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MEMORANDUM

DATE: MAY 8, 2009

TO: TOMPKINS COUNTY COUNCIL OF GOVERNMENTS
HEALTH BENEFITS STEERING COMMITTEE

FROM: LOCEY & CAHILL, LLC

RE: UNION PARTICIPATION ON THE BOARD OF DIRECTORS

We have received several inquiries relative to the participation of representatives from the various Collective Bargaining Units on the Board of Directors of the Greater Tompkins County Municipal Health Insurance Consortium.

The key issues have been authority to participate, who can participate, how are representatives chosen, and in what capacity may they participate. I would like to address each of these issues from our perspective as the Employee Benefits Consultant to the Tompkins County Council of Governments. Please keep in mind that we are awaiting a formal legal opinion from John Powers of Hancock & Estabrook, LLP. Once this opinion is received, it will be shared with all concerned parties.

AUTHORITY TO PARTICIPATE

As you may be aware, Article 47 of the New York State Insurance Law has language which addresses this very issue. Specifically, §4705(a)(8) reads in part as follows:

“ . . . a plan which is entered into after the effective date of this article shall provide that unions which are the exclusive collective bargaining representatives of employees who are covered by such health benefit plan shall be entitled to representation on such governing body.”

The above language applies to any Municipal Cooperative Health Benefit Plan created after January 1, 1993. As for its application to our specific situation, the current and most recent draft of the Municipal Cooperative Agreement for the Greater Tompkins County Municipal Health Insurance Consortium does, in our professional opinion, satisfy the above requirement. Please refer to Page 4, Section C(11) of the Agreement in part as follows:

“11. In addition, the Board shall include a representative from each union who is the exclusive collective bargaining representative of any Enrollee or group of Enrollees covered by the Plan[s], for one or more of the Participants.”

Based on the above, we are of the opinion that the Consortium Agreement (05/01/2009 Draft) complies fully with the requirement authorizing unions to participate on the Board of Directors.

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WHO CAN PARTICIPATE?

Article 47 of the Insurance Law references unions shall be entitled to representation on the governing board. Our interpretation of this provision is that each union shall have one representative regardless of the number of employers who might employ their members. For instance, if the CSEA or Teamsters represent employees at more than one employer, they still receive only one seat on the Board of Directors. It is important to note that we want to be sure to include all unions and we feel the most recent draft of the Municipal Cooperative Agreement adequately covers this on Page 4, Section C(11) in part (2nd sentence) as follows:

“Each union shall be entitled to one representative, regardless of the number of Participants that recognized the unions as the exclusive collective bargaining representative for employees covered by the Plan.”

Based on the above, we are of the opinion that the Consortium Agreement (05/01/2009 Draft) complies fully with the requirement authorizing which unions and how many representatives may serve on the Board of Directors.

HOW ARE REPRESENTATIVES CHOSEN?

The selection of the Representatives is a matter defined in Article 47 in §4705(c)(1) in part as follows:

“ . . . for those agreements entered into after the effective date of this article, the governing board shall include representation by unions which are the exclusive collective bargaining representatives of employees covered by the plan, and that such unions shall establish and agree to the procedures by which the member or members of the governing board which represent unions are selected;”

The above, in our professional opinion, provides the union leadership with the right to select their representative by a process developed and approved by them with no restrictions placed on the process by the employers (Participants). It is our professional opinion that the Municipal Cooperative Agreement dated May 1, 2009 addresses this matter with language that is consistent with the requirements of Article 47. Please refer to Page 4 of the Agreement, Section (C)(11) in part (3rd sentence) as follows:

“Each eligible union shall establish and agree to the procedures by which the representative is chosen and shall designate one representative in writing to the Chairman of the Board.”

Based on the above, we are of the opinion that the Consortium Agreement (05/01/2009 Draft) complies fully with the selection process of union representatives who may serve on the Board of Directors.

IN WHAT CAPACITY MAY UNION REPRESENTATIVE PARTICIPATE?

Unfortunately, Article 47 of the New York State Insurance Law provides very little guidance as to the level of involvement and power union representatives would have on the Board of Directors. As a result, this is an area where we have requested a legal opinion from the Tompkins County Council of Government's legal counsel, John Powers of Hancock & Estabrook, LLP. We anticipate having this opinion in the very near futures and we will share it with you as soon as it is made available.

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The current draft of the Municipal Cooperative Agreement (May 1, 2009 Draft) clearly allows for participation by the unions on the Board of Directors. However, that participation is limited as it does not include any voting authority, nor does it include the ability to bring forth resolutions either on a primary or secondary basis. The representatives will receive all reports and documents discussed at the meetings and the union representatives will have the following powers:

“Notwithstanding the foregoing, Non-Voting Directors (a) may participate in Board deliberations; (b) may propose and submit non-binding recommendations and/or resolutions to the full Board; and (c) shall have such other rights and responsibilities as determined by the Board.”

Based on the above, we are of the opinion that the Consortium Agreement (05/01/2009 Draft) complies fully with the powers granted to union representatives who may serve on the Board of Directors.

As stated earlier this last matter is one which has risen to the level of needing a direct legal opinion to satisfy. Once the legal opinion is delivered, the Committee can review it and if needed we could have Attorney Powers review his findings with the Tompkins County Council of Governments, the Health Benefits Steering Committee, and/or the union leadership.

We hope the above addresses the concerns raised relative to union participation on the Board of Directors. As always, please do not hesitate to contact us should you have any questions in regard to this information or should you require assistance of any kind. You can reach our office by calling us at 315-425-1424.

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facsimile to each and all of the Directors. The Directors may then fax their approval or disapproval of said actions to the Chairperson. Upon receipt by the Chairperson of the requisite number of written approvals, the Chairperson may act on behalf of the Board in reliance upon such approvals. Any actions taken by the Chairperson pursuant to this paragraph shall be ratified at the next scheduled meeting of the Board.

11. In addition, the Board shall include a representative from each union who is the exclusive collective bargaining representative of any Enrollee or group of Enrollees covered by the Plan[s], for one or more of the Participants. Each union shall be entitled to one representative, regardless of the number of Participants that recognize the union as the exclusive collective bargaining representative for employees covered by the Plan. Each eligible union shall establish and agree to the procedures by which the representative is chosen and shall designate one representative in writing to the Chairman of the Board. Each representative designated under this section shall serve as a non-voting member of the Board (each a "Non-Voting Director"), who shall not have the authority to vote on any official action taken by the Board, nor move or second binding resolutions. The number of Non-Voting Directors shall not be taken into account when determining the existence of a quorum. Non-Voting Directors shall not be eligible to hold office in the Consortium. Notwithstanding the foregoing, Non-Voting Directors (a) may participate in Board deliberations; (b) may propose and submit non-binding recommendations and/or resolutions to the full Board; and (c) shall have such other rights and responsibilities as determined by the Board.

D. WEIGHTED VOTING.

1. Except as otherwise provided in this Agreement, any two or more voting Directors, acting jointly, may require a weighted vote on any matter that may come before the Board. In such event, the voting procedure set forth in this Section D shall apply in lieu of any other voting procedures set forth in this Agreement. Such weighted voting procedures shall apply solely with respect to the matter then before the Board.

2. For purposes of this Section D, each voting Director shall receive votes as follows:

a. each voting Director representing a Participant with five hundred (500) or fewer Enrollees shall be entitled to one (1) vote.

b. each voting Director representing a Participant with more than five hundred (500) Enrollees shall be entitled to a number of votes equaling the total number of votes available under subsection (a) divided evenly by the number of Participants eligible under subsection (b) of this section and rounded down to the nearest whole number.

3. Attached as Addendum "A" to this Agreement is a example of the application of the voting formula contained in subparagraph "2" of this Section.

4. Notwithstanding anything to the contrary contained in this Agreement, any action taken pursuant to this Section D shall require the approval of two-thirds (2/3) of the total number of votes, if all votes had been cast.

§ 4705. Municipal cooperation agreements. (a)

The municipal cooperation agreement, under which the municipal cooperative health benefit plan is established and maintained, and any amendment thereto, shall be approved by each participating municipal corporation by majority vote of each such corporation's governing body, and shall:

(1) specify all municipal corporations participating in the municipal cooperative health benefit plan and describe the form or type of municipal corporations eligible for participation;

(2) state that all participating municipal corporations agree to share the costs of and assume the liabilities for medical, surgical and hospital benefits provided under the municipal cooperative health benefit plan to the covered employees (including retirees) and their dependents of all participating municipal corporations;

(3) state that each participating municipal corporation agrees to pay on demand such municipal corporation's share of any assessment ordered by the governing board of the municipal cooperative health benefit plan or by the superintendent under this article or article seventy-four of this chapter;

(4) specify the eligibility requirements for membership in and coverage by the municipal cooperative health benefit plan, including reasonable geographic boundaries (if any) of such plan, provided that no municipal cooperation agreement shall include any provision restricting or otherwise limiting the right to participate in the plan of a municipal corporation of the same type which provides satisfactory proof of its financial responsibility and which is located within the geographic region in which the municipal cooperative health benefit plan operates;

(5) not include any provision restricting or otherwise limiting the right of eligible employees (including retirees and dependents) of a participating municipal corporation to enroll for coverage in the plan;

(6) designate the fiscal officer of a participating municipal corporation to be the chief fiscal officer of the municipal cooperative health benefit plan;

(7) designate the plan's attorney-in-fact to receive service of summons or other legal process in any action, suit or proceeding arising out of any contract, agreement or transaction involving such municipal cooperative health benefit plan; and

(8) establish a governing board to be responsible for the management, control and administration of the municipal cooperative health benefit plan, provided any municipal cooperative agreement to establish such a plan which is entered into after the effective date of this article shall provide that unions which are the exclusive collective bargaining representatives of employees who are covered by such health benefit plan shall be entitled to representation on such governing board.

(b) The municipal cooperation agreement shall provide that the plan's chief fiscal officer:

(1) shall have custody of all moneys received by the municipal cooperative health benefit plan or made available for expenditure under the plan;

(2) shall, notwithstanding any provision of the general municipal law, make payment in accordance with procedures developed by the plan's governing board and acceptable to the superintendent;

(3) may invest moneys not required for immediate expenditure in the types of investment specified in the general municipal law or the education law (as applicable) for temporary investments or as otherwise expressly permitted by the superintendent; and

(4) shall receive no remuneration, except that the participating municipal corporation employing the chief fiscal officer may be reimbursed for reasonable expenses incurred in connection with the duties of such fiscal officer in connection with the plan.

(c) A municipal cooperation agreement shall include a provision:

(1) describing the composition, number and procedures under which governing board members are chosen, provided that, for those agreements entered into after the effective date of this article, the governing board shall include representation by unions which are the exclusive collective bargaining representatives of employees covered by the plan, and that such unions shall establish and agree to the procedures by which the member or members of the governing board which represent unions are selected;

(2) designating one governing board member to have custody of all reports, statements and other documents of the plan; and

(3) that the governing board shall meet at least annually at a time and place in this state designated in accordance with the agreement.

(d) The municipal cooperation agreement shall provide that the governing board:

(1) shall design the plan of benefits provided by the municipal cooperative health benefit plan and prepare the plan document and summary plan description in accordance with section four thousand seven hundred nine of this article;

(2) may enter into an agreement with a contract administrator or other service provider, determined by the governing board to be qualified, to receive, investigate, recommend, audit, approve or make payment of claims under the municipal cooperative health benefit plan, provided that:

(A) the charges, fees and other compensation for any contracted services shall be clearly stated in written administrative services contracts as required in subdivision six of section ninety-two-a of the general municipal law;

(B) payment for contracted services shall be made only after such services are rendered;

(C) no member of the plan's governing board or any member of such member's immediate family shall be an owner, officer, director, partner, or employee of any contract administrator retained by the plan; and

(D) all such agreements shall comply with the requirements of subdivision six of section ninety-two-a of the general municipal law.

(3) shall be authorized to purchase stop-loss insurance, to the extent required by section four thousand seven hundred seven of this article, on behalf of the municipal cooperative health benefit plan;

(4) shall be authorized to establish a joint fund or funds to finance all plan expenditures, including claims, reserves, surplus, administration, stop-loss insurance and other expenses;

(5) shall prepare an annual budget for the municipal cooperative health benefit plan to determine the premium equivalent rates for participating municipal corporations to be deposited in the plan's joint fund or funds during the fiscal year, provided that:

(A) the governing board shall designate the bank or trust company in which joint funds, including reserve funds, are to be deposited and which shall be located in this state, duly chartered under federal law or the laws of this state; and

(B) the governing board shall establish premium equivalent rates for participating municipal corporations on the bases of a community rating methodology filed with

and approved by the superintendent and, in determining the annual premium equivalent rates, the governing board:

(i) may contract for necessary actuarial services to estimate expected plan expenditures during the fiscal year;

(ii) shall maintain reserves in amounts equal to or exceeding the minimum amounts required by section four thousand seven hundred six of this article; and

(iii) shall maintain a stop-loss policy or policies, to the extent required by section four thousand seven hundred seven of this article;

(6) shall be authorized to assess participating municipal corporations for additional contributions, if actual losses due to benefits paid out, administrative expenses and reserve and surplus requirements exceed amounts held in the plan's joint funds; and

(7) shall be authorized to refund amounts in excess of reserves and surplus required by section four thousand seven hundred six of this article and anticipated expenses in the plan's joint funds to participating municipal corporations, or to retain such excess amounts or a portion thereof and apply such amounts in preparing the plan's budget for the following year.

(e) The municipal cooperation agreement shall provide for the following to be prepared and furnished to the governing board, to participating municipal corporations, to unions which are the exclusive bargaining representatives of employees covered by the plan and to the superintendent:

(1) an annual audit, and opinions thereon, by an independent certified public accountant, of the financial condition, accounting procedures and internal control systems of the municipal cooperative health benefit plan;

(2) an annual report and quarterly reports describing the plan's current financial status; and

(3) an annual independent actuarial opinion on the financial soundness of the plan, including the actuarial soundness of contribution or premium equivalent rates and reserves, both as paid in the current year and projected for the next fiscal year.

(f) The municipal cooperation agreement shall specify the rights and obligations of a municipal corporation withdrawing from a municipal cooperative health benefit plan to any contribution (or premium equivalent) refund or reserve fund or for any contingent assessment liability or other obligation.

(g) Every municipal cooperation agreement shall contain a provision stating that nothing contained in such agreement shall be construed to waive any right a covered person possesses with respect to the confidentiality of medical records and that such right may only be waived upon the written consent of such covered person.