

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 2047

6 By: Brown

7 COMMITTEE SUBSTITUTE

8 An Act relating to state government; amending 74 O.S.
9 2001, Sections 1365, as last amended by Section 1,
10 Chapter 28, O.S.L. 2009, Section 3, Chapter 489,
11 O.S.L. 2002 and 1371, as last amended by Section 6,
12 Chapter 269, O.S.L. 2007 (74 O.S. Supp. 2009,
13 Sections 1365, 1366.2 and 1371), which relate to the
14 Oklahoma State Employees Benefits Council; specifying
15 that the Oklahoma State Employees Benefits Council
16 shall award a contract to a health maintenance
17 organization; modifying requirements relating to the
18 awarding of certain contracts; requiring the Council
19 to award certain contract to one health maintenance
20 organization; providing an effective date; and
21 declaring an emergency.

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

23 SECTION 1. AMENDATORY 74 O.S. 2001, Section 1365, as
24 last amended by Section 1, Chapter 28, O.S.L. 2009 (74 O.S. Supp.
2009, Section 1365), is amended to read as follows:

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

1 1. To construe and interpret the plan, and decide all questions
2 of eligibility in accordance with the Oklahoma State Employees
3 Benefits Act and 26 U.S.C.A., Section 1 et seq.;

4 2. To select those benefits which shall be made available to
5 participants under the plan, according to the Oklahoma State
6 Employees Benefits Act, and other applicable laws and rules;

7 3. To retain or employ qualified agencies, persons or entities
8 to design, develop, communicate, implement or administer the plan;

9 4. To prescribe procedures to be followed by participants in
10 making elections and filing claims under the plan;

11 5. To prepare and distribute information communicating and
12 explaining the plan to participating employers and participants.
13 The State and Education Employees Group Insurance Board, Health
14 Maintenance Organizations, or other third-party insurance vendors
15 may be directly or indirectly involved in the distribution of
16 communicated information to participating state agency employers and
17 state employee participants subject to the following conditions:

18 a. the Council shall verify all marketing and
19 communications information for factual accuracy prior
20 to distribution,

21 b. the Board or vendors shall provide timely notice of
22 any marketing, communications, or distribution plans
23 to the Council and shall coordinate the scheduling of
24 any group presentations with the Council, and

1 c. the Board or vendors shall file a brief summary with
2 the Council outlining the results following any
3 marketing and communications activities;

4 6. To receive from participating employers and participants
5 such information as shall be necessary for the proper administration
6 of the plan, and any of the benefits offered thereunder;

7 7. To furnish the participating employers and participants such
8 annual reports with respect to the administration of the plan as are
9 reasonable and appropriate;

10 8. To keep reports of benefit elections, claims and
11 disbursements for claims under the plan;

12 9. To appoint an executive director who shall serve at the
13 pleasure of the Council. The executive director shall employ or
14 retain such persons in accordance with the Oklahoma State Employees
15 Benefits Act and the requirements of other applicable law, including
16 but not limited to actuaries and certified public accountants, as he
17 or she deems appropriate to perform such duties as may from time to
18 time be required under the Oklahoma State Employees Benefits Act and
19 to render advice upon request with regard to any matters arising
20 under the plan subject to the approval of the Council. The
21 executive director shall have not less than seven (7) years of group
22 insurance administration experience on a senior managerial level or
23 not less than three (3) years of flexible benefits experience on a
24 senior managerial level. Any actuary or certified public accountant

1 employed or retained under contract by the Council shall have not
2 less than three (3) years' experience in group insurance or employee
3 benefits administration. The compensation of all persons employed
4 or retained by the Council and all other expenses of the Council
5 shall be paid at such rates and in such amounts as the Council shall
6 approve, subject to the provisions of applicable law;

7 10. To negotiate for best and final offer through competitive
8 negotiation and contract with a federally qualified health
9 maintenance ~~organizations~~ organization under the provisions of 42
10 U.S.C., Section 300e et seq., or with a Health Maintenance
11 ~~Organizations~~ Organization granted a certificate of authority by the
12 Insurance Commissioner pursuant to Sections 6901 through 6951 of
13 Title 36 of the Oklahoma Statutes for consideration by participants
14 as an alternative to the health plans offered by the Board, and to
15 transfer to ~~the~~ a health maintenance ~~organizations~~ organization such
16 funds as may be approved for a participant electing health
17 maintenance organization alternative services. The Council may also
18 select and contract with a vendor to offer a point-of-service plan.
19 An HMO may offer coverage through a point-of-service plan, subject
20 to the guidelines established by the Council. However, if the
21 Council chooses to offer a point-of-service plan, then a vendor that
22 offers both an HMO plan and a point-of-service plan may choose to
23 offer only its point-of-service plan in lieu of offering its HMO
24 plan.

1 The Oklahoma State Employees Benefits Council may, however,
2 renegotiate rates with the successful ~~bidders~~ bidder after contracts
3 have been awarded if there is an extraordinary circumstance. An
4 extraordinary circumstance shall be limited to insolvency of a the
5 participating health maintenance organization or point-of-service
6 plan, dissolution of a the participating health maintenance
7 organization or point-of-service plan or withdrawal of another
8 participating health maintenance organization or point-of-service
9 plan at any time during the calendar year. Nothing in this section
10 of law shall be construed to permit either party to unilaterally
11 alter the terms of the contract;

12 11. To retain as confidential information the initial Request
13 For Proposal offers as well as any subsequent bid offers made by the
14 health plans prior to final contract awards as a part of the best
15 and final offer negotiations process for the benefit plan;

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

18 13. To require vendors offering coverage through the Council,
19 including the Board, to provide such enrollment and claims data as
20 is determined by the Council. The Oklahoma State Employees Benefits
21 Council with the cooperation of the Department of Central Services
22 acting pursuant to Section 85.1 et seq. of this title, shall be
23 authorized to retain as confidential, any proprietary information
24 submitted in response to the Council's Request For Proposal.

1 Provided, however, that any such information requested by the
2 Council from the vendors shall only be subject to the
3 confidentiality provision of this paragraph if it is clearly
4 designated in the Request For Proposal as being protected under this
5 provision. All requested information lacking such a designation in
6 the Request For Proposal shall be subject to Section 24A.1 et seq.
7 of Title 51 of the Oklahoma Statutes. From health maintenance
8 organizations, data provided shall include the current Health Plan
9 Employer Data and Information Set (HEDIS);

10 14. To purchase any insurance deemed necessary for providing
11 benefits under the plan including indemnity dental plans, provided
12 that the only indemnity health plan selected by the Council shall be
13 the indemnity plan offered by the Board, and to transfer to the
14 Board such funds as may be approved for a participant electing a
15 benefit plan offered by the Board. All indemnity dental plans,
16 including the one offered by the Oklahoma State and Education Group
17 Insurance Board, must meet or exceed the following requirements:

- 18 a. they shall have a statewide provider network,
- 19 b. they shall provide benefits which shall reimburse the
20 expense for the following types of dental procedures:
 - 21 (1) diagnostic,
 - 22 (2) preventative,
 - 23 (3) restorative,
 - 24 (4) endodontic,

- 1 (5) periodontic,
- 2 (6) prosthodontics,
- 3 (7) oral surgery,
- 4 (8) dental implants,
- 5 (9) dental prosthetics, and
- 6 (10) orthodontics, and

7 c. they shall provide an annual benefit of not less than
8 One Thousand Five Hundred Dollars (\$1,500.00) for all
9 services other than orthodontic services, and a
10 lifetime benefit of not less than One Thousand Five
11 Hundred Dollars (\$1,500.00) for orthodontic services;

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

14 16. To assess and collect reasonable fees from the Board, and
15 from such contracted health maintenance organizations and third
16 party insurance vendors to offset the costs of administration as
17 determined by the Council. The Council shall have the authority to
18 transfer income received pursuant to this subsection to the Board
19 for services provided by the Board;

20 17. To accept, modify or reject elections under the plan in
21 accordance with the Oklahoma State Employees Benefits Act and 26
22 U.S.C.A., Section 1 et seq.;

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

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

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

11 B. The Council members shall discharge their duties as
12 fiduciaries with respect to the participants and their dependents of
13 the plan, and all fiduciaries shall be subject to the following
14 definitions and provisions:

15 1. A person or organization is a fiduciary with respect to the
16 Council to the extent that the person or organization:

- 17 a. exercises any discretionary authority or discretionary
18 control respecting administration or management of the
19 Council,
- 20 b. exercises any authority or control respecting
21 disposition of the assets of the Council,
- 22 c. renders advice for a fee or other compensation, direct
23 or indirect, with respect to any participant or
24 dependent benefits, monies or other property of the

1 Council, or has any authority or responsibility to do
2 so, or

3 d. has any discretionary authority or discretionary
4 responsibility in the administration of the Council;

5 2. The Council may procure insurance indemnifying the members
6 of the Council from personal loss or accountability from liability
7 resulting from a member's action or inaction as a member of the
8 Council;

9 3. Except for a breach of fiduciary obligation, a Council
10 member shall not be individually or personally responsible for any
11 action of the Council;

12 4. Any person who is a fiduciary with respect to the Council
13 shall be entitled to rely on representations made by participants,
14 participating employers, third party administrators and
15 beneficiaries with respect to age and other personal facts
16 concerning a participant or beneficiaries, unless the fiduciary
17 knows the representations to be false;

18 5. Each fiduciary shall discharge his or her duties and
19 responsibilities with respect to the Council and the plan solely in
20 the interest of the participants and beneficiaries of the plan
21 according to the terms hereof, for the exclusive purpose of
22 providing benefits to participants and their beneficiaries, with the
23 care, skill, prudence and diligence under the circumstances
24 prevailing from time to time that a prudent person acting in a like

1 capacity and familiar with such matters would use in the conduct of
2 an enterprise of like character and with like aims; and

3 6. The duties and responsibilities allocated to each fiduciary
4 by the Oklahoma State Employees Benefits Act or by the Council shall
5 be the several and not joint responsibility of each, and no
6 fiduciary shall be liable for the act or omission of any other
7 fiduciary unless:

8 a. by his or her failure to properly administer his or
9 her specific responsibility he or she enabled such
10 other person or organization to commit a breach of
11 fiduciary responsibility, or

12 b. he or she knowingly participates in, or knowingly
13 undertakes to conceal, an act or omission of another
14 person or organization, knowing such act or omission
15 to be a breach, or

16 c. having knowledge of the breach of another person or
17 organization, he or she fails to make reasonable
18 efforts under the circumstances to remedy said breach.

19 SECTION 2. AMENDATORY Section 3, Chapter 489, O.S.L.
20 2002 (74 O.S. Supp. 2009, Section 1366.2), is amended to read as
21 follows:

22 Section 1366.2. Notwithstanding any other provision of law to
23 the contrary, for contracts relating to the plan year beginning
24 January 1, 2003, and for each plan year thereafter, the Oklahoma

1 State Employees Benefits Council and the State and Education
2 Employees Group Insurance Board shall:

3 a. develop geographic service areas and list the zip
4 codes contained in such service areas. ~~Each~~The
5 participating health maintenance organization shall
6 not be required to offer enrollment in every service
7 area as a condition to participation in the State
8 Account,

9 b. not require the participating health maintenance
10 ~~organizations~~ organization to offer a Medicare
11 supplement plan; provided, however, ~~any~~ the
12 participating health maintenance organization that
13 offers a Medicare supplement plan to other entities
14 within this state shall be required to offer a
15 Medicare supplement plan,

16 c. require the participating health maintenance
17 ~~organizations~~ organization to meet the standardized
18 benefit plan as required by the Oklahoma State
19 Employees Benefits Council; provided, however, the
20 participating health maintenance ~~organizations~~
21 organization may offer enhancements in an effort to
22 make their plans more attractive and competitive, and

23 d. ensure that all premiums collected are paid to the
24 participating health maintenance ~~organizations~~

1 organization within sixty (60) calendar days of
2 receipt.

3 SECTION 3. AMENDATORY 74 O.S. 2001, Section 1371, as
4 last amended by Section 6, Chapter 269, O.S.L. 2007 (74 O.S. Supp.
5 2009, Section 1371), is amended to read as follows:

6 Section 1371. A. All participants must purchase at least the
7 basic plan unless, to the extent that it is consistent with federal
8 law, the participant is a person who has retired from a branch of
9 the United States military and has been provided with health
10 coverage through a federal plan and that participant provides proof
11 of that coverage. On or before January 1 of the plan year beginning
12 July 1, 2001, and July 1 of any plan year beginning after January 1,
13 2002, the Oklahoma State Employees Benefits Council shall design the
14 basic plan for the next plan year to insure that the basic plan
15 provides adequate coverage to all participants. All benefit plans,
16 whether offered by the State and Education Employees Group Insurance
17 Board, a health maintenance organization or other vendors shall meet
18 the minimum requirements set by the Council for the basic plan.

19 B. The Board shall offer health, disability, life and dental
20 coverage to all participants and their dependents. For health,
21 dental, disability and life coverage, the Board shall offer plans at
22 the basic benefit level established by the Council, and in addition,
23 may offer benefit plans that provide an enhanced level of benefits.
24 The Board shall be responsible for determining the plan design and

1 the benefit price for the plans that they offer. Effective for the
2 plan year beginning January 1, 2007, and for each plan year
3 thereafter, in setting health insurance premiums for active
4 employees and for retirees under sixty-five (65) years of age, the
5 Board shall set the monthly premium for active employees to be equal
6 to the monthly premium for retirees under sixty-five (65) years of
7 age.

8 Nothing in this subsection shall be construed as prohibiting the
9 Board from offering additional medical plans, provided that any
10 medical plan offered to participants shall meet or exceed the
11 benefits provided in the medical portion of the basic plan.

12 C. In lieu of electing any of the preceding medical benefit
13 plans, a participant may elect medical coverage by ~~any~~ the health
14 maintenance organization made available to participants by the
15 Council. The benefit price of ~~any~~ the health maintenance
16 organization shall be determined on a competitive bid basis.
17 Contracts for said plans shall not be subject to the provisions of
18 the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this
19 title. The Council shall promulgate rules establishing appropriate
20 competitive bidding criteria and procedures for ~~contracts~~ the
21 contract awarded for flexible benefits plans. ~~All plans offered by~~
22 ~~health maintenance organizations meeting the bid requirements as~~
23 ~~determined by the Council shall be accepted. The Council shall have~~
24 ~~the authority to reject the bid or restrict enrollment in any health~~

1 ~~maintenance organization for which the Council determines the~~
2 ~~benefit price to be excessive. The Council shall have the authority~~
3 ~~to reject any plan that does not meet the bid requirements. All~~
4 bidders shall submit along with their bid a notarized, sworn
5 statement as provided by Section 85.22 of this title. The Council
6 shall award the contract to one health maintenance organization
7 which meets the bid requirements. Effective for the plan year
8 beginning January 1, 2007, and for each plan year thereafter, in
9 setting health insurance premiums for active employees and for
10 retirees under sixty-five (65) years of age, HMOs, self-insured
11 organizations and prepaid plans shall set the monthly premium for
12 active employees to be equal to the monthly premium for retirees
13 under sixty-five (65) years of age.

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

17 E. Each employee of a participating employer who meets the
18 eligibility requirements for participation in the flexible benefits
19 plan shall make an annual election of benefits under the plan during
20 an enrollment period to be held prior to the beginning of each plan
21 year. The enrollment period dates will be determined annually and
22 will be announced by the Council, providing the enrollment period
23 shall end no later than thirty (30) days before the beginning of the
24 plan year.

1 Each such employee shall make an irrevocable advance election
2 for the plan year or the remainder thereof pursuant to such
3 procedures as the Council shall prescribe. Any such employee who
4 fails to make a proper election under the plan shall, nevertheless,
5 be a participant in the plan and shall be deemed to have purchased
6 the default benefits described in this section.

7 F. The Council shall prescribe the forms that participants will
8 be required to use in making their elections, and may prescribe
9 deadlines and other procedures for filing the elections.

10 G. Any participant who, in the first year for which he or she
11 is eligible to participate in the plan, fails to make a proper
12 election under the plan in conformance with the procedures set forth
13 in this section or as prescribed by the Council shall be deemed
14 automatically to have purchased the default benefits. The default
15 benefits shall be the same as the basic plan benefits. Any
16 participant who, after having participated in the plan during the
17 previous plan year, fails to make a proper election under the plan
18 in conformance with the procedures set forth in this section or
19 prescribed by the Council, shall be deemed automatically to have
20 purchased the same benefits which the participant purchased in the
21 immediately preceding plan year, except that the participant shall
22 not be deemed to have elected coverage under the health care
23 reimbursement account plan or the dependent care reimbursement
24 account plan.

1 H. Benefit plan contracts with the Board, a health maintenance
2 ~~organizations~~ organization, and other third party insurance vendors
3 shall provide for a risk adjustment factor for adverse selection
4 that may occur, as determined by the Council, based on generally
5 accepted actuarial principles.

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

13 a. that primary care physician was part of a provider
14 group that was offered to the individual at enrollment
15 and later removed from the network of the health
16 maintenance organization, for reasons other than for
17 cause, and

18 b. the individual submits a request in writing to the
19 health maintenance organization to continue to have
20 access to the primary care physician.

21 2. The primary care physician selected by the individual shall
22 be required to accept reimbursement for such health care services on
23 a fee-for-service basis only. The fee-for-service shall be computed
24 by the health maintenance organization based on the average of the

1 other fee-for-service contracts of the health maintenance
2 organization in the local community. The individual shall only be
3 required to pay the primary care physician those co-payments,
4 coinsurance and any applicable deductibles in accordance with the
5 terms of the agreement between the employer and the health
6 maintenance organization and the provider shall not balance bill the
7 patient.

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

15 SECTION 4. This act shall become effective July 1, 2010.

16 SECTION 5. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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