

ENROLLED HOUSE  
BILL NO. 2437

By: Cox, Lamons, Pittman and  
Cannaday of the House

and

Johnson (Mike) and Myers of  
the Senate

An Act relating to insurance; defining terms; creating the Health Carrier Access Payment Revolving Fund for the Oklahoma Health Care Authority; stating purpose of the fund; requiring health carrier to make certain access payment; specifying calculation of claims paid under certain situations; specifying due date for access payments; authorizing the Insurance Commissioner to refuse to renew, suspend or revoke the certificate of authority to transact insurance of any health carrier failing to pay an access payment; authorizing the Insurance Commissioner to assess civil penalties for failure to pay access payments; allowing reasonable attorney fees to be awarded to the 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), as amended by Section 3 of Enrolled Senate Bill No. 2054 of the 2nd Session of the 52nd Oklahoma Legislature, which relates to the State Insurance Commissioner Revolving Fund; excluding certain revenues from deposit; modifying provisions related to State Insurance Commissioner Revolving Fund; and providing for codification.

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 7101 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

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

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

"Claims paid" shall not include:

- a. claims-related expenses and general administrative expenses,
- b. payments made to qualifying providers under a "pay-for-performance" or other incentive compensation arrangement if the payments are not reflected in the processing of claims submitted for services rendered to specific covered individuals,
- c. claims paid by health carriers with respect to accidental injury, specified disease, hospital indemnity, dental, vision, disability income, long-term care, Medicare supplement or other limited 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
  - b. payments made to or by organized groups of providers of health and medical services in accordance with managed care risk arrangements or network access agreements that are unrelated to the provision of services to specific covered individuals;
4. "Health and medical services" means, but is not limited to:
- a. any services included in the furnishing of medical care,
  - b. dental care to the extent covered under a medical insurance policy,
  - c. pharmaceutical benefits or hospitalization, including, but not limited to, services provided in a hospital or other medical facility,
  - d. ancillary services, including, but not limited to, ambulatory services,
  - e. physician and other practitioner services, including, but not limited to, services provided by an assistant to a physician, nurse practitioner or midwife, and
  - f. behavioral health services, including, but not limited to, mental health and substance abuse services;

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

- a. third-party administrators as provided for in Sections 1441 through 1452 of Title 36 of the Oklahoma Statutes,
- b. health maintenance organizations as provided for in Sections 6901 through 6936 of Title 36 of the Oklahoma Statutes,
- c. self-insured employer welfare arrangements,
- d. excess carriers,
- e. stop loss carriers,
- f. multiple employer welfare arrangements (MEWA) as provided for in Sections 633 through 650 of Title 36 of the Oklahoma Statutes,
- g. professional employer organizations (PEO), and
- h. the Oklahoma State and Education Employees Group Insurance Board (OSEEGIB); and

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7102 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a mechanism of funding through health carrier access payments, as defined in Section 1 of this act, in order to stabilize the state's Medicaid program.

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

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

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

C. All monies collected under Sections 3 and 4 of this act shall be used and expended by the Oklahoma Health Care Authority for the support of the state's Medicaid program and make full use of any federal matching funds available to the state.

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

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

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

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

B. If a health carrier is contractually entitled to withhold certain amounts from payments due to providers of health and medical services for the purpose of ensuring that providers fulfill any financial obligations under a managed care risk arrangement, the full amounts due to the providers before the application of the contractual withholdings shall be reflected in the calculation of claims paid.

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

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

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

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

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

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

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

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

SECTION 5. AMENDATORY Section 1, Chapter 432, O.S.L. 2009 (36 O.S. Supp. 2009, Section 307.3), as amended by Section 3 of Enrolled Senate Bill No. 2054 of the 2nd Session of the 52nd Oklahoma Legislature, is amended to read as follows:

Section 307.3 A. Effective July 1, 2009, there is hereby created in the State Treasury a revolving fund for the Insurance Commissioner called the State Insurance Commissioner Revolving Fund. The revolving fund shall be used to fund the operations of the Office of the Insurance Commissioner.

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

- a. premium taxes,
- b. monies transferred to the Attorney General's Insurance Fraud Unit Revolving Fund pursuant to Section 362 of this title, ~~and~~
- c. funds paid to and collected pursuant to the Oklahoma Certified Real Estate Appraisers Act, Sections 858-700 through 858-732 of Title 59 of the Oklahoma Statutes, and
- d. health carrier access payments paid to and collected by the Insurance Commissioner and deposited into the Health Carrier Access Payment Revolving Fund.

2. The revolving fund shall be a continuing fund, not subject to fiscal year limitations. Expenditures from the revolving fund

shall be made pursuant to the laws of this state and the statutes relating to the Insurance Department. Warrants for expenditures from the revolving fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Insurance Department and filed with the Director of State Finance.

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

C. After the effective date of this act, the State Treasury is authorized and directed to deduct from the funds paid or collected by the Insurance Commissioner a sum equal to seventy-six and one-half percent (76.5%) of the payment and place the same to the credit of the General Revenue Fund of the state. The State Treasurer shall place to the credit of the State Insurance Commissioner Revolving Fund the remainder of the funds so paid and collected by the Insurance Commissioner.

Passed the House of Representatives the 21st day of May, 2010.

---

Presiding Officer of the House of  
Representatives

Passed the Senate the 24th day of May, 2010.

---

Presiding Officer of the Senate