

1 ENGROSSED SENATE
2 BILL NO. 623

By: Aldridge of the Senate

3 and

4 Mulready of the House

5
6
7 An Act relating to state employees' benefits;
8 amending 74 O.S. 2001, Sections 1365, as last amended
9 by Section 1, Chapter 28, O.S.L. 2009 and 1370, as
10 last amended by Section 2, Chapter 28, O.S.L. 2009
11 (74 O.S. Supp. 2010, Sections 1365 and 1370), which
12 relate to the Oklahoma State Employees Benefits Act;
13 adding duties of the Oklahoma State Employees
14 Benefits Council; providing certain flexible benefit
15 allowance related to TRICARE supplemental products;
16 providing an effective date; and declaring an
17 emergency.

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

15 SECTION 1. AMENDATORY 74 O.S. 2001, Section 1365, as
16 last amended by Section 1, Chapter 28, O.S.L. 2009 (74 O.S. Supp.
17 2010, Section 1365), is amended to read as follows:

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

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

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

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

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

8 5. To prepare and distribute information communicating and
9 explaining the plan to participating employers and participants.

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

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

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

22 c. the Board or vendors shall file a brief summary with
23 the Council outlining the results following any
24 marketing and communications activities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) dental prosthetics, and

2 (10) orthodontics, and

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

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

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

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

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

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

1 20. To manage, license or sell software developed for and
2 acquired by the Council, whether or not such software is patented or
3 copyrighted. The Council shall have the authority to license and
4 sell such software or any rights to such software without declaring
5 such property to be surplus. All proceeds from any such sale shall
6 be deposited in the Benefits Council Administration Revolving Fund
7 and used to defray the costs of administration; and

8 21. Beginning with the plan year which begins on January 1,
9 2012, to select and contract with one or more providers to offer a
10 group TRICARE Supplement product to eligible employees who are
11 eligible TRICARE beneficiaries. Any membership dues required to
12 participate in a group TRICARE Supplement product offered pursuant
13 to this paragraph shall be paid by the employee. As used in this
14 paragraph, "TRICARE" means the Department of Defense health care
15 program for active duty and retired uniform service members and
16 their families.

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

21 1. A person or organization is a fiduciary with respect to the
22 Council to the extent that the person or organization:
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- a. exercises any discretionary authority or discretionary control respecting administration or management of the Council,
- b. exercises any authority or control respecting disposition of the assets of the Council,
- c. renders advice for a fee or other compensation, direct or indirect, with respect to any participant or dependent benefits, monies or other property of the Council, or has any authority or responsibility to do so, or
- d. has any discretionary authority or discretionary responsibility in the administration of the Council;

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

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

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

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

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

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

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

21 b. he or she knowingly participates in, or knowingly
22 undertakes to conceal, an act or omission of another
23 person or organization, knowing such act or omission
24 to be a breach, or

1 c. having knowledge of the breach of another person or
2 organization, he or she fails to make reasonable
3 efforts under the circumstances to remedy said breach.

4 SECTION 2. AMENDATORY 74 O.S. 2001, Section 1370, as
5 last amended by Section 2, Chapter 28, O.S.L. 2009 (74 O.S. Supp.
6 2010, Section 1370), is amended to read as follows:

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

21 B. Each participant shall be credited annually with a specified
22 amount as a flexible benefit allowance which shall be available for
23 the purchase of benefits. The amount of the flexible benefit
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1 allowance credited to each participant shall be communicated to him
2 or her prior to the enrollment period for each plan year.

3 C. ~~For~~ Except as provided in subsection D of this section, for
4 the plan year ending December 31, ~~2001~~ 2012, and each plan year
5 thereafter, the amount of a participant's benefit allowance, which
6 shall be the total amount the employer contributes for the payment
7 of insurance premiums or other benefits, shall be:

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

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

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

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

20 E. This section shall not prohibit payments for supplemental
21 health insurance coverage made pursuant to Section 1314.4 of this
22 title or payments for the cost of providing health insurance
23 coverage for dependents of employees of the Grand River Dam
24 Authority.

1 ~~E.~~ F. If a participant desires to buy benefits whose sum total
2 of benefit prices is in excess of his or her flexible benefit
3 allowance, the participant may elect to use pay conversion dollars
4 to purchase such excess benefits. Pay conversion dollars may be
5 elected through a salary reduction agreement made pursuant to the
6 election procedures of Section 1371 of this title. The elected
7 amount shall be deducted from the participant's compensation in
8 equal amounts each pay period over the plan year. On termination of
9 employment during a plan year, a participant shall have no
10 obligation to pay the participating employer any pay conversion
11 dollars allocated to the portion of the plan year after the
12 participant's termination of employment.

13 ~~F.~~ G. If a participant elects benefits whose sum total of
14 benefit prices is less than his or her flexible benefit allowance,
15 he or she shall receive any excess flexible benefit allowance as
16 taxable compensation. Such taxable compensation will be paid in
17 substantially equal amounts each pay period over the plan year. On
18 termination during a plan year, a participant shall have no right to
19 receive any such taxable cash compensation allocated to the portion
20 of the plan year after the participant's termination. Nothing
21 herein shall affect a participant's obligation to elect the minimum
22 benefits or to accept the default benefits of the plan with
23 corresponding reduction in the sum of his or her flexible benefit
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1 allowance equal to the sum total benefit price of such minimum
2 benefits or default benefits.

3 SECTION 3. This act shall become effective July 1, 2011.

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

8 Passed the Senate the 14th day of March, 2011.

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Presiding Officer of the Senate

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12 Passed the House of Representatives the ____ day of _____,
13 2011.

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Presiding Officer of the House
of Representatives

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