

ENGROSSED HOUSE
BILL NO. 1017

By: Leist, Harrison, McClain,
Dorman and McIntyre of the
House

and

Robinson of the Senate

An Act relating to poor persons; amending 56 O.S. 2001, Section 222, which relates to certain audits; changing certain responsibility from Department of Public Welfare to the Oklahoma Health Care Authority; amending 56 O.S. 2001, Section 1010.13, which relates to persons authorized to enroll beneficiaries of Medicaid program; clarifying cite; amending 56 O.S. 2001, Section 1025.2, as amended by Section 2, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2002, Section 1025.2), which relates to community services and Medicaid personal care providers; authorizing Executive Director of Authority to make certain waivers and receive certain information; requiring Department of Human Services to disclose certain information to the State Medicaid Agency; authorizing the Oklahoma Health Care Authority to assess a quality assurance assessment fee on certain health maintenance organizations; providing percentage; providing procedures; providing certain dates for assessment; providing for calculations; limiting certain assessments; specifying uses for assessment; providing conditions which would make assessment null and void; providing for penalties; providing for deposits and expenditures; defining terms; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2001, Section 222, is amended to read as follows:

Section 222. ~~The auditors~~ Auditors from the ~~Department of Public Welfare~~ Oklahoma Health Care Authority under the direction of the ~~Oklahoma Public Welfare Commission and the Director of Public Welfare~~ are Chief Executive Officer of the Authority shall be authorized and empowered to conduct an audit of the financial records itemized in ~~the~~ a hospital's reimbursable per diem cost records in order to determine whether or not the certified per diem

cost is sustained by the detailed financial records of such hospital as to such per diem costs.

SECTION 2. AMENDATORY 56 O.S. 2001, Section 1010.13, is amended to read as follows:

Section 1010.13 A Medicaid beneficiary, including, but not limited to, a beneficiary currently enrolled in a fully or partially capitated managed care delivery model pursuant to the provisions of the Oklahoma Medicaid Healthcare Options System, who is not medically or legally competent may have another person act on the beneficiary's behalf for purposes of enrollment or reenrollment into any of the managed care delivery models. A person so authorized shall be a member of one of the following classes of persons:

1. An authorized representative pursuant to the provisions of 20 U. S. Code of Federal Regulations, ~~Sections 404.1075 through 404.1707~~ Section 404.2021;

2. The beneficiary's spouse;

3. The guardian of the person appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

4. The attorney-in-fact for health care decisions acting pursuant to the provisions of the Uniform Durable Power of Attorney Act or the health care proxy acting pursuant to the provisions of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act;

5. A child of the beneficiary who is at least eighteen (18) years of age;

6. A parent of the beneficiary; or

7. A brother or sister of the beneficiary who is at least eighteen (18) years of age.

SECTION 3. AMENDATORY 56 O.S. 2001, Section 1025.2, as amended by Section 2, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2002, Section 1025.2), is amended to read as follows:

Section 1025.2 A. 1. Except as otherwise provided by subsection C of this section, before any community services provider or Medicaid personal care services provider makes an offer to employ or to contract with a community services worker applicant or a Medicaid personal care assistant applicant to provide health-related services, training, or supportive assistance to a person with a developmental disability, or personal care services to a person who receives the services of the state Medicaid program personal care program, the community services provider or Medicaid personal care services provider shall:

- a. provide, prior to a check with the Department of Human Services, for a criminal history records search to be made on the community services worker applicant or Medicaid personal care assistant or contractor pursuant to the provisions of this section, and
- b. check with the Department of Human Services to determine if the name of the applicant seeking employment or contract has been entered on the community services worker registry created pursuant to Section 1025.3 of this title. Prior to a decision by the Department to enter the name of a community services worker or a Medicaid personal care assistant on such registry, the Department shall allow for notice and opportunity for due process for such community services worker or Medicaid personal care assistant against whom a final investigative finding by the Department of Human Services or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual has been made. The Department of Human Services is authorized to charge a community services provider or a Medicaid personal care assistant a reasonable fee for access to the

registry. If the name of the applicant seeking employment or a contract with the community services provider or Medicaid personal care assistant is listed on the registry as having a final Department of Human Services investigative finding or a finding by an Administrative Law Judge pursuant to the requirements of Section 1025.3 of this title, and the Department has allowed for notice and opportunity for due process for such applicant, the provider shall not hire the applicant.

2. If the Department of Human Services contracts directly with a Medicaid personal care assistant, the Department shall follow the screening procedures required by this section for Medicaid personal care services providers.

3. A community services provider is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request pursuant to the provisions of this section.

4. A Medicaid personal care services provider shall request the Bureau to conduct a criminal background check on Medicaid personal care assistants pursuant to the provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes.

5. The community services provider shall request the Bureau to conduct a criminal history records search on a community services worker desiring employment or a contract with the provider and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The community services provider shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. Such fee shall be determined by the Oklahoma State Bureau of Investigation.

6. The requirement of a criminal history records search shall not apply to an offer of employment made to:

- a. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,
- b. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,
- c. a physical therapist registered pursuant to the Physical Therapy Practice Act,
- d. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,
- e. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,
- f. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act,
- g. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act, or
- h. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act.

B. At the request of the community services provider, the Bureau shall conduct a criminal history records search on any applicant desiring employment or a contract pursuant to subsection A of this section or any worker employed by the community services provider, including any of the workers specified in paragraph 6 of subsection A of this section, at any time during the period of employment of such worker with the provider.

C. A community services provider may make an offer of temporary employment to a community services worker pending the results of such criminal history records search and the registry review on the applicant. The community services provider in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the

applicant accepts temporary employment. Temporary employment shall not exceed thirty (30) days. The community services provider shall not hire or contract with an applicant as a community services worker on a permanent basis until the results of the criminal history records search and the registry review are received.

D. Within five (5) days of receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting community services provider.

E. Every community services provider and Medicaid personal care services provider shall inform each applicant for employment, or each prospective contract worker, as applicable, that the community services provider or Medicaid personal care services provider is required to obtain a criminal history records search and a registry review before making an offer of permanent employment or a contract with the community services worker or Medicaid personal care assistant or applicant described in subsection A of this section.

F. 1. If the results of any criminal history records search from any jurisdiction reveals that the subject worker or applicant has been convicted, or pled guilty or nolo contendere to a felony or misdemeanor assault and battery, the employer shall not hire or contract with the applicant, but shall immediately terminate the community services worker's employment, contract, or volunteer arrangement, subject to the provisions of paragraph 2 of this subsection.

2. The community services provider may request, in writing, a waiver of the provisions of paragraph 1 of this subsection from the Director of the Department of Human Services, or a designee of the Director, ~~and such provisions may be waived in writing by the Director of the Department of Human Services or a designee of the Director.~~ The Director or a designee of the Director may waive the provisions based upon standards promulgated by the Commission for

Human Services after concurrence by the Chief Executive Officer of the Oklahoma Health Care Authority as the State Medicaid Agency. No waiver shall be granted for offenses resulting in a felony conviction or plea of guilty or nolo contendere to a felony that occurred less than five (5) calendar years prior to the date of request. In no case shall a waiver be granted for employment of a community services worker who has been convicted of, or pled guilty or nolo contendere to, a felony count of aggravated assault and battery, homicide, murder, attempted murder, rape, incest, sodomy, or abuse, neglect, or financial exploitation of any person entrusted to the worker's care.

G. All criminal history records received by the community services provider or Medicaid personal care services provider are for the exclusive use of the Department of Human Services, the Oklahoma Health Care Authority and the community services provider or Medicaid personal care services provider which requested the information. Except as otherwise provided by this chapter or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

H. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

I. As part of any inspections required by law, the Department of Human Services shall review the employment files of the community services provider or Medicaid personal care services provider required to conduct a criminal history records search to ensure such provider is in compliance with the provisions of this section.

J. The Department of Human Services shall disclose all registry information, all criminal records gathered and any inspections conducted as a result of this section to the State Medicaid Agency upon the request of the State Medicaid Agency.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2003 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Health Care Authority shall assess a quality assurance assessment fee upon each health maintenance organization that has a Medicaid managed care contract awarded by the state and administered by the Oklahoma Health Care Authority. The quality assurance assessment fee shall equal six percent (6%) of all annual non-Medicare premiums collected by a health maintenance organization.

2. The quality assurance assessment fee shall only be assessed on a health maintenance organization that has in effect a Medicaid managed care contract awarded by the state and administered by the Oklahoma Health Care Authority at the time of the assessment. A Medicaid managed care organization shall have thirty (30) days after the effective date of this act to determine if such organization will terminate its contract with the Oklahoma Health Care Authority. If a Medicaid managed care organization decides to terminate its contract with the Oklahoma Health Care Authority during the thirty-day period such an organization shall not be assessed any quality assurance assessment fee. If a Medicaid managed care organization terminates its contract with the Oklahoma Health Care Authority prior to the collection of a fee, the most current quarterly fee shall not be assessed or collected for the quarter in which the organization terminated its contract.

B. 1. The quality assurance assessment fee shall be assessed on all annual non-Medicare premiums collected by each health maintenance organization described in subsection A of this section based on the health maintenance organization's filings with the Oklahoma Insurance Commissioner pursuant to Section 629 of Title 36 of the Oklahoma Statutes. The quality assurance assessment fee

shall be assessed after April 1, June 15, September 15, and December 15 of each year.

2. Except as otherwise provided by law, the quality assurance assessment fee shall be payable to the Oklahoma Health Care Authority on a quarterly basis. Each payment shall be due sixty (60) days after the filings of the estimates of premiums pursuant to Section 629 of Title 36 of the Oklahoma Statutes.

3. If a health maintenance organization does not have non-Medicare premium revenue listed in a filing under Section 629 of Title 36 of the Oklahoma Statutes, the assessment shall be based on an estimate by the Oklahoma Health Care Authority of the health maintenance organization's annual non-Medicare premiums, assessed quarterly, and shall be payable upon receipt.

C. The quality assurance assessment fee collected pursuant to subsection A of this section and all federal matching funds attributed to the fee may be used by the Authority for the following purposes, including but not limited to:

1. The reinstatement of Medicaid service reductions made by the Oklahoma Health Care Authority from January 1, 2001, to January 1, 2003;

2. The restoration of Medicaid eligibility reductions promulgated by the Oklahoma Health Care Authority prior to January 1, 2003; and

3. The payment of actuarial sound rates, as determined by an independent qualified actuary, based on the benefit structure included in the SoonerCare Plus program.

D. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to the Oklahoma Medicaid program, for purposes of matching expenditures using the Medicaid managed care organization quality assurance assessment fee, at the approved federal medical assistance percentage for the applicable fiscal year, the Medicaid managed care

organization quality assurance assessment fee shall be null and void as of the effective date of the invalidation.

E. If a health maintenance organization fails to pay the quality assurance assessment fee required under subsection A of this section, the Oklahoma Health Care Authority may assess the health maintenance organization a penalty of five percent (5%) of the assessment for each month that the assessment and penalty are not paid up to a maximum of fifty percent (50%) of the assessment. Such penalties may be recouped from Medicaid managed care organization payments made by the Oklahoma Health Care Authority.

F. The Oklahoma Health Care Authority shall deposit the revenue collected through the quality assurance assessment fee in the Medicaid revolving fund established by Section 5016 of Title 63 of the Oklahoma Statutes.

G. As used in this section:

1. "Medicaid" means Title XIX of the Social Security Act, 42 U.S.C., Section 1396 et seq.;

2. "Medicare" means Title XVIII of the Social Security Act 42 U.S.C, Section 1395 et seq.;

3. "Premium" shall mean the term described for purposes of calculating the Oklahoma premium tax under Section 624 of Title 36 of the Oklahoma Statutes; and

4. "Medicaid managed care organization" means the term as defined in 42 U.S.C., Section 1396b(m).

SECTION 5. 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 3rd day of March, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2003.

Presiding Officer of the Senate