

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 1088

By: Monson of the Senate

and

Askins, Tyler and Settle
of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state employees; amending Section 4, Chapter 332, O.S.L. 1993, as amended by Section 6, Chapter 204, O.S.L. 1995 and Section 9, Chapter 332, O.S.L. 1993, as amended by Section 5, Chapter 282, O.S.L. 1994 (63 O.S. Supp. 1997, Sections 5006 and 5011), which relate to the Oklahoma Health Care Authority; deleting certain power of the Authority relating to state and education employees; modifying certain power of the Authority to oversee bidding of health care benefits provided by the Oklahoma State Employees Benefits Council; Section 4, Chapter 400, O.S.L. 1992, as last amended by Section 2, Chapter 48, O.S.L. 1997 and Section 5, Chapter 400, O.S.L. 1992, as last amended by Section 4, Chapter 362, O.S.L. 1997 (74 O.S. Supp. 1997, Sections 1364 and 1365), which relate to employee benefits; deleting certain authority of the Oklahoma Health Care Authority; establishing certain powers and duties of the Council; requiring the Council to keep certain bid information confidential; making all bid information public after the bid is awarded; allowing the Council to contract for remedies; amending Section 11, Chapter 400, O.S.L. 1992, as last amended by Section 7, Chapter 362, O.S.L. 1997 (74 O.S. Supp. 1997, Section 1371), which relates to employee benefits; requiring the Board to establish a preferred provider organization plan (PPO); establishing when plan will be offered; authorizing the Council to offer a PPO; allowing consultant services; deleting obsolete language; restricting Oklahoma State Employees Benefits Council bidding criteria; deleting language concerning certain authority of Council; granting certain negotiating authority to Council; granting authority to reject bids or restrict enrollment after negotiations; granting authority to Council to make certain communications; requiring certain health maintenance organizations to submit certain information to Council; requiring Council to retain certain information as confidential; requiring Council to promulgate rules concerning communication of certain information; providing effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 332, O.S.L. 1993, as amended by Section 6, Chapter 204, O.S.L. 1995 (63 O.S. Supp. 1997, Section 5006), is amended to read as follows:

Section 5006. A. There is hereby created the Oklahoma Health Care Authority. The Authority shall have the power and duty to:

1. Purchase health care benefits for ~~state and education employees and~~ Medicaid recipients, and others who are dependent on the state for necessary medical care, as specifically authorized by law;

2. ~~Develop~~ Assist in the development of state and education employee health care plans as authorized by Section 5011 of this title;

3. Enter into contracts for the delivery of state-purchased health care and establish standards and criteria which must be met by entities to be eligible to contract with the Authority for the delivery of state-purchased health care;

4. Develop a proposed standard basic health care benefits package or packages to be offered by health services providers, for ~~state and education employees and~~ Medicaid recipients;

5. Study all matters connected with the provision of state-purchased and state-subsidized health care coverage;

6. Develop and submit plans, reports and proposals, provide information and analyze areas of public and private health care interaction pursuant to the provisions of the Oklahoma Health Care Authority Act;

7. Serve as a resource for information on state-purchased and state-subsidized health care access, cost containment and related health issues;

8. Administer programs and enforce laws placed under the jurisdiction of the Authority pursuant to the Oklahoma Health Care Authority Act, and such other duties prescribed by law;

9. Collaborate with and assist the Insurance Commissioner in the development of a Uniform Claim Processing System for use by third-party payors and health care providers;

10. Collaborate with and assist the State Department of Health with the development of licensure standards and criteria for pre-paid health plans; and

11. Exercise all incidental powers which are necessary and proper to carry out the purposes of the Oklahoma Health Care Authority Act.

B. All positions within the Authority shall be unclassified until approval of the annual business and personnel plan submitted by January 1, 1995, by the Governor and the Legislature. In the annual business plan submitted January 1, 1995, the Board shall include a personnel plan which shall list, describe and justify all unclassified positions within the Authority and their compensation. All other employees and positions shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act.

SECTION 2. AMENDATORY Section 9, Chapter 332, O.S.L. 1993, as amended by Section 5, Chapter 282, O.S.L. 1994 (63 O.S. Supp. 1997, Section 5011), is amended to read as follows:

Section 5011. A. ~~Effective July 1, 1994, the duties, powers and responsibilities of the Oklahoma State Employees Benefits Council that relate to the purchase of health care benefits shall be made under the direction and with the approval of the Oklahoma Health Care Authority.~~

B. ~~The Authority shall develop state and education employee health care benefit plans as provided by this section. In developing these plans, the Authority shall consider the following elements:~~

1. ~~Methods of maximizing cost containment while ensuring access to quality health care;~~

2. ~~Development of provider arrangements that encourage cost containment and ensure access to quality care, including, but not limited to, prepaid delivery systems and prospective payment methods;~~

3. ~~Utilization review procedures including, but not limited to:~~

- ~~a. prior authorization of services,~~
- ~~b. hospital inpatient length of stay reviews,~~
- ~~c. requirements for use of outpatient surgeries,~~
- ~~d. requirements for second opinions for surgeries,~~
- ~~e. review of invoices or claims submitted by health services providers, and~~
- ~~f. performance audits of providers; and~~

~~4. Effective coordination of health care benefits.~~

~~C. Effective January, 1996, and each January thereafter, the administrator of the Oklahoma Health Care Authority shall publish and distribute to each school district in this state that so requests a description of health care benefit plans available through the Oklahoma Health Care Authority and the estimated cost of such plans if school district employees were enrolled. The Authority shall assist the Oklahoma State Employees Benefits Council in the development of the bid process and the Invitation to Bid which is issued to secure bids by health care insurers to provide health care coverage to state and education employees.~~

~~D.~~ B. The Authority shall:

1. Require utilization review and financial data review from participating entities which contract with the Authority for state-purchased and state-subsidized health care on a quarterly basis;
2. Centralize enrollment files for all persons covered by state-purchased and state-subsidized health care benefit plans;
3. Develop enrollment demographics on a plan-specific basis; and
4. Establish methods for collecting, analyzing, and disseminating information on the cost and quality of services rendered by health care providers to all persons covered by such plans.

~~E.~~ C. The administrator may require that any entity that contracts for the delivery of services pursuant to a state-purchased or state-subsidized health care benefit plan administered by the Authority shall provide to said administrator all information deemed necessary to fulfill the administrator's

duties as set forth in the Oklahoma Health Care Authority Act, Section 5003 et seq. of this title. All data related to claims and produced pursuant to the Oklahoma Health Care Authority Act shall be the property of this state.

~~F.~~ D. Any savings realized pursuant to this section and Section 5009 of this title shall not be used to increase benefits unless such use is authorized by law.

~~G.~~ E. On and after July 1, 1995, the Oklahoma Basic Health Benefits Board shall receive any funds appropriated for operations or duties imposed by law upon the Oklahoma Basic Health Benefits Board from the Oklahoma Health Care Authority.

SECTION 3. AMENDATORY Section 4, Chapter 400, O.S.L. 1992, as last amended by Section 2, Chapter 48, O.S.L. 1997 (74 O.S. Supp. 1997, Section 1364), is amended to read as follows:

Section 1364. A. There is hereby created the Oklahoma State Employees Benefits Council. ~~The powers, duties and responsibilities of the Council that relate to the purchase of health care benefits shall be made under the direction and with the approval of the Oklahoma Health Care Authority in accordance with the plan adopted pursuant to Section 5006 of Title 63 of the Oklahoma Statutes.~~

~~B.~~ The Oklahoma State Employees Benefits Council shall be composed of the five (5) following individuals:

1. The Administrator of the Office of Personnel Management;
2. Two members appointed by the Governor;
3. One member appointed by the President Pro Tempore of the Senate; and
4. One member appointed by the Speaker of the House of Representatives.

~~C.~~ B. The members appointed by the Governor shall serve a term of office of four (4) years which is coterminous with the term of office of the office of the appointing authority. The members appointed by the Speaker of the House of Representatives and the President Pro Tempore of the State Senate shall serve a term of office of four (4) years.

~~D.~~ C. No member of the Council shall be a lobbyist registered in this state as provided by law, or be employed, directly or indirectly, by any firm or health care provider under contract to the Council or Board, or any benefit program under its jurisdiction, for any goods or services whatsoever.

~~E.~~ D. Any vacancy that occurs on the Council shall be filled for the unexpired term in the same manner as the office was previously filled.

~~F.~~ E. The general administration and responsibility for the proper design, selection or operation of the benefits offered under the plan and for making effective the provisions of Section 1361 et seq. of this title are hereby vested in the Council.

~~G.~~ F. The Council shall elect one of its members as chair. The chair shall preside over meetings of the Council and perform such other duties as may be required by the Council. The Council shall elect one of its members to serve as vice-chair who shall perform the duties of the chair in the absence of the latter or upon the inability or refusal of the chair to act. The Council shall elect one of its members to serve as secretary.

~~H.~~ G. The Council and staff shall act in accordance with the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open Records Act and the Administrative Procedures Act. The Council shall, in July of each year, hold a regular meeting which shall be the annual meeting, at which meeting it shall elect officers.

~~I.~~ H. Special meetings may be called upon written notice by the chair or by agreement of any three members of the Council. Notice of a special meeting shall be delivered to all members in person or by registered or certified United States mail not less than seven (7) days prior to the date fixed for the meeting; provided, however, that notice of such meeting may be waived by any member either before or after such meeting and attendance at such meeting shall constitute a waiver of notice of such meeting, unless a member participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

~~J.~~ I. The majority of the members of the Council shall constitute a quorum for the transaction of business. Each Council member shall be entitled to one vote on the Council. Any official action of the Council must have three votes of the members of the Council present.

~~K.~~ J. All resolutions, proceedings, acts and determinations of the Council shall be recorded and all such records, together with such documents and instruments as may be necessary for the administration of the plan, shall be preserved in the custody of the executive director.

~~L.~~ K. Each member of the Council shall serve without compensation except that each of the Council members shall receive travel expenses in accordance with the State Travel Reimbursement Act.

~~M.~~ L. The Council shall not be subject to the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of this title.

SECTION 4. AMENDATORY Section 5, Chapter 400, O.S.L. 1992, as last amended by Section 4, Chapter 362, O.S.L. 1997 (74 O.S. Supp. 1997, Section 1365), is amended to read as follows:

Section 1365. A. The Oklahoma State Employees Benefits Council shall have the following powers and duties:

1. To offer health care benefits to participants;
2. To develop health care plans for participants; and
3. To develop a standard basic health care benefits package or packages to be offered by health care providers for participants.

B. 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 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. The State and Education Employees Group Insurance Board, health maintenance organizations, or other third-party insurance vendors may be directly or indirectly involved in the distribution of 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. 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 State 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). The Council shall also be authorized to retain as confidential information the initial bid offers as well as any subsequent bid offers made by the health plans prior to final contract awards as a part of the best and final offer negotiation process for the benefit plan;

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. 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; and

18. To contract for remedies which may be enforced by the Oklahoma State Employees Benefits Council against health maintenance organizations that fail to comply with the contract awarded.

~~B.~~ C. 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 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 the fiduciary knows 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 11, Chapter 400, O.S.L. 1992, as last amended by Section 7, Chapter 362, O.S.L. 1997 (74 O.S. Supp. 1997, Section 1371), is amended to read as follows:

Section 1371. A. All participants must 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 meet the minimum requirements set by the Council for the basic plan.

B. The Board shall offer health, 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.

By December 1, 1998, the Board with the assistance and the approval of the Joint Liaison Committee on State and Education Employees Group Insurance Benefits, created in Section 1306 of this title, shall design an additional health benefit plan which shall be a preferred provider organization (PPO) designed plan. The additional PPO plan shall be made available as an option for participants for the FY-2000 plan year and for each year thereafter. The Oklahoma State Employees Benefits Council shall be authorized to contract with a PPO to provide health care services to state employees subject to the approval of the Joint Liaison Committee. The Joint Liaison Committee may retain a consultant in benefit design to assist in the development of the additional PPO health benefit plan design.

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, 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~~ Savings 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 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. The Council shall not establish excessive benefit pricing as bidding criteria. All plans offered by health maintenance organizations meeting the bid requirements as determined by the Council shall be accepted. The Council shall have the authority to ~~reject the bid or restrict enrollment in any health maintenance organization for~~ negotiate with a health maintenance organization which submits a bid which the Council determines exceeds industry claims expense trends and the benefit price to be excessive does not reflect acceptable loss ratios. If, after negotiating, the health maintenance organization does not revise the bid to lower the benefit price, the Council shall have the authority to reject the bid, restrict enrollment in that health maintenance organization, or to prepare and distribute information in the annual enrollment guide and by other means which communicates to participants that the benefit price exceeds acceptable criteria established by the Council. 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.

E. By September 1, 1998, all health maintenance organizations which are offering a plan to participants shall submit to the Council information regarding utilization data and loss ratios on the state plan business for the FY-97 and FY-98 plan year. By September 1 of each year thereafter, all health maintenance organizations offering a plan to participants shall submit to the Council information regarding utilization data and loss ratios on the state plan business. The Council shall retain as confidential any proprietary information submitted by a health maintenance organization pursuant to this subsection. The Council shall promulgate rules which establish the type, form, and means by which the information collected on utilization data and loss ratios will be communicated to participating employers and participants by the Council.

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

~~F.~~ H. 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.~~ I. 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.~~ J. 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.~~ K. 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 6. This act shall become effective July 1, 1998.

SECTION 7. 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.