

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 2437

By: Miller and Martin (Scott)  
of the House

and

Johnson (Mike) and Myers of  
the Senate

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10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to insurance; defining terms; creating  
12 the Health Carrier Access Payment Revolving Fund for  
13 the Oklahoma Health Care Authority; stating purpose of  
14 the fund; requiring health carrier to make certain  
15 access payment; specifying calculation of claims paid  
16 under certain situations; specifying due date for  
17 access payments; authorizing the Insurance  
18 Commissioner to refuse to renew, suspend or revoke the  
19 certificate of authority to transact insurance of any  
20 health carrier failing to pay an access payment;  
21 authorizing the Insurance Commissioner to assess civil  
22 penalties for failure to pay access payments; allowing  
23 reasonable attorney fees to be awarded to the  
24 Insurance Commissioner if certain action is necessary;  
requiring the Insurance Commissioner to promulgate  
certain rules; specifying that certain payments shall  
not be a part of the State Insurance Commissioner  
Revolving Fund; amending Section 1, Chapter 432,  
O.S.L. 2009 (36 O.S. Supp. 2009, Section 307.3), which  
relates to the State Insurance Commissioner Revolving  
Fund; excluding certain revenues from deposit;  
modifying provisions related to State Insurance  
Commissioner Revolving Fund; providing for  
codification; providing an effective date; and  
declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 7101 of Title 36, unless there  
4 is created a duplication in numbering, reads as follows:

5 As used in this act:

6 1. "Access payments" means an amount paid to the Insurance  
7 Commissioner based upon a percentage of claims paid by a health  
8 carrier to be used to fund the state's Medicaid program and make  
9 full use of any federal matching funds available to the state;

10 2. "Claims paid" means all payments made by a health carrier  
11 for health and medical services for residents of this state.

12 "Claims paid" shall not include:

13 a. claims-related expenses and general administrative  
14 expenses,

15 b. payments made to qualifying providers under a "pay-  
16 for-performance" or other incentive compensation  
17 arrangement if the payments are not reflected in the  
18 processing of claims submitted for services rendered  
19 to specific covered individuals,

20 c. claims paid by health carriers with respect to  
21 accidental injury, specified disease, hospital  
22 indemnity, dental, vision, disability income, long-  
23 term care, Medicare supplement or other limited  
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- benefit health insurance, except claims paid for dental services covered under a medical policy,
- d. claims paid for services rendered to nonresidents of this state,
  - e. claims paid under retiree health benefit plans that are separate from and not included within benefit plans for existing employees,
  - f. claims paid by an employee benefit excess insurance carrier that have been counted by a third-party administrator for determining an access payment,
  - g. claims paid for services rendered to a person covered under a benefit plan for federal employees,
  - h. claims paid for services rendered outside of this state to a person who is a resident of this state, and
  - i. claims paid pursuant to Medicare or Medicaid;

3. "Claims-related expenses" means:

- a. payments for utilization review, care management, disease management, risk assessment and similar administrative services intended to reduce the claims paid for health and medical services rendered to cover individuals for the purposes of attempting to ensure that needed services are delivered in an efficacious manner or by helping to maintain or improve the health of a covered individual, and

1           b. payments made to or by organized groups of providers  
2           of health and medical services in accordance with  
3           managed care risk arrangements or network access  
4           agreements that are unrelated to the provision of  
5           services to specific covered individuals;

6           4. "Health and medical services" means, but is not limited to:

7           a. any services included in the furnishing of medical  
8           care,

9           b. dental care to the extent covered under a medical  
10          insurance policy,

11          c. pharmaceutical benefits or hospitalization, including,  
12          but not limited to, services provided in a hospital or  
13          other medical facility,

14          d. ancillary services, including, but not limited to,  
15          ambulatory services,

16          e. physician and other practitioner services, including,  
17          but not limited to, services provided by an assistant  
18          to a physician, nurse practitioner or midwife, and

19          f. behavioral health services, including, but not limited  
20          to, mental health and substance abuse services;

21          5. "Health carrier" means any entity or insurer authorized to  
22          provide health insurance or health benefits pursuant to the laws of  
23          this state and any entity or person engaged in the business of  
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1 making contracts of accident or health insurance. "Health carrier"  
2 includes, but is not limited to:

- 3 a. third-party administrators as provided for in Sections  
4 1441 through 1452 of Title 36 of the Oklahoma  
5 Statutes,
- 6 b. health maintenance organizations as provided for in  
7 Sections 6901 through 6936 of Title 36 of the Oklahoma  
8 Statutes,
- 9 c. self-insured employer welfare arrangements,
- 10 d. excess carriers,
- 11 e. stop loss carriers,
- 12 f. multiple employer welfare arrangements (MEWA) as  
13 provided for in Sections 633 through 650 of Title 36  
14 of the Oklahoma Statutes,
- 15 g. professional employer organizations (PEO), and
- 16 h. the Oklahoma State and Education Employees Group  
17 Insurance Board (OSEEGIB); and

18 6. "Insurance Commissioner" or "Commissioner" means the  
19 Oklahoma Insurance Commissioner.

20 SECTION 2. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 7102 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:  
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1       A. There is hereby created a mechanism of funding through  
2 health carrier access payments, as defined in Section 1 of this act,  
3 in order to stabilize the state's Medicaid program.

4       B. There is hereby created in the State Treasury a revolving  
5 fund for the Oklahoma Health Care Authority to be designated the  
6 "Health Carrier Access Payment Revolving Fund". The revolving fund  
7 shall be used to fund the state's Medicaid program and make full use  
8 of any federal matching funds available to the state.

9       1. The revolving fund shall consist of all monies collected and  
10 received by the Insurance Commissioner pursuant to Sections 3 and 4  
11 of this act, which shall be deposited by the Insurance Commissioner  
12 into the revolving fund, as well as interest attributable to  
13 investment of money in the fund.

14       2. The revolving fund shall be a continuing fund, not subject  
15 to fiscal year limitations. All monies accruing to the credit of  
16 said fund are hereby appropriated and may be budgeted and expended  
17 by the Oklahoma Health Care Authority. Expenditures from the  
18 revolving fund shall be made pursuant to the laws of this state and  
19 the statutes relating to the state's Medicaid program. Expenditures  
20 from the revolving fund shall be made upon warrants issued by the  
21 State Treasurer, based on claims filed as prescribed by law with the  
22 Director of the Office of State Finance for approval and payment.

23       C. All monies collected under Sections 3 and 4 of this act  
24 shall be used and expended by the Oklahoma Health Care Authority for

1 the support of the state's Medicaid program and make full use of any  
2 federal matching funds available to the state.

3 D. The Oklahoma Health Care Authority is hereby authorized to  
4 transfer funds from the Health Carrier Access Payment Revolving Fund  
5 to the 340 CMIA Programs Disbursing Fund administered by the  
6 Oklahoma Health Care Authority for the purpose of carrying out the  
7 provisions of this act.

8 E. No monies collected from health carriers as access payments  
9 shall be expended for any wage or salary of any employee of any  
10 state agency and shall not provide any general or administrative  
11 funding for the state or any of its agencies, except for reasonable  
12 expenses incurred by the Insurance Commissioner for the express  
13 purpose of collecting the funds and by the Oklahoma Health Care  
14 Authority for the express purposes and administration of the fund.

15 SECTION 3. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 7103 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. From the effective date of this act until January 1, 2015,  
19 all health carriers shall pay to the Insurance Commissioner an  
20 access payment of one percent (1.0%) on all claims paid.

21 B. If a health carrier is contractually entitled to withhold  
22 certain amounts from payments due to providers of health and medical  
23 services for the purpose of ensuring that providers fulfill any  
24 financial obligations under a managed care risk arrangement, the

1 full amounts due to the providers before the application of the  
2 contractual withholdings shall be reflected in the calculation of  
3 claims paid.

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 7104 of Title 36, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. Except as provided in subsection B of this section, the  
8 access payments required to be paid by health carriers in Section 3  
9 of this act shall be due and reported to the Insurance Commissioner  
10 on claims paid and incurred beginning July 1, 2010.

11 B. The access payments required in Section 3 of this act by a  
12 health carrier that is a third-party administrator or a self-insured  
13 employer shall be reported and paid on the basis of claims incurred  
14 and paid beginning July 1, 2010.

15 C. Access payments shall be made monthly to the Insurance  
16 Commissioner and are due thirty (30) days after the end of each  
17 month, except that access payments for third-party administrators  
18 for groups of fifty or fewer members may be made annually not less  
19 than sixty (60) days after the close of the plan year.

20 D. All monies collected by the Insurance Commissioner pursuant  
21 to this act shall be paid into the State Treasury weekly and  
22 transferred monthly to the Health Carrier Access Payment Revolving  
23 Fund created in Section 2 of this act.

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1 E. The Insurance Commissioner may refuse to renew, suspend or  
2 revoke, after notice and hearing, the certificate of authority to  
3 transact insurance in this state of any health carrier failing to  
4 pay an access payment. In addition to failing to renew, suspension  
5 or revocation of the certificate of authority, the Insurance  
6 Commissioner may assess civil penalties in accordance with Section  
7 619 of Title 36 of the Oklahoma Statutes against any health carrier  
8 failing to pay an access payment or may take any other enforcement  
9 action authorized by the Oklahoma Insurance Code to collect any  
10 unpaid access payments.

11 F. Reasonable attorney fees shall be awarded to the Insurance  
12 Commissioner if judicial action is necessary for the enforcement of  
13 this act. Attorney fees shall be based upon those prevailing in the  
14 community. Attorney fees collected by the Insurance Commissioner  
15 without the assistance of the Attorney General shall be credited to  
16 the State Insurance Commissioner Revolving Fund.

17 G. The Insurance Commissioner shall promulgate rules and the  
18 procedures necessary for the implementation and administration of  
19 this act.

20 SECTION 5. AMENDATORY Section 1, Chapter 432, O.S.L.  
21 2009 (36 O.S. Supp. 2009, Section 307.3), is amended to read as  
22 follows:

23 Section 307.3 A. Effective July 1, 2009, there is hereby  
24 created in the State Treasury a revolving fund for the Insurance

1 Commissioner called the State Insurance Commissioner Revolving Fund.  
2 The revolving fund shall be used to fund the operations of the  
3 Office of the Insurance Commissioner.

4 1. Notwithstanding any other law to the contrary, the revolving  
5 fund shall consist of and consolidate all funds that are or have  
6 been paid or collected by the Insurance Commissioner pursuant to the  
7 laws of this state and the rules of the Insurance Department except  
8 that the revolving fund shall not include:

9 a. premium taxes,

10 b. monies transferred to the Attorney General's Insurance  
11 Fraud Unit Revolving Fund pursuant to Section 362 of  
12 this title, ~~and~~

13 c. funds paid to and collected pursuant to the Oklahoma  
14 Certified Real Estate Appraisers Act, Section Sections  
15 858-700 et seq. through 858-732 of Title ~~36~~ 59 of the  
16 Oklahoma Statutes, and

17 d. health carrier access payments paid to and collected  
18 by the Insurance Commissioner and deposited into the  
19 Health Carrier Access Payment Revolving Fund.

20 2. The revolving fund shall be a continuing fund, not subject  
21 to fiscal year limitations. Expenditures from the revolving fund  
22 shall be made pursuant to the laws of this state and the statutes  
23 relating to the Insurance Department. Warrants for expenditures  
24 from the revolving fund shall be drawn by the State Treasurer, based

1 on claims signed by an authorized employee or employees of the  
2 Insurance Department and filed with the Director of the Office of  
3 State Finance.

4 B. All funds collected by the Insurance Commissioner shall be  
5 paid into the State Treasury weekly.

6 C. The State Treasury is authorized and directed to deduct from  
7 the funds paid into the Insurance Commissioner Revolving Fund after  
8 the effective date of this section a sum equal to seventy-six and  
9 one-half percent (76.5%) of such payment and place the same to the  
10 credit of the General Revenue Fund of the state. The remainder of  
11 said funds so paid and collected shall by the State Treasurer be  
12 placed to the credit of the State Insurance Commissioner Revolving  
13 Fund.

14 SECTION 6. This act shall become effective July 1, 2010.

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

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