

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1385

By: Monson of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 6532, which relates to the Health Insurance High Risk Pool Act; exempting the State and Education Employees Group Insurance Board; allowing continued coverage in a HealthChoice plan under certain circumstances; amending 74 O.S. 2001, Section 1365, which relates to the Oklahoma State Employees Benefits Council; modifying structure; allowing best and final offer negotiations for certain dental and vision plans; requiring the Oklahoma State Employees Benefits Council and the State and Education Employees Group Insurance Board to offer all dental and vision plans meeting bid requirements; granting authority to Council and Board to reject bids or restrict enrollment under certain circumstances; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6532, is amended to read as follows:

Section 6532. As used in the Health Insurance High Risk Pool Act:

1. "Agent" means any person who is licensed to sell health insurance in this state;
2. "Board" means the Board of Directors of the Health Insurance High Risk Pool;
3. "Church plan" has the meaning given such term under Section 3(33) of the Employee Retirement Income Security Act of 1974;

4. "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

- a. a group health plan,
- b. health insurance coverage,
- c. Part A or B of Title XVIII of the Social Security Act,
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under Section 1928 of such act,
- e. Chapter 55 of Title 10, U.S. Code,
- f. a medical care program of the Indian Health Service or of a tribal organization,
- g. a state health benefits risk pool,
- h. a health plan offered under Chapter 89 of Title 5, U.S. Code,
- i. a public health plan as defined in federal regulations, or
- j. a health benefit plan under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e);

5. "Federally defined eligible individual" means an individual:

- a. for whom, as of the date on which the individual seeks coverage under the Health Insurance High Risk Pool Act, the aggregate of the periods of creditable coverage, as defined in Section 1D of the Employee Retirement Income Security Act of 1974, is eighteen (18) or more months,
- b. whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan or health insurance coverage offered in conjunction with any such plan,
- c. who is not eligible for coverage under a group health plan, part A or B of Title XVIII of the Social Security Act, or a state plan under Title XIX of such

Act or any successor program and who does not have other health insurance coverage,

d. with respect to whom the most recent coverage under a COBRA continuation provision or under a similar state program, elected such coverage, and

e. who has exhausted such continuation coverage under such provision or program, if the individual elected the continuation coverage described in paragraph 5 of this section;

6. "Governmental plan" has the same meaning given such term under Section 3(32) of the Employee Retirement Income Security Act of 1974 and any federal governmental plan;

7. "Group health benefit plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care as defined in Section 3N of the Employee Retirement Income Security Act of 1974 and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise;

8. "Health insurance" means any individual or group hospital or medical expense-incurred policy or health care benefits plan or contract. The term does not include any policy governing short-term accidents only, a fixed-indemnity policy, a limited benefit policy, a specified accident policy, a specified disease policy, a Medicare supplement policy, a long-term care policy, medical payment or personal injury coverage in a motor vehicle policy, coverage issued as a supplement to liability insurance, a disability policy, or workers' compensation;

9. "Insurer" means any individual, corporation, association, partnership, fraternal benefit society, or any other entity engaged in the health insurance business, except insurance agents and

brokers. This term shall also include not-for-profit hospital service and medical indemnity plans, health maintenance organizations, preferred provider organizations, prepaid health plans, ~~the State and Education Employees Group Health Insurance Plan,~~ and any reinsurer reinsuring health insurance in this state, which shall be designated as engaged in the business of insurance for the purposes of Section 6531 et seq. of this title. Provided, for purposes of the Health Insurance High Risk Pool Act, the term insurer shall not include the State and Education Employees Group Insurance Board;

10. "Medical care" means amounts paid for:

- a. the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,
- b. transportation primarily for and essential to medical care referred to in paragraph 1 of this section, and
- c. insurance covering medical care referred to in paragraphs 1 and 2 of this section;

11. "Medicare" means coverage under Parts A and B of Title XVIII of the Social Security Act (Public Law 74-271, 42 U.S.C., Section 1395 et seq., as amended);

12. "Pool" means the Health Insurance High Risk Pool;

13. "Physician" means a doctor of medicine and surgery, doctor of osteopathic medicine, doctor of chiropractic, doctor of podiatric medicine, doctor of optometry, and, for purposes of oral and maxillofacial surgery only, a doctor of dentistry, each duly licensed by this state;

14. "Plan" means the comprehensive health insurance benefit plan as adopted by the Board of Directors of the Health Insurance High Risk Pool, or by rule; and

15. "Reinsurer" means any insurer as defined in Section 103 of this title from whom any person providing health insurance to Oklahoma insureds procures insurance for itself as the insurer, with respect to all or part of the health insurance risk of the person.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1329 of Title 74, unless there is created a duplication in numbering, reads as follows:

If an employee who participates in a medical plan offered by the State and Education Employees Group Insurance Board is separated from eligible employment and has exhausted continued coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) as amended, such an employee or covered dependent may continue the coverage of such plan if he or she is otherwise eligible for participation in the plan of the Health Insurance High Risk Pool.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 1365, is amended to read as follows:

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

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

2. To select those benefits which shall be made available to participants under the plan, according to this act, and other applicable laws and 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~~ the following benefit plans through a best and final offer negotiation process:

a. 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, ~~and~~ and

b. dental and vision plans licensed or regulated by a state regulatory authority to perform business in the State of Oklahoma. The Oklahoma State Employees Benefits Council and the Oklahoma State and Education Employees Group Insurance Board shall offer all dental and vision plans meeting bid requirements. The Council and Board shall have the authority to reject the bid or restrict enrollment in any dental or vision

plan for which the Council and Board determine the benefit price to be excessive;

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 and the Code;

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

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

20. To manage, license or sell software developed for and acquired by the Council, whether or not such software is patented or copyrighted. The Council shall have the authority to license and sell such software or any rights to such software without declaring such property to be surplus. All proceeds from any such sale shall be deposited in the Benefits Council Administration Revolving Fund and used to defray the costs of administration.

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. Sections 1 and 2 of this act shall become effective November 1, 2002.

SECTION 5. 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.

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