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REPORT TO THE CITY COUNCIL

MODIFICATION OF THE REIMBURSEMENT OF MEDICARE PART B PREMIUMS
UNDER IRMAA

INTRODUCTION

At its December 5, 2011 meeting, the Audit Committee passed a motion to accept and forward to the San Diego City Council (City Council) the City Auditor's Performance Audit of the San Diego City Employees' Retirement System (SDCERS), and requested that the City Attorney prepare and present to the City Council a legal opinion addressing the following two issues: (1) may the City discontinue or modify the reimbursement of the Medicare Part B Income Related Monthly Adjustment Amount (IRMAA) premiums for Health Eligible Retirees?; and (2) may the City offset Industrial Disability Retirement (IDR) benefit payments by Workers' Compensation payments received by the benefit recipient?

This Report addresses the first issue. An accompanying report addresses the second issue.

QUESTIONS PRESENTED

1. Does San Diego Municipal Code section 24.1202(b)(4), as currently written, require the City of San Diego to reimburse the full Medicare Part B¹ premium for a Health Eligible Retiree,² including the Income Related Medicare Adjustment Amount (IRMAA) for high income retirees?

2. If so, may the City modify the retiree health benefit for current retirees, by (a) limiting the reimbursement of Medicare Part B premiums to the standard Part B premium amount, and (b) eliminating reimbursement of the IRMAA adjustment for high-income retirees?

3. Do the new retiree health benefits (for employees who were hired before July 1, 2005 and retire after March 31, 2012) include reimbursement of Medicare Part B Premiums, including the IRMAA adjustment for high-income retirees?

¹ Medicare Part B is an insurance option for people who qualify for Medicare. It covers medically necessary services like doctors' services, outpatient care, home health services, and other medical services. Part B also covers some preventative services. The beneficiary must sign up for Medicare Part B and pay a monthly premium, and yearly deductible. The cost for the premium is deducted from the beneficiary's Social Security check.

² A "Health Eligible Retiree" is a City retiree who: (1) was on the City payroll on or after October 5, 1980; (2) was hired by the City before July 1, 2005; (3) retired after October 5, 1980; *and* (4) is eligible for and receiving a retirement allowance from SDCERS. Except for elected officers, the retiree must also retire before April 1, 2012. San Diego Municipal Code § 24.1201(b)(5).

SHORT ANSWERS

1. Yes. San Diego Municipal Code section 24.1202(b)(4) requires the City to reimburse the full Medicare Part B premium, without limitation, including the IRMAA adjustment for high income retirees.

2. Probably not. Health Eligible Retirees who have already retired most likely have a vested right be reimbursed the full cost of their Medicare Part B premiums, including IRMAA adjustments. This reimbursement is in addition to the set annual limit on payment of their private health insurance premiums.

3. Under Ordinance O-20105, enacting the post-retirement health benefit changes for employees hired before July 1, 2005 who retire after March 31, 2012, the City is required to reimburse retired employees who select Option A or Option B for their private and Medicare health insurance premiums, but only up to a set annual limit.

BACKGROUND

The unmodified Medicare Part B premium (Base Premium) covers only 25 percent of the full cost of Part B coverage. Before 2007, the federal government subsidized 75 percent of the coverage cost for all Medicare beneficiaries. However, since January 2007, higher income beneficiaries have been required to pay increased Part B premiums, which are calculated using the beneficiary's modified adjusted gross income (MAGI) from the employee's previous year's federal income tax return.³ The increase to the Base Premium is referred to as the "Income Related Medicare Adjustment Amount" or the "IRMAA."

The IRMAA is *not* a separate premium for Medicare Part B coverage; it is an adjustment made to a beneficiary's Base Premium to compensate for the decrease in the amount of subsidy the federal government provides. As such, it is simply an element used to calculate a beneficiary's total Part B premium.⁴

Since 2008, a Medicare beneficiary whose tax filing status is "single" must pay increased premiums if the beneficiary's MAGI is over \$85,000; married beneficiaries filing joint returns are subject to increased premiums if their MAGI is over \$170,000.⁵ The *Patient Protection and Affordable Care Act*⁶ freezes the income thresholds at the 2008 amount through

³ 20 C.F.R. § 418.1110; 26 U.S.C. § 62.

⁴ As discussed in footnote 11, another element used to calculate the premium is the beneficiary's retirement date.

⁵ The adjustment is not a set amount for all beneficiaries subject to IRMAA. For example, a single tax filer with a MAGI of between \$85,000 and \$107,000 pays a total monthly Part B premium of \$154.70, whereas a single tax filer whose MAGI is over \$213,000 pays \$353.60 per month.

http://socialsecurityadviceonline.com/index.php?option=com_content&view=article&id=154&Itemid=101.

⁶ Pub.L. 111-148, 124 Stat. 119, to be codified as amended at several sections throughout the Internal Revenue Code and in Title 42 of the United States Code. The Patient Protection and Affordable Care Act is a United States federal statute signed into law by President Barack Obama on March 23, 2010. The law (along with the Health Care and Education Reconciliation Act of 2010) is the principal health care reform legislation of the 111th United States Congress.

December 31, 2019, meaning that the adjustments will not increase until after that date.⁷ In 2010, only 5 percent of Medicare beneficiaries were subject to any level of IRMAA adjustment.⁸

Currently, the monthly Base Premium ranges between \$96.40 and \$115.40, based upon the date the beneficiary first becomes eligible for Medicare. The IRMAA adjustments bring the full monthly Part B premiums to between \$161.50 and \$369.10.⁹

ANALYSIS

I. SAN DIEGO MUNICIPAL CODE SECTION 24.1202(B)(4) REQUIRES REIMBURSEMENT OF THE FULL MEDICARE PART B PREMIUM.

On March 31, 1997, the San Diego City Council adopted San Diego Ordinance O-18392, which added to the Municipal Code the requirement that the City reimburse Health Eligible Retirees for their Medicare Part B premiums, provided the retiree “timely enrolls” in Medicare Part B. Since that time, the San Diego Municipal Code (SDMC) has stated:

A Health Eligible Retiree timely enrolled in Medicare is also entitled to reimbursement of the cost of the Part B Supplemental Medical Expense Premium.

SDMC § 24.1202(b)(4). The requirement that the City reimburse Part B premiums is *in addition to* the requirement that it reimburse retirees’ premiums for private health insurance.¹⁰ It is important to recognize that the reimbursement limit for private health insurance premiums decreases at the point the City begins reimbursing Part B premiums.¹¹

Section 24.1202(b)(4) does not set a dollar limit on the amount the City is required to reimburse for Part B premiums, nor does it limit a retiree’s entitlement to only the Base Premium. Section 24.1202(b)(4) simply states that a Health Eligible Retiree “is entitled reimbursement of the cost of the Part B Supplemental Medical Expense Premium.” When the Part B reimbursement was added to Section 24.1202(b), there was no income-based adjustment. Moreover, the City Council has not acted to amend this provision to exclude reimbursement of the IRMAA in the five years since the imposition of the IRMAA began.

⁷ Patient Protection and Affordable Care Act § 3402, amending 42 U.S.C. § 1395r(i).

⁸ Kaiser Family Foundation, The Social Security COLA and Medicare Part B Premium: Questions, Answers, and Issues (Oct. 2009); <http://www.kff.org/medicare/upload/7912-02.pdf>.

⁹ https://questions.medicare.gov/app/answers/detail/a_id/2306/~2011-part-b-premium-amounts-for-persons-with-higher-income-levels

¹⁰ The separate limits on reimbursement of private health insurance premiums, which vary based upon retirement date and bargaining group, are set forth in SDMC section 24.1202(b), subsections (1), (2), (3), (5), (6), and (7). Subsections (1) and (2) state the private health insurance reimbursement limits for fiscal year 2003, and the maximum annual adjustments after that year. Subsection (3) limits reimbursement of private health premiums to “the actual premium cost [the retiree] incurs.” Subsection (4) directly follows the provisions related to reimbursement of private insurance premiums and states that a Health Eligible Retiree “is also” entitled to reimbursement of the Part B premium. Thus, the right to reimbursement of the Part B premium is clearly in addition to the right to reimbursement for private health insurance premiums.

¹¹ The reimbursement limits for Medicare-eligible retirees are limited to the lower insurance premiums for insurance policies for retirees covered by Medicare Part B. SDMC §24.1202(b)(1) and (2).

II. MODIFYING OR CAPPING THE MEDICARE PART B REIMBURSEMENT COULD ONLY BE APPLIED TO FUTURE RETIREES.

If the City Council wants to adopt an ordinance ending reimbursement of the IRMAA adjustment portion of the Part B premium, that amendment could only apply to employees who retire after the effective date of the ordinance amending section 24.1202.¹² In addition, before the City Council may adopt an ordinance ending reimbursement of the IRMAA for current represented employees, the City must first negotiate with the recognized labor organizations.¹³ After concluding negotiations, the City Council would then have to adopt an ordinance amending SDMC section 24.1202(b)(4) to modify the Part B reimbursement, which would include a first and second reading of the ordinance and a 30-day referendum period.

As discussed below, the City has negotiated substantial reductions to retiree health benefits for health eligible employees who retire after March 31, 2012. Therefore, any amendments to section 24.1202 would only apply to employees who retire during the brief period between the ordinance's effective date and April 1, 2012.

III. NO EMPLOYEE WHO RETIRES AFTER MARCH 31, 2012 WILL RECEIVE A SEPARATE REIMBURSEMENT OF THE MEDICARE PART B PREMIUM.

On October 18, 2011, the City Council adopted San Diego Ordinance O-20105, codifying the changes to post-retirement health benefits for employees who retire after March 31, 2012, as set forth in the Tentative Agreements between the City and its recognized labor organizations. Ordinance O-20105 amended Chapter 2 of the San Diego Municipal Code by adding Article 9, Divisions 1 and 2, sections 29.0101, 29.0102, 29.0103, 29.0104, 29.0105, and 29.0201.

With respect to employees who select Option A, SDMC section 29.0103(b)(2) provides, in pertinent part:

A General Member or Safety Member who qualifies for and elects Option A on or before February 1, 2012, may obtain post-employment health coverage under any available City-sponsored health insurance plan or any other health insurance plan of their choice. The Member will be paid or reimbursed his or her health insurance premiums up to the Option A annual retiree health allowance, which is set at \$8,883.24 for Fiscal Year 2013, and will increase by two percent annually beginning July 1, 2013. (Emphasis added.)

¹² In a unanimous opinion released on November 21, 2011, the California Supreme Court held that a vested right to retiree health benefits could be implied from a county ordinance or resolution. *Retired Employees Association of Orange County v. County of Orange*, 52 Cal.4th 1171 (2011); see also 2010 Op. City Att'y at 61 (2010-1; January 21, 2010), concluding that retiree health benefits for retired employees are most likely vested. Available at: <http://docs.sandiego.gov/cityattorney>.

¹³ 2010 Op. City Att'y, *supra*, at 61.

With respect to employees who select Option B, SDMC section 29.0103(c)(2) provides, in pertinent part:

A General Member or Safety Member who qualifies for and elects Option B on or before February 1, 2012, may obtain post-employment health coverage under any available City-sponsored health insurance plan or any other health insurance plan of their choice. The Member will be paid or reimbursed their health insurance premiums up to \$5,500 per year. There will be no annual adjustment of this amount. (Emphasis added.)

In summary, employees who choose either Option A or Option B are entitled, upon retirement, to reimbursement of any health coverage they choose, up to a set annual limit. The health insurance may include Medicare or private insurance, or a combination of both, but the City is only obligated to pay up to the annual limit. This is in contrast to Health Eligible Retirees who retire before April 1, 2012, who are entitled to reimbursement of their private health insurance premiums up to the annual limit *plus* reimbursement of their uncapped Medicare Part B premiums.

CONCLUSION

Health Eligible Retirees who have already retired, or who retire before April 1, 2012, most likely have a vested right to reimbursement for the full cost of their Medicare Part B premiums, including the IRMAA adjustment. This reimbursement is in addition to the set annual limit on payment of their private health insurance premiums.

Employees who are eligible for and select either Option A or Option B under the new retiree health benefits for eligible employees retiring after March 31, 2012 are entitled only to reimbursement for their private insurance and Medicare premiums up to the set annual limits. Unlike the Health Eligible Retirees who retire before April 1, 2012, the employees covered by Option A or Option B will receive reimbursement for their private health insurance and Medicare premiums only to the extent that the sum of the their private and Medicare premiums falls within the annual limits for Option A or Option B.

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By _____ /s/
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