

Arkansas School Boards Association

ASBA would like to thank the task force for the ability to offer testimony. We recognize that the task force's job is incredibly complex and emotionally charged. We believe successful implementation of possible fixes presented to the Committee will necessitate serious examination of several Arkansas Statutes. To assist the review process, ASBA has put together a list of statutes we believe may require amending or repealing to achieve a lasting fix to the solvency of the public school employee insurance program.

Our suggestions are based on the options presented by the consultants to this committee, which require the Task Force and the General Assembly to make hard choices to resolve this long standing and recurring problem. Employee education and support is an essential cornerstone of transitioning into a revised, successful, health care system. Changing eligibility requirements will necessitate massively increased outreach to help employees understand that the changes are designed to benefit them while also helping to resolve the current health care fiscal crisis. Many of the statutes we address were passed before the Affordable Care Act (ACA) was enacted and were not an issue in their original context, but will need to be addressed to implement the options presented to this committee by the consultants.

Option 1—Removing Eligibility of Part Time Employees:

In reviewing the following statutes, it's very important to consider that when a state statute provides access to a greater number of people than the Federal statute, the state definition controls.

A.C.A. § 6-17-1111:

Subsection (a) needs to be amended due to its lower threshold for health care eligibility than the definition of a full time employee under the ACA. Should the General Assembly wish to remove part time employees from those eligible to enroll in public school employee health insurance (PSEHI), We believe two primary conflicts should be addressed:

1. There is a difference between "hours of service" (under the ACA) and "hours of work" (under Arkansas Statute); the definition of "hours of service" covers more areas than "hours of work". An hour of service includes the time an employee is paid, or expects to be paid, both for performing job duties and for not performing job duties due to vacation, holidays, sick leave, military leave, jury duty, and FMLA leave. This is an important distinction because the potential fines by the IRS for an employer failing to offer coverage to a full time employee are based on the definition of hours of service.
2. The ACA determines eligibility based on a **weekly** calculation of hours of service while A.C.A. § 6-17-1111 grants eligibility on the number of hours worked in a **year**. The ACA requires that employers offer health insurance to employees who average at least thirty (30) hours of service each week. Most classified employees are on a nine (9) month contract which is equal to thirty-six (36) weeks. Those employees would need to average twenty-five (25) hours a week to be eligible for insurance under current Arkansas law. This is below the thirty (30) hours a week threshold set by the ACA.

Suggested fix: change A.C.A. § 6-17-1111(a) to mirror the ACA required 30 hours of service per week.

A.C.A. § 6-17-1116:

Subsection (a) provides three definitions for a full time bus driver and subsection (b) permits full time bus drivers to be eligible to enroll in PSEHI. The following is an explanation of how each statutory definition of a full time bus driver under Arkansas law allows the employee to be eligible for coverage who would not be eligible under the ACA:

(a)(1) A person who contracts with a public school district to operate a school bus for at least seven hundred twenty (720) hours during the school year;

Since standard contract length for a bus driver is nine (9) months, or thirty-six (36) weeks, a bus driver only needs to work an average of twenty (20) hours a week to reach the yearly requirement. The ACA requires an average of thirty (30) hours of service a week to be considered a full time employee.

(a)(2) A person whose primary source of income during the school year is obtained by operating a school bus for a public school district;

This definition of a full time bus driver is problematic when considered with the thirty (30) hours of service eligibility standard under the ACA. Basing eligibility on an individual's primary source of income would allow someone to contract as a bus driver for ten (10) hours a week (or even less) and be eligible for health insurance if the individual had no other personal income.

(a)(3) A person who contracts with a public school district to operate a school bus and is designated by the superintendent as a full-time school bus driver, regardless of the number of hours for which the person contracted;

This definition provides no standard for eligibility determination and requires no weekly minimum number of hours in order for the individual to be eligible for PSEHI.

Suggested fix: repeal the entire section.

A.C.A. § 6-17-2201 et seq.:

These statutes are important because they govern a classified employee's eligibility to receive several different benefits. Arkansas's definition of a full time employee as one who works at least twenty (20) hours a week is a lower threshold than the thirty (30) hours weekly required under the ACA. We believe standardization of statutes defining a full time employee is necessary to protect employers from adverse legal consequences (IRS fines related to the ACA or awards of damages) and for employee consistency of understanding.

A.C.A. § 6-17-1702(2):

This statute contains the same definition as A.C.A. § 6-17-2201 et seq. and should be amended to match in order to prevent confusion around the idea of "You're a full time employee, but you're not a full time employee."

Suggested fix: replace the statutes' definition of full time as twenty (20) hours worked with thirty (30) hours of service required under the ACA and include the definition of "service hours" in A.C.A. § 6-17-2202.

Option 2—Retired Employee Coverage:

A.C.A. § 6-17-1112:

This section should be considered in any discussion of policy changes regarding public school retiree health insurance as it is the primary statute to address public school retirees' health insurance.

Option 3—Removing Eligibility of Employee Spouses:

A.C.A. § 21-5-407:

The current statutory definition of dependents eligible to enroll on an employee's insurance includes spouses. The ACA requires employers offer eligible employees the option of adding their dependents to their health insurance plan. The ACA's definition of dependant includes the sons and daughters, including adopted sons and daughters, who are under the age of twenty-six (26) of an eligible employee. The ACA does not require employers to offer eligible employees the option of adding their spouses to their health insurance plan. Consequently, it is statutorily permissible to not offer eligible employees a plan that includes spouses but under current State and Public School Life and Health Insurance Program Board regulations spouses are eligible.

Suggested fix: The current statutory definition for a dependant is “a member of a participant's family who is eligible for coverage under the State and Public School Life and Health Insurance Program”. However, “family” is not statutorily defined which allows two possible solutions

1) The State and Public School Life and Health Insurance Program Board could, through regulation, determine spouses of eligible employees to be ineligible to enroll. Under this suggestion, no statutory action is required should the task force desire to remove spouses from being eligible to enroll.

2) A.C.A. § 21-5-407(3) could be amended to statutorily make spouses ineligible in the same manner as 1). This option, however would be more difficult due to the statute's current applicability to both school and state employees.

Additional Health Insurance Issues:

A.C.A. § 6-17-1117 and A.C.A. § 21-5-405:

Portions of these statutes create conflicting obligations for districts. A.C.A. § 21-5-405(b)(4)(C)(i) requires that a district spend all funding allocated through the matrix for health care to either:

- a. increase the district's contribution for participating employees enrolled in PSEHI; or
- b. contribute to a participating employee's HSA.

The conflict arises from A.C.A. § 6-17-1117(c)(1)(B) requirement that a district pay the same contribution rate for all eligible employees enrolled in the PSEHI. While we do not know the correct interpretation of “contribution rate” – is it a strict dollar amount or is it the same percentage contribution – there is serious implementation issue that warrants legislative attention. Under the current Bronze employee only plan, the employee's monthly required contribution is only \$11.00. It is possible, if not likely, that the contribution required under A.C.A. § 21-5-405(b)(4)(C)(i) would exceed \$11.00. It is also possible that the employee has no HSA. How does the district make equal contributions to a Gold plan employee and to the Bronze employee when they cannot contribute more than \$11.00 to that employee?

Suggested fix: 1) make HSA's mandatory for Bronze plan enrollees.

2) change the equal contribution requirement under A.C.A. § 6-17-1117(c)(1)(B)

A.C.A. § 21-5-401 and A.C.A. § 21-5-418:

ASBA agrees that the absolute most important part of restoring the PSEHI program is educating public school employees about the pros and cons of available health insurance options. A.C.A. § 21-5-401(b)(3)(D) codifies the importance of providing employees relevant and meaningful education about health insurance.

Additionally, A.C.A. § 21-5-418(c) strongly supports the idea that educating employees on health insurance is a necessity. We applaud all efforts to educate employees about their insurance options.

Conclusion

The issues we have raised require the Task Force and the General Assembly to make hard choices to resolve this long standing and recurring problem. Changing eligibility requirements will necessitate massively increased outreach to help employees understand that the changes are designed to benefit them while also helping to resolve the current health care fiscal crisis.