less than 15 years	50%
15 years – less than 20 years	75%
20 years or more service	100%
Eligible Pensioners Hired by the State on or After January 1, 2007	
Years of Service	State share paid by the State
Less than 15 years	0%
15 years – less than 17.5 years	50%
17.5 years – less than 20 years	75%
20 years or more service	100%

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