

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1616

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to insurance; amending Section 1,
8 Chapter 432, O.S.L. 2009 (36 O.S. 2009, Section
9 307.3), which relates to the State Insurance
10 Commissioner Revolving Fund; stating legislative
11 findings; creating the Health Carrier Access Payment
12 Revolving Fund; stating purpose of the fund;
13 requiring the Insurance Commissioner to post certain
14 expenditures monthly on the Insurance Department
15 website; directing the Insurance Commissioner to
16 annually account to the State Auditor and Inspector
17 certain receipts and expenditures; defining terms;
18 requiring health carrier to make certain access
19 payment; allowing for increase in amount of access
20 payment under certain conditions; specifying amount
21 of maximum payment; specifying calculation of claims
22 paid under certain situations; specifying due date
23 for access payments; authorizing the Insurance
24 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 Commission 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; clarifying the State
Treasurer's duties relating to the deposit of certain
funds; 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 A. The Legislature finds that a mechanism to provide long-term
6 funding is necessary to reduce the negative effects of uninsured
7 Oklahomans on the economy and the state. This mechanism will
8 stabilize the insurance market by providing improved access to
9 health insurance for lower income, uninsured Oklahomans.

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

14 C. There is hereby created in the State Treasury a revolving
15 fund for the Insurance Department called the "Health Carrier Access
16 Payment Revolving Fund". The revolving fund shall be used to fund
17 the principal state program aiming to provide access to health
18 insurance to uninsured Oklahomans and to maximize the ability of the
19 state to secure all possible federal funds, grants or matching
20 funds.

21 1. The revolving fund shall consist of funds that are collected
22 and received by health carriers pursuant to Section 3 of this act,
23 which shall be deposited by the Insurance Commissioner into the
24 revolving fund.

1 2. The revolving fund shall be a continuing fund, not subject
2 to fiscal year limitations. Expenditures from the revolving fund
3 shall be made pursuant to the laws of this state and the statutes
4 relating to the principal state program aiming to provide access to
5 health insurance to uninsured Oklahomans. Warrants for expenditures
6 from the revolving fund shall be drawn by the State Treasurer, based
7 on claims signed by an authorized employee or employees of the
8 Insurance Department and filed with the Director of State Finance.

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

11 E. All monies collected by the Oklahoma Insurance Commissioner
12 pursuant to this act shall be used and expended by the Insurance
13 Commissioner for the sole purpose of providing access to certified
14 and affordable health insurance for uninsured Oklahomans either as
15 individuals or employees of small employers.

16 F. Expenditures of funds collected from health carrier access
17 payments shall be made only upon written orders issued by the
18 Insurance Commissioner. The funds shall be used to provide grants
19 to maximize the ability of the state to secure any or all federal
20 matching funds and grants to provide access to affordable health
21 insurance to individuals or employees of small employers. No monies
22 collected from health carriers as access payments shall be expended
23 for any wage or salary of any employee of any state agency and shall
24 not provide any general or administrative funding for the state or

1 any of its agencies, except for reasonable expenses incurred for the
2 express purposes and administration of the fund.

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

- 7 1. An accounting of the monthly revenues and expenditures;
- 8 2. The amount of grants or federal matching dollars received;
- 9 3. The number of Oklahomans that have acquired health insurance
10 through the state program; and
- 11 4. The number of Oklahomans that maintain health insurance
12 through the state program.

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

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

19 As used in this act:

- 20 1. "Access payments" means an amount paid to the Insurance
21 Commissioner based upon a percentage of claims paid by a health
22 carrier to be used for the purpose of providing a continuous funding
23 source to provide access to health insurance for uninsured
24 Oklahomans.

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

3 "Claims paid" shall not include:

- 4 a. claims-related expenses and general administrative
5 expenses,
- 6 b. payments made to qualifying providers under a "pay for
7 performance" or other incentive compensation
8 arrangement if the payments are not reflected in the
9 processing of claims submitted for services rendered
10 to specific covered individuals,
- 11 c. claims paid by health carriers with respect to
12 accidental injury, specified disease, hospital
13 indemnity, dental, vision, disability income, long-
14 term care, Medicare supplement or other limited
15 benefit health insurance, except claims paid for
16 dental services covered under a medical policy,
- 17 d. claims paid for services rendered to nonresidents of
18 this state,
- 19 e. claims paid under retiree health benefit plans that
20 are separate from and not included within benefit
21 plans for existing employees,
- 22 f. claims paid by an employee benefit excess insurance
23 carrier that have been counted by a third-party
24 administrator for determining an access payment,

- 1 g. claims paid for services rendered to a person covered
- 2 under a benefit plan for federal employees,
- 3 h. claims paid for services rendered outside of this
- 4 state to a person who is a resident of this state, and
- 5 i. claims paid pursuant to Medicare or Medicaid;

6 3. "Claims-related expenses" means:

- 7 a. payments for utilization review, care management,
- 8 disease management, risk assessment and similar
- 9 administrative services intended to reduce the claims
- 10 paid for health and medical services rendered to cover
- 11 individuals for the purposes of attempting to ensure
- 12 that needed services are delivered in an efficacious
- 13 manner or by helping to maintain or improve the health
- 14 of a covered individual, and
- 15 b. payments made to or by organized groups of providers
- 16 of health and medical services in accordance with
- 17 managed care risk arrangements or network access
- 18 agreements that are unrelated to the provision of
- 19 services to specific covered individuals;

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

- 21 a. any services included in the furnishing of medical
- 22 care,
- 23 b. dental care to the extent covered under a medical
- 24 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,

- 1 f. multiple employer welfare arrangements (MEWA) as
2 provided for in Sections 633 through 650 of Title 36
3 of the Oklahoma Statutes,
4 g. professional employer organizations (PEO), and
5 h. the Oklahoma State and Education Employees Group
6 Insurance Board (OSEEGIB); and

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

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

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

16 B. Each time the Insurance Commissioner certifies that the
17 enrollment in the principal state program aiming to provide access
18 to insurance for uninsured Oklahomans has reached seventy-five
19 percent (75%) of the total possible enrollment of eligible persons
20 in the program at that point in time, the access payment paid by all
21 health carriers pursuant to this act shall increase one-half of one
22 percent (0.5%). The maximum health carrier access payment shall not
23 exceed four percent (4.0%).
24

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

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

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

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

23 C. Access payments shall be made monthly to the Insurance
24 Commissioner and are due thirty (30) days after the end of each

1 month, except that access payments for third-party administrators
2 for groups of fifty (50) or fewer members may be made annually not
3 less than sixty (60) days after the close of the plan year.

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

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

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

22 SECTION 5. AMENDATORY Section 1, Chapter 432, O.S.L.
23 2009 (36 O.S. Supp. 2009, Section 307.3), is amended to read as
24 follows:

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

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

- 11 a. premium taxes,
- 12 b. monies transferred to the Attorney General's Insurance
13 Fraud Unit Revolving Fund pursuant to Section 362 of
14 this title, ~~and~~
- 15 c. funds paid to and collected pursuant to the Oklahoma
16 Certified Real Estate Appraisers Act, Section 858-700
17 ~~et seq.~~ through 858-732 of Title ~~36~~ 59 of the Oklahoma
18 Statutes; and
- 19 d. health carrier access payments paid to and collected
20 by the Insurance Commissioner and deposited into the
21 Health Carrier Access Payment Revolving Fund.

22 2. The revolving fund shall be a continuing fund, not subject
23 to fiscal year limitations. Expenditures from the revolving fund
24 shall be made pursuant to the laws of this state and the statutes

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

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

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

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

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

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