

FROM OUT OF THE SHADOWS TO YOUR
FINANCIAL STATEMENTS: REDUCING RETIREE
HEALTH CARE COSTS

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Today's Presenters

- Howard Shifman is the president and founder of Howard L Shifman, PC, his firm represents a diverse group of governmental clients, including the communities of Lapeer County, Warren and Royal Oak. Mr. Shifman has assisted the MML in the legislative process on the drafting of PA 312 and PA 152. In 2011 he was honored by the Michigan Municipal League with the Special Award of Merit for devotion to the cause of municipal government and advancement of municipal affairs in Michigan.
- Brandon Fournier is an attorney with the Law Offices of Howard Shifman having previously served as the City Administrator for the City of Southgate serving as the Director of Labor Relations and Human Resources Manager. During that time, he was the architect of a municipal reorganization plan that resulted from a 20% loss in general fund revenue. He is presently a delegate to the MML Finance Committee

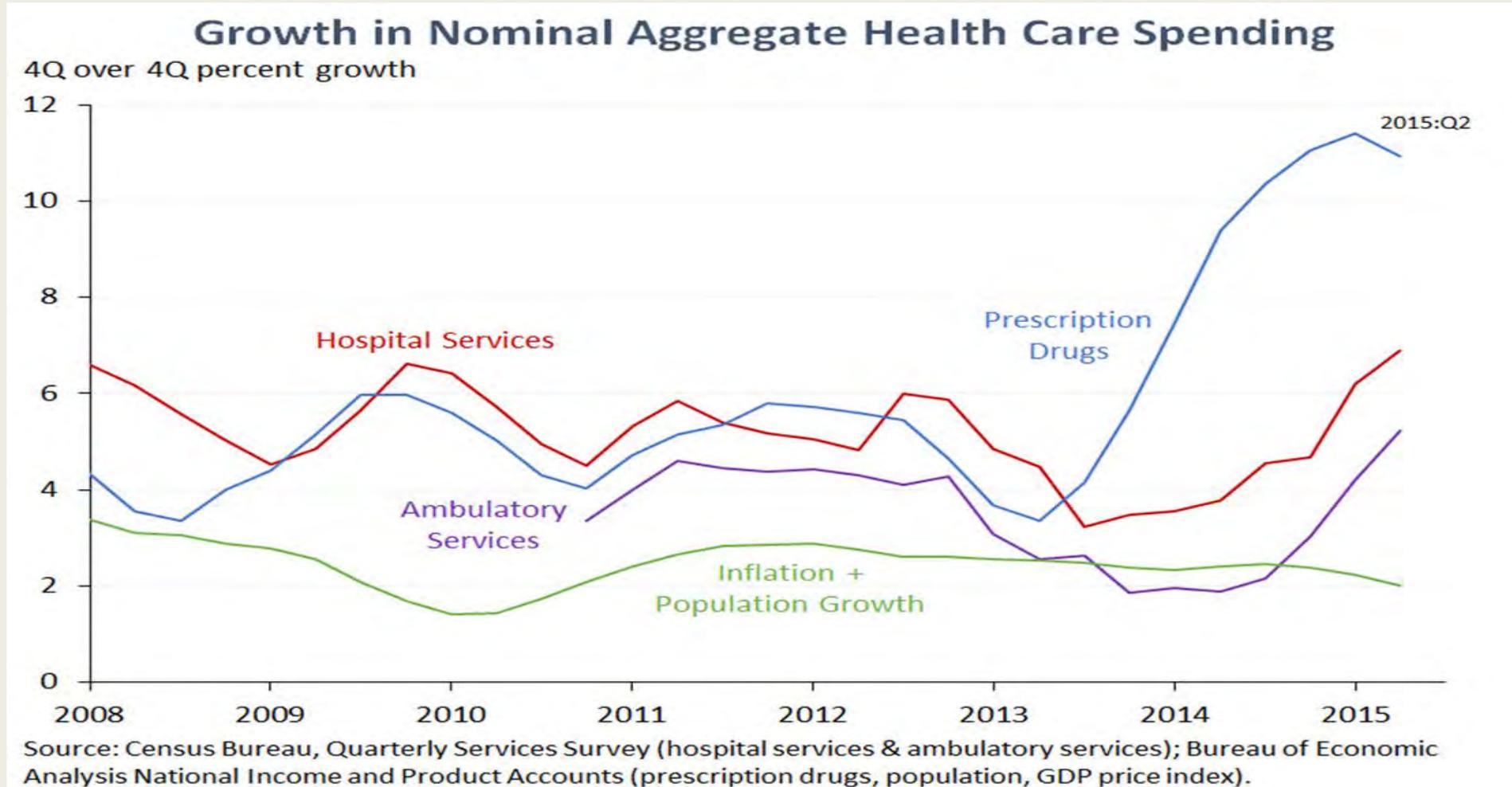
Burden facing local units of government

- Most public sector organizations in Michigan offer retiree healthcare, but the cost of health care was not as burdensome when these promises were originally made. If left unchecked, the financial burden will continue to grow at an alarming pace. The combination of medical trend, specialty prescription drug costs, people living longer than ever before, and the growing concern of chronic conditions are placing a large burden on public employers. And let's not forget the unfunded GASB health care liability that needs to be accounted for on financial reports.

The problem

- The cost of Retiree Health Care has increased exponentially absorbing a greater share of general fund revenue
- With the forthcoming changes to the accounting rules local governments will soon be confronted with a major change in reporting requirements

Cost of Health Care



GASB 75

- Establishes one “cost method” for attributing the present value of benefit payments to specific years.
- Previous Standard allowed governments to choose from one of six different “cost methods”.
- Changes in benefit plan assumptions used to determine the annual OPEB expenses will be recognized within the current reporting period.
- Governments will be required to recognize deferred outflows and inflows and factor them into the expenses calculation systematically over the remaining years of employment.
- Additional Note Disclosure and Required Supplementary Information.

GASB 75

- The new Standard supersedes GASB 43 and GASB 45.
- Effective for fiscal years after June 15, 2017.
- The entire net OPEB liability must be reported on the face of the financial statements rather in the footnotes.
- Previous Standard allowed governments to amortize the unfunded liability over a period of up to thirty years.

How to reduce unfunded liability

- Make strategic changes
- Pay as you go
- Pay the Annual Required Contribution (ARC)
- Fund a GASB Trust (115 Trust)
- Bond OPEB? What does GFOA say?

Common questions

- Can I change my health insurance carrier for retiree health care coverage?
- Our Police and Fire Retirees who did not pay into Medicare, eligible to enroll in Medicare Part A and Part B?
- Is Healthcare protected by the state constitution?
- Can I implement a Medicare based plan if there are benefit modifications?

How has the Affordable Care Act altered the Retiree Health Care Landscape?

- Groups of less than 100 are now metal tier rated.
- Statutory health care benefit changes.
- The exchange an alternative or buyout opportunity?
- The Cadillac tax is almost here.
- The plan that I previously offered is no longer available?

Public Sector Benefits

- Studier v. Michigan Public Schools Retirements Board (2005)
 - *The Michigan Supreme Court held in 2005 that retirement health care benefit's are not accrued financial benefits as defined in Article 9 of the Michigan Constitution.*

Legal Trends; Federal Cases

- **Reese v. CNH America, LLC; Sixth Circuit Court of Appeals (2012)**
 - Reasonably commensurate with pre-retirement plans:
 - *Does the modified plan provide benefits “reasonably commensurate” with the old plan?*
 - *Are the proposed changes “reasonable in light of changes in health care?”*
 - *Are the benefits “roughly consistent with the kinds of benefits provided to current employees”?*
- **M & G polymers USA, LLC v. Tackett, et al.; 135 S. Ct. 926 (2015)**
 - “a collective bargaining agreement may provide{e} in explicit terms that certain benefits continue after expiration.” But when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life

Legal Trends; Federal Cases

- **Gallo, et al. v. Moen Inc.; Sixth Circuit Court of Appeals (2016)**
 1. Application of Tackett
 2. Relevant contract language: “Continued hospitalization, surgical and medical coverage will be provided without cost to past pensioners and their dependents prior to March 1, 1996.” There is no language that states they intended to cover retirees for life
 3. No vesting occurred

Legal Trends; Michigan Rulings



■ Harper Woods Retirees Association V. City of Harper Woods

- *The District Court granted summary disposition in favor of the City consistent with the 6th Circuit's reasoning in the Reese Case*
- *However, on Appeal the Court held "The task is to examine each of the CBA's and personnel contracts in effect at the time of retirement for the respective class members, and to determine whether the language of the provisions governing retiree health care benefits indicates that the parties intended the same benefits to continue after expiration of the agreements"*

Legal Trends; Michigan Rulings



- **Allen Park Retirees Association V. State of Michigan and Department of Treasury; Michigan Court of Claims case**
 1. State of Michigan's motion for summary disposition was granted
 - Language in the Contract "The City reserves the right to change any and/or all insurance company(ies) and/or plan(s) providing the replacement program is equal to or better than the program available from the present company"
 - Allen Park was under State of Michigan PA 436 at the time of modification

Legal Trends; Michigan Rulings



- Sloan v. City of Madison Heights
- Language of the CBA: “The City shall have the right to change insurance carriers for fringe benefits provided that the employee benefits are not reduced from present benefits.”
- Arbitration decision conforming the ability for the City to change carrier was binding on the retirees actions as long as the benefits were the same as or greater

Legal Trends

1. The line of cases from the 6th Circuit Court of Appeals have essentially established a reasonableness standard and a presumption that these are contracts that can be changed as long as these changes are reasonable
2. Although lower federal court decisions may be persuasive, they are not binding on state courts
3. Michigan law is still very unsettled and lacks a positive non PA 436 decisions allowing for the change in benefits
4. The language contained in your contracts is critically important
5. Fight the threshold issues; class certifications

Analyzing the Problem

- Now that we have reviewed the present legal landscape how should the issues be reviewed in the context of the current environment?
- Future Employees/Current Employees
- Pre Age 65 Retirees
- Post Age 65 Retirees

Current and Future Employees

- Where possible, attempt to negotiate future retiree healthcare components
- Coverage – Who is Covered?
 - Eliminate retiree healthcare fully or stipend
 - Do not cover spouses / Only cover spouses if no other group coverage
 - If coverage offered to spouse and/or depts, only cover spouses and dependents at time of retirement
- Payment
 - Retiree pays nothing / Retiree pays full amount / Retiree pays for spouse/children / Retiree pays percentage / Employer pays to a certain cap and retirees pay excess (pseudo hard cap)
 - Group caps its costs at cost of Medicare retiree (med only or med/Rx). Pre Medicare retiree pays the difference

Current and Future Employees

- Coverage Type – What Coverage is Offered?
- Only medical/Rx (no dental, vision, or life)
- Alternative plan at a lower retiree contribution
- Retiree Coverage Baseline – Frozen or Floating?
- Retiree coverage same as when retired / Retiree coverage floats with actives / Keep separate with language to change in the future
- Eliminate Retiree Healthcare or Stipend?
- Eliminate retiree healthcare / Eliminate retiree healthcare but offer stipend for use on private or public exchange (Detroit / Inkster model - no exchange credit if pre tax)
- Wayne County model – Provide post-tax cash based on income level. More cash to higher income individuals because they are not eligible for as large of Exchange subsidies. Vice versa for lower income

Current and Future Employees

- **Eligibility – Who is Eligible and When?**

1. Closed class
2. Extend specific age and service
3. Eliminate deferred retirement

- **Miscellaneous**

1. Members must elect and pay for Medicare A and B when eligible
2. Add flexible language for carrier, funding type, substantial comparability, move to MA and EGWP if financially advantageous
3. Add protective language that allows for plan changes if approaching Cadillac Tax or any other ACA tax/penalty
4. Retiree annual opt outs

Current and Future Employees

- Most Michigan public sector organizations are no longer offering retiree healthcare to new hires. If still offering, consider the following trends.
- Trends
- Retiree medical savings account in lieu of retirement healthcare
- Contributions must be equitable among employees in a similar circumstance (union, hire date)
- Employee and ER funding, only employee, or only employer
- NOTE – Individuals with money in a pre tax RMSA (or RHS) account are not eligible for exchange subsidies until their account balance is exhausted

Current Pre-Age 65 Retirees

- **Determine whether court cases allow for greater flexibility based on your existing language**
- **When offering healthcare to pre-Medicare retirees, some tactics to consider.**
 1. Review contract language for flexibility
 - If flexible language, see trending provisions section
 2. Actuarial equivalent plans on better performing platform (if inflexible language)
 3. Prescription drug clinical management programs
 4. Reasonable changes per Reese
 5. Buy outs

Post Age 65 Retirees

- Two types of Medicare medical coverage – Medicare Supplement and Medicare Advantage
- BCBSM, BCN, HAP, Health Plus, Aetna, and Priority Health offer both Medicare Supplemental and Medicare Advantage options
- If self funded with BCBSM, two possibilities – BCBSM Medicare Supplemental or BCBSM Medicare Advantage. BCBSM issued a firm edict on carving out. How firm?

Medicare Advantage

- Medicare privatization
- Insurance carriers contract with CMS and receive funding from government and client
- Large incentive to manage health conditions
- Members must have Medicare A and B
- Replaces need for Medicare A and B card –coverage offered exclusively through carrier
- Plan design and demographics factored into rate development
- When calculating baseline, USE CLAIMS/FEES, NOT ILLUSTRATIVE RATES

Retirement Drug Subsidy (RDS) v. Employee Group Waiver Plan (EGWP)

- Employers offering Rx coverage to Medicare retirees have three options
- Retain current program and seek subsidies through the Retiree Drug Subsidy (RDS) program
- Transition to a group Part D program through an Employer Group Waiver Plan (EGWP)
- Do not collect subsidies
- Employers may choose, RDS, EGWP, or none
- To participate in RDS or EGWP, retirees need Medicare A and or B
- Both RDS and EGWP were created through the Medicare Modernization Act of 2003, but officially introduced on January 1, 2006

Maximizing OPEB Reductions

- Medicare retiree changes offer the greatest reduction
- Then pre Medicare retiree changes
- Lastly, active changes, unless eliminating future eligibility

Summary

- Review your labor agreements/manuals speak to your labor attorney to learn your options
- Review retiree contract language, especially if unchanged for several years
- The landscape has changed and has become fluid – arm yourself with experts
- Have an open dialogue with unions and retirees on state and federal laws
- Place language in your contracts to protect your organization moving forward
- Keep eyes open to new trends in the future such as reference based pricing, GPO/340b Rx, and captive stop loss arrangements
- Buckle up – the world of health care is changing rapidly

Questions

Thank you very much for attending!

Please contact us if you have any
questions

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