

SB 1616

1 THE STATE SENATE
2 Monday, February 22, 2010

3 Senate Bill No. 1616
4 As Amended

5 SENATE BILL NO. 1616 - By: Crain of the Senate and Cox of the House.

6 [insurance - State Insurance Commissioner Revolving Fund -
7 creating fund - defining terms - authorizing penalties -
8 effective date -
9 emergency]

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

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

14 A. The Legislature finds that a mechanism to provide long-term
15 funding is necessary to reduce the negative effects of uninsured
16 Oklahomans on the economy and the state. This mechanism will
17 stabilize the insurance market by providing improved access to
18 health insurance for lower income, uninsured Oklahomans.

19 B. There is hereby created a mechanism of funding through
20 health carrier access payments, as defined in Section 2 of this act,
21 in order to establish a long-term source of funding to provide
22 access to health insurance for uninsured Oklahomans.

23 C. There is hereby created in the State Treasury a revolving
24 fund for the Insurance Department called the "Health Carrier Access
25 Payment Revolving Fund". The revolving fund shall be used to fund

1 the principal state program aiming to provide access to health
2 insurance to uninsured Oklahomans and to maximize the ability of the
3 state to secure all possible federal funds, grants or matching
4 funds.

5 1. The revolving fund shall consist of funds that are collected
6 and received by health carriers pursuant to Section 3 of this act,
7 which shall be deposited by the Insurance Commissioner into the
8 revolving fund.

9 2. The revolving fund shall be a continuing fund, not subject
10 to fiscal year limitations. Expenditures from the revolving fund
11 shall be made pursuant to the laws of this state and the statutes
12 relating to the principal state program aiming to provide access to
13 health insurance to uninsured Oklahomans. Warrants for expenditures
14 from the revolving fund shall be drawn by the State Treasurer, based
15 on claims signed by an authorized employee or employees of the
16 Insurance Department and filed with the Director of State Finance.

17 D. All funds collected by the Insurance Commissioner shall be
18 paid into the State Treasury weekly.

19 E. All monies collected by the Oklahoma Insurance Commissioner
20 pursuant to this act shall be used and expended by the Insurance
21 Commissioner for the sole purpose of providing access to certified
22 and affordable health insurance for uninsured Oklahomans either as
23 individuals or employees of small employers.

1 F. Expenditures of funds collected from health carrier access
2 payments shall be made only upon written orders issued by the
3 Insurance Commissioner. The funds shall be used to provide grants
4 to maximize the ability of the state to secure any or all federal
5 matching funds and grants to provide access to affordable health
6 insurance to individuals or employees of small employers. No monies
7 collected from health carriers as access payments shall be expended
8 for any wage or salary of any employee of any state agency and shall
9 not provide any general or administrative funding for the state or
10 any of its agencies, except for reasonable expenses incurred for the
11 express purposes and administration of the fund.

12 G. The Insurance Commissioner shall post monthly on the website
13 of the Insurance Department a report detailing the expenditures from
14 the Health Carrier Access Revolving Fund. The report may include,
15 but not be limited to:

- 16 1. An accounting of the monthly revenues and expenditures;
- 17 2. The amount of grants or federal matching dollars received;
- 18 3. The number of Oklahomans that have acquired health insurance
19 through the state program; and
- 20 4. The number of Oklahomans that maintain health insurance
21 through the state program.

1 H. The Insurance Commissioner shall annually account to the
2 State Auditor and Inspector for all monies or property received or
3 expended pursuant to this section.

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

7 As used in this act:

8 1. "Access payments" means an amount paid to the Insurance
9 Commissioner based upon a percentage of claims paid by a health
10 carrier to be used for the purpose of providing a continuous funding
11 source to provide access to health insurance for uninsured
12 Oklahomans.

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

15 "Claims paid" shall not include:

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

- 1 c. claims paid by health carriers with respect to
2 accidental injury, specified disease, hospital
3 indemnity, dental, vision, disability income, long-
4 term care, Medicare supplement or other limited
5 benefit health insurance, except claims paid for
6 dental services covered under a medical policy,
- 7 d. claims paid for services rendered to nonresidents of
8 this state,
- 9 e. claims paid under retiree health benefit plans that
10 are separate from and not included within benefit
11 plans for existing employees,
- 12 f. claims paid by an employee benefit excess insurance
13 carrier that have been counted by a third-party
14 administrator for determining an access payment,
- 15 g. claims paid for services rendered to a person covered
16 under a benefit plan for federal employees,
- 17 h. claims paid for services rendered outside of this
18 state to a person who is a resident of this state, and
- 19 i. claims paid pursuant to Medicare or Medicaid;
- 20 3. "Claims-related expenses" means:
- 21 a. payments for utilization review, care management,
22 disease management, risk assessment and similar
23 administrative services intended to reduce the claims

1 paid for health and medical services rendered to cover
2 individuals for the purposes of attempting to ensure
3 that needed services are delivered in an efficacious
4 manner or by helping to maintain or improve the health
5 of a covered individual, and

6 b. payments made to or by organized groups of providers
7 of health and medical services in accordance with
8 managed care risk arrangements or network access
9 agreements that are unrelated to the provision of
10 services to specific covered individuals;

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

12 a. any services included in the furnishing of medical
13 care,

14 b. dental care to the extent covered under a medical
15 insurance policy,

16 c. pharmaceutical benefits or hospitalization, including,
17 but not limited to, services provided in a hospital or
18 other medical facility,

19 d. ancillary services, including, but not limited to,
20 ambulatory services,

21 e. physician and other practitioner services, including,
22 but not limited to, services provided by an assistant
23 to a physician, nurse practitioner or midwife, and

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

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

8 a. third-party administrators as provided for in Sections
9 1441 through 1452 of Title 36 of the Oklahoma
10 Statutes,

11 b. health maintenance organizations as provided for in
12 Sections 6901 through 6936 of Title 36 of the Oklahoma
13 Statutes,

14 c. self-insured employer welfare arrangements,

15 d. excess carriers,

16 e. stop loss carriers,

17 f. multiple employer welfare arrangements (MEWA) as
18 provided for in Sections 633 through 650 of Title 36
19 of the Oklahoma Statutes,

20 g. professional employer organizations (PEO), and

21 h. the Oklahoma State and Education Employees Group
22 Insurance Board (OSEEGIB); and

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

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

6 A. All health carriers shall pay to the Insurance Commissioner
7 an access payment of one-half of one percent (0.5%) on all claims
8 paid in addition to the requirements provided for in subsection B of
9 this section.

10 B. Each time the Insurance Commissioner certifies that the
11 enrollment in the principal state program aiming to provide access
12 to insurance for uninsured Oklahomans has reached seventy-five
13 percent (75%) of the total possible enrollment of eligible persons
14 in the program at that point in time, the access payment paid by all
15 health carriers pursuant to this act shall increase one-half of one
16 percent (0.5%). The maximum health carrier access payment shall not
17 exceed four percent (4.0%).

18 C. If a health carrier is contractually entitled to withhold
19 certain amounts from payments due to providers of health and medical
20 services for the purpose of ensuring that providers fulfill any
21 financial obligations under a managed care risk arrangement, the
22 full amounts due to the providers before the application of the

1 contractual withholdings shall be reflected in the calculation of
2 claims paid.

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

6 A. Except as provided in Subsection B of this section, the
7 access payments required to be paid by health carriers in Section 3
8 of this act shall be due and reported to the Insurance Commissioner
9 on claims paid and incurred beginning the month after the first
10 annual report is to be filed by the health carrier with the
11 Insurance Commissioner after the effective date of this act.

12 B. The access payments required in Section 3 of this act by a
13 health carrier that is a third-party administrator or a self-insured
14 employer shall be reported and paid on the basis of claims incurred
15 and paid as of the first annual filing of the third-party
16 administrator or self-insured employer with the Insurance
17 Commissioner after the effective date of this act.

18 C. Access payments shall be made monthly to the Insurance
19 Commissioner and are due thirty (30) days after the end of each
20 month, except that access payments for third-party administrators
21 for groups of fifty (50) or fewer members may be made annually not
22 less than sixty (60) days after the close of the plan year.

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

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

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

22 Section 307.3 A. Effective July 1, 2009, there is hereby
23 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 858-700
15 ~~et seq.~~ through 858-732 of Title ~~36~~ 59 of the Oklahoma
16 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

1 from the revolving fund shall be drawn by the State Treasurer, based
2 on claims signed by an authorized employee or employees of the
3 Insurance Department and filed with the Director of State Finance.

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

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
23 2-18-10 - DO PASS, As Amended and Coauthored.