

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1290

By: Wilson

4  
5  
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2001,  
8 Section 607 and Section 3, Chapter 197, O.S.L. 2003,  
9 (36 O.S. Supp. 2009, Sections 607 and 6903), which  
10 relate to certificates of authority to transact  
11 insurance and to operate a health maintenance  
12 organization; providing that certificate of authority  
13 to transact insurance is not required for certain  
14 out-of-state insurers; defining term; requiring an  
15 out-of-state insurer to meet certain specified  
16 requirements in order to transact insurance in this  
17 state; requiring the Insurance Commissioner to issue  
18 or deny a certification to an out-of-state insurer  
19 within specified time period; authorizing the  
20 Insurance Commissioner to revoke a certification  
21 under certain circumstances; specifying that certain  
22 statutes are not applicable to an out-of-state  
23 insurer; providing that certificate of authority to  
24 transact insurance is not required for certain out-  
of-state health maintenance organization; defining  
term; requiring an out-of-state health maintenance  
organization to meet certain specified requirements  
in order to transact insurance in this state;  
requiring the Insurance Commissioner to issue or deny  
a certification to an out-of-state health maintenance  
organization within specified time period;  
authorizing the Insurance Commissioner to revoke a  
certification under certain circumstances; specifying  
that certain statutes are not applicable to an out-  
of-state health maintenance organization; amending  
74 O.S. 2001, Sections 1306, as last amended by  
Section 3, Chapter 231, O.S.L. 2006 and 1365, as last  
amended by Section 1, Chapter 28, O.S.L. 2009 (74  
O.S. Sup. 2009, Sections 1306 and 1365), which relate  
to the State and Education Employees Group Insurance  
Board and the Oklahoma State Employees Benefits

1 Council; authorizing the State and Education  
2 Employees Group Insurance Board and the Oklahoma  
3 State Employees Benefits Council to contract with  
4 out-of-state health maintenance organizations;  
5 providing for codification; and providing an  
6 effective date.

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

7 SECTION 1. AMENDATORY 36 O.S. 2001, Section 607, is  
8 amended to read as follows:

9 Section 607. A. To qualify for and hold authority to transact  
10 insurance in Oklahoma an insurer must be otherwise in compliance  
11 with the provisions of this Code and with its charter powers, and  
12 must be an incorporated stock insurer, an incorporated mutual  
13 insurer, a mutual benefit association, a nonprofit hospital service  
14 and medical indemnity corporation, a farmers mutual fire insurance  
15 association, a Lloyd's association or a reciprocal insurer, of the  
16 same general type as may be formed as a domestic insurer under this  
17 Code; except, that no foreign or alien insurer shall be authorized  
18 to transact insurance in Oklahoma which does not maintain reserves  
19 as required by Article 15 (Assets and Liabilities) applicable to the  
20 kind or kinds of insurance transacted by such insurer.

21 B. No certificate of authority or license to transact any kind  
22 of insurance business in this state shall be issued, renewed or  
23 continued in effect, to any domestic, foreign or alien insurance  
24 company or other insurance entity which is owned or financially

1 controlled in whole or in part by another state of the United  
2 States, or by a foreign government, or by any political subdivision  
3 of either, or which is an agency of any such state, government or  
4 subdivision.

5 C. Notwithstanding subsections A and B of this section, a  
6 certificate of authority shall not be required for an out-of-state  
7 insurer that is duly authorized or qualified in the state or  
8 territory of its domicile if the Insurance Commissioner certifies  
9 that the out-of-state insurer meets the requirements of Section 2 of  
10 this act.

11 SECTION 2. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 607.2 of Title 36, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. "Out-of-state insurer" means an insurer that holds a valid  
15 certificate of authority to transact individual or group health  
16 insurance in any other state or territory of the United States of  
17 America and does not have a certificate of authority to transact any  
18 kind of insurance business in this state.

19 B. To qualify under this section and subsection C of Section 1  
20 of this act, an out-of-state insurer as defined in this section, may  
21 not transact individual or group health insurance in this state by  
22 mail, the Internet or otherwise unless the Insurance Commissioner  
23 has issued a certification that the requirements of this section  
24 have been met. The Commissioner shall issue or deny a certification

1 within ninety (90) days of a request. An out-of-state insurer shall  
2 meet the following requirements:

3 1. Provide any required information and reporting pursuant to  
4 rules promulgated by the Commissioner;

5 2. Any policy, contract or certificate of individual or group  
6 health insurance offered for sale in this state by an out-of-state  
7 insurer shall comply with the applicable individual and group health  
8 insurance laws in the state or territory of its domicile, and any  
9 such policy must be actively marketed in that state or territory;

10 3. The out-of-state insurer shall maintain minimum capital and  
11 surplus requirements in an amount required by Section 610 of Title  
12 36 of the Oklahoma Statutes and maintain reserves in an amount  
13 required by Section 1508 of Title 36 of the Oklahoma Statutes.

14 4. The out-of-state insurer shall report relevant information  
15 concerning individual health plans offered for sale in this state  
16 pursuant to rules promulgated by the Insurance Commissioner and  
17 disclose to prospective enrollees how the health plans differ from  
18 individual and group health plans offered by domestic insurers.  
19 Such health plan policies and applications for coverage shall  
20 contain the following disclosure statement or a substantially  
21 similar statement: "This policy is issued by an out-of-state  
22 insurer and is governed by the laws and regulations of [state or  
23 territory of the out-of-state insurer's domicile]. This policy may  
24 not be subject to all the insurance laws and rules of the State of

1 Oklahoma, including coverage of certain health care services or  
2 benefits mandated by Oklahoma law. Before purchasing this policy,  
3 you should carefully review the terms and conditions of coverage,  
4 including any exclusions or limitations of coverage."

5 5. Every out-of-state insurer shall establish and maintain a  
6 grievance procedure that has been approved by the Insurance  
7 Commissioner to provide for the resolution of grievances initiated  
8 by enrollees. Such grievance procedure shall be approved or denied  
9 by the Insurance Commissioner within thirty (30) days of submission.  
10 The out-of-state insurer shall maintain a record of grievances  
11 received since the date of its last examination of grievances.

12 6. The out-of-state insurer shall not engage in unfair methods  
13 of competition and unfair or deceptive acts or practices pursuant to  
14 Sections 1203 and 1204 of Title 36 of the Oklahoma Statutes.

15 7. For its Oklahoma business, the out-of-state insurer is  
16 subject to applicable taxes, tax credits, and assessments, including  
17 participation in the Health Insurance High Risk Pool, imposed on  
18 insurers transacting individual and group health insurance pursuant  
19 to a certificate of authority in this state.

20 8. The out-of-state insurer shall designate an agent for  
21 receiving service of legal documents and process in the manner  
22 provided in Section 621 of Title 36 of the Oklahoma Statutes.

23 9. The out-of-state insurer shall comply with lawful orders  
24 from courts of competent jurisdiction issued on a voluntary

1 dissolution proceeding or in response to a petition for an  
2 injunction by the Commissioner asserting that the out-of-state  
3 insurer is in a hazardous financial condition.

4 10. The out-of-state insurer shall participate in the Oklahoma  
5 Life and Health Insurance Guaranty Association, pursuant to Section  
6 2021 et seq. of Title 36 of the Oklahoma Statutes.

7 11. The out-of-state insurer shall not be prohibited from  
8 establishing a network of providers in this state nor any other  
9 means necessary to provide the services it is authorized to provide  
10 in this state.

11 The Insurance Commissioner may revoke a certification to transact  
12 business in this state for failure of any of the above requirements  
13 after a notice and hearing pursuant to rules promulgated by the  
14 Insurance Commissioner.

15 C. Except as expressly provided in this section, the  
16 requirements of Title 36 of the Oklahoma Statutes do not apply to an  
17 out-of-state insurer certified to transact health insurance under  
18 this section.

19 SECTION 3. AMENDATORY Section 3, Chapter 197, O.S.L.  
20 2003 (36 O.S. Supp. 2009, Section 6903), is amended to read as  
21 follows:

22 Section 6903. A. Notwithstanding any law of this state to the  
23 contrary, any person may apply to the Insurance Commissioner for a  
24 certificate of authority to establish and operate a health

1 maintenance organization pursuant to the provisions of the Health  
2 Maintenance Organization Act of 2003. No person shall establish or  
3 operate a health maintenance organization in this state without  
4 obtaining a certificate of authority pursuant to the provisions of  
5 this act. A foreign corporation may qualify under this act, subject  
6 to its registration to do business in this state as a foreign  
7 corporation and compliance with all provisions of this act and other  
8 applicable state laws. All certificates of authority shall be  
9 perpetual and automatically renewed as of March 1 of each year,  
10 unless the health maintenance organization fails to qualify for  
11 renewal pursuant to the provisions of this act and any other  
12 applicable provisions of ~~Title 36 of the Oklahoma Statutes~~ this  
13 title.

14 B. Any health maintenance organization that has previously  
15 received a certificate of authority from the State Commissioner of  
16 Health, but has not received a certificate of authority from the  
17 Insurance Commissioner to operate as a health maintenance  
18 organization as of ~~the effective date of this act~~ November 1, 2003,  
19 shall submit an application for a certificate of authority, as  
20 provided in subsection C of this section, by March 1, 2004. Each  
21 applicant may continue to operate until such time as the Insurance  
22 Commissioner acts upon the application if the applicant continues to  
23 comply with the provisions of Title 63 of the Oklahoma Statutes, the  
24 rules promulgated pursuant thereto by the State Board of Health as

1 they existed immediately prior to ~~the effective date of this act~~  
2 November 1, 2003, and administrative orders entered by the State  
3 Commissioner of Health prior to ~~the effective date of this act~~  
4 November 1, 2003. In the event that an application is denied under  
5 the provisions of Section 6904 of this title, the applicant shall  
6 thereafter be treated as a health maintenance organization whose  
7 certificate of authority has been revoked.

8 C. Each application for a certificate of authority shall be  
9 verified by an officer or authorized representative of the  
10 applicant, shall be in a form prescribed by the National Association  
11 of Insurance Commissioners (NAIC), and shall be accompanied by the  
12 following:

13 1. A copy of the applicant's organizational documents  
14 including, but not limited to, the articles of incorporation,  
15 articles of association, partnership agreement, trust agreement, or  
16 other applicable documents, and all amendments thereto;

17 2. A copy of the bylaws, rules, regulations or similar  
18 document, if any, regulating the conduct of the internal affairs of  
19 the applicant;

20 3. A list of the names, addresses, official positions and  
21 biographical information, on forms acceptable to the NAIC, of the  
22 persons who are to be responsible for the conduct of the affairs and  
23 day-to-day operations of the applicant, including all members of the  
24 board of directors, board of trustees, executive committee or other

1 governing board or committee, and the principal officers in the case  
2 of a corporation, or the partners or members in the case of a  
3 partnership or association;

4 4. A copy of any contract form made or to be made between any  
5 class of providers and the health maintenance organization, and a  
6 copy of any contract made or to be made between third party  
7 administrators, marketing consultants or persons listed in paragraph  
8 3 of this subsection and the health maintenance organization;

9 5. A copy of the form of evidence of coverage to be issued to  
10 enrollees;

11 6. A copy of the form of group contract, if any, to be issued  
12 to employers, unions, trustees or other organizations;

13 7. Financial statements showing the applicant's assets,  
14 liabilities and sources of financial support including, but not  
15 limited to:

- 16 a. a copy of the applicant's most recent, regular
- 17 certified financial statement,
- 18 b. an unaudited current financial statement, and
- 19 c. fully audited financial information as to the earnings
- 20 and financial condition of each person controlling a
- 21 domestic health maintenance organization pursuant to
- 22 the provisions of subsection (c) of Section 1651 of
- 23 ~~Title 36 of the Oklahoma Statutes~~ this title for the
- 24 preceding five (5) fiscal years for each such

1           acquiring party, or for such lesser period as such  
2           acquiring party and any predecessors thereof shall  
3           have been in existence, and similar unaudited  
4           information as of a date not earlier than ninety (90)  
5           days prior to the filing of the statement; provided,  
6           however, the Insurance Commissioner shall have the  
7           discretionary ability to waive the audit requirement  
8           based upon review of substantially similar financial  
9           disclosure statements submitted by the acquiring  
10          party;

11          8. A financial feasibility plan that includes detailed  
12 enrollment projections, the methodology for determining premium  
13 rates to be charged during the first twelve (12) months of  
14 operations as certified by an actuary or other qualified person  
15 acceptable to the Insurance Commissioner, a projection of balance  
16 sheets, cash flow statements showing any capital expenditures,  
17 purchase and sale of investments and deposits with the state, and  
18 income and expense statements anticipated from the start of  
19 operations until the organization has had net income for at least  
20 one year, and a statement as to the sources of working capital as  
21 well as any other sources of funding;

22          9. A power of attorney duly executed by the applicant, if not  
23 domiciled in this state, appointing the Insurance Commissioner, his  
24 or her successors in office and duly authorized deputies, as the

1 true and lawful attorney of the applicant in and for this state upon  
2 whom all lawful process in any legal action or proceeding against  
3 the health maintenance organization on a cause of action arising in  
4 this state may be served;

5 10. A statement or map reasonably describing the geographic  
6 area or areas to be served;

7 11. A description of the internal grievance procedures to be  
8 utilized for the investigation and resolution of enrollee complaints  
9 and grievances;

10 12. A description of the proposed quality assurance program,  
11 including the formal organizational structure, methods for  
12 developing criteria, procedures for comprehensive evaluation of the  
13 quality of care rendered to enrollees, and processes to initiate  
14 corrective action and reevaluation when deficiencies in provider or  
15 organizational performance are identified;

16 13. A description of the procedures to be implemented to meet  
17 the protection against insolvency provisions of Section ~~43~~ 6913 of  
18 this ~~act~~ title;

19 14. A list of the names, addresses, and license numbers of all  
20 providers with which the health maintenance organization has  
21 agreements;

22 15. Other information the Insurance Commissioner may require to  
23 make the determinations required in Section 4 6904 of this ~~act~~  
24 title; and

1 16. An original, along with copies, of all documents required  
2 pursuant to the provisions of this subsection, with all required  
3 fees.

4 D. 1. The Insurance Commissioner may promulgate rules for the  
5 proper administration of this act and to require a health  
6 maintenance organization, subsequent to receiving its certificate of  
7 authority, to submit the information, modifications or amendments to  
8 the items described in subsection C of this section to the Insurance  
9 Commissioner, either for approval or for information only, prior to  
10 the effectuation of the modification or amendment, or to require the  
11 health maintenance organization to indicate the modifications to  
12 both the State Commissioner of Health and the Insurance Commissioner  
13 at the time of the next succeeding site visit or examination.

14 2. Any modification or amendment for which the Insurance  
15 Commissioner's approval is required shall be deemed approved unless  
16 disapproved within thirty (30) days, provided that the Insurance  
17 Commissioner may postpone the action for such further time, not  
18 exceeding an additional sixty (60) days, as necessary for proper  
19 consideration.

20 E. Notwithstanding the other provisions of this section, a  
21 certificate of authority shall not be required for an out-of-state  
22 health maintenance organization that is duly authorized or qualified  
23 in the state or territory of its domicile if the Insurance  
24

1 Commissioner certifies that the out-of-state health maintenance  
2 organization meets the requirements of Section 4 of this act.

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 6903.2 of Title 36, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. "Out-of-state health maintenance organization" means a  
7 health maintenance organization that holds a valid certificate of  
8 authority or other valid authorization to provide health care  
9 services in any other state or territory of the United States of  
10 America and does not have a certificate of authority to provide  
11 health care services in this state.

12 B. To qualify under this section and subsection E of Section 3  
13 of this act, an out-of-state health maintenance organization as  
14 defined in this section, may not engage in health care service  
15 transactions covering residents of this state by mail, the Internet  
16 or otherwise unless the Insurance Commissioner has issued a  
17 certification that the requirements of this section have been met.  
18 The Commissioner shall issue or deny a certification within ninety  
19 (90) days of a request. An out-of-state health maintenance  
20 organization shall meet the following requirements:

21 1. Provide any required information and reporting pursuant to  
22 rule promulgated by the Commissioner;

23 2. Any health care services offered in this state by an out-of-  
24 state health maintenance organization shall comply with the

1 applicable laws in the state or territory of its domicile and such  
2 services must be actively marketed in that state or territory;

3 3. The out-of-state health maintenance organization shall  
4 maintain a minimum net worth in an amount required by Section 6913  
5 of Title 36 of the Oklahoma Statutes;

6 4. The out-of-state health maintenance organization shall  
7 report relevant information concerning its health care services  
8 offered for sale in this state pursuant to rules promulgated by the  
9 Insurance Commissioner and disclose to prospective enrollees how  
10 they differ from those offered by domestic health maintenance  
11 organizations. Individual and group contracts and applications for  
12 coverage shall contain the following disclosure statement or a  
13 substantially similar statement: "This policy is issued by an out-  
14 of-state health maintenance organization and is governed by the laws  
15 and regulations of [state or territory of the out-of-state health  
16 maintenance organization's domicile]. The health care services  
17 provided under this contract may not be subject to all the insurance  
18 laws and rules of the State of Oklahoma, including coverage of  
19 certain health care services or benefits mandated by Oklahoma law.  
20 Before purchasing, you should carefully review the terms and  
21 conditions of coverage including any exclusions or limitations of  
22 coverage;"

23 5. Every out-of-state health maintenance organization shall  
24 establish and maintain a grievance procedure that has been approved

1 by the Insurance Commissioner, after consultation with the State  
2 Commissioner of Health, to provide for the resolution of grievances  
3 initiated by enrollees. Such grievance procedure shall be approved  
4 or denied by the Insurance Commissioner within thirty (30) days of  
5 submission. The out-of-state health maintenance organization shall  
6 maintain a record of grievances received since the date of its last  
7 examination of grievances;

8 6. The out-of-state health maintenance organization shall not  
9 engage in unfair methods of competition and unfair or deceptive acts  
10 or practices;

11 7. For its Oklahoma business, the out-of-state health  
12 maintenance organization is subject to applicable taxes, tax  
13 credits, and assessments, including participation in the Health  
14 Insurance High Risk Pool, imposed on health maintenance  
15 organizations that have a certificate of authority to transact  
16 business in this state;

17 8. The out-of-state health maintenance organization shall  
18 designate an agent for receiving service of legal documents and  
19 process in the same manner as that for foreign insurers provided in  
20 Section 621 of Title 36 of the Oklahoma Statutes;

21 9. The out-of-state health maintenance organization shall  
22 comply with lawful orders from courts of competent jurisdiction  
23 issued on a voluntary dissolution proceeding or in response to a  
24 petition for an injunction by the Commissioner asserting that the

1 out-of-state health maintenance organization is in a hazardous  
2 financial condition;

3 10. Out-of-state health maintenance organizations shall not be  
4 prohibited from establishing a network of providers in this state  
5 nor any other means necessary to provide the services it is  
6 authorized to provide in this state.

7 The Insurance Commissioner may revoke a certification to transact  
8 business in this state for failure of any of the above requirements  
9 after a notice and hearing pursuant to rules promulgated by the  
10 Insurance Commissioner.

11 C. Except as expressly provided in this section, the  
12 requirements of Title 36 of the Oklahoma Statutes do not apply to an  
13 out-of-state health maintenance organization certified to transact  
14 health care services under this section.

15 SECTION 5. AMENDATORY 74 O.S. 2001, Section 1306, as  
16 last amended by Section 3, Chapter 231, O.S.L. 2006 (74 O.S. Supp.  
17 2009, Section 1306), is amended to read as follows:

18 Section 1306. The State and Education Employees Group Insurance  
19 Board shall administer and manage the group insurance plans and the  
20 flexible benefits plan and, subject to the provisions of the State  
21 and Education Employees Group Insurance Act and the State Employees  
22 Flexible Benefits Act, shall have the following powers and duties:

23 1. The preparation of specifications for such insurance plans  
24 as the Board may determine to be appropriate;

1           2. The authority and duty to request bids through the  
2 Purchasing Division of the Department of Central Services for a  
3 contract to be the claims administrator for all or any part of such  
4 insurance and benefit plans as the Board may offer;

5           3. The determination of the methods of claims administration  
6 under such insurance and benefit plans as the Board may offer;

7           4. The determination of the eligibility of employees and their  
8 dependents to participate in each of the Group Insurance Plans and  
9 in such other insurance and benefit plans as the Board may offer and  
10 the eligibility of employees to participate in the Life Insurance  
11 Plan provided that evidence of insurability shall not be a  
12 requirement in determining an employee's initial eligibility;

13           5. The determination of the amount of employee payroll  
14 deductions and the responsibility of establishing the procedure by  
15 which such deduction shall be made;

16           6. The establishment of a grievance procedure by which a three-  
17 member grievance panel shall act as an appeals body for complaints  
18 by insured employees regarding the allowance and payment of claims,  
19 eligibility, and other matters. Except for grievances settled to  
20 the satisfaction of both parties prior to a hearing, any person who  
21 requests in writing a hearing before the grievance panel shall  
22 receive a hearing before the panel. The grievance procedure  
23 provided by this paragraph shall be the exclusive remedy available  
24 to insured employees having complaints against the insurer. Such

1 grievance procedure shall be subject to the Oklahoma Administrative  
2 Procedures Act, including provisions thereof for review of agency  
3 decisions by the district court. The grievance panel shall schedule  
4 a hearing regarding the allowance and payment of claims, eligibility  
5 and other matters within sixty (60) days from the date the grievance  
6 panel receives a written request for a hearing unless the panel  
7 orders a continuance for good cause shown. Upon written request by  
8 the insured employee to the grievance panel and received not less  
9 than ten (10) days before the hearing date, the grievance panel  
10 shall cause a full stenographic record of the proceedings to be made  
11 by a competent court reporter at the insured employee's expense;

12 7. The continuing study of the operation of such insurance and  
13 benefit plans as the Board may offer including such matters as gross  
14 and net costs, administrative costs, benefits, utilization of  
15 benefits, and claims administration;

16 8. The administration of the Health, Dental and Life Insurance  
17 Reserve Fund or Funds, the Flexible Benefits Revolving Fund and the  
18 Education Employees Group Insurance Reserve Fund;

19 9. The auditing of the claims paid pursuant to the provisions  
20 of the State and Education Employees Group Insurance Act, the State  
21 Employees Flexible Benefits Act and the State Employees Disability  
22 Program Act;

23 10. a. To select and contract with federally qualified Health  
24 Maintenance Organizations under the provisions of 42

1 U.S.C., Section 300e et seq. or with Health  
2 Maintenance Organizations granted a certificate of  
3 authority by the Insurance Commissioner pursuant to  
4 Sections 6901 through 6951 of ~~Title 36 of the Oklahoma~~  
5 ~~Statutes~~ this title or with an out-of-state health  
6 maintenance organization granted certification by the  
7 Insurance Commissioner pursuant to Section 4 of this  
8 act, for consideration by employees as an alternative  
9 to the state self-insured health plan, and to transfer  
10 to the HMOs such funds as may be approved for an  
11 employee electing HMO alternative services. The Board  
12 may also select and contract with a vendor to offer a  
13 point-of-service plan. An HMO may offer coverage  
14 through a point-of-service plan, subject to the  
15 guidelines established by the Board. However, if the  
16 Board chooses to offer a point-of-service plan, then a  
17 vendor that offers both an HMO plan and a point-of-  
18 service plan may choose to offer only its point-of-  
19 service plan in lieu of offering its HMO plan.

20 b. Benefit plan contracts with the State and Education  
21 Employees Group Insurance Board, Health Maintenance  
22 Organizations, out-of-state health maintenance  
23 organizations, and other third-party insurance vendors  
24 shall provide for a risk adjustment factor for adverse

1 selection that may occur, as determined by the Board,  
2 based on generally accepted actuarial principles. The  
3 risk adjustment factor shall include all members  
4 participating in the plans offered by the State and  
5 Education Employees Group Insurance Board. The  
6 Oklahoma State Employees Benefits Council shall  
7 contract with an actuary to provide the above  
8 actuarial services, and shall be reimbursed for these  
9 contract expenses by the Board.

10 c. Effective for the plan year beginning January 1, 2007,  
11 and for each year thereafter, in setting health  
12 insurance premiums for active employees and for  
13 retirees under sixty-five (65) years of age, HMOs,  
14 self-insured organizations and prepaid plans shall set  
15 the monthly premium for active employees to be equal  
16 to the premium for retirees under sixty-five (65)  
17 years of age;

18 11. To contract for reinsurance, catastrophic insurance, or any  
19 other type of insurance deemed necessary by the Board. Provided,  
20 however, that the Board shall not offer a health plan which is owned  
21 or operated by the state and which utilizes a capitated payment plan  
22 for providers which uses a primary care physician as a gatekeeper to  
23 any specialty care provided by physician-specialists, unless  
24 specifically authorized by the Legislature;

1       12. The Board, pursuant to the provisions of Section 250 et  
2 seq. of Title 75 of the Oklahoma Statutes, shall adopt such rules  
3 consistent with the provisions of the State and Education Employees  
4 Group Insurance Act as it deems necessary to carry out its statutory  
5 duties and responsibilities. Emergency Rules adopted by the Board  
6 and approved by the Governor which are in effect on the first day of  
7 the Regular Session of the Oklahoma Legislature shall not become  
8 null and void until January 15 of the subsequent calendar year;

9       13. The Board shall contract for claims administration services  
10 with a private insurance carrier or a company experienced in claims  
11 administration of any insurance that the Board may be directed to  
12 offer. No contract for claims administration services shall be made  
13 unless such contract has been offered for bids through the  
14 Purchasing Division of the Department of Central Services. The  
15 Board shall contract with a private insurance carrier or other  
16 experienced claims administrator to process claims with software  
17 that is normally used for its customers;

18       14. The Board shall contract for utilization review services  
19 with a company experienced in utilization review, data base  
20 evaluation, market research, and planning and performance of the  
21 health insurance plan;

22       15. The Board shall have the authority to determine all rates  
23 and life, dental and health benefits. Except as otherwise provided  
24 for in Section 1321 of this title, the Board shall not have the

1 authority to adjust the premium rates after approval. The Board  
2 shall submit notice of the amount of employee premiums and dependent  
3 premiums along with an actuarial projection of the upcoming fiscal  
4 year's enrollment, employee contributions, employer contributions,  
5 investment earnings, paid claims, internal expenses, external  
6 expenses and changes in liabilities to the Director of the Office of  
7 State Finance and the Director of the Legislative Service Bureau no  
8 later than March 1 of the previous fiscal year.

9       Effective for the plan year beginning January 1, 2007, and for  
10 each plan year thereafter, in setting health insurance premiums for  
11 active employees and retirees under sixty-five (65) years of age,  
12 the Board shall set the monthly premium for active employees to be  
13 equal to the monthly premium for retirees under sixty-five (65)  
14 years of age;

15       16. Before December 1 of each year the Board shall submit to  
16 the Director of the Office of State Finance a report outlining the  
17 financial condition for the previous fiscal year of all insurance  
18 plans offered by the Board. The report shall include a complete  
19 explanation of all reserve funds and the actuarial projections on  
20 the need for such reserves. The report shall include and disclose  
21 an estimate of the future trend of medical costs, the impact from  
22 HMO enrollment, antiselection, changes in law, and other  
23 contingencies that could impact the financial status of the plan.  
24 The Director of the Office of State Finance shall make written

1 comment on the report and shall provide such comment, along with the  
2 report submitted by the Board, to the Governor, the President Pro  
3 Tempore of the Senate, the Speaker of the House of Representatives  
4 and the Chair of the Oklahoma State Employees Benefits Council by  
5 January 15;

6 17. The Board shall establish a prescription drug card network;

7 18. The Board shall have the authority to intercept monies  
8 owing to plan participants from other state agencies, when those  
9 participants in turn, owe money to the Board. The Board shall be  
10 required to adopt rules and regulations ensuring the participants  
11 due process of law;

12 19. The Board is authorized to make available to eligible  
13 employees supplemental health care benefit plans to include but not  
14 be limited to long-term care, deductible reduction plans and  
15 employee co-payment reinsurance. Premiums for said plans shall be  
16 actuarially based and the cost for such supplemental plans shall be  
17 paid by the employee;

18 20. Beginning with the plan year which begins on January 1,  
19 2006, the Board shall select and contract with one or more providers  
20 to offer a group TRICARE Supplement product to eligible employees  
21 who are eligible TRICARE beneficiaries. Any membership dues  
22 required to participate in a group TRICARE Supplement product  
23 offered pursuant to this paragraph shall be paid by the employee.  
24 As used in this paragraph, "TRICARE" means the Department of Defense

1 health care program for active duty and retired uniform service  
2 members and their families;

3 21. There is hereby created as a joint committee of the State  
4 Legislature, the Joint Liaison Committee on State and Education  
5 Employees Group Insurance Benefits, which Joint Committee shall  
6 consist of three members of the Senate to be appointed by the  
7 President Pro Tempore thereof and three members of the House of  
8 Representatives to be appointed by the Speaker thereof. The Chair  
9 and Vice Chair of the Joint Committee shall be appointed from the  
10 membership thereof by the President Pro Tempore of the Senate and  
11 the Speaker of the House of Representatives, respectively, one of  
12 whom shall be a member of the Senate and the other shall be a member  
13 of the House of Representatives. At the beginning of the first  
14 regular session of each Legislature, starting in 1991, the Chair  
15 shall be from the Senate; thereafter the chairship shall alternate  
16 every two (2) years between the Senate and the House of  
17 Representatives.

18 The Joint Liaison Committee on State and Education Employees  
19 Group Insurance Benefits shall function as a committee of the State  
20 Legislature when the Legislature is in session and when the  
21 Legislature is not in session. Each appointed member of said  
22 committee shall serve until his or her successor is appointed.

23 The Joint Liaison Committee on State and Education Employees  
24 Group Insurance Benefits shall serve as a liaison with the State and

1 Education Employees Group Insurance Board regarding advice,  
2 guidance, policy, management, operations, plans, programs and fiscal  
3 needs of said Board. Said Board shall not be bound by any action of  
4 the Joint Committee; and

5 22. The State and Education Employees Group Insurance Board  
6 shall annually collect its own set of performance measures  
7 comparable to the Health Plan Employer Data and Information Set  
8 (HEDIS) for the purpose of assessing the quality of its HealthChoice  
9 plans and the other services it provides.

10 SECTION 6. AMENDATORY 74 O.S. 2001, Section 1365, as  
11 last amended by Section 1, Chapter 28, O.S.L. 2009 (74 O.S. Supp.  
12 2009, Section 1365), is amended to read as follows:

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

16 1. To construe and interpret the plan, and decide all questions  
17 of eligibility in accordance with the Oklahoma State Employees  
18 Benefits Act and 26 U.S.C.A., Section 1 et seq.;

19 2. To select those benefits which shall be made available to  
20 participants under the plan, according to the Oklahoma State  
21 Employees Benefits Act, and other applicable laws and rules;

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

24

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

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

10           a. the Council shall verify all marketing and  
11                 communications information for factual accuracy prior  
12                 to distribution,

13           b. the Board or vendors shall provide timely notice of  
14                 any marketing, communications, or distribution plans  
15                 to the Council and shall coordinate the scheduling of  
16                 any group presentations with the Council, and

17           c. the Board or vendors shall file a brief summary with  
18                 the Council outlining the results following any  
19                 marketing and communications activities;

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

23  
24

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

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

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

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

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

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

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

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

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

20 Provided, however, that any such information requested by the  
21 Council from the vendors shall only be subject to the  
22 confidentiality provision of this paragraph if it is clearly  
23 designated in the Request For Proposal as being protected under this  
24 provision. All requested information lacking such a designation in

1 the Request For Proposal shall be subject to Section 24A.1 et seq.  
2 of Title 51 of the Oklahoma Statutes. From health maintenance  
3 organizations, data provided shall include the current Health Plan  
4 Employer Data and Information Set (HEDIS);

5 14. To purchase any insurance deemed necessary for providing  
6 benefits under the plan including indemnity dental plans, provided  
7 that the only indemnity health plan selected by the Council shall be  
8 the indemnity plan offered by the Board, and to transfer to the  
9 Board such funds as may be approved for a participant electing a  
10 benefit plan offered by the Board. All indemnity dental plans,  
11 including the one offered by the Oklahoma State and Education Group  
12 Insurance Board, must meet or exceed the 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,
  - 24 (9) dental prosthetics, and

1 (10) orthodontics, and

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

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

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

15 17. To accept, modify or reject elections under the plan in  
16 accordance with the Oklahoma State Employees Benefits Act and 26  
17 U.S.C.A., Section 1 et seq.;

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

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

23 20. To manage, license or sell software developed for and  
24 acquired by the Council, whether or not such software is patented or

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

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;

24

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 7. This act shall become effective November 1, 2010.

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