

RHBAS Report Feedback

Subcommittee Members

Bethany Hall-Long

Add chart and narrative being presented at the 9/27 meeting.

Secretary Claire DeMatteis

On page 6 or 7, we have to make it clear that the Subcommittee took no votes on

- **Model B:** New retirees on or after 1/1/2025
- **Model C:** Retirement date on or after 1/1/2025

Further, this report needs to address the SB 29 mandate: (4) Evaluate options for continuing to provide strong Delaware retiree healthcare benefits in a fiscally sustainable way, including options to maintain their current coverage similar to residents in other states that offer a choice to buy into a Medicare Supplement plan.

Where is the “fiscally sustainable way....??”

Secretary Rick Geisenberger

Here are a few edits I would suggest that hopefully circle back to “fiscal sustainability”:

COVER MEMO – Replace paragraph 3 with the following 2 paragraphs that will help further emphasize where we have made progress – boosting the Trust Fund:

“As reported in the May 1, 2023, RHBAS Initial Report (the “Initial Report”), because the SEBC voted on April 24, 2023, to further extend the expired Special Medicfill Medicare Supplement contract for an additional six (6) months through June 30, 2024, the current level of State funding for Medicare retiree healthcare benefits will continue throughout Fiscal Year 2024.

We are pleased to report that the State is making some progress toward improving the funding of the Other Post-Employment Benefits (OPEB) Fund. Executive Order 52 and the Fiscal Year 2023 budget established a 1% set aside of the prior year’s General Fund operating budget for the Fund. The Initial Report recommended codifying this requirement. Subsequently, Senate Bill 175 was introduced on June 13, 2023 and signed into law by the Governor on July 17, 2023. The 1% budget and 0.36% payroll set-asides in both the Fiscal Year 2023 and 2024 budgets represent more than a seven-fold increase in annual contributions to the OPEB Fund. In addition, the State was recently able to contribute an additional \$101 million of one-time, extraordinary revenue to the OPEB Fund as authorized in the Fiscal Year 2022 Bond and Capital Improvement Act. As a result, OPEB Fund balances have more than doubled since July 1, 2017.”

Page 1, Paragraph 3 - Change last sentence to:

“The Governor disbanded the RBSC via Executive Order 56 on February 15, 2023. The new Subcommittee first convened on March 6, 2023.”

Page 4, Paragraph 3 – Can you verify if the \$6.7 million is solely Medicare premiums or does that also include pre-Medicare premiums?

Page 9, Recommendation 1 – Change as follows:

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

Page 9 , Areas of Focus –

At the beginning, insert the words “In recognition of its mandate to evaluate options for continuing to provide strong State retiree healthcare benefits in a fiscally, sustainable way, the Subcommittee will . . . “

Also, while I don’t know if it will be possible to make it into this report – I do plan to reach out to the chairs and suggest that the RHBAS consider voting to expand Recommendation #1 to include the full recommendation of the RBSC with respect to the OPEB Trust which included:

“Provide additional one-time contributions when circumstances such as one-time revenues or surpluses permit, similar to Section 16 (Escheat Special Funds) of the FY 2022 Bond and Capital Improvement Act.”

Wayne Emsley

A. Page 1, Para 1, last line, delete the word “woefully”

They found that under the current State pensioner healthcare plans, vesting schedules, and funding models, the OPEB trust fund is woefully underfunded and unsustainable.

B. Page 1, Para 2, 3 rd sentence, delete the word “public”

After several public meetings in early 2022, the SEBC awarded Highmark Blue Cross Blue Shield Delaware a contract to provide Medicare retiree healthcare under a Medicare Advantage plan, beginning January 1, 2023.

C. Page 1, Para 2, last sentence, delete the phrase “included language that recategorized the state plan to Medicare Advantage and”

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."

D. Page 2, last para, replace second sentence:

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

With:

The Subcommittee also provided an opportunity for a retiree to conduct a 30-minute presentation during the March 22, 2023 meeting based on the work of four retirees. The presentation included basic factual background, analysis of monthly data, and suggestions for the subcommittee's future meetings. They identified several data discrepancies, including inaccuracies in the reported retiree contributions and healthcare costs.

E. Page 3, para 2, Replace entire existing paragraph which begins: The Subcommittee found that public comments during meetings ...

Replace with:

The Subcommittee heard public comments during meetings generally focused on (a) financing to continue the existing Medicare Supplement benefit and (b) strong dissatisfaction Medicare Advantage: The following concerns were frequently expressed:

- the process the State utilized in selecting Medicare Advantage
- the 2,030 prior authorizations required by Medicare Advantage
- the provider network limitations of Medicare Advantage
- the possibility of co-pays, deductibles, cost-sharing, and co-insurance fees included in Medicare Advantage, not charged under Special 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
- that an insurance company would be involved in healthcare decisions rather than solely retirees' doctors
- their belief that Medicare Advantage plans make their profits by delaying and denying necessary medical care to participants.

In approximately ten hours of public comment, no retiree or current state employee spoke in favor of Medicare Advantage.

F. Page 4, first sentence:

The public also provided the Subcommittee with an analysis of Medicare options by state with a summary of key findings.

Replace with:

Three retirees also provided the Subcommittee with an analysis of Medicare options by state. Their effort clarified and corrected previously reviewed information and included a summary of key findings.

G. Page 4, Task 3, delete 2nd sentence:

~~The cost to the State operating budget is approximately \$7 million per month compared to the Governor's Recommended Budget, which presumed implementation of the Highmark Medicare Advantage plan for all Medicare retirees.~~

H. Page 4, Task 4, 3rd sentence:

According to the Office of Pensions, approximately \$6.7 million in premiums are paid annually by retirees to the State (in addition to the monthly premium paid to Medicare), with the remaining \$151 million covered by the State.

Change parenthesis to:

(in addition to approximately \$58 million in monthly premiums paid to Medicare),

I. Page 5, 6th dot, strike last sentence ~~“Additionally, the Subcommittee reviewed salary data for state and public education employees of these states.”~~

J. Page 6, Studied Areas of Focus (Funding, Eligibility, Plan Design, and Combinations), first sentence. For clarity, insert numbers:

The RBSC previously evaluated options to address the State's OPEB liability, grouped into three categories: (1) increased funding, (2) eligibility changes, and (3) plan design/benefit delivery.

Delete 2nd sentence:

~~The RBSC concluded that combining options from each bucket will most significantly reduce the OPEB liability while potentially minimizing negative disruption to any cohort.~~

Add the following sentence:

However, this subcommittee, based on Cheiron's actuarial analysis, has identified funding as the primary solution to tackle the OPEB liability. While Eligibility and Plan Design adjustments provide some modest liability reduction, they can also negatively impact the State's recruiting and employee retention efforts. Therefore, it is funding that stands as the most attractive mechanism to effectively address this

issue.

K. Page 9, Areas of Focus Requiring Further Action/Analysis, delete 2 nd sentence:
~~The analysis will include options for both pre- and post-65 retirees and will consider changes to grandfathered and non-grandfathered subpopulations.~~

Insert:

While the primary focus thus far has centered on the Medicare Retiree population, It's important to acknowledge that they are not the sole group influencing the OPEB liability. The Subcommittee must also direct its attention to the Non-Medicare/Pre-65 population in order to comprehensively address the OPEB liability. Therefore, this analysis will include options for both pre- and post-65 retirees hired after 1/1/2025.

L. Insert the following Executive Summary prior to page 1:

Executive Summary

The RHBAS was charged with:

- receiving public comment on current and future State retiree healthcare benefits
- analyzing Medicare Advantage plans
- evaluating the implications of extending the existing Medicare Supplement plan
- evaluating options for continuing to provide retiree healthcare benefits in a fiscally sustainable way
- issuing findings and recommendations to the Governor and the General Assembly.

The Subcommittee first convened on March 6, 2023, and has held 17 meetings to date. All meetings included a time for public comment.

The Subcommittee has approved the following actions and recommendations:

1. set the 2052 OPEB funded ratio target at a minimum of 80% and no requirement to reach the actuarially defined contribution.
2. recommended that 1% minimum of the prior year's State operating budget is set aside each year to fund OPEB.
3. recommended 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.

4. recommended 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.

5. recommended 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.

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

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

While the primary focus thus far has centered on the Medicare Retiree population, It's important to acknowledge that they are not the sole group influencing the OPEB liability. The Subcommittee must also direct its attention to the Non-Medicare/Pre-65 population to comprehensively address the OPEB liability. Therefore, this analysis will include options for both pre- and post-65 retirees hired after 1/1/2025.

The Subcommittee will continue to meet regularly with the goal of issuing a report of additional recommendations to the Governor, General Assembly, and SEBC no later than [Date].

Public Comments:

Sen. Karen Peterson

(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.

Barbara Philbin:

#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 1 claims that the SEBC and RHBAS held many public meetings to study current and future underfunded state retiree health coverage.

Comment. Delete the word SEBC and retain RHBAS and add the following on page 1. It was not until the establishment of the RHBAS by SB 29 that the public was educated honestly and intelligently 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 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.