

**SENATE CHAMBER**

STATE OF OKLAHOMA

DISPOSITION BY SENATE

**FLOOR AMENDMENT**

No. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Date)

Mr./Madame President:

I move to amend House Bill No. 2447, Page 24, Line 18 1/2, as follows:

By inserting new SECTIONS 8 through 17 to read as follows and by renumbering the subsequent section.

Submitted by:

\_\_\_\_\_  
Senator Tom Adelson

Adelson-CD-FA-HB2447  
4/17/2012 1:21 PM

1 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
2 as Section 6970 of Title 36, unless there is created a duplication in numbering, reads as follows:

3 Sections 8 through 17 of this act shall be known and may be cited as the "Oklahoma Any  
4 Willing Provider Act".

5 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
6 as Section 6971 of Title 36, unless there is created a duplication in numbering, reads as follows:

1           A. The Legislature finds that as the state’s insurance sector becomes increasingly dominated  
2 by managed care features that include decisions regarding coverage and appropriateness of health  
3 care, there is a vital need to protect patients in this environment.

4           B. The purpose of the Oklahoma Any Willing Provider Act is to prohibit discrimination  
5 against a provider willing to meet the terms and conditions for participation established by a health  
6 insurer and to preclude an insurer from prohibiting or limiting participation in the provision of  
7 services through a health benefit plan.

8           SECTION 10.   NEW LAW   A new section of law to be codified in the Oklahoma Statutes  
9 as Section 6972 of Title 36, unless there is created a duplication in numbering, reads as follows:

10           As used in the Oklahoma Any Willing Provider Act:

11           1. “Copayment” means a type of cost-sharing whereby insured or covered persons pay a  
12 specified predetermined amount per unit of service or percentage of health care costs with their  
13 insurer paying the remainder of the charge. Further:

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

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

16           2. “Gatekeeper system” means a system of administration used by any health benefit plan in  
17 which a primary care provider furnishes basic patient care and coordinates diagnostic testing,  
18 indicated treatment, and specialty referral for persons covered by the health benefit plan;

19           3. “Health benefit plan” means any entity or program that provides reimbursement, including  
20 capitation, for health care services;

21           4. “Health care provider” means those entities or institutions licensed by the State of  
22 Oklahoma to provide health care, limited to the following:

23                   a.       community mental health centers or clinics,

24                   b.       hospitals,

1 c. licensed ambulatory surgery centers, and

2 d. rural health clinics;

3 5. "Health care services" means services and products provided by a health care provider  
4 within the scope of the provider's license; and

5 6. "Health care insurer" means any entity including, but not limited to:

6 a. insurance companies,

7 b. hospital and medical service corporations,

8 c. health maintenance organizations,

9 d. preferred provider organizations,

10 e. physician hospital organizations,

11 f. third-party administrators, and

12 g. prescription benefit management companies authorized to administer, offer, or  
13 provide health benefit plans.

14 SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
15 as Section 6973 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

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

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

21 (1) a higher copayment,

22 (2) a reduction in reimbursement for services, or

23 (3) promotion of one health care provider over another by these methods;

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

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

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

11           SECTION 12. NEW LAW   A new section of law to be codified in the Oklahoma Statutes  
12 as Section 6974 of Title 36, unless there is created a duplication in numbering, reads as follows:

13           A. The Oklahoma Any Willing Provider Act shall not be construed:

14           1. To require all providers or a percentage of providers in the state or a locale to participate in  
15 the provision of services for a health maintenance organization; or

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

19           B. 1. The Oklahoma Any Willing Provider Act shall apply to:

20           a.       all health insurers, regardless of whether they are providing coverage, including  
21                    prepaid coverage, or administering or contracting to provide provider networks,  
22                    and

23           b.       all multiple-employer welfare arrangements and multiple-employer trusts.

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

3           C. 1. Nothing in the Oklahoma Any Willing Provider Act shall be construed to cover or  
4 regulate health care provider networks offered by noninsurers.

5           2. If an employer sponsoring a self-insured health benefit plan contracts directly with  
6 providers or contracts for a health care provider network, the Oklahoma Any Willing Provider Act  
7 shall not apply.

8           3. If a health insurer subcontracts with a noninsurer whose health care network does not meet  
9 the requirements of the Oklahoma Any Willing Provider Act, then the noninsurer may create a  
10 separate health care provider network that meets the requirements of the Oklahoma Any Willing  
11 Provider Act.

12           4. If the noninsurer chooses not to create the separate health care provider network, then the  
13 responsibility for compliance with the Oklahoma Any Willing Provider Act shall be the obligation of  
14 the health insurer to the extent permitted by the federal Employee Retirement Income Security Act of  
15 1974, as amended.

16           D. Notwithstanding the provisions of subsection C of this section, the Oklahoma Any Willing  
17 Provider Act applies to a health benefit plan provided by the state to state employees and education  
18 employees, as defined by Section 1303 of Title 74 of the Oklahoma Statutes, whether the health  
19 benefit plan is self-funded or insured.

20           SECTION 13.   NEW LAW   A new section of law to be codified in the Oklahoma Statutes  
21 as Section 6975 of Title 36, unless there is created a duplication in numbering, reads as follows:

22           It is a violation of the Oklahoma Any Willing Provider Act for any health care insurer or other  
23 person or entity to provide any health benefit plan providing for health care services to residents of  
24 this state that does not conform to the Oklahoma Any Willing Provider Act, but nothing in the

1 Oklahoma Any Willing Provider Act shall constitute a violation on the basis of actions taken by the  
2 health benefit plan to maintain quality, enforce utilization regulations, and to control costs.

3 SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
4 as Section 6976 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

10 SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
11 as Section 6977 of Title 36, unless there is created a duplication in numbering, reads as follows:

12 A. To avoid impairment of existing contracts the Oklahoma Any Willing Provider Act shall  
13 only apply to contracts issued or renewed after November 1, 2012.

14 B. Any provision in a health benefit plan which is executed, delivered, or renewed, or  
15 otherwise contracts for provision of services in this state that is contrary to the Oklahoma Any  
16 Willing Provider Act, shall, to the extent of the conflict, be void.

17 SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
18 as Section 6978 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

22 SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes  
23 as Section 6979 of Title 36, unless there is created a duplication in numbering, reads as follows:

24 The Insurance Commissioner shall:

1           1. Enforce the Oklahoma Any Willing Provider Act using powers granted to the  
2 Commissioner in Title 36 of the Oklahoma Statutes; and

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

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