

1 **SENATE CHAMBER**

2 **STATE OF OKLAHOMA**

DISPOSITION BY SENATE

3  
4 **FLOOR AMENDMENT**

5  
6 No. \_\_\_\_\_

7  
8 \_\_\_\_\_  
9 (Date)

10 Mr./Madame President:

11  
12 I move to amend Senate Bill No. 1511, Page 96, Line 6, as follows:

13 By inserting new Sections 34 through 43 to read as attached and renumbering subsequent sections.

14 Submitted by:

15  
16 \_\_\_\_\_  
17 Senator Adelson

18  
19 Adelson-ARE-FA-SB1511  
20 2/28/2012 4:12 PM

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23  
24 SECTION 34. NEW LAW A new section of law to be codified  
25 in the Oklahoma Statutes as Section 6970 of Title 36, unless there  
26 is created a duplication in numbering, reads as follows:

27 This act shall be known and may be cited as the "Oklahoma Any  
28 Willing Provider Act".

29 SECTION 35. NEW LAW A new section of law to be codified  
30 in the Oklahoma Statutes as Section 6971 of Title 36, unless there  
31 is created a duplication in numbering, reads as follows:

32 A. The Legislature finds that as the state's insurance sector  
33 becomes increasingly dominated by managed care features that  
34 include decisions regarding coverage and appropriateness of health

1 care, there is a vital need to protect patients in this  
2 environment.

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

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

12 As used in the Oklahoma Any Willing Provider Act:

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

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

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

20 2. "Gatekeeper system" means a system of administration used  
21 by any health benefit plan in which a primary care provider  
22 furnishes basic patient care and coordinates diagnostic testing,  
23 indicated treatment, and specialty referral for persons covered by  
24 the health benefit plan;

1       3. "Health benefit plan" means any entity or program that  
2 provides reimbursement, including capitation, for health care  
3 services;

4       4. "Health care provider" means those entities or institutions  
5 licensed by the State of Oklahoma to provide health care, limited  
6 to the following:

- 7           a. community mental health centers or clinics,
- 8           b. hospitals,
- 9           c. licensed ambulatory surgery centers, and
- 10          d. rural health clinics;

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

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

- 16           a. insurance companies,
- 17           b. hospital and medical service corporations,
- 18           c. health maintenance organizations,
- 19           d. preferred provider organizations,
- 20           e. physician hospital organizations,
- 21           f. third-party administrators, and
- 22           g. prescription benefit management companies authorized  
23 to administer, offer, or provide health benefit  
24 plans.

1           SECTION 37.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6973 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

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

5           1.    a.    Impose a monetary advantage or penalty under a health  
6                   benefit plan that would affect the choice of a  
7                   beneficiary to select among those health care  
8                   providers participating in the health benefit plan  
9                   according to the terms offered.

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

- 11                   (1) a higher copayment,  
12                   (2) a reduction in reimbursement for services, or  
13                   (3) promotion of one health care provider over  
14                   another by these methods;

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

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

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

6 SECTION 38. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 6974 of Title 36, unless there  
8 is created a duplication in numbering, reads as follows:

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

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

14 2. To take away the authority of health maintenance  
15 organizations that provide coverage of physician services to set  
16 the terms and conditions for participation by institutes, though  
17 health maintenance organizations shall apply the terms and  
18 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  
21 providing coverage, including prepaid coverage, or  
22 administering or contracting to provide provider  
23 networks, and

24 b. all multiple-employer welfare arrangements and  
25 multiple-employer trusts.

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

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

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

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

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

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

1           SECTION 39.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6975 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           It is a violation of the Oklahoma Any Willing Provider Act for  
5 any health care insurer or other person or entity to provide any  
6 health benefit plan providing for health care services to residents  
7 of this state that does not conform to the Oklahoma Any Willing  
8 Provider Act, but nothing in the Oklahoma Any Willing Provider Act  
9 shall constitute a violation on the basis of actions taken by the  
10 health benefit plan to maintain quality, enforce utilization  
11 regulations, and to control costs.

12           SECTION 40.           NEW LAW           A new section of law to be codified  
13 in the Oklahoma Statutes as Section 6976 of Title 36, unless there  
14 is created a duplication in numbering, reads as follows:

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

22           SECTION 41.           NEW LAW           A new section of law to be codified  
23 in the Oklahoma Statutes as Section 6977 of Title 36, unless there  
24 is created a duplication in numbering, reads as follows:

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

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

8           SECTION 42.           NEW LAW           A new section of law to be codified  
9 in the Oklahoma Statutes as Section 6978 of Title 36, unless there  
10 is created a duplication in numbering, reads as follows:

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

15           SECTION 43.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 6979 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18           The Insurance Commissioner shall:

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

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

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