SHORT TITLE: Employee benefits; modifying duties of Oklahoma State Employees Benefits Council; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 248 By: Monson

AS INTRODUCED

An Act relating to employee benefits; amending Section 5, Chapter 400, O.S.L. 1992, as amended by Section 10, Chapter 359, O.S.L. 1993 and Section 11, Chapter 400, O.S.L. 1992, as last amended by Section 8, Chapter 288, O.S.L. 1996 (74 O.S. Supp. 1996, Sections 1365 and 1371), which relate to fiduciary duties and election of benefit plans; modifying powers and duties of the Oklahoma State Employees Benefits Council; modifying procedures for rejection of bids by or restriction of enrollment in certain health maintenance organizations; and providing an effective date.

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

SECTION 1. AMENDATORY Section 5, Chapter 400, O.S.L. 1992 as amended by Section 10, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 1996, 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~~ Section 1361 et seq. of this title and the Internal Revenue Code, Section 1 et seq. of Title 26 of the United States Code;

2. To select those benefits which shall be made available to participants under the plan, according to ~~this act~~ Section 1361 et seq. of this title, 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 State and Education Employees Group Insurance 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~~ Section 1361 et seq. of this title 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~~ the provisions of Section 1361 et seq. of this title 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 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. In selecting the health maintenance organizations, the Council shall consider plan characteristics, provider network, quality of care, geographic coverage and access and price;

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. Data provided shall include, but not be limited to, the following:

a. from all vendors, basic demographic data, and

b. from the state plan and health maintenance organizations, 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 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~~ the provisions of Section 1361 et seq. of this title and the Internal Revenue Code, Section 1 et seq. of Title 26 of the United States 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~~ Section 1361 et seq. of this title 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~~ Section 1361 et seq. of this title 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 2. AMENDATORY Section 11, Chapter 400, O.S.L. 1992, as last amended by Section 8, Chapter 288, O.S.L. 1996 (74 O.S. Supp. 1996, Section 1371), is amended to read as follows:

Section 1371. A. All participants must use a portion or all of their flexible benefit allowance to purchase at least the basic plan. On or before January 1 of each year, the 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 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.

D. In lieu of electing any of the preceding medical benefit plans, a participant may elect medical coverage by any health

maintenance organization made available to participants by the Council. The benefit price of any health maintenance organization shall be determined annually by a sealed bid process conducted through the Central Purchasing Division of the Department of Central Services. All plans offered by health maintenance organizations meeting the bid requirements as determined by the Council shall be accepted. Provided, however, the Council shall have the authority to reject the bid or restrict enrollment in any health maintenance organization for which the ~~benefit price is determined to be excessive~~ plan characteristics, provider network, quality of care, geographic access and coverage and price do not meet the requirements as determined 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 price of services offered compared to the required benefits and other bids submitted, the quality of care issues within each organization, the overall needs of the state including, but not limited to, geographic access and employee density and network composition. 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 3. This act shall become effective November 1, 1997.

46-1-0235 BPR