

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 943

By: Treat of the Senate

6 and

7 McCall of the House

8
9 An Act relating to health insurance; amending 36 O.S.
10 2011, Sections 6512, as amended by Section 1, Chapter
11 151, O.S.L. 2012 and 6513, as amended by Section 2,
12 Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,
13 Sections 6512 and 6513), which relate to definitions
14 and application of the Small Employer Health
15 Insurance Reform Act to certain group health benefit
16 plans; deleting definitions; eliminating certain
17 exceptions to Act; eliminating timeframe for
18 correcting certain retention level; eliminating
19 prohibition against requirement of certain contract;
20 removing requirement that certain health plans be
21 sold at certain rate; defining terms; creating
22 exception to applicability of Act; establishing
23 requirements for certain health plans; requiring that
24 certain health plans be sold at certain rate;
providing for codification; 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, as
amended by Section 1, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,
Section 6512), is amended to read as follows:

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

3 1. "Actuarial certification" means a written statement by a
4 member of the American Academy of Actuaries or other individual
5 acceptable to the Insurance Commissioner that a small employer
6 carrier is in compliance with the provisions of Section 6515 of this
7 title, based upon the examination of the person, including a review
8 of the appropriate records and of the actuarial assumptions and
9 methods used by the small employer carrier in establishing premium
10 rates for applicable health benefit plans;

11 2. "Affiliate" or "affiliated" means any entity or person who
12 directly or indirectly through one or more intermediaries, controls
13 or is controlled by, or is under common control with, a specified
14 entity or person;

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

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

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

1 6. ~~Bona fide association" means an association that:~~

2 a. ~~has been actively in existence for at least five (5)~~
3 ~~years,~~

4 b. ~~has been formed and maintained in good faith for~~
5 ~~purposes other than obtaining insurance,~~

6 c. ~~does not condition membership in the association on~~
7 ~~any health status related factor relating to any~~
8 ~~individual including an employee of an employer or a~~
9 ~~dependent of an individual,~~

10 d. ~~makes health insurance coverage offered through the~~
11 ~~bona fide association available to all members~~
12 ~~regardless of any health status related factor~~
13 ~~relating to the members or individuals eligible for~~
14 ~~coverage through the member, and~~

15 e. ~~does not make health insurance offered through the~~
16 ~~bona fide association available other than in~~
17 ~~connection with a member of the bona fide association;~~

18 7. "Carrier" means any entity which provides health insurance
19 in this state. For the purposes of the Small Employer Health
20 Insurance Reform Act, carrier includes a licensed insurance company,
21 not-for-profit hospital service or medical indemnity corporation, a
22 fraternal benefit society, a health maintenance organization, a
23 multiple employer welfare arrangement or any other entity providing
24

1 a plan of health insurance or health benefits subject to state
2 insurance regulation;

3 ~~8.~~ 7. "Case characteristics" means demographic or other
4 objective characteristics of a small employer that are considered by
5 the small employer carrier in the determination of premium rates for
6 the small employer, provided that claim experience, health status
7 and duration of coverage shall not be case characteristics for the
8 purposes of the Small Employer Health Insurance Reform Act. A small
9 employer carrier shall not use case characteristics, other than age,
10 gender, industry, geographic area and family composition, without
11 prior approval of the Insurance Commissioner. Group size shall not
12 be used as a case characteristic;

13 ~~9.~~ 8. "Class of business" means all or a separate grouping of
14 small employers established pursuant to Section 6514 of this title.
15 Group size shall not be used as a class of business;

16 ~~10.~~ 9. "Commissioner" means the Insurance Commissioner;

17 ~~11.~~ 10. "Control", "controlling", "controlled by" or "under
18 common control with" means the possession, direct or indirect, of
19 the power to direct or cause the direction of the management and
20 policies of a person, whether through the ownership of voting
21 securities, by contract or otherwise, unless the power is the result
22 of an official position with or corporate office held by the person.
23 Control shall be presumed to exist if any person, directly or
24 indirectly, owns, controls, holds with the power to vote, or holds

1 proxies representing ten percent (10%) or more of the voting
2 securities of any other person. This presumption may be rebutted by
3 a showing that control does not exist in fact in the manner provided
4 in Section 1654 of this title. The Commissioner may determine,
5 after furnishing all persons in interest notice and opportunity to
6 be heard and making specific findings of fact to support the
7 determination, that control exists in fact, notwithstanding the
8 absence of a presumption to that effect;

9 ~~12.~~ 11. "Department" means the Insurance Department;

10 ~~13.~~ 12. "Dependent" means a spouse, an unmarried child under
11 the age of eighteen (18), an unmarried child who is a full-time
12 student under the age of twenty-three (23) and who is financially
13 dependent upon the parent, and an unmarried child of any age who is
14 medically certified as disabled and dependent upon the parent;

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

23 ~~15.~~ 14. "Established geographic service area" means a
24 geographic area, as approved by the Commissioner and based on the

1 certificate of authority of the carrier to transact insurance in
2 this state, within which the carrier is authorized to provide
3 coverage;

4 ~~16.~~ 15. a. "Health benefit plan" means any hospital or
5 medical policy or certificate; contract of insurance
6 provided by a not-for-profit hospital service or
7 medical indemnity plan; or prepaid health plan or
8 health maintenance organization subscriber contract.

9 b. Health benefit plan does not include accident-only,
10 credit, dental, vision, Medicare supplement, long-term
11 care, or disability income insurance, coverage issued
12 as a supplement to liability insurance, workers'
13 compensation or similar insurance, or automobile
14 medical payment insurance.

15 c. "Health benefit plan" shall not include policies or
16 certificates of specified disease, hospital confinement
17 indemnity or limited benefit health insurance, provided
18 that the carrier offering those policies or
19 certificates complies with the following:

20 (1) the carrier files on or before March 1 of each
21 year a certification with the Commissioner that
22 contains the statement and information described
23 in division (2) of this subparagraph,
24

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

3 (a) a statement from the carrier certifying that
4 policies or certificates described in this
5 subparagraph are being offered and marketed
6 as supplemental health insurance and not as
7 a substitute for hospital or medical expense
8 insurance or major medical expense
9 insurance, and

10 (b) a summary description of each policy or
11 certificate described in this subparagraph,
12 including the average annual premium rates
13 or range of premium rates in cases where
14 premiums vary by age, gender or other
15 factors charged for such policies and
16 certificates in this state, and

17 (3) in the case of a policy or certificate that is
18 described in this subparagraph and that is
19 offered for the first time in this state on or
20 after May 20, 1994, the carrier files with the
21 Commissioner the information and statement
22 required in division (2) of this subparagraph at
23 least thirty (30) days prior to the date a policy
24

1 or certificate is issued or delivered in this
2 state;

3 ~~17.~~ 16. "Index rate" means, for each class of business as to a
4 rating period for small employers with similar case characteristics,
5 the arithmetic average of the applicable base premium rate and the
6 corresponding highest premium rate;

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

14 a. the individual meets each of the following:

- 15 (1) the individual was covered under qualifying
16 previous coverage at the time of the initial
17 enrollment,
18 (2) the individual lost coverage under qualifying
19 previous coverage as a result of termination of
20 employment or eligibility, the involuntary
21 termination of the qualifying previous coverage,
22 death of a spouse or divorce, and
23
24

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

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

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

13 ~~19.~~ 18. "New business premium rate" means, for each class of
14 business as to a rating period, the lowest premium rate charged or
15 offered, or which could have been charged or offered, by the small
16 employer carrier to small employers with similar case
17 characteristics for newly issued health benefit plans with the same
18 or similar coverage;

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

23 ~~21.~~ 20. "Program" means the Oklahoma Small Employer Health
24 Reinsurance Program created pursuant to Section 6522 of this title;

1 ~~22.~~ 21. "Qualifying previous coverage" and "qualifying existing
2 coverage" mean benefits or coverage provided under:

3 a. Medicare or Medicaid,

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

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

16 ~~23.~~ 22. "Rating period" means the calendar period for which
17 premium rates established by a small employer carrier are assumed to
18 be in effect;

19 ~~24.~~ 23. "Reinsuring carrier" means a small employer carrier
20 participating in the reinsurance program pursuant to Section 6522 of
21 this title;

22 ~~25.~~ 24. "Restricted network provision" means any provision of a
23 health benefit plan that conditions the payment of benefits, in
24 whole or in part, on the use of health care providers that have

1 entered into a contractual arrangement with the carrier pursuant to
2 Sections 6901 through 6963 of this title to provide health care
3 services to covered individuals;

4 ~~26.~~ 25. "Small employer" means any person, firm, corporation,
5 partnership, limited liability company or association that is
6 actively engaged in business that, on at least fifty percent (50%)
7 of its working days during the preceding calendar quarter, employed
8 no more than fifty (50) eligible employees, the majority of whom
9 were employed within this state. In determining the number of
10 eligible employees, companies that are affiliated companies, or that
11 are eligible to file a combined tax return for purposes of state
12 income taxation, shall be considered one employer; and

13 ~~27.~~ 26. "Small employer carrier" means a carrier that offers
14 health benefit plans covering eligible employees of one or more
15 small employers in this state.

16 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6513, as
17 amended by Section 2, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,
18 Section 6513), is amended to read as follows:

19 Section 6513. A. Except as otherwise provided in this section
20 and in Section 3 of this act, the Small Employer Health Insurance
21 Reform Act shall apply to any group health benefit plan that
22 provides coverage to two (2) or more eligible employees of a small
23 employer in this state and to individual health benefits plans
24 providing coverage for the eligible employees of a small employer

1 which may include the employer when three (3) or more of such
2 individual plans are sold to a small employer if any of the
3 following conditions are met:

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

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

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

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

24

1 2. An affiliated carrier that is a health maintenance
2 organization granted a certificate of authority by the Insurance
3 Commissioner pursuant to the provisions of Sections 6901 through
4 6951 of Title 36 of the Oklahoma Statutes may be considered to be a
5 separate carrier for the purposes of the Small Employer Health
6 Insurance Reform Act.

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

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

18 ~~b. is delivered or issued for delivery to a bona fide~~
19 ~~association in a form that meets the requirements of~~
20 ~~Section 4502 of this title, and~~

21 ~~c. satisfies all of the following:~~

22 ~~(1) the initial premium rate for small employers in~~
23 ~~the bona fide association health plan shall be~~

1 ~~subject to the restrictions regarding premium~~
2 ~~rates contained in Section 6515 of this title,~~
3 ~~(2) the association shall not discriminate in~~
4 ~~membership requirements based on actual or~~
5 ~~expected health status of individual enrollees or~~
6 ~~prospective enrollees,~~
7 ~~(3) small employer groups that have two (2) or more~~
8 ~~eligible employees and that meet the membership~~
9 ~~requirements for the association are not excluded~~
10 ~~from the association health plan, and~~
11 ~~(4) except as provided in paragraph 2 of this~~
12 ~~subsection, the association health plan maintains~~
13 ~~an eighty percent (80%) retention rate.~~

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

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

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

6 ~~4. A bona fide association health plan may not require a~~
7 ~~contract under this subsection between the bona fide association~~
8 ~~health plan and the member to be effective for a period of longer~~
9 ~~than two (2) years. This provision shall not be construed to~~
10 ~~prevent a contract from being extended for additional two-year~~
11 ~~periods or preventing the member from voluntarily electing a~~
12 ~~contract period of longer than two (2) years.~~

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

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6530 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

14 1. The bona fide association health plan shall be delivered or
15 issued for delivery to a bona fide association in a form that meets
16 the requirements of Section 4502 of Title 36 of the Oklahoma
17 Statutes;

18 2. The bona fide association health plan shall comply with any
19 federal nondiscrimination requirement applicable to the association
20 health plan;

21 3. Small employer groups that have two (2) or more eligible
22 employees and that are members of the association may not be
23 excluded from the association health plan;

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

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

7 (1) go out of business, whether through merger,
8 acquisition or any other reason,

9 (2) no longer meet eligibility requirements for
10 membership in the association,

11 (3) no longer meet participation requirements for
12 employers that are set forth in the plan
13 documents, or

14 (4) fail to pay premiums.

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

21 d. A bona fide association health plan may not require a
22 contract under this subsection between the bona fide
23 association health plan and the member to be effective
24 for a period of longer than two (2) years. This

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

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

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

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11 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04/09/2019 - DO PASS.
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