

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1621

By: Brown

AS INTRODUCED

An Act relating to health insurance; amending 36 O.S. 2011, Sections 6512, 6213 and 6519, which relate to the Small Employer Health Insurance Reform Act; adding definition; exempting certain health benefits plans from the provisions of the Small Employer Health Insurance Reform Act; providing that a small employer carrier is not required to offer a health benefit plan to certain small employers; prohibiting certain arrangements from issuing coverage to a group or individual not in the same trade or business; requiring arrangements to accept all groups and individuals in the same trade or business that meet membership requirements; stating membership requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6512, is 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 carrier is in compliance with the provisions of Section 6515 of this

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

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

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

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

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

19 6. Bona fide association means an association that meets the
20 requirements of 42 U.S.C. 300gg-11 as amended and in effect on July
21 1, 1997;

22 7. "Carrier" means any entity which provides health insurance
23 in this state. For the purposes of the Small Employer Health
24 Insurance Reform Act, carrier includes a licensed insurance company,

1 not-for-profit hospital service or medical indemnity corporation, a
2 fraternal benefit society, a health maintenance organization, a
3 multiple employer welfare arrangement or any other entity providing
4 a plan of health insurance or health benefits subject to state
5 insurance regulation;

6 ~~7.~~ 8. "Case characteristics" means demographic or other
7 objective characteristics of a small employer that are considered by
8 the small employer carrier in the determination of premium rates for
9 the small employer, provided that claim experience, health status
10 and duration of coverage shall not be case characteristics for the
11 purposes of the Small Employer Health Insurance Reform Act. A small
12 employer carrier shall not use case characteristics, other than age,
13 gender, industry, geographic area and family composition, without
14 prior approval of the Insurance Commissioner. Group size shall not
15 be used as a case characteristic;

16 ~~8.~~ 9. "Class of business" means all or a separate grouping of
17 small employers established pursuant to Section 6514 of this title.
18 Group size shall not be used as a class of business;

19 ~~9.~~ 10. "Commissioner" means the Insurance Commissioner;

20 ~~10.~~ 11. "Control", "controlling", "controlled by" or "under
21 common control with" means the possession, direct or indirect, of
22 the power to direct or cause the direction of the management and
23 policies of a person, whether through the ownership of voting
24 securities, by contract or otherwise, unless the power is the result

1 of an official position with or corporate office held by the person.
2 Control shall be presumed to exist if any person, directly or
3 indirectly, owns, controls, holds with the power to vote, or holds
4 proxies representing ten percent (10%) or more of the voting
5 securities of any other person. This presumption may be rebutted by
6 a showing that control does not exist in fact in the manner provided
7 in Section 1654 of this title. The Commissioner may determine,
8 after furnishing all persons in interest notice and opportunity to
9 be heard and making specific findings of fact to support the
10 determination, that control exists in fact, notwithstanding the
11 absence of a presumption to that effect;

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

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

18 ~~13.~~ 14. "Eligible employee" means an employee who works on a
19 full-time basis or, at the option of the employer, an employee who
20 works on a part-time basis with a normal work week of twenty-four
21 (24) or more hours. The term includes a sole proprietor, a partner
22 of a partnership, and associates of a limited liability company, if
23 the sole proprietor, partner or associate is included as an employee
24

1 under a health benefit plan of a small employer, but does not
2 include an employee who works on a temporary or substitute basis;

3 ~~14.~~ 15. "Established geographic service area" means a
4 geographic area, as approved by the Commissioner and based on the
5 certificate of authority of the carrier to transact insurance in
6 this state, within which the carrier is authorized to provide
7 coverage;

8 ~~15.~~

9 16. a. "Health benefit plan" means any hospital or medical
10 policy or certificate; contract of insurance provided
11 by a not-for-profit hospital service or medical
12 indemnity plan; or prepaid health plan or health
13 maintenance organization subscriber contract.

14 b. Health benefit plan does not include accident-only,
15 credit, dental, vision, Medicare supplement, long-term
16 care, or disability income insurance, coverage issued
17 as a supplement to liability insurance, workers'
18 compensation or similar insurance, or automobile
19 medical payment insurance.

20 c. "Health benefit plan" shall not include policies or
21 certificates of specified disease, hospital confinement
22 indemnity or limited benefit health insurance, provided
23 that the carrier offering those policies or
24 certificates complies with the following:

- 1 (1) the carrier files on or before March 1 of each
2 year a certification with the Commissioner that
3 contains the statement and information described
4 in division (2) of this subparagraph,
- 5 (2) the certification required in division (1) of
6 this subparagraph shall contain the following:
- 7 (a) a statement from the carrier certifying that
8 policies or certificates described in this
9 subparagraph are being offered and marketed
10 as supplemental health insurance and not as
11 a substitute for hospital or medical expense
12 insurance or major medical expense
13 insurance, and
- 14 (b) a summary description of each policy or
15 certificate described in this subparagraph,
16 including the average annual premium rates
17 or range of premium rates in cases where
18 premiums vary by age, gender or other
19 factors charged for such policies and
20 certificates in this state, and
- 21 (3) in the case of a policy or certificate that is
22 described in this subparagraph and that is
23 offered for the first time in this state on or
24 after ~~the effective date of this act~~ May 20,

1 1994, the carrier files with the Commissioner the
2 information and statement required in division
3 (2) of this subparagraph at least thirty (30)
4 days prior to the date a policy or certificate is
5 issued or delivered in this state;

6 ~~16.~~ 17. "Index rate" means, for each class of business as to a
7 rating period for small employers with similar case characteristics,
8 the arithmetic average of the applicable base premium rate and the
9 corresponding highest premium rate;

10 ~~17.~~ 18. "Late enrollee" means an eligible employee or dependent
11 who requests enrollment in a health benefit plan of a small employer
12 following the initial enrollment period during which the individual
13 is entitled to enroll under the terms of the health benefit plan,
14 provided that the initial enrollment period is a period of at least
15 thirty-one (31) days. However, an eligible employee or dependent
16 shall not be considered a late enrollee if:

17 a. the individual meets each of the following:

18 (1) the individual was covered under qualifying
19 previous coverage at the time of the initial
20 enrollment,

21 (2) the individual lost coverage under qualifying
22 previous coverage as a result of termination of
23 employment or eligibility, the involuntary
24

1 termination of the qualifying previous coverage,
2 death of a spouse or divorce, and

3 (3) the individual requests enrollment within thirty
4 (30) days after termination of the qualifying
5 previous coverage,

6 b. the individual is employed by an employer which offers
7 multiple health benefit plans and the individual
8 elects a different plan during an open enrollment
9 period, or

10 c. a court has ordered coverage be provided for a spouse
11 or minor or dependent child under a health benefit
12 plan of a covered employee and request for enrollment
13 is made within thirty (30) days after issuance of the
14 court order;

15 ~~18.~~ 19. "New business premium rate" means, for each class of
16 business as to a rating period, the lowest premium rate charged or
17 offered, or which could have been charged or offered, by the small
18 employer carrier to small employers with similar case
19 characteristics for newly issued health benefit plans with the same
20 or similar coverage;

21 ~~19.~~ 20. "Premium" means all monies paid by a small employer and
22 eligible employees as a condition of receiving coverage from a small
23 employer carrier, including any fees or other contributions
24 associated with the health benefit plan;

1 ~~20.~~ 21. "Program" means the Oklahoma Small Employer Health
2 Reinsurance Program created pursuant to Section 6522 of this title;

3 ~~21.~~ 22. "Qualifying previous coverage" and "qualifying existing
4 coverage" mean benefits or coverage provided under:

5 a. Medicare or Medicaid,

6 b. an employer-based health insurance or health benefit
7 arrangement that provides benefits similar to or
8 exceeding benefits provided under the basic health
9 benefit plan, or

10 c. an individual health insurance policy, including
11 coverage issued by a health maintenance organization,
12 fraternal benefit society and those entities set forth
13 in Sections 6901 through 6936 of this title, that
14 provides benefits similar to or exceeding the benefits
15 provided under the basic health benefit plan, provided
16 that the policy has been in effect for a period of at
17 least one (1) year;

18 ~~22.~~ 23. "Rating period" means the calendar period for which
19 premium rates established by a small employer carrier are assumed to
20 be in effect;

21 ~~23.~~ 24. "Reinsuring carrier" means a small employer carrier
22 participating in the reinsurance program pursuant to Section 6522 of
23 this title;

1 ~~24.~~ 25. "Restricted network provision" means any provision of a
2 health benefit plan that conditions the payment of benefits, in
3 whole or in part, on the use of health care providers that have
4 entered into a contractual arrangement with the carrier pursuant to
5 Sections 6901 through 6963 of this title to provide health care
6 services to covered individuals;

7 ~~25.~~ 26. "Small employer" means any person, firm, corporation,
8 partnership, limited liability company or association that is
9 actively engaged in business that, on at least fifty percent (50%)
10 of its working days during the preceding calendar quarter, employed
11 no more than fifty (50) eligible employees, the majority of whom
12 were employed within this state. In determining the number of
13 eligible employees, companies that are affiliated companies, or that
14 are eligible to file a combined tax return for purposes of state
15 income taxation, shall be considered one employer; and

16 ~~26.~~ 27. "Small employer carrier" means a carrier that offers
17 health benefit plans covering eligible employees of one or more
18 small employers in this state.

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

21 Section 6513. A. ~~The~~ Except as otherwise provided in this
22 section, the Small Employer Health Insurance Reform Act shall apply
23 to any group health benefit plan that provides coverage to two (2)
24 or more eligible employees of a small employer in this state and to

1 individual health benefits plans providing coverage for the eligible
2 employees of a small employer which may include the employer when
3 three (3) or more of such individual plans are sold to a small
4 employer if any of the following conditions are met:

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

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

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

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

1 2. An affiliated carrier that is a health maintenance
2 organization ~~having a license under Section 2501 et seq. of Title 63~~
3 granted a certificate of authority by the Insurance Commissioner
4 pursuant to the provisions of Sections 6901 through 9651 of Title 36
5 of the Oklahoma Statutes may be considered to be a separate carrier
6 for the purposes of the Small Employer Health Insurance Reform Act.

7 C. 1. The provisions of the Small Employer Health Insurance
8 Reform Act shall not apply to a health benefit plan issued to a
9 small employer group through an association health plan. For
10 purposes of this subsection, an "association health plan" means a
11 health benefit plan that:

12 a. is delivered or issued for delivery to an association
13 or trust that meets the requirements of Section 4502
14 of this title or to a Multiple Employer Welfare
15 Arrangement (MEWA) subject to the provision of
16 Sections 633 through 650 of this title, and

17 b. satisfies all of the following:

18 (1) the initial premium rate for the association
19 health plan shall not vary by more than fifty
20 percent (50%) across the groups of small
21 employers under the plan,

22 (2) the association policyholder shall not
23 discriminate in membership requirements based on
24

actual or expected health status of individual enrollees or prospective enrollees,

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

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

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

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

SECTION 3. AMENDATORY 36 O.S. 2011, Section 6519, is

amended to read as follows:

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

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

b. In the case of a small employer carrier that establishes more than one class of business pursuant to Section 6514 of ~~Title 36 of the Oklahoma Statutes~~ this title, the small employer carrier shall maintain and issue to eligible small employers all health benefit plans currently being marketed in each class of business so established. A small employer carrier may apply reasonable criteria to determine the class of business applicable to any small employer, provided that:

- 1 (1) the criteria are not intended to discourage or
2 prevent acceptance of small employers applying
3 for a health benefit plan,
4 (2) the criteria are not related to the health status
5 or claim experience of the small employer,
6 (3) the criteria are applied consistently to all
7 small employers applying for coverage in the
8 class of business, and
9 (4) the small employer carrier provides for the
10 acceptance of all eligible small employers into
11 one or more classes of business.

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

15 3. A small employer is eligible under paragraph 2 of this
16 subsection if it employed at least two or more eligible employees
17 within this state on at least fifty percent (50%) of its working
18 days during the preceding calendar quarter. This also includes
19 family businesses where employees of the business may be related.
20 The fact that the employees are related shall have no effect on the
21 eligibility for coverage of the small employer.

22 4. A small employer carrier that offers a health benefit plan
23 in the small employer market only through one or more bona fide
24

1 associations is not required to offer that health benefit plan to
2 small employers that are not members of the bona fide association.

3 B. 1. A small employer carrier shall file with the
4 Commissioner, in a format and manner prescribed by the Commissioner,
5 all health benefit plans to be used by the carrier. A health
6 benefit plan filed pursuant to this paragraph may be used by a small
7 employer carrier beginning sixty (60) days after it is filed unless
8 the Commissioner disapproves its use.

9 2. The Commissioner at any time may, after providing notice and
10 an opportunity for a hearing to the small employer carrier,
11 disapprove the continued use by a small employer carrier of any
12 health benefit plan on the grounds that the plan does not meet the
13 requirements of ~~this act~~ the Small Employer Health Insurance Reform
14 Act.

15 C. Health benefit plans covering small employers shall comply
16 with the following provisions:

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

22 a. a condition that would have caused an ordinarily
23 prudent person to seek medical advice, diagnosis, care
24

1 or treatment during the six (6) months immediately
2 preceding the effective date of coverage, or

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

7 2. A health benefit plan may exclude coverage for late
8 enrollees for the greater of eighteen (18) months or for an
9 eighteen-month preexisting condition exclusion; provided that if
10 both a period of exclusion from coverage and a preexisting condition
11 exclusion are applicable to a late enrollee, the combined period
12 shall not exceed eighteen (18) months from the date the individual
13 enrolls for coverage under the health benefit plan;

14 3. a. Except as provided in subparagraph d of this
15 paragraph, requirements used by a small employer
16 carrier will be limited to requirements for minimum
17 participation of eligible employees and minimum
18 employer contributions. These requirements shall be
19 applied uniformly among all small employers with the
20 same number of eligible employees applying for
21 coverage or receiving coverage from the small employer
22 carrier.

23 b. A small employer carrier may vary application of
24 minimum participation requirements and minimum

1 employer contribution requirements only by the size of
2 the small employer group.

3 c. (1) Except as provided in division (2) of this
4 subparagraph, in applying minimum participation
5 requirements with respect to a small employer, a
6 small employer carrier shall not consider
7 employees or dependents who have qualifying
8 existing coverage in determining whether the
9 applicable percentage of participation is met.

10 (2) With respect to a small employer, a small
11 employer carrier may consider employees or
12 dependents who have coverage under another health
13 benefit plan sponsored by a small employer in
14 applying minimum participation requirements.

15 d. A small employer carrier shall not increase any
16 requirement for minimum employee participation or any
17 requirement for minimum employer contribution
18 applicable to a small employer at any time after the
19 small employer has been accepted for coverage; and

20 4. a. If a small employer carrier offers coverage to a small
21 employer, the small employer carrier shall offer
22 coverage to all of the eligible employees of a small
23 employer and their dependents. A small employer
24 carrier shall not offer coverage to only certain

1 individuals in a small employer group or to only part
2 of the group, except in the case of late enrollees as
3 provided in paragraph 2 of this subsection.

4 b. Except as permitted under paragraphs 1 and 2 of this
5 subsection, a small employer carrier shall not modify
6 a health benefit plan with respect to a small employer
7 or any eligible employee or dependent, through riders,
8 endorsements or otherwise, to restrict or exclude
9 coverage or benefits for specific diseases, medical
10 conditions or services otherwise covered by the plan.

11 D. The Commissioner shall develop, by rule, a uniform health
12 questionnaire for use by small employers applying for health
13 insurance coverage under group health plans offered by small
14 employer carriers. Small employer carriers shall be required to
15 accept and use the uniform health questionnaire not more than six
16 (6) months after the rules adopting the questionnaire become
17 effective.

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

21 a. to a small employer, where the small employer is not
22 physically located in the established geographic
23 service area of the carrier,
24

1 b. to an employee, when the employee does not work or
2 reside within the established geographic service area
3 of the carrier, or

4 c. within an area where the small employer carrier
5 reasonably anticipates, and demonstrates to the
6 satisfaction of the Commissioner, that it will not
7 have the capacity within its established geographic
8 service area to deliver service adequately to the
9 members of such groups because of its obligations to
10 existing group policyholders and enrollees.

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

19 F. A Multiple Employer Welfare Arrangement (MEWA), professional
20 or trade association or other similar arrangement established or
21 maintained to provide benefits to a particular trade, business,
22 profession or industry or their subsidiaries shall not issue
23 coverage to a group or individual that is not in the same trade,
24 business, profession or industry as that covered by the arrangement.

1 The arrangement shall accept all groups and individuals in the same
2 trade, business, profession or industry or their subsidiaries that
3 apply for coverage under the arrangement and that meet the
4 requirements for membership in the arrangement. For purposes of
5 this subsection, the requirements for membership in an arrangement
6 shall not include any requirements that relate to the actual or
7 expected health status of the prospective enrollee.

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

9
10 53-2-2572 ARE 1/19/2012 1:16:02 PM
11
12
13
14
15
16
17
18
19
20
21
22
23
24