

EQUITY, ACCESS & DIVERSITY
MINUTES OF MEETING
SEPTEMBER 21, 2009

[In these minutes: SCFA Health Care Savings Plan Resolution, Proposed Agenda Items for 2009 – 2010]

[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate or Twin Cities Assembly; none of the comments, conclusions or actions reported in these minutes represent the views of, nor are they binding on, the Senate or Assembly, the Administration or the Board of Regents.]

PRESENT: Irene Duranczyk, chair, MJ Gilbert, John Mason, Shannon McGoffin, Kimberly Boyd, Peg Lonnnquist, Patrick Troup, Elizabeth Davis, Michael Goh, Keith Horvath, Katie Ballering, Lauren Beach

REGRETS: Vicente Garces, Richard Graff,

ABSENT: Anne Phibbs, Joel Eisinger, Raul Marrero-Fente, Benjamin Munson

GUESTS: Professor Kathryn Hanna, chair, Senate Committee on Faculty Affairs and Jackie Singer, director, Retirement Programs

I). Professor Irene Duranczyk called the meeting to order and welcomed all those present. She then requested members take turns going around the room and introducing themselves and sharing what they would like to accomplish this year as a member of EAD.

II). Professor Duranczyk reported that the Board of Regents' Equity, Diversity, Equal Opportunity, and Affirmative Action policy was approved over the summer. Copies of this policy were distributed to members for their information.

III). Copies of the committee's charge were distributed to members for their review.

IV). Professor Duranczyk welcomed Professor Kathryn Hanna, chair, Senate Committee on Faculty Affairs (SCFA) who requested to come before the committee to garner members' support for the Health Care Savings Plan (HCSP) resolution that will go to the Faculty Senate for action on Thursday, October 1, 2009.

Copies of the HCSP resolution were distributed to members. Professor Hanna thanked the committee for their time and introduced herself. She began by providing the committee with background information on this issue. She noted that the concept of a HCSP has actually been churning around the University for several years. Currently, the following employee groups have health care savings plans in effect - Teamsters, Civil Service, and the LELS Police Officers.

Professor Hanna noted that a similar HCSP resolution was brought to the Faculty Senate last spring, but it was defeated. Despite this setback, many faculty believe the issue is important enough to bring back to the Senate, and, therefore, the issue is being revisited.

This resolution, noted Professor Hanna, asks the University to reallocate 2% of the current University contribution to the Faculty Retirement Plan into an individual's HCSP each pay period. A HCSP is a tax-exempt account that can be used to pay for approved medical expenses after an employee leaves the University. Contributions going into or being paid out of the plan are generally tax-free. HCSP accounts can be used to pay for eligible health care expenses, e.g., medical and dental premiums. (A complete list of eligible health care expenses are listed in IRS publication 502 - <http://www.irs.gov/pub/irs-pdf/p502.pdf>).

Professor Hanna noted that the issues raised by Professor Munson last spring opposing this resolution was very valid. He argued that employees with same sex domestic partners (SSDP) would not get the same full-tax-free HCSP benefits afforded heterosexual married couples. She added that the reason for this disparity is because the federal government does not recognize SSDP relationships, and the IRS does not extend the tax-exempt HCSP benefits received by a spouse to a SSDP. Recognizing the inequitable treatment under current federal tax code for people with same sex domestic partner benefits, this resolution, reported Professor Hanna, directs the Faculty Consultative Committee (FCC) to send elected officials letters on behalf of the Faculty Senate outlining these inequities, and requesting them to introduce legislation that would change the federal tax code. In addition, the resolution asks President Bruininks to have the University's federal legislative liaisons work to support legislative changes in the federal tax code.

A member asked what is the difference between a HCSP and a Flexible Spending Account (FSA). Professor Hanna noted that unlike a FSA, a HCSP does not expire. HCSP balances can be used by employees when they retire or quit the University to pay for eligible health care expenses, and remain invested in various investment options, as chosen by the faculty member, until withdrawn. In addition, spouses and dependents can use the account to pay for allowable medical expenses. So, for example, an individual in a SSDP relationship with a dependent can use money in the account to pay for allowable medical expenses for that dependent. If an individual dies with an account balance, his/her spouse or dependents can use the account tax-free to pay for eligible medical expenses. Individuals without a spouse or dependents are able to name a beneficiary who can use the account balance for eligible medical expenses, but these payments will be taxable to the beneficiary.

At the conclusion of her presentation, Professor Hanna asked for member's thoughts. Professor Duranczyk stated that the major issue from last year was that a HCSP would benefit married faculty over faculty with a SSDP. In response, Professor Hanna noted that in actuality a HCSP would benefit all faculty regardless if they have a spouse or SSDP, but that it would not benefit the same sex partners of employees.

A member stated that the last paragraph in the comment section of the resolution that addresses inequities in various kinds of committed relationships that do not involve marriage dilutes the focus of the resolution. This paragraph is not consistent with the rest of the resolution. Professor Hanna stated that this paragraph was added to address concerns voiced by certain heterosexual couples in committed relationships who are not married, but believe they should also be eligible for this benefit without having to get married. Another member stated that some people in opposite sex domestic partnerships choose not to pursue marriage because they object to the unearned privilege this union gives them. Therefore, in the sense that these individuals are allied around the same issue as same sex partners, it could be said that the same issue applies to these people as well.

A member reminded the committee about the resolution EAD passed in the spring of 2008 addressing the issue that SSDP benefits are treated as taxable income for those University employees that elect these benefits. To remedy this situation, EAD proposed a mechanism for eliminating this inherent tax inequity in SSDP benefits called 'grossing up.' 'Grossing up' would involve adding money to employees with SSDP benefits gross income using a formula that would assure that the net income this employee receives would be the same as he/she would have received if the SSDP benefits were not taxable.

In response to a comment having to do with the 2% reallocation from the FRP into an individual's HCSP account each pay period, Professor Hanna reminded the committee that the University does not provide its retirees with health benefits. Instead, the University allows retirees to purchase medical insurance through one of its retiree group medical plans. Technically, reallocating 2% of the current University contribution from the FRP into an individual's HCSP arguably could be viewed as helping retirees with their health care expenses once they leave the University. She added that establishing a HCSP would also save faculty money. Ms. Singer commented that a HCSP would save both faculty and the University money.

A member suggested adding the 'grossing up' proposal to this resolution. Professor Hanna stated that she believes the resolution should include only one main issue in addition to addressing the major concerns that were voiced last spring when the resolution went to the Senate for action.

Do other major employers offer HCSPs for their employees asked a member? If so, have these programs worked as they were designed, and are participants satisfied with the benefit? Yes, stated Jackie Singer, there are several hundred employers across the state that offer a HCSP. She added that she knows of no problems with the program.

How would the University save money if it were to offer a HCSP asked a member? Ms. Singer stated that both the University and the faculty/staff member save money because neither the University nor the faculty/staff member pay Social Security or Medicare taxes (FICA) on the contribution amounts. These amounts are exempt from FICA taxes due to the mandatory nature of the program.

Given the mandatory nature of a HCSP, a member voiced displeasure with being forced

to participate in a plan that continues to discriminate against employees who elect SSDP benefits. The letter writing campaign proposed in this resolution as well as the recommendation to lobby for a change in the federal tax codes while nice are not terribly concrete or meaningful gestures. EAD needs to take a stand for the people that are being discriminated against by this resolution. For example, EAD could recommend that until the inequity in the tax code is remedied that the University should 'gross up' the salaries of faculty with SSDP benefits. This type of concrete action would be much more meaningful than simply requesting the tax code be changed.

Professor Duranczyk asked Professor Hanna if she was looking for an endorsement of this resolution by EAD. Yes, a statement of support would be ideal, stated Professor Hanna, but she understands the committee needs to discuss their position further.

A member asked Professor Hanna whether she would be willing to revise the resolution to include language asking (but not requiring) President Bruininks to work to achieve equity in the benefits offered at the University for employees with same sex domestic partners until the tax code is changed. Professor Hanna stated that this would be a possibility, but also stated that this could be brought as a friendly amendment to the floor of the Senate; there are several options.

In response to a question about the exact amount employees with SSDP partners are losing if their partners access their funds on a taxable basis after their deaths, rather than on a tax-free basis while alive, Ms. Singer stated that it is impossible to know. Given the fact that an account could theoretically be exhausted by one person, it would be impossible to know how much any one person would have in their account, and how much would be left, if any, for a SSDP versus a spouse versus a beneficiary. She added that it would also be impossible to do any type of adjustment into the HCSP accounts of employees with SSDP benefits because the plan is required to be set up so that all employees within a classification abide by the same rules for participation in the plan, which includes contribution amounts on a nondiscriminatory basis.

If the University were to offer a HCSP, would it exacerbate SSDP benefit inequalities asked a member? Professor Hanna stated that in her opinion doing so would not exacerbate SSDP benefit inequalities, and, in the case where employees with SSDP benefits cover a dependent(s), this could be viewed as a benefit.

Hearing no further questions for Professor Hanna or Ms. Singer, Professor Duranczyk thanked them for sharing this resolution with the committee and answering members' questions.

Moving on, Professor Duranczyk asked the committee what they would like to do with the information with they received today. Members went off the record to discuss the issue and how they would like to proceed. At the conclusion of their discussion, it was agreed that a statement of concern would be drafted, which would outline the committee's reservations concerning the resolution, and put forward concrete inclusions that would strengthen it. In addition, the committee also liked the idea of crafting an

equity impact statement, which would be similar to an environmental impact statement, e.g., what it costs to be GLBT at the University. Ms. Boyd volunteered to draft the statement, and, given Professor Munson's passion for this issue, would ask him to help her. Once crafted, the statement would be circulated to members for their review/input, followed by an electronic vote.

V). Next, members spent the remainder of the meeting discussing issues the committee would like to take up this year. The following ideas were generated:

- Revisit the 'grossing up' issue.
- Invite a representative from the Women's Faculty Cabinet to provide information on the issue of women's faculty salaries, an issue they are looking at this year.
- Receive updates from the two subcommittees that were formed last year:
 - a). A subcommittee to explore creating an instrument to assess the climate for under-represented faculty, staff, and students.
 - b). The MLK Day Subcommittee.
- Invite Janet Morse, director, Student Conflict Resolution Center, to share results from the all UMN-TC graduate student survey regarding the prevalence, manifestations, and effects of academic incivility.

VI). Professor Duranczyk asked members to review the April 13, 2009 minutes prior to the next meeting at which time the committee will vote to approve them.

VII). Hearing no further business, Professor Duranczyk adjourned the meeting.

Renee Dempsey
University Senate

POST MEETING UPDATE: The October 1, 2009 Faculty Senate meeting was cancelled. Therefore, the Health Care Savings Plan (HCSP) resolution did not go forward as anticipated. Given this development, the EAD statement of concern was not drafted.