

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 1053

By: McEntire and McCall of the  
House

4 and

5 Treat of the Senate

6  
7  
8 An Act relating to insurance; amending 36 O.S. 2011,  
9 Sections 6512 and 6513, as amended by Sections 1 and  
10 2, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,  
11 Sections 6512 and 6513), which relate to the Small  
12 Employer Health Insurance Reform Act; modifying  
13 definitions; modifying application of Act; defining  
14 terms; providing that the Small Employer Health  
15 Insurance Reform Act does not apply to certain health  
16 plans; providing requirements for bona fide  
17 association health plans; providing for codification;  
18 and providing an effective date.

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AMENDMENT NO. 1. Page 1, strike the title to read

"[ insurance - Small Employer Health Insurance Reform  
Act - application - health plans - codification -  
effective date ]"

1 Passed the Senate the 25th day of April, 2019.

2  
3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2019.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives

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10 Sections 6512 and 6513), which relate to the Small  
11 Employer Health Insurance Reform Act; modifying  
12 definitions; modifying application of Act; defining  
13 terms; providing that the Small Employer Health  
14 Insurance Reform Act does not apply to certain health  
15 plans; providing requirements for bona fide  
16 association health plans; providing for codification;  
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6512, as  
20 amended by Section 1, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,  
21 Section 6512), is amended to read as follows:

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

24 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:~~  
20 a. ~~has been actively in existence for at least five (5)~~  
21 ~~years,~~  
22 b. ~~has been formed and maintained in good faith for~~  
23 ~~purposes other than obtaining insurance,~~

24

1           ~~e. 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          ~~8.~~ 7. "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 ~~9.~~ 8. "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 ~~10.~~ 9. "Commissioner" means the Insurance Commissioner;

11 ~~11.~~ 10. "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 ~~12.~~ 11. "Department" means the Insurance Department;

4 ~~13.~~ 12. "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 ~~14.~~ 13. "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 ~~15.~~ 14. "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 ~~16.~~

23 15. 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 May 20, 1994, the carrier files with the  
15 Commissioner the information and statement  
16 required in division (2) of this subparagraph at  
17 least thirty (30) days prior to the date a policy  
18 or certificate is issued or delivered in this  
19 state;

20 ~~17.~~ 16. "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       ~~18.~~ 17. "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

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 ~~19.~~ 18. "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 ~~20.~~ 19. "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 ~~21.~~ 20. "Program" means the Oklahoma Small Employer Health  
17 Reinsurance Program created pursuant to Section 6522 of this title;

18 ~~22.~~ 21. "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 ~~23.~~ 22. "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 ~~24.~~ 23. "Reinsuring carrier" means a small employer carrier  
13 participating in the reinsurance program pursuant to Section 6522 of  
14 this title;

15 ~~25.~~ 24. "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 ~~26.~~ 25. "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 ~~27.~~ 26. "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, as  
10 amended by Section 2, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,  
11 Section 6513), is amended to read as follows:

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

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

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

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

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

19           2. An affiliated carrier that is a health maintenance  
20 organization granted a certificate of authority by the Insurance  
21 Commissioner pursuant to the provisions of Sections 6901 through  
22 6951 of ~~Title 36 of the Oklahoma Statutes~~ this title may be  
23 considered to be a separate carrier for the purposes of the Small  
24 Employer Health Insurance Reform Act.

1       ~~C. 1. Except as otherwise expressly set forth in this~~  
2 ~~subsection, the provisions of the Small Employer Health Insurance~~  
3 ~~Reform Act shall not apply to a health benefit plan issued to a~~  
4 ~~small employer group through a bona fide association health plan.~~  
5 ~~Each bona fide association health plan that meets the requirements~~  
6 ~~of this section shall be considered a large group for purposes of~~  
7 ~~application of the Oklahoma Insurance Code. For purposes of this~~  
8 ~~subsection, a "bona fide association health plan" means a health~~  
9 ~~benefit plan that:~~

10           ~~a. is sponsored by a bona fide association as defined in~~  
11           ~~Section 6512 of this title,~~

12           ~~b. 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           ~~c. 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,~~

- 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 c 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. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 6530 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. "Bona fide association" means any association that has a  
14 current form M-1 filed with and accepted by the United States  
15 Department of Labor showing Oklahoma as the state of operation and:

16 1. Is formed under a pathway established in accordance with the  
17 applicable provisions of 29 CFR 2510; or

18 2. Was previously established or is newly formed under federal  
19 regulatory guidance effective prior to August 20, 2018.

20 B. "Bona fide association health plan" means a health benefit  
21 plan that is sponsored by a bona fide association as defined in  
22 subsection A of this section.

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1 C. The provisions of the Small Employer Health Insurance Reform  
2 Act shall not apply to a health benefit plan issued to a bona fide  
3 association health plan.

4 D. Each bona fide association health plan that meets the  
5 requirements of this section shall be considered a large group for  
6 purposes of application of the Oklahoma Insurance Code.

7 E. A bona fide association health plan shall be subject to the  
8 following requirements:

9 1. The bona fide association health plan shall be delivered or  
10 issued for delivery to a bona fide association in a form that meets  
11 the requirements of Section 4502 of Title 36 of the Oklahoma  
12 Statutes;

13 2. The bona fide association health plan shall comply with any  
14 federal nondiscrimination requirements applicable to the association  
15 health plan;

16 3. Small employer groups that have two or more eligible  
17 employees and that are members of the association may not be  
18 excluded from the association health plan;

19 4. a. Except as provided in subparagraph b of this  
20 paragraph, the association health plan shall maintain  
21 an eighty percent (80%) retention rate.

22 b. The eighty percent (80%) retention rate specified in  
23 subparagraph a of this paragraph shall not include  
24 employer groups or working owners that:

- 1 (1) go out of business, whether through merger,  
2 acquisition or any other reason,
- 3 (2) no longer meet eligibility requirements for  
4 membership in the association,
- 5 (3) no longer meet participation requirements for  
6 employers that are set forth in the plan  
7 documents, or
- 8 (4) fail to pay premiums.

9 c. A bona fide association health plan that fails to  
10 maintain the eighty percent (80%) retention rate  
11 during any year may have twelve (12) months to correct  
12 the retention level before being required to become  
13 subject to the requirements of the Small Employer  
14 Health Insurance Reform Act.

15 d. A bona fide association health plan may not require a  
16 contract under this subsection between the bona fide  
17 association health plan and the member to be effective  
18 for a period of longer than two (2) years. This  
19 provision shall not be construed to prevent a contract  
20 from being extended for additional two-year periods or  
21 preventing the member from voluntarily electing a  
22 contract period of longer than two (2) years; and

23 5. Each bona fide association health plan shall be available to  
24 be marketed and sold by all licensed agents and brokers of the

1 health carrier at the health carrier's standard commission and/or  
2 fee schedule for the calendar year.

3 SECTION 4. This act shall become effective November 1, 2019.

4 Passed the House of Representatives the 7th day of March, 2019.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2019.

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Presiding Officer of the Senate

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