

ENGROSSED HOUSE
BILL NO. 1473

By: Kern, Auffet, Coody,
Morrissette, Staggs,
Terrill, Wesselhoft, Martin
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An Act relating to state government; amending 74 O.S. 2001, Sections 1363 and 1365, as last amended by Section 2, Chapter 405, O.S.L. 2004 (74 O.S. Supp. 2004, Section 1365), which relate to the Oklahoma State Employees Benefits Act; deleting obsolete definition; defining terms; modifying certain terms; extending services to certain employees; authorizing collection of fee; providing for promulgation of rules; 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 1363, is amended to read as follows:

Section 1363. The following words and phrases as used in this 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;

~~3.~~ 2. "Benefit" means any of the benefits which may be purchased or is required to be purchased under the plan;

~~4.~~ 3. "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.~~ 4. "Benefit price" means the number of flexible benefit dollars needed to purchase a benefit under the plan;

~~6.~~ 5. "Board" means the State and Education Employees Group Insurance Board, as created by the State and Education Employees Group Insurance Act;

~~7.~~ 6. "Code" means the Internal Revenue Code of 1986, as amended, from time to time;

~~8.~~ 7. "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, or amounts deferred under the tax sheltered income deferral plans as authorized by Section 1701 et seq. of this title;

~~9.~~ 8. "Council" means the Oklahoma State Employees Benefits Council, as created by this act;

~~10.~~ 9. "Default benefit" means any benefit a participant who fails to make a proper election under the plan shall be deemed to have purchased;

~~11.~~ 10. "Dependent" means a participant's spouse or any of his or her dependents as defined in ~~Code~~ 26 U.S.C., Section 152 and regulations promulgated thereunder;

~~12.~~ 11. "Flexible benefit allowance" means the annual amounts credited by the participating employer for each participant for the purchase of benefits under the plan;

~~13.~~ 12. "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;

13. "Flexible spending account" means the health care reimbursement account option and dependent care reimbursement

account option administered by the Employees Benefits Council pursuant to 26 U.S.C., Section 125;

14. "Flexible spending account employer" means entities eligible to participate in the health plan offered by the Board, including the Regents of Higher Education or any institution under the authority of the State Regents for Higher Education;

15. "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 for state employees as provided in Section 284 of this title,~~ and any employee of a participating employer who is a member of the Teachers' Retirement System of Oklahoma;

~~15.~~ 16. "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 technology center 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 Oklahoma Department of Career and Technology 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.~~ 17. "Pay conversion dollars" means amounts by which a participant elects to reduce his compensation to purchase benefits under the plan;

~~17.~~ 18. "Plan" means the flexible benefits plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions of this act;

~~18.~~ 19. "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.~~ 20. "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.~~ 21. "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 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 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; and

21. Upon approval by the majority action of the governing board or the equivalent governing authority of a flexible spending account employer and upon application in writing from the governing board or the equivalent governing authority of a flexible spending account employer, the Council may extend the flexible spending account services of the Employees Benefits Council to the employees of a flexible spending account employer. Employees of a participating flexible spending account employer shall not be required to purchase the basic plan for the purpose of participating in the flexible spending accounts. Exclusion from purchasing the basic plan as defined in this section does not extend to participants as defined in Section 1363 of this title. The Employees Benefits Council shall be authorized to assess and collect a fee from each participating flexible spending account employer. The Employees Benefits Council shall promulgate administrative rules for flexible spending account services as defined in this section.

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. This act shall become effective July 1, 2005.

SECTION 4. 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 16th day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate