

SHORT TITLE: Health insurance; Oklahoma State and Education Employees Group Insurance Board and the Oklahoma State Employees Benefits Council; requiring legislative approval; providing for exclusivity of responsibilities; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1106

By: Herbert

AS INTRODUCED

An Act relating to health insurance; amending 74 O.S. 1991, Section 1306, as last amended by Section 15, Chapter 10, O.S.L. 1993 and Section 5, Chapter 400, O.S.L. 1992, as amended by Section 10, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 1995, Sections 1306 and 1365), which relate to the Oklahoma State and Education Employees Group Insurance Board and the Oklahoma State Employees Benefits Council; requiring certain legislative approval; providing for exclusivity of certain responsibilities; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 1306, as last amended by Section 15, Chapter 10, O.S.L. 1993 (74 O.S. Supp. 1995, Section 1306), is amended to read as follows:

Section 1306. (1) The State and Education Employees Group Insurance Board shall administer and manage the group insurance plans and the flexible benefits plan and, subject to the provisions of the State and Education Employees Group Insurance Act, Section 1301 et seq. and the State Employees Flexible Benefits Act, Section 1341 et seq. of this title, shall have the following powers and duties:

(a) The preparation of specifications for such insurance plans as the Board may be directed to offer;

(b) The authority and duty to request bids through the Purchasing Division of the Department of Central Services for a

contract to be the claims administrator for all or any part of such insurance and benefit plans as the Board may be directed to offer;

(c) The determination of the methods of claims administration under such insurance and benefit plans as the Board may be directed to offer;

(d) The determination of the eligibility of employees and their dependents to participate in each of the Group Insurance Plans and in such other insurance and benefit plans as the Board may be directed to offer and the eligibility of employees other than education employees to participate in the Life Insurance Plan provided that evidence of insurability shall not be a requirement in determining an employee's initial eligibility;

(e) The determination of the amount of employee payroll deductions and the responsibility of establishing the procedure by which such deduction shall be made;

(f) The establishment of a grievance procedure by which a three-member grievance panel shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters. Except for grievances settled to the satisfaction of both parties prior to a hearing, any person who requests in writing a hearing before the grievance panel shall receive a hearing before the panel. The grievance procedure provided by this paragraph shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, ~~Sections 301 through 325~~ Section 250 et seq. of Title 75 of the Oklahoma Statutes including provisions thereof for review of agency decisions by the district court. The grievance panel shall schedule a hearing regarding the allowance and payment of claims, eligibility and other matters within sixty (60) days from

the date the grievance panel receives a written request for a hearing unless the panel orders a continuance for good cause shown. Upon written request by the insured employee to the grievance panel and received not less than ten (10) days before the hearing date, the grievance panel shall cause a full stenographic record of the proceedings to be made by a competent court reporter at the insured employee's expense;

(g) The continuing study of the operation of such insurance and benefit plans as the Board may be directed to offer including such matters as gross and net costs, administrative costs, benefits, utilization of benefits, and claims administration;

(h) The administration of the Health, Dental and Life Insurance Reserve Fund or Funds, the Flexible Benefits Revolving Fund and the Education Employees Group Insurance Reserve Fund;

(i) The auditing of the claims paid pursuant to the provisions of the State and Education Employees Group Insurance Act, the State Employees Flexible Benefits Act and the State Employees Disability Program Act;

(j) (1) To select and contract with federally qualified Health Maintenance Organizations under the provisions of 42 U.S.C., Section 300e et seq. or with Health Maintenance Organizations licensed by the Department of Health pursuant to Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes for consideration by employees as an alternative to the state self-insured health plan, and to transfer to the HMOs such funds as may be approved for an employee electing HMO alternative services.

(2) HMO contracts shall provide for a risk adjustment factor for adverse selection, that may occur as determined by the Board, based on generally accepted actuarial principles;

(k) For the fiscal year beginning July 1, 1992, to assess and collect a four percent (4%) fee from such contracted HMOs to offset the costs of administration, and to appropriate and pay to the Benefits Council Administration Fund an amount equal to fifty percent (50%) of said fee within ten (10) days of collection;

(l) To contract for re-insurance, catastrophic insurance, or any other type of insurance deemed necessary by the Board and authorized by the Legislature;

(m) The Board, pursuant to the provisions of Sections 301 through 325 of Title 75 of the Oklahoma Statutes, shall adopt such rules and regulations consistent with the provisions of the State and Education Employees Group Insurance Act as it deems necessary to carry out its statutory duties and responsibilities;

(n) The Board shall contract for claims administration services with a private insurance carrier or a company experienced in claims administration of any insurance that the Board may be directed to offer. No contract for claims administration services shall be made unless such contract has been offered for bids through the Purchasing Division of the Department of Central Services. The Board shall contract with a private insurance carrier or other experienced claims administrator to process claims with software that is normally used for its customers;

(o) The Board shall contract for utilization review services with a company experienced in utilization review, data base evaluation, market research, and planning and performance of the health insurance plan;

(p) The Board shall approve the amount of employee premiums and dependent premiums for such insurance plans as the Board shall be directed to offer for each fiscal year no later than March 1 of the previous fiscal year. The Board shall submit notice of the amount

of employee premiums and dependent premiums along with an actuarial projection of the upcoming fiscal year's enrollment, employee contributions, employer contributions, investment earnings, paid claims, internal expenses, external expenses and changes in liabilities to the Director of the Office of State Finance and the Director of the Legislative Service Bureau no later than March 1 of the previous fiscal year;

(q) Before December 1 of each year the Board shall submit to the Director of the Office of State Finance a report outlining the financial condition for the previous fiscal year of all insurance plans offered by the Board. The report shall include a complete explanation of all reserve funds and the actuarial projections on the need for such reserves. The report shall include and disclose an estimate of the future trend of medical costs, the impact from HMO enrollment, antiselection, changes in law, and other contingencies that could impact the financial status of the plan. The Director of the Office of State Finance shall make written comment on the report and shall provide such comment, along with the report submitted by the Board, to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Chairman of the Oklahoma State Employees Benefits Council by January 15;

(r) The Board shall establish a prescription drug card network for the fiscal year beginning July 1, 1990;

(s) The Board shall have the authority to intercept monies owing to plan participants from other state agencies, when those participants in turn, owe money to the Board. The Board shall be required to adopt rules and regulations ensuring the participants due process of law;

(t) The Board is authorized to make available to eligible employees supplemental health care benefit plans to include but not be limited to long-term care, deductible reduction plans and employee co-payment reinsurance. Premiums for said plans shall be actuarially based and the cost for such supplemental plans shall be paid by the employee; and

(u) There is hereby created as a joint committee of the State Legislature, the Joint Liaison Committee on State and Education Employees Group Insurance Benefits, which Joint Committee shall consist of three members of the Senate to be appointed by the President Pro Tempore thereof and three members of the House of Representatives to be appointed by the Speaker thereof. The Chairman and Vice Chairman of the Joint Committee shall be appointed from the membership thereof by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, respectively, one of whom shall be a member of the Senate and the other shall be a member of the House of Representatives. At the beginning of the first regular session of each Legislature, starting in 1991, the Chairman shall be from the Senate; thereafter the chairmanship shall alternate every two (2) years between the Senate and the House of Representatives.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall function as a committee of the State Legislature when the Legislature is in session and when the Legislature is not in session. Each appointed member of said committee shall serve until his or her successor is appointed.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefit shall serve as a liaison with the State and Education Employees Group Insurance Board regarding advice, guidance, policy, management, operations, plans, programs and fiscal

needs of said Board. Said Board shall not be bound by any action of the Joint Committee.

(v) For the fiscal year beginning July 1, 1993, certain duties and responsibilities of the Board shall be transferred to the Oklahoma State Employees Benefits Council pursuant to the provisions of the Oklahoma State Employees Benefits Act. During the fiscal year beginning July 1, 1992, the Board shall cease activities related to the implementation of said transferred duties and responsibilities for the next fiscal year and implement all reasonable actions to ensure the effective and efficient transfer of said duties and responsibilities to the Oklahoma State Employees Benefits Council.

SECTION 2. AMENDATORY Section 5, Chapter 400, O.S.L. 1992, as amended by Section 10, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 1995, Section 1365), is amended to read as follows:

Section 1365. A. The Oklahoma State Employees Benefits Council shall have the following duties, responsibilities and authority with respect to the administration of the plan:

1. To construe and interpret the plan, and decide all questions of eligibility in accordance with this act and the Code;

2. To select those benefits which shall be made available to participants under the plan, according to this act, and other applicable laws and regulations;

3. To retain or employ qualified agencies, persons or entities to design, develop, communicate, implement or administer the plan;

4. To prescribe procedures to be followed by participants in making elections and filing claims under the plan;

5. To prepare and distribute information communicating and explaining the plan to participating employers and participants; provided that neither the Board, health maintenance organizations,

nor other third-party insurance vendors shall be directly or indirectly involved in the distribution of said communicated information to participating employers and participants;

6. To receive from participating employers and participants such information as shall be necessary for the proper administration of the plan, and any of the benefits offered thereunder;

7. To furnish the participating employers and participants such annual reports with respect to the administration of the plan as are reasonable and appropriate;

8. To keep reports of benefit elections, claims and disbursements for claims under the plan;

9. To appoint an executive director who shall serve at the pleasure of the Council. The executive director shall employ or retain such persons in accordance with this act and the requirements of other applicable law, including but not limited to actuaries and certified public accountants, as he or she deems appropriate to perform such duties as may from time to time be required under this act and to render advice upon request with regard to any matters arising under the plan subject to the approval of the Council. The executive director shall have not less than seven (7) years of group insurance administration experience on a senior managerial level or not less than three (3) years of flexible benefits experience on a senior managerial level. Any actuary or certified public accountant employed or retained under contract by the Council shall have not less than three (3) years' experience in group insurance or employee benefits administration. The compensation of all persons employed or retained by the Council and all other expenses of the Council shall be paid at such rates and in such amounts as the Council shall approve, subject to the provisions of applicable law;

10. For plan year beginning July 1, 1993, and all future plan years, the exclusive responsibility and authority to select and contract with federally qualified health maintenance organizations under the provisions of 42 U.S.C., Section 300e et seq. or with health maintenance organizations licensed by the Department of Health pursuant to Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes for consideration by participants as an alternative to the health plans offered by the Board, and to transfer to the health maintenance organizations such funds as may be approved for a participant electing health maintenance organization alternative services;

11. To require vendors offering coverage through the Council, including the Board, to provide such enrollment and claims data as is determined by the Council;

12. To purchase any insurance deemed necessary for providing benefits under the plan, provided that the only indemnity plan selected by the Council shall be the indemnity plan offered by the Board, and to transfer to the Board such funds as may be approved for a participant electing a benefit plan offered by the Board;

13. To communicate deferred compensation programs as provided in Section 1701 of this title;

14. For the plan year beginning July 1, 1993, and all future plan years, to assess and collect reasonable fees from the Board, and from such contracted health maintenance organizations and third party insurance vendors to offset the costs of administration as determined by the Council. The Council shall have the authority to transfer income received pursuant to this subsection to the Board for services provided by the Board;

15. To accept, modify or reject elections under the plan in accordance with this act and the Code;

16. To promulgate election and claim forms to be used by participants; and

17. To take all steps deemed necessary to properly administer the plan in accordance with this act and the requirements of other applicable law.

B. The Council members shall discharge their duties as fiduciaries with respect to the participants and their dependents of the plan, and all fiduciaries shall be subject to the following definitions and provisions:

1. A person or organization is a fiduciary with respect to the Council to the extent that the person or organization:

- a. exercises any discretionary authority or discretionary control respecting administration or management of the Council,
- b. exercises any authority or control respecting disposition of the assets of the Council,
- c. renders advice for a fee or other compensation, direct or indirect, with respect to any participant or dependent benefits, monies or other property of the Council, or has any authority or responsibility to do so, or
- d. has any discretionary authority or discretionary responsibility in the administration of the Council;

2. The Council may purchase insurance for its fiduciaries or for itself to cover potential liability or losses occurring by reason of the act or omission of a fiduciary, but any such insurance purchased by the Council must permit recourse by the insurer against a fiduciary in the case of a breach of fiduciary obligation by such fiduciary. Nothing in this subsection shall be construed as requiring the purchase of any insurance;

3. Except for a breach of fiduciary obligation, a Council member shall not be individually or personally responsible for any action of the Council;

4. Any person who is a fiduciary with respect to the Council shall be entitled to rely on representations made by participants, participating employers, third party administrators and beneficiaries with respect to age and other personal facts concerning a participant or beneficiaries, unless said fiduciary knows said representations to be false;

5. Each fiduciary shall discharge his or her duties and responsibilities with respect to the Council and the plan solely in the interest of the participants and beneficiaries of the plan according to the terms hereof, for the exclusive purpose of providing benefits to participants and their beneficiaries, with the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

6. The duties and responsibilities allocated to each fiduciary by this act or by the Council shall be the several and not joint responsibility of each, and no fiduciary shall be liable for the act or omission of any other fiduciary unless:

- a. by his or her failure to properly administer his or her specific responsibility he or she enabled such other person or organization to commit a breach of fiduciary responsibility, or
- b. he or she knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person or organization, knowing such act or omission to be a breach, or

c. having knowledge of the breach of another person or organization, he or she fails to make reasonable efforts under the circumstances to remedy said breach.

SECTION 3. This act shall become effective July 1, 1996.

SECTION 4. 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.

45-2-2120

SLM