

**Pension and Health Benefits Review Commission  
Vote Results  
July 8, 2011**

**A-3868 (Conaway/Vainieri Huttel/Conners)**

Requires insurance coverage in the individual and small employer markets and SHBP and SEHBP for "off-label" uses of certain drugs.

**Motion:** Recommend against enactment. In light of the enactment of Chapter 78, P.L. 2011, the subject of "off-label" uses of certain drugs is a plan design issue and should be referred to the SHBP/SEHBP State Health Benefits Plan Design Committees.

**Discussion:** The bill requires insurance coverage in the individual and small employer markets and SHBP/SEHBP for "off-label" uses of certain drugs. It provides benefits for expenses incurred in prescribing a drug which has not been approved by the FDA if the drug is recognized as medically appropriate. The concern with the bill is that it relies solely on the recommendation that the drug is recognized as being medically appropriate for the specific treatment for which it has been prescribed by the referenced compendia. The fact that an attending practitioner prescribes and approves the drug intervention, or length of treatment does not make the intervention "medically necessary and appropriate." Therefore, the Commission recommends that the subject of "off label" uses of certain drugs be referred to the new SHBP/SEHBP State Health Benefits Plan Design Committee as established by the enactment of Chapter 78.

**A-3998 (Polistina/Amodeo)**

Requires appointed or elected official receive annual salary of \$50,000 or more for position to participate in PERS or DCRP.

**Motion:** Recommend against enactment since the bill may have unintended consequences to municipal and county governments.

**Discussion:** The Commission is concerned that the enactment of this bill could have a negative effect on municipal and county appointed officials. Many of these appointed positions in local government, i.e. deputy municipal clerks; business administrators, etc. are mandated positions that justify the receipt of participation in a retirement program. To remove them from participation in a retirement program may be problematic in retaining employees for these types of positions. In addition, P.L. 2010, c.1 permits PERS membership for such employees on the condition that they in fact work full-time so the \$50,000 limit seems arbitrary. A separate bill may be called for if the goal is to preclude pensions for State Legislators with a salary of \$49,000. A number of recently enacted pension and health benefits reforms were aimed at curtailing pension coverage for elected and appointed officials making this bill unnecessary; in particular, the DCRP was created to curtail tacking, boosting and part of the financial strain on the pension funds. In addition, the provisions of this bill would be applicable to both current and new part-time elected and appointed officials. The State law that provides members a "non-forfeitable right" to receive upon retirement the level of pension benefits that was in place at the time 5 years of pension service was attained may render this bill unenforceable as it applies to those who have already accrued five years of pension service credit. The enactment of P.L. 2010, c. 1 removed the non-forfeitable right to receive benefits as provided under

the laws governing the retirement system or fund, upon the attainment of five years of service credit for members enrolled on or after the effective date of May 21, 2010.

**A-3161 (Johnson)**

Expands health benefits coverage for early intervention services provided through DHSS.

**Motion:** Recommend against enactment since the Commission usually does not support health benefit mandates and recommends that changes to health benefits coverage should be deferred to the SHBP/SEHBP State Health Benefits Plan Design Committee as established by the enactment of Chapter 78.

**Discussion:** The Commission is opposed to this bill since it mandates coverage that will increase the annual employer SHBP/SEHBP costs. The enactment of Chapter 115, P.L. 2009 mandates that the SHBP/SEHBP's coverage for developmental services is limited to covered individuals with autism and other developmental disabilities. This bill will expand this coverage to a covered individual who is eligible for services provided through the Early Intervention System under DHSS for the treatment of a child with a developmental delay who has not been diagnosed as having an autism spectrum disorder or another developmental disability. The New Jersey Early Intervention System (NJEIS), under the Division of Family Health Services, implements the statewide system of services for infants and toddlers, birth to age three, with developmental delays or disabilities, and their families. The Early Intervention System is funded by the State and costs \$100 ml. The enactment of the bill would shift the cost of the family cost share liability to the health care insurer.

**A-3968 (Conaway)**

Restricts health insurers from limiting access to pain medication.

**Motion:** Recommend against enactment since health benefit mandates increase health care costs.

**Discussion:** The bill will increase SHBP/SEHBP employer costs and removes the oversight of the pharmacy benefits manager. It grants the authority to the prescriber, rather than the plan to determine the duration of a step therapy program. This will significantly undercut the value of any step therapy program for these medications because these programs are designed to cover and promote the clinically appropriate and cost effective generic drug or lower-cost brand-name alternative drug before covering the higher cost non-preferred drugs. The plan is in the best position to make these determinations because they have visibility to both the clinical and cost consideration related to a class of drugs. These programs are also seen as an avenue for implementing utilization management rules outside of the influence of any brand manufacturer sales program. Turning the authority for step therapy initiatives over to the prescriber would subvert the intent of the step therapy programs. In addition, step therapy programs can be particularly important when dealing with medications that are more prone to abuse such as certain drugs used in the treatment of pain.

Aside from the SHBP/SEHBP, the bill would mandate the coverage for all health insurance policies that provide coverage for outpatient prescription drugs issued in the State, other than self-insured contracts. Such mandates generally tend to drive

up the cost of health insurance for both the employer provided coverage and individual policies.

**S-2503 (Greenstein)/A-664 (Greenstein)**

Provides non-forfeitable right to post-retirement medical benefits provided by law to certain public employees with 25 years of service.

**Motion:** Recommend against enactment since it may increase the State's total liabilities for post-retirement medical. Recent legislation has addressed this issue.

**Discussion:** The enactment of Chapter 78 P.L. 2011 made sweeping changes to both the pension and health care benefits for public employees. The health benefit provisions of Chapter 78 shifts the active and retired public employee health benefit contributions away from a collectively negotiated arrangement to a legislative mandate. Historically, legislation enacted impacting retired health benefit coverage grandfathered active employees who already accrued 25 years of service, the level of service required to earn employer provided health benefit coverage in retirement, to the same arrangement provided at the time they reached the 25 years service credit level. Chapter 78 not only grandfathers current active public employees with 25 or more years of service from increased health benefit contributions in retirement, it also grandfathers active employees with 20 to 24 years of service.

The enactment of this bill S-2503, would effectively preclude the application of any future premium sharing, or any other SHBP/SEHBP cost containment measure, to any prospective retiree from the PERS, TPAF and ABP who had five years of pension service credit at the time the cost containment measure is adopted, and minimize any anticipated health benefit cost reductions to the State and local employers. In additions, the provisions of this bill apply only to State and local public employees who are members of the PERS, TPAF, and ABP. State employees who are members of the PFRS, SPRS, and JRS along with local employees in the PFRS, are not provided with similar protection.