

1 ENGROSSED HOUSE
2 BILL NO. 1381

By: Cox, Roan, Shelton and
Pittman of the House

3 and

4 Jolley of the Senate

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6
7
8 (public health and safety - Supplemental Hospital
9 Offset Payment Program Act - Supplemental Hospital
10 Offset Payment Program Fund -
11 codification)

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

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

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

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

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

- 1 1. "Authority" means the Oklahoma Health Care Authority;
- 2 2. "Base year" means a hospital's fiscal year ending in 2009,
3 as reported in the Medicare Cost Report or as determined by the
4 Authority if the hospital's data is not included in the Medicare
5 Cost Report. The base year data will be used in all assessment
6 calculations through state fiscal year 2014;
- 7 3. "Net hospital patient revenue" means the gross hospital
8 revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines 1, 2,
9 2.01, 15, 17 and 18) of the Medicare Cost Report, excluding
10 estimated nonhospital ancillary revenue as reported on Worksheet D-
11 4, multiplied by the hospital's ratio of total net to gross revenue,
12 as reported on Worksheet G-3 (Column 1, Line 3) and Worksheet G-2
13 (Part I, Column 3, Line 25);
- 14 4. "Hospital" means an institution licensed by the State
15 Department of Health as a general or specialized hospital pursuant
16 to Section 1-701 of Title 63 of the Oklahoma Statutes maintained
17 primarily for the diagnosis, treatment, or care of patients;
- 18 5. "Hospital Advisory Committee" means the Committee
19 established for the purposes of advising the Oklahoma Health Care
20 Authority and recommending provisions within and approval of any
21 state plan amendment or waiver affecting hospital reimbursement made
22 necessary or advisable by the Supplemental Hospital Offset Payment
23 Program Act. The Committee shall be appointed no later than thirty
24 (30) days after the effective date of this act, and shall be

1 composed of five (5) members to serve until June 30, 2014, from
2 lists of names submitted by the Oklahoma Hospital Association, as
3 follows:

4 a. one member, appointed by the Governor, who shall serve
5 as chairman, and

6 b. two members appointed each by the President Pro
7 Tempore of the Oklahoma State Senate and the Speaker
8 of the Oklahoma House of Representatives;

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

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

14 8. "Upper payment limit" means the maximum ceiling imposed by
15 42 C.F.R, Sections 447.272 and 447.321 on hospital Medicaid
16 reimbursement for inpatient and outpatient services, other than to
17 hospitals owned or operated by state government; and

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

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

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

7 B. Unless adjudged to be unconstitutional or otherwise invalid,
8 in which case the hospital shall pay the supplemental hospital
9 offset payment program fee, the following hospitals shall be exempt
10 from the supplemental hospital offset payment program fee:

11 1. A hospital that is owned or operated by the state or a state
12 agency;

13 2. A hospital for which the majority of its inpatient
14 admissions are for cardiac, brain injury, cancer, surgical or
15 obstetrical services;

16 3. A hospital that is certified by the federal Centers for
17 Medicaid and Medicare Services as a long-term acute care hospital;
18 and

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

21 C. The supplemental hospital offset payment program fee shall
22 be an assessment imposed on each hospital, except those exempted
23 under subsection B of this section, for each state fiscal year in an
24

1 amount calculated as a percentage of each hospital's net patient
2 revenue.

3 1. The assessment rate shall be determined annually based upon
4 the percentage of net hospital patient revenue needed to generate an
5 amount up to the nonfederal portion of the upper payment limit gap
6 plus the annual fee to be paid to the Authority under subparagraph c
7 of paragraph 1 of subsection F of Section 4 of this act. The
8 assessment rate for state fiscal year 2012 shall be fixed at two
9 percent (2%). At no time in subsequent years shall the assessment
10 rate exceed four percent (4%).

11 2. Net hospital patient revenue shall be determined using the
12 data from each hospital's fiscal year 2009 Medicare Cost Report
13 contained in the Centers for Medicare and Medicaid Services'
14 Healthcare Cost Report Information System file dated December 31,
15 2010.

16 3. If a hospital's fiscal year 2009 Medicare Cost Report is not
17 contained in the Centers for Medicare and Medicaid Services'
18 Healthcare Cost Report Information System file dated December 31,
19 2010, the hospital shall submit a copy of the hospital's 2009
20 Medicare Cost Report to the Authority in order to allow the
21 Authority to determine the hospital's net hospital patient revenue
22 for the base year.

23 4. If a hospital commenced operations after the due date for a
24 2009 Medicare Cost Report, the hospital shall submit its 2010

1 Medicare Cost Report to the Authority in order to allow the
2 Authority to determine the hospital's net patient revenue for the
3 base year.

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

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

7 E. Closure, merger and new hospitals.

8 1. If a hospital ceases to operate as a hospital or for any
9 reason ceases to be subject to the fee imposed under the
10 Supplemental Hospital Offset Payment Program Act, the assessment for
11 the state fiscal year in which the cessation occurs shall be
12 adjusted by multiplying the annual assessment by a fraction, the
13 numerator of which is the number of days in the year during which
14 the hospital is subject to the assessment and the denominator of
15 which is 365. Immediately upon ceasing to operate as a hospital, or
16 otherwise ceasing to be subject to the supplemental hospital offset
17 payment program fee, the hospital shall pay the assessment for the
18 year as so adjusted, to the extent not previously paid.

19 2. In the case of a hospital that did not operate as a hospital
20 throughout the base year, its assessment and any potential receipt
21 of a hospital access payment will commence in accordance with rules
22 for implementation and enforcement promulgated by the Authority,
23 after consideration of the input and recommendations of the Hospital
24 Advisory Committee.

1 F. 1. In the event that federal financial participation
2 pursuant to Title XIX of the Social Security Act is not available to
3 the Oklahoma Medicaid program for purposes of matching expenditures
4 from the Supplemental Hospital Offset Payment Program Fund at the
5 approved federal medical assistance percentage for the applicable
6 fiscal year, the supplemental hospital offset payment program fee
7 shall be null and void as of the date of the nonavailability of such
8 federal funding through and during any period of nonavailability.

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

13 3. In the event that the supplemental hospital offset payment
14 program fee is determined to be null and void for any of the reasons
15 enumerated in this subsection, any supplemental hospital offset
16 payment program fee assessed and collected for any period after such
17 invalidation shall be returned in full within sixty (60) days by the
18 Authority to the hospital from which it was collected.

19 G. The Authority, after considering the input and
20 recommendations of the Hospital Advisory Committee, shall promulgate
21 rules for the implementation and enforcement of the supplemental
22 hospital offset payment program fee. Unless otherwise provided, the
23 rules adopted under this subsection shall not grant any exceptions
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1 to or exemptions from the hospital assessment imposed under this
2 section.

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

- 5 1. Submit the supplemental hospital offset payment program fee;
- 6 2. Submit the fee in a timely manner;
- 7 3. Submit reports as required by this section; or
- 8 4. Submit reports timely.

9 I. The supplemental hospital offset payment program fee shall
10 terminate effective June 30, 2014.

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

14 A. There is hereby created in the State Treasury a revolving
15 fund to be designated the "Supplemental Hospital Offset Payment
16 Program Fund".

17 B. The fund shall be a continuing fund, not subject to fiscal
18 year limitations, consisting of:

- 19 1. All monies received by the Oklahoma Health Care Authority
20 from hospitals pursuant to the Supplemental Hospital Offset Payment
21 Program Act and otherwise specified or authorized by law;
- 22 2. Any interest or penalties levied and collected in
23 conjunction with the administration of this section;

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

5 4. All interest attributable to investment of money in the
6 fund.

7 C. Notice of Assessment.

8 1. The Authority shall send a notice of assessment to each
9 hospital informing the hospital of the assessment rate, the
10 hospital's net patient revenue calculation, and the assessment
11 amount owed by the hospital for the applicable fiscal year.

12 2. Annual notices of assessment shall be sent at least forty-
13 five (45) days before the due date for the first quarterly
14 assessment payment of each fiscal year.

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

21 4. The hospital shall have thirty (30) days from the date of
22 its receipt of a notice of assessment to review and verify the
23 assessment rate, the hospital's net patient revenue calculation, and
24 the assessment amount. The Authority shall establish, after

1 consideration of input and recommendations by the Hospital Advisory
2 Committee, a method to resolve any errors or disputes in the
3 calculation of the assessment.

4 5. A hospital subject to an assessment under the Supplemental
5 Hospital Offset Payment Program Act that has not been previously
6 licensed as a hospital in Oklahoma and that commences hospital
7 operations during a state fiscal year shall pay the required
8 assessment computed under subsection E of Section 3 of this act and
9 shall be eligible for hospital access payments under subsection E of
10 this section on the date specified in rules promulgated by the
11 Authority after consideration of input and recommendations of the
12 Hospital Advisory Committee.

13 6. A hospital that is exempted from payment of the assessment
14 under subsection B of Section 3 of this act at the beginning of a
15 state fiscal year but during the state fiscal year experiences a
16 change in status so that it becomes subject to the assessment shall
17 pay the required assessment computed under subsection E of Section 3
18 of this act and shall be eligible for hospital access payments under
19 subsection E of this section on the date specified in rules
20 promulgated by the Authority after consideration of input and
21 recommendations of the Hospital Advisory Committee.

22 7. A hospital that is subject to payment of the assessment
23 imposed by subsection A of Section 3 of this act at the beginning of
24 a state fiscal year, but during the state fiscal year experiences a

1 change in status so that it becomes exempted from payment under
2 subsection B of Section 3 of this act, shall be relieved of its
3 obligation to pay the hospital assessment and shall become
4 ineligible for hospital access payments under subsection E of this
5 section on the date specified in rules promulgated by the Authority
6 after consideration of input and recommendations of the Hospital
7 Advisory Committee.

8 D. Quarterly Notice and Collection.

9 1. The annual assessment imposed under subsection A of Section
10 3 of this act shall be due and payable on a quarterly basis.

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

14 a. the Authority issues written notice stating that the
15 assessment and payment methodologies required under
16 the Supplemental Hospital Offset Payment Program Act
17 have been approved by the Centers for Medicare and
18 Medicaid Services and the waiver under 42 C.F.R.,
19 Section 433.68, if necessary, has been granted by the
20 Centers for Medicare and Medicaid Services,

21 b. the thirty-day verification period required by
22 paragraph 4 of subsection C of this section has
23 expired and any disputed amount of assessment has been
24 resolved, and

1 c. the Authority has made all quarterly installments of
2 inpatient and outpatient hospital access payments that
3 were otherwise due under subsection E of this section
4 consistent with the effective date of the approved
5 state plan amendment and waiver.

6 2. After the initial installment of an annual assessment has
7 been paid under this section, each subsequent quarterly installment
8 payment shall be due and payable within ten (10) business days after
9 the hospital has received its inpatient and outpatient access
10 payments due for the applicable quarter.

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

13 a. a penalty assessment equal to five percent (5%) of the
14 quarterly amount not paid on or before the due date,
15 and

16 b. on the last day of each quarter after the due date
17 until the assessed amount and the penalty imposed
18 under subparagraph a of this paragraph are paid in
19 full, an additional five-percent penalty assessment on
20 any unpaid quarterly and unpaid penalty assessment
21 amounts.

22 4. Payments shall be credited first to unpaid quarterly
23 amounts, rather than to penalty or interest amounts, beginning with
24 the most delinquent installment.

1 E. Medicaid Hospital Access Payments.

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

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

9 3. All hospitals shall be eligible for inpatient and outpatient
10 hospital access payments each state fiscal year as set forth in this
11 subsection except hospitals described in paragraph 1, 2 or 3 of
12 subsection B of Section 3 of this act.

13 4. A portion of the hospital access payment amount, not to
14 exceed the upper payment limit gap for inpatient services, shall be
15 designated as the inpatient hospital access payment pool.

16 a. In addition to any other funds paid to hospitals for
17 inpatient hospital services to Medicaid patients, each
18 eligible hospital shall receive inpatient hospital
19 access payments each state fiscal year equal to the
20 hospital's pro rata share of the inpatient hospital
21 access payment pool based upon the hospital's Medicaid
22 payments for inpatient services divided by the total
23 Medicaid payments for inpatient services of all
24 eligible.

1 b. Inpatient hospital access payments shall be made on a
2 quarterly basis.

3 5. A portion of the hospital access payment amount, not to
4 exceed the upper payment limit gap for outpatient services, shall be
5 designated as the outpatient hospital access payment pool.

6 a. In addition to any other funds paid to hospitals for
7 outpatient hospital services to Medicaid patients,
8 each eligible hospital shall receive outpatient
9 hospital access payments each state fiscal year equal
10 to the hospital's pro rata share of the outpatient
11 hospital access payment pool based upon the hospital's
12 Medicaid payments for outpatient services divided by
13 the total Medicaid payments for outpatient services of
14 all eligible.

15 b. Outpatient hospital access payments shall be made on a
16 quarterly basis.

17 6. A portion of the inpatient hospital access payment pool and
18 of the outpatient hospital access payment pool shall be designated
19 as the critical access hospital payment pool.

20 a. In addition to any other funds paid to critical access
21 hospitals for inpatient and outpatient hospital
22 services to Medicaid patients, each critical access
23 hospital shall receive hospital access payments equal
24 to the amount by which the payment for these services

1 was less than one hundred one percent (101%) of the
2 hospital's cost of providing these services, as
3 determined using the Medicare Cost Report.

4 b. The Authority shall calculate hospital access payments
5 for critical access hospitals and deduct these
6 payments from the inpatient hospital access payment
7 pool and the outpatient hospital access payment pool
8 before allocating the remaining balance in each pool
9 as provided in subparagraph a of paragraph 4 and
10 subparagraph a of paragraph 5 of this section.

11 c. Critical access hospital payments shall be made on a
12 quarterly basis.

13 7. A hospital access payment shall not be used to offset any
14 other payment by Medicaid for hospital inpatient or outpatient
15 services to Medicaid beneficiaries, including without limitation any
16 fee-for-service, per diem, private hospital inpatient adjustment, or
17 cost-settlement payment.

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

11 A. The supplemental hospital offset payment program fee is to
12 supplement, not supplant, appropriations to support hospital
13 reimbursement. If Medicaid payment rates to providers are adjusted,
14 hospital rates shall not be adjusted more than the percentage-rate
15 reduction or increase for any other provider group.

16 B. Notwithstanding any other provision of the Supplemental
17 Hospital Offset Payment Program Act, if, after receipt of
18 authorization to receive federal matching funds for monies generated
19 by the Supplemental Hospital Offset Payment Program Act, the
20 authorization is withdrawn or changed so that federal matching funds
21 are no longer available, the Oklahoma Health Care Authority shall
22 cease collecting the provider fee and shall repay to the hospitals
23 any money received by the Supplemental Hospital Offset Payment
24 Program Fund that is not subject to federal matching funds.

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

4 A. The Oklahoma Health Care Authority shall submit to the
5 Hospital Advisory Committee a proposed state plan amendment to
6 implement the requirements of the Supplemental Hospital Offset
7 Payment Program Act, including the payment of hospital access
8 payments under Section 4 of this act no later than forty-five (45)
9 days after the effective date of this act, and shall submit the
10 state plan amendment to the Centers for Medicare and Medicaid
11 Services after consideration of the input and recommendations of the
12 Hospital Advisory Committee.

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

15 1. Not implement the assessment imposed under the Supplemental
16 Hospital Offset Payment Program Act; and

17 2. Return any fees to hospitals that paid the fees if any such
18 fees have been collected.

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1 Passed the House of Representatives the 10th day of March, 2011.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate