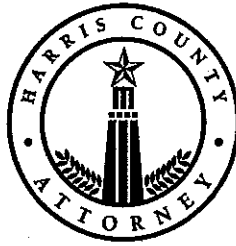


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OPINION COMMITTEE



The Office of Vince Ryan
County Attorney

FILE # M2-46612-10
I.D. # 46612

RQ-0928-GA

October 26, 2010

Honorable Greg Abbott
Attorney General of Texas
Capital Station
Post Office Box 12548
Austin, Texas 78711-2548

VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

Re: Request for Opinion concerning Employee Health Clinic

Dear General Abbott:

On behalf of the Harris County Department of Education ("HCDE"), a county school district located in Harris County, I am requesting your opinion concerning whether HCDE may provide an on-site health clinic to its employees without violating Teacher Retirement System of Texas ("TRS") statutes or governing rules, namely Texas Education Code § 22.004(i). Texas Education Code § 22.004(i) provides that "a district participating in the uniform group coverage program established under Chapter 1579, Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579, Insurance Code, is implemented." See TEX. EDUC. CODE § 22.004(i).

This issue is one of concern to school districts across the state, including schools districts in Harris County. It is our opinion that a Texas school district may provide a health clinic to its employees without violating TRS governing provisions, including Texas Education Code § 22.004(i), and solicit your opinion in this regard.

Employees of Texas school districts, including HCDE, participate in TRS. See TEX. GOV'T CODE, Chapter 821, *et. seq.* Texas school districts are required to provide group health benefits to their employees. See TEX. EDUC. CODE § 22.004(a) (providing that "[a] district shall participate in the uniform group coverage program established under Chapter 1579, Insurance Code, as provided by Subchapter D of that chapter."); TEX. EDUC. CODE § 22.004(b) (stating that "[a] district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage...."). In accordance with Texas Education Code § 22.004(a), HCDE, and a large number of Texas school districts, participate in TRS's

health benefit programs. TRS administers two health benefit programs: (1) TRS-Care, the health benefit program for eligible retirees; and (2) TRS-Active Care, the health benefit program for eligible public school employees.¹ See *Teacher Retirement System Fact Sheet*, Texas Retired Teachers Association, available at <http://www.trta.org>.

HCDE desires to offer an on-site health clinic to its employees in an effort to provide wellness, preventative, and primary care in a convenient, cost-effective manner. HCDE anticipates using a telehealth program for its health clinic. A telehealth program typically uses two-way audio/visual equipment connected to physicians' offices and nurse control centers to offer an array of diagnostic services to employees on-site at HCDE. HCDE anticipates that participation in the on-site health clinic would not be mandatory but rather, would be an optional, available service for employees to use if they so desire. HCDE further anticipates that the on-site health clinic will be available for all employees regardless of whether they are covered by a TRS health benefit program or an outside health benefit provider unaffiliated with TRS.

Because HCDE participates in the TRS uniform group coverage program, it "may not make group health coverage available to its employees...after the date on which the program of coverages...is implemented." See TEX. EDUC. CODE § 22.004(i). HCDE does not intend for its health clinic to replace or circumvent the TRS health coverage program but rather, merely supplement employees' available healthcare options. HCDE and the Office of the Harris County Attorney assert that HCDE's on-site health clinic does not violate § 22.004(i)'s prohibition of offering group health coverage to its employees separate from the TRS uniform group coverage program.

The legislative history of Texas Education Code § 22.004(i) explains that § 22.004 was amended in 2001 "to prohibit entities participating in the [TRS] program from procuring or renewing health insurance contracts, participating in the small employer market, or purchasing additional group health coverage other than optional insurance coverages for employees." See Texas Bill Analysis, H.B. 3343, August 8, 2001. By offering an on-site health clinic to its employees, HCDE contends that it is not procuring or otherwise offering health insurance for its employees but rather, is merely offering an additional health-related service to its employees.

Nothing in the plain language of Texas Education Code § 22.004(i) or in its legislative history evidences any intent to prohibit school districts from making on-site health clinics available to their employees. If it was the Legislature's intent to prohibit school districts from offering on-site health clinics to employees, the Legislature could have implemented such a prohibition; however, it has chosen to remain silent. Consequently, there is no legal reason why HCDE or any Texas school district may not make an on-site health clinic available to its employees.

For all of these reasons, HCDE and the Office of the Harris County Attorney, on HCDE's behalf, respectively request that you issue an opinion concluding that HCDE may make an on-

¹ TRS also administers TRS long-term care insurance, which is an insurance program that provides funds to assist in long-term care and is available to eligible TRS members, retirees, and certain members of their families.

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site health clinic available to its employees without violating any TRS provisions, including Texas Education Code § 22.004(i).

Very truly yours,



Vince Ryan
Harris County Attorney

cc: Ms. Sarah W. Langlois
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
Attorney for Harris County Department of Education