

**FRANKLIN COUNTY  
COMMISSION AGENDA ITEM**

<b>TO:</b> BOARD OF FRANKLIN COUNTY COMMISSIONERS	<b>Reviewed:</b>
<b>FROM:</b> Lisa Johnson	<b>Ext:</b> 3485
<b>DEPARTMENT:</b> Administration	
<b>DATE:</b> Monday, August 24, 2009	<b>No:</b>

**ITEM: Discuss the proposed State of Kansas Non-State Public Employer Contract**

Background: On August 6, 2009, the Commission voted to execute a letter of intent to join the State of Kansas Health Benefit Plan beginning January 1, 2010 for a three year period. We have received the attached contracts from the State of Kansas to formalize this agreement and join the plan. The agreement provides for a three year commitment on the part of the County, referred to in the agreement as the Non-State Public Employer (NSPE). The County is required as part of the agreement to budget the necessary funds for the employer portion of the plan during this time period and to submit on a monthly basis the employer and employee premiums to the State. Once the contracts are signed, open enrollment for the 2010 benefit year is scheduled to occur on September 22, 2009, in the Commission Chambers at the Annex. Times for the meetings will be scheduled shortly. Information has been provided to employees on the different network providers, prescription costs and plan costs. Additional information will be provided to each employee and other eligible participants prior to the open enrollment on each plan option. Ms. Stofko has also advised departments of her availability to meet with employees to answer questions prior to enrollment and to meet with entire departments if so desired.

Recommended Action: None

Attachments: Contract

**STATE OF KANSAS**  
**NON-STATE PUBLIC EMPLOYER CONTRACT**

This contract is entered into by and between the Kansas State Employees Health Care Commission (“Commission” or “HCC”) and **Franklin County** (“Non-State Public Employer” or “NSPE”).

**ARTICLE I**  
**NATURE OF THE CONTRACT.**

The Commission has created a Non-State Public Employer health care benefit plan to provide health care benefits within the State’s employee health care benefits program. The intent of this contract is to allow the NSPE to participate in a health benefit risk pool (“**Non-State Public Employer Pool**”), which is comprised of entities enumerated in K.S.A. §75-6506(c) and amendments thereto. The Commission shall have all discretion regarding how the plan and pooling (funding) are to be formed and implemented. The plan is self-funded. Should the plan require additional funds from the NSPE, the Commission shall have the authority to reasonably require additional payments from the NSPE to support the pool. The Commission shall provide professional benefit administration of the health plan.

**ARTICLE II**  
**DEFINITIONS.**

- A. **Non-State Public Employer** – As defined by the Commission, which includes, but not limited to the following: Public school districts, community colleges, area vocational technical schools, or technical colleges, special districts or other local governmental entities, persons on the payroll of a county, township, city, county extensions, hospitals (city, district, or community), libraries, and community mental health centers as outlined in Supp. 2005 K.S.A. 75-6506(c) and supporting regulations.
- B. **Eligible Employee** – The eligible covered persons in the plan are those persons who are permanent employees of a participating entity meeting a threshold requirement of working at least 1,000 (630 educational employer group) hours per year for part-time employees, or more than 2,000 (1,004 educational employer group) hours per year for full-time employees, and their eligible dependents. Further details of eligibility for NSPEs’ employees and their dependents shall be set forth in the NSPE Administration Manual of policies and procedures.
- C. **Eligible Dependent** – Is a covered participant’s lawful spouse and/or a participant’s unmarried child who is under 23 years of age. (Additional conditions apply, see the NSPE Administration Manual)
- D. **Non-State Public Employer Pool** – A defined group of employees that are experience rated.

- E. **Health Plan** – Defined medical, drugs, vision and dental benefits offered to NSPE groups.
- F. **Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)** – A federal law requiring that most employers sponsoring Group Health Insurance Plans offer employees and their families an opportunity to extend health coverage for a limited period of time.
- G. **COBRA Participants** – A participant who elects a temporary extension of health coverage where such coverage would otherwise end as defined by the COBRA act of 1986.
- H. **Composite Rate** – The employer share of a weighted average of all health plan options offered by the NSPE
- I. **Employer Contribution Rate** – The amount of the premium paid by the employer on behalf of the employee and/or dependents.
- J. **“Ramp-Up”** – The alternative method for an employer to reach the funding level that is at least equal to the contribution made for State employees and dependents in the State employee health benefits program.
- K. **Full Level of Employee Contribution** – The amount that is the employee portion of the premium, which is consistent with the contribution level required by the Commission.
- L. **Employee Dependant Contribution** – The amount of premium paid by the employee for dependents.
- M. **HealthQuest** - the State of Kansas Health Promotion Program, which is a wellness program administered by the State Employee Health Plan section.
- N. **Pool Stabilization** – An actuarial estimate of premiums required to pay claims and create reserves to pay future claims and manage the health plan.
- O. **Direct Billed and Retirees** – A program to extend health coverage to: 1) retiring participant group employees, 2) totally disabled former participating group employees, 3) surviving spouses and/or dependents of participating groups eligible under the provisions of K.A.R. 108-1-3 and 108-1-4, and 4) active participating group employees who were covered under the health plan immediately before going on approved leave without pay.
- P. **Premium** – The total cost of the health plan option selected by the employee.

**ARTICLE III**  
**CONTRACT PERIOD.**

- A. A “plan year” is defined as beginning at 12:01 a.m., Central Standard Time, on January 1, through Midnight, December 31.
- B. The Contract Funding/Term Agreement shall be three (3) or five (5) complete plan years, based upon the funding option selected in Article XII of this contract.
- C. Those NSPE who choose the “ramp up” option in Article XII of this contract must maintain enrollment in the health plan for at least three (3) complete plan years from the date of completion of the “ramp up” period.
- D. The NSPE seeking admission to the NSPE Pool during a plan year may do so on a date mutually agreed upon by the parties and at rates equal to those established by the Commission for the plan year in which they enter. The contract term may be longer than the 3 or 5 plan year period due to the effective date of the contract.
- E. The effective date of this contract is **January 1, 2010**.
- F. The NSPE represents and covenants that it shall obtain, maintain and properly budget funds to satisfy its obligations under this contract. Except, as otherwise specifically, provided by law funding for this contract shall have priority over any other budgeted expenditures.

**ARTICLE IV**  
**NON-STATE PUBLIC EMPLOYER PARTICIPATION RESPONSIBILITIES.**

Subject to Supp. 2005 K.S.A. 75-6506(d) and supporting regulations the NSPE, in order to participate in the health benefit plan, agrees to the following conditions:

- A. At least 70% of the eligible employees of the participating NSPE shall participate in the Non-State Public Employer portion of the health plan;
- B. The plan design and all funding are determined by the Commission and shall not be subject to any contract negotiations;
- C. Employers may not create, maintain or provide incentives for employees not to join the health plan. Covered groups are prohibited from providing cash out options or any other payments or incentives to employees in lieu of coverage in the health plan;

- D. The health plan is considered a “core” benefit in a Non-State Public Employer’s cafeteria benefit plan;
- E. NSPEs shall elect one of the following two employer funding/term options and must pay the appropriate premium as set forth by the Commission:
  - 1. Remain in the Plan for a minimum of three plan years; or
  - 2. Remain in the Plan for a minimum of 5 plan years if a “ramp-up” option is selected;
- F. Participate in HealthQuest and related initiatives as set forth and directed by the Commission or staff;
- G. NSPEs shall provide staff for enrollment, provide general information and first-level assistance to participants;
- H. Should any of the above requirements not be met in any plan year, the NSPE shall submit a written plan to the Commission stating how it will timely comply with the requirement(s) of this section. If the NSPE does not return to compliance within a reasonable time (60 days or less) the Commission may terminate the NSPE from the plan and the NSPE will be subject to liquidated damages as set forth in Article VIII, Subsection B;
- I. The NSPE also shall:
  - 1. Collect the employer and employee contributions and remit the contributions to the Commission on a monthly basis;
  - 2. Provide the Commission, at mutually agreed upon dates and in a mutually agreed upon format, a list of those retirees and COBRA participants who are currently enrolled, along with their eligible dependents for direct billing;
  - 3. Be primarily responsible for and participate in the enrollment process for its eligible participants;
  - 4. Complete and submit to the health plan section all forms and supporting documentation for employees requesting enrollment changes and terminations in a timely manner (within 31 days of the event);
  - 5. Provide yearly, on or before November 15 an Employer Certification Form as provided in the administration manual;
  - 6. Provide yearly, on or before November 15, salary and salary tier information on current employees.
  - 7. In the case of a 100% contribution election for a three year employer funding commitment in Article XII, be responsible for an accurate calculation of this 100% funding commitment.

- J. The NSPE shall be subject to all Commission policies, procedures and staff administrative requirements of the State Employee Health Plan Section of the Kansas Health Policy Authority, which may be amended at any time without notice to the NSPE.

**ARTICLE V**  
**PREMIUMS AND PAYMENT.**

- A. Employer contribution rates are solely determined by the Commission and may be changed from time to time with prior notice given to the NSPE. Currently, the employer contribution shall be a monthly composite rate: a weighted average of all plan premiums or costs. The employee contribution shall be a monthly rate reflecting a percentage of the selected individual health plan costs. The employer contribution shall be assessed and paid during the State's fiscal year: July 1 – June 30. The employee contribution shall be assessed and paid during the State's plan-year: January 1 – December 31.
- B. Premiums shall be invoiced to the NSPE monthly on or before the 25<sup>th</sup> day of each month proceeding the month of coverage (or first business day thereafter). The invoiced amount due shall be based upon known enrollment on the invoice date. The NSPE shall pay the invoiced premium on or before the first day of the month for that month of coverage. The NSPE shall pay a late fee equal to two and one-half percent (2.5%) of the monthly premium due for any premium not received by the Commission by the 15<sup>th</sup> day of the month coverage is in effect.
- C. If the NSPE fails to properly make a premium payment by the 15<sup>th</sup> day of the month for that month of coverage the Commission reserves the right to terminate this contract without any prior written notice to NSPE.
- D. Any NSPE cancelled for nonpayment of premiums shall be responsible for all paid claims after the last date of paid coverage and an administrative fee of eight percent (8%). The NSPE shall reimburse and remit payment to the Commission within 10 days from date of invoice for all claims paid by the Commission or any other State agency during the period of non-premium payment, plus an administrative fee equal to eight percent (8%) of the total amount of claims paid by the Commission and any legal fees, expenses and costs incurred. This contract shall automatically terminate and NSPE shall also be liable for the liquidated damages as identified in Section VIII, Subsection B.
- E. Claims for services provided after the termination date of this contract shall be the sole responsibility of the NSPE. Pharmacy claims will be billed to the NSPE by the Commission.

**ARTICLE VI**  
**POOL STABILIZATION.**

- A. From time to time, the Commission may review the number of enrolled participants in the self-insured plan and determine whether to create one or more separate Non-State Public Employer Pools made up of some or all Non-State Public Employers.
- B. Upon creation of a Non-State Public Employer Pool applicable to any Non-State Public Employer, all affected Non-State Public Employers enrolling shall be included in such Pool and pay the Non-State Public Employer Pool rates established by the Commission.
- C. Upon creation of an applicable Non-State Public Employer Pool, at the beginning of the Plan Year after the benchmark number of eligible participants in the self-insured plan is met, all affected Non-State Public Employers shall be included in such Pool and pay Pool rates. After the Non-State Public Employer Pool is created, rates shall be determined by the Commission based upon the experience, plan administration, reserves, and needs of the Pool to be self-sufficient.

**ARTICLE VII**  
**COBRA, DIRECT BILL, AND HIPAA REQUIREMENTS.**

- A. The Commission shall be responsible for billing and collecting 102% of premiums from participants and other qualified beneficiaries who continue insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986. The Commission shall retain the additional 2% to cover administrative costs. For extended continuation of coverage as required by the Omnibus Budget Reconciliation Act of 1986, and during coverage from the 19<sup>th</sup> through the 29<sup>th</sup> month, individuals will be required to pay 150% of the premium required of active participants. In such instances an amount equal to 2% of the normal premium will be retained by the Commission as special administrative expense and the 148% of the normal premium shall be considered as premium payments.
- B. Direct billed and retirees of the NSPE shall be permitted to participate in the program as long as the NSPE is a current participant in the Plan, and has participated in the Plan on the day immediately preceding the date of a coverage status change.
- C. NSPE shall comply with all the provisions of the Health Insurance Portability and Accountability Act (HIPAA), along with all other HIPAA related procedures as may be specified by the Commission. NSPE shall indemnify and hold harmless the Commission and the State of Kansas for any HIPAA violation, as determined by the Commission.

**ARTICLE VIII**  
**TERMINATION.**

- A. Notwithstanding any other provisions of this contract to the contrary, the Commission reserves the right to terminate this contract at the end of any plan year by giving 90 days written notice, or as otherwise provided in this contract. This contract will automatically renew on January 1 for three years following the end of any multi-year contract, unless written notice of termination is received by October 1 of the end of any multi-year contract.
- B. Notwithstanding any other provisions of this contract to the contrary, the Commission reserves the right to terminate this contract, without prior notice, if (1) the NSPE fails to make any premium payment at the proper time and in the proper amount; (2) the NSPE commits a material breach relating to one of more of the terms of this contract; and (3) the NSPE becomes, or reasonably appears to be close to becoming, insolvent or bankrupt, or subject to conservatorship, receivership or liquidation.

Withdrawal, noncompliance or termination of this contract, other than pursuant to Subsection A of this Article will also result in liquidated damages being assessed against the NSPE as follows:

1. For those NSPEs with less than twelve (12) months remaining on their contract, liquidated damages shall be equal to two and one-half percent (2.5%) of the premium the NSPE would have been obligated to pay, based upon enrollment on the date of termination, for the remaining term of the contract.
  2. For those NSPEs with twelve (12) to twenty-four (24) months remaining on their contract, liquidated damages shall be equal to five percent (5%) of the premium the NSPE would have been obligated to pay, based upon enrollment on the date of termination, for the remaining term of the contract.
  3. For those NSPEs with more than twenty-four (24) months remaining on their contract, liquidated damages shall be equal to ten percent (10%) of the premium the NSPE would have been obligated to pay, based upon enrollment on the date of termination, for the remaining term of the contract
- B. The assessment of liquidated damages in this contract shall not be an exclusive remedy and shall not limit any other remedy at law or equity available to the State.
- C. In the event the NSPE is a part of a consolidation or disorganization or otherwise attaches to another entity, all obligations of the NSPE under this contract shall

continue and shall be enforceable against that portion of the new entity. The original NSPE participants must remain in the Pool, subject to the terms of this contract.

- D. Additionally, if NSPE withdraws or terminates this contract for any reason, the NSPE may not join the Plan unless the following conditions are met: 1) five (5) years from the natural expiration of this contract has past, and 2) the NSPE's current loss ratio (as determined by the Staff) at the time of re-applying does not exceed ten percent (10%) of the existing loss ratio of the NSPE Pool.

**ARTICLE IX**  
**CONTRACTUAL PROVISIONS ATTACHMENT.**

The provisions of the Contractual Provisions Attachment (DA-146a), which is attached hereto, are hereby incorporated by reference.

**ARTICLE X**  
**NOTICES.**

The notice addresses of the parties are as follows:

**KANSAS STATE EMPLOYEES HEALTH CARE COMMISSION**

ATTN: Doug Farmer, Director  
State Employee Health Benefits Plan  
Landon State Office Building, Room 900-N  
900 SW Jackson  
Topeka, KS 66612  
Telephone: (785) 368-6361  
Fax: (785) 368-7180

**NON-STATE PUBLIC EMPLOYER**

Franklin County  
ATTN: John E. Taylor  
Title: Chairman, Franklin County Board of Commissioners  
Address: 1428 S Main, Suite 2  
Ottawa, Kansas 66067  
Telephone: (785) 229-3485  
Fax: (785) 229-3449

**Federal Employer Identification Number:** 48-6038022

**ARTICLE XI**  
**ENTIRETY OF CONTRACT.**

This contract and the documents described above, which are incorporated by reference, constitute the entire agreement of the parties hereto. No oral agreements will be effective to alter this contract. This contract can only be amended by written agreement which is signed by the parties.

**ARTICLE XII**  
**EMPLOYER FUNDING ELECTION.**

Pursuant to the terms of this contract, the NSPE elects the employer funding option and multi-year commitment as checked below:

**THREE YEAR EMPLOYER FUNDING COMMITMENT.** (Employer pays full level of employee and dependent contribution – no “Ramp Up”).

Required Contribution Level paid by the State of Kansas for its own employees.

**FIVE YEAR EMPLOYER FUNDING COMMITMENT.**

EMPLOYER CONTRIBUTION    and    DEPENDENT CONTRIBUTION

Full Employer

Two Year “Ramp-Up”

Three Year “Ramp-Up”

Full Dependent

Two Year “Ramp-Up”

Three Year “Ramp-Up”

Five Year “Ramp-Up”

**ARTICLE XIII**  
**JURISDICTION.**

The parties shall bring any and all legal proceedings arising under this contract in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which any Commission entity is a party. NSPE waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on contractor in the manner authorized by applicable law or court rule. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment.

**ARTICLE XIV**  
**VALIDITY AND WAIVER.**

The invalidity in whole or in part of any provision of this contract shall not affect the validity of other provisions. A waiver of a breach of any provision of this contract shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision of this contract. The failure of the State to enforce at any time or from time to time any provision of this contract shall not be construed as a waiver thereof.

**ARTICLE XV**  
**SIGNATURES.**

Signatures herein shall serve to bind the parties to this agreement. The parties represent and warrant that they have read and thoroughly understand the terms and conditions and they are represented by counsel and the terms and conditions of this contract have been fully explained to them by counsel.

This contract shall be binding on any person or entity that is a successor of the NSPE.

HEALTH CARE COMMISSION

NON-STATE PUBLIC EMPLOYER

By: \_\_\_\_\_  
Health Care Commission, Chair

By: \_\_\_\_\_  
Print: John E. Taylor  
Title: Chairman, Franklin County Board  
of Commissioners

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Document No. 29004

## **CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the **1st day of January, 2010**.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
- 2. Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."