ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2188

By: Greenwood, Perry, Graves, Ramsey, Claunch, O'Neal and Miller of the House

and

Hendrick of the Senate

(medical trusts - amending 63 O.S., Sections 2622 and 2623 - Medical Savings Account Act - amending 74 O.S., Sections 1366 and 1371 - effective date - emergency)

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

[medical trusts - amending 63 O.S., Sections 2622 and 2623 - Medical Savings Account Act - amending 74 O.S., Section 1371 - effective date - emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 249, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2622), is amended to read as follows:

Section 2622. As used in the Medical Savings Account Act:

1. "Account holder" means the individual including but not limited to an employee of an employer or dependents of the individual on whose behalf the medical savings account is established;

2. "Dependent child" means any person under the age of twenty-one (21) years or any person who is legally entitled or subject to a court order for the provision of proper and necessary subsistence, education, medical care, or any other care necessary for the health, or well-being of such person, and who is not otherwise emancipated, married or a member of the Armed Forces of the United States, or who is mentally or physically incapacitated and cannot provide for themselves;

3. "Eligible medical expenses" means an expense paid by the taxpayer for medical care described in Section 213(d) of the Internal Revenue Code;

4. "Medical savings account" or "account" means an account established in this state pursuant to a medical savings account program to pay the eligible medical expenses of an account holder and the dependents of the account holder;

5. "Medical savings account program" or "program" means a program that includes all of the following:

a. the purchase by an individual or employer of a qualified higher deductible health benefit plan which is approved by the State Department of Health and offered by an entity regulated by the State Department of Health or is approved by the Insurance Commissioner and offered by an entity regulated by the Insurance Commissioner <u>or is offered by the State and Education Employees Group Insurance Board</u> for the benefit of the individual or an employee of the employer and the dependents of that individual or the employee,

b. the deposit by an individual into a medical savings account or the contribution on behalf of an employee into a medical care account by an employer of all or part of the premium differential realized by the employer based on the purchase of a qualified higher

deductible health plan for the benefit of the employee. An employer that did not previously provide a health plan or provide a health coverage policy, certificate, or contract for employees may contribute all or part of the deductible of a qualified higher deductible health benefit plan; and

6. "Trustee" means a chartered state bank, savings and loan association or trust company authorized to act as a fiduciary; a national banking association or savings and loan association authorized to act as a fiduciary; or an insurance company.

SECTION 2. AMENDATORY Section 3, Chapter 249, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2623), is amended to read as follows:

Section 2623. A. For taxable years beginning after December 31, 1995, an individual who is a resident of this state or an employer shall be allowed to deposit contributions to a medical savings account. The amount of deposit for the first taxable year subsequent to the effective date of this act shall not exceed:

1. Two Thousand Dollars ($2,000.00) for the account holder;

2. Two Thousand Dollars ($2,000.00) for the spouse of the account holder; and

3. One Thousand Dollars ($1,000.00) for each dependent child of the account holder.

B. The maximum allowable amount of deposit for subsequent years shall be increased annually by a percentage equal to the previous year's increase in the national Consumer Price Index (CPI).

C. Contributions made to and interest earned on a medical savings account shall be exempt from taxation as adjusted gross income in this state as provided for in Section 2358 of Title 68 of the Oklahoma Statutes.

D. Upon agreement between an employer and employee, an employee may either have the employer contribute to the employee's medical

savings account under a medical savings account program or continue to make contributions under the employee's existing health insurance policy or program, subject to the restrictions in paragraph 1 of subsection ~~F~~ E of this section.

E. The medical savings account shall be established as a trust under the laws of this state and placed with a trustee.

1. The trustee shall utilize the funds held in a medical savings account solely for the purpose of paying the eligible medical expenses of the account holder or the dependents of the account holder or to purchase a health benefit plan, certification, or contract if the account holder does not otherwise have health insurance coverage. Funds held in a medical savings account shall not be used to cover medical expenses of the account holder or dependents of the account holder that are otherwise covered by other means, including but not limited to medical expenses covered pursuant to an automobile insurance policy, a workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

2. The account holder may submit prior to the end of the tax year documentation of medical expenses paid by the account holder during that tax year to the trustee and the trustee shall reimburse the account holder for eligible medical expenses from the medical savings account.

3. Any funds remaining in a medical savings account at the end of the tax year after all medical expenses have been paid unless withdrawn as provided for in this section shall remain in the account and may be used by the account holder for payment of future medical expenses.

F. An account holder may withdraw money from the medical savings account of the account holder for any purpose other than a purpose listed in paragraph 1 of subsection E of this section, only on the last business day of the trustee's business year. If money

is withdrawn on that date, pursuant to this subsection, it shall be considered income for income tax purposes and shall not be eligible for the exemption provided in Section 2358 of Title 68 of the Oklahoma Statutes.

G. If the account holder withdraws money for any purpose, other than a purpose described in paragraph 1 of subsection E of this section, at any time other than on the last business day of the trustee's business year, all of the following shall apply:

1. The amount of the withdrawal shall be considered income for income tax purposes and shall not be eligible for the tax exemption provided in Section 2358 of Title 68 of the Oklahoma Statutes;

2. The trustee shall withhold and shall pay on behalf of the account holder a penalty to the Oklahoma Tax Commission equal to ten percent (10%) of the amount of the withdrawal; and

3. All interest earned on the account during the tax year in which a withdrawal occurs shall be considered income for income tax purposes.

H. Upon the death of the account holder, the account principal, as well as any interest accumulated thereon, shall be distributed to the estate of the account holder and shall be taxed as part of the estate.

I. If an employee is no longer employed by an employer that participates in a medical savings account program and the employee, not more than sixty (60) days after the final day of employment, transfers the account to a new trustee or requests in writing to the trustee of the former employer that the account remain with that trustee and that trustee agrees to retain the account, the money in the medical savings account may be utilized for the benefit of the account holder or the dependents of the account holder subject to this act, and the money shall remain exempt from taxation pursuant to Section 2358 of Title 68 of the Oklahoma Statutes. Not more than thirty (30) days after the expiration of the sixty-day transfer

period, if the account holder has not transferred the account or the trustee has not accepted the account of the former employee, the employer shall mail a check to the last-known address of the former employee in an amount equal to the amount in the account on the date the check is mailed. The amount shall be taxed and subject to penalty as provided for in subsection G of this section. If an employee becomes employed with a different employer that participates in a medical savings account program before the expiration of the sixty-day transfer period, the employee may transfer the medical savings account to the trustee of the new employer without penalty.

SECTION 3. AMENDATORY Section 11, Chapter 400, O.S.L. 1992, as amended by Section 11, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 1995, Section 1371), is amended to read as follows:

Section 1371. A. All participants must use a portion or all of their flexible benefit allowance to purchase at least the basic plan. On or before January 1 of each year, the Council shall design the basic plan for the next plan year to insure that the basic plan provides adequate coverage to all participants. All benefit plans, whether offered by the Board, a health maintenance organization or other vendors shall at least meet the minimum requirements set by the Council for the basic plan.

B. The Board shall offer health, dental, disability, life and dental coverage to all participants and their dependents. For health, dental, disability and life coverage, the Board shall offer plans at the basic benefit level established by the Council, and in addition, may offer benefit plans that provide an enhanced level of benefits. The Board shall offer a high deductible health benefit plan which shall have the same copayments, coinsurance and benefit limits as the basic benefit level but with a higher deductible amount. The Board shall be responsible for determining the plan design and the benefit price for the plans that they offer. The

benefits price for the basic plan during a plan year shall not exceed the flexible benefits allowance for the same plan year. The Council shall approve the plan designs to assure that they meet the minimum benefit levels.

Nothing in this subsection shall be construed as prohibiting the Board from offering additional medical plans, provided that any medical plan offered to participants shall meet or exceed the benefits provided in the medical portion of the basic plan.

C. In lieu of electing any of the preceding medical benefit plans, a participant may elect medical coverage by any health maintenance organization made available to participants by the Council. The benefit price of any health maintenance organization shall be determined annually by a sealed bid process conducted through the Central Purchasing Division of the Department of Central Services. All plans offered by health maintenance organizations meeting the bid requirements as determined by the Council shall be accepted. Provided, however, the Council shall have the authority to reject the bid or restrict enrollment in any health maintenance organization for which the benefit price is determined to be excessive by the Council. In making such determination the Council shall examine the most recent financial data of the health maintenance organization and shall consider the prices charged for comparable plans offered to other groups. All bidders shall submit along with their bid a notarized, sworn statement as provided by Section 85.22 of this title. The Council shall have the authority to reject any plan that does not meet the bid requirements.

D. Nothing in this section shall be construed as prohibiting the Council from offering additional qualified benefit plans or currently taxable benefit plans.

E. Each employee of a participating employer who meets the eligibility requirements for participation in the flexible benefits plan shall make an annual election of benefits under the plan during

an enrollment period to be held prior to the beginning of each plan year. The enrollment period dates will be determined annually and will be announced by the Council, providing the enrollment period shall end no later than thirty (30) days before the beginning of the plan year.

Each such employee shall make an irrevocable advance election for the plan year or the remainder thereof pursuant to such procedures as the Council shall prescribe. Any such employee who fails to make a proper election under the plan shall, nevertheless, be a participant in the plan and shall be deemed to have purchased the default benefits described in this section.

F. The Council shall prescribe the forms that participants will be required to use in making their elections, and may prescribe deadlines and other procedures for filing the elections.

G. Any participant who, in the first year for which he or she is eligible to participate in the plan, fails to make a proper election under the plan in conformance with the procedures set forth in this section or as prescribed by the Council shall be deemed automatically to have purchased the default benefits. The default benefits shall be the same as the basic plan benefits. Any participant who, after having participated in the plan during the previous plan year, fails to make a proper election under the plan in conformance with the procedures set forth in this section or prescribed by the Council, shall be deemed automatically to have purchased the same benefits which the participant purchased in the immediately preceding plan year, except that the participant shall not be deemed to have elected coverage under the health care reimbursement account plan or the dependent care reimbursement account plan~~;~~.

H. Benefit plan contracts with the Board, health maintenance organizations, and other third party insurance vendors shall provide for a risk adjustment factor for adverse selection that may occur,

as determined by the Council, based on generally accepted actuarial principles.

SECTION 4. This act shall become effective July 1, 1996.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 2nd day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker of the House of Representatives