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THE STATE SENATE  
Monday, April 6, 2009

ENGROSSED  
House Bill No. 2108  
As Amended

ENGROSSED HOUSE BILL NO. 2108 - By: Ortega, Morrissette and Martin (Steve) of the House and Justice of the Senate.

[ Oklahoma State Employees Benefits Council - modifying duties of the Council - effective date - emergency ]

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

SECTION 1. 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~~ the Oklahoma State Employees Benefits 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;

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

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

8           6. "Board" means the State and Education Employees Group  
9 Insurance Board, as created by the State and Education Employees  
10 Group Insurance Act;

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

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

21          9. "Council" means the Oklahoma State Employees Benefits  
22 Council, as created by ~~this act~~ the Oklahoma State Employees  
23 Benefits Act;

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

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

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

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

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

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

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

1        ~~20.~~ 21. "Termination" means the termination of a participant's  
2 employment as an employee of a participating employer, whether by  
3 reasons of discharge, voluntary termination, retirement, death or  
4 reduction-in-force.

5        SECTION 2.        AMENDATORY        74 O.S. 2001, Section 1365, as  
6 last amended by Section 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp.  
7 2008, Section 1365), is amended to read as follows:

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

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

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

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

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

21        5. To prepare and distribute information communicating and  
22 explaining the plan to participating employers and participants.

23 The State and Education Employees Group Insurance Board, Health

1 Maintenance Organizations, or other third-party insurance vendors  
2 may be directly or indirectly involved in the distribution of  
3 communicated information to participating state agency employers and  
4 state employee participants subject to the following conditions:

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

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

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

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

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

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

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

21           10. To negotiate for best and final offer through competitive  
22 negotiation and contract with federally qualified health maintenance  
23 organizations under the provisions of 42 U.S.C., Section 300e et

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

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

1 the calendar year. Nothing in this section of law shall be  
2 construed to permit either party to unilaterally alter the terms of  
3 the contract;

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

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

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

1 organizations, data provided shall include the current Health Plan  
2 Employer Data and Information Set (HEDIS);

3 14. To purchase any insurance and extend any benefits deemed  
4 necessary for providing benefits under the plan including, but not  
5 limited to, Preferred Provider Organization (PPO) Health Plans and  
6 indemnity dental plans, ~~provided that the only indemnity health plan~~  
7 ~~selected by the Council shall be the indemnity plan offered by the~~  
8 ~~Board,~~ and to transfer to the Board such funds as may be approved  
9 for a participant electing a benefit plan offered by the Board. All  
10 indemnity dental plans, including the one offered by the Oklahoma  
11 State and Education Group Insurance Board, must meet or exceed the  
12 following requirements:

- 13 a. they shall have a statewide provider network,
- 14 b. they shall provide benefits which shall reimburse the  
15 expense for the following types of dental procedures:
- 16 (1) diagnostic,
- 17 (2) preventative,
- 18 (3) restorative,
- 19 (4) endodontic,
- 20 (5) periodontic,
- 21 (6) prosthodontics,
- 22 (7) oral surgery,
- 23 (8) dental implants,

1 (9) dental prosthetics, and  
2 (10) orthodontics, and  
3 c. they shall provide an annual benefit of not less than  
4 One Thousand Five Hundred Dollars (\$1,500.00) for all  
5 services other than orthodontic services, and a  
6 lifetime benefit of not less than One Thousand Five  
7 Hundred Dollars (\$1,500.00) for orthodontic services;

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

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

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

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

21 19. Beginning with the plan year which begins on January 1,  
22 2006, to select and contract with one or more providers to offer a  
23 group TRICARE Supplement product to eligible employees who are

1 eligible TRICARE beneficiaries. Any membership dues required to  
2 participate in a group TRICARE Supplement product offered pursuant  
3 to this paragraph shall be paid by the employee. As used in this  
4 paragraph, "TRICARE" means the Department of Defense health care  
5 program for active duty and retired uniform service members and  
6 their families;

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

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

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

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

- 1           a.    exercises any discretionary authority or discretionary  
2                   control respecting administration or management of the  
3                   Council,  
4           b.    exercises any authority or control respecting  
5                   disposition of the assets of the Council,  
6           c.    renders advice for a fee or other compensation, direct  
7                   or indirect, with respect to any participant or  
8                   dependent benefits, monies or other property of the  
9                   Council, or has any authority or responsibility to do  
10                  so, or  
11           d.    has any discretionary authority or discretionary  
12                  responsibility in the administration of the Council;

13           2.    The Council may procure insurance indemnifying the members  
14   of the Council from personal loss or accountability from liability  
15   resulting from a member's action or inaction as a member of the  
16   Council;

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

20           4.    Any person who is a fiduciary with respect to the Council  
21   shall be entitled to rely on representations made by participants,  
22   participating employers, third party administrators and  
23   beneficiaries with respect to age and other personal facts

1 concerning a participant or beneficiaries, unless the fiduciary  
2 knows the representations to be false;

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

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

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

21 b. he or she knowingly participates in, or knowingly  
22 undertakes to conceal, an act or omission of another

1 person or organization, knowing such act or omission  
2 to be a breach, or  
3 c. having knowledge of the breach of another person or  
4 organization, he or she fails to make reasonable  
5 efforts under the circumstances to remedy said breach.

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated  
12 4-2-09 - DO PASS, As Amended.