

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2501

By: Anthony

AS INTRODUCED

An Act relating to public health and safety and poor persons; amending Section 4, Chapter 332, as amended by Section 6, Chapter 204, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5006), which relates to the Oklahoma Health Care Authority; removing obsolete language; amending 63 O.S. 1991, Section 1-1917, which relates to the Nursing Home Care Act; amending 56 O.S. 1991, Sections 169, 177, 200, 200a, 200b, 201, 202, 203, 204, as last amended by Section 1, Chapter 161, O.S.L. 1995, 204.1, 206, Section 2, Chapter 161, O.S.L. 1995, and 1003, as amended by Section 2, Chapter 306, O.S.L. 1995 (56 O.S. Supp. 1995, Sections 204, 504.1 and 1003), which relate to powers and duties of the Department of Human Services, the Oklahoma Health Care Authority and the Oklahoma Medicaid Program Integrity Act; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 332, as amended by Section 6, Chapter 204, O.S.L. 1995 (63 O.S. Supp. 1995, Section 5006), is amended to read as follows:

Section 5006. A. There is hereby created the Oklahoma Health Care Authority.

B. The Authority shall have the power and duty to:

1. Purchase health care benefits for state and education employees and Medicaid recipients, and others who are dependent on the state for necessary medical care, as specifically authorized by law;

2. Develop state and education employee health care plans as authorized by Section 5011 of this title;

3. Enter into contracts for the delivery of state-purchased health care and establish standards and criteria which must be met by entities to be eligible to contract with the Authority for the delivery of state-purchased health care;

4. Develop a proposed standard basic health care benefits package or packages to be offered by health services providers, for state and education employees and Medicaid recipients;

5. Study all matters connected with the provision of state-purchased and state-subsidized health care coverage;

6. Develop and submit plans, reports and proposals, provide information and analyze areas of public and private health care interaction pursuant to the provisions of the Oklahoma Health Care Authority Act;

7. Serve as a resource for information on state-purchased and state-subsidized health care access, cost containment and related health issues;

8. Administer programs and enforce laws placed under the jurisdiction of the Authority pursuant to the Oklahoma Health Care Authority Act, and such other duties prescribed by law;

9. Collaborate with and assist the Insurance Commissioner in the development of a Uniform Claim Processing System for use by third-party payors and health care providers;

10. Collaborate with and assist the State Department of Health with the development of licensure standards and criteria for pre-paid health plans; and

11. Exercise all incidental powers which are necessary and proper to carry out the purposes of the Oklahoma Health Care Authority Act.

~~B. All positions within the Authority shall be unclassified until approval of the annual business and personnel plan submitted by January 1, 1995, by the Governor and the Legislature. In the annual business plan submitted January 1, 1995, the Board shall include a personnel plan which shall list, describe and justify all unclassified positions within the Authority and their compensation. All other employees and positions shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act.~~

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1917, is amended to read as follows:

Section 1-1917. It shall be the duty of the Department of Human Services and the Director of the Oklahoma State Bureau of Investigation to assist the Commissioner in carrying out the provisions of ~~this act~~ the Nursing Home Care Act insofar as the functions of these respective offices and departments are concerned with the health, welfare and safety of any person or persons cared for in facilities ~~as defined herein~~.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 169, is amended to read as follows:

Section 169. A. All assistance grants made ~~under this act~~ pursuant to this title and Title 63 of the Oklahoma Statutes shall be reinvestigated by the Department of Human Services as frequently

as may be required by the Commission. In all cases, the Department shall have the power to modify or revoke its former grant. The same right of hearing shall be accorded an aggrieved recipient as provided in Section ~~8 thereof.~~ ~~Provided, that on and after June 1st, 1957, it~~ 168 of this title.

B. It shall be the duty of the ~~Oklahoma Public Welfare Commission~~ for Human Services in conformity with the Federal Social Security Laws and in regard to funds available to revise and liberalize the budget as now used in ascertaining the need of any person eligible to receive old age assistance, and in so doing the increased cost of living and condition of health shall be given due consideration ~~(and excepting~~ except for earned and/or inconsequential resources and casual irregular or unpredictable wages or salary in an amount of an average of Fifty Dollars (\$50.00) or a greater amount per month). ~~Provided further, that the~~

C. The Commission shall immediately direct the reinvestigation and revision of the budget of each and every recipient and the payment of assistance ~~thereafter~~ shall be made on such basis.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 177, is amended to read as follows:

Section 177. A. The ~~Commission~~ Oklahoma Health Care Authority shall have the authority to accept grants from the federal government of money or services for the purpose of augmenting assistance granted ~~hereunder~~ or to reimburse the state for assistance granted ~~hereunder~~ and to conform to the requirements of any federal agency or agencies governing ~~said~~ the federal grants in any manner not inconsistent with the constitution and laws of the State of Oklahoma.

B. The ~~Commission~~ Oklahoma Health Care Authority shall have the authority to make apportionments in advance of funds under its control in accordance with the requirements of the federal

government where ~~such~~ the funds are to be matched in whole or in part by federal funds.

SECTION 5. AMENDATORY 56 O.S. 1991, Section 200, is amended to read as follows:

Section 200. A. 1. The payment of medical expenses by the Department of Human Services for or on behalf of or the receipt of medical assistance by a person who has been injured, or who has suffered a disease, as a result of the negligence or act of another person creates a debt to the Department subject to recovery by legal action pursuant to this section.

2. The payment of medical expenses by the Department ~~of Human Services~~ for or on behalf of a person who has been injured or who has suffered a disease, and either has a claim or may have a claim against an insurer, to the extent recoverable, creates a debt to the Department whether or not such person asserts or maintains a claim against an insurer.

B. The Department ~~of Human Services~~ shall provide notice to all recipients of medical assistance at the time of application for such assistance of their obligation to report any claim or action and of any judgment, settlement or compromise arising from ~~such~~ the claim or action for injury or illness for which the Department makes payments for medical assistance.

C. The recipient of medical assistance from the Department ~~of Human Services~~ for an injury or disease who asserts a claim or maintains an action against another on account of ~~such~~ the injury or disease or ~~such~~ the recipient's legal representative shall notify the Department ~~of Human Services~~ of ~~such~~ the claim or action and of any judgment, settlement or compromise arising from ~~such~~ the claim or action prior to ~~said~~ the final judgment, settlement or compromise.

D. If ~~such~~ the injured or diseased person asserts or maintains a claim against such other person or tortfeasor on account of ~~such~~ the injury or disease, the Department:

1. Shall have a lien upon payment of ~~such~~ the medical assistance to the extent of the amount so paid upon that part going or belonging to ~~such~~ the injured or diseased person of any recovery or sum had or collected or to be collected by ~~such~~ the injured or diseased person, or by ~~his~~ the heirs, personal representative or next of kin in case of ~~his~~ the death of the person, whether by judgment or by settlement or compromise; provided, however, that this lien shall be inferior to any lien or claim of any attorney or attorneys for handling the claim on behalf of ~~such~~ the injured or diseased person, ~~his~~ the heirs or personal representatives. The lien authorized by this section shall not be applied or considered valid against any temporary or permanent disability award of the claimant due under the Workers' Compensation Act in this state. Provided, the lien of the Department authorized pursuant to this subsection shall be applied and considered valid as against any insurer adjudged responsible for medical expenses under the Workers' Compensation Act;

2. May take ~~such~~ the other legal action necessary to recover the amount so paid or to be paid to ~~such~~ the injured or diseased person or to ~~his~~ the heirs, personal representative or next of kin in case of ~~his~~ the death of the person.

E. 1. To effectuate the lien authorized pursuant to this section, the Department ~~of Human Services~~ shall file a written notice containing a statement of the amount claimed, the name and address of the injured person, and the name of the person, firm or corporation alleged to be liable to the injured or the diseased person for damages in the office of the clerk of the district court for the County of Oklahoma, State of Oklahoma, prior to the full payment of any monies to ~~such~~ the injured or diseased person or ~~his~~

the heirs or personal representatives as damages or compensation for ~~such~~ the injury or disease.

2. The Department shall also send by certified mail, return receipt requested, postage prepaid, a copy of ~~such~~ the notice with a statement of the date of filing thereof to:

- a. the recipient of the medical assistance;
- b. any person, firm or corporation alleged to be liable to the injured or diseased person for damages so sustained;
- c. any insurer which may be ultimately liable, if the name and address shall be known; and
- d. any attorney for the injured or diseased person, provided the Department has notice of the name of ~~such~~ the attorney.

3. The Department shall have the right to file a written notice of its lien in any action commenced by ~~such~~ the injured or diseased person.

F. The Department, to secure and enforce ~~such~~ the right of recovery or reimbursement on behalf of the injured or diseased person, may initiate and prosecute any action or proceeding against ~~such~~ the other person or tortfeasor who may be liable to the injured or diseased person if the injured or diseased person has not initiated any legal proceedings against ~~such~~ the other person or tortfeasor.

G. Any person or insurer that has been notified by the Department of claim of lien authorized by this section and who, directly or indirectly, pays to the recipient any money as a settlement or compromise of the recipient's claim arising out of the injury shall be liable to the Department ~~of Human Services~~ for the money value of the medical assistance rendered by the Department in an amount not in excess of the amount to which the recipient was

entitled to recover from the tortfeasor or insurer because of the injury.

H. As used in this section:

1. "Medical expenses" includes the cost of hospital, medical, surgical and dental services, care and treatment, rehabilitation, and prostheses and medical appliances, and nursing and funeral services;

2. "Person" includes, in addition to an individual, the guardian of an individual, and the administrator or executor of the estate of an individual, and a corporation; and

3. "Insurer" means any insurance company that administers accident and health policies or plans or that administers any other type insurance policy containing medical provisions, and any nonprofit hospital service and indemnity and medical service and indemnity corporation, actually engaged in business in the state, regardless of where the insurance contract is written, or plan is administered or where such corporation is incorporated.

SECTION 6. AMENDATORY 56 O.S. 1991, Section 200a, is amended to read as follows:

Section 200a. Whenever the ~~Department of Human Services~~ Oklahoma Health Care Authority pays for medical services or renders medical services, for or on behalf of a person who has been injured or suffered an illness or disease, the right of the provider of such services to reimbursement will be automatically assigned to the ~~Department of Human Services~~ Oklahoma Health Care Authority, upon notice to the insurer or other party obligated as a matter of law or agreement to reimburse ~~such~~ the provider on behalf of the patient; furthermore, upon assignment, the ~~Department of Human Services~~ Authority, for purposes of the claim for reimbursement, becomes a provider of medical services. Provided further and notwithstanding the provisions of Section 200 of this title, the assignment of the right to reimbursement shall be applied and considered valid against

any employer or insurer under the Workers' Compensation Act in this state.

SECTION 7. AMENDATORY 56 O.S. 1991, Section 200b, is amended to read as follows:

Section 200b. A. Pursuant to the provisions of this section, the ~~Department of Human Services~~ Oklahoma Health Care Authority is authorized to file and enforce a lien against the homestead of a recipient for payments of medical assistance made by the ~~Department Authority~~ to the recipient who is an inpatient of a nursing home if the ~~Department Authority~~, upon competent medical testimony, determines ~~such~~ the recipient cannot reasonably be expected to be discharged and returned home. A one-year period of compensated inpatient care at a nursing home or nursing homes shall constitute a determination by the Department that the recipient cannot reasonably be expected to be discharged and returned home.

B. Upon certification for Title XIX of the federal Social Security Act payments for nursing home care, the Department shall provide written notice to the recipient that:

1. A one-year period of compensated inpatient care at a nursing home ~~or homes~~ shall constitute a determination by the ~~Department Authority~~ that the recipient cannot reasonably be expected to be discharged and returned home;

2. A lien will be filed against ~~his~~ the homestead of the recipient pursuant to the provisions of this section and that the amount of the lien shall be for the amount of assistance paid by the ~~Department Authority~~ after the expiration of one (1) year from the date the recipient became eligible for compensated inpatient care at a nursing home or homes until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient; and

3. The recipient is entitled to a hearing with the ~~Department of Human Services~~ Authority prior to the filing of the lien pursuant to this section.

The notice shall, also, contain an explanation of the lien and the effect the lien will have on the ownership of the homestead of the recipient and any other person residing in the homestead. The notice shall be signed by the recipient or ~~his~~ the legal guardian of the recipient acknowledging that the recipient or ~~his~~ the legal guardian of the recipient understands the notice and the effect the payment of medical assistance on ~~his~~ the recipient's behalf will have upon the homestead of the recipient.

C. The lien filed pursuant to subsection E of this section shall be for the amount of assistance paid beginning one (1) year after the recipient has received inpatient care from a nursing home or nursing homes and has received payment of medical assistance by the ~~Department~~ Authority until the time of the filing of the lien and for any amount paid thereafter for ~~such~~ the medical assistance to the recipient.

D. The ~~Department~~ Authority shall not file a lien on the homestead of the recipient pursuant to subsection E of this section while the homestead is the lawful residence of:

1. The surviving spouse of the recipient;
2. A child related to the recipient by blood or marriage who is twenty (20) years of age or less;
3. An adult child related to the recipient by blood or marriage who is incapacitated as defined by the ~~Department~~ Authority; or
4. A brother or sister of the recipient who has an equity interest in the home and who was residing in the home for at least one (1) year immediately preceding the date the recipient was admitted to the nursing home and has resided there on a continuous basis since that time.

E. No lien for payment of medical assistance pursuant to this section shall be effective unless:

1. The ~~Department~~ Authority has provided notice to the recipient of the intent to file a lien against the homestead of the recipient and of the opportunity for a hearing on the matter; and

2. After the notice specified in paragraph 1 of this subsection has been given, a lien is filed for record against the legal description of the homestead in the office of the county clerk of the county in which the homestead of the recipient is located. The lien shall contain the following information:

- a. the name and address of the place of residence of the recipient, and
- b. the amount of the assistance paid at the time of the filing of the lien and the amount which is expected to accumulate on a monthly basis, and
- c. the date the recipient began receiving compensated inpatient care at a nursing home or nursing homes, and
- d. the legal description of the real property against which the lien will be recorded, and
- e. such other information as the ~~Department~~ Authority requires.

F. 1. After the lien has been filed pursuant to subsection E of this section, the Department of Human Services may enforce a lien only:

- a. after the death of the surviving spouse of the recipient;
- b. when there is no child related to the recipient by blood or marriage who is twenty (20) years of age or less residing in the homestead;
- c. when there is no adult child related to the recipient by blood or marriage who is incapacitated as defined

by the ~~Department~~ Authority residing in the homestead;
and

- d. when no brother or sister of the recipient is residing in the homestead, who has resided there for at least one (1) year immediately before the date of the recipient's admission to the facility or institution, and has resided there on a continuous basis since that time.

2. A lien filed pursuant to subsection E of this section shall remain on ~~said~~ the homestead:

- a. until the lien is satisfied; or
- b. until the value of the homestead is consumed by the lien at which time the ~~Department~~ Authority may force the sale of the ~~said~~ the homestead to satisfy the lien; or
- c. after transfer of title of the real property by conveyance, sale, succession, inheritance, or will.

3. The lien filed pursuant to subsection E of this section may be enforceable by the ~~Department~~ Authority before or after the death of the recipient.

4. The lien created by this section shall be treated as a mortgage and shall be released in accordance with the provisions as set forth in Section 15 of Title 46 of the Oklahoma Statutes.

5. The lien shall not sever a joint tenancy nor affect the right of survivorship. The lien shall be enforceable only to the extent of the ownership of the person receiving assistance as it existed at the time the recipient began receiving assistance.

G. The recipient, ~~his~~ the heirs of the recipient, personal representative, or assigns may discharge said lien at any time by paying the amount of the lien to the ~~Department~~ Authority.

H. At the end of the one (1) year limitation, the ~~Department~~ Authority shall exclude from consideration as a resource the value of the homestead of the recipient.

I. The payment of medical assistance on behalf of the recipient by the ~~Department~~ Authority and the signing of the notice pursuant to subsection B of this section shall constitute a waiver of the homestead rights of the recipient for the purposes of this section and Section 3 of Article XII of the Oklahoma Constitution.

J. 1. Pursuant to the provisions of this subsection, if the homestead is sold to enforce the lien authorized pursuant to the provisions of this section, an amount up to Six Thousand Dollars (\$6,000.00) from the proceeds of the sale of the homestead, less the value of any prepaid burial or insurance policies or designated accounts for funeral expenses already owned by the recipient, shall be set aside in an irrevocable trust fund to be used for the funeral expenses of the recipient.

2. Payment of ~~such~~ the funeral expenses from the proceeds of the sale of the homestead shall be made as follows:

a. If the proceeds exceed the amount of the lien, the payment of funeral expenses shall be first satisfied from any amount in excess of the lien amount. After the excess is exhausted, the remainder of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.

b. If the proceeds from the sale of the homestead do not exceed the amount of the lien, the payment of funeral expenses shall be satisfied from the lien amount prior to payment of any reimbursement to the ~~Department of Human Services~~ Authority.

K. As used in this section:

"Nursing home" means any home, establishment, or institution which offers or provides on a regular basis twenty-four-hour medical services, skilled nursing care, necessary special dietary service, and personal care and supervision to three or more of its residents who are not related to the owner or administrator of the facility.

L. If any provisions of this section shall be in conflict with any applicable federal statutes, and rules ~~and regulations~~, the federal statutes, and rules ~~and regulations~~ shall prevail and be controlling until such time as the federal statute, and rules ~~and regulations~~ shall be revised to conform to this ~~act~~ section.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 201, is amended to read as follows:

Section 201. The Department of ~~Public Welfare~~ Human Services is hereby authorized to procure group hospitalization and medical care insurance in any of the forms customarily issued by any company or companies, association or associations authorized to do business in the State of Oklahoma for all persons eligible to receive old age assistance under the provisions of subsection (a) of Section 4 of the Oklahoma Social Security Act, at a rate not to exceed the amount of the actual costs.

SECTION 9. AMENDATORY 56 O.S. 1991, Section 202, is amended to read as follows:

Section 202. A. Premiums on such insurance shall be paid from monies or funds appropriated for the payment of assistance to the needy aged persons qualifying for assistance under subsection ~~(a)~~ A of Section 164 of this title.

B. Monthly claims for such premiums, certified by the Department of Human Services, shall be filed with the Director of State Finance for audit and settlement prior to being paid on warrants by the State Treasurer.

SECTION 10. AMENDATORY 56 O.S. 1991, Section 203, is amended to read as follows:

Section 203. In the event the Department of ~~Public Welfare~~ Human Services, after a thorough study of the needs, determines that the services provided for in Section ~~±~~ 201 of this ~~act~~ title can be more satisfactorily and economically performed by providing for its own system of hospitalization and medical care, the Department of ~~Public Welfare~~ Human Services is hereby authorized to establish and maintain such a system within ~~said~~ the Department, under which ~~such~~ the services as provided in Section ~~±~~ 201 of this title can be offered.

SECTION 11. AMENDATORY 56 O.S. 1991, Section 204, as last amended by Section 1, Chapter 161, O.S.L. 1995 (56 O.S. Supp. 1995, Section 204), is amended to read as follows:

Section 204. A. Except as otherwise provided by law, the Oklahoma Health Care Authority shall be authorized and directed to establish a vendor drug program to provide any drugs that have been approved and designated as safe and effective by the federal Food and Drug Administration, and that are prescribed by a licensed medical, dental, podiatric or osteopathic practitioner for eligible recipients of assistance payments suffering from painful or life-endangering diseases or other persons who are suffering from a catastrophic illness.

B. The Authority shall, in accordance with federal law, not be obligated to cover any outpatient drugs of a manufacturer which has not entered into or which does not have in effect a rebate agreement with the Secretary of Health and Human Services on behalf of the state.

C. Such program shall, to the fullest extent possible, be established and maintained in conjunction with existing federal programs of prescribed drugs so as to earn the maximum of federal financial participation. Exempt from the provisions of this section are the following drugs or classes of drugs, or their medical uses:

1. Agents when used for anorexia or weight gain;

2. Agents when used to promote fertility;
3. Agents when used for cosmetic purposes or hair growth;
4. Agents when used for the symptomatic relief of coughs and colds;
5. Agents when used to promote smoking cessation;
6. Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations;
7. Nonprescription drugs;
8. Covered outpatient drugs when the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;
9. Drugs described in paragraph 3 of subsection c of Section 107 of the Drug Amendments of 1962, 21 U.S.C., Section 107(c)(3), and identical, similar or related drugs, within the meaning of paragraph 1 of subsection b of Section 310.6 of Title 21 of the Code of Federal Regulations;
10. Barbiturates; or
11. Benzodiazepines;

provided, however, the Authority shall be authorized to include specific drugs within these categories for reimbursement based upon specific medical need.

D. The Authority shall be authorized to establish a prospective drug utilization review program for the H2 Antagonists; provided that such limitations are in compliance with federal Food and Drug Administration Agency-approved product labeling.

SECTION 12. AMENDATORY 56 O.S. 1991, Section 204.1, is amended to read as follows:

Section 204.1 The Department of Human Services ~~is authorized and directed to~~ shall expand the vendor drug program in the categories of the Aged, Blind and Disabled, and to include those medically needy individuals suffering from catastrophic illnesses

who meet requirements for medical assistance, to be administered to the fullest extent possible in conjunction with and subject to existing federal programs so as to earn the maximum of federal financial participation.

SECTION 13. AMENDATORY 56 O.S. 1991, Section 206, is amended to read as follows:

Section 206. A. For the reduction of infant mortality and incidence of low birthweight, the Commission for Human Services ~~is hereby authorized and directed~~ shall, subject to availability of funds, ~~to~~ include as part of its Medicaid program an optional categorically needy group who meet the income and resource limitations and are:

1. Pregnant women;
2. Postpartum women, provided such group shall only be included in such program for the sixty-day period after parturition; and
3. Infants under one (1) year of age.

B. Eligibility criteria for the optional categorically needy program established by subsection A of this section shall be determined by rules ~~and regulations~~ promulgated by the Commission for Human Services subject to the following requirements:

1. a. The income level for eligibility shall be set at one hundred percent (100%) of the nonfarm income official poverty line, as defined by the Office of Management and Budget, and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.
- b. A woman described by subsection A of this section shall continue to be treated as eligible without regard to any change in income of the family of which she is a member until the end of the sixty-day period beginning on the last day of her pregnancy.

c. Family income shall be determined in accordance with the methodology employed under the state plan pursuant to Part A or E of Title IV of the federal Social Security Act. Costs incurred for medical care or for any other type of remedial care shall not be included in eligibility determination.

d. An infant described by subsection A of this section who is receiving inpatient services for which medical assistance is provided on the date the infant attains the maximum age with respect to which coverage is provided under the Medicaid State Plan for such individuals shall continue to be treated as eligible until the end of the stay for which inpatient services are furnished.

2. The resource level for eligibility for pregnant women and postpartum women may be eliminated or may be set by the Commission for Human Services, provided that it is no more restrictive than the level set under Title XVI of the uncodified federal Social Security Act.

3. The resource level for eligibility for an infant under one (1) year of age may be eliminated or may be set by the Commission, provided that it is no more restrictive than the resource level set for the Oklahoma aid to families with dependent children program.

C. The Commission for Human Services shall, by rules ~~and regulations~~, establish the amount, scope and duration of medical services provided to the optional categorically needy group established by subsection A of this section.

D. 1. Medical services to pregnant women pursuant to subsection A of this section shall include services and assistance for services related to pregnancy, delivery, and prenatal and postpartum care and to other conditions which may complicate

pregnancy. ~~Notwithstanding any other provision of this act,~~
~~reimbursement~~

2. Reimbursement of or payment for medical services provided through the optional categorically needy group established by subsection A of this section shall not include induced abortion, diagnostic procedures done for the purpose of inducing an abortion, or other procedures related to induced abortion unless the physician certifies in written form that the mother's life is in danger if the fetus is carried to term.

SECTION 14. AMENDATORY Section 2, Chapter 161, O.S.L. 1995 (56 O.S. Supp. 1995, Section 504.1), is amended to read as follows:

Section 504.1 A. There is hereby created within the Oklahoma Health Care Authority the Medicaid Drug Utilization Review (DUR) Board, which shall be responsible for the implementation of retrospective and prospective drug utilization programs under the direction of the Authority.

B. The DUR Board shall consist of ten (10) members appointed by the chief executive officer of the Authority as follows:

1. Four physicians, licensed and actively engaged in the practice of medicine or osteopathic medicine in this state, of which:

- a. three shall be physicians chosen from a list of not less than six names submitted by the Oklahoma State Medical Association, and
- b. one shall be a physician chosen from a list of not less than two names submitted by the Oklahoma Osteopathic Association;

2. Four ~~licensed~~ pharmacists licensed pursuant to the laws of this state actively engaged in the practice of pharmacy, chosen from a list of not less than six names submitted by the Oklahoma Pharmaceutical Association;

3. One person representing the lay community, who shall not be a physician or a pharmacist, but shall be a health care professional with recognized knowledge and expertise in at least one of the following:

- a. clinically appropriate prescribing of covered outpatient drugs,
- b. clinically appropriate dispensing and monitoring of covered outpatient drugs,
- c. drug use review, evaluation and intervention, and
- d. medical quality assurance; and

4. One person representing the pharmaceutical industry who is a resident of the State of Oklahoma, chosen from a list of not less than two names submitted by the Pharmaceutical Research and Manufacturers of America.

C. Members shall serve terms of three (3) years, except that one physician, one pharmacist and the lay representative shall each be initially appointed for two-year terms in order to stagger the terms. In making the appointments, the chief executive officer shall provide, to the extent possible, for geographic balance in the representation on the DUR Board. Members may be reappointed for a period not to exceed three three-year terms and one partial term. Vacancies on the Board shall be filled for the balance of the unexpired term from new lists submitted by the entity originally submitting the list for the position vacated.

D. The Board shall elect from among its members a chair and a vice-chair who shall serve one-year terms, provided they may succeed themselves.

E. The proceedings of all meetings of the Board shall comply with the provisions of the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes,~~ and shall be subject to the provisions of Articles I and II of the Administrative Procedures Act.

SECTION 15. AMENDATORY 56 O.S. 1991, Section 1003, as amended by Section 2, Chapter 306, O.S.L. 1995 (56 O.S. Supp. 1995, Section 1003), is amended to read as follows:

Section 1003. A. There is hereby created within the Office of the Attorney General, a Medicaid fraud control unit.

B. The Medicaid fraud control unit shall be the state entity to which all cases of suspected Medicaid fraud shall be referred by the Oklahoma Health Care Authority or its fiscal agents for the purposes of investigation, civil action, criminal action or referral to the district attorney. ~~Provided however, nothing~~ Nothing contained in the Oklahoma Medicaid Program Integrity Act shall prohibit the Oklahoma Health Care Authority from investigating or additionally referring to other proper law enforcement agencies cases of suspected Medicaid fraud.

C. 1. In carrying out ~~these~~ responsibilities specified by the Oklahoma Medicaid Program Integrity Act, the Attorney General shall have all the powers necessary to comply with federal laws and regulations relative to the operation of a Medicaid fraud unit, the power to cross-designate assistant United States attorneys as assistant attorneys general, the power to investigate cases of patient abuse, the power to issue or cause to be issued subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by the Oklahoma Medicaid Program Integrity Act and shall have all the powers of a district attorney.

2. a. Subpoenas ad testificandum or duces tecum issued pursuant to the Oklahoma Medicaid Program Integrity Act may be served by the Attorney General, any peace officer, or any competent person over eighteen (18)

years of age, and may require attendance or production at any place in this state.

b. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify, or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued or the county where served, at the election of the Attorney General, as if it was a contempt on that court.

D. The Attorney General shall have authority to collect all penalties, amounts of restitution, or interest accruing on any amount of restitution to be made and any penalties to be paid from and after default in the payment thereof levied pursuant to the provisions of the Oklahoma Medicaid Program Integrity Act. ~~However,~~ The provisions of this subsection is not in any way intended shall not be construed to affect the contempt power of any court.

SECTION 16. This act shall become effective November 1, 1996.

45-2-8352

KSM