

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2108:

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AS INTRODUCED

An Act relating to public health and safety; amending 56 O.S. 2001, Section 230.72, which relates to Medicaid assistance; clarifying scope of law; amending 56 O.S. 2001, Section 2002, as amended by Section 17, Chapter 22, O.S.L. 2002 (56 O.S. Supp. 2003, Section 2002), which relates to nursing facilities quality of care fee; prohibiting increase of fee unless authorized; amending 63 O.S. 2001, Section 5009, as amended by Section 10, Chapter 464, O.S.L. 2003 (63 O.S. Supp. 2003, Section 5009), which relates to administration of Oklahoma Medicaid Program; deleting certain financial incentives; repealing 56 O.S. 2001, Sections 2001 and 2003, as amended by Section 4, Chapter 2, O.S.L. 2003 (56 O.S. Supp. 2003, Section 2003), which relate to service fees for intermediate care facilities and health maintenance organizations; repealing 63 O.S. 2001, Sections 5014, 5019 and 5021, which relate to the Oklahoma Health Care Authority Board and the Oklahoma Health Care Authority Risk Control Program; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2001, Section 230.72, is amended to read as follows:

Section 230.72 The Department of Human Services and the Oklahoma Health Care Authority shall jointly establish eligibility criteria which ensure that recipients of assistance pursuant to the federal Temporary Assistance to Needy Families Program (TANF), who become employed or who are at risk of losing Medicaid because of earned income disregards or other excluded resources pursuant to the Statewide Temporary Assistance Responsibility System (STARS), will

continue to receive Medicaid assistance as otherwise specified by state or federal law.

SECTION 2. AMENDATORY 56 O.S. 2001, Section 2002, as amended by Section 17, Chapter 22, O.S.L. 2002 (56 O.S. Supp. 2003, Section 2002), is amended to read as follows:

Section 2002. A. For the purpose of providing quality care enhancements, the Oklahoma Health Care Authority is authorized to and shall assess a Nursing Facilities Quality of Care Fee pursuant to this section upon each nursing facility licensed in this state. Quality of care enhancements include, but are not limited to, the purposes specified in this section.

B. As a basis for determining the Nursing Facilities Quality of Care Fee assessed upon each licensed nursing facility, the Oklahoma Health Care Authority shall calculate a uniform per-patient day rate. The rate shall be calculated by dividing six percent (6%) of the total annual patient gross receipts of all licensed nursing facilities in this state by the total number of patient days for all licensed nursing facilities in this state. The result shall be the per-patient day rate. Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee shall not be increased unless specifically authorized by the Legislature.

C. The Nursing Facilities Quality of Care Fee owed by a licensed nursing facility shall be calculated by the Oklahoma Health Care Authority by adding the daily patient census of a licensed nursing facility, as reported by the facility for each day of the month, and by multiplying the ensuing figure by the per-patient day rate determined pursuant to the provisions of subsection B of this section.

D. Each licensed nursing facility which is assessed the Nursing Facilities Quality of Care Fee shall be required to file a report on a monthly basis with the Oklahoma Health Care Authority detailing

the daily patient census and patient gross receipts at such time and in such manner as required by the Oklahoma Health Care Authority.

E. 1. The Nursing Facilities Quality of Care Fee for a licensed nursing facility for the period beginning October 1, 2000, shall be determined using the daily patient census and annual patient gross receipts figures reported to the Oklahoma Health Care Authority for the calendar year 1999 upon forms supplied by the Authority.

2. The Nursing Facilities Quality of Care Fee for the fiscal year beginning July 1, 2001, and each fiscal year thereafter shall be determined by:

- a. using the daily patient census and patient gross receipts reports received by the Authority covering the six-month period October 1 through March 31 of the prior fiscal year, and
- b. annualizing those figures.

For the 2005 fiscal year and each fiscal year thereafter, the annualization of the Nursing Facilities Quality of Care Fee specified in this paragraph shall be subject to the limitation in subsection B of this section.

F. The payment of the Nursing Facilities Quality of Care Fee by licensed nursing facilities shall be an allowable cost for Medicaid reimbursement purposes.

G. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Nursing Facility Quality of Care 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 Authority pursuant to this section and otherwise specified or authorized by law,

- b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and
- c. 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 budgeted and expended by the Authority for:

- a. reimbursement of the additional costs paid to Medicaid-certified nursing facilities for purposes specified by Sections 1-1925.2, 5022.1 and 5022.2 of Title 63 of the Oklahoma Statutes,
- b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),
- c. nonemergency transportation services for Medicaid-eligible nursing home clients,
- d. eyeglass and denture services for Medicaid-eligible nursing home clients,
- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,
- h. ~~funds to conduct a study of nursing facility reimbursement methodology,~~

~~i.~~ costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,

~~j.~~ i. durable medical equipment and supplies services for Medicaid-eligible elderly adults, and

~~k.~~ j. personal needs allowance increases for residents of nursing homes and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

4. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

5. The fund and the programs specified in this section funded by revenues collected from the Nursing Facilities Quality of Care Fee pursuant to this section are exempt from budgetary cuts, reductions, or eliminations ~~caused by the lack of general revenue funds.~~

6. The Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR) shall not exceed the net Medicaid rate increase for nursing facilities including, but not limited to, the Medicaid rate increase for which Medicaid-certified nursing facilities are eligible due to the Nursing Facilities Quality of Care Fee less the portion of that increase attributable to treating the Nursing Facilities Quality of Care Fee as an allowable cost.

7. The reimbursement rate for nursing facilities shall be made in accordance with Oklahoma's Medicaid reimbursement rate methodology and the provisions of this section.

8. No nursing facility shall be guaranteed, expressly or otherwise, that any additional costs reimbursed to the facility will

equal or exceed the amount of the Nursing Facilities Quality of Care Fee paid by the nursing facility.

H. 1. 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 from the Nursing Facility Quality of Care Fund at the approved federal medical assistance percentage for the applicable fiscal year, the Nursing Facilities Quality of Care Fee shall be null and void as of the date of the nonavailability of such federal funding, through and during any period of nonavailability.

2. In the event of an invalidation of this section by any court of last resort under circumstances not covered in subsection I of this section, the Nursing Facilities Quality of Care Fee shall be null and void as of the effective date of that invalidation.

3. In the event that the Nursing Facilities Quality of Care Fee is determined to be null and void for any of the reasons enumerated in this subsection, any Nursing Facilities Quality of Care Fee assessed and collected for any periods after such invalidation shall be returned in full within sixty (60) days by the Oklahoma Health Care Authority to the nursing facility from which it was collected.

I. 1. If any provision of this section or the application thereof shall be adjudged to be invalid by any court of last resort, such judgment shall not affect, impair or invalidate the provisions of the section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered. The applicability of such provision to other persons or circumstances shall not be affected thereby.

2. This subsection shall not apply to any judgment that affects the rate of the Nursing Facilities Quality of Care Fee, its applicability to all licensed nursing homes in the state, the usage of the fee for the purposes prescribed in this section, and/or the

ability of the Oklahoma Health Care Authority to obtain full federal participation to match its expenditures of the proceeds of the fee.

J. The Oklahoma Health Care Authority shall promulgate rules for the implementation and enforcement of the Nursing Facilities Quality of Care Fee established by this section.

K. The Authority shall provide for administrative penalties in the event nursing facilities fail to:

1. Submit the Quality of Care Fee;
2. Submit the fee in a timely manner;
3. Submit reports as required by this section; or
4. Submit reports timely.

L. As used in this section:

1. "Nursing facility" means any home, establishment or institution, or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

2. "Medicaid" means the medical assistance program established in Title XIX of the federal Social Security Act and administered in this state by the Oklahoma Health Care Authority;

3. "Patient gross revenues" means gross revenues received in compensation for services provided to residents of nursing facilities including, but not limited to, client participation. The term "patient gross revenues" shall not include amounts received by nursing facilities as charitable contributions; and

4. "Additional costs paid to Medicaid-certified nursing facilities under Oklahoma's Medicaid reimbursement methodology" means both state and federal Medicaid expenditures including, but not limited to, funds in excess of the aggregate amounts that would otherwise have been paid to Medicaid-certified nursing facilities under the Medicaid reimbursement methodology which have been updated for inflationary, economic, and regulatory trends and which are in

effect immediately prior to the inception of the Nursing Facilities Quality of Care Fee.

M. If any provision of this section, or the application thereof, is determined by any controlling federal agency, or any court of last resort to prevent the state from obtaining federal financial participation in the state's Medicaid program, such provision shall be deemed null and void as of the date of the non-availability of such federal funding and through and during any period of non-availability. All other provisions of the bill shall remain valid and enforceable.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 5009, as amended by Section 10, Chapter 464, O.S.L. 2003 (63 O.S. Supp. 2003, Section 5009), is amended to read as follows:

Section 5009. A. On and after July 1, 1993, the Oklahoma Health Care Authority shall be the state entity designated by law to assume the responsibilities for the preparation and development for converting the present delivery of the Oklahoma Medicaid Program to a managed care system. The system shall emphasize:

1. Managed care principles, including a capitated, prepaid system with either full or partial capitation, provided that highest priority shall be given to development of prepaid capitated health plans;

2. Use of primary care physicians to establish the appropriate type of medical care a Medicaid recipient should receive; and

3. Preventative care.

The Authority shall also study the feasibility of allowing a private entity to administer all or part of the managed care system.

B. On and after January 1, 1995, the Authority shall be the designated state agency for the administration of the Oklahoma Medicaid Program.

1. The Authority shall contract with the Department of Human Services for the determination of Medicaid eligibility and other

administrative or operational functions related to the Oklahoma Medicaid Program as necessary and appropriate.

2. To the extent possible and appropriate, upon the transfer of the administration of the Oklahoma Medicaid Program, the Authority shall employ the personnel of the Medical Services Division of the Department of Human Services.

3. The Department of Human Services and the Authority shall jointly prepare a transition plan for the transfer of the administration of the Oklahoma Medicaid Program to the Authority. The transition plan shall include provisions for the retraining and reassignment of employees of the Department of Human Services affected by the transfer. The transition plan shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before January 1, 1995.

C. In order to provide adequate funding for the unique training and research purposes associated with the demonstration program conducted by the entity described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes, and to provide services to persons without regard to their ability to pay, the Oklahoma Health Care Authority shall analyze the feasibility of establishing a Medicaid reimbursement methodology for nursing facilities to provide a separate Medicaid payment rate sufficient to cover all costs allowable under Medicare principles of reimbursement for the facility to be constructed or operated, or constructed and operated, by the organization described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes.

~~D. For the purpose of reducing inequities between the health care benefits available to Medicaid beneficiaries in the rural and the urban areas of the state and to improve the health care available to rural beneficiaries, the Authority shall implement financial incentives for physicians to practice in underserved rural~~

~~communities, which may include, but shall not be limited to,
increases in physician reimbursement rates.~~

SECTION 4. REPEALER 56 O.S. 2001, Sections 2001 and 2003, as amended by Section 4, Chapter 2, O.S.L. 2003 (56 O.S. Supp. 2003, Section 2003), are hereby repealed.

SECTION 5. REPEALER 63 O.S. 2001, Sections 5014, 5019 and 5021, are hereby repealed.

SECTION 6. 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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