STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1713 By: Benge of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to medical care for indigent persons; creating the Oklahoma Community Hospitals Public Trust Authorities Act; providing short title; defining terms; providing purpose; providing procedures; authorizing establishment of certain public trusts; requiring certain creation documents; specifying requirements for creators of public trusts; providing for contents; providing for public trust membership; specifying powers and duties; limiting certain actions; requiring certain approvals and filings; providing for amending public trust agreements; listing certain requirements; making certain public trusts governmental entities with certain duties; specifying powers and duties; requiring certain actions; providing for venue; requiring certain qualifications; providing for compensation; prohibiting certain interest; requiring certain compliance; requiring certain audits; authorizing bonds; providing for liability; providing certain limits; prohibiting certain liability; providing for termination; providing for construction of section; providing for interest; requiring certain reports; providing for requirements; creating the Medicaid Payment Reimbursement Fund; providing for contents, deposits and expenditures; providing procedures; providing for distribution of certain monies; requiring submission of waivers; amending 60 O.S. 2001, Section 176.1, which relates to public trusts; modifying certain requirements; providing for codification; and declaring an 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 3250.1 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 "Oklahoma Community Hospitals Public Trust Authorities Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Community Hospitals Public Trust Authorities Act:

1. "Community hospital public trust authority" or "public trust" means a community hospital public trust authority establishing a hospital district pursuant to the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act;

2. "Hospital" means a hospital as such term is defined by Section 1-701 of Title 63 of the Oklahoma Statutes and facilities within the definition of Section 2657 of Title 63 of the Oklahoma Statutes;

3. "Hospital district" means a designated geographical area established by a community hospital public trust authority; and

4. "Medically indigent person" means a person requiring medically necessary hospital or other health care services for the person or the dependents of the person, who has insufficient or no public or private third-party coverage, and whose personal resources are insufficient to provide for hospital or other health care services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Legislature finds that the delivery of health care services to the public including medically indigent persons will be enhanced through the establishment of community hospital public trust authorities and the creation of hospital districts pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act.

2. The purpose of the Oklahoma Community Hospitals Public Trust Authorities Act is to provide maximum utilization and efficient administration in delivering health care services by hospital districts to the public including medically indigent persons, and to provide for and supplemental Medicaid programs.

B. 1. A hospital or two or more hospitals located within a county or adjacent counties or located within a county or adjacent counties and a municipality may jointly create a public trust for the purposes of:

a. establishing a hospital district,

b. accessing and providing funding for coordination of the delivery of health care to the public including but not limited to programs that contribute to serving the medically indigent,

c. improving access to health care by the public,

d. coordinating the development of new health services in the hospital district,

e. considering various alternatives for integrating the services of the health care delivery system in the hospital district, and

f. providing for and supplementing Medicaid programs.

2. A hospital participating in the creation of a public trust must:

a. expend at least Fifty Thousand Dollars ($50,000.00) annually providing care for medically indigent persons, and

b. have a system of inpatient and/or outpatient health care, trauma care, or emergency care services that is not limited to a specific modality of health care.

3. The boundaries of a community hospital public trust authority should be coextensive with the boundaries of a county or a group of member counties.

4. The county or counties or the county or counties and municipality in which a hospital district is established must approve and shall be the beneficiary of the public trust pursuant to the provisions of Sections 176 and 177 of Title 60 of the Oklahoma Statutes.

C. The instrument creating the public trust shall provide at a minimum:

1. The reasons for organizing and constituting a hospital district, including a statement that the community hospital public trust authority will comply with all applicable provisions of Sections 176 through 180.3 of Title 60 of the Oklahoma Statutes and the Oklahoma Community Hospitals Public Trust Authorities Act;

2. A statement that the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities authorized by the written instrument creating the public trust;

3. The names and corporate headquarters of each hospital located in the proposed hospital district;

4. The general patient loads of each hospital within the proposed hospital district and the anticipated number of medically indigent persons for whom medical services will be provided;

5. A concise description of the geographic boundaries to be embraced within the proposed hospital district;

6. A statement that the proposed hospital district is embracing only those lands within the proposed boundaries specified by paragraph 5 of this subsection which can reasonably and economically be served in the foreseeable future;

7. Assurance that all hospitals located within the hospital district which meet the eligibility criteria can participate in the public trust;

8. For the appointment, succession, powers, duties, terms and manner of removal of trustees;

9. For the appointment of at least five trustees as follows:

a. the chief executive officers of the hospitals participating in the community hospital public trust authority and may include the chief executive officers of hospitals located within the hospital district,

b. (1) one county commissioner or their designee from each beneficiary county which the hospital district embraces, appointed by the commissioners of each such county, and

(2) the chief administrative officer or his or her designee from a municipality in which the hospital district is situated, if such municipality is the beneficiary of the public trust, and

c. one member appointed by the Governor who has no direct affiliation with any hospital participating in the community hospital public trust authority; provided, that if pursuant to the provisions of this paragraph the Board will have less than five members, the Governor shall appoint additional members; and

10. The time and place of the regular meetings and the manner in which special meetings may be called. A community hospital public trust authority shall keep a complete record of all its proceedings.

D. As a condition precedent, each community hospital public trust authority must receive approval from the Attorney General that the public trust is in the proper form.

E. A certified copy of the public trust agreement must be filed with the Secretary of State and with the court clerk of each beneficiary county and municipality.

F. Each public trust established pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act shall not be

amended without a two-thirds (2/3) vote of approval of the trustees of such trust.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

Hospitals located within a hospital district:

1. Shall be licensed by the State Department of Health and shall meet the standards, requirements and essentials of the Joint Commission of Accreditation of Health Care Organizations or the American Osteopathic Association or meet Medicare certification by the Center for Medicare and Medicaid Services. Provided, the State Commissioner of Health may waive any such standards, requirements and essentials as the Commissioner deems necessary; and

2. May provide services and receive payments therefor pursuant to Titles XVIII and XIX of the federal Social Security Act, and may participate in other federal medical programs.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each member of a community hospital public trust authority shall be a resident of the state and a registered voter.

B. The members of the community hospital public trust authority shall serve without compensation but may be reimbursed for all reasonable and actual and necessary travel expenses incurred in the performance of their duties in accordance with the provisions of the State Travel Reimbursement Act.

C. Each officer handling funds of the public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified by the Oklahoma Central Purchasing Act. The cost of the bond shall be paid from funds of the community hospital public trust authority.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Each community hospital public trust authority shall be a governmental entity and a body politic and corporate with powers of government and with authority to establish and operate a hospital district and to exercise the rights, privileges and functions specified by the Oklahoma Community Hospitals Public Trust Authorities Act and Sections 176 through 180.3 of Title 60 of the Oklahoma Statutes.

2. Nothing in this subsection shall be construed as authorizing any hospital district to levy or collect taxes or to pledge the credit of the state or any subdivision of this state.

B. Each community hospital public trust authority shall have the power to:

1. Adopt bylaws and promulgate rules for the regulation of its affairs and the conduct of its business;

2. Adopt an official seal;

3. Act as a vehicle for securing funds for education, indigent medical care, trauma, emergency and other health care services;

4. Coordinate the delivery and efficiency of health care services within the hospital district established pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act;

5. Sue and be sued;

6. Make and enter into all contracts necessary or incidental to the performance of its duties and the execution of its powers pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act;

7. Purchase or lease equipment, furniture, materials and supplies, and incur such other expenses as may be necessary to discharge its duties and responsibilities or to implement the

provisions of the Oklahoma Community Hospitals Public Trust Authorities Act;

8. Accept grants and other funds from agencies of this state and the United States of America, from other government entities, or from any corporation or agency created or designed by the United States or other government entity, and to enter into such agreements as the United States or such corporation or agency may require;

9. Accept grants and gifts from private individuals and organizations;

10. Accept and make intergovernmental transfers authorized by state law. A hospital district may make intergovernmental transfers to the Oklahoma Health Care Authority to the extent permitted by state or federal law;

11. Issue bonds and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then-owned or after-acquired real or personal property, assets, franchises, or revenues;

12. Become a member of other cooperatives, joint ventures, partnerships, corporations or other legal entities or to own stock therein;

13. Conduct its business and exercise its powers within or without this state;

14. Assess fees, levies, assessment, or charges upon and enforce the payment of such fees, levies, assessments or charges against any hospital located within the geographical boundaries of its hospital district and to remit such monies to the Oklahoma Health Care Authority for purposes of meeting the state's share for the supplemental Medicaid programs to the extent and manner authorized by federal law. Fees, levies, assessments or charges may be enforced by a community hospital public trust authority through

civil action brought in the district court in the county in which the community hospital public trust authority is located;

15. Appoint officers, agents and employees, prescribe their duties and fix their compensation;

16. Engage in long-term planning for the operation and management of a community hospital public trust authority;

17. Establish petty cash funds as needed and provide for appropriate accounting procedures and controls; and

18. Do all other things necessary and proper to implement the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act.

C. No director or officer of a community hospital public trust authority shall vote on any issue before the authority in which such director or officer has a direct interest in any contract or for any work by or for the community hospital public trust authority.

D. The trustees of each community hospital public trust authority created pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the community hospital public trust authority. All bylaws and amendments thereto of a community hospital public trust authority shall be submitted in writing to each beneficiary of the community hospital public trust authority, the Governor of this state and to the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate.

E. No appropriation of state funds shall be made to any community hospital public trust authority. Each authority may receive the funds it may be entitled to receive pursuant to the Medicaid program as administered by the Oklahoma Health Care Authority.

F. Each community hospital public trust authority shall comply with:

1. The annual budget provisions of the state requiring a balanced budget. A copy of the budget shall be submitted annually to the Governor and to each beneficiary of the community hospital public trust authority;

2. The Public Competitive Bidding Act of 1974;

3. The Oklahoma Open Records Act;

4. The Oklahoma Open Meeting Act; and

5. The provisions of Sections 176 through 180.3 of Title 60 of the Oklahoma Statutes and the Community Hospitals Public Trust Authorities Act.

G. 1. Each community hospital public trust authority shall provide for complete financial audits on all accounts of the community hospital public trust authority and authorize periodic audits by an independent external auditing agency. Such audits shall be performed annually in a format approved by the State Auditor and Inspector. The audits shall be made in accordance with generally accepted auditing standards and government auditing standards. Financial statements shall be prepared in accordance with generally accepted accounting principles. Such audits shall be submitted to the State Auditor and Inspector and to the beneficiary of the community hospital public trust authority for review.

2. In addition to the audits specified by this subsection, the State Auditor and Inspector, whenever the State Auditor and Inspector deems it appropriate, and at least once each five (5) years, or upon receipt of a request to do so from the beneficiary of a community hospital public trust authority, the Governor, the Attorney General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives or the community hospital public trust authority shall conduct a special audit of the authority. Such audit shall be paid from the funds of the community hospital public trust authority.

H. 1. Except for acts of dishonesty, no trustee of a community hospital public trust authority shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property.

2. A community hospital public trust authority established pursuant to the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act shall be covered by The Governmental Tort Claims Act.

3. Officers, employees, agents, independent contractors and employees of independent contractors of hospitals participating in the hospital district shall not be covered by The Governmental Tort Claims Act. The provisions of this paragraph shall not affect the immunity provided to hospitals or to officers and employees of hospitals covered by Section 152 of Title 51 of the Oklahoma Statutes.

4. In no event shall the state, county or municipality be construed to be or become liable for any act, omission or obligation of a trustee or of the community hospital public trust authority.

I. A community hospital public trust authority may be terminated by agreement of the trustees of this state; provided, that such community hospital public trust authority shall not be terminated while there exists any outstanding contractual obligations chargeable against the trust property.

J. 1. Compliance with the provisions of Sections 176 through 180.3 of Title 60 of the Oklahoma Statutes and the Oklahoma Community Hospitals Public Trust Authorities Act by a community hospital public trust authority shall be and constitute a binding contract with the county or counties and municipality beneficiaries for the acceptance of the beneficial interest in the trust property by the designated beneficiary and the application of the proceeds of

the trust property and its operation for the purposes, and in accordance with the stipulations, of the public trust instrument.

2. Each community hospital public trust authority shall be the regularly constituted authority of the beneficiary for the performance of the functions for which the community hospital public trust authority shall have been created.

K. 1. A community hospital public trust authority shall have the power and duty to make and issue bonds and to pledge revenues of the community hospital public trust authority subject to the Oklahoma Bond Oversight and Reform Act. Nothing in the Oklahoma Community Hospitals Public Trust Authorities Act shall authorize the issuance of any bonds by a community hospital public trust authority payable other than from revenues of the community hospital public trust authority.

2. Community hospital public trust authority revenue bonds issued under the provisions of this subsection shall not at any time be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any political subdivision, but such bonds shall be payable solely from the funds herein provided.

3. Such revenue bonds shall contain on the face thereof a statement to the effect that neither the state nor the community hospital public trust authority shall be obligated to pay the same or the interest thereon except from the revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged, or may hereafter be pledged, to the payment of the principal of or the interest on such bonds.

4. The interest income derived from any obligation issued by a community hospital public trust authority shall be exempt from the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

Each community hospital public trust authority shall submit an annual report to each beneficiary of the authority, the Governor, the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives. Such report shall be submitted in accordance with the requirements for financial statement audits in Section 212A of Title 74 of the Oklahoma Statutes, and shall include an account of the operations and actions of the authority and an accounting of all revenue received and disbursed by the authority for the previous fiscal year.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Medicaid Payment Reimbursement Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

a. all monies received by the Oklahoma Health Care Authority pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act and otherwise specified or authorized by law including but not limited to monies received by the Authority from assessments levied on hospitals included in a hospital district, and

b. interest attributable to investment of money in the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be expended by the Authority for services to

Medicaid beneficiaries residing within or receiving services within the boundaries of the community hospitals public trust.

B. Any monies received from any assessment levied on hospitals within a hospital district for purposes of providing the state matching funds for supplemental Medicaid programs pursuant to the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act shall be submitted to the Oklahoma Health Care Authority for deposit into the Medicaid Payment Reimbursement Fund.

C. The Oklahoma Health Care Authority shall transfer to the Medicaid Payment Reimbursement Fund any payment received by the Oklahoma Health Care Authority pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act and rules promulgated by the Oklahoma Health Care Authority pursuant to federal law and the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act.

D. 1. The Oklahoma Health Care Authority shall make Medicaid reimbursement payments to each community public trust authority to the extent permitted by federal law and rules promulgated by the Oklahoma Health Care Authority pursuant to federal law and the provisions of the Oklahoma Community Hospitals Public Trust Authorities Act.

2. Each community hospital public trust authority established shall be limited to receipt of supplemental Medicaid program funds for its designated area.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3250.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority Board shall submit an application for any waiver necessary to authorize Medicaid supplements to hospital districts to the extent permitted by federal law and pursuant to the Oklahoma Community Hospitals Public Trust Authorities Act.

SECTION 10. AMENDATORY 60 O.S. 2001, Section 176.1, is amended to read as follows:

Section 176.1 A. Except as provided in subsection F of this section and if the conditions set out in subsection B of this section are satisfied in compliance with Section 176 et seq. of this title, a public trust duly created in accordance with the provisions of Section 176 et seq. of this title shall be presumed for all purposes of Oklahoma law to:

1. Exist for the public benefit;

2. Exist as a legal entity separate and distinct from the settlor and from the governmental entity that is its beneficiary; and

3. Act on behalf and in the furtherance of a public function or functions for which it is created even though facilities financed by the public trust or in which the public trust has an ownership interest may be operated by private persons or entities pursuant to contract.

B. The conditions to be satisfied as required in subsection A of this section are as follows:

1. The trustees of the public trust are appointed by the governing body of the beneficiary or beneficiaries <u>or as otherwise provided by law</u>. This paragraph shall not apply to public trusts in existence as of July 1, 1992;

2. The public trust delivers to the governing body of the beneficiaries, or in the case of the state as beneficiary, to the State Auditor and Inspector, annual audits as provided in Section 180.1 of this title;

3. With respect to city or county beneficiary public trusts, the function or enterprise in which the public trust is engaged is or could be authorized by state law to be performed by the beneficiary; and

4. With respect to city or county beneficiary public trusts, all indebtedness incurred by the public trust is approved by the governing body of the beneficiary as provided in subsection ~~(e)~~ E of Section 176 of this title.

C. The existence of a contract for the operation or management of the facility financed by the public trust is hereby declared to be in furtherance of the public purpose of the public trust and shall not affect the validity of such public trust.

D. Except where the provisions of the trust indenture or of Section 176 et seq. of this title, or of any other law written specifically to govern the affairs of public trusts, expressly requires otherwise, the affairs of the public trust shall be separate and independent from the affairs of the beneficiary in all matters or activities authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions; provided, that either the public trust or the beneficiary may make payment of money to the other unless prohibited by the written instrument creating such public trust or by existing state law.

E. For all purposes of Oklahoma law, the existence and validity of any public trust shall be determined and established solely by the provisions of the written instrument creating such public trust, and by the provisions of Section 176 et seq. of this title and of any other law written specifically to create a public trust. Actions taken or omitted by the trustees of a public trust shall not affect the existence or validity of the entity as a public trust but shall be subject to subsequent review or ratification by said trustees or to correction by the district court in a proper proceeding.

F. Nothing in this section shall affect coverage of any entity under The Governmental Tort Claims Act.

SECTION 11. 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.

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