HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

HOUSE BILL 1381 By: Cox, Roan and Shelton of the House

and

Jolley of the Senate

AS INTRODUCED

[public health and safety - creating the Supplemental Hospital Offset Payment Program Act - effective date – emergency]

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

As used in the Supplemental Hospital Offset Payment Program Act:

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

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

3. “Net hospital patient revenue” means the gross hospital revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines 1, 2, 2.01, 15, 17 and 18) of the Medicare Cost Report, excluding estimated nonhospital ancillary revenue as reported on Worksheet D-4, multiplied by the hospital’s ratio of total net to gross revenue, as reported on Worksheet G-3 (Column 1, Line 3) and Worksheet G-2 (Part I, Column 3, Line 25);

4. “Hospital" means an institution licensed by the State Department of Health as a general or specialized hospital pursuant to Section 1-701 of Title 63 of the Oklahoma Statutes maintained primarily for the diagnosis, treatment, or care of patients;

5. “Hospital Advisory Committee” means the Committee established for the purposes of advising the Oklahoma Health Care

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Authority and recommending provisions within and approval of any state plan amendment or waiver affecting hospital reimbursement made necessary or advisable by the Supplemental Hospital Offset Payment Program Act. The Committee shall be appointed no later than May 1, 2011, and shall be composed of five (5) members to serve until June 30, 2014, from lists of names submitted by the Oklahoma Hospital Association, as follows:

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

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

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

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

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

9. “Upper payment limit gap” means the difference between the upper payment limit and Medicaid payments not financed using

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

hospital assessments made to all hospitals other than hospitals owned or operated by state government.

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

4. 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 state fiscal 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 F of Section 4 of this act. The assessment rate for state fiscal year 2012 shall be fixed at two percent (2%). At no time in subsequent years shall the assessment rate exceed four percent (4%).

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

3. If a hospital's fiscal year 2009 Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated December 31,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

2010, the hospital shall submit a copy of the hospital's 2009 Medicare Cost Report to the Authority in order to allow the Authority to determine the hospital's net hospital patient revenue for the base year.

4. If a hospital commenced operations after the due date for a 2009 Medicare Cost Report, the hospital shall submit its 2010 Medicare Cost Report to the Authority in order to allow the Authority to determine the hospital's net patient revenue for the base year.

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

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

E. Closure, merger and new hospitals.

1. If a hospital ceases to operate as a hospital or for any reason ceases to be subject to the fee imposed under the Supplemental Hospital Offset Payment Program Act, the assessment for the state fiscal year in which the cessation occurs shall be adjusted by multiplying the annual assessment by a fraction, the numerator of which is the number of days in the year during which the hospital is subject to the assessment and the denominator of which is 365. Immediately upon ceasing to operate as a hospital, or otherwise ceasing to be subject to the supplemental hospital offset

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

payment program fee, the hospital shall pay the assessment for the year as so adjusted, to the extent not previously paid.

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

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

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

3. In the event that the supplemental hospital offset payment program fee is determined to be null and void for any of the reasons enumerated in this subsection, any supplemental hospital offset

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

payment program fee assessed and collected for any period after such invalidation shall be returned in full within sixty (60) days by the Authority to the hospital from which it was collected.

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

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

1. Submit the supplemental hospital offset payment program fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by this section; or

4. Submit reports timely.

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

C. Notice of Assessment.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

4. The hospital shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate, the hospital's net patient revenue calculation, and the assessment amount. The Authority shall establish, after consideration of input and recommendations by the Hospital Advisory Committee, a method to resolve any errors or disputes in the calculation of the assessment.

5. A hospital subject to an assessment under the Supplemental Hospital Offset Payment Program Act that has not been previously licensed as a hospital in Oklahoma and that commences hospital operations during a state fiscal year shall pay the required assessment computed under subsection E of Section 3 of this act and shall be eligible for hospital access payments under subsection E of this section on the date specified in rules promulgated by the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

Authority after consideration of input and recommendations of the Hospital Advisory Committee.

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

7. A hospital that is subject to payment of the assessment imposed by subsection A of Section 3 of this act at the beginning of a state fiscal year, but during the state fiscal year experiences a change in status so that it becomes exempted from payment under subsection B of Section 3 of this act, shall be relieved of its obligation to pay the hospital assessment and shall become ineligible for hospital access payments under subsection E of this section on the date specified in rules promulgated by the Authority after consideration of input and recommendations of the Hospital Advisory Committee.

D. Quarterly Notice and Collection.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1. The annual assessment imposed under subsection A of Section 3 of this act shall be due and payable on a quarterly basis. However, the first installment payment of an assessment imposed by the Supplemental Hospital Offset Payment Program Act shall not be due and payable until:

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

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

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

2. After the initial installment of an annual assessment has been paid under this section, each subsequent quarterly installment

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

payment shall be due and payable within ten (10) business days after the hospital has received its inpatient and outpatient access payments due for the applicable quarter.

3. If a hospital fails to timely pay the full amount of a 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. Payments shall be credited first to unpaid quarterly amounts, rather than to penalty or interest amounts, beginning with the most delinquent installment.

E. 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 April 1, 2011, the Authority shall make hospital access payments as set forth in this section.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

a. In addition to any other funds paid to critical access hospitals for inpatient and outpatient hospital services to Medicaid patients, each critical access hospital shall receive hospital access payments equal to the amount by which the payment for these services was less than one hundred one percent (101%) of the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

hospital's cost of providing these services, as determined using the Medicare Cost Report.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

4. The Supplemental Hospital Offset Payment Program Fund and the program specified in the Supplemental Hospital Offset Payment Program Act are exempt from budgetary reductions or eliminations caused by the lack of general revenue funds or other funds designated for or appropriated to the Authority.

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

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

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

B. Notwithstanding any other provision of the Supplemental Hospital Offset Payment Program Act, if, after receipt of authorization to receive federal matching funds for monies generated by the Supplemental Hospital Offset Payment Program Act, the authorization is withdrawn or changed so that federal matching funds are no longer available, the Oklahoma Health Care Authority shall

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

cease collecting the provider fee and shall repay to the hospitals any money received by the Supplemental Hospital Offset Payment Program Fund that is not subject to federal matching funds.

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

A. The Oklahoma Health Care Authority shall submit to the Hospital Advisory Committee a proposed state plan amendment to implement the requirements of the Supplemental Hospital Offset Payment Program Act, including the payment of hospital access payments under Section 4 of this act no later than May 15, 2011, and shall submit the state plan amendment to the Centers for Medicare and Medicaid Services after consideration of the input and recommendations of the Hospital Advisory Committee.

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

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

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

SECTION 7. This act shall become effective April 1, 2011.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 03-03-2011 - DO PASS, As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.