

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 HOUSE BILL 1381

By: Cox, Roan, Shelton, Pittman  
and (Sears) of the House

6 and

7 (Myers) of the Senate

8  
9 COMMITTEE SUBSTITUTE

10 [ public health and safety - Supplemental Hospital  
11 Offset Payment Program Act - Supplemental Hospital  
12 Offset Payment Program Fund - codification ]

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

14 SECTION 1. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 3241.1 of Title 63, unless there  
16 is created a duplication in numbering, reads as follows:

17 This act shall be known and may be cited as the "Supplemental  
18 Hospital Offset Payment Program Act".

19 SECTION 2. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 3241.2 of Title 63, unless there  
21 is created a duplication in numbering, reads as follows:

22 As used in the Supplemental Hospital Offset Payment Program Act:

23 1. "Authority" means the Oklahoma Health Care Authority;

1        2. "Base year" means a hospital's fiscal year ending in 2009,  
2 as reported in the Medicare Cost Report or as determined by the  
3 Authority if the hospital's data is not included in the Medicare  
4 Cost Report. The base year data will be used in all assessment  
5 calculations through 2014;

6        3. "Net hospital patient revenue" means the gross hospital  
7 revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines 16, 17  
8 and 18) of the Medicare Cost Report, multiplied by the hospital's  
9 ratio of total net to gross revenue, as reported on Worksheet G-3  
10 (Column 1, Line 3) and Worksheet G-2 (Part I, Column 3, Line 25);

11       4. "Hospital" means an institution licensed by the State  
12 Department of Health as a hospital pursuant to Section 1-701.1 of  
13 Title 63 of the Oklahoma Statutes maintained primarily for the  
14 diagnosis, treatment, or care of patients;

15       5. "Hospital Advisory Committee" means the Committee  
16 established for the purposes of advising the Oklahoma Health Care  
17 Authority and recommending provisions within and approval of any  
18 state plan amendment or waiver affecting hospital reimbursement made  
19 necessary or advisable by the Supplemental Hospital Offset Payment  
20 Program Act. In order to expedite the submission of the state plan  
21 amendment required by Section 6 of this act, the Committee shall  
22 initially be appointed by the Executive Director of the Authority  
23 from recommendations submitted by a statewide association  
24 representing rural and urban hospitals. The permanent Committee

1 shall be appointed no later than thirty (30) days after the  
2 effective date of this act, and shall be composed of five (5)  
3 members to serve until December 31, 2014, from lists of names  
4 submitted by a statewide association representing rural and urban  
5 hospitals, as follows:

- 6 a. one member, appointed by the Governor, who shall serve  
7 as chairman, and
- 8 b. two members appointed each by the President Pro  
9 Tempore of the Oklahoma State Senate and the Speaker  
10 of the Oklahoma House of Representatives;

11 6. "Medicaid" means the medical assistance program established  
12 in Title XIX of the federal Social Security Act and administered in  
13 this state by the Oklahoma Health Care Authority;

14 7. "Medicare Cost Report" means Form CMS-2552-96, the Hospital  
15 Cost Report, as it existed on January 1, 2011;

16 8. "Upper payment limit" means the maximum ceiling imposed by  
17 42 C.F.R, Sections 447.272 and 447.321 on hospital Medicaid  
18 reimbursement for inpatient and outpatient services, other than to  
19 hospitals owned or operated by state government; and

20 9. "Upper payment limit gap" means the difference between the  
21 upper payment limit and Medicaid payments not financed using  
22 hospital assessments made to all hospitals other than hospitals  
23 owned or operated by state government.

24

1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3241.3 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. For the purpose of assuring access to quality care for  
5 Oklahoma Medicaid consumers, the Oklahoma Health Care Authority,  
6 after considering input and recommendations from the Hospital  
7 Advisory Committee, shall assess hospitals licensed in Oklahoma,  
8 unless exempt under subsection B of this section, a supplemental  
9 hospital offset payment program fee.

10          B. The following hospitals shall be exempt from the  
11 supplemental hospital offset payment program fee:

12          1. A hospital that is owned or operated by the state or a state  
13 agency, the federal government, a federally recognized Indian Tribe,  
14 or the Indian Health Service;

15          2. A hospital that provides more than fifty percent (50%) of  
16 its inpatient days under a contract with a state agency other than  
17 the Authority;

18          3. A hospital for which the majority of its inpatient days are  
19 for any one of the following services, as determined by the  
20 Authority using the Inpatient Discharge Data File published by the  
21 Oklahoma State Department of Health, or in the case of a hospital  
22 not included in the Inpatient Discharge Data File, using  
23 substantially equivalent data provided by the hospital:

24           a. treatment of a neurological injury,

- b. treatment of cancer,
- c. treatment of cardiovascular disease,
- d. obstetrical or childbirth services,
- e. surgical care, except that this exemption shall not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery;

4. A hospital that is certified by the federal Centers for Medicaid and Medicare Services as a long-term acute care hospital or as a children's hospital; and

5. A hospital that is certified by the federal Centers for Medicaid and Medicare Services as a critical access hospital.

C. The supplemental hospital offset payment program fee shall be an assessment imposed on each hospital, except those exempted under subsection B of this section, for each calendar year in an amount calculated as a percentage of each hospital's net patient revenue.

1. The assessment rate shall be determined annually based upon the percentage of net hospital patient revenue needed to generate an amount up to the nonfederal portion of the upper payment limit gap plus the annual fee to be paid to the Authority under subparagraph c of paragraph 1 of subsection G of Section 4 of this act. The assessment rate until December 31, 2012 shall be fixed at two and

1 one half percent (2.5%). At no time in subsequent years shall the  
2 assessment rate exceed four percent (4%).

3 2. Net hospital patient revenue shall be determined using the  
4 data from each hospital's fiscal year 2009 Medicare Cost Report  
5 contained in the Centers for Medicare and Medicaid Services'  
6 Healthcare Cost Report Information System file dated December 31,  
7 2010.

8 3. If a hospital's fiscal year 2009 Medicare Cost Report is not  
9 contained in the Centers for Medicare and Medicaid Services'  
10 Healthcare Cost Report Information System file dated December 31,  
11 2010, the hospital shall submit a copy of the hospital's 2009  
12 Medicare Cost Report to the Authority in order to allow the  
13 Authority to determine the hospital's net hospital patient revenue  
14 for the base year.

15 4. If a hospital commenced operations after the due date for a  
16 2009 Medicare Cost Report, the hospital shall submit its initial  
17 Medicare Cost Report to the Authority in order to allow the  
18 Authority to determine the hospital's net patient revenue for the  
19 base year.

20 5. Partial year reports may be prorated for an annual basis.

21 6. In the event that a hospital does not file a uniform cost  
22 report under 42 U.S.C., Section 1396a(a)(40), the Authority shall  
23 establish a uniform cost report for such facility subject to the  
24

1 Supplemental Hospital Offset Payment Program provided for in this  
2 section.

3 7. The Authority shall review what hospitals are included in  
4 the Supplemental Hospital Offset Payment Program provided for in  
5 subsection C of this section and what hospitals are exempted from  
6 the Supplemental Hospital Offset Payment Program pursuant to  
7 subsection B of this section. Such review shall occur at a fixed  
8 period of time. This review and decision shall occur within twenty  
9 (20) days of the time of federal approval and annually thereafter in  
10 December of each year.

11 8. The Authority shall review and determine the amount of the  
12 annual assessment. Such review and determination shall occur within  
13 the twenty (20) days of federal approval and annually thereafter in  
14 December of each year.

15 D. A hospital may not charge any patient for any portion of the  
16 supplemental hospital offset payment program fee.

17 E. Closure, merger and new hospitals.

18 1. If a hospital ceases to operate as a hospital or for any  
19 reason ceases to be subject to the fee imposed under the  
20 Supplemental Hospital Offset Payment Program Act, the assessment for  
21 the year in which the cessation occurs shall be adjusted by  
22 multiplying the annual assessment by a fraction, the numerator of  
23 which is the number of days in the year during which the hospital is  
24 subject to the assessment and the denominator of which is 365.

1 Immediately upon ceasing to operate as a hospital, or otherwise  
2 ceasing to be subject to the supplemental hospital offset payment  
3 program fee, the hospital shall pay the assessment for the year as  
4 so adjusted, to the extent not previously paid.

5 2. In the case of a hospital that did not operate as a hospital  
6 throughout the base year, its assessment and any potential receipt  
7 of a hospital access payment will commence in accordance with rules  
8 for implementation and enforcement promulgated by the Authority,  
9 after consideration of the input and recommendations of the Hospital  
10 Advisory Committee.

11 F. 1. In the event that federal financial participation  
12 pursuant to Title XIX of the Social Security Act is not available to  
13 the Oklahoma Medicaid program for purposes of matching expenditures  
14 from the Supplemental Hospital Offset Payment Program Fund at the  
15 approved federal medical assistance percentage for the applicable  
16 year, the supplemental hospital offset payment program fee shall be  
17 null and void as of the date of the nonavailability of such federal  
18 funding through and during any period of nonavailability.

19 2. In the event of an invalidation of the Supplemental Hospital  
20 Offset Payment Program Act by any court of last resort, the  
21 supplemental hospital offset payment program fee shall be null and  
22 void as of the effective date of that invalidation.

23 3. In the event that the supplemental hospital offset payment  
24 program fee is determined to be null and void for any of the reasons

1 enumerated in this subsection, any supplemental hospital offset  
2 payment program fee assessed and collected for any period after such  
3 invalidation shall be returned in full within twenty (20) days by  
4 the Authority to the hospital from which it was collected.

5 G. The Authority, after considering the input and  
6 recommendations of the Hospital Advisory Committee, shall promulgate  
7 rules for the implementation and enforcement of the supplemental  
8 hospital offset payment program fee. Unless otherwise provided, the  
9 rules adopted under this subsection shall not grant any exceptions  
10 to or exemptions from the hospital assessment imposed under this  
11 section.

12 H. The Authority shall provide for administrative penalties in  
13 the event a hospital fails to:

- 14 1. Submit the supplemental hospital offset payment program fee;
- 15 2. Submit the fee in a timely manner;
- 16 3. Submit reports as required by this section; or
- 17 4. Submit reports timely.

18 I. The supplemental hospital offset payment program fee shall  
19 terminate effective December 31, 2014.

20 J. The Authority shall have the power to promulgate emergency  
21 rules to enact the provisions of this act.

22 SECTION 4. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 3241.4 of Title 63, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. There is hereby created in the State Treasury a revolving  
2 fund to be designated the "Supplemental Hospital Offset Payment  
3 Program Fund".

4       B. The fund shall be a continuing fund, not subject to fiscal  
5 year limitations, be interest bearing and consisting of:

6       1. All monies received by the Oklahoma Health Care Authority  
7 from hospitals pursuant to the Supplemental Hospital Offset Payment  
8 Program Act and otherwise specified or authorized by law;

9       2. Any interest or penalties levied and collected in  
10 conjunction with the administration of this section;

11       3. All monies received by the Authority due to federal  
12 financial participation pursuant to Title XIX of the Social Security  
13 Act as the result of the assessment and receipt of fees imposed by  
14 the Supplemental Hospital Offset Payment Program Act; and

15       4. All interest attributable to investment of money in the  
16 fund.

17       C. Notwithstanding any other provisions of law, the Oklahoma  
18 Healthcare Authority is authorized to transfer Thirty Million  
19 Dollars (\$30,000,000.00) each fiscal year from the Supplemental  
20 Hospital Offset Payment Program Fund to the Medical Payments CMIA  
21 Programs Disbursing Fund.

22       D. Notice of Assessment.

23       1. The Authority shall send a notice of assessment to each  
24 hospital informing the hospital of the assessment rate, the

1 hospital's net patient revenue calculation, and the assessment  
2 amount owed by the hospital for the applicable year.

3 2. Annual notices of assessment shall be sent at least thirty  
4 (30) days before the due date for the first quarterly assessment  
5 payment of each year.

6 3. The first notice of assessment shall be sent within forty-  
7 five days (45) days after receipt by the Authority of notification  
8 from the Centers for Medicare and Medicaid Services that the  
9 assessments and payments required under the Supplemental Hospital  
10 Offset Payment Program Act and, if necessary, the waiver granted  
11 under 42 C.F.R., Section 433.68 have been approved.

12 4. The hospital shall have thirty (30) days from the date of  
13 its receipt of a notice of assessment to review and verify the  
14 assessment rate, the hospital's net patient revenue calculation, and  
15 the assessment amount.

16 5. A hospital subject to an assessment under the Supplemental  
17 Hospital Offset Payment Program Act that has not been previously  
18 licensed as a hospital in Oklahoma and that commences hospital  
19 operations during a year shall pay the required assessment computed  
20 under subsection E of Section 3 of this act and shall be eligible  
21 for hospital access payments under subsection E of this section on  
22 the date specified in rules promulgated by the Authority after  
23 consideration of input and recommendations of the Hospital Advisory  
24 Committee.

1 E. Quarterly Notice and Collection.

2 1. The annual assessment imposed under subsection A of Section  
3 3 of this act shall be due and payable on a quarterly basis.

4 However, the first installment payment of an assessment imposed by  
5 the Supplemental Hospital Offset Payment Program Act shall not be  
6 due and payable until:

- 7 a. the Authority issues written notice stating that the  
8 assessment and payment methodologies required under the  
9 Supplemental Hospital Offset Payment Program Act have  
10 been approved by the Centers for Medicare and Medicaid  
11 Services and the waiver under 42 C.F.R., Section  
12 433.68, if necessary, has been granted by the Centers  
13 for Medicare and Medicaid Services,
- 14 b. the thirty-day verification period required by  
15 paragraph 4 of subsection C of this section has  
16 expired, and
- 17 c. the Authority issues a notice giving a due date for the  
18 first payment.

19 2. After the initial installment of an annual assessment has  
20 been paid under this section, each subsequent quarterly installment  
21 payment shall be due and payable by the fifteenth day of the first  
22 month of the applicable quarter.

23 3. If a hospital fails to timely pay the full amount of a  
24 quarterly assessment, the Authority shall add to the assessment:

- a. a penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date, and
- b. on the last day of each quarter after the due date until the assessed amount and the penalty imposed under subparagraph a of this paragraph are paid in full, an additional five-percent penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

4. The quarterly assessment including applicable penalties and interest must be paid regardless of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments.

F. Medicaid Hospital Access Payments.

1. To preserve the quality and improve access to hospital services for hospital inpatient and outpatient services rendered on or after the effective date of this act, the Authority shall make hospital access payments as set forth in this section.

2. The Authority shall pay all quarterly hospital access payments within ten (10) calendar days of the due date for quarterly assessment payments established in subsection E of this section.

1           3. The Authority shall calculate the hospital access payment  
2 amount up to but not to exceed the upper payment limit gap for  
3 inpatient and outpatient services.

4           4. All hospitals shall be eligible for inpatient and outpatient  
5 hospital access payments each year as set forth in this subsection  
6 except hospitals described in paragraph 1, 2, 3 or 4 of subsection B  
7 of Section 3 of this act.

8           5. A portion of the hospital access payment amount, not to  
9 exceed the upper payment limit gap for inpatient services, shall be  
10 designated as the inpatient hospital access payment pool.

11           a. In addition to any other funds paid to hospitals for  
12 inpatient hospital services to Medicaid patients, each  
13 eligible hospital shall receive inpatient hospital  
14 access payments each year equal to the hospital's pro  
15 rata share of the inpatient hospital access payment  
16 pool based upon the hospital's Medicaid payments for  
17 inpatient services divided by the total Medicaid  
18 payments for inpatient services of all eligible.

19           b. Inpatient hospital access payments shall be made on a  
20 quarterly basis.

21           6. A portion of the hospital access payment amount, not to  
22 exceed the upper payment limit gap for outpatient services, shall be  
23 designated as the outpatient hospital access payment pool.

24

1 a. In addition to any other funds paid to hospitals for  
2 outpatient hospital services to Medicaid patients, each  
3 eligible hospital shall receive outpatient hospital  
4 access payments each year equal to the hospital's pro  
5 rata share of the outpatient hospital access payment  
6 pool based upon the hospital's Medicaid payments for  
7 outpatient services divided by the total Medicaid  
8 payments for outpatient services of all eligible.

9 b. Outpatient hospital access payments shall be made on a  
10 quarterly basis.

11 7. A portion of the inpatient hospital access payment pool and  
12 of the outpatient hospital access payment pool shall be designated as  
13 the critical access hospital payment pool.

14 a. In addition to any other funds paid to critical access  
15 hospitals for inpatient and outpatient hospital  
16 services to Medicaid patients, each critical access  
17 hospital shall receive hospital access payments equal  
18 to the amount by which the payment for these services  
19 was less than one hundred one percent (101%) of the  
20 hospital's cost of providing these services, as  
21 determined using the Medicare Cost Report.

22 b. The Authority shall calculate hospital access payments  
23 for critical access hospitals and deduct these payments  
24 from the inpatient hospital access payment pool and the

1 outpatient hospital access payment pool before  
2 allocating the remaining balance in each pool as  
3 provided in subparagraph a of paragraph 4 and  
4 subparagraph a of paragraph 5 of this section.

5 c. Critical access hospital payments shall be made on a  
6 quarterly basis.

7 8. A hospital access payment shall not be used to offset any  
8 other payment by Medicaid for hospital inpatient or outpatient  
9 services to Medicaid beneficiaries, including without limitation any  
10 fee-for-service, per diem, private hospital inpatient adjustment, or  
11 cost-settlement payment.

12 9. If the Centers for Medicare and Medicaid Services finds that  
13 the Authority has made payments to hospitals that exceed the upper  
14 payment limits determined in accordance with 42 C.F.R 447.272 and 42  
15 C.F.R. 447.321, hospitals shall refund to the Authority a share of  
16 the recouped federal funds that is proportionate to the hospitals'  
17 positive contribution to the upper payment limit.

18 G. All monies accruing to the credit of the Supplemental  
19 Hospital Offset Payment Program Fund are hereby appropriated and  
20 shall be budgeted and expended by the Authority after consideration  
21 of the input and recommendation of the Hospital Advisory Committee.

22 1. Monies in the Supplemental Hospital Offset Payment Program  
23 Fund shall be used only for:  
24

- a. supplemental payments for Medicaid and SCHIP inpatient and outpatient services to hospitals that participate in the assessment,
- b. supplemental payments for Critical Access Hospitals,
- c. payment of administrative expenses incurred by the Authority or its agents and employees in performing the activities authorized by the Supplemental Hospital Offset Payment Program Act but not more than Two Hundred Thousand Dollars (\$200,000.00) each year, and
- d. the reimbursement of monies collected by the Authority from hospitals through error or mistake in performing the activities authorized under the Supplemental Hospital Offset Payment Program Act.

2. The Authority shall pay from the Supplemental Hospital Offset Payment Program Fund quarterly installment payments to hospitals of amounts available for supplemental inpatient and outpatient payments, and supplemental payments for Critical Access Hospitals.

3. Monies in the Supplemental Hospital Offset Payment Program Fund shall not be used to replace other general revenues appropriated and funded by the Legislature or other revenues used to support Medicaid.

4. The Supplemental Hospital Offset Payment Program Fund and the program specified in the Supplemental Hospital Offset Payment

1 Program Act are exempt from budgetary reductions or eliminations  
2 caused by the lack of general revenue funds or other funds  
3 designated for or appropriated to the Authority.

4 5. No hospital shall be guaranteed, expressly or otherwise,  
5 that any additional costs reimbursed to the facility will equal or  
6 exceed the amount of the supplemental hospital offset payment  
7 program fee paid by the hospital.

8 H. After considering input and recommendations from the  
9 Hospital Advisory Committee, the Authority shall promulgate  
10 regulations that:

11 1. Allow for an appeal of the annual assessment of the  
12 Supplemental Hospital Offset Payment Program payable under this act;  
13 and

14 2. Allow for an appeal of an assessment of any fees or  
15 penalties determined.

16 SECTION 5. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3241.5 of Title 63, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. The supplemental hospital offset payment program fee is to  
20 supplement, not supplant, appropriations to support hospital  
21 reimbursement. If Medicaid payment rates to providers are adjusted,  
22 hospital rates shall not be adjusted less favorably than the average  
23 percentage-rate reduction or increase applicable to the majority of  
24 other provider groups.

1 B. Notwithstanding any other provision of the Supplemental  
2 Hospital Offset Payment Program Act, if, after receipt of  
3 authorization to receive federal matching funds for monies generated  
4 by the Supplemental Hospital Offset Payment Program Act, the  
5 authorization is withdrawn or changed so that federal matching funds  
6 are no longer available, the Oklahoma Health Care Authority shall  
7 cease collecting the provider fee and shall repay to the hospitals  
8 any money received by the Supplemental Hospital Offset Payment  
9 Program Fund that is not subject to federal matching funds.

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 3241.6 of Title 63, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. The Oklahoma Health Care Authority shall submit to the  
14 Hospital Advisory Committee a proposed state plan amendment to  
15 implement the requirements of the Supplemental Hospital Offset  
16 Payment Program Act, including the payment of hospital access  
17 payments under Section 4 of this act no later than forty-five (45)  
18 days after the effective date of this act, and shall submit the  
19 state plan amendment to the Centers for Medicare and Medicaid  
20 Services after consideration of the input and recommendations of the  
21 Hospital Advisory Committee.

22 B. If the state plan amendment is not approved by the Centers  
23 for Medicare and Medicaid Services, the Authority shall:

24

- 1        1. Not implement the assessment imposed under the Supplemental  
2 Hospital Offset Payment Program Act; and  
3        2. Return any fees to hospitals that paid the fees if any such  
4 fees have been collected.

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