

ENROLLED HOUSE
BILL NO. 2188

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

and

Hendrick of the Senate

An Act relating to medical trusts; amending Sections 2 and 3, Chapter 249, O.S.L. 1995 (63 O.S. Supp. 1995, Sections 2622 and 2623), which relate to the Medical Savings Account Act; modifying certain definitions; providing for definition of certain term; allowing unused funds to be used for future medical expenses; providing for the transfer of a medical savings account by certain employees; stating procedure for transferring account; requiring employers under certain conditions to send funds to employee; providing certain penalty; amending Section 6, Chapter 400, O.S.L. 1992 and Section 11, Chapter 400, O.S.L. 1992, as amended by Section 11, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 1995, Sections 1366 and 1371), which relate to the Oklahoma State Employees Benefits Act; modifying allowed expenses in an employee salary adjustment agreement; requiring the Board to offer a certain high deductible health benefit plan; stating benefit level and copayment amount of high deductible plan; allowing certain participants to elect the high deductible health benefit plan; providing for deposit of excess benefit allowance in a medical saving account; providing for taxation of deposited amounts; providing an effective date; and declaring an 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 or is offered by the State and Education Employees Group Insurance Board 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, licensed securities dealer 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. For purposes of the Medical Savings Account Act, an employer shall include a participating employer as defined in the Oklahoma State Employees Benefits Act.

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 6, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1995, Section 1366), is amended to read as follows:

Section 1366. A. The Council shall establish a flexible benefits plan in accordance with the provisions of this act. All participating employers shall offer the plan to their eligible employees.

B. The Council shall interpret the plan and decide any matters arising thereunder and may adopt such rules and procedures as it deems necessary, desirable or appropriate in the administration of the plan subject to the Administrative Procedures Act. All rules and decisions of the Council shall be uniformly and consistently applied to all participants in similar circumstances and shall be conclusive and binding on all persons having an interest in the plan. When making any decision or determination, the Council shall be entitled to rely upon such information as may be furnished to it by a participant, a participating employer, legal counsel, third party administrator or the management of any individual benefit plan which is incorporated in the plan.

C. The executive director, under the direction of the Council, may contract with one or more firms or organizations to administer or provide consulting services in regard to all or any portion of the plan.

The Council shall solicit proposals on a competitive bid basis from such firms or organizations according to the standards set out in the Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes. When requested by the Council, the Department of Central Services shall assist the Council in the process of selecting any contracts for the design, development, communication or implementation of the plan.

When awarding a contract for services pursuant to this subsection, the Council shall satisfy itself that the contractor has no interests which would impair its ability to perform the tasks and services required and that the contractor will exercise proper independent judgment when performing its responsibilities under this act and under the contract.

D. The Council shall implement the plan created by this act for the fiscal year beginning July 1, 1993. The Council shall submit to the Director of the Legislative Service Bureau and the Director of the Office of State Finance a report detailing the procedures and operations performed or to be performed by the Council along with the associated costs for implementing and operating the plan prior to December 1, 1992. Said report, written in cooperation with the Board, shall make specific reference to the duties and

responsibilities to be transferred from the Board to the Council by identifying and listing said duties and responsibilities, the actions of the Board that have facilitated or will facilitate the transfer of said duties and responsibilities, and what actions, if any, the Council desires the Board to take in order to further the efficient and effective transfer of said duties and responsibilities.

E. Expenses included in an employee's salary adjustment agreement pursuant to the flexible benefits plan shall be limited to expenses for:

1. Premiums for any health insurance, health maintenance organization, life insurance, long term disability insurance ~~or~~, dental insurance or high deductible health benefit plan offered to employees and their dependents;

2. Insurance premiums or retirement plan premiums or payments which are supplemental to insurance or retirement programs offered by the State of Oklahoma or which are paid for under salary adjustment agreements pursuant to the provisions of ~~paragraph 1 or 2 of subsection D of~~ Section 7.10 of Title 62 of the Oklahoma Statutes;

3. Dependent care;

4. Medical care, as defined by the Council; and

5. All other eligible benefit programs offered under 26 United States Code Section 125.

F. The amount by which an employee's salary is adjusted pursuant to a salary adjustment agreement shall be excluded from income in computation of income tax withholding, federal insurance contributions act taxes, unemployment payments and workers' compensation coverage. Such amount shall be included as income in computation of state retirement contributions and benefits. Provided, if the inclusions and exclusions provided in this subsection conflict with the provisions of federal law or regulations pertaining to flexible benefits plans, the Council is authorized to modify or abolish such inclusions and exclusions.

G. The Office of Personnel Management shall provide the Council with the necessary services and facilities required to administer the programs of the Council. Legal representation shall be provided by the Office of the Attorney General through the Office of Personnel Management as provided for in Section 18 1 of Title 74 of the Oklahoma Statutes. The Office of Personnel Management shall be reimbursed by the Council for the cost of such services and facilities.

For budgetary purposes only, employees of the Council shall be considered employees of the Office of Personnel Management; however, such employees shall not for any other reason be considered employees of the Office of Personnel Management. The executive director shall be the appointing authority and agency head. All other positions and employees shall be classified and subject to the provisions of the Merit System of Personnel Administration except actuaries and other personnel and positions in the unclassified service as provided in ~~Sections 840.8 and 840.10~~ Section 840-5.5 of this title.

SECTION 4. 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, after meeting the higher deductible amount, shall have the same coinsurance and benefit limits as the basic benefit plan but with a higher deductible amount and with copayments which are no greater than the basic benefit plan. 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. A participant may elect the high deductible health benefit plan offered by the Board and any excess flexible benefit allowance remaining after payment of the higher deductible benefit price may be deposited in a medical saving account established in accordance with the Medical Saving Account Act. Any excess flexible benefit allowance deposited in a medical saving account shall not be considered taxable compensation.

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

~~E.~~ F. 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.~~ G. 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.~~ H. 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.~~ I. 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 5. This act shall become effective July 1, 1996.

SECTION 6. 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 House of Representatives the 13th day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 13th day of May, 1996.

President of the Senate