

# An Act

ENROLLED HOUSE  
BILL NO. 2191

By: Schwartz of the House

and

Stanislawski of the Senate

An Act relating to insurance; amending 36 O.S. 2011, Section 6515, which relates to the Small Employer Health Insurance Reform Act; allowing a small employer carrier to include an employer's bona fide wellness program in premium rate development; amending 40 O.S. 2011, Section 500, which relates to conditions of employment; allowing an employer to offer incentives to employees to participate in certain wellness programs in conjunction with employer-provided health insurance; and providing an effective date.

SUBJECT: Wellness programs

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6515, is amended to read as follows:

Section 6515. A. Premium rates for health benefit plans subject to the Small Employer Health Insurance Reform Act shall be subject to the following provisions:

1. The rate manual developed for use by a small employer carrier shall be filed and approved by the Insurance Commissioner prior to use. Any changes to the rate manual shall be filed and approved by the Insurance Commissioner prior to use. Every filing shall be made not less than thirty (30) days prior to the date the small employer carrier intends to implement the rates. The rate manual so filed shall be deemed approved upon expiration of the

thirty-day waiting period unless, prior to the end of the period, it has been affirmatively approved or disapproved by order of the Commissioner. Approval of a rate manual by the Commissioner shall constitute a waiver of any unexpired portion of the thirty-day waiting period. The Commissioner may extend the period to approve or disapprove a rate manual by not more than an additional thirty (30) days by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of an extended period, the rate filing shall be deemed approved unless otherwise approved or disapproved by the Commissioner. The Commissioner may at any time, after notice and for cause shown, withdraw approval of a filed rate;

2. A small employer health benefit plan shall not be delivered or issued for delivery unless the policy form or certificate form can be expected to return to policyholders and certificate holders in the form of aggregate benefits provided under the policy form or certificate form at least sixty percent (60%) of the aggregate amount of premiums earned. The rate of return shall be estimated for the entire period for which rates are computed to provide coverage. The rate of return shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period in accordance with accepted actuarial principles and practices;

3. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent (20%);

4. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate;

5. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

- a. the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the

case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers,

- b. any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the rate manual for the class of business of the small employer carrier, and
- c. any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the rate manual for the class of business of the small employer carrier;

6. Adjustments in rates for claim experience, health status and duration of coverage shall not be charged to individual employees or dependents. Any adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer;

7. A small employer carrier may utilize industry as a case characteristic in establishing premium rates; provided, the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent (15%);

8. In the case of health benefit plans issued prior to the effective date of the Small Employer Health Insurance Reform Act, a premium rate for a rating period may exceed the ranges set forth in paragraphs 3 and 4 of this subsection for a period of three (3) years following the effective date of the Small Employer Health Insurance Reform Act. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

- a. the percentage change in the new business premium rate measured from the first day of the prior rating period

to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers, and

- b. any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the rate manual of the carrier for the class of business;

9. Small employer carriers shall:

- a. apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups within the same class of business which differ only by amounts attributable to plan design and do not reflect differences due to claims experience, health status and duration of coverage, and
- b. treat all health benefit plans issued or renewed in the same calendar month as having the same rating period;

10. For the purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted provider network results in substantial differences in claims costs;

11. The Insurance Commissioner may establish rules to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of the Small Employer Health Insurance Reform Act, including:

- a. assuring that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan

design, not including differences due to claims experience, health status or duration of coverage, and

- b. prescribing the manner in which case characteristics may be used by small employer carriers.

B. A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage.

C. The Commissioner may suspend for a specified period the application of paragraph 3 of subsection A of this section as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the Commissioner either that the suspension is reasonably necessary in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

D. Nothing in the Small Employer Health Insurance Reform Act shall prohibit a small employer carrier from including in premium rate development an employer's bona fide wellness program for its employees including, but not limited to, a tobacco cessation program.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 500, is amended to read as follows:

Section 500. A. It shall be unlawful for an employer to:

1. Discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a nonsmoker or smokes or uses tobacco products during nonworking hours; or

2. Require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours.

B. Nothing in this section shall prohibit an employer from offering incentives to an employee to participate in wellness programs, including, but not limited to, smoking cessation programs, in conjunction with the employer providing the employee health insurance coverage.

SECTION 3. This act shall become effective November 1, 2013.

Passed the House of Representatives the 6th day of March, 2013.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 16th day of April, 2013.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_