ENGROSSED HOUSE
BILL NO. 1362

By: Case of the House

and

Corn of the Senate

An Act relating to state government; amending 74 O.S. 2001, Section 1306, as last amended by Section 1, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, Section 1306), which relates to the powers and duties of the State and Education Employees Group Insurance Board; requiring the Board to contract for certain supplemental products; amending 74 O.S. 2001, Sections 1365, as last amended by Section 2, Chapter 405, O.S.L. 2004, and 1370, as last amended by Section 3, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, Sections 1365 and 1370), which relate to the Oklahoma State Employee Benefits Act; adding duty for the Oklahoma State Employee Benefits Council to provide certain product to participants; modifying provisions related to purchase of benefits by certain persons; providing for certain flexible benefit allowance amount for certain persons making certain elections; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 1306, as last amended by Section 1, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, Section 1306), is amended to read as follows:

Section 1306. The State and Education Employees Group Insurance Board shall administer and manage the group insurance plans and the flexible benefits plan and, subject to the provisions of the State and Education Employees Group Insurance Act and the State Employees Flexible Benefits Act, shall have the following powers and duties:

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

2. The authority and duty to request bids through the Purchasing Division of the Department of Central Services for a

contract to be the claims administrator for all or any part of such insurance and benefit plans as the Board may offer;

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

4. The determination of the eligibility of employees and their dependents to participate in each of the Group Insurance Plans and in such other insurance and benefit plans as the Board may offer and the eligibility of employees other than education employees to participate in the Life Insurance Plan provided that evidence of insurability shall not be a requirement in determining an employee's initial eligibility;

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

6. The establishment of a grievance procedure by which a three-member grievance panel shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters. Except for grievances settled to the satisfaction of both parties prior to a hearing, any person who requests in writing a hearing before the grievance panel shall receive a hearing before the panel. The grievance procedure provided by this paragraph shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court. The grievance panel shall schedule a hearing regarding the allowance and payment of claims, eligibility and other matters within sixty (60) days from the date the grievance panel receives a written request for a hearing unless the panel orders a continuance for good cause shown. Upon written request by the insured employee to the grievance panel and received not less than ten (10) days before the hearing date, the grievance panel

shall cause a full stenographic record of the proceedings to be made by a competent court reporter at the insured employee's expense;

7. The continuing study of the operation of such insurance and benefit plans as the Board may offer including such matters as gross and net costs, administrative costs, benefits, utilization of benefits, and claims administration;

8. The administration of the Health, Dental and Life Insurance Reserve Fund or Funds, the Flexible Benefits Revolving Fund and the Education Employees Group Insurance Reserve Fund;

9. The auditing of the claims paid pursuant to the provisions of the State and Education Employees Group Insurance Act, the State Employees Flexible Benefits Act and the State Employees Disability Program Act;

10. a. To select and contract with federally qualified Health Maintenance Organizations under the provisions of 42 U.S.C., Section 300e et seq. or with Health Maintenance Organizations licensed by the Department of Health pursuant to Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes for consideration by employees as an alternative to the state self-insured health plan, and to transfer to the HMOs such funds as may be approved for an employee electing HMO alternative services. The Board may also select and contract with a vendor to offer a point-of-service plan. An HMO may offer coverage through a point-of-service plan, subject to the guidelines established by the Board. However, if the Board chooses to offer a point-of-service plan, then a vendor that offers both an HMO plan and a point-of-service plan may choose to offer only its point-of-service plan in lieu of offering its HMO plan.

b. Benefit plan contracts with the State and Education Employees Group Insurance 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 Board, based on generally accepted actuarial principles. The risk adjustment factor shall include all members participating in the plans offered by the State and Education Employees Group Insurance Board. The Oklahoma State Employees Benefits Council shall contract with an actuary to provide the above actuarial services, and shall be reimbursed for these contract expenses by the Board.

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

11. To contract for reinsurance, catastrophic insurance, or any other type of insurance deemed necessary by the Board. Provided, however, that the Board shall not offer a health plan which is owned or operated by the state and which utilizes a capitated payment plan for providers which uses a primary care physician as a gatekeeper to any specialty care provided by physician-specialists, unless specifically authorized by the Legislature;

12. The Board, pursuant to the provisions of Section 250 et seq. of Title 75 of the Oklahoma Statutes, shall adopt such rules consistent with the provisions of the State and Education Employees

Group Insurance Act as it deems necessary to carry out its statutory duties and responsibilities. Emergency Rules adopted by the Board and approved by the Governor which are in effect on the first day of the Regular Session of the Oklahoma Legislature shall not become null and void until January 15 of the subsequent calendar year;

13. The Board shall contract for claims administration services with a private insurance carrier or a company experienced in claims administration of any insurance that the Board may be directed to offer. No contract for claims administration services shall be made unless such contract has been offered for bids through the Purchasing Division of the Department of Central Services. The Board shall contract with a private insurance carrier or other experienced claims administrator to process claims with software that is normally used for its customers;

14. The Board shall contract for utilization review services with a company experienced in utilization review, data base evaluation, market research, and planning and performance of the health insurance plan;

15. The Board shall approve the amount of employee premiums and dependent premiums for such insurance plans as the Board shall offer for each year no later than the bid submission date for health maintenance organizations set by the Oklahoma State Employees Benefits Council, which for plan year beginning July 1, 2001, shall be set no later than the third Friday of December of the previous fiscal year. The next plan year shall begin January 1, 2002, and on January 1 each year thereafter. For plan year beginning January 1, 2002, and for each year thereafter, the submission date shall be set no later than the third Friday of August of the previous year. Except as otherwise provided for in Section 1321 of this title, the Board shall not have the authority to adjust the premium rates after approval. The Board shall submit notice of the amount of employee premiums and dependent premiums along with an actuarial projection

of the upcoming fiscal year's enrollment, employee contributions, employer contributions, investment earnings, paid claims, internal expenses, external expenses and changes in liabilities to the Director of the Office of State Finance and the Director of the Legislative Service Bureau no later than March 1 of the previous fiscal year.

In setting health insurance premiums for active employees and retirees under sixty-five (65) years of age, the Board shall set the monthly premium for active employees at a maximum of Ninety Dollars ($90.00) less than the monthly premium for retirees under sixty-five (65) years of age;

16. Before December 1 of each year the Board shall submit to the Director of the Office of State Finance a report outlining the financial condition for the previous fiscal year of all insurance plans offered by the Board. The report shall include a complete explanation of all reserve funds and the actuarial projections on the need for such reserves. The report shall include and disclose an estimate of the future trend of medical costs, the impact from HMO enrollment, antiselection, changes in law, and other contingencies that could impact the financial status of the plan. The Director of the Office of State Finance shall make written comment on the report and shall provide such comment, along with the report submitted by the Board, to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Chair of the Oklahoma State Employees Benefits Council by January 15;

17. The Board shall establish a prescription drug card network;

18. The Board shall have the authority to intercept monies owing to plan participants from other state agencies, when those participants in turn, owe money to the Board. The Board shall be required to adopt rules and regulations ensuring the participants due process of law;

19. The Board is authorized to make available to eligible employees supplemental health care benefit plans to include but not be limited to long-term care, deductible reduction plans and employee co-payment reinsurance. Premiums for said plans shall be actuarially based and the cost for such supplemental plans shall be paid by the employee; ~~and~~

20. Beginning with the plan year which begins on January 1, 2006, the Board shall select and contract with one or more providers to offer a group Tricare Supplement product to eligible employees who are eligible Tricare beneficiaries. Any membership dues required to participate in a group Tricare Supplement product offered pursuant to this paragraph shall be paid by the employee. As used in this paragraph, Tricare shall mean the Department of Defense health care program for active-duty and retired uniform service members and their families;

21. There is hereby created as a joint committee of the State Legislature, the Joint Liaison Committee on State and Education Employees Group Insurance Benefits, which Joint Committee shall consist of three members of the Senate to be appointed by the President Pro Tempore thereof and three members of the House of Representatives to be appointed by the Speaker thereof. The Chair and Vice Chair of the Joint Committee shall be appointed from the membership thereof by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, respectively, one of whom shall be a member of the Senate and the other shall be a member of the House of Representatives. At the beginning of the first regular session of each Legislature, starting in 1991, the Chair shall be from the Senate; thereafter the chairship shall alternate every two (2) years between the Senate and the House of Representatives.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall function as a committee of the State

Legislature when the Legislature is in session and when the Legislature is not in session. Each appointed member of said committee shall serve until his or her successor is appointed.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall serve as a liaison with the State and Education Employees Group Insurance Board regarding advice, guidance, policy, management, operations, plans, programs and fiscal needs of said Board. Said Board shall not be bound by any action of the Joint Committee~~.~~; and

~~21.~~ 22. The State and Education Employees Group Insurance Board shall annually collect its own set of performance measures comparable to the Health Plan Employer Data and Information Set (HEDIS) for the purpose of assessing the quality of its HealthChoice plans and the other services it provides.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 1365, as last amended by Section 2, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, 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 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. The Council may also select and contract with a vendor to offer a point-of-service plan. An HMO may offer coverage through a point-of-service plan, subject to the guidelines established by the Council. However, if the Council chooses to offer a point-of-service plan, then a vendor that offers both an HMO plan and a point-of-service plan may choose to offer only its point-of-service plan in lieu of offering its HMO plan.

The Oklahoma State Employees Benefits Council may, however, renegotiate rates with successful bidders after contracts have been awarded if there is an extraordinary circumstance. An extraordinary circumstance shall be limited to insolvency of a participating health maintenance organization or point-of-service plan, dissolution of a participating health maintenance organization or point-of-service plan or withdrawal of another participating health maintenance organization or point-of-service plan at any time during

the calendar year. Nothing in this section of law shall be construed to permit either party to unilaterally alter the terms of the contract;

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 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 make available to eligible participants the group Tricare Supplement product provided by the Board to eligible employees pursuant to Section 1306 of this title;

20. 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.~~ 21. 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 3. AMENDATORY 74 O.S. 2001, Section 1370, as last amended by Section 3, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, Section 1370), is amended to read as follows:

Section 1370. A. Subject to the requirement that a participant must elect the default benefits, the basic plan, or is a person who has retired from a branch of the United States military and has been provided with health care through a federal plan and provides proof of this coverage ~~and opts to not choose any benefits~~, flexible benefit dollars may be used to purchase any of the benefits offered by the Oklahoma State Employees Benefits Council under the flexible benefits plan. A participant who has provided proof of other coverage as described in this subsection shall not receive flexible benefit dollars if the person elects not to purchase any benefits. A participant's flexible benefit dollars for a plan year shall consist of the sum of (1) flexible benefit allowance credited to a participant by the participating employer, and (2) pay conversion dollars elected by a participant.

B. Each participant shall be credited annually with a specified amount as a flexible benefit allowance which shall be available for the purchase of benefits. The amount of the flexible benefit allowance credited to each participant shall be communicated to him or her prior to the enrollment period for each plan year.

C. For the plan year ending December 31, 2001, and each plan year thereafter, the amount of a participant's benefit allowance, which shall be the total amount the employer contributes for the payment of insurance premiums or other benefits, shall be:

1. The greater of Two Hundred Sixty-two Dollars and nineteen cents ($262.19) per month or an amount equal to the sum of the average monthly premiums of all high option health insurance plans, excluding the point-of-service plans, the group Tricare Supplemental product, the average monthly premiums of the dental plans, the monthly premium of the disability plan, and the monthly premium of the basic life insurance plan offered to state employees or the amount determined by the Council based on a formula for determining a participant's benefit credits consistent with the requirements of 26 U.S.C., Section 125(g)(2) and regulations thereunder; ~~or~~

2. One-half (1/2) of the amount of the employee-only flexible benefit allowance specified in paragraph 1 of this subsection for any participant who has retired from a branch of the United States military, who has opted not to purchase health care coverage but has elected to purchase the basic dental, disability and life coverage or any additional coverage offered to participants by the Council;

3. Three-fourths (3/4) of the amount of the employee-only flexible benefit allowance specified in paragraph 1 of this subsection for any participant who has retired from a branch of the United States military, who elects to purchase a group Tricare Supplemental product provided to eligible employees pursuant to Section 1306 of this title and the basic dental, disability and life

coverage or any additional coverage offered to participants by the Council; or

4. The greater of Two Hundred Twenty-four Dollars and sixty-nine cents ($224.69) per month or an amount equal to the sum of the average monthly premiums of all high option health insurance plans, excluding the point-of-service plans, the average monthly premiums of the dental plans, the monthly premium of the disability plan, and the monthly premium of the basic life insurance plan offered to state employees plus one of the additional amounts as follows for participants who elect to include one or more dependents:

a. for a spouse, seventy-five percent (75%) of the average price of all high option benefit plans, excluding the point-of-service plans, available for coverage of a spouse,

b. for one child, seventy-five percent (75%) of the average price of all high option benefit plans available, excluding the point-of-service plans, for coverage of one child,

c. for two or more children, seventy-five percent (75%) of the average price of all high option benefit plans available, excluding the point-of-service plans, for coverage of two or more children,

d. for a spouse and one child, seventy-five percent (75%) of the average price of all high option benefit plans available, excluding the point-of-service plans, for coverage of a spouse and one child, or

e. for a spouse and two or more children, seventy-five percent (75%) of the average price of all high option benefit plans available, excluding the point-of-service plans, for coverage of a spouse and two or more children.

D. This section shall not prohibit payments for supplemental health insurance coverage made pursuant to Section 1314.4 of this title or payments for the cost of providing health insurance coverage for dependents of employees of the Grand River Dam Authority.

E. If a participant desires to buy benefits whose sum total of benefit prices is in excess of his or her flexible benefit allowance, the participant may elect to use pay conversion dollars to purchase such excess benefits. Pay conversion dollars may be elected through a salary reduction agreement made pursuant to the election procedures of Section 1371 of this title. The elected amount shall be deducted from the participant's compensation in equal amounts each pay period over the plan year. On termination of employment during a plan year, a participant shall have no obligation to pay the participating employer any pay conversion dollars allocated to the portion of the plan year after the participant's termination of employment.

F. If a participant elects benefits whose sum total of benefit prices is less than his or her flexible benefit allowance, he or she shall receive any excess flexible benefit allowance as taxable compensation. Such taxable compensation will be paid in substantially equal amounts each pay period over the plan year. On termination during a plan year, a participant shall have no right to receive any such taxable cash compensation allocated to the portion of the plan year after the participant's termination. Nothing herein shall affect a participant's obligation to elect the minimum benefits or to accept the default benefits of the plan with corresponding reduction in the sum of his or her flexible benefit allowance equal to the sum total benefit price of such minimum benefits or default benefits.

SECTION 4. This act shall become effective July 1, 2005.

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.

Passed the House of Representatives the 15th day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

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Presiding Officer of the Senate