

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 52

6 By: Jolley

7 COMMITTEE SUBSTITUTE

8 An Act relating to state government; amending 74 O.S.
9 2001, Sections 1365, as last amended by Section 2,
10 Chapter 450, O.S.L. 2005 and 1370, as last amended by
11 Section 5, Chapter 269, O.S.L. 2007 (74 O.S. Supp.
12 2008, Sections 1365 and 1370), which relate to the
13 Oklahoma State Employees Benefits Act; updating
14 reference to agency granting a certificate of
15 authority to a Health Maintenance Organization in
16 this state; modifying duties of the Oklahoma State
17 Employees Benefits Council regarding TRICARE
18 supplemental product; deleting certain flexible
19 benefit allowance related to TRICARE supplemental
20 products; providing an effective date; and declaring
21 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 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp.
2008, 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 ~~this act~~ the Oklahoma State
3 Employees Benefits Act and ~~the Code~~ 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 ~~this act~~ the Oklahoma
6 State 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 ~~this act~~ the Oklahoma State
15 Employees Benefits Act and the requirements of other applicable law,
16 including but not limited to actuaries and certified public
17 accountants, as he or she deems appropriate to perform such duties
18 as may from time to time be required under ~~this act~~ the Oklahoma
19 State Employees Benefits Act and to render advice upon request with
20 regard to any matters arising under the plan subject to the approval
21 of the Council. The executive director shall have not less than
22 seven (7) years of group insurance administration experience on a
23 senior managerial level or not less than three (3) years of flexible
24 benefits experience on a senior managerial level. Any actuary or

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

8 10. To negotiate for best and final offer through competitive
9 negotiation and contract with federally qualified health maintenance
10 organizations under the provisions of 42 U.S.C., Section 300e et
11 seq., or with Health Maintenance Organizations licensed granted a
12 certificate of authority by the State Department of Health Insurance
13 Commissioner pursuant to Sections ~~2501~~ 6901 through ~~2510~~ 6951 of
14 Title ~~63~~ 36 of the Oklahoma Statutes for consideration by
15 participants as an alternative to the health plans offered by the
16 Board, and to transfer to the health maintenance organizations such
17 funds as may be approved for a participant electing health
18 maintenance organization alternative services. The Council may also
19 select and contract with a vendor to offer a point-of-service plan.
20 An HMO may offer coverage through a point-of-service plan, subject
21 to the guidelines established by the Council. However, if the
22 Council chooses to offer a point-of-service plan, then a vendor that
23 offers both an HMO plan and a point-of-service plan may choose to

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1 offer only its point-of-service plan in lieu of offering its HMO
2 plan.

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

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

18 12. To promulgate administrative rules for the competitive
19 negotiation process;

20 13. To require vendors offering coverage through the Council,
21 including the Board, to provide such enrollment and claims data as
22 is determined by the Council. The Oklahoma State Employees Benefits
23 Council with the cooperation of the Department of Central Services
24 acting pursuant to Section 85.1 et seq. of this title, shall be

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

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

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

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

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

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

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

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

1 18. To promulgate election and claim forms to be used by
2 participants;

3 ~~19. Beginning with the plan year which begins on January 1,~~
4 ~~2006, to select and contract with one or more providers to offer a~~
5 ~~group TRICARE Supplement product to eligible employees who are~~
6 ~~eligible TRICARE beneficiaries. Any membership dues required to~~
7 ~~participate in a group TRICARE Supplement product offered pursuant~~
8 ~~to this paragraph shall be paid by the employee. As used in this~~
9 ~~paragraph, "TRICARE" means the Department of Defense health care~~
10 ~~program for active duty and retired uniform service members and~~
11 ~~their families;~~

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

15 ~~21.~~ 20. To manage, license or sell software developed for and
16 acquired by the Council, whether or not such software is patented or
17 copyrighted. The Council shall have the authority to license and
18 sell such software or any rights to such software without declaring
19 such property to be surplus. All proceeds from any such sale shall
20 be deposited in the Benefits Council Administration Revolving Fund
21 and used to defray the costs of administration.

22 B. The Council members shall discharge their duties as
23 fiduciaries with respect to the participants and their dependents of
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1 the plan, and all fiduciaries shall be subject to the following
2 definitions and provisions:

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

5 a. exercises any discretionary authority or discretionary
6 control respecting administration or management of the
7 Council,

8 b. exercises any authority or control respecting
9 disposition of the assets of the Council,

10 c. renders advice for a fee or other compensation, direct
11 or indirect, with respect to any participant or
12 dependent benefits, monies or other property of the
13 Council, or has any authority or responsibility to do
14 so, or

15 d. has any discretionary authority or discretionary
16 responsibility in the administration of the Council;

17 2. The Council may procure insurance indemnifying the members
18 of the Council from personal loss or accountability from liability
19 resulting from a member's action or inaction as a member of the
20 Council;

21 3. Except for a breach of fiduciary obligation, a Council
22 member shall not be individually or personally responsible for any
23 action of the Council;

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1 4. Any person who is a fiduciary with respect to the Council
2 shall be entitled to rely on representations made by participants,
3 participating employers, third party administrators and
4 beneficiaries with respect to age and other personal facts
5 concerning a participant or beneficiaries, unless the fiduciary
6 knows the representations to be false;

7 5. Each fiduciary shall discharge his or her duties and
8 responsibilities with respect to the Council and the plan solely in
9 the interest of the participants and beneficiaries of the plan
10 according to the terms hereof, for the exclusive purpose of
11 providing benefits to participants and their beneficiaries, with the
12 care, skill, prudence and diligence under the circumstances
13 prevailing from time to time that a prudent person acting in a like
14 capacity and familiar with such matters would use in the conduct of
15 an enterprise of like character and with like aims; and

16 6. The duties and responsibilities allocated to each fiduciary
17 by ~~this act~~ the Oklahoma State Employees Benefits Act or by the
18 Council shall be the several and not joint responsibility of each,
19 and no fiduciary shall be liable for the act or omission of any
20 other fiduciary unless:

21 a. by his or her failure to properly administer his or
22 her specific responsibility he or she enabled such
23 other person or organization to commit a breach of
24 fiduciary responsibility, or

1 b. he or she knowingly participates in, or knowingly
2 undertakes to conceal, an act or omission of another
3 person or organization, knowing such act or omission
4 to be a breach, or

5 c. having knowledge of the breach of another person or
6 organization, he or she fails to make reasonable
7 efforts under the circumstances to remedy said breach.

8 SECTION 2. AMENDATORY 74 O.S. 2001, Section 1370, as
9 last amended by Section 5, Chapter 269, O.S.L. 2007 (74 O.S. Supp.
10 2008, Section 1370), is amended to read as follows:

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

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

6 C. ~~Except as provided in subsection D of this section, for~~ For
7 the plan year ending December 31, 2001, and each plan year
8 thereafter, the amount of a participant's benefit allowance, which
9 shall be the total amount the employer contributes for the payment
10 of insurance premiums or other benefits, shall be:

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

21 2. The greater of Two Hundred Twenty-four Dollars and sixty-
22 nine cents (\$224.69) per month or an amount equal to the sum of the
23 average monthly premiums of all high option health insurance plans,
24 excluding the point-of-service plans, the average monthly premiums

1 of the dental plans, the monthly premium of the disability plan, and
2 the monthly premium of the basic life insurance plan offered to
3 state employees plus one of the additional amounts as follows for
4 participants who elect to include one or more dependents:

- 5 a. for a spouse, seventy-five percent (75%) of the
6 average price of all high option benefit plans,
7 excluding the point-of-service plans, available for
8 coverage of a spouse,
- 9 b. for one child, seventy-five percent (75%) of the
10 average price of all high option benefit plans
11 available, excluding the point-of-service plans, for
12 coverage of one child,
- 13 c. for two or more children, seventy-five percent (75%)
14 of the average price of all high option benefit plans
15 available, excluding the point-of-service plans, for
16 coverage of two or more children,
- 17 d. for a spouse and one child, seventy-five percent (75%)
18 of the average price of all high option benefit plans
19 available, excluding the point-of-service plans, for
20 coverage of a spouse and one child, or
- 21 e. for a spouse and two or more children, seventy-five
22 percent (75%) of the average price of all high option
23 benefit plans available, excluding the point-of-

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1 service plans, for coverage of a spouse and two or
2 more children.

3 ~~D. To the extent that it is consistent with federal law, for an~~
4 ~~employee who is an eligible TRICARE beneficiary and has opted not to~~
5 ~~purchase health care coverage and who purchases a group TRICARE~~
6 ~~Supplemental product, the amount of the participant's benefit~~
7 ~~allowance shall be equal to the sum of the monthly premium of the~~
8 ~~group TRICARE Supplemental product purchased by the participant, if~~
9 ~~any, the average monthly premiums of the dental plans, the monthly~~
10 ~~premium of the disability plan, and the monthly premium of the basic~~
11 ~~life insurance plan offered to state employees or the amount~~
12 ~~determined by the Council based on a formula for determining a~~
13 ~~participant's benefit credits consistent with the requirements of 26~~
14 ~~U.S.C., Section 125(g)(2) and regulations thereunder. To the extent~~
15 ~~that it is consistent with federal law, for each eligible dependent~~
16 ~~of an employee who is an eligible TRICARE beneficiary and has opted~~
17 ~~not to purchase health care coverage, if the employee purchases a~~
18 ~~group TRICARE Supplemental product on behalf of the dependent, the~~
19 ~~benefit allowance shall be equal to seventy five percent (75%) of~~
20 ~~the monthly premium of the group TRICARE Supplemental product~~
21 ~~purchased by the participant on behalf of the dependent.~~

22 ~~E. This section shall not prohibit payments for supplemental~~
23 ~~health insurance coverage made pursuant to Section 1314.4 of this~~
24 ~~title or payments for the cost of providing health insurance~~

1 coverage for dependents of employees of the Grand River Dam
2 Authority.

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

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

1 corresponding reduction in the sum of his or her flexible benefit
2 allowance equal to the sum total benefit price of such minimum
3 benefits or default benefits.

4 SECTION 3. This act shall become effective July 1, 2009.

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

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