

ENGROSSED HOUSE  
BILL NO. 1416

By: Boyd (Betty) of the  
House

and

Henry of the Senate

( public health and safety - Fairness In Managed Care Act -  
certification of managed care plans - codification -  
emergency )

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2525.2 of Title 63, unless there  
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Fairness In  
Managed Care Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2525.3 of Title 63, unless there  
is created a duplication in numbering, reads as follows:

The Legislature hereby finds and declares that:

1. Managed care plans have become a significant part of this  
state's health care delivery system. Managed care plans utilize  
various managed care techniques that include decisions regarding  
coverage and the appropriateness of health care. It is a vital  
state governmental function to ensure fairness in the delivery of  
managed care; and

2. This legislation requires the Oklahoma State Department of Health to establish standards for the certification of qualified managed care plans. Standards are required to ensure patient protection, physician and provider fairness and utilization reviews safeguards. Patient choice of physicians and other providers will be enhanced through an optional point of service plan which may be offered by qualified managed care plans.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2525.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Fairness in Managed Care Act:

1. "Qualified managed care plan" means a managed care plan that the Commissioner has certified as meeting the requirements of this act;

2. "Qualified utilization review program" means a utilization review program that meets the certification requirements of the Fairness In Managed Care Act;

3. "Managed care plan" means a plan operated by a managed care entity that provides for the financing and delivery of health care services to persons enrolled in such plan through:

- a. arrangements with selected providers to furnish health care services,
- b. standards for the selection of participating providers,
- c. organizational arrangements for ongoing quality assurance, utilization review programs, and dispute resolution, and
- d. financial incentives for persons enrolled in the plan to use the participating providers and procedures provided for by the plan;

4. "Managed care entity" includes a licensed insurance company, hospital or medical service plan, health maintenance organization, an employer or employee organization, or a managed care contractor;

5. "Managed care contractor" means a person that:

- a. establishes, operates or maintains a network of participating providers,
- b. conducts or arranges for utilization review activities, and
- c. contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan;

6. "Participating provider" means a physician as defined in Section 725.2 of Title 59 of the Oklahoma Statutes, hospital, pharmacy, laboratory, or other appropriately state-licensed or otherwise state-recognized provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient enrolled in a managed care plan;

7. "Out-of-network" or "point of service" plan is a product issued by a qualified managed care plan that provides additional coverage and/or access to services by a health care provider who is not a member of the plan's provider network;

8. "Provider network" means those providers who have entered into a contract or agreement with the plan under which such providers are obligated to provide items and services to eligible individuals enrolled in the plan;

9. "Emergency care" means emergency room screening and stabilization as needed for conditions that reasonably appear to constitute a life or limb threatening emergency, based on the presenting symptoms of the patient; and

10. "Urgent care" means the care necessary to treat those conditions that arise suddenly and require treatment to prevent scarring and minor disabilities including but not limited to skin lacerations, joint sprains, significant abrasions, or infections.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2525.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Board of Health shall establish a process for certification of managed care plans meeting the requirements of subsection A of Section 5 of this act and of utilization review programs meeting the requirements of subsection B of Section 5 of this act.

B. The State Board of Health shall promulgate rules identifying the procedures for the periodic review and recertification of qualified managed care plans and qualified utilization review programs.

C. The State Department of Health shall terminate the certification of a previously qualified managed care plan or a qualified utilization review program if the Commissioner determines that such plan or program no longer meets the applicable requirements for certification.

D. 1. An eligible organization as defined in Section 1876(b) of the Social Security Act shall be deemed to meet the requirements of Section 5 of this act for certification as a qualified managed care plan.

2. If the Commissioner finds that a national accreditation body establishes a requirement or requirements for accreditation of a managed care plan or utilization review program that are at least equivalent to the requirements established pursuant to Section 5 of this act, the Commissioner shall, to the extent appropriate, treat a managed care plan or a utilization review program thus accredited as meeting the requirements of Section 5 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2525.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate standards for the certification of qualified managed care plans that conduct business in this state, including standards whereby:

1. Prospective enrollees in health insurance plans must be provided information as to the terms and conditions of the plan so that they can make informed decisions about accepting a certain system of health care delivery. When the plan is described orally to enrollees it must be easily understandable and truthful, and objective terms must be used. All written plan descriptions must be in a readable and understandable format language. Specific items that must be included are:

- a. coverage provisions, benefits, and any exclusions by category of service, provider or physician, and if applicable, by specific service,
- b. any and all prior authorization or other utilization review requirements and any procedures that may lead the patient to be denied coverage for or not be provided a particular service,
- c. explanation of how plan limitations impact enrollees including information on enrollee financial responsibility for payment for coinsurance or other noncovered or out-of-plan services, and
- d. enrollee satisfaction statistics including, but not limited to, percent reenrollment and reasons for leaving plans;

2. Plans must demonstrate that they have adequate access to physicians and other providers, so that all covered health care services will be provided in a timely fashion;

3. Plans must meet financial requirements that are established to assure the ability to pay for covered services. An indemnity fund as set forth by the Commissioner of Health must be established to provide for plan failures even when a plan has met the reserve requirements;

4. All plans shall be required to establish a mechanism under which physicians participating in the plan provide input into the plan's medical policy including but not limited to coverage of new technology and procedures, utilization review criteria and procedures, quality and credentialing criteria, and medical management procedures; and

5. All plans shall be required to credential physicians within the plan.

a. Such a credentialing process shall begin prior to the execution of an agreement for services between the managed care plan and the physician.

b. Credentialing shall be based on objective standards of quality with input from physicians credentialed in the plan, and such standards shall be available to physician applicants and participating physicians.

When economic considerations are part of the decision, objective criteria must be used and must be available to physician applicants and participating physicians.

When graduate medical education is a consideration in a credentialing, equal recognition will be given to

training programs accredited by the Accrediting Council on Graduate Medical Education and by the American Osteopathic Association or Council on

Optometric Education. Each application shall be

reviewed by a credentialing committee of physicians.

The lack of board certification or board eligibility

cannot be the only criterion for denial of application.

- c. Plans shall be prohibited from discriminating against enrollees with expensive medical conditions by excluding practitioners with practices containing a substantial number of such patients.
- d. The physician applicant shall be provided with the reasons used if the application is denied or the contract not renewed.
- e. Plans shall not be allowed to include clauses in physician or other provider contracts that allow for the plan to terminate the contract without providing reasons if the physician requests such reasons.
- f. There shall be a due process appeal at the request of the physician from all adverse credentialing or termination of participation decisions.
- g. Prior to initiation of a proceeding leading to termination of a contract, if the physician desires, the physician shall be provided notice, an opportunity for discussion, and an opportunity to enter into and complete a corrective action plan where appropriate, except in cases where there is imminent harm to patient health or an action by a state medical board or other government agency that effectively impairs the physician's ability to practice medicine.
- h. Health plans, by contract, will not prohibit physicians from communicating with patients concerning medical care or medically appropriate treatment options, whether covered or not.

B. Qualified utilization review programs must comply with the following requirements:

1. Prior authorization is not required for emergency care, and patient or physician requests for prior authorization of a nonemergency service must be answered within five (5) business days. Qualified personnel must be available for same-day telephone responses to inquiries about medical necessity including certification of continued length of stay;

2. Emergency care required out of area does not require prior authorization. Follow-up care will be covered out of area as long as the care is necessitated by the emergency or urgent situation;

3. Plans must ensure that enrollees, in plans where preauthorization is a condition to coverage of a service, are required to sign medical information release consent forms upon enrollment for use where services requiring prior authorization are recommended or proposed by their physician, and plans are prohibited from disclosing to employers any medical information about an enrollee without that person's specific prior authorization. Preauthorization requests must be considered only by a physician licensed by the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners and subject to the jurisdiction of the Oklahoma courts;

4. When prior approval for a specific service or other specific covered item is obtained, it shall be considered approval for that purpose, and the specific service shall be considered covered unless there was fraud or incorrect information provided at the time such prior approval was obtained; and

5. Contested denials of service by the attending physician in cases where there are not medically agreed upon guidelines shall be evaluated only by physicians of the same or similar specialty or training as the attending physician who is contesting the denial.

C. 1. Rules shall first be established under this section by not later than twelve (12) months after the date of the enactment of

the Fairness In Managed Care Act. In developing rules under this section, the Commissioner of Health shall:

- a. review standards in use by national private accreditation organizations and the National Association of Insurance Commissioners,
- b. recognize, to the extent appropriate, differences in the organizational structure and operation of managed care plans, and
- c. establish procedures for the timely consideration of applications for certification by managed care plans and utilization review programs.

2. The Commissioner shall periodically review the standards established under this section and may revise the standards from time to time to assure that such standards continue to reflect appropriate policies and practices for the cost-effective and medically appropriate use of services within managed care plans.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2525.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each qualified managed care plan including such plans provided, offered or made available by voluntary health purchasing cooperatives, employers, associations, self-insurers, or any other private group that limits coverage for out-of-network services may offer to all eligible enrollees coverage for such services through a point of service plan.

B. A qualified managed care plan may charge an alternative premium for point of service coverage that takes into account the actuarial value of such coverage. Such additional charges may be paid by the enrollee rather than the sponsor.

C. Where a sponsor including but not limited to an employer, association, or private group intends to offer only an HMO plan to covered persons, a point of service option or its equivalent may

also be offered. This optional coverage for out-of-network care may be subject to an additional premium, and shall require that the out-of-state network care provider shall indemnify the plan for any harm or problems arising from such care.

D. A managed care entity can not require a participating provider to enroll in more than one of its managed care plans.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 12th day of March, 1997.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1997.

President of the Senate