

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1053

By: McEntire

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5  
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2011,  
8 Sections 6512 and 6513, as amended by Sections 1 and  
9 2, Chapter 151, O.S.L. 2012 (36 O.S. Supp. 2018,  
10 Sections 6512 and 6513), which relate to the Small  
11 Employer Health Insurance Reform Act; modifying  
12 definitions; modifying application of act; and  
13 providing an effective date.

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

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

18 Section 6512. As used in the Small Employer Health Insurance  
19 Reform Act:

20 1. "Actuarial certification" means a written statement by a  
21 member of the American Academy of Actuaries or other individual  
22 acceptable to the Insurance Commissioner that a small employer  
23 carrier is in compliance with the provisions of Section 6515 of this  
24 title, based upon the examination of the person, including a review  
of the appropriate records and of the actuarial assumptions and

1 methods used by the small employer carrier in establishing premium  
2 rates for applicable health benefit plans;

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

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

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

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

17 6. "Bona fide association" means an association that:

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

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

22 ~~c.~~

23 b. does not condition membership in the association on  
24 any health-status related factor relating to any

1 individual including an employee of an employer or a  
2 dependent of an individual,

3 ~~d.~~

4 c. makes health insurance coverage offered through the  
5 bona fide association available to all members  
6 regardless of any health status related factor  
7 relating to the members or individuals eligible for  
8 coverage through the member, and

9 ~~e.~~

10 d. 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. "Case characteristics" means demographic or other objective  
22 characteristics of a small employer that are considered by the small  
23 employer carrier in the determination of premium rates for the small  
24 employer, provided that claim experience, health status and duration

1 of coverage shall not be case characteristics for the purposes of  
2 the Small Employer Health Insurance Reform Act. A small employer  
3 carrier shall not use case characteristics, other than age, gender,  
4 industry, geographic area and family composition, without prior  
5 approval of the Insurance Commissioner. Group size shall not be  
6 used as a case characteristic;

7 9. "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. "Commissioner" means the Insurance Commissioner;

11 11. "Control", "controlling", "controlled by" or "under common  
12 control with" means the possession, direct or indirect, of the power  
13 to direct or cause the direction of the management and policies of a  
14 person, whether through the ownership of voting securities, by  
15 contract or otherwise, unless the power is the result of an official  
16 position with or corporate office held by the person. Control shall  
17 be presumed to exist if any person, directly or indirectly, owns,  
18 controls, holds with the power to vote, or holds proxies  
19 representing ten percent (10%) or more of the voting securities of  
20 any other person. This presumption may be rebutted by a showing  
21 that control does not exist in fact in the manner provided in  
22 Section 1654 of this title. The Commissioner may determine, after  
23 furnishing all persons in interest notice and opportunity to be  
24 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. "Department" means the Insurance Department;

4 13. "Dependent" means a spouse, an unmarried child under the  
5 age of eighteen (18), an unmarried child who is a full-time student  
6 under the age of twenty-three (23) and who is financially dependent  
7 upon the parent, and an unmarried child of any age who is medically  
8 certified as disabled and dependent upon the parent;

9 14. "Eligible employee" means an employee who works on a full-  
10 time basis or, at the option of the employer, an employee who works  
11 on a part-time basis with a normal work week of twenty-four (24) or  
12 more hours. The term includes a sole proprietor, a partner of a  
13 partnership, and associates of a limited liability company, if the  
14 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. "Established geographic service area" means a geographic  
18 area, as approved by the Commissioner and based on the certificate  
19 of authority of the carrier to transact insurance in this state,  
20 within which the carrier is authorized to provide coverage;

21 16. a. "Health benefit plan" means any hospital or medical  
22 policy or certificate; contract of insurance provided  
23 by a not-for-profit hospital service or medical  
24

1 indemnity plan; or prepaid health plan or health  
2 maintenance organization subscriber contract.

3 b. Health benefit plan does not include accident-only,  
4 credit, dental, vision, Medicare supplement, long-term  
5 care, or disability income insurance, coverage issued  
6 as a supplement to liability insurance, workers'  
7 compensation or similar insurance, or automobile  
8 medical payment insurance.

9 c. "Health benefit plan" shall not include policies or  
10 certificates of specified disease, hospital confinement  
11 indemnity or limited benefit health insurance, provided  
12 that the carrier offering those policies or  
13 certificates complies with the following:

14 (1) the carrier files on or before March 1 of each  
15 year a certification with the Commissioner that  
16 contains the statement and information described  
17 in division (2) of this subparagraph,

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

20 (a) a statement from the carrier certifying that  
21 policies or certificates described in this  
22 subparagraph are being offered and marketed  
23 as supplemental health insurance and not as  
24 a substitute for hospital or medical expense

1 insurance or major medical expense

2 insurance, and

3 (b) a summary description of each policy or  
4 certificate described in this subparagraph,  
5 including the average annual premium rates  
6 or range of premium rates in cases where  
7 premiums vary by age, gender or other  
8 factors charged for such policies and  
9 certificates in this state, and

10 (3) in the case of a policy or certificate that is  
11 described in this subparagraph and that is  
12 offered for the first time in this state on or  
13 after May 20, 1994, the carrier files with the  
14 Commissioner the information and statement  
15 required in division (2) of this subparagraph at  
16 least thirty (30) days prior to the date a policy  
17 or certificate is issued or delivered in this  
18 state;

19 17. "Index rate" means, for each class of business as to a  
20 rating period for small employers with similar case characteristics,  
21 the arithmetic average of the applicable base premium rate and the  
22 corresponding highest premium rate;

23 18. "Late enrollee" means an eligible employee or dependent who  
24 requests enrollment in a health benefit plan of a small employer

1 following the initial enrollment period during which the individual  
2 is entitled to enroll under the terms of the health benefit plan,  
3 provided that the initial enrollment period is a period of at least  
4 thirty-one (31) days. However, an eligible employee or dependent  
5 shall not be considered a late enrollee if:

6 a. the individual meets each of the following:

7 (1) the individual was covered under qualifying  
8 previous coverage at the time of the initial  
9 enrollment,

10 (2) the individual lost coverage under qualifying  
11 previous coverage as a result of termination of  
12 employment or eligibility, the involuntary  
13 termination of the qualifying previous coverage,  
14 death of a spouse or divorce, and

15 (3) the individual requests enrollment within thirty  
16 (30) days after termination of the qualifying  
17 previous coverage,

18 b. the individual is employed by an employer which offers  
19 multiple health benefit plans and the individual  
20 elects a different plan during an open enrollment  
21 period, or

22 c. a court has ordered coverage be provided for a spouse  
23 or minor or dependent child under a health benefit  
24 plan of a covered employee and request for enrollment

1 is made within thirty (30) days after issuance of the  
2 court order;

3 19. "New business premium rate" means, for each class of  
4 business as to a rating period, the lowest premium rate charged or  
5 offered, or which could have been charged or offered, by the small  
6 employer carrier to small employers with similar case  
7 characteristics for newly issued health benefit plans with the same  
8 or similar coverage;

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

13 21. "Program" means the Oklahoma Small Employer Health  
14 Reinsurance Program created pursuant to Section 6522 of this title;

15 22. "Qualifying previous coverage" and "qualifying existing  
16 coverage" mean benefits or coverage provided under:

- 17 a. Medicare or Medicaid,
- 18 b. an employer-based health insurance or health benefit  
19 arrangement that provides benefits similar to or  
20 exceeding benefits provided under the basic health  
21 benefit plan, or
- 22 c. an individual health insurance policy, including  
23 coverage issued by a health maintenance organization,  
24 fraternal benefit society and those entities set forth

1 in Sections 6901 through 6936 of this title, that  
2 provides benefits similar to or exceeding the benefits  
3 provided under the basic health benefit plan, provided  
4 that the policy has been in effect for a period of at  
5 least one (1) year;

6 23. "Rating period" means the calendar period for which premium  
7 rates established by a small employer carrier are assumed to be in  
8 effect;

9 24. "Reinsuring carrier" means a small employer carrier  
10 participating in the reinsurance program pursuant to Section 6522 of  
11 this title;

12 25. "Restricted network provision" means any provision of a  
13 health benefit plan that conditions the payment of benefits, in  
14 whole or in part, on the use of health care providers that have  
15 entered into a contractual arrangement with the carrier pursuant to  
16 Sections 6901 through 6963 of this title to provide health care  
17 services to covered individuals;

18 26. "Small employer" means any person, firm, corporation,  
19 partnership, limited liability company or association that is  
20 actively engaged in business that, on at least fifty percent (50%)  
21 of its working days during the preceding calendar quarter, employed  
22 no more than fifty (50) eligible employees, the majority of whom  
23 were employed within this state. In determining the number of  
24 eligible employees, companies that are affiliated companies, or that

1 are eligible to file a combined tax return for purposes of state  
2 income taxation, shall be considered one employer; and

3 27. "Small employer carrier" means a carrier that offers health  
4 benefit plans covering eligible employees of one or more small  
5 employers in this state.

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

9 Section 6513. A. Except as otherwise provided in this section,  
10 the Small Employer Health Insurance Reform Act shall apply to any  
11 group health benefit plan that provides coverage to ~~two (2) or more~~  
12 at least one (1) eligible employees employee of a small employer in  
13 this state and to individual health benefits plans providing  
14 coverage for the eligible employees of a small employer which may  
15 include the employer when three (3) or more of such individual plans  
16 are sold to a small employer if any of the following conditions are  
17 met:

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

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

23 3. The health benefit plan is treated by the employer or any of  
24 the eligible employees or dependents as part of a plan or program

1 for the purposes of Section 162 or Section 106 of the United States  
2 Internal Revenue Code.

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

14 2. An affiliated carrier that is a health maintenance  
15 organization granted a certificate of authority by the Insurance  
16 Commissioner pursuant to the provisions of Sections 6901 through  
17 6951 of Title 36 of the Oklahoma Statutes may be considered to be a  
18 separate carrier for the purposes of the Small Employer Health  
19 Insurance Reform Act.

20 C. 1. Except as otherwise expressly set forth in this  
21 subsection, the provisions of the Small Employer Health Insurance  
22 Reform Act shall not apply to a health benefit plan issued to a  
23 small employer group through a bona fide association health plan.  
24 Each bona fide association health plan that meets the requirements

1 of this section shall be considered a large group for purposes of  
2 application of the Oklahoma Insurance Code. For purposes of this  
3 subsection, a "bona fide association health plan" means a health  
4 benefit plan that:

5 a. is sponsored by a bona fide association as defined in  
6 Section 6512 of this title,

7 b. is delivered or issued for delivery to a bona fide  
8 association in a form that meets the requirements of  
9 Section 4502 of this title, and

10 c. satisfies all of the following:

11 (1) the initial premium rate for small employers in  
12 the bona fide association health plan shall be  
13 subject to the restrictions regarding premium  
14 rates contained in Section 6515 of this title,

15 (2) the association shall not discriminate in  
16 membership requirements based on actual or  
17 expected health status of individual enrollees or  
18 prospective enrollees,

19 (3) small employer groups that have ~~two (2) or more~~  
20 at least one (1) eligible employees employee and  
21 that meet the membership requirements for the  
22 association are not excluded from the association  
23 health plan, and

24

1 (4) except as provided in paragraph 2 of this  
2 subsection, the association health plan maintains  
3 an eighty percent (80%) retention rate.

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

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

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

19 4. A bona fide association health plan may not require a  
20 contract under this subsection between the bona fide association  
21 health plan and the member to be effective for a period of longer  
22 than two (2) years. This provision shall not be construed to  
23 prevent a contract from being extended for additional two-year  
24

1 periods or preventing the member from voluntarily electing a  
2 contract period of longer than two (2) years.

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

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

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