

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2886

By: Moore

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5
6 AS INTRODUCED

7 An Act relating to state government; amending 74 O.S.
8 2001, Section 1365, as last amended by Section 1,
9 Chapter 28, O.S.L. 2009 (74 O.S. Supp. 2009, Section
10 1365), which relates to duties of the Oklahoma State
11 Employees Benefits Council; authorizing Council to
12 take bids for workers' compensation insurance;
13 allowing state agencies to bid for insurance through
14 Council; specifying requirements; providing procedure
15 for obtaining workers' compensation bids; providing
16 that Employees Benefits Council shall award certain
17 business; requiring delivery of certain loss
18 histories; requiring cooperation with Employees
19 Benefits Council; and providing an effective date.

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

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

24 Section 1365. A. The Oklahoma State Employees Benefits Council
shall have the following duties, responsibilities and authority with
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 federally qualified health maintenance
9 organizations under the provisions of 42 U.S.C., Section 300e et
10 seq., or with Health Maintenance Organizations granted a certificate
11 of authority by the Insurance Commissioner pursuant to Sections 6901
12 through 6951 of Title 36 of the Oklahoma Statutes for consideration
13 by participants as an alternative to the health plans offered by the
14 Board, and to transfer to the health maintenance organizations such
15 funds as may be approved for a participant electing health
16 maintenance organization alternative services. The Council may also
17 select and contract with a vendor to offer a point-of-service plan.
18 An HMO may offer coverage through a point-of-service plan, subject
19 to the guidelines established by the Council. However, if the
20 Council chooses to offer a point-of-service plan, then a vendor that
21 offers both an HMO plan and a point-of-service plan may choose to
22 offer only its point-of-service plan in lieu of offering its HMO
23 plan.

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

11 21. To take bids for workers' compensation insurance for state
12 agencies. Any state agency may bid for workers' compensation
13 insurance through the Council. State agencies shall obtain workers
14 compensation quotes each year through the Council. All processes
15 required for quoting, evaluation and the awarding of the workers'
16 compensation bids shall be completed through the Council. The
17 Council shall obtain three bids from different workers' compensation
18 carriers using the free market or private sector for obtaining and
19 placing the workers' compensation business. The private sector
20 entity or broker chosen by the Council shall provide three bids for
21 review. The Council shall award the bid. The private sector entity
22 or broker shall place and manage the business awarded and
23 communicate with the Council and agency directors on a quarterly
24 basis. CompSource Oklahoma or any carrier or entity providing the

1 state agencies workers' compensation business shall deliver the
2 agency's loss history and National Council on Compensation Insurance
3 (NCCI) worksheets for the previous three (3) years to the Council,
4 and comply with any other requests for information the Council may
5 require.

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

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

12 a. exercises any discretionary authority or discretionary
13 control respecting administration or management of the
14 Council,

15 b. exercises any authority or control respecting
16 disposition of the assets of the Council,

17 c. renders advice for a fee or other compensation, direct
18 or indirect, with respect to any participant or
19 dependent benefits, monies or other property of the
20 Council, or has any authority or responsibility to do
21 so, or

22 d. has any discretionary authority or discretionary
23 responsibility in the administration of the Council;

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

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

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

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

23 6. The duties and responsibilities allocated to each fiduciary
24 by the Oklahoma State Employees Benefits Act or by the Council shall

1 be the several and not joint responsibility of each, and no
2 fiduciary shall be liable for the act or omission of any other
3 fiduciary unless:

- 4 a. by his or her failure to properly administer his or
5 her specific responsibility he or she enabled such
6 other person or organization to commit a breach of
7 fiduciary responsibility, or
- 8 b. he or she knowingly participates in, or knowingly
9 undertakes to conceal, an act or omission of another
10 person or organization, knowing such act or omission
11 to be a breach, or
- 12 c. having knowledge of the breach of another person or
13 organization, he or she fails to make reasonable
14 efforts under the circumstances to remedy said breach.

15 SECTION 2. This act shall become effective November 1, 2010.

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17 52-2-9499 SDR 01/12/10
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