

THE HOUSE OF REPRESENTATIVES
Monday, March 23, 2009

ENGROSSED

Senate Bill No. 52

ENGROSSED SENATE BILL NO. 52 - By: JOLLEY of the Senate and ORTEGA of the House.

An Act relating to state government; amending 74 O.S. 2001, Sections 1365, as last amended by Section 2, Chapter 450, O.S.L. 2005 and 1370, as last amended by Section 5, Chapter 269, O.S.L. 2007 (74 O.S. Supp. 2008, Sections 1365 and 1370), which relate to the Oklahoma State Employees Benefits Act; updating reference to agency granting a certificate of authority to a Health Maintenance Organization in this state; modifying duties of the Oklahoma State Employees Benefits Council regarding TRICARE supplemental product; deleting certain flexible benefit allowance related to TRICARE supplemental products; providing an effective date; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 74 O.S. 2001, Section 1365, as last amended by
2 Section 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp. 2008, Section 1365), is amended to
3 read as follows:
4 Section 1365. A. The Oklahoma State Employees Benefits Council shall have the
5 following duties, responsibilities and authority with respect to the administration of the
6 plan:

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

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

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

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

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

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

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

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

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

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

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

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

1 compensation of all persons employed or retained by the Council and all other expenses
2 of the Council shall be paid at such rates and in such amounts as the Council shall
3 approve, subject to the provisions of applicable law;

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

18 The Oklahoma State Employees Benefits Council may, however, renegotiate rates
19 with successful bidders after contracts have been awarded if there is an extraordinary
20 circumstance. An extraordinary circumstance shall be limited to insolvency of a
21 participating health maintenance organization or point-of-service plan, dissolution of a
22 participating health maintenance organization or point-of-service plan or withdrawal of

1 another participating health maintenance organization or point-of-service plan at any
2 time during the calendar year. Nothing in this section of law shall be construed to
3 permit either party to unilaterally alter the terms of the contract;

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

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

8 13. To require vendors offering coverage through the Council, including the Board,
9 to provide such enrollment and claims data as is determined by the Council. The
10 Oklahoma State Employees Benefits Council with the cooperation of the Department of
11 Central Services acting pursuant to Section 85.1 et seq. of this title, shall be authorized
12 to retain as confidential, any proprietary information submitted in response to the
13 Council's Request For Proposal. Provided, however, that any such information requested
14 by the Council from the vendors shall only be subject to the confidentiality provision of
15 this paragraph if it is clearly designated in the Request For Proposal as being protected
16 under this provision. All requested information lacking such a designation in the
17 Request For Proposal shall be subject to Section 24A.1 et seq. of Title 51 of the Oklahoma
18 Statutes. From health maintenance organizations, data provided shall include the
19 current Health Plan Employer Data and Information Set (HEDIS);

20 14. To purchase any insurance deemed necessary for providing benefits under the
21 plan including indemnity dental plans, provided that the only indemnity health plan
22 selected by the Council shall be the indemnity plan offered by the Board, and to transfer

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

21 ~~21.~~ 20. To manage, license or sell software developed for and acquired by the
22 Council, whether or not such software is patented or copyrighted. The Council shall have

1 the authority to license and sell such software or any rights to such software without
2 declaring such property to be surplus. All proceeds from any such sale shall be deposited
3 in the Benefits Council Administration Revolving Fund and used to defray the costs of
4 administration.

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

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

- 10 a. exercises any discretionary authority or discretionary control
11 respecting administration or management of the Council,
- 12 b. exercises any authority or control respecting disposition of the assets of
13 the Council,
- 14 c. renders advice for a fee or other compensation, direct or indirect, with
15 respect to any participant or dependent benefits, monies or other
16 property of the Council, or has any authority or responsibility to do so,
17 or
- 18 d. has any discretionary authority or discretionary responsibility in the
19 administration of the Council;

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

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

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

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

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

- 18 a. by his or her failure to properly administer his or her specific
19 responsibility he or she enabled such other person or organization to
20 commit a breach of fiduciary responsibility, or

- 1 b. he or she knowingly participates in, or knowingly undertakes to
2 conceal, an act or omission of another person or organization, knowing
3 such act or omission to be a breach, or
4 c. having knowledge of the breach of another person or organization, he
5 or she fails to make reasonable efforts under the circumstances to
6 remedy said breach.

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

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

21 B. Each participant shall be credited annually with a specified amount as a flexible
22 benefit allowance which shall be available for the purchase of benefits. The amount of

1 the flexible benefit allowance credited to each participant shall be communicated to him
2 or her prior to the enrollment period for each plan year.

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

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

15 2. The greater of Two Hundred Twenty-four Dollars and sixty-nine cents (\$224.69)
16 per month or an amount equal to the sum of the average monthly premiums of all high
17 option health insurance plans, excluding the point-of-service plans, the average monthly
18 premiums of the dental plans, the monthly premium of the disability plan, and the
19 monthly premium of the basic life insurance plan offered to state employees plus one of
20 the additional amounts as follows for participants who elect to include one or more
21 dependents:

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

17 D. ~~To the extent that it is consistent with federal law, for an employee who is an~~
18 ~~eligible TRICARE beneficiary and has opted not to purchase health care coverage and~~
19 ~~who purchases a group TRICARE Supplemental product, the amount of the participant's~~
20 ~~benefit allowance shall be equal to the sum of the monthly premium of the group~~
21 ~~TRICARE Supplemental product purchased by the participant, if any, the average~~
22 ~~monthly premiums of the dental plans, the monthly premium of the disability plan, and~~

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

10 ~~E.~~ This section shall not prohibit payments for supplemental health insurance
11 coverage made pursuant to Section 1314.4 of this title or payments for the cost of
12 providing health insurance coverage for dependents of employees of the Grand River
13 Dam Authority.

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

1 G. F. If a participant elects benefits whose sum total of benefit prices is less than
2 his or her flexible benefit allowance, he or she shall receive any excess flexible benefit
3 allowance as taxable compensation. Such taxable compensation will be paid in
4 substantially equal amounts each pay period over the plan year. On termination during
5 a plan year, a participant shall have no right to receive any such taxable cash
6 compensation allocated to the portion of the plan year after the participant's termination.
7 Nothing herein shall affect a participant's obligation to elect the minimum benefits or to
8 accept the default benefits of the plan with corresponding reduction in the sum of his or
9 her flexible benefit allowance equal to the sum total benefit price of such minimum
10 benefits or default benefits.

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
16 FINANCIAL SERVICES, dated 03-19-09 - DO PASS.