

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2108

By: Ortega

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to the Oklahoma State Employees
9 Benefits Council; amending 74 O.S. 2001, Sections
10 1363 and 1365, as last amended by Section 2, Chapter
11 450, O.S.L. 2005 (74 O.S. Supp. 2008, Section 1365),
12 which relate to the Oklahoma State Employees Benefits
13 Act; modifying definitions; modifying duties of the
14 Council; providing an effective date; and declaring
15 an emergency.

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

17 SECTION 1. AMENDATORY 74 O.S. 2001, Section 1363, is
18 amended to read as follows:

19 Section 1363. The following words and phrases as used in ~~this~~
20 ~~act~~ the Oklahoma State Employees Benefits Act, unless a different
21 meaning is clearly required by the context, shall have the following
22 meanings:

- 23 1. "Authority" means the Oklahoma Health Care Authority;
- 24 2. "Basic plan" means the plan that provides the least amount
of benefits each participant is required to purchase pursuant to the

1 provisions of the plan. The basic plan shall include only health,
2 dental, disability and life benefits;

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

5 4. "Benefit plan" means the specific terms and conditions
6 regarding a benefit which may be purchased under the plan, including
7 the terms and conditions of any separate plan document, group
8 insurance policy or administrative services contract entered into by
9 the Council;

10 5. "Benefit price" means the number of flexible benefit dollars
11 needed to purchase a benefit under the plan;

12 6. "Board" means the State and Education Employees Group
13 Insurance Board, as created by the State and Education Employees
14 Group Insurance Act;

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

17 8. "Compensation" means the remuneration directly paid to a
18 participating employee by a participating employer exclusive of
19 overtime pay, and longevity pay, calculated prior to and without
20 regard to adjustments arising out of an employee's participation in
21 the plan authorized pursuant to ~~this act~~ the Oklahoma State
22 Employees Benefits Act, or amounts deferred under the tax sheltered
23 income deferment plans as authorized by Section 1701 et seq. of this
24 title;

1 9. "Council" means the Oklahoma State Employees Benefits
2 Council, as created by ~~this act~~ the Oklahoma State Employees
3 Benefits Act;

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

7 11. "Dependent" means a participant's spouse or any of his or
8 her dependents as defined in Code Section 152 and regulations
9 promulgated thereunder;

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

13 13. "Flexible benefit dollars" means the sum of the flexible
14 benefit allowance and pay conversion dollars allocated by a
15 participant pursuant to provisions of the plan;

16 14. "Participant" means any officer or employee of a
17 participating employer who is a member of the Oklahoma Law
18 Enforcement Retirement System, the Oklahoma Public Employees
19 Retirement System or the Uniform Retirement System for Justices and
20 Judges, any officer or employee of a participating employer, whose
21 employment is not seasonal or temporary and whose employment
22 requires at least one thousand (1,000) hours of work per year and
23 whose salary and wage is equal to or greater than the hourly wage
24 for state employees ~~as provided in Section 284 of this title~~, and

1 any employee of a participating employer who is a member of the
2 Teachers' Retirement System of Oklahoma;

3 15. "Participating employer" means any state agency, board,
4 commission, department, institution, authority, officer, bureau,
5 council, office or other entity created by the Oklahoma Constitution
6 or statute that is a participating employer of the Oklahoma Law
7 Enforcement Retirement System, the Oklahoma Public Employees
8 Retirement System or the Uniform Retirement System for Justices and
9 Judges, but shall not include any county, county hospital, city or
10 town, conservation district, any private or public trust in which a
11 county, city or town participates and is the primary beneficiary,
12 any school district or technology center school district, or
13 political subdivision of the state, but shall include the State
14 Department of Education, the Oklahoma Department of Wildlife
15 Conservation, the Oklahoma Employment Security Commission, the
16 Teachers' Retirement System of Oklahoma and the Oklahoma Department
17 of Career and Technology Education. Provided, the term
18 "participating employer" shall also mean the State Regents for
19 Higher Education or any institution under the authority of the State
20 Regents for Higher Education upon agreement between the State
21 Regents for Higher Education or the appropriate governing board of
22 an institution under the authority of the State Regents for Higher
23 Education and the Council;

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1 16. "Pay conversion dollars" means amounts by which a
2 participant elects to reduce his compensation to purchase benefits
3 under the plan;

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

7 18. "Plan year" means for the plan year beginning July 1, 2001,
8 the six-month period commencing on July 1 and ending on the
9 following December 31. The next plan year shall begin January 1,
10 2002. It shall mean the twelve-month period commencing on January 1
11 and ending on the following December 31;

12 19. "Preferred Provider Organization (PPO) Health Plan" means a
13 managed care plan that provides comprehensive health coverage while
14 utilizing a contracted group of providers to secure preferred
15 pricing;

16 20. "Salary Adjustment Agreement" means a written agreement
17 between a participant and participating employer whereby the
18 employer agrees to adjust the salary of the participant by a stated
19 amount or an amount equal to the cost of benefits selected under the
20 plan and the participating employer agrees to contribute such amount
21 to cover certain costs of the benefits selected by the participant
22 to the Council; and

23 ~~20.~~ 21. "Termination" means the termination of a participant's
24 employment as an employee of a participating employer, whether by

1 reasons of discharge, voluntary termination, retirement, death or
2 reduction-in-force.

3 SECTION 2. AMENDATORY 74 O.S. 2001, Section 1365, as
4 last amended by Section 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp.
5 2008, Section 1365), is amended to read as follows:

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

9 1. To construe and interpret the plan, and decide all questions
10 of eligibility in accordance with ~~this act~~ the Oklahoma State
11 Employees Benefits Act and the Code;

12 2. To select those benefits which shall be made available to
13 participants under the plan, according to ~~this act~~ the Oklahoma
14 State Employees Benefits Act, and other applicable laws and rules;

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

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

19 5. To prepare and distribute information communicating and
20 explaining the plan to participating employers and participants.

21 The State and Education Employees Group Insurance Board, Health
22 Maintenance Organizations, or other third-party insurance vendors
23 may be directly or indirectly involved in the distribution of
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1 communicated information to participating state agency employers and
2 state employee participants subject to the following conditions:

3 a. the Council shall verify all marketing and
4 communications information for factual accuracy prior
5 to distribution,

6 b. the Board or vendors shall provide timely notice of
7 any marketing, communications, or distribution plans
8 to the Council and shall coordinate the scheduling of
9 any group presentations with the Council, and

10 c. the Board or vendors shall file a brief summary with
11 the Council outlining the results following any
12 marketing and communications activities;

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

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

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

21 9. To appoint an executive director who shall serve at the
22 pleasure of the Council. The executive director shall employ or
23 retain such persons in accordance with ~~this act~~ the Oklahoma State
24 Employees Benefits Act and the requirements of other applicable law,

1 including but not limited to actuaries and certified public
2 accountants, as ~~he or she~~ the executive director deems appropriate
3 to perform such duties as may from time to time be required under
4 ~~this act~~ the Oklahoma State Employees Benefits Act and to render
5 advice upon request with regard to any matters arising under the
6 plan subject to the approval of the Council. The executive director
7 shall have not less than seven (7) years of group insurance
8 administration experience on a senior managerial level or not less
9 than three (3) years of flexible benefits experience on a senior
10 managerial level. Any actuary or certified public accountant
11 employed or retained under contract by the Council shall have not
12 less than three (3) ~~years~~ years of experience in group insurance or
13 employee benefits administration. The compensation of all persons
14 employed or retained by the Council and all other expenses of the
15 Council shall be paid at such rates and in such amounts as the
16 Council shall approve, subject to the provisions of applicable law;

17 10. To negotiate for best and final offer through competitive
18 negotiation and contract with federally qualified health maintenance
19 organizations under the provisions of 42 U.S.C., Section 300e et
20 seq. or with Health Maintenance Organizations ~~licensed~~ granted a
21 certificate of authority by the ~~State Department of Health Insurance~~
22 Commissioner pursuant to Sections ~~2501~~ 6901 through ~~2510~~ 6951 of
23 Title ~~63~~ 36 of the Oklahoma Statutes for consideration by
24 participants as an alternative to the health plans offered by the

1 Board, and to transfer to the health maintenance organizations such
2 funds as may be approved for a participant electing health
3 maintenance organization alternative services. The Council may also
4 select and contract with a vendor to offer a point-of-service plan.
5 An HMO may offer coverage through a point-of-service plan, subject
6 to the guidelines established by the Council. However, if the
7 Council chooses to offer a point-of-service plan, then a vendor that
8 offers both an HMO plan and a point-of-service plan may choose to
9 offer only its point-of-service plan in lieu of offering its HMO
10 plan.

11 The Oklahoma State Employees Benefits Council may, however,
12 renegotiate rates with successful bidders after contracts have been
13 awarded if there is an extraordinary circumstance. An extraordinary
14 circumstance shall be limited to insolvency of a participating
15 health maintenance organization or point-of-service plan,
16 dissolution of a participating health maintenance organization or
17 point-of-service plan or withdrawal of another participating health
18 maintenance organization or point-of-service plan at any time during
19 the calendar year. Nothing in this section of law shall be
20 construed to permit either party to unilaterally alter the terms of
21 the contract;

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

3 12. To promulgate administrative rules for the competitive
4 negotiation process;

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

12 Provided, however, that any ~~such~~ information requested by the
13 Council from the vendors shall only be subject to the
14 confidentiality provision of this paragraph if it is clearly
15 designated in the Request For Proposal as being protected under this
16 provision. All requested information lacking such a designation in
17 the Request For Proposal shall be subject to Section 24A.1 et seq.
18 of Title 51 of the Oklahoma Statutes. From health maintenance
19 organizations, data provided shall include the current Health Plan
20 Employer Data and Information Set (HEDIS);

21 14. To purchase any insurance and extend any benefits deemed
22 necessary for providing benefits under the plan including, but not
23 limited to, Preferred Provider Organization (PPO) Health Plans and
24 indemnity dental plans, ~~provided that the only indemnity health plan~~

1 ~~selected by the Council shall be the indemnity plan offered by the~~
2 ~~Board,~~ and to transfer to the Board such funds as may be approved
3 for a participant electing a benefit plan offered by the Board. All
4 indemnity dental plans, including the one offered by the Oklahoma
5 State and Education Group Insurance Board, must meet or exceed the
6 following requirements:

- 7 a. they shall have a statewide provider network,
- 8 b. they shall provide benefits which shall reimburse the
9 expense for the following types of dental procedures:
 - 10 (1) diagnostic,
 - 11 (2) preventative,
 - 12 (3) restorative,
 - 13 (4) endodontic,
 - 14 (5) periodontic,
 - 15 (6) prosthodontics,
 - 16 (7) oral surgery,
 - 17 (8) dental implants,
 - 18 (9) dental prosthetics, and
 - 19 (10) orthodontics, and
- 20 c. they shall provide an annual benefit of not less than
21 One Thousand Five Hundred Dollars (\$1,500.00) for all
22 services other than orthodontic services, and a
23 lifetime benefit of not less than One Thousand Five
24 Hundred Dollars (\$1,500.00) for orthodontic services;

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

3 16. To assess and collect reasonable fees from the Board, and
4 from ~~such~~ contracted health maintenance organizations and third
5 party insurance vendors to offset the costs of administration as
6 determined by the Council. The Council shall have the authority to
7 transfer income received pursuant to this subsection to the Board
8 for services provided by the Board;

9 17. To accept, modify or reject elections under the plan in
10 accordance with ~~this act~~ the Oklahoma State Employees Benefits Act
11 and the Code;

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

14 19. Beginning with the plan year which begins on January 1,
15 2006, to select and contract with one or more providers to offer a
16 group TRICARE Supplement product to eligible employees who are
17 eligible TRICARE beneficiaries. Any membership dues required to
18 participate in a group TRICARE Supplement product offered pursuant
19 to this paragraph shall be paid by the employee. As used in this
20 paragraph, "TRICARE" means the Department of Defense health care
21 program for active duty and retired uniform service members and
22 their families;

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

4 21. 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 ~~this act~~ the Oklahoma State Employees Benefits Act or by the
5 Council shall be the several and not joint responsibility of each,
6 and no fiduciary shall be liable for the act or omission of any
7 other 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 3. This act shall become effective July 1, 2009.

20 SECTION 4. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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