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Local Finance Notice

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Implementing the 2011 Pension and Health Benefit Reforms (P.L. 2011 c. 78)

(This Notice supersedes and replaces in its entirety Local Finance Notice 2011-20 originally issued on July 25, 2011. Local officials should review this entire Notice as it provides elaboration and supplemental guidance.)

I. Introduction

This Notice covers the implementation of Chapter 78 of the Laws of 2011 (the law). This is landmark legislation affecting the long-term health of the State's public employee pension systems, and increases the share of health benefits coverage paid by public employees and retirees who receive employer paid health benefits. The law changes the health care contribution standards set in Chapter 2 of 2010, by increasing the amounts contributed and expanding the range of employees and retirees covered by the contribution requirement.

This Notice is directed to local units (municipalities, counties, local authorities, and related public agencies) that provide health care coverage to their employees. In doing so, it primarily references Section 42 of the law. This section describes the implementation of the health care contributions for local units that do not provide health care coverage from the SHBP. Section 42 is consistent with Section 40, which applies to members of State administered health care plans (SHBP and SEHBP), including local units that are members.

While it focuses on local units, the content of the Notice is also consistent with other related sections for employers that are not members of a State health benefit plan: Section 41, which covers local boards of education; Section 43, which covers independent state authorities and commissions; and Section 44, which covers entities under the Local Authorities Fiscal Control Act (which are also local units covered under Section 42).

The law also covers all forms of health insurance; state-run (i.e., SHBP), commercial insurer, jointly with other local units (through a health insurance fund), and self-insured. Contribution requirements apply to all forms of coverage.

This Notice should be construed as authoritative guidance, not formal legal advice. It is anticipated there may be local circumstances that may require interpretation by local legal counsel in the event this or subsequent agency guidance is inconclusive.

The Division may issue further guidance, and interested parties should check the Division's website periodically for updates. Additional guidance will be issued through the Division's GovConnect system and through DLGS E-Mail News.

Recipients are asked to share this Notice with their Human Resources Offices and any subordinate agencies, boards, or commissions that handle their own payroll.

Contents of Notice: The Notice is divided into the following sections:

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A. Health Benefit Contribution Schedules
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Online resources: The Division of Pensions and Benefits (DPB) is maintaining a regularly updated web page with resources concerning the law, including a Frequently Asked Questions page concerning health benefits. These resources are as follows:

- Pensions information site: www.nj.gov/treasury/pensions/reform-2011.shtml
- Summary of full law at: www.nj.gov/treasury/pensions/newlaw11.shtml#chap78
- Full text of c.78: www.nj.gov/treasury/pensions/pdf/laws/chapt78-2011.pdf
- DLGS Health Benefit Reform Links: www.state.nj.us/dca/lgs/research/reschmenu.shtml#health

Use of Terminology: As used in this Notice, the following are commonly used terms and their meanings:

Base salary is the salary on which pension contribution or equivalent Defined Contribution Retirement Program (DCRP) salary is based (or would be if the employee was enrolled). However, for employees hired after July of 2007 for whom pensionable salary is limited to the salary on which social security contributions are based, the employee's total, pension plus DCRP eligible base salary would be used. It would also be equal to the annualized amount on which an hourly rate-based salary is based.

- *Chapter 2* refers generally to the 2010 legislation that required, starting in May of 2010, or when collective negotiation contracts expired, employees to make a health care contribution of 1.5% of their base salary.
- *Chapter 78* refers generally to Chapter 78 of the Laws of 2011, the pension and health benefits reform law addressed by this Notice.
- *CNA* refers to a "collective negotiations agreement," a contract between the public employer and a union, negotiated pursuant to the Public Employment Relations Act. It does not include individual employment agreements with individual employees.
- *Effective date* is 6/28/11. The law is effective on that date for employees not under a CNA, and upon contract expiration for employees with a CNA.
- *Implementation or implementation date*: Section 80 of the law allows employers time for necessary administrative actions to implement the increased employee contributions. When implemented after the effective date, there is no retroactive impact (i.e., when pension contributions start on October 1, the payment is not retroactive to July 1). The provision allows for administrative convenience and does not affect the effective date. For example, for employees not covered by a CNA, if the first year deduction was started on October 1, the implementation date of the second year increase in contributions will be July 1, 2012.
- *SHBP* is the State Health Benefits Program and the reference also includes the School Employees' Health Benefit Program (SEHBP).
- *Health benefit contribution* is the amount an employee or retiree contributes toward premium for health benefits. The amount of contribution is the higher of 1.5% of base salary (Chapter 2), or Chapter 78, s.39 (subject to phase-in requirements of sections 40-44), or any locally or contractually required contribution that applies to an employee.
- *(x)* Letters in parenthesis refer to the related subsection of Section 42, or if a number, the section number of Chapter 78.

II. Health Benefit Contribution Schedule (Section 39)

Section 39 of the law details the formula for calculating the employee health benefit contribution. The full contribution tables are included in this Notice as Appendix A and are available online.

The formula is based on:

- Type of coverage: family, employee plus (children, spouse, partner), or individual employee, or their equivalents; and,
- Base salary, which determines the percent of premium cost that is contributed for each type of coverage; and,
- Cost of coverage (premium).

The minimum and maximum percentages, based on the type of coverage and impact of income range at full (fourth year) implementation, are as follows:

Type of Coverage	First Salary Bracket	% of premium at lowest salary bracket	Highest Salary (and over)	Maximum % of premium paid
Employee	< than $20,000	4.5%	$95,000	35%
Employee plus	< than $25,000	3.5%	$100,000	35%
Family	< than $25,000	3.0%	$110,000	35%

The cost of coverage is the premium or periodic charges and is calculated differently for local units that are members of SHBP and those that are not. **For SHBP employers**, the cost of coverage is the premium or periodic charges for medical and prescription drug plan for each type of coverage. Rates are those used for the calendar year in effect at the time of salary payment. If the local unit participates in the SHBP to provide medical coverage to its employees and uses a separate, locally contracted prescription benefit program, the sum of both premiums is used. The Division of Pensions and Benefits has posted online retirement calculators that can assist in calculating an employee's contribution for each health plan option.

For non-SHBP employers, the law requires that the cost of coverage includes the premium or periodic charges for all health care benefits including medical, prescription, dental, vision, etc., for each type of coverage. Employer contributions toward employee benefits that are insurance policies, such as long-term care, or disability policies are not included in the cost of coverage.

Health Benefit Contribution Calculation: The percent of premium contribution (derived from base salary or retirement allowance and type of coverage tables from Section 39) is multiplied by the total premium for the cost of the coverage received by each employee or retiree. For part-time employees that work hourly, use the base salary to determine the percentage of contribution. If not enrolled in a pension system, estimate the number of work hours. If type of coverage or base salary changes during the year, the deduction would be changed at the same time, as appropriate.

> Example: an individual with family coverage and base salary of $72,500 pays 22% of the cost of the family coverage, when fully implemented in the fourth year. The cost of family coverage will depend on if the employer is a SHBP participating employer or not, since the cost of coverage calculation is different if the employer is an SHBP member or not.

For payroll purposes, the contribution is treated as a payroll deduction (i.e., like the pension deduction) and remitted as the health care provider requires. Self-insured programs should transfer funds from the payroll agency to the self-insured trust fund no less than quarterly. For budget purposes, the health insurance line item should include only the net amount of the employer's cost. For accounting purposes, reimbursements to the health insurance line item appropriation may be made to facilitate the payment of health insurance bills only if the local unit can pay the bill from a single account.

Impact on Local Unit Self-Insured Programs: Many local units provide their employee health insurance on a self-insured basis. While these programs are not currently regulated (beyond routine financial reporting requirements), the implementation of Chapter 78 requires that these programs establish premiums or periodic charges on which the employee contributions will be calculated. The premiums or periodic charges should include all employer-borne health benefit related costs in order to adequately account for these costs on a per employee basis.

These programs will need to establish premiums or periodic charges for each coverage tier (individual, employee plus, and family or equivalents). There are two approaches to this: establish premiums or periodic charges by working with the health benefits professional who guides the plan, or using existing COBRA premiums. COBRA premiums are calculated pursuant to one of the two permitted models under Internal Revenue Code Section 4980B(f)(4), which is reprinted as Appendix D of this Notice.

Existing COBRA rates should deduct the two percent administrative fee charged to separated employees who receive COBRA benefits. Local units using a self-insured program should consult with their third-party administrators or plan designers to develop an acceptable premium model.

"Reopening" of Contracts: Chapter 78 (sections 40-42) requires that any "extension, alteration, re-opening, amendment, or other adjustment to a CNA" in effect or expired on 6/28/11 is treated as a new CNA, requiring immediate implementation of c.78. Questions have been raised about the impact of this clause on circumstances such as adding new job titles and setting their wage rates, agreeing to continue previously negotiated sidebar agreements that may be expiring in ongoing contracts, or negotiating concessions to avoid layoffs.

While guidance on such individual circumstances cannot be provided by State agencies, they should be addressed by the legal advisors of the parties based on their particular circumstances and contract language.

III. Contribution Requirements (Sections 42 and 44)

Section 42 addresses: employee health care contributions for existing employees who were employed on the effective date, a phase-in of contributions, the treatment of employees with CNAs, and, treatment of employees without CNA coverage. The following are the key elements of employee contributions:

1. As of 6/28/11 the minimum health benefits contributions established under Section 39 are not negotiable or locally set for four years, or four years from the expiration of any contracts in effect on 6/28/11
2. All employees receiving health benefits will contribute to the cost of health benefits, sooner or later.
3. The employee health benefit contribution takes effect:
    a. Immediately (subject to necessary administrative actions for collection being implemented by the employer) when a CNA expired before 6/28/11 and a successor agreement had not been agreed to; or,
    b. As soon as a CNA that was in effect on the effective date expires.

The fact that a successor CNA of an expired contract may have been negotiated and was in some stage of approval (including pending or interest arbitration awards that were not implemented) or a successor agreement for a contract that expired after June 28 was approved and ready for implementation, has no impact on required health benefit contributions. In these cases, the c.78 health care contributions take effect immediately.

4. When a contract that requires a health benefits contribution higher than c.78 expires, the requirement remains in effect until a subsequent contract amends or removes it, or until the c.78 requirement is greater.
5. When a CNA that was in effect on 6/28 expires or is in almost any way modified, the contribution required by section 39 is phased in at 25% a year.

The following table summarizes the different circumstances about employee contributions and collective negotiation agreements:

Employee Contribution and CNA Status Principles Table

Status of contract/employee	CNA expires after 6/28	CNA expired prior to 6/28
Existing employee as of 6/28/11*	While the CNA is in effect the employee makes health benefits contributions pursuant to current contract provisions until it expires; then implement c.78 phase-in.	Employee makes health benefits contributions at the c. 78 Year 1 phase-in rate upon implementation regardless of: when new contact commences, what a previously negotiated contract provided, or contract negotiation status.
New employee hired after 6/28/11*	While the CNA is in effect the employee makes health benefits contributions pursuant to current contract provisions until it expires; then implement c.78 phase-in. **For employees hired after the CNA expires**: the employee makes health benefits contributions at the c. 78 Year 4 phase-in rate (full contribution) upon starting employment; *except that, if an employee is hired the day after a CNA expires, the employee contributes at the Year 1 phase-in rate (this employee is considered an existing employee on the day the c.78 health care contribution commences)*	Employee makes health benefits contribution at the c.78 Year 4 phase-in rate (full contribution) upon starting employment.

* See the section below on "existing employment" for supplemental guidance on employees not receiving a paycheck when c.78 is implemented.

1) Employees employed on the date the c. 78 health care contribution commences: The date the c.78 contribution commences varies; it is on the implementation date for employees not under a CNA and the day after a CNA ends for CNAs in effect on June 28, 2011. Existing employees are subject to a four year phase-in of the full contribution amount. The following describes employment circumstances that may affect whether the phase-in applies to certain employees:

a) An employee is someone who appears on the employer's regular payroll and receives a salary or wages. (N.J.S.A. 52:14.-17.26). An existing employee includes:

- An employee who has not been formally terminated, but continues to receive employer-paid benefits while not receiving salary and has rights to return
- 10-month school employees who continue to receive employer-paid health benefits over the summer until employment resumes in September
- Employees receiving worker compensation benefits
- Employees on voluntary unpaid leave who have rights to return and who maintain health benefits through COBRA payments

b) Conversely, an employee is not an existing employee when terminated for economic reasons and the determination to return is the employer's, not the employee's, notwithstanding that the employee makes COBRA payments. Similarly, an employee who ceases employment over the summer and there is a formal break in the employment relationship, i.e., the employee receives unemployment compensation, would not be treated as an existing employee.

c) The employer needs to review the individual circumstances involved for each employee and make decisions based on those facts. In these cases, if the employee is represented by a collective negotiations agreement, a dispute over the employer's action on the matter may be the subject of an appropriate filing with the Public Employment Relations Commission.

2) When contributions commence *(a)*, the following applies to all employees:

a. Payment starts as soon as locally implemented without any retroactive payment. Employers are expected to use due diligence to work with staff and vendors to implement the deduction *(s.80).*

b. If an existing 1.5% of base salary contribution or locally negotiated contribution is greater than the s. 39 health benefit contribution, that amount is paid until the new contribution is greater *(d).* The c. 78 contribution does not add another layer of contributions on top of the 1.5% of base salary contribution, nor does it reduce any locally negotiated higher amount.

3) Employees who receive health benefits and are not covered by a CNA in effect on the effective date:

Existing employees (including employees working under expired CNAs) are required to make a phased-in health benefit contribution pursuant to section 39 through 43 (as applicable). Employees not covered by a CNA but whose health benefit contributions are tied by local policy or practice to a CNA that has not expired as of the effective date are also required to make a phased-in health benefit contribution. The contributions begin as soon as it can be implemented locally *(d1)*, regardless of when a successor CNA is finalized. Existing employees covered by an individual employment agreement are covered under #5 below.

New employees who begin work on or after the effective date pay the **full health care contribution** pursuant to section 39, without regard to the phase-in. This includes new employees hired between June 28 and the time an expired CNA has its successor agreement finalized.

4) For employees covered by CNAs in effect on the effective date:

a. The four-year phase-in starts upon expiration of the contract. Sections 40-42 apply during the full four-year period as if it were part of the successor contract. Once fully phased-in (after year 4 is completed), the benefit contribution amount can be negotiated locally. At that time, the benefit is treated as part of the base contract and can be negotiated as any other benefit.

b. New employees whose positions are covered by an existing CNA in effect on June 28, 2011, and begin work on or after the effective date are covered by the contract and their contribution commences upon expiration of the CNA, at which time the four-year phase begins. They are treated the same as employees who are already employed and covered by a CNA.

c. If an expired contract was under negotiation as of the effective date and the final settlement includes retroactive salaries, the retroactive salary calculation must take into account the effect the salary increase has on the health benefit contribution back to the date when the new salary took effect (but no earlier than the implementation date of the new contributions; administratively the adjustment is treated as if it were a retroactive pension payment)

d. If an employee in one bargaining unit changes to another bargaining unit (i.e., due to promotion or title change), the employee will immediately change to the provisions of the contract of the new bargaining unit.

e. Existing contracts that are extended, altered, reopened, amended, or otherwise adjusted are considered new agreements (e) and would be subject to immediate phase-in (42a).

5) Employees with individual employment agreements begin phasing in c.78 of the effective date (and subject to implementation) unless local legal counsel determines that, under the facts and circumstances of the particular IEA, applying c.78 would result in an impermissible contract impairment.

6) A local unit can implement an alternate employee contribution, if it provides equal or greater savings, and approval is granted by the DLGS (or the Department of Education for boards of education) and filed with the DPB*(c).* This is covered below in Part VI.

7) Employees that change organizations: If an employee is transferred or assigned to another government employer through an agreement between employers (i.e., bona fide shared services, inter-government transfer, service consolidation, etc.), and the work being performed is effectively continuous, the change would not trigger a break in employment and the employee would not be treated as a new employee for c.78 purposes.

However, where there is no such agreement between employers, a change from state to local employment, or from one local employer to a different local employer is new employment and the employee will be subject immediately to the Year 4 phase-in rate (full contribution). The fact that the former and new employer are both employers that participate in the SHBP/SEHBP is not determinative of the employee's status as an existing employee for purposes of the health benefits contribution.

IV. Retirement Health Benefits (Sections 40 and 42 through 44)

N.J.S.A. 52:14-17.38 (for SHBP members) and 40A:10-23 (for all other local units) allow employers to assume payment obligations for health care benefits in retirement when various eligibility criteria are met. They are often referred to as "Chapter 88" or "Chapter 48" and include so-called "62/15" (age/years of service) health care retirement benefits.

Chapter 78 requires, with some important exceptions, all public employees, that retire after the effective date and receive employer paid health benefits, to make a health benefits contribution, paid to their employer as a deduction from their retirement benefit. A key exception is, in the absence of a local unit requirement to make a contribution that the c.78 requirement for retiree health insurance contributions **does not apply to employees that have 20 years or more of service in a state or local retirement system as of the effective date and meet the eligibility requirements of the employer pursuant to N.J.S.A. 40A:10-23, (i.e., 62/15 or 25 yrs) (b3).**

Thus, the contribution requirement affects most employees with less than 20 years of service as of the effective date. When these employees retire, they shall have deducted from their retirement allowance the health benefit contribution, **using the retirement allowance** as if it were the base salary *(b1)*.

Thus, local unit employees that receive retirement health care paid for by their employers (as per N.J.S.A. 40A:10-23 or similar law) **are exempt from the health benefits contribution required by c.78** if:

1) They are covered or connected to a CNA; **and**,
2) They reach the age/years of service requirements (at least 62/15, pursuant to an approved local policy) for the **benefit no later** than the expiration of a contract that was in force on the effective date; **or,**
3) In the absence of a CNA, they reached the required age/years of service requirements (at least 62/15, pursuant to an approved local policy) for the benefit prior to the effective date; **or**
4) They had 20 or more years of creditable service in one or more State or locally-administered retirement systems on the effective date.

Regardless of CNA status, the amount paid by a retire, not grandfathered by the foregoing, is based on the benefit in effect at the time the employee **becomes eligible for the benefit,** provided that the retiree pays at a minimum the contribution required by Chapter 78. As these can vary case-by-case, local officials should be sure to diligently maintain records of benefits in effect when employees reach retirement benefit eligibility.

It is possible there are some local units that have plans or practices that are not consistent with N.J.S.A. 40A:10-23 or have other practices that are not consistent with the law. In these cases, local unit legal advisors should carefully review the law to determine how it should be applied locally and take the opportunity to bring their plans into compliance with this statute.

V. Section 125 Plans

The law expands existing law concerning local unit employers (including boards of education) and the creation of "cafeteria plans" for their employees pursuant to Section 125 of the Internal Revenue Code. Initially authorized

for use by local units in 2007 (as part of P.L. 2007, c.62), it allowed local units the option of establishing these plans, often referred to as cafeteria plans. The plans allow employee and certain employer payments toward employee benefits to be taken as "pre-tax" benefits – that is, not subject to federal income taxes.

The law now **requires** local unit employers to establish a cafeteria plan for medical or dental expenses not covered by a health benefits plan. This may be accomplished through a Flexible Spending Account (FSA). A FSA allows an employee to voluntarily set aside a portion of their earnings to pay for qualified medical expenses as established in the cafeteria plan. Money deducted from an employee's pay into a FSA is also not subject to payroll taxes.

Under a FSA, the employer segregates employee funds and creates a system that permits an employee to submit for reimbursement of the set-aside expenses or issues a "benefit card" that can be used to pay for certain qualified expenses (as in a debit card). Set-aside expenses can include medical or pharmaceutical co-payments or medical goods or services not covered by the plan.

The law does not provide authority for the employer to charge employees for the service. However, any funds in an employee's FSA not used by the end of the plan year revert to the employer and may be used to cover or assist with the administrative costs. In addition, for every dollar that employees allocate to their FSA, the employer is able to reduce its own appropriation for its FICA tax payment responsibilities, as the employer will pay reduced taxes.

Employers may also establish a Premium Option Plan (POP). The POP formalizes the treatment of employee contributions toward health benefits as payroll contributions before federal income and FICA (Social Security and Medicare) taxes are calculated. Participation by the employee, however, is voluntary as some employees may wish to pay their contributions or premiums share expenses from after tax dollars. As a way to simplify administration of the program, the State automatically enrolls all its employees in the POP and gives employees the opportunity to opt-out. Some employees choose not to participate in Section 125 plans because it lowers the annual earnings against which Social Security deductions are made. These employees should consider the financial advantages of saving on taxes now, compared to any slight reduction in future Social Security benefits.

The law also permits local units to offer Dependent Care Flexible Spending Accounts for certain expenses used to care for dependents who live with the employee while the employee is at work. While this most commonly means child care for children under the age of 13, it can also be used for children of any age who are physically or mentally incapable of self-care, as well as adult day care for senior citizen dependents who live with the employee, such as parents or grandparents. Additionally, the person or persons on whom the dependent care funds are spent must be able to be claimed as a dependent on the employee's federal tax return. As with the medical FSA, funds not used by the end of the plan year revert to the employer.

These programs should be created as soon as administratively practical. Contracts for these programs are subject to the insurance provisions of the Local Public Contracts Law and should be procured competitively.

In all these cases, and in particular for dependent care programs, local units should consult with a legal advisor or a qualified risk management advisor in establishing a plan and providing information to employees. Local units that participate in a joint health insurance fund should check with their Fund Administrator regarding assistance with the creation of cafeteria plans. There are also numerous employee and health benefit program advisors who can provide assistance and model documents for establishing cafeteria plans.

Basic information on Section 125 Plans is available on the IRS website. Detailed Information on State government's implementation of the three programs is available in DPB Fact Sheet # 44, Tax$ave. Appendix C of this Notice displays the Section 125 requirements and the changes from the original 2007 language.

VI. Alternate Employee Health Care Contribution

The law *(42c)* permits local units to develop alternate employee health care contributions as part of a CNA. The alternate is health care contribution other than the percentage required by sections 40-44, as appropriate to the employer. To implement an alternate health care contribution, the employer must document that it will result in annual savings that will equal or exceed the savings that would have been realized if the c.78, s. 39 (as appropriately applied through sections 40-44) health care contribution model were used, and exceed savings if one of the new SHBP plan designs were implemented instead. The alternate contribution can be applied to other employees that are not covered by the CNA. The law does not allow an alternate contribution in the absence of a CNA.

To implement an alternate health care contribution, employers must consider the following:

- Authority is granted for a local unit to enter into contracts to provide health care benefits as required by a CNA.
- The CNA can provide for contributions different from the health benefit contribution by employees and retirees under s.39, IF:
    1. Total aggregate savings during the term of that agreement from contributions or plan design for covered lives (employees, retirees, and others that fall under it) EQUALS or exceeds…
    2. …the annual savings that would have resulted had employees and retirees made the c. 78, s. 39 contributions; PLUS
    3. …the difference between the cost of the employer's plan and the cost of enrolling employees in the SHBP once the new plan designs have been implemented (section 47 and 48). The State has adopted several new SHBP plan design options to SHBP covered employees starting January 1, 2012.

The Division of Local Government Services (Department of Education for public schools) must approve or deny the alternate contribution model within 30 days of filing or it will be deemed approved. The Division (for local units) and the Department of Education (for boards of education) will release guidelines for submitting alternate health benefit contribution proposals.

VII. Other Health Benefit Related Elements

The law includes other provisions regarding health care programs. Provisions with particular regard to local units include the following:

1) The SHBP has approved optional plan designs that vary by out-of-pocket costs (co-pays, deductibles), plus a "high deductible" plan (s.47). Open enrollment is planned for the Fall of 2011 with the new plan designs taking effect 1/1/12. Non-SHBP members are not required to provide alternate plan designs, but nothing prevents them from doing so.

2) The law provides directive language that affects the negotiation of CNAs after full implementation of the health benefit contribution (s.78 and 79). Once the fourth year has been completed (100% of the required contribution has been paid for a year), the law provides that:

    a. Negotiations for the next contract shall be conducted as if the full contribution was a part of the previous contract; and

    b. All the provisions of sections 39 and 42 remain in place until fully phased-in; and

    c. Once sections 39 and 42 are fully implemented, the contribution structure is negotiable, starting from the point of full implementation

3) Impact on wavier payments (local policies that provide payments to employees in lieu of taking health care benefits): Chapter 78 does not make any changes to existing law or practice concerning waivers as allowed in N.J.S.A. 40A:10-17.1. Under that law, waivers continue to be limited to "25 percent or $5,000, whichever is less, **of the amount saved** (by the local unit), because of the employee's waiver of coverage." Because the calculation is based on the amount saved by the employer, the waiver calculation should first reduce the premium cost by the amount the employee would be contributing if they took the benefit to calculate the waiver amount.

VIII. Pension System Impacts

The Division of Pensions and Benefits has posted details concerning changes to employee pension contributions and the future governance and funding of the pension plans on its website. While the governance and funding issues are beyond the scope of this Notice, the following summarizes changes in employee contribution requirements.

- PERS member contributions will increase one percent immediately, with an additional one percent phased-in over 7 years, starting on July 1, 2012 (s.10). PFRS members will immediately see an increase in their pension contribution to 10% (s.15). To facilitate the administration of the initial increase, DPB has determined that the increase will go into effect with the first payroll in October 2011 (which is reported to the Division as compensation during the 4th calendar quarter of 2011) and will not be retroactive.

- The law also changes retirement benefits for those who become members of the retirement systems after the effective date. For PERS members, the new retirement age is 65. The only PERS early retirement program will be retirement with at least 30 years of service credit and an allowance reduction of ¼% for each month the employee retires before 65 (s.18). PFRS members can retire with 60% of final compensation plus 1% times the number of years over 25, but less than 30 (s.19). An employee's pension "membership tier" (PERS, PFRS, TPAF) also plays a role in pension benefits.

- The law also repeals laws (N.J.S.A. 43:15A-47.2 and 43:16A-5.1) that permitted elected officials to retire from PERS or PFRS if they have other service credit in the retirement system and continue their employment as an elected official. Now, to be eligible to retire, the member must terminate all PERS or PFRS covered service. Details on these and other effects of the new pension laws are online on the DPB website.

IX. In Closing…

Chapter 78 implements critical state policies that affect the long-term financial stability of the State and our local units. Implementing Chapter 78 provides challenges for local unit human resource administration personnel. It is important that local officials take the time to thoroughly review and apply this Notice and use DPB online guidance to assist in their efforts.

The Divisions of Local Government Services and Pensions and Benefits will continue participating in professional development seminars and webinars to review the law and its implementation issues. Information on these events will be posted on the Division's GovConnect General News page.

If local unit officials have questions not covered in this material, they are advised to review the DPB website and Health Insurance FAQ, and check back frequently for updates. Emails concerning pension or SHBP employer questions can be sent to pensions.nj@treas.state.nj.us. Health insurance questions for non-SHBP members can be sent to dlgs@dca.state.nj.us.

Approved: Thomas H. Neff, Director, Division of Local Government Services

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4	online retirement calculators	www.nj.gov/treasury/pensions/hb-percentage-home2012.shtml
10	IRS Section 125 Plans FAQ	www.irs.gov/govt/fslg/article/0,,id=112720,00.html
10	DPB Fact Sheet # 44, Tax$ave	www.nj.gov/treasury/pensions/epbam/exhibits/factsheets/fact44.pdf
12	Details concerning changes	http://www.nj.gov/treasury/pensions/reform-2011.shtml
12	PERS	http://www.nj.gov/treasury/pensions/pdf/sc0853-pers-tpaf-tier-chart.pdf
12	PFRS	http://www.nj.gov/treasury/pensions/pdf/sc0864-pfrs-tier-chart.pdf
12	TPAF	http://www.nj.gov/treasury/pensions/pdf/sc0853-pers-tpaf-tier-chart.pdf
12	DPB Website	http://www.nj.gov/treasury/pensions/reform-2011.shtml
1	DLGS GovConnect General News	http://www.nj.gov/govconnect/news/general/

Appendix A – Health Benefit Contribution Schedules (1 of 3)

How to use these tables:

1. The following three tables are used to determine the percent of the health benefit cost an employee contributes towards during the phase-in period and the full payment requirement (4th year). The tables cover single, employee "plus" (children, spouse, or partner), and family coverage.

2. Use the table that reflects the type of coverage chosen by the employee; then find the employee's base salary within the given ranges. The percent of cost of the health care benefit is the percentage based on the implementation year (year one through four).

3. Regardless, the employee's contribution is the higher of 1.5% of base salary or the amount of health care costs based on the table calculation.

SINGLE COVERAGE

Salary Range	Year 1	Year 2	Year 3	Year 4
less than 20,000	1.13%	2.25%	3.38%	4.50%
20,000-24,999.99	1.38%	2.75%	4.13%	5.50%
25,000-29,999.99	1.88%	3.75%	5.63%	7.50%
30,000-34,999.99	2.50%	5.00%	7.50%	10.00%
35,000-39,999.99	2.75%	5.50%	8.25%	11.00%
40,000-44,999.99	3.00%	6.00%	9.00%	12.00%
45,000-49,999.99	3.50%	7.00%	10.50%	14.00%
50,000-54,999.99	5.00%	10.00%	15.00%	20.00%
55,000-59,999.99	5.75%	11.50%	17.25%	23.00%
60,000-64,999.99	6.75%	13.50%	20.25%	27.00%
65,000-69,999.99	7.25%	14.50%	21.75%	29.00%
70,000-74,999.99	8.00%	16.00%	24.00%	32.00%
75,000-79,999.99	8.25%	16.50%	24.75%	33.00%
80,000-94,999.99	8.50%	17.00%	25.50%	34.00%
95,000 and over	8.75%	17.50%	26.25%	35.00%

Appendix A – Health Benefit Contribution Schedules (2 of 3)

FAMILY COVERAGE

Salary Range	Year 1	Year 2	Year 3	Year 4
less than 25,000	0.75%	1.50%	2.25%	3.00%
25,000-29,999.99	1.00%	2.00%	3.00%	4.00%
30,000-34,999.99	1.25%	2.50%	3.75%	5.00%
35,000-39,999.99	1.50%	3.00%	4.50%	6.00%
40,000-44,999.99	1.75%	3.50%	5.25%	7.00%
45,000-49,999.99	2.25%	4.50%	6.75%	9.00%
50,000-54,999.99	3.00%	6.00%	9.00%	12.00%
55,000-59,999.99	3.50%	7.00%	10.50%	14.00%
60,000-64,999.99	4.25%	8.50%	12.75%	17.00%
65,000-69,999.99	4.75%	9.50%	14.25%	19.00%
70,000-74,999.99	5.50%	11.00%	16.50%	22.00%
75,000-79,999.99	5.75%	11.50%	17.25%	23.00%
80,000-84,999.99	6.00%	12.00%	18.00%	24.00%
85,000-89,999.99	6.50%	13.00%	19.50%	26.00%
90,000-94,999.99	7.00%	14.00%	21.00%	28.00%
95,000-99,999.99	7.25%	14.50%	21.75%	29.00%
100,000-109,999.99	8.00%	16.00%	24.00%	32.00%
110,000 and over	8.75%	17.50%	26.25%	35.00%

Appendix A – Health Benefit Contribution Schedules (3 of 3)

MEMBER/SPOUSE/PARTNER OR PARENT/CHILDREN COVERAGE

Salary Range	Year 1	Year 2	Year 3	Year 4
less than 25,000	0.88%	1.75%	2.63%	3.50%
25,000-29,999.99	1.13%	2.25%	3.38%	4.50%
30,000-34,999.99	1.50%	3.00%	4.50%	6.00%
35,000-39,999.99	1.75%	3.50%	5.25%	7.00%
40,000-44,999.99	2.00%	4.00%	6.00%	8.00%
45,000-49,999.99	2.50%	5.00%	7.50%	10.00%
50,000-54,999.99	3.75%	7.50%	11.25%	15.00%
55,000-59,999.99	4.25%	8.50%	12.75%	17.00%
60,000-64,999.99	5.25%	10.50%	15.75%	21.00%
65,000-69,999.99	5.75%	11.50%	17.25%	23.00%
70,000-74,999.99	6.50%	13.00%	19.50%	26.00%
75,000-79,999.99	6.75%	13.50%	20.25%	27.00%
80,000-84,999.99	7.00%	14.00%	21.00%	28.00%
85,000-99,999.99	7.50%	15.00%	22.50%	30.00%
100,000 and over	8.75%	17.50%	26.25%	35.00%

Appendix B - Chapter 2, Q. 29 Regarding Individual Employee Contracts

29. How are officials or employees whose titles are not included in a negotiation unit or who are not in a union, and have their own employment agreements affected? (Applicable to both SHBP and non-SHBP employers.)

Employees with individual employment contracts with the employer (such as a Municipal Administrator or Manager), such agreements must be reviewed on a case-by-case basis with legal counsel. There are two issues to address.

The first is to determine whether the agreement's terms make any collective negotiation agreement's provisions applicable as an individual employee. That is, does the agreement include language that the employee also receives the raises or other benefits awarded to those covered by a collective negotiation agreement? If so, the employee would be considered aligned with the employees covered by that agreement and would begin paying the contribution amount at the expiration of that collective negotiation agreement or on May 21, 2010 if the agreement had expired.

The second issue comes into play if an agreement does not reflect a relationship to a collective negotiation agreement. In this case, it must be determined whether there might be any constitutional impairment of contract issue if the 1.5% payment were imposed, under the facts and circumstances of the particular individual employment agreement. This must be done on an individual basis and is outside the scope of these FAQs. Local officials should consult appropriate legal counsel to determine how this should be resolved.

Appendix C - Section 125 Language - N.J.S.A. 40A:10-23.5

(this text is consistent with s. 44 and N.J.S.A. 18A:16-19.1 for boards of education)

52. Section 45 of P.L.2007, c.62 (C.40A:10-23.5) is amended to read as follows:

45. Notwithstanding the provisions of any other law to the contrary, a local unit of government, or an agency, board, commission, authority or instrumentality thereof, may establish as an employer a cafeteria plan for its employees pursuant to section 125 of the federal Internal Revenue Code, 26 U.S.C. s.125, and shall establish such a plan for medical or dental expenses not covered by a health benefits plan.

The plan **[**may**]** shall provide for a reduction in an employee's salary, through payroll deductions or otherwise, in exchange for payment by the employer of medical or dental expenses not covered by a health benefits plan, and may provide for a reduction in an employee's salary, through payroll deductions or otherwise, in exchange for payment by the employer of dependent care expenses as provided in section 129 of the code, 26 U.S.C. s.129, and such other benefits as are consistent with section 125 which are included under the plan.

The amount of any reduction in an employee's salary for the purpose of contributing to the plan shall continue to be treated as regular compensation for all other purposes, including the calculation of pension contributions and the amount of any retirement allowance, but, to the extent permitted by the federal Internal Revenue Code, shall not be included in the computation of federal taxes withheld from the employee's salary.

(cf: P.L.2007, c.62, s.45)

Appendix D – IRS COBRA Rate Calculation Regulation Pertinent Part

IRC § 4980B. Failure to satisfy continuation coverage requirements of group health plans

(a)…(e)

(f) Continuation coverage requirements of group health plans

(1)…(3)

(4) **Applicable premium**
For purposes of this subsection—

(A) **In general**

The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(B) **Special rule for self-insured plans**

To the extent that a plan is a self-insured plan—

(i) In general

Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

(ii) Determination on basis of past cost

If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(iii) Clause (ii) not to apply where significant change

A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

(C) **Determination period**

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.