

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1025

By: Adelson

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5
6 AS INTRODUCED

7 An Act relating to insurance; creating the Oklahoma
8 Any Willing Provider Act; stating legislative
9 findings; stating purpose; defining terms;
10 prohibiting certain acts by health care insurers;
11 providing that insurance providers may continue
12 certain efficiency and cost-control programs;
13 specifying that participation in a health plan is not
14 mandatory for certain providers; specifying that
15 insurers may establish terms and conditions for
16 participation in certain programs; specifying
17 applicability to various insurance providers;
18 requiring compliance with federal Employee Retirement
19 Income Security Act of 1974; specifying that the
20 Oklahoma Any Willing Provider Act shall not apply to
21 certain self-insured businesses; authorizing the
22 creation of certain networks by certain noninsurers;
23 providing that the Oklahoma Any Willing Provider Act
24 shall apply to state and education employees;
specifying violations of act; providing for cause of
action in the event of certain violations; providing
that the Oklahoma Any Willing Provider Act shall be
applicable to certain contracts arising after certain
date; providing duties and powers of the Insurance
Commissioner; providing for codification; and
providing an effective date.

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

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

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

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 6971 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

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

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

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6972 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 As used in the Oklahoma Any Willing Provider Act:

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

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

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

6 2. "Gatekeeper system" means a system of administration used by
7 any health benefit plan in which a primary care provider furnishes
8 basic patient care and coordinates diagnostic testing, indicated
9 treatment, and specialty referral for persons covered by the health
10 benefit plan;

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

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

17 a. community mental health centers or clinics,

18 b. hospitals,

19 c. licensed ambulatory surgery centers, and

20 d. rural health clinics;

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

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

- 3 a. insurance companies,
- 4 b. hospital and medical service corporations,
- 5 c. health maintenance organizations,
- 6 d. preferred provider organizations,
- 7 e. physician hospital organizations,
- 8 f. third-party administrators, and
- 9 g. prescription benefit management companies authorized
10 to administer, offer, or provide health benefit plans.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6973 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

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

15 1. a. Impose a monetary advantage or penalty under a health
16 benefit plan that would affect the choice of a
17 beneficiary to select among those health care
18 providers participating in the health benefit plan
19 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
24 another by these methods;

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

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

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

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6974 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

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

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

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

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

7 a. all health insurers, regardless of whether they are
8 providing coverage, including prepaid coverage, or
9 administering or contracting to provide provider
10 networks, and

11 b. all multiple-employer welfare arrangements and
12 multiple-employer trusts.

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

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

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

23 3. If a health insurer subcontracts with a noninsurer whose
24 health care network does not meet the requirements of the Oklahoma

1 Any Willing Provider Act, then the noninsurer may create a separate
2 health care provider network that meets the requirements of the
3 Oklahoma Any Willing Provider Act.

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

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

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6975 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 It is a violation of the Oklahoma Any Willing Provider Act for
18 any health care insurer or other person or entity to provide any
19 health benefit plan providing for health care services to residents
20 of this state that does not conform to the Oklahoma Any Willing
21 Provider Act, but nothing in the Oklahoma Any Willing Provider Act
22 shall constitute a violation on the basis of actions taken by the
23 health benefit plan to maintain quality, enforce utilization
24 regulations, and to control costs.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6976 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

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

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6977 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

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

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

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

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

5 SECTION 10. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6979 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 The Insurance Commissioner shall:

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

11 and

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

14 SECTION 11. This act shall become effective November 1, 2012.

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