

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2731

By: Roussetot

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5  
6 AS INTRODUCED

7 An Act relating to public health; creating the  
8 Oklahoma Any Willing Institute Act; stating  
9 legislative intent; defining terms; prohibiting  
10 certain acts by health care insurers; providing that  
11 insurance providers may continue certain efficiency  
12 and cost-control programs; specifying that  
13 participation in a health plan is not mandatory for  
14 certain institutes; specifying that insurers may  
15 establish terms and conditions for participation in  
16 certain programs; specifying applicability to various  
17 insurance providers; requiring compliance with  
18 federal Employee Retirement Income Security Act of  
19 1974; specifying that the Oklahoma Any Willing  
20 Institute Act shall not apply to certain self-insured  
21 businesses; authorizing the creation of certain  
22 networks by certain noninsurers; providing that the  
23 Oklahoma Any Willing Institute Act shall apply to  
24 state and education employees; specifying violations  
of act; providing for cause of action in the event of  
certain violations; providing that the Oklahoma Any  
Willing Institute Act shall be applicable to certain  
contracts arising after certain date; authorizing  
Insurance Commissioner to enforce provisions of act;  
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  
2 in the Oklahoma Statutes as Section 1-228.1 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma Any  
5 Willing Institute Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-228.2 of Title 63, unless  
8 there is created a duplication in numbering, reads as follows:

9 The Legislature finds that as the state's insurance sector  
10 becomes increasingly dominated by managed care features that include  
11 decisions regarding coverage and appropriateness of health care,  
12 there is a vital need to protect patients in this environment.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1-228.3 of Title 63, unless  
15 there is created a duplication in numbering, reads as follows:

16 As used in the Oklahoma Any Willing Institute Act:

17 1. "Oklahoma Any Willing Institute Act" means a law that  
18 prohibits discrimination against a provider institute willing to  
19 meet the terms and conditions for participation established by a  
20 health insurer or that otherwise precludes an insurer from  
21 prohibiting or limiting participation in the provision of services  
22 through a health benefit plan;

23 2. "Copayment" means a type of cost-sharing whereby insured or  
24 covered persons pay a specified predetermined amount per unit of

1 service or percentage of health care costs with their insurer paying  
2 the remainder of the charge. Further:

3 a. the copayment is incurred at the time the service is  
4 rendered, and

5 b. the copayment may be a fixed or variable amount;

6 3. "Gatekeeper system" means a system of administration used by  
7 any health benefit plan in which a primary care provider furnishes  
8 basic patient care and coordinates diagnostic testing, indicated  
9 treatment, and specialty referral for persons covered by the health  
10 benefit plan;

11 4. "Health benefit plan" means any entity or program that  
12 provides reimbursement, including capitation, for health care  
13 services;

14 5. "Health care institute" means those entities or institutions  
15 licensed by the State of Oklahoma to provide health care, limited to  
16 the following:

17 a. community mental health centers or clinics,

18 b. hospitals,

19 c. licensed ambulatory surgery centers, and

20 d. rural health clinics;

21 6. "Health care services" means services and products provided  
22 by a health care institute within the scope of the institute's  
23 license; and

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1 7. "Health care insurer" means any entity including, but not  
2 limited to:

- 3 a. insurance companies,
- 4 b. hospital and medical service corporations,
- 5 c. health maintenance organizations,
- 6 d. preferred provider organizations,
- 7 e. physician hospital organizations,
- 8 f. third-party administrators, and
- 9 g. prescription benefit management companies, authorized  
10 to administer, offer, or provide health benefit plans.

11 SECTION 4. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-228.4 of Title 63, unless  
13 there is created a duplication in numbering, reads as follows:

14 A. A health care insurer shall not, directly or indirectly:

- 15 1. a. Impose a monetary advantage or penalty under a health  
16 benefit plan that would affect the choice of a  
17 beneficiary to select among those health care  
18 institutes participating in the health benefit plan  
19 according to the terms offered.

20 b. "Monetary advantage" or "penalty" includes:

- 21 (1) a higher copayment,
- 22 (2) a reduction in reimbursement for services, or
- 23 (3) promotion of one health care provider over  
24 another by these methods;

1           2. Impose upon a beneficiary of health care services under a  
2 health benefit plan any copayment, fee, or condition that is not  
3 equally imposed upon all beneficiaries in the same benefit category,  
4 class, or copayment level under that health benefit plan when the  
5 beneficiary is receiving services from a participating health care  
6 institute pursuant to that health benefit plan; or

7           3. Prohibit or limit a health care institute, as defined in  
8 Section 3 of this act, willing to accept the health benefit plan's  
9 operating terms and conditions, schedule of fees, covered expenses,  
10 and utilization regulations and quality standards, from the  
11 opportunity to participate in that plan.

12           B. Nothing in this section shall prevent a health benefit plan  
13 from instituting measures designed to maintain quality and to  
14 control costs, including, but not limited to, the utilization of a  
15 gatekeeper system, as long as such measures are imposed equally on  
16 all institutes in the same class.

17           SECTION 5.           NEW LAW           A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-228.5 of Title 63, unless  
19 there is created a duplication in numbering, reads as follows:

20           A. The Oklahoma Any Willing Institute Act shall not be  
21 construed:

22           1. To require all institutes or a percentage of institutes in  
23 the state or a locale to participate in the provision of services  
24 for a health maintenance organization; or

1           2. To take away the authority of health maintenance  
2 organizations that provide coverage of physician services to set the  
3 terms and conditions for participation by institutes, though health  
4 maintenance organizations shall apply the terms and conditions in a  
5 nondiscriminatory manner.

6           B. 1. The Oklahoma Any Willing Institute Act shall apply to:

7               a. all health insurers, regardless of whether they are  
8               providing coverage, including prepaid coverage, or  
9               administering or contracting to provide provider  
10              networks, and

11             b. all multiple-employer welfare arrangements and  
12              multiple-employer trusts.

13           2. This subsection shall apply only to the extent permitted by  
14 the federal Employee Retirement Income Security Act of 1974, as  
15 amended, 29 U.S.C., Sections 1001 through 1461.

16           C. 1. Nothing in the Oklahoma Any Willing Institute Act shall  
17 be construed to cover or regulate health care provider networks  
18 offered by noninsurers.

19           2. If an employer sponsoring a self-insured health benefit plan  
20 contracts directly with providers or contracts for a health care  
21 provider network, the Oklahoma Any Willing Institute Act shall not  
22 apply.

23           3. If a health insurer subcontracts with a noninsurer whose  
24 health care network does not meet the requirements of the Oklahoma

1 Any Willing Institute Act, then the noninsurer may create a separate  
2 health care provider network that meets the requirements of the  
3 Oklahoma Any Willing Institute Act.

4 4. If the noninsurer chooses not to create the separate health  
5 care provider network, then the responsibility for compliance with  
6 the Oklahoma Any Willing Institute Act shall be the obligation of  
7 the health insurer to the extent permitted by the federal Employee  
8 Retirement Income Security Act of 1974, as amended.

9 D. Notwithstanding the provisions of subsection C of this  
10 section, the Oklahoma Any Willing Institute Act applies to a health  
11 benefit plan provided by the state to state employees and education  
12 employees, as defined by Section 1303 of Title 74 of the Oklahoma  
13 Statutes, whether the health benefit plan is self-funded or insured.

14 SECTION 6. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1-228.6 of Title 63, unless  
16 there is created a duplication in numbering, reads as follows:

17 It is a violation of the Oklahoma Any Willing Institute Act for  
18 any health care insurer or other person or entity to provide any  
19 health benefit plan providing for health care services to residents  
20 of this state that does not conform to the Oklahoma Any Willing  
21 Institute Act, but nothing in the Oklahoma Any Willing Institute Act  
22 shall constitute a violation on the basis of actions taken by the  
23 health benefit plan to maintain quality, enforce utilization  
24 regulations, and to control costs.

1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-228.7 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4           To the extent permitted by ERISA, the federal Employee  
5 Retirement Income Security Act of 1974, 29 U.S.C., Sections 1001  
6 through 1461, any institute adversely affected by a violation of the  
7 Oklahoma Any Willing Institute Act may sue in district court only  
8 for injunctive relief against the health care insurer, but not for  
9 damages. The prevailing party shall be allowed a reasonable  
10 attorney fee and costs.

11          SECTION 8.           NEW LAW           A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-228.8 of Title 63, unless  
13 there is created a duplication in numbering, reads as follows:

14          A. To avoid impairment of existing contracts the Oklahoma Any  
15 Willing Institute Act shall only apply to contracts issued or  
16 renewed after November 1, 2010.

17          B. Any provision in a health benefit plan which is executed,  
18 delivered, or renewed, or otherwise contracts for provision of  
19 services in this state that is contrary to the Oklahoma Any Willing  
20 Institute Act, shall, to the extent of the conflict, be void.

21          SECTION 9.           NEW LAW           A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-228.9 of Title 63, unless  
23 there is created a duplication in numbering, reads as follows:

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1 The provisions of the Oklahoma Any Willing Institute Act shall  
2 not apply to self-funded or other health benefit plans that are  
3 exempt from state regulation by virtue of the federal Employee  
4 Retirement Income Security Act of 1974, as amended.

5 SECTION 10. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1-228.10 of Title 63, unless  
7 there is created a duplication in numbering, reads as follows:

8 The Insurance Commissioner shall:

9 1. Enforce the Oklahoma Any Willing Institute Act using powers  
10 granted to the Commissioner in Title 36 of the Oklahoma Statutes;  
11 and

12 2. Be entitled to seek an injunction against a health insurer  
13 in a court of competent jurisdiction.

14 SECTION 11. This act shall become effective November 1, 2010.

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