HOUSE RESEARCH ORGANIZATION
Texas House of Representatives

Interim NEWS

October 2, 2002 Number 77-12

Implementing HB 3343

Issues Linger for School Employee Health Plan

With the new school year under way, Texas public school employees are test-driving TRS-ActiveCare, the state-administered health insurance program for teachers and other school employees. The new health plan, created by the 77th Legislature in HB 3343 by Sadler and funded at nearly $1.3 billion for the first year, took effect September 1, 2002.

TRS-ActiveCare generally has found favor with school employees. However, some school districts and their employees have complained that the state plan costs them more and leaves them with fewer choices than the coverage they had before. Also of concern is the impact of rising medical and pharmaceutical costs. Because HB 3343 caps state contributions and mandatory contributions by school districts, school employees worry that the cost of future premium increases will fall on them. State lawmakers likely will consider changes to the administration and financing of TRS-ActiveCare during a legislative session that promises to be a belt-tightener for many state programs.

For background on the debate over funding health insurance for school employees, see *Teacher Health Insurance: The Multibillion-Dollar Question*, House Research Organization Focus Report No. 77-7, February 23, 2001.

Plan summary

Lawmakers directed the Teacher Retirement System (TRS) to manage the new health plan, in part because of TRS' 17-year history managing TRS-Care, the statewide health plan for about 140,000 retired school employees. Adding active employees to the system essentially doubles the number of people covered under the TRS umbrella. School districts with 500 or fewer employees were required to participate as of September 1, while districts with between 501 and 1,000 employees were given the option to join. All districts will be eligible to join beginning in September 2005, making the TRS system potentially one of the nation's largest health plans.

TRS-ActiveCare now covers more than 104,000 employees, about 19 percent of all public education

(See Insurance, page 2)

New Rules Approved for Second Round of Colonias Road Building Grants

The Texas Department of Transportation (TxDOT) has awarded grants totaling $50 million for access road projects for colonias along the Texas-Mexico border, marking the state's first large-scale use of bond financing to pay for road building, other than tollways. TxDOT expects to begin awarding a second round of grants to border counties in early 2003, using new and somewhat controversial rules aimed at streamlining the process.

SB 1296 by Lucio, et al., enacted by the 77th Legislature, authorized the creation of a bond program for colonias access roads, contingent on voter approval of a constitutional amendment, SJR 37 by Lucio, et al. Texas voters approved the amendment in November 2001 by a margin of 61 to 39 percent.

TxDOT administers the program, funded through general obligation bonds or notes issued by the Texas Public Finance Authority (TPFA) at times and in amounts determined by the governor. The TPFA may issue up to $175 million in bonds to help border counties build or improve roads to connect colonias to existing public roads. The goal is to improve access, especially for school buses

(See Colonias, page 7)

(Insurance, from page 1)

employees in Texas and about 24 percent of those with group health coverage. Counting dependents, the plan covers more than 176,000 lives. Of 1,149 eligible entities, 870 school districts, charter schools, regional service centers, and other educational districts began participating in the plan on September 1. As of mid-August, 108 school districts had opted to delay participation until their current health-plan contracts expire; of those districts, 62 delayed coverage to continue their contracts with the Temple-based Scott & White health plan.

TRS-ActiveCare is a self-funded plan, meaning that the state provides the funds to pay employee claims and pays a third party to administer the plan. Under a self-funded plan, the state assumes a financial risk in exchange for lower premiums, eliminating markups for profit or contingency risk. To administer TRS-ActiveCare, TRS chose Blue Cross/Blue Shield of Texas, which also administers the Employees Retirement System (ERS) plan for state employees. Aetna administers the TRS-Care plan for public school retirees, and Medco administers prescription drug benefits for all three plans.

Premium contributions. School districts participating in TRS-ActiveCare send TRS monthly premium payments that go into the Texas school employees uniform group coverage trust fund to pay claim costs. Each participating district must contribute at least $150 per month per employee toward health insurance. Districts that were not paying $150 per month per employee before the 2001-02 school year may receive "minimum effort transition assistance" from the state to help them meet this threshold. Transition assistance will be phased out over six years, except for districts that are levying maintenance-and-operations (M&O) taxes at the maximum rate, currently $1.50 per $100 of property value. Roughly 200 districts have reached the $1.50 cap now, and the number of districts taxing at that level could double in the coming year, according to the Texas Association of School Boards.

Public school employees under the new plan pay higher premiums for comparable coverage than do state employees under ERS.

The state's premium contribution to eligible districts is $75 per month ($900 per year) per participating employee, which is included in school finance formulas and paid by TEA from the Foundation School Program. The state also provides "hold harmless" funding for districts that do not gain enough new state aid through the formulas to meet the $75-per-month threshold. In addition, all school employees, regardless of whether they participate in a group health plan, receive $83.33 per month ($1,000 per year) in "passthrough" money from the state, except for employees of open-enrollment charter schools that chose not to participate in TRS-ActiveCare. The total amount of guaranteed state and district aid thus equals $308 per month per participant.

Comparing TRS-ActiveCare and ERS. TRS-ActiveCare offers three tiers of coverage to eligible school employees, depending on how much out-of-pocket expense the employee chooses to bear. Plan 3, the richest plan, is comparable to the health insurance provided to state employees through ERS. Since the advent of TRS-ActiveCare in school districts with fewer than 1,000 employees, the percentage of employees in those districts with health coverage comparable to that of state employees has nearly doubled, from 22 percent to 41 percent, according to TRS.

Access to TRS-ActiveCare essentially eliminates regional variations in pricing, making the rate structure for all participating districts the same. However, premium costs will vary for school employees across districts, as some districts may choose to contribute more than the minimum $150 per month. The table on page 3 compares premium costs for public school employees and state employees. The calculation of the maximum cost to employees assumes that school employees apply all $83 per month of their state passthrough money toward health insurance premiums.

Even though ERS covers active and retired state employees in a single risk pool, public school employees under TRS-ActiveCare pay higher premium rates for comparable coverage. Reasons include the lack of claims

Monthly Costs of TRS-ActiveCare Plans vs. ERS Plan

	TRS Plan 1		TRS Plan 2		TRS Plan 3		ERS Plan*	
	Total cost	Maximum employee cost**	Total cost	Maximum employee cost**	Total cost	Maximum employee cost**	Total cost	Maximum employee cost**
Employee only	$237	$ 0***	$315	$ 7	$399	$ 91	$307	$ 0
Employee plus spouse	539	231	717	409	907	599	659	176
Employee plus child(ren)	377	69	502	194	635	327	543	118
Employee plus family	593	285	789	481	997	689	895	294

* Rates for Blue Cross/Blue Shield HealthSelect and HealthSelect Plus.
** If the school district contributes more than the $150 minimum, the employee's cost will be less than shown.
*** Assuming that premium conversion is available, $71 remains to be used at the employee's discretion.

Sources: Teacher Retirement System and Employees Retirement System.

experience on which to base premium rates for school employees; TRS' caution when setting premiums because of the lack of reserve funds in the TRS budget; and factoring for "adverse selection."

Adverse selection results when high-risk districts with expensive claims histories choose to participate in the program while low-risk districts with less expensive claims histories opt out. Because districts with between 501 and 1,000 employees participate in TRS-ActiveCare on an optional basis, premiums had to reflect the potential for adverse selection among these districts. Adverse selection also can occur at an individual level — for example, when employees with expensive claims histories or those with very sick children or spouses buy up to the richest level of coverage, while healthier employees buy into less comprehensive coverage, thus burdening Plan 3 with the greatest number of expensive claims.

Sum-certain contribution. Of primary concern to teacher advocates during the crafting of HB 3343 was the decision to establish a "sum certain" or defined state contribution per school employee per year. That decision cushions the state budget against sharp cost increases but makes it likely that school districts and/or their employees will have to pay for any future cost increases.

In the ERS health plan for state employees, the state guarantees to pay 100 percent of employee premiums and 50 percent of dependent premiums. To change that, the Legislature would have to approve the reduction in the biennial general appropriations act. In TRS-ActiveCare, however, if premium costs exceed the combined total of guaranteed state and district aid, since the state has capped its own liability, school districts or their employees must make up the difference in costs.

Some teacher groups say that sum-certain funding amounts to a form of rationing that values state employees over public school employees. They note that the state's financial exposure for each public school employee's health care is only $1,900 a year, as opposed to $7,200 a year for each state employee, and they advocate closing this gap. Others respond that such comparisons are moot because school employees work for local school districts, not for the state, but that HB 3343 represents a generous first step toward health benefits for school employees. They also note that because school districts are required to contribute at least $1,800 per year per employee, the total benefit to each employee is $3,700 per year.

Passthrough issue

Public school employees may elect to use their $1,000-per-year passthrough from TRS in one of four ways: (1) as salary, (2) as a contribution to a health-care reimbursement account, (3) to buy dependent or spousal coverage, or (4) to buy up to a higher level of coverage. School employees had to make their decisions by August 1, 2002. Those choices could become an important policy issue during the upcoming session. With a looming budget shortfall projected in the billions of dollars, the Legislature could decide to restrict or remove employees' choice of how to use the passthrough.

Neither TRS nor TEA is collecting data on how employees have chosen to use their passthrough dollars. However, preliminary data from the Texas State Teachers Association's annual survey of salaries and benefits, based on responses from about half of the districts, indicate that 80 to 90 percent of school employees have chosen to apply the passthrough to health care.

The election form given to school employees provided two options: taxable compensation or a tax-sheltered contribution to an employer's "cafeteria" health plan. Some advocates claim that school districts are pressuring employees to apply the passthrough to their salaries because that option is easier to administer. Other districts, according to teacher groups, are requiring employees to postpone their choices until January 2003, when U.S. Internal Revenue Service regulations allow a qualifying event for changing or starting new cafeteria plans. In the meantime, some allege that those districts are not distributing passthrough money.

During debate on HB 3343, the House considered an amendment by Rep. Dianne White Delisi that would have restricted the passthrough to health-care options only, such as medical savings accounts or health-care reimbursement. Although the amendment was tabled by a vote of 97-48 on the House floor, a similar proposal could arise during the 2003 legislative session. Amendment supporters argued that the purpose of HB 3343 was to provide health care for the uninsured, and that allowing employees to receive the passthrough as salary could leave health-care needs unaddressed. They said employees could have applied the $1,000 to a menu of options, such as dental, vision, or prescription plans, or to dependent coverage, thus increasing school employees' choices and improving their health-care coverage. Providing a salary option, they argued, could create an unfair advantage for employees who had access to health insurance through their spouses and thus could spend the passthrough money on items other than health care.

Opponents of limiting the passthrough say that allowing school employees to choose whether to use the money to improve their health-care coverage or to supplement their salaries is the fairest, most flexible way to help them. They note that employees who already have health coverage through their spouses still may be spending some of their passthrough money on out-of-pocket heath-care expenses. Furthermore, they say, because TRS has based its premium calculations on the assumption that all passthrough money would be applied to health care, it seems unlikely that school employees would receive premium reductions in exchange for the loss of their passthrough option.

Choice of providers

A major complaint raised by some school districts and their employees during interim hearings has been TRS' selection of Blue Cross/Blue Shield as the sole health-care provider for TRS-ActiveCare. This is of particular concern to employees of 62 school districts in Central Texas where a regional provider, Scott & White, has established a strong presence. These districts and a few others elsewhere in the state contend that HB 3343 will cost them more and eliminate choices. Some school employees said the new health plan will require them to pay out-of-pocket for premiums, whereas previously the district paid the entire premium. Others said that under TRS-ActiveCare, they will have to drive 20 to 30 miles to visit a provider, whereas previously they could visit a regional clinic in the center of town.

Lawmakers may consider whether to mandate the inclusion of regional health-care plans in bidding for TRS-ActiveCare contracts.

In response to these concerns, the TRS board of trustees adopted a resolution in late July that allows a district with 500 or fewer employees to delay coverage under TRS-ActiveCare, as long as the district (1) made comparable coverage available to its employees during the 2001-02 school year, (2) covered at least 50 percent of its employees under the comparable plan(s), and (3)

Estimated Costs for TRS-ActiveCare, Fiscal 2002-03

Cost element	Description/source of funds	Agency	Cost
Startup costs	Startup funds for fiscal 2002 came from a $10 annual health insurance fee assessed from 1993 to 1996 on all active school-district employees. The accumulated balance of $22 million was supplemented with $3 million in general revenue.	TRS	$25.0 million
$1,000-per-year employee passthrough	$83.33 per month in general revenue to every public school employee may be used for salary or deferred compensation, dependent coverage, establishing a health-care reimbursement account, or buying a higher level of coverage.	TRS	$588.7 million
$900-per-year participant insurance allotment	$75 per month to districts for each public school employee who participates in TRS-ActiveCare or any other health plan. Funding flows to districts through school finance formulas, including $103 million of general revenue.	TEA	$515.5 million
District "hold harmless" funding	Extra help for districts that do not gain enough new state aid through school finance formulas to pay the insurance allotment of $900 per year per participant. These generally are districts with high participation rates and relatively low gain through formula adjustments made by HB 3343.	TEA	$26.6 million
Minimum effort transition aid	Funded in part by general revenue and in part by Foundation School Program formula adjustments. Helps districts that cannot meet the minimum contribution of $150 per month per participant. Funding will be phased out over six years, but districts that levy taxes at the maximum allowable rate for maintenance and operations are held harmless permanently.	TRS	$102.4 million
Social Security "hold harmless" funding	Employees who elect to receive $1,000 passthrough as salary must pay federal taxes on it. Districts that participate in Social Security will receive general revenue aid to offset cost of employer matching taxes.	TRS	$1.4 million
Children's Health Insurance Program (CHIP)	Replacement funds (general revenue) for public school employees' children who become ineligible for CHIP after enrollment in TRS-ActiveCare. Federal law prohibits federal financing for children in CHIP if the child has access to a statewide health-care plan.	HHSC	$4.2 million
Total			**$1.3 billion**

Sources: Teacher Retirement System, Texas Education Association, and Legislative Budget Board.

notified TRS by August 15, 2002, of its intention to continue an existing contract. Over the next 16 months, as existing contracts with providers expire, 108 districts that delayed coverage will join TRS-ActiveCare.

Some argued that a delay of coverage until current contracts expired was not enough, but that school districts using regional health-care plans should be allowed to opt out of TRS-ActiveCare until TRS could offer as many choices as ERS offers to state employees. Opponents of this approach noted that actuaries had stressed that only mandatory participation by districts would lower risks and reduce costs. While delaying coverage for some districts might not have a significant impact on systemwide costs in fiscal 2003, they said, a longer-term opt-out provision might make the plan more expensive for other districts in the future.

Mandating regional competition. Some legislators have discussed introducing proposals that would require TRS to include regional health-care plans in the bidding process for TRS-ActiveCare contracts. Supporters of regional competition say the current "one size fits all" plan is causing thousands of school employees to pay hundreds of dollars more for fewer benefits. They say that competition often results in lower prices and better services and that regional bidding would allow employees to maintain existing doctor-patient relationships. They also contend that high premiums and limited access to health-care providers in the current state plan are exacerbating the teacher shortage in smaller districts. Without a statutory mandate, they say, TRS may not feel obligated to allow regional providers to compete.

Opponents of mandating regional competition say that such a measure is unnecessary because the TRS board already has the authority to include regional health plans in bidding for TRS-ActiveCare contracts. They say that limiting the board's administrative flexibility by imposing mandates on the bidding process could create problems in soliciting and negotiating future contracts, and that the TRS board is preparing a Request for Proposals for next school year that would allow regional competition.

Budget uncertainties

Texas is not the only state dealing with rising costs of health insurance for state employees. These cost increases affect private industry as well. According to the *New York Times*, workers signing up for health-care plans for next year can expect the largest rate increases in 10 years.

CalPERS, the California state employee pension fund, which provides health coverage for 1.25 million employees and retirees, projects a 25 percent increase in premiums in 2002. The debate over passing these costs through to participants in the Los Angeles Unified School District (LAUSD) led to the threat of a teacher's strike. Although LAUSD officials found $39 million in surplus funds to cover this year's expenses, they say the district must come up with an additional $79 million to maintain its current level of coverage next year. LAUSD predicts that at present growth rates, annual health coverage costs for Los Angeles school employees alone could reach nearly $1 billion in five years.

TRS' preliminary Legislative Appropriation Request (LAR) for fiscal 2004-05 includes an increase of about $720 million over the current biennium to cover increased costs in the TRS-Care health plan for public school retirees. The LAR also requests $1.4 billion for TRS' portion of TRS-ActiveCare; for fiscal 2003, TRS' allotment for the program was about $693 million. In addition to funding two full years of operation, the request for fiscal 2004-05 reflects an anticipated increase in public school employment due to statewide enrollment growth.

Total expenses for TRS-Active Care in fiscal 2002-03 originally were estimated at $1.3 billion (see table, page 5), but those estimates are subject to change. The estimates assumed 95 percent participation by eligible employees. Because the actual participation rate appears closer to 82 percent, certain cost estimates may drop, such as the amount needed to fund the premium allotment of $900 per year per participant.

No firm estimate of total costs for fiscal 2004-05 is available yet, especially for TEA's portion of the funding, because of the fluidity of school finance formulas and uncertainty about participation rates in the coming biennium. While hold-harmless funding and minimum-effort transition assistance might be expected to decline in future years, according to budget analysts, those figures also will depend on how many schools reach the statutory cap on M&O taxes, which, in turn, depends on whether the Legislature decides to raise the cap. The Legislative Budget Board's official estimate of total program costs for fiscal 2004-05 will be available in January 2003.

— by Dana Jepson

(Colonias, from page 1)

and emergency vehicles, to the more than 1,400 colonias along the border. More than 400,000 people live in these unimproved subdivisions in rural unincorporated areas, mostly in the Lower Rio Grande Valley, where population and traffic are expected to increase in response to economic growth spurred by the North American Free Trade Agreement. Proponents said that funding from bonds backed by the state's credit could enable construction of about 2,000 miles of access roads, helping to make colonias more livable and lift their residents out of poverty.

The Texas Transportation Commission (TTC) on September 26 adopted changes to the rules governing the program, despite objections from a legislative advisory panel comprising border county officials. Members of the panel deemed some of the new rules too restrictive and faulted state highway officials for a lack of prior consultation. TxDOT staff members said the changes to application procedures, project selection criteria, and mechanisms for apportioning funds will make the process more efficient, serve more colonias residents, and ensure that all counties receive some funds.

First round of grants

Earlier this year, TxDOT awarded grants totaling $50 million for 274 projects in the 21 eligible counties. Hidalgo, Cameron, El Paso, and Webb counties will receive almost 80 percent of the total, with Hidalgo County receiving almost 30 percent. No projects have begun construction yet, according to TxDOT.

TxDOT conducted the first round of grant awards using procedures and criteria set forth in the Texas Administrative Code, Title 43, secs. 15.100-15.106. Those rules require the first 50 percent of available funds to be distributed to counties in proportion to their border colonia population, and the remaining 50 percent to be distributed on a project-by-project basis. Among other eligibility criteria, a project must "have one terminus at or within a border colonia and one terminus at a public road." Jack Foster, TxDOT systems planning director, said 80 percent of the first-round funding is being spent on roads within colonias. Many are unpaved county roads, he said, and some colonias will have all their roads paved.

After evaluating and ranking applications, TxDOT allocated bond money in proportion to each county's colonia population, then awarded grants totaling about $24.7 million in February and March 2002. In the competitive phase, based solely on individual project rankings, TxDOT awarded $25.3 million to eight counties in April. Criteria for this phase included colonia population based on the latest estimates from the Texas Water Development Board (TWDB) and the ratio of residents whose property abutted the road projects to the number of roadway miles in the projects. TxDOT officials said that some applications had to be revised because of miscommunication with counties about rules.

Rule changes

The TTC in June gave preliminary approval to new rules designed to address problems that TXDOT staff identified in the first round of funding. During the ensuing comment period, the Border Colonia Advisory Board, chaired by Hidalgo County Judge Eloy Pulido of Edinburg, recommended several revisions. The board members are elected officials representing several counties along the Texas-Mexico border. Sen. Eddie Lucio, chairman of the Subcommittee on Border Affairs of the Senate Business and Commerce Committee, appointed the board in November 2001 to advise the subcommittee on implementation of SB 1296.

The rule changes adopted on September 26 include requiring a separate application for each project; deleting the ratio involving roadway miles and abutting residences; amending the population criterion to include a similar ratio of colonia roadway miles to each colonia's total population; capping project cost at $200,000 per mile (double the standard estimate); guaranteeing each county at least $100,000 per round of funding; allowing any unused funds from the minimum and population allocations to be spent on cost overruns not covered by funding awarded competitively; and granting counties more flexibility in spending the bond funds.

In letters to TxDOT and Sen. Lucio, the colonia advisory board objected to using TWDB population estimates, which it called incomplete and out of date; the data are from 1996. The TTC's order said that TxDOT, the governor, the secretary of state, and other agencies agreed that the TWDB database was "the most appropriate listing of eligible colonias."

The county officials also suggested disbursing unallocated funds among counties by population and allowing counties to submit additional projects for funding consideration, or fully funding partially funded projects, if and when unallocated funds become available. The new rules approved by the TTC allow counties to spend leftover money on other approved colonias road projects.

The advisory board called the $200,000-per-mile maximum too restrictive in some cases, particularly for projects requiring extensive drainage. The commission responded by authorizing TxDOT to grant waivers of the cost-per-mile restriction for projects with exceptional drainage costs.

At a border affairs subcommittee hearing and at TxDOT's two public hearings on the proposed new rules, some critics said the rules were weighted to population more heavily than the Legislature intended and thus tended to penalize smaller counties. The commission agreed and reduced the weight given to population-related criteria in project rankings.

Border counties would like to be able to spend bond money on interior colonias roads that now are ineligible for this funding. The 78th Legislature may consider proposals to change the statutory language to allow paving the greatest possible number of roads. The Governor's Office, however, supports the existing eligiblity rules, noting that the program has only enough money to pave up to 45 percent of substandard colonias roads. TxDOT's Jack Foster said a comprehensive paving program, including drainage, could cost $500 million.

— by Patrick K. Graves

HOUSE RESEARCH ORGANIZATION

TEXAS HOUSE OF REPRESENTATIVES

Steering Committee:

Peggy Hamric, *Chairman*
Roberto Gutierrez, *Vice Chairman*
Dianne White Delisi
Harold Dutton
Bob Hunter
Carl Isett
Mike Krusee
Jim McReynolds
Elliott Naishtat
Joe Pickett
Robert Puente
Elvira Reyna
Bob Turner
G.E. "Buddy" West
Steve Wolens

John H. Reagan Building
Room 420

P.O. Box 2910
Austin, Texas 78768-2910

(512) 463-0752
FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

Staff:

Tom Whatley, *Director;* Greg Martin, *Editor;*
Rita Barr, *Office Manager/Analyst;* Kellie Dworaczyk,
Patrick K. Graves, Dana Jepson, Travis Phillips,
Kelli Soika, *Research Analysts*