

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL 1396

By: Monson

COMMITTEE SUBSTITUTE

[ Employee benefits - Oklahoma State Employees  
Benefits Act - annual eye examination - extension of  
enrollment period - effective date -

emergency ]

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

SECTION 1. AMENDATORY Section 3, Chapter 400, O.S.L.  
1992, as last amended by Section 5, Chapter 255, O.S.L. 1999 (74  
O.S. Supp. 1999, Section 1363), is amended to read as follows:

Section 1363. The following words and phrases as used in ~~this~~  
~~act~~ the Oklahoma State Employees Benefits Act, unless a different  
meaning is clearly required by the context, shall have the following  
meanings:

1. "Authority" means the Oklahoma Health Care Authority;
2. "Basic plan" means the plan that provides the least amount  
of benefits each participant is required to purchase pursuant to the  
provisions of the plan. The basic plan shall include only health,  
dental, disability and life benefits. Beginning with the July 1,  
2001 plan year, the basic plan shall include an annual eye  
examination;
3. "Benefit" means any of the benefits which may be purchased  
or is required to be purchased under the plan;
4. "Benefit plan" means the specific terms and conditions  
regarding a benefit which may be purchased under the plan, including  
the terms and conditions of any separate plan document, group

insurance policy or administrative services contract entered into by the Council;

5. "Benefit price" means the number of flexible benefit dollars needed to purchase a benefit under the plan;

6. "Board" means the State and Education Employees Group Insurance Board, as created by the State and Education Employees Group Insurance Act;

7. "Code" means the Internal Revenue Code of 1986, as amended, from time to time;

8. "Compensation" means the remuneration directly paid to a participating employee by a participating employer exclusive of overtime pay, and longevity pay, calculated prior to and without regard to adjustments arising out of an employee's participation in the plan authorized pursuant to ~~this act~~ the Oklahoma State Employees Benefits Act, or amounts deferred under the tax sheltered income deferment plans as authorized by Section 1701 et seq. of this title;

9. "Council" means the Oklahoma State Employees Benefits Council, as created by ~~this act~~ the Oklahoma State Employees Benefits Act;

10. "Default benefit" means any benefit a participant who fails to make a proper election under the plan shall be deemed to have purchased;

11. "Dependent" means a participant's spouse or any of his or her dependents as defined in Code Section 152 and regulations promulgated thereunder;

12. "Flexible benefit allowance" means the annual amounts credited by the participating employer for each participant for the purchase of benefits under the plan;

13. "Flexible benefit dollars" means the sum of the flexible benefit allowance and pay conversion dollars allocated by a participant pursuant to provisions of the plan;

14. "Participant" means any officer or employee of a participating employer who is a member of the Oklahoma Law Enforcement Retirement System, the Oklahoma Public Employees Retirement System or the Uniform Retirement System for Justices and Judges, any officer or employee of a participating employer, whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year and whose salary and wage is equal to or greater than the ~~hourly wage~~ minimum annualized salary for state employees as provided in Section ~~284~~ 840-2.16 of this title, and any employee of a participating employer who is a member of the Teachers' Retirement System of Oklahoma;

15. "Participating employer" means any state agency, board, commission, department, institution, authority, officer, bureau, council, office or other entity created by the Oklahoma Constitution or statute that is a participating employer of the Oklahoma Law Enforcement Retirement System, the Oklahoma Public Employees Retirement System or the Uniform Retirement System for Justices and Judges, but shall not include any county, county hospital, city or town, conservation district, any private or public trust in which a county, city or town participates and is the primary beneficiary, any school district or vocational-technical school district, or political subdivision of the state, but shall include the State Department of Education, the Oklahoma Department of Wildlife Conservation, the Oklahoma Employment Security Commission, the Teachers' Retirement System of Oklahoma and the State Department of Vocational and Technical Education. Provided the term "participating employer" shall also mean the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education upon agreement between the State Regents for Higher Education or the appropriate governing board of

an institution under the authority of the State Regents for Higher Education and the Council;

16. "Pay conversion dollars" means amounts by which a participant elects to reduce his compensation to purchase benefits under the plan;

17. "Plan" means the flexible benefits plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions of this act;

18. "Plan year" means for the plan year beginning July 1, 2001, the six-month period commencing on July 1 and ending on the following December 31. The next plan year shall begin January 1, 2002. It shall mean the twelve-month period commencing on January 1 and ending on the following December 31;

19. "Salary Adjustment Agreement" means a written agreement between a participant and participating employer whereby the employer agrees to adjust the salary of the participant by a stated amount or an amount equal to the cost of benefits selected under the plan and the participating employer agrees to contribute such amount to cover certain costs of the benefits selected by the participant to the Council; and

20. "Termination" means the termination of a participant's employment as an employee of a participating employer, whether by reasons of discharge, voluntary termination, retirement, death or reduction-in-force.

SECTION 2. AMENDATORY Section 4, Chapter 400, O.S.L. 1992, as last amended by Section 3, Chapter 87, O.S.L. 1999 (74 O.S. Supp. 1999, Section 1364), is amended to read as follows:

Section 1364. A. There is hereby created the Oklahoma State Employees Benefits Council.

B. The Oklahoma State Employees Benefits Council shall be composed of the ~~five (5)~~ seven (7) 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; and

5. One member of the Oklahoma Public Employees Association appointed by the Board of Directors of the Oklahoma Public Employees Association; and

6. One member of the Oklahoma Education Association appointed by the Board of Directors of the Oklahoma Education Association.

C. 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. The initial term of office of the member appointed by the Oklahoma Public Employees Association and the member appointed by the Oklahoma Education Association shall be for the period ending June 30, 2004. Thereafter, the term of office of the member appointed by the Oklahoma Public Employees Association and the member appointed by the Oklahoma Education Association shall be four (4) years.

E. 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.~~ F. 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.~~ G. 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.~~ H. 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.~~ I. 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.~~ J. 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.~~ K. 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.~~ L. 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.~~ M. 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.~~ N. The Council shall not be subject to the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of this title.

SECTION 3. AMENDATORY Section 5, Chapter 400, O.S.L. 1992, as last amended by Section 2, Chapter 403, O.S.L. 1999 (74 O.S. Supp. 1999, 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~~ the Oklahoma State Employees Benefits Act and the Code;

2. To select those benefits which shall be made available to participants under the plan, according to ~~this act~~ the Oklahoma State Employees Benefits 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 negotiate for best and final offer through competitive negotiation 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. Such HMOs may offer coverage through a point-of-service plan, subject to the guidelines established by the Council;

11. To retain as confidential information the initial Request For Proposal 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 negotiations process for the benefit plan;

12. To promulgate administrative rules for the competitive negotiation process;

13. 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 Request For Proposal. 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 Request For Proposal as being protected under this provision. All requested information lacking such a designation in the Request For Proposal 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);

14. 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;

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

16. 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;

17. To accept, modify or reject elections under the plan in accordance with ~~this act~~ the Oklahoma State Employees Benefits Act and the Code;

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

19. To take all steps deemed necessary to properly administer the plan in accordance with ~~this act~~ the Oklahoma State Employees Benefits Act and the requirements of other applicable law; and

20. To require vendors to set their rates in an amount not to exceed the rates offered to other large employers within the state for comparable benefits. Other large employers for purposes of this

paragraph are those employers who employed five thousand or more employees in the previous calendar year.

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 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 person 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 4. AMENDATORY Section 11, Chapter 400, O.S.L. 1992, as last amended by Section 8, Chapter 255, O.S.L. 1999 (74 O.S. Supp. 1999, 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 the plan year beginning July 1, 2001, and July 1 of any plan year beginning after January 1,

2002, 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. Beginning with the July 1, 2001 plan year, the Board shall also offer an annual eye examination to all participants and their dependents. For health, dental, disability ~~and~~, life coverage, and the annual eye examination, 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. 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. 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 which the Council determines the benefit price to be excessive. 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. 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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1374 of Title 74, unless there is created a duplication in numbering, reads as follows:

During any legislative session in which benefits offered by the State and Education Employees Group Insurance Board or the Oklahoma State Employees Benefits Council are modified by legislation, the enrollment period for participating members shall be extended for the purpose of allowing such members to enroll in the modified benefits. However, any extension of the enrollment period may only occur if it is in compliance with the requirements of Title 26, Section 125 et seq. of the Internal Revenue Code of the United States. The State and Education Employees Group Insurance Board and the Oklahoma State Employees Benefits Council shall promulgate rules necessary for the implementation of this section.

SECTION 6. REPEALER Section 10, Chapter 400, O.S.L. 1992, as last amended by Section 7, Chapter 255, O.S.L. 1999 (74 O.S. Supp. 1999, Section 1370), is hereby repealed.

SECTION 7. This act shall become effective July 1, 2000.

SECTION 8. 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.

47-2-2989

SJ

6/11/2015 8:28:04 PM