

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1391

By: Bengé

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 2001, Sections 1362, 1363, 1365, as last amended by Section 2, Chapter 405, O.S.L. 2004, 1366.2, as amended by Section 3, Chapter 489, O.S.L. 2002 and 1371, as last amended by Section 1, Chapter 414, O.S.L. 2004 (74 O.S. Supp. 2004, Sections 1365, 1366.2 and 1371), which relate to the Oklahoma State Employees Benefits Act; expanding list of benefit providers; updating definition; expanding list of entities that can perform certain functions; providing for distribution of certain information; eliminating prohibition on Employee Benefits Council from offering other indemnity health plans; expanding list of entities covered in act; deleting obsolete language; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 1362, is amended to read as follows:

Section 1362. It is hereby declared that the purpose of Section 1361 et seq. of this title is:

1. To recognize that the employee benefit needs of individual state employees differ, depending on the age, salary and family status of the employee, and that it is needful to permit participating employees to select and tailor the benefits they receive in a manner calculated to best meet the particular needs of themselves and their families;
2. To furnish state employees with choices among various employee benefits or cash compensation;
3. To provide state employees and their dependents with basic group health insurance, basic group term life insurance, and basic long-term disability insurance;

4. To provide state employees and their dependents with optional employee benefits, to include, but not be limited to, enhanced health insurance coverage, health maintenance ~~organization services~~ organizations, health indemnity insurance plans, dental indemnity plans, dental maintenance organizations, health point-of-service plans, life insurance, ~~dental insurance~~ and enhanced long-term disability insurance;

5. To provide state employees with reimbursement for qualifying dependent care expenses for which a dependent care tax credit is not taken, reimbursement for qualifying health care expenses not reimbursed by any other insurance plan or taken as a tax deduction, additional benefits which are currently taxable, additional benefits which are not currently taxable, and cash compensation;

6. To provide state employees with tax sheltered income deferment plans;

7. To provide uniform benefit options for all state employees regardless of their place of residence within this state;

8. To manage the provision of health care benefits in a manner that allows for the long term control of costs;

9. To provide for the coordination and design, in accordance with applicable law, of all employee benefits offered to state employees so as to increase the efficient delivery and effectiveness of those benefits;

10. To enable the state to attract and retain qualified employees by providing employee benefits which are competitive with those provided private industry;

11. To offer uniformity in those benefits that are offered to both state employees and those eligible for participation in the State and Education Employees Group Insurance Act, Section 1301 et seq. of this title;

12. To recognize and protect the state's investment in each employee by promoting and preserving good health and longevity among state employees;

13. To recognize the service to the state by elected and appointed officials by extending to them the same benefits as are provided under the flexible benefits program to state employees; and

14. To recognize long and faithful service, and to encourage employees to remain in state service until eligible for retirement by providing employee benefits.

SECTION 2. 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. "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, 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;

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~~ 26 U.S.C., 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 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. "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. "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 3. 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, health indemnity insurance plans, dental

indemnity insurance plans, dental maintenance organizations, health point-of-service plans, 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 a best and final offer through competitive negotiation and contract with health indemnity insurance plans, dental indemnity insurance plans, dental maintenance organizations, health point-of-service plans, and 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 indemnity insurance plans, dental indemnity insurance plans, dental maintenance organizations, health point-of-service plans, and 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 health indemnity insurance plan,

dental indemnity insurance plan, dental maintenance organization, health point-of-service plan and health maintenance organization bidders after contracts have been awarded if there is an extraordinary circumstance. An extraordinary circumstance shall be limited to insolvency or dissolution of a participating health ~~maintenance organization, dental~~ 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, dental~~ 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 indemnity insurance plans, dental indemnity insurance plans, dental maintenance organizations, health point-of-service plans, and health maintenance organizations 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~~ health indemnity insurance plan, dental indemnity insurance plan, dental maintenance organization, health point-of-service plan and health maintenance organization bidders offering coverage through the Council, including the Board, to provide such enrollment and claims data as is determined by the Council. The Board shall provide utilization data to the Council in a format prescribed by the Council for distribution to prospective health indemnity insurance plan, health point-of-service plan and health maintenance organization bidders. 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~~ health indemnity insurance plans, dental indemnity insurance plans, dental maintenance organizations, health point-of-service plans, and health maintenance organizations 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, health indemnity insurance plans, and health point-of-service plans, 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 indemnity insurance plans, dental indemnity insurance plans, dental maintenance organizations, health point-of-service plans, 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~~ member 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 74 O.S. 2001, Section 1366.2, as amended by Section 3, Chapter 489, O.S.L. 2002 (74 O.S. Supp. 2004, Section 1366.2), is amended to read as follows:

Section 1366.2 Notwithstanding any other provision of law to the contrary, for contracts relating to ~~the~~ each plan year ~~beginning January 1, 2003, and for each plan year thereafter,~~ the Oklahoma State Employees Benefits Council and the State and Education Employees Group Insurance Board shall:

- a. develop geographic service areas and list the zip codes contained in such service areas. Each participating health indemnity insurance plan, health point-of-service plans, and health maintenance organization shall not be required to offer enrollment in every service area as a condition to participation in the State Account,
- b. not require participating health indemnity insurance plans, health point-of-service plans, and health maintenance organizations to offer a Medicare supplement plan; provided, however, ~~any~~ participating health indemnity insurance plan, health point-of-service plan, and health maintenance organization that offers a Medicare supplement plan to other entities within this state shall be required to offer a Medicare supplement plan,
- c. require participating health indemnity insurance plans, health point-of-service plans, and health maintenance organizations to meet the standardized benefit plan as required by the Oklahoma State Employees Benefits Council; provided, however,

- participating health indemnity insurance plans, health point-of-service plans, and health maintenance organizations may offer enhancements in an effort to make their plans more attractive and competitive, and
- d. ensure that all premiums collected are paid to participating health indemnity insurance plans, health point-of-service plans, and health maintenance organizations within sixty (60) calendar days of receipt of premium.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 1371, as last amended by Section 1, Chapter 414, O.S.L. 2004 (74 O.S. Supp. 2004, Section 1371), is amended to read as follows:

Section 1371. A. All participants must purchase at least the basic plan unless the participant is a person who has retired from a branch of the United States military and has been provided with health coverage through a federal plan and that participant provides proof of that coverage. 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 indemnity insurance plan, dental indemnity insurance plan, dental maintenance organization, health point-of-service plan, and 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. For health, dental, disability and life coverage, the Board shall offer plans at the basic benefit level established by the Council, and in addition, may offer benefit plans that provide an enhanced level of benefits.

The Board shall 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.

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. In lieu of electing any of the preceding medical benefit plans, a participant may elect medical coverage by any health indemnity insurance plan, dental indemnity insurance plan, dental maintenance organization, health point-of-service plan, or health maintenance organization made available to participants by the Council. The benefit price of any health indemnity insurance plan, dental indemnity insurance plan, dental maintenance organization, health point-of-service plan, or health maintenance organization shall be determined on a competitive ~~bid~~ negotiation basis through a best and final offer process. 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 best and final offer, competitive bidding negotiation 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 indemnity insurance plan, dental indemnity insurance plan, dental maintenance organization, health point-of-service plan, or health maintenance organization for which the Council determines the

benefit price to be excessive. The Council shall have the authority to reject any ~~plan~~ proposal 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~~ health indemnity insurance plans, health point-of-service plans, health maintenance organizations offered by the Employees Benefits Council, 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.

D. Nothing in this section shall be construed as prohibiting the Council from offering additional qualified benefit plans or currently taxable benefit plans.

E. 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.

F. 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.

G. 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.

H. Benefit plan contracts with the Board, health indemnity insurance plans, health point-of-service plans, 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.

~~I. 1. For the plan year ending December 31, 2004, employees covered or eligible to be covered under the State and Education Employees Group Insurance Act and the State Employees Flexible Benefits Act who are enrolled in a health maintenance organization offering a network in Oklahoma City, shall have the option of continuing care with a primary care physician for the remainder of the plan year if:~~

- ~~a. that primary care physician was part of a provider group that was offered to the individual at enrollment and later removed from the network of the health~~

~~maintenance organization, for reasons other than for  
cause, and~~

- ~~b. the individual submits a request in writing to the  
health maintenance organization to continue to have  
access to the primary care physician.~~

~~2. The primary care physician selected by the individual shall  
be required to accept reimbursement for such health care services on  
a fee-for-service basis only. The fee-for-service shall be computed  
by the health maintenance organization based on the average of the  
other fee-for-service contracts of the health maintenance  
organization in the local community. The individual shall only be  
required to pay the primary care physician those co-payments,  
coinsurance and any applicable deductibles in accordance with the  
terms of the agreement between the employer and the health  
maintenance organization and the provider shall not balance bill the  
patient.~~

~~3. Any network offered in Oklahoma City that is terminated  
prior to July 1, 2004, shall notify the health maintenance  
organization, Oklahoma State Employees Benefits Council and State  
and Education Employees Group Insurance Board by June 11, 2004, of  
the network's intentions to continue providing primary care services  
as described in paragraph 2 of this subsection offered by the health  
maintenance organization to state and public employees.~~

SECTION 6. 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.