

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1621

6 By: Brown

7 COMMITTEE SUBSTITUTE

8 An Act relating to health insurance; amending 36 O.S.
9 2011, Sections 6512, 6213 and 6519, which relate to
10 the Small Employer Health Insurance Reform Act;
11 adding definition; exempting certain health benefits
12 plans from the provisions of the Small Employer
13 Health Insurance Reform Act; defining term; providing
14 that a small employer carrier is not required to
15 offer a health benefit plan to certain small
16 employers; prohibiting certain associations from
17 issuing coverage to a group or individual not in the
18 same trade or business; requiring associations to
19 accept all groups in the same trade or business that
20 meet membership requirements; stating membership
21 requirements; and providing an effective date.

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

23 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6512, is
24 amended to read as follows:

Section 6512. As used in the Small Employer Health Insurance
Reform Act:

1. "Actuarial certification" means a written statement by a
member of the American Academy of Actuaries or other individual
acceptable to the Insurance Commissioner that a small employer

1 carrier is in compliance with the provisions of Section 6515 of this
2 title, based upon the examination of the person, including a review
3 of the appropriate records and of the actuarial assumptions and
4 methods used by the small employer carrier in establishing premium
5 rates for applicable health benefit plans;

6 2. "Affiliate" or "affiliated" means any entity or person who
7 directly or indirectly through one or more intermediaries, controls
8 or is controlled by, or is under common control with, a specified
9 entity or person;

10 3. "Base premium rate" means, for each class of business as to
11 a rating period, the lowest premium rate charged or which could have
12 been charged under a rating system for that class of business, by
13 the small employer carrier to small employers with similar case
14 characteristics for health benefit plans with the same or similar
15 coverage;

16 4. "Basic health benefit plan" means a lower cost health
17 benefit plan adopted by the state for small employer groups;

18 5. "Board" means the board of directors of the program
19 established pursuant to Section 6522 of this title;

20 6. Bona fide association means an association that:

21 a. has been actively in existence for at least five (5)
22 years,

23 b. has been formed and maintained in good faith for
24 purposes other than obtaining insurance,

1 c. does not condition membership in the association on
2 any health-status related factor relating to any
3 individual including an employee of an employer or a
4 dependent of an individual,

5 d. makes health insurance coverage offered through the
6 bona fide association available to all members
7 regardless of any health status related factor
8 relating to the members or individuals eligible for
9 coverage through the member, and

10 e. does not make health insurance offered through the
11 bona fide association available other than in
12 connection with a member of the bona fide association;

13 7. "Carrier" means any entity which provides health insurance
14 in this state. For the purposes of the Small Employer Health
15 Insurance Reform Act, carrier includes a licensed insurance company,
16 not-for-profit hospital service or medical indemnity corporation, a
17 fraternal benefit society, a health maintenance organization, a
18 multiple employer welfare arrangement or any other entity providing
19 a plan of health insurance or health benefits subject to state
20 insurance regulation;

21 ~~7.~~ 8. "Case characteristics" means demographic or other
22 objective characteristics of a small employer that are considered by
23 the small employer carrier in the determination of premium rates for
24 the small employer, provided that claim experience, health status

1 and duration of coverage shall not be case characteristics for the
2 purposes of the Small Employer Health Insurance Reform Act. A small
3 employer carrier shall not use case characteristics, other than age,
4 gender, industry, geographic area and family composition, without
5 prior approval of the Insurance Commissioner. Group size shall not
6 be used as a case characteristic;

7 ~~8.~~ 9. "Class of business" means all or a separate grouping of
8 small employers established pursuant to Section 6514 of this title.
9 Group size shall not be used as a class of business;

10 ~~9.~~ 10. "Commissioner" means the Insurance Commissioner;

11 ~~10.~~ 11. "Control", "controlling", "controlled by" or "under
12 common control with" means the possession, direct or indirect, of
13 the power to direct or cause the direction of the management and
14 policies of a person, whether through the ownership of voting
15 securities, by contract or otherwise, unless the power is the result
16 of an official position with or corporate office held by the person.
17 Control shall be presumed to exist if any person, directly or
18 indirectly, owns, controls, holds with the power to vote, or holds
19 proxies representing ten percent (10%) or more of the voting
20 securities of any other person. This presumption may be rebutted by
21 a showing that control does not exist in fact in the manner provided
22 in Section 1654 of this title. The Commissioner may determine,
23 after furnishing all persons in interest notice and opportunity to
24 be heard and making specific findings of fact to support the

1 determination, that control exists in fact, notwithstanding the
2 absence of a presumption to that effect;

3 ~~11.~~ 12. "Department" means the Insurance Department;

4 ~~12.~~ 13. "Dependent" means a spouse, an unmarried child under
5 the age of eighteen (18), an unmarried child who is a full-time
6 student under the age of twenty-three (23) and who is financially
7 dependent upon the parent, and an unmarried child of any age who is
8 medically certified as disabled and dependent upon the parent;

9 ~~13.~~ 14. "Eligible employee" means an employee who works on a
10 full-time basis or, at the option of the employer, an employee who
11 works on a part-time basis with a normal work week of twenty-four
12 (24) or more hours. The term includes a sole proprietor, a partner
13 of a partnership, and associates of a limited liability company, if
14 the sole proprietor, partner or associate is included as an employee
15 under a health benefit plan of a small employer, but does not
16 include an employee who works on a temporary or substitute basis;

17 ~~14.~~ 15. "Established geographic service area" means a
18 geographic area, as approved by the Commissioner and based on the
19 certificate of authority of the carrier to transact insurance in
20 this state, within which the carrier is authorized to provide
21 coverage;

22 ~~15.~~

23 16. a. "Health benefit plan" means any hospital or medical
24 policy or certificate; contract of insurance provided

1 by a not-for-profit hospital service or medical
2 indemnity plan; or prepaid health plan or health
3 maintenance organization subscriber contract.

4 b. Health benefit plan does not include accident-only,
5 credit, dental, vision, Medicare supplement, long-term
6 care, or disability income insurance, coverage issued
7 as a supplement to liability insurance, workers'
8 compensation or similar insurance, or automobile
9 medical payment insurance.

10 c. "Health benefit plan" shall not include policies or
11 certificates of specified disease, hospital confinement
12 indemnity or limited benefit health insurance, provided
13 that the carrier offering those policies or
14 certificates complies with the following:

15 (1) the carrier files on or before March 1 of each
16 year a certification with the Commissioner that
17 contains the statement and information described
18 in division (2) of this subparagraph,

19 (2) the certification required in division (1) of
20 this subparagraph shall contain the following:

21 (a) a statement from the carrier certifying that
22 policies or certificates described in this
23 subparagraph are being offered and marketed
24 as supplemental health insurance and not as

1 a substitute for hospital or medical expense
2 insurance or major medical expense
3 insurance, and

4 (b) a summary description of each policy or
5 certificate described in this subparagraph,
6 including the average annual premium rates
7 or range of premium rates in cases where
8 premiums vary by age, gender or other
9 factors charged for such policies and
10 certificates in this state, and

11 (3) in the case of a policy or certificate that is
12 described in this subparagraph and that is
13 offered for the first time in this state on or
14 after ~~the effective date of this act~~ May 20,
15 1994, the carrier files with the Commissioner the
16 information and statement required in division
17 (2) of this subparagraph at least thirty (30)
18 days prior to the date a policy or certificate is
19 issued or delivered in this state;

20 ~~16.~~ 17. "Index rate" means, for each class of business as to a
21 rating period for small employers with similar case characteristics,
22 the arithmetic average of the applicable base premium rate and the
23 corresponding highest premium rate;

1 ~~17.~~ 18. "Late enrollee" means an eligible employee or dependent
2 who requests enrollment in a health benefit plan of a small employer
3 following the initial enrollment period during which the individual
4 is entitled to enroll under the terms of the health benefit plan,
5 provided that the initial enrollment period is a period of at least
6 thirty-one (31) days. However, an eligible employee or dependent
7 shall not be considered a late enrollee if:

8 a. the individual meets each of the following:

9 (1) the individual was covered under qualifying
10 previous coverage at the time of the initial
11 enrollment,

12 (2) the individual lost coverage under qualifying
13 previous coverage as a result of termination of
14 employment or eligibility, the involuntary
15 termination of the qualifying previous coverage,
16 death of a spouse or divorce, and

17 (3) the individual requests enrollment within thirty
18 (30) days after termination of the qualifying
19 previous coverage,

20 b. the individual is employed by an employer which offers
21 multiple health benefit plans and the individual
22 elects a different plan during an open enrollment
23 period, or
24

1 c. a court has ordered coverage be provided for a spouse
2 or minor or dependent child under a health benefit
3 plan of a covered employee and request for enrollment
4 is made within thirty (30) days after issuance of the
5 court order;

6 ~~18.~~ 19. "New business premium rate" means, for each class of
7 business as to a rating period, the lowest premium rate charged or
8 offered, or which could have been charged or offered, by the small
9 employer carrier to small employers with similar case
10 characteristics for newly issued health benefit plans with the same
11 or similar coverage;

12 ~~19.~~ 20. "Premium" means all monies paid by a small employer and
13 eligible employees as a condition of receiving coverage from a small
14 employer carrier, including any fees or other contributions
15 associated with the health benefit plan;

16 ~~20.~~ 21. "Program" means the Oklahoma Small Employer Health
17 Reinsurance Program created pursuant to Section 6522 of this title;

18 ~~21.~~ 22. "Qualifying previous coverage" and "qualifying existing
19 coverage" mean benefits or coverage provided under:

- 20 a. Medicare or Medicaid,
- 21 b. an employer-based health insurance or health benefit
22 arrangement that provides benefits similar to or
23 exceeding benefits provided under the basic health
24 benefit plan, or

1 c. an individual health insurance policy, including
2 coverage issued by a health maintenance organization,
3 fraternal benefit society and those entities set forth
4 in Sections 6901 through 6936 of this title, that
5 provides benefits similar to or exceeding the benefits
6 provided under the basic health benefit plan, provided
7 that the policy has been in effect for a period of at
8 least one (1) year;

9 ~~22.~~ 23. "Rating period" means the calendar period for which
10 premium rates established by a small employer carrier are assumed to
11 be in effect;

12 ~~23.~~ 24. "Reinsuring carrier" means a small employer carrier
13 participating in the reinsurance program pursuant to Section 6522 of
14 this title;

15 ~~24.~~ 25. "Restricted network provision" means any provision of a
16 health benefit plan that conditions the payment of benefits, in
17 whole or in part, on the use of health care providers that have
18 entered into a contractual arrangement with the carrier pursuant to
19 Sections 6901 through 6963 of this title to provide health care
20 services to covered individuals;

21 ~~25.~~ 26. "Small employer" means any person, firm, corporation,
22 partnership, limited liability company or association that is
23 actively engaged in business that, on at least fifty percent (50%)
24 of its working days during the preceding calendar quarter, employed

1 no more than fifty (50) eligible employees, the majority of whom
2 were employed within this state. In determining the number of
3 eligible employees, companies that are affiliated companies, or that
4 are eligible to file a combined tax return for purposes of state
5 income taxation, shall be considered one employer; and

6 ~~26.~~ 27. "Small employer carrier" means a carrier that offers
7 health benefit plans covering eligible employees of one or more
8 small employers in this state.

9 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6513, is
10 amended to read as follows:

11 Section 6513. A. ~~The~~ Except as otherwise provided in this
12 section, the Small Employer Health Insurance Reform Act shall apply
13 to any group health benefit plan that provides coverage to two (2)
14 or more eligible employees of a small employer in this state and to
15 individual health benefits plans providing coverage for the eligible
16 employees of a small employer which may include the employer when
17 three (3) or more of such individual plans are sold to a small
18 employer if any of the following conditions are met:

19 1. Any portion of the premium or benefits is paid by or on
20 behalf of the small employer;

21 2. An eligible employee or dependent is reimbursed, whether
22 through wage adjustments or otherwise, by or on behalf of the small
23 employer for any portion of the premium; or

24

1 3. The health benefit plan is treated by the employer or any of
2 the eligible employees or dependents as part of a plan or program
3 for the purposes of Section 162 or Section 106 of the United States
4 Internal Revenue Code.

5 B. 1. Except as provided in paragraph 2 of this subsection,
6 for the purposes of the Small Employer Health Insurance Reform Act,
7 carriers that are affiliated companies or that are eligible to file
8 a consolidated tax return shall be treated as one carrier and any
9 restrictions or limitations imposed by the Small Employer Health
10 Insurance Reform Act shall apply as if all health benefit plans
11 issued to small employers in this state by such affiliated carriers
12 were issued by one carrier, unless on or before July 1, 1992, the
13 respective affiliate carriers operated with separate books of
14 business as insurers of health benefit plans in which event each
15 such affiliate carrier shall be treated as a separate carrier.

16 2. An affiliated carrier that is a health maintenance
17 organization ~~having a license under Section 2501 et seq. of Title 63~~
18 granted a certificate of authority by the Insurance Commissioner
19 pursuant to the provisions of Sections 6901 through 6951 of Title 36
20 of the Oklahoma Statutes may be considered to be a separate carrier
21 for the purposes of the Small Employer Health Insurance Reform Act.

22 C. 1. Except as otherwise expressly set forth in this
23 subsection, the provisions of the Small Employer Health Insurance
24 Reform Act shall not apply to a health benefit plan issued to a

1 small employer group through a bona fide association health plan.
2 Each bona fide association health plan that meets the requirements
3 of this section shall be considered a large group for purposes of
4 application of the Oklahoma Insurance Code. For purposes of this
5 subsection, a "bona fide association health plan" means a health
6 benefit plan that:

7 a. is sponsored by a bona fide association as defined in
8 Section 6512 of this title,

9 b. is issued by a health carrier with a financial
10 strength rating equivalent to that represented by a B+
11 rating from the A.M. Best Company, Inc.,

12 c. is delivered or issued for delivery to a bona fide
13 association in a form that meets the requirements of
14 Section 4502 of this title, and

15 d. satisfies all of the following:

16 (1) the initial premium rate for small employers in
17 the bona fide association health plan shall be
18 subject to the restrictions regarding premium
19 rates contained in Section 6515 of this title,

20 (2) the association shall not discriminate in
21 membership requirements based on actual or
22 expected health status of individual enrollees or
23 prospective enrollees,

24

- 1 (3) small employer groups that have two (2) or more
2 eligible employees and that meet the membership
3 requirements for the association are not excluded
4 from the association health plan, and
5 (4) except as provided in paragraph 2 of this
6 subsection, the association health plan maintains
7 an eighty percent (80%) retention rate.

8 2. The eighty percent (80%) retention rate specified in
9 division (4) of subparagraph d of paragraph 1 of this subsection
10 shall not include employer groups that:

- 11 a. go out of business, whether through merger,
12 acquisition or any other reason,
13 b. no longer meet eligibility requirements for membership
14 in the association,
15 c. no longer meet participation requirements for
16 employers that are set forth in the plan documents, or
17 d. fail to pay premiums.

18 3. A bona fide association health plan that fails to maintain
19 the eighty percent (80%) retention rate during any year may have
20 twelve months to correct the retention level before being required
21 to become subject to the requirements of the Small Employer Health
22 Insurance Reform Act.

23 4. A bona fide association health plan may not require a
24 contract under this subsection between the bona fide association

1 health plan and the member to be effective for a period of longer
2 than two (2) years. This provision shall not be construed to
3 prevent a contract from being extended for additional two-year
4 periods or preventing the member from voluntarily electing a
5 contract period of longer than two (2) years.

6 5. Each bona fide association health plan shall be available to
7 be marketed and sold by all licensed agents and brokers of the
8 health carrier, at the health carrier's standard commission and/or
9 fee schedule for the calendar year.

10 SECTION 3. AMENDATORY 36 O.S. 2011, Section 6519, is
11 amended to read as follows:

12 Section 6519. A. 1. As a condition of transacting business in
13 this state with small employers, every small employer carrier shall
14 actively offer to small employers the health benefit plans currently
15 being marketed by the small employer carrier.

16 2. a. A small employer carrier shall issue a health benefit
17 plan to any eligible small employer that applies for a
18 plan and agrees to make the required premium payments
19 and to satisfy the other reasonable provisions of the
20 health benefit plan not inconsistent with ~~this act~~
21 Section 6511 et seq. of this title.

22 b. In the case of a small employer carrier that
23 establishes more than one class of business pursuant
24 to Section 6514 of ~~Title 36 of the Oklahoma Statutes~~

1 this title, the small employer carrier shall maintain
2 and issue to eligible small employers all health
3 benefit plans currently being marketed in each class
4 of business so established. A small employer carrier
5 may apply reasonable criteria to determine the class
6 of business applicable to any small employer, provided
7 that:

8 (1) the criteria are not intended to discourage or
9 prevent acceptance of small employers applying
10 for a health benefit plan,

11 (2) the criteria are not related to the health status
12 or claim experience of the small employer,

13 (3) the criteria are applied consistently to all
14 small employers applying for coverage in the
15 class of business, and

16 (4) the small employer carrier provides for the
17 acceptance of all eligible small employers into
18 one or more classes of business.

19 The provisions of this subparagraph shall not apply to
20 a class of business into which the small employer
21 carrier is no longer enrolling new small businesses.

22 3. A small employer is eligible under paragraph 2 of this
23 subsection if it employed at least two or more eligible employees
24 within this state on at least fifty percent (50%) of its working

1 days during the preceding calendar quarter. This also includes
2 family businesses where employees of the business may be related.
3 The fact that the employees are related shall have no effect on the
4 eligibility for coverage of the small employer.

5 4. A small employer carrier that offers a health benefit plan
6 in the small employer market only through one or more bona fide
7 association health plans is not required to offer that health
8 benefit plan to any small employer that is not a member of the bona
9 fide association sponsoring the bona fide association health plan.

10 B. 1. A small employer carrier shall file with the
11 Commissioner, in a format and manner prescribed by the Commissioner,
12 all health benefit plans to be used by the carrier. A health
13 benefit plan filed pursuant to this paragraph may be used by a small
14 employer carrier beginning sixty (60) days after it is filed unless
15 the Commissioner disapproves its use.

16 2. ~~The~~ Except as otherwise set forth in this title, the
17 Commissioner at any time may, after providing notice and an
18 opportunity for a hearing to the small employer carrier, disapprove
19 the continued use by a small employer carrier of any health benefit
20 plan on the grounds that the plan does not meet the requirements of
21 ~~this act~~ the Small Employer Health Insurance Reform Act.

22 C. Health benefit plans covering small employers shall comply
23 with the following provisions:
24

1 1. A health benefit plan shall not deny, exclude or limit
2 benefits for a covered individual for losses incurred more than
3 twelve (12) months following the effective date of the individual's
4 coverage due to a preexisting condition. A health benefit plan
5 shall not define a preexisting condition more restrictively than:

6 a. a condition that would have caused an ordinarily
7 prudent person to seek medical advice, diagnosis, care
8 or treatment during the six (6) months immediately
9 preceding the effective date of coverage, or

10 b. a condition for which medical advice, diagnosis, care
11 or treatment was recommended or received during the
12 six (6) months immediately preceding the effective
13 date of coverage;

14 2. A health benefit plan may exclude coverage for late
15 enrollees for the greater of eighteen (18) months or for an
16 eighteen-month preexisting condition exclusion; provided that if
17 both a period of exclusion from coverage and a preexisting condition
18 exclusion are applicable to a late enrollee, the combined period
19 shall not exceed eighteen (18) months from the date the individual
20 enrolls for coverage under the health benefit plan;

21 3. a. Except as provided in subparagraph d of this
22 paragraph, requirements used by a small employer
23 carrier will be limited to requirements for minimum
24 participation of eligible employees and minimum

1 employer contributions. These requirements shall be
2 applied uniformly among all small employers with the
3 same number of eligible employees applying for
4 coverage or receiving coverage from the small employer
5 carrier.

6 b. A small employer carrier may vary application of
7 minimum participation requirements and minimum
8 employer contribution requirements only by the size of
9 the small employer group.

10 c. (1) Except as provided in division (2) of this
11 subparagraph, in applying minimum participation
12 requirements with respect to a small employer, a small
13 employer carrier shall not consider employees or
14 dependents who have qualifying existing coverage in
15 determining whether the applicable percentage of
16 participation is met.

17 (2) With respect to a small employer, a small
18 employer carrier may consider employees or
19 dependents who have coverage under another health
20 benefit plan sponsored by a small employer in
21 applying minimum participation requirements.

22 d. A small employer carrier shall not increase any
23 requirement for minimum employee participation or any
24 requirement for minimum employer contribution

1 applicable to a small employer at any time after the
2 small employer has been accepted for coverage; and

3 4. a. If a small employer carrier offers coverage to a small
4 employer, the small employer carrier shall offer
5 coverage to all of the eligible employees of a small
6 employer and their dependents. A small employer
7 carrier shall not offer coverage to only certain
8 individuals in a small employer group or to only part
9 of the group, except in the case of late enrollees as
10 provided in paragraph 2 of this subsection.

11 b. Except as permitted under paragraphs 1 and 2 of this
12 subsection, a small employer carrier shall not modify
13 a health benefit plan with respect to a small employer
14 or any eligible employee or dependent, through riders,
15 endorsements or otherwise, to restrict or exclude
16 coverage or benefits for specific diseases, medical
17 conditions or services otherwise covered by the plan.

18 D. The Commissioner shall develop, by rule, a uniform health
19 questionnaire for use by small employers applying for health
20 insurance coverage under group health plans offered by small
21 employer carriers. Small employer carriers shall be required to
22 accept and use the uniform health questionnaire not more than six
23 (6) months after the rules adopting the questionnaire become
24 effective.

1 E. 1. A small employer carrier shall not be required to offer
2 coverage or accept applications pursuant to subsection A of this
3 section in the case of the following:

4 a. to a small employer, where the small employer is not
5 physically located in the established geographic
6 service area of the carrier,

7 b. to an employee, when the employee does not work or
8 reside within the established geographic service area
9 of the carrier, or

10 c. within an area where the small employer carrier
11 reasonably anticipates, and demonstrates to the
12 satisfaction of the Commissioner, that it will not
13 have the capacity within its established geographic
14 service area to deliver service adequately to the
15 members of such groups because of its obligations to
16 existing group policyholders and enrollees.

17 2. A small employer carrier that cannot offer coverage pursuant
18 to subparagraph c of paragraph 1 of this subsection may not offer
19 coverage in the applicable area to new cases of employer groups with
20 more than fifty (50) eligible employees or to any small employer
21 groups until the later of one hundred eighty (180) days following
22 each refusal or the date on which the carrier notifies the
23 Commissioner that it has regained capacity to deliver services to
24 small employer groups.

1 F. A bona fide association health plan established pursuant to
2 this title to provide benefits to a particular trade, business,
3 profession or industry or their subsidiaries shall not issue
4 coverage to a group or individual that is not in the same trade,
5 business, profession or industry as that covered by the bona fide
6 association health plan. The bona fide association health plan
7 shall accept all employer groups in the same trade, business,
8 profession or industry or their subsidiaries that apply for coverage
9 under the arrangement and that meet the requirements for membership
10 in the arrangement. For purposes of this subsection, the
11 requirements for membership in a bona fide association health plan
12 shall not include any requirements that relate to the actual or
13 expected health status of the prospective enrollee.

14 SECTION 4. This act shall become effective November 1, 2012.

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