

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1085

By: Roberts and Cox of the
House

and

Monson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 1991, Sections 1306, as last amended by Section 21 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, and 1321, which relate to the State and Education Employees Group Insurance Plan; changing date by which the Board shall approve premiums; prohibiting adjustment of premiums; modifying authority of Board to adjust rates and benefits; providing date by which rates and benefits shall be annually adjusted; deleting provision establishing effective date of adjustments; amending Section 2, Chapter 163, O.S.L. 1992, as amended by Section 18, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1348), Section 5, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1365), as last amended by Section 1 of Enrolled Senate Bill No. 644 of the 1st Session of the 46th Oklahoma Legislature, Section 6, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1366), as last amended by Section 2 of Enrolled Senate Bill No. 660 of the 1st Session of the 46th Oklahoma Legislature, Section 8, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1368), as amended by Section 1 of Enrolled Senate Bill No. 249 of the 1st Session of the 46th Oklahoma Legislature, and Section 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1371), as last amended by Section 1 of Enrolled House Bill No. 2048 of the 1st Session of the 46th Oklahoma Legislature, which relates to flexible benefit plans and to the Oklahoma State Employees Benefits Act; providing for participation in other flexible benefit plans; modifying powers and duties of the Council; modifying duty related to collection of certain information; allowing certain vendors to distribute information under certain conditions; allowing the procurement of certain insurance; deleting obsolete language; removing involvement of the Office of Personnel Management in the administration of the Oklahoma State Employees Benefits Act; modifying coverages offered by the Board; exempting flexible benefits plan contracts from Central Purchasing Act; allowing Oklahoma State Employees Benefits Council to establish rules relating to bidding and awarding of contracts; modifying procedures for rejection of bids by or restrictions of enrollment in certain health maintenance organizations; repealing Sections 5 and 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Sections

1365 and 1371), as last amended by Sections 1 and 2 of Enrolled Senate Bill No. 248 of the 1st Session of the 46th Oklahoma Legislature, Sections 5, 6, 7, 8 and 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Sections 1365, 1366, 1367, 1368 and 1371), as last amended by Sections 3, 4, 5, 6 and 7 of Enrolled Senate Bill No. 247 of the 1st Session of the 46th Oklahoma Legislature and Section 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1371), as last amended by Section 3 of Enrolled Senate Bill No. 660 of the 1st Session of the 46th Oklahoma Legislature, which relate to the Oklahoma State Employees Benefits Act; 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 21 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1306. 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:

1. The preparation of specifications for such insurance plans as the Board may be directed to offer;

2. 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;

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

4. 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;

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

6. 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, 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;

7. 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;

8. 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;

9. 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;

10. a. 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.

b. 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.

c. Effective for the plan year beginning July 1, 1997, and for each year thereafter, in setting health insurance premiums for active employees and for retirees under sixty-five (65) years of age, HMOs, self-insured organizations and prepaid plans shall set the monthly premium for active employees at a maximum of Ninety Dollars (\$90.00) less than the monthly premium for retirees under sixty-five (65) years of age;

11. 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;

12. To contract for ~~re-insurance~~ reinsurance, catastrophic insurance, or any other type of insurance deemed necessary by the Board. Provided, however, that the Board shall not offer a health plan which is owned or operated by the state and which utilizes a

capitated payment plan for providers which uses a primary care physician as a gatekeeper to any specialty care provided by physician-specialists, unless specifically authorized by the Legislature;

13. The Board, pursuant to the provisions of Section 250 et seq. 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;

14. 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;

15. 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;

16. 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 bid submission date for health maintenance organizations set by the Oklahoma State Employees Benefits Council, which shall be set no later than the third Friday of December of the previous fiscal year. Except as otherwise provided for in Section 1321 of this title, the Board shall not have the authority to adjust the premium rates after approval. 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.

Effective for the plan year beginning July 1, 1997, and for each year thereafter, in setting health insurance premiums for active employees and retirees under sixty-five (65) years of age, the Board shall set the monthly premium for active employees at a maximum of Ninety Dollars (\$90.00) less than the monthly premium for retirees under sixty-five (65) years of age;

17. 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;

18. The Board shall establish a prescription drug card network for the fiscal year beginning July 1, 1990;

19. 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;

20. 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

21. 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 Benefits 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.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 1321, is amended to read as follows:

Section 1321. The Board shall have the authority to determine all rates and life, dental and health benefits. All rates shall be compiled in a comprehensive Schedule of Benefits. The Schedule of Benefits shall be available for inspection during regular business hours at the office of the State and Education Employees Group Insurance Board. The Board ~~further~~ shall have the authority to annually adjust the rates and benefits ~~as warranted~~, based on claim experience. The annual adjustment shall be made no later

than the bid submission date for health maintenance organizations set by the Oklahoma State Employees Benefits Council, which shall be set no later than the third Friday of December of each year. The Board may approve a mid-year adjustment provided the need for an adjustment is substantiated by an actuarial determination. The only publication or notice requirements that shall apply to the Schedule of Benefits, ~~or subsequent adjustments,~~ shall be those requirements provided in the Oklahoma Open Meeting Act; ~~provided, however, that any rate or benefit change shall not become effective for at least thirty (30) days after any Board action.~~ It is the intent of the Legislature that the benefits provided not include cosmetic dental procedures except for certain orthodontic procedures as adopted by the Board.

SECTION 3. AMENDATORY Section 2, Chapter 163, O.S.L. 1992, as amended by Section 18, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1348), is amended to read as follows:

Section 1348. A. The Board shall develop a flexible benefits plan, in accordance with the provisions of Section 1344 of ~~Title 74 of the Oklahoma Statutes~~ this title, to be made available to the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, counties, municipalities, political subdivisions or school districts. If the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any individual county, municipality, political subdivision or school district chooses to participate in the plan, it must, by a resolution adopted by the governing body, adopt a written flexible benefits plan and notify the Board in order to participate in the program. All full-time employees of a participating entity shall be given the option of participating in the program. The Board is authorized to contract with the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any county, municipality, political subdivision or school district within this state for providing a flexible benefits plan and is authorized to assess charges to participating

entities to cover the costs associated with administering this program.

B. Nothing in this section shall prohibit the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, counties, municipalities, political subdivisions or school districts from participating in other flexible benefit plans under the same terms and conditions as specified in subsection C of Section 1344 of this title.

SECTION 4. AMENDATORY Section 5, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1365), as last amended by Section 1 of Enrolled Senate Bill No. 644 of the 1st Session of the 46th Oklahoma Legislature, 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~~ rules;

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~~ The State and Education Employees Group Insurance Board, health maintenance organizations, ~~nor~~ or other third-party insurance vendors shall may be directly or indirectly involved in the distribution of said communicated information to participating state agency employers and state employee participants subject to the following conditions:

- a. the Council shall verify all marketing and communications information for factual accuracy prior to distribution,

- b. the Board or vendors shall provide timely notice of any marketing, communications, or distribution plans to the Council and shall coordinate the scheduling of any group presentations with the Council, and
- c. the Board or vendors shall file a brief summary with the Council outlining the results following any marketing and communications activities;

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, to~~ 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. The Oklahoma State Employees Benefits Council with the cooperation of the Department of Central Services acting pursuant to Section 85.1 et seq. of this title, shall be authorized to retain as confidential, any proprietary information submitted in response to the Council's Invitation to Bid. Provided, however, that any such information requested by the Council from the vendors shall only be subject to the confidentiality provision of this paragraph if it is clearly designated in the Invitation to Bid as being protected under this provision. All requested information lacking such a designation in the Invitation to Bid shall be subject to Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. From the state plan and health maintenance organizations, data provided shall include the current Health Plan Employer Data and Information Set (HEDIS);

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~~ 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 procure~~
insurance indemnifying the members of the Council from personal
loss or accountability from liability resulting from a member's
action or inaction as a member of the Council;

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~~ the fiduciary knows ~~said~~ the 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 5. AMENDATORY Section 6, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1366), as last amended by Section 2 of Enrolled Senate Bill No. 660 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1366. A. The Oklahoma State Employees Benefits Council shall establish a flexible benefits plan in accordance with the provisions of Section 1361 et seq. of this title. 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. Contracts for the flexible benefits plan shall not be subject to the provisions of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title. The Council shall promulgate rules establishing appropriate competitive bidding criteria and procedures for contracts awarded for flexible benefits plans. 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 Section 1361 et seq. of this title 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 State and Education Employees Group Insurance 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, 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~~ this state or which are paid for under salary adjustment agreements pursuant to the provisions 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.~~ E. 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.~~

F. 1. 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 this title. 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.~~

2. 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 Section 840-5.5 of this title.

SECTION 6. AMENDATORY Section 8, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1368), as amended by Section 1 of Enrolled Senate Bill No. 249 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1368. There is hereby created in the State Treasury a revolving fund for the Oklahoma State Employees Benefits Council to be designated the "Benefits Council Administration Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies properly credited and paid to the Oklahoma State Employees Benefits Council other than flexible benefit dollars. Disbursements from the fund shall be limited to the direct operation of the Oklahoma State Employees Benefits Council and the Wellness Program as authorized by the Council.

SECTION 7. AMENDATORY Section 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1371), as last amended by Section 1 of Enrolled House Bill No. 2048 of the 1st Session of the 46th Oklahoma Legislature, 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 Oklahoma State Employees Benefits 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 State and Education Employees Group Insurance 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. Effective for the

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plan year beginning July 1, 1997, and for each year thereafter, in setting health insurance premiums for active employees and for retirees under sixty-five (65) years of age, the Board shall set the monthly premium for active employees at a maximum of Ninety Dollars (\$90.00) less than the monthly premium for retirees under sixty-five (65) years of age.

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. For purposes of this subsection, "excess flexible benefit allowance" means the remaining flexible benefit allowance amount after deduction of the premium price of the higher deductible benefit plan, the premium price of the selected dental plan and the benefit price for life and disability benefits.

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~~ on a competitive bid basis. Contracts for said plans shall not be subject to the provisions of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title. The Council shall promulgate rules establishing appropriate

competitive bidding criteria and procedures for contracts awarded for flexible benefits plans. All plans offered by health maintenance organizations meeting the bid requirements as determined by the Council shall be accepted. ~~Provided, however,~~ ~~the~~ The Council shall have the authority to reject the bid or restrict enrollment in any health maintenance organization for which the Council determines 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~~ The Council shall have the authority to reject any plan that does not meet the bid requirements. 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.~~ Effective for the plan year beginning July 1, 1997, and for each year thereafter, in setting health insurance premiums for active employees and for retirees under sixty-five (65) years of age, HMOs, self-insured organizations and prepaid plans shall set the monthly premium for active employees at a maximum of Ninety Dollars (\$90.00) less than the monthly premium for retirees under sixty-five (65) years of age.

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

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.

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.

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.

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 8. REPEALER Sections 5 and 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Sections 1365 and 1371), as last amended by Sections 1 and 2 of Enrolled Senate Bill No. 248 of the 1st Session of the 46th Oklahoma Legislature, Sections 5, 6, 7, 8 and 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Sections 1365, 1366, 1367, 1368 and 1371), as last amended by Sections 3, 4, 5, 6 and 7 of Enrolled Senate Bill No. 247 of the 1st Session of the 46th Oklahoma Legislature, and Section 11, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1996, Section 1371), as last amended by Req. No. 7871Page 20

Section 3 of Enrolled Senate Bill No. 660 of the 1st Session of the 46th Oklahoma Legislature, are hereby repealed.

SECTION 9. This act shall become effective July 1, 1997.

SECTION 10. 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.

46-1-7871

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