

**REGIONAL TRANSIT ISSUE PAPER**

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
3	11/08/10	Open	Action	11/01/10

Subject: Approving Contracts With Kaiser and HealthNet to Provide Reimbursement Under the Patient Protection and Affordable Care Act for Employment Based Plans for a Portion of Early Retiree Claims.

ISSUE

Approving Contracts with Kaiser and HealthNet to Provide Reimbursement Under the Patient Protection and Affordable Care Act for Employment Based Plans for a Portion of Early Retiree Claims.

RECOMMENDED ACTION

Adopt Resolution No. 10-11-\_\_\_\_\_, Approving Contracts with Kaiser and HealthNet to Provide Reimbursement Under the Patient Protection And Affordable Care Act for Employment Based Plans for a Portion of Early Retiree Claims.

FISCAL IMPACT

Unknown at this time but staff anticipates no cost to RT. Since this is a reimbursement program provided under Patient Protection and Affordable Care Act (otherwise known as Health Care Reform, "HCR"), the District hopes to receive a portion of the reimbursement provided by Health and Human Services ("HHS") for the cost of claims for early retiree insurance. At this time, the form of reimbursement is unclear but may include premium reductions.

DISCUSSION

On March 23, 2010 the Patient Protection and Affordable Care Act, more commonly called Health Care Reform ("HCR") was signed into law; one provision in the legislation allows employers to seek partial reimbursement for claims incurred on behalf of early retirees.

According to various publications provided by RT's benefits broker, Keenan, "HHS will pay partial reimbursements for claims to employer-sponsored health plans on behalf of Early Retirees for the purpose of lowering costs for the plan". To that end, the District must enter into agreements with both Kaiser and HealthNet, ensuring accurate claims data is provided to HHS sufficient to support possible reimbursement. Both Kaiser and HealthNet have represented they will waive any ~~changes~~ charges to RT for the culmination and submittal of the required data. As such, RT does not anticipate any direct costs related to the agreements.

Contracts have been reviewed by RT's Legal Department which had concerns with some of the contract provisions. In an attempt to address those concerns, RT's Legal Department contacted Kaiser and Health Net to request that the language be modified. Both companies rejected RT's requested modifications. Staff discussed the concerns with RT Legal and determined that while

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Approved:

Presented:

REVISED FINAL 11/8/10

General Manager/CEO

Director, Human Resources

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there are concerns with the contract language, staff recommends that RT proceed with the contracts and subsequent request for reimbursement. The concerns identified are:

**Kaiser:**

- Deemed acceptance of Kaiser amendments. If Kaiser were to amend the agreement, RT would have only fifteen days to reject the amendment; otherwise, the amendment is deemed accepted. The time period may be inadequate for RT to review the amendments and respond. Staff believes that the sixty (60) day termination for convenience clause in the agreement will mitigate any problems that may arise from amendments that are considered unacceptable to RT.
- Assignment of Kaiser's duties under the agreement. Kaiser has an unconditional right to assign its rights and obligations under the agreement to another entity. Legal was concerned regarding the sensitive nature of the data transmitted in the event Kaiser assigns its duties to a less reputable organization. Staff believes that it is unlikely Kaiser would choose an unqualified assignee and that the legal obligations related to the securement of this data would continue to apply to any assignee.
- Waiver of terms. The agreement provides that Kaiser can fail to enforce any provision of the agreement, but retains a right to later require strict performance by RT of any provision which it had failed to enforce. Legal believed that the unilateral nature of this provision was objectionable. However, staff believes that it is unlikely Kaiser's administration of this agreement will lead to inconsistency given the large number of entities that are also entering into the same agreement. It is more likely, Kaiser will consistently administer all of the material terms of this agreement.

**HealthNet:**

- Deemed acceptance of HealthNet's amendments. The same issues as described above regarding Kaiser apply to this agreement.
- Identification of early retirees. There is some ambiguity concerning what "effective date" of the program since HHS has not made this determination. Therefore, HealthNet has left blank this date which triggers certain obligations, causing the term of the agreement to be undefined. However, staff believes that this is an unavoidable consequence given the programs uncertain implementation by HHS. Therefore, staff believes that the risks inherent in this uncertainty are worth the benefit of being able to submit its claims to HHS at the earliest possible time.

Staff recommends entering into the above described agreements, and requests authority to allow the General Manager/CEO to execute these agreements. As noted previously, the Legal Department's concerns have been considered in making this recommendation.

RESOLUTION NO. 10-11-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

November 8, 2010

**APPROVING CONTRACTS WITH KAISER AND HEATLHNET TO PROVIDE REIMBURSEMENT UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT FOR EMPLOYMENT BASED PLANS FOR A PORTION OF EARLY RETIREE CLAIMS**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract with Kaiser for providing Patient Protection and Affordable Care Act Reimbursement benefits to the District for costs associated with early retiree health care is hereby approved.

THAT, the Contract with HealthNet for providing Patient Protection and Affordable Care Act Reimbursement benefits to the District for costs associated with early retiree health care is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the above contracts.

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STEVE MILLER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary