STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2079 By: Key

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 1204, as last amended by Section 20, Chapter 1, O.S.L. 2007 (36 O.S. Supp. 2010, Section 1204), which relates to unfair and deceptive business practices; excluding certain discounts from rebate violation definition; creating the Designated Credentials Verification Organization Act; defining terms; providing requirements for credentials verification organizations; providing exception; requiring health care practitioners to update credentialing information; allowing health care practitioners to select and change credentialing organization; allowing health care entities to use certain credentialing organizations; authorizing health care entities to collect certain additional information; authorizing health care entities to require additional information from practitioners; specifying health care entities retain employment discretion; requiring credentialing organizations to disclose certain information to health care entities; providing procedure for credentialing organizations ceasing operations; requiring credentialing organizations to disclose information to health care practitioner; prohibiting the collection of certain duplicate information; requiring certain notice prior to disclosure of certain information; prohibiting actions against certain organizations acting in good faith; creating rebuttable presumption of good faith; prohibiting certain denials or refusals based upon requiring the use of certain credentialing organization; specifying certain discounts or

reductions shall not be considered rebates; providing for codification, and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1204, as last amended by Section 20, Chapter 1, O.S.L. 2007 (36 O.S. Supp. 2010, Section 1204), is amended to read as follows:

Section 1204. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to

induce such policyholder to lapse, forfeit, or surrender his insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading. No insurance company shall issue, or cause to be issued, any policy of insurance of any type or description upon life, or property, real or personal, whenever such policy of insurance is to be furnished or delivered to the purchaser or bailee of any property, real or personal, as an inducement to purchase or bail said property, real or personal, and no other person shall advertise, offer or give free insurance, insurance without cost or for less than the approved or customary rate, in connection with the sale or bailment of real or personal property, except as provided in subsection B, Section 4101 of Article 41 (Group Life Insurance and Group Annuity Contracts). No person that

is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.

3. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

4. Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs,

or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

6. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. Unfair discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(c) As to kinds of insurance other than life and accident and health, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor. This subsection shall not apply as to any premium rate in effect pursuant to Article 9 of the Oklahoma Insurance Code.

8. Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon; or paying or allowing, or giving or offering to pay, allow or give, directly or indirectly, as inducement to any contract of insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; except in accordance with an applicable rate filing, rating plan or rating system filed with and approved by the Insurance Commissioner; or giving or selling or purchasing or offering to give, sell, or purchase as inducement to such insurance, or in connection therewith, any stocks, bonds or other securities of any company, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract or receiving or accepting

as inducement to contracts of insurance, any rebate of premium payable on the contract, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement not specified in the contract.

(b) Nothing in subsection 7 or paragraph (a) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided, that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders;

(2) In the case of life or accident and health insurance policies issued on the industrial debit or weekly premium plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

(3) Making a readjustment of the rate of premium for a policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) In the case of life insurance companies, allowing its bona fide employees to receive a commission on the premiums paid by them on policies on their own lives;

(5) Issuing life or accident and health policies on a salary saving or payroll deduction plan at a reduced rate commensurate with the savings made by the use of such plan; ~~and~~

(6) Paying commissions or other compensation to duly licensed agents or brokers, or allowing or returning to participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits; and

(7) Offering discounts or reductions of cost for credential verification services by organizations which also offer malpractice or other insurance policies, as provided in Section 10 of this act.

(c) As used in this section, the word "insurance" includes suretyship and the word "policy" includes bond.

9. Coercion prohibited. Requiring as a condition precedent to the purchase of, or the lending of money upon the security of, real or personal property, that any insurance covering such property, or liability arising from the ownership, maintenance or use thereof, be procured by or on behalf of the vendee or by the borrower in connection with such purchase or loan through any particular person or agent or in any particular insurer, or requiring the payment of a reasonable fee as a condition precedent to the replacement of insurance coverage on mortgaged property at the anniversary date of

the policy; provided, however, that this provision shall not prevent the exercise by any such vendor or lender of the right to approve or disapprove any insurer selected to underwrite the insurance; but any disapproval of any insurer shall be on reasonable grounds.

10. Inducements. No insurer, agent, broker, solicitor, or other person shall, as an inducement to insurance or in connection with any insurance transaction, provide in any policy for or offer, sell, buy, or offer or promise to buy, sell, give, promise, or allow to the insured or prospective insured or to any other person in his behalf in any manner whatsoever:

(a) Any employment.

(b) Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto.

(c) Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for, or promising any special profits.

(d) Any prizes, goods, wares, merchandise, or tangible property of an aggregate value in excess of Twenty-five Dollars ($25.00).

(e) Any special favor, advantage or other benefit in the payment, method of payment or credit for payment of the premium through the use of credit cards, credit card facilities, credit card lists, or wholesale or retail credit accounts of another person. The provisions of this paragraph shall not apply to individual

policies insuring against loss resulting from bodily injury or death by accident as defined by Article 44 of the Oklahoma Insurance Code.

11. Premature disposal of premium notes prohibited. No insurer or agent thereof shall hypothecate, sell, or dispose of a promissory note received in payment of any part of a premium on a policy of insurance applied for prior to the delivery of the policy.

12. Fraudulent statement in application; penalty. Any insurance agent, examining physician, or other person who knowingly or willfully makes a false or fraudulent statement or representation in or relative to an application for insurance, or who makes any such statement to obtain a fee, commission, money, or benefit shall be guilty of a misdemeanor.

13. Deceptive use of financial institution's name in notification or solicitation. Verbally or by any other means notifying or soliciting any person in a manner that:

(a) mentions the name of an unrelated and unaffiliated financial institution,

(b) mentions an insurance product or the possible lack of insurance coverage,

(c) does not mention the actual or trade name of the insurance agency or company on whose behalf the notification or solicitation is provided, and

(d) thereby creates an impression or implication, including by omission, that the financial institution

or a financial-institution-authorized entity is or may be the one making the notification or solicitation. Nothing in this paragraph shall be interpreted to prohibit the reference to or use of the name of a financial institution made pursuant to a contractual agreement between the insurer and the financial institution.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Designated Credentials Verification Organization Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this article, the term:

1. "Applicant" means an individual applying for credentialing by a health care entity but shall not include an individual applying for employment with a health care entity;

2. "Board" means the applicable licensing board with oversight over each respective category of health care practitioner;

3. "Certified" or "accredited" means approved by a quality assessment program of the National Committee for Quality Assurance, the Joint Commission on Accreditation of Healthcare Organizations, the American Accreditation Healthcare Commission/Utilization Review

Accreditation Commission, or any affiliated or successor organization thereto;

4. "Core credentials data" means basic demographic information, health status information pertaining to the health care provider, any professional education, professional training, the names and addresses of not less than five current peer references, licensure information, Drug Enforcement Administration certification, social security number, tax identification number, board certifications, Educational Commission for Foreign Medical Graduates information, hospital affiliation information, managed care organization affiliation information, other institutional affiliation information, professional society memberships, professional liability insurance, claims, lawsuits, judgments, or settlements, Medicare or Medicaid sanctions, and criminal convictions;

5. "Credentialing" or being "credentialed" means the process of assessing and verifying the qualifications of a licensed health care practitioner by a health care entity but shall not impact or affect functions currently performed by state licensing boards;

6. "Credentials verification organization" means any entity or organization that is certified or accredited to collect, verify, maintain, store, and provide a health care practitioner's core credentials data, including all corrections, updates, and modifications thereto, as authorized by the health care practitioner and in accordance with the provisions of this article;

7. "Health care entity" means:

a. any health care facility or other health care organization licensed or certified to provide approved health care services in Oklahoma,

b. any entity licensed by the Oklahoma Insurance Department as a prepaid health care plan or health maintenance organization or as an insurer to provide coverage for health care services, or

c. any independent practice association, physician hospital organization, preferred provider organization, and other similar organization of practitioners;

8. "Health care practitioner" means any health care provider licensed pursuant to the requirements of state law;

9. "National accrediting organization" means a nationally recognized organization that awards accreditation or certification to hospitals, managed care organizations, other health care organizations, or credentials verification entities, including, but not limited to, the Joint Commission on Accreditation of Healthcare Organizations, the National Committee for Quality Assurance, and the American Accreditation Healthcare Commission/Utilization Review Accreditation Committee; and

10. "Recredentialing" or being "recredentialed" means the process by which a health care entity verifies the credentials of a

health care practitioner whose core credentials data, including all corrections, updates, and modifications thereto, are currently on file with that entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In accordance with the provisions of the Designated Credentials Verification Organization Act, a health care practitioner may designate a credentials verification organization to collect, store, and disseminate his or her core credentials data in accordance with this section. Any core credentials data collected pursuant to this section shall be collected to be used by health care entities for credentialing health care practitioners and, therefore, shall be considered confidential and privileged. Once the core credentials data are submitted to a designated credentials verification organization, the health care practitioner may elect that he or she not be required to resubmit such data when applying for practice privileges with health care entities or being recredentialed by such entity. However, as provided in subsection C of this section, each health care practitioner is responsible for providing his or her designated credentials verification organization with any corrections, updates, and modifications to his or her core credentials data to ensure that all credentialing and recredentialing data on the practitioner remain current. Nothing in

this subsection shall be construed to prevent the designated credentials verification organization from obtaining all necessary attestation and release forms, including signatures and dates.

B. In the event of an emergency situation or a situation involving the granting of temporary or provisional privileges to practice in or with a health care entity, the health care entity may request the health care practitioner to submit the necessary core data directly, without the involvement of his or her designated credentials verification organization.

C. Each health care practitioner electing to designate a credentials verification organization under subsection A of this section shall report any action or information affecting his or her core credentials data, including any corrections, updates, or modifications thereto, to his or her designated credentials verification organization as soon as possible but not later than fifteen (15) days after such action occurs or such information is known.

D. A health care practitioner may decide which credentials verification organization he or she wants to collect, store, and disseminate his or her core credentials data. A health care practitioner may also choose not to designate a credentials verification organization. In addition, any health care practitioner may choose to withdraw from or move his or her core

credentials data from one credentials verification organization to another at any time.

E. Any health care entity that employs, contracts with, or allows health care practitioners to treat its patients shall use the designated credentials verification organization to obtain core credentials data on a health care practitioner applying for privileges with that entity if the health care practitioner has previously made such a designation and has notified the health care entity of that designation. The submission of a request for participation in or privileges with a health care entity shall constitute authorization for the health care entity to obtain the applicant's core credentials data from the applicant's designated credentials verification organization if the applicant has made such a designation.

F. Any additional information outside of the core credentials data or any incorrect, inaccurate, or untimely core credentials data that is required by the health care entity's credentialing or recredentialing process may be collected from any source of the information either by the health care entity or its designee.

G. Nothing in this section may be construed to restrict the right of any health care entity to request the health care practitioner to furnish additional information necessary for credentialing or to limit its authority to require health care practitioners to comply with mandatory reporting directly to the

health care entity of any sanctions placed on such practitioners by a state or federal regulatory agency with oversight over such practitioners.

H. Nothing in this section may be construed to restrict in any way the authority of the health care entity to approve or deny an application for hospital staff membership, clinical privileges, or managed care network participation.

I. A designated credentials verification organization shall, upon the request of a health care entity required to obtain core credentials data from that organization, disclose its process for obtaining such data.

J. Any credentials verification entity which ceases doing business in this state for any reason shall, no later than thirty (30) days prior to cessation of business, provide notification to all health care practitioners and health care entities affected thereby, so that alternative provisions for the collection and maintenance of each affected practitioner's core credentials data may be made. Any credentials verification entity which ceases doing business in this state shall be ineligible to be designated as a credentials verification organization under the Designated Credentials Verification Organization Act for a period of one (1) year after any such cessation of business or three (3) years thereafter if it failed to provide the advance notification required by this subsection.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each designated credentials verification organization shall, within fifteen (15) days of a request for information, make available to a health care entity which the health care practitioner has authorized to receive his or her data all core credentials data it collects on such health care practitioner, including all corrections, updates, and modifications thereto, at a reasonable cost. Any health care entity requesting such data shall pass this cost on to the health care practitioner. All additional corrections, updates, and modifications to any core credentials data which are collected by a credentials verification organization for a health care practitioner, including any change to the health care practitioner's designation of a credentials verification organization, shall be provided within fifteen (15) days to each of the health care entities which have been authorized to receive such data or notification of a designation from a health care practitioner at no additional cost to the health care entity.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by the Designated Credentials Verification Organization Act, a health care entity shall not

collect or attempt to collect duplicate core credentials data from any health care practitioner if such data are already on file with a credentials verification organization designated by that practitioner to provide core credentials data to any health care entity and such health care entity has been notified of such designation.

B. Any credentials verification organization which has not been designated by a health care practitioner shall not attempt to collect duplicate core credentials data from that health care practitioner once it has been notified of the fact that another credentials verification organization has been designated to collect such data.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

Before releasing a health care practitioner's core credentials data for the first time to any requesting health care entity or for the first such release after any corrections, updates, or modifications to the core credentials data, the designated credentials verification organization shall provide the affected health care practitioner up to fifteen (15) days to review such data and correct any errors or omissions from the data. The credentials verification organization shall include any corrections, changes, or clarifications made by the health care practitioner before such data

are submitted to the health care entity. For all subsequent requests from health care entities where there have been no recent corrections, updates, or modifications to the data, the credentials verification organization may, without further authorization from the health care practitioner, provide the data directly to the requesting health care entity. In addition, all credentials verification organizations operating in this state shall employ appropriate procedures to allow for an annual audit of the core credentials data on file for each health care practitioner and shall, on at least an annual basis, allow each practitioner the opportunity to review the core data being maintained on his or her behalf and to make certain that the data on file are still current and accurate in all respects.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No civil, criminal, or administrative action may be instituted, and there shall be no liability, against any health care entity on account of its reliance in good faith on any data obtained from a credentials verification organization.

B. Compliance with the provisions of the Designated Credentials Verification Organization Act shall create a rebuttable presumption that a health care entity has exercised ordinary care in its

reliance on core credentialing data obtained from the designated credentials verification organization.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

No health care entity may deny a health care practitioner any participation in, or privileges with, its plan or facility solely on the basis that such health care practitioner required that the health care entity obtain core credentials data from a designated credentials verification organization.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6110.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Designated Credentials Verification Organization Act, a designated credentials verification organization which offers discounts or reductions of cost for the services provided shall not be considered to be offering a "rebate" as defined in paragraph 8 of Section 1204 of Title 36 of the Oklahoma Statutes if the organization also provides malpractice or other insurance policies to the health care practitioner.

SECTION 11. This act shall become effective November 1, 2011.

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