

THE HOUSE OF REPRESENTATIVES
Monday, March 1, 2010

House Bill No. 2828

HOUSE BILL NO. 2828 - By: PETERS AND JOHNSON of the House and BINGMAN of the Senate.

An Act relating to public health and safety; defining terms; requiring certain information be reported to the Oklahoma Health Care Authority; requiring Authority to provide certain forms; providing that certain payment shall be an allowable Medicaid cost; creating Home-Based Quality Assurance Fund; specifying fund shall be continuing; providing fund shall not be subject to certain fiscal limitations; providing for sources of funding; specifying that fund monies may be budgeted and expended by Authority for certain services; requiring expenditures be made upon certain warrants; specifying that Fund and certain programs shall not be subject to budget cuts or other reductions; providing that reimbursement rate shall be consistent with certain methodology; specifying that certain providers shall not be guaranteed that certain cost reimbursements shall equal or exceed amount of certain assessment; specifying that certain assessment shall be void if certain federal matching expenditures are unavailable; providing that certain assessment shall be void if certain court invalidates section; providing for the return of assessment within a certain time period in the event of certain invalidation; specifying that if a court of last resort determines certain provision prevents state from obtaining certain funds that provision shall be void; specifying severability of invalidated provisions; specifying exceptions to applicability of section; requiring Authority to promulgate certain rules and provide for certain penalties; defining terms; requiring Authority to assess certain providers annually; specifying formula for the evaluation of certain assessments; specifying that certain assessment shall not be increased without legislative authorization; providing for codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 2004 of Title 56, unless there is created a duplication in numbering,
3 reads as follows:

4 A. As used in this section:

5 1. “Additional costs reimbursed to the contracted community-based service
6 provider” means both state and federal Medicaid expenditures in excess of the aggregate
7 amounts that would otherwise have been paid to a contracted community-based service
8 provider including, but not limited to, costs related to an audit required by the
9 Department of Human Services, the Oklahoma Health Care Authority, or the State
10 Auditor and Inspector;

11 2. “Contracted community-based service provider” means any entity contracted by
12 the Department of Human Services, the Oklahoma Health Care Authority, or any private
13 person providing the support, or promotion of support, for a service recipient to remain in
14 such person’s home or residence and shall include, but not be limited to, entities and
15 persons providing personal support, professional support, case management,
16 transportation services, and services through a Home and Community-Based Waiver or
17 Advantage Waiver as defined by Title XIX of the Social Security Act, Section 1915 (C);

18 3. “Gross receipts” means annual gross revenues received in compensation for
19 services rendered by a contracted community-based service provider, but shall not
20 include any amount received by a contracted service provider as a charitable contribution
21 or any amount received by a provider as compensation for services rendered that is not
22 reimbursed; and

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

4 B. Information required to calculate the Home-Based Support Quality Assurance
5 Assessment provided in Section 2 of this act for a contracted community-based service
6 provider shall be reported to the Oklahoma Health Care Authority using forms supplied
7 by the Oklahoma Health Care Authority.

8 C. The payment of the Home-Based Quality Assurance Assessment by contracted
9 community-based service providers shall be an allowable cost for Medicaid
10 reimbursement purposes.

11 D. 1. There is hereby created in the State Treasury a revolving fund for the
12 Oklahoma Health Care Authority to be designated the "Home-Based Quality Assurance
13 Fund".

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

- 16 a. all monies received by the Oklahoma Health Care Authority pursuant
17 to Section 2 of this act and otherwise specified or authorized by law,
18 b. monies received by the Oklahoma Health Care Authority due to
19 federal financial participation pursuant to Title XIX of the Social
20 Security Act, and
21 c. interest attributable to investment of money in the Home-Based
22 Quality Assurance Fund.

1 3. All monies accruing to the credit of the fund are appropriated and may be
2 budgeted and expended by the Oklahoma Health Care Authority for Medicaid services
3 provided by contracted community-based service providers.

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

7 5. The Home-Based Quality Assurance Fund and the programs specified in this
8 section that are funded by revenues collected from the Home-Based Quality Assurance
9 Assessment pursuant to this section are exempt from budgetary cuts, reductions, or
10 eliminations.

11 6. The reimbursement rate for contracted community-based service providers shall
12 be made in accordance with Oklahoma's Medicaid reimbursement rate methodology and
13 the provisions of this section.

14 7. No contracted community-based service provider shall be guaranteed, expressly
15 or otherwise, that any additional costs reimbursed to the contracted community-based
16 service provider shall equal or exceed the amount of the Home-Based Quality Assurance
17 Assessment paid by the contracted community-based service provider.

18 F. 1. If federal financial participation pursuant to Title XIX of the Social Security
19 Act is not available to the Oklahoma Medicaid program, for purposes of matching
20 expenditures from the Home-Based Quality Assurance Fund at the approved federal
21 medical assistance percentage for the applicable fiscal year, the Home-Based Quality

1 Assurance Assessment shall be null and void as of the date of the nonavailability of such
2 federal funding, through and during any period of nonavailability.

3 2. If this section is invalidated by any court of last resort under circumstances not
4 covered in subsection G of this section, the Home-Based Quality Assurance Assessment
5 shall be void as of the effective date of that invalidation.

6 3. If the Home-Based Quality Assurance Assessment is determined to be void for
7 any of the reasons enumerated in this section, any Home-Based Quality Assurance
8 Assessment assessed and collected for any periods after such invalidation shall be
9 returned in full within sixty (60) days by the Oklahoma Health Care Authority to the
10 contracted community-based service provider from which it was collected.

11 4. If any provision of this section, or the application thereof, is determined by any
12 court of last resort to prevent the state from obtaining federal financial participation in
13 the state Medicaid program, such provision shall be deemed void as of the date of the
14 nonavailability of such federal funding and through and during any period of
15 nonavailability.

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

1 2. This subsection shall not apply to any judgment that affects the rate of the
2 Home-Based Quality Assurance Assessment, its applicability to all contracted
3 community-based service providers in the state, the usage of the fee for the purposes
4 prescribed in this section, or the ability of the Oklahoma Health Care Authority to obtain
5 full federal participation to match its expenditures of the proceeds of the assessment.

6 H. The Oklahoma Health Care Authority shall:

7 1. Promulgate rules for the implementation and enforcement of the Home-Based
8 Quality Assurance Assessment established by this section; and

9 2. Provide for administrative penalties in the event a contracted community-based
10 service provider fails to:

11 a. submit the Home-Based Quality Assurance Assessment,

12 b. submit the Home-Based Quality Assurance Assessment in a timely
13 manner, or

14 c. submit reports as required by this section or by the Oklahoma Health
15 Care Authority.

16 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 4002 of Title 68, unless there is created a duplication in numbering,
18 reads as follows:

19 A. As used in this section:

20 1. “Contracted community-based service provider” means any entity contracted by
21 the Department of Human Services, the Oklahoma Health Care Authority, or any private
22 person providing the support, or promotion of support, for a service recipient to remain in

1 such person's home or residence and shall include, but not be limited to, entities and
2 persons providing personal support, professional support, case management, and
3 transportation services, and services through a Home and Community-Based Waiver or
4 Advantage Waiver as defined by Title XIX of the Social Security Act, Section 1915 (C);

5 2."Gross receipts" means annual gross revenues received in compensation for
6 services rendered by a contracted community-based service provider, but shall not
7 include any amount received by a contracted service provider as a charitable contribution
8 or any amount received by a provider as compensation for services rendered that is not
9 reimbursed;

10 B. 1.For the purpose of providing quality care enhancements, the Oklahoma Health
11 Care Authority is authorized to and shall annually assess a Home-Based Support Quality
12 Assurance Assessment pursuant to this section on each contracted community-based
13 service provider in this state. Quality of care enhancements include, but are not limited
14 to, the purposes specified in Section 1 of this act.

15 2. The Home-Based Support Quality Assurance Assessment assessed on a
16 contracted community-based service provider shall be calculated by the Oklahoma
17 Health Care Authority by multiplying the total annual Medicaid gross receipts for the
18 provision of all services rendered in this state by the contracted community-based service
19 provider by five and one-half percent (5.5%), regardless of whether such Medicaid
20 receipts are based on days or hours of service, the cost of services rendered, or some other
21 basis. The Home-Based Support Quality Assurance Assessment shall not be increased
22 unless specifically authorized by the Legislature.

1 SECTION 3. This act shall become effective November 1, 2010.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
3 dated 02-25-10 - DO PASS, As Coauthored.