

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 112

By: Adelson

4
5
6 AS INTRODUCED

7 An Act relating to health insurance premiums;
8 creating the Health Insurance Competitive Loss Rating
9 Act; providing short title; specifying purposes of
10 the Health Insurance Competitive Loss Rating Act;
11 making certain forms of insurance applicable to the
12 Health Insurance Competitive Loss Rating Act; making
13 certain presumptions regarding a competitive market;
14 specifying factors to be identified in making a
15 determination regarding a competitive market;
16 providing that a rate may not be excessive,
17 inadequate or unfairly discriminatory; providing
18 procedures for the determination of certain rates;
19 specifying how certain rates shall be regulated;
20 providing that certain rates are deemed to be in
21 compliance under certain conditions; requiring
22 insurers to file certain rate information with the
23 Insurance Commissioner; authorizing the Insurance
24 Commissioner to suspend or modify certain filing
requirements; allowing an excessive rate to be used
under certain circumstances; stating conditions for
the disapproval of certain rates; providing
procedures relating to the disapproval of certain
rates; requiring Insurance Commissioner to issue
certain order; allowing order of disapproval to be
appealed; requiring certain parties to establish
procedures to review certain actions; establishing an
appeals process to the Insurance Commissioner for
certain actions; requiring the Insurance Commissioner
to conduct certain hearing; requiring an advisory
organization to file certain information with the
Insurance Commissioner for the Insurance
Commissioner's approval; providing for codification;
and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 4420.1 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Health
6 Insurance Competitive Loss Rating Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 4420.2 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The purposes of the Health Insurance Competitive Loss Rating
11 Act are:

12 1. To promote price competition among insurers so as to provide
13 rates that are responsive to competitive market conditions;

14 2. To protect policyholders and the public against the adverse
15 effects of excessive, inadequate or unfairly discriminatory rates;

16 3. To prohibit unlawful price-fixing agreements and other
17 anticompetitive behavior by insurers;

18 4. To provide regulatory procedures for the maintenance of
19 appropriate data reporting systems;

20 5. To provide regulatory controls in the absence of a
21 competitive marketplace; and

22 6. To authorize essential cooperative action among insurers in
23 the ratemaking process and to regulate such activity to prevent
24

1 practices that substantially lessen competition or create a
2 monopoly.

3 B. The Health Insurance Competitive Loss Rating Act is
4 applicable to all forms of health insurance written in this state by
5 insurers licensed in this state.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4420.3 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A competitive market is presumed to exist for a line of
10 health insurance unless the Insurance Commissioner, after a hearing,
11 issues an order stating that a reasonable degree of competition does
12 not exist in the market. The burden of proof in any hearing shall
13 be placed on the party or parties advocating the position that
14 competition does not exist. Any ruling that a market is not
15 competitive shall identify the factors causing the market not to be
16 competitive. Such order shall expire no later than one (1) year
17 after issue unless rescinded earlier by the Commissioner or unless
18 the Commissioner renews the rule after a hearing and a finding as to
19 the continued lack of a reasonable degree of competition. Any
20 ruling that renews the finding that competition does not exist shall
21 also identify the factors that cause the market to continue not to
22 be competitive.

23

24

1 B. 1. In determining whether a reasonable degree of
2 competition exists within a line of health insurance, the
3 Commissioner shall consider the following factors:

- 4 a. the number of insurers actively engaged in writing
5 coverage,
- 6 b. market shares of the leading writers and the changes
7 in market shares over a reasonable period of time,
- 8 c. existence of financial or economic barriers that could
9 prevent new firms from entering the market,
- 10 d. measures of market concentration and changes of market
11 concentration over time,
- 12 e. whether long-term profitability for insurers in the
13 market is reasonable in relation to industries of
14 comparable business risk, and
- 15 f. the relationship of insurers' costs to revenue over a
16 reasonable period of time.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4420.4 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A rate may not be excessive, inadequate or unfairly
21 discriminatory.

22 1. No rate in a competitive market may be determined to be
23 excessive unless the rate has increased the previous calendar year
24 more than fifty percent (50%) above the most recent inflation rate

1 as calculated using the Consumer Price Index (CPI-U) published by
2 the United States Bureau of Labor Statistics. A rate in a
3 noncompetitive market may be determined to be excessive if it is
4 likely to produce a profit that is unreasonably high for the
5 insurance provided.

6 2. A rate may not be determined to be inadequate unless:

7 a. the rate is clearly insufficient to sustain projected
8 losses, expenses and special assessments, and

9 b. the rate is unreasonably low and use of the rate by
10 the insurer has tended or, if continued, will tend to
11 create a monopoly in the market.

12 3. Unfair discrimination may be determined to exist if, after
13 allowing for practical limitations, price differentials fail to
14 reflect equitably the differences in expected losses and expenses.

15 A rate may not be determined to be unfairly discriminatory because
16 different premiums result for policyholders with like loss exposures
17 but different expense levels, or like expenses but different loss
18 exposures, or if it averaged broadly among persons insured within a
19 group, franchise or blanket policy or a mass-marketed plan. A rate
20 in a competitive market shall be considered unfairly discriminatory
21 if it classifies risk on the basis of race, color, creed, or
22 national origin.

23

24

1 B. In determining whether rates in a noncompetitive market are
2 excessive, inadequate, or unfairly discriminatory, due consideration
3 may be given to:

4 1. Past and prospective loss experience within and outside this
5 state, in accordance with accepted actuarial principles;

6 2. A reasonable margin for underwriting profit and
7 contingencies;

8 3. Loadings for leveling premium rates over time for dividends,
9 savings or unabsorbed premium deposits allowed or returned by
10 insurers to their policyholders, members or subscribers;

11 4. Past and prospective expenses both countrywide and those
12 specially applicable to this state; and

13 5. Provisions for special assessments and to all other relevant
14 factors including judgment within and outside this state.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 4420.5 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. If the Insurance Commissioner determines that competition
19 does not exist in a market and issues a ruling to that effect
20 pursuant to Section 4 of this act, the rates applicable to insurance
21 sold in that market shall be regulated in accordance with the
22 provisions of the Health Insurance Competitive Loss Rating Act that
23 are applicable to noncompetitive markets.

24

1 B. Any rate in effect at the time the Commissioner determines
2 that competition does not exist pursuant to the Health Insurance
3 Competitive Loss Rating Act shall be deemed to be in compliance with
4 the laws of this state unless disapproved pursuant to the procedures
5 and rating standards contained in Sections 7 through 10 of this act
6 that are applicable to noncompetitive markets.

7 C. Any insurer having a rate filing in effect at the time the
8 Commissioner determines that competition does not exist pursuant to
9 Section 4 of this act may be required to furnish supporting
10 information within thirty (30) days of a written request by the
11 Commissioner.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4420.6 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Every insurer shall file with the Insurance Commissioner all
16 rates and supplementary rate information to be used in this state no
17 later than thirty (30) days after the effective date of the rates
18 going into effect. The rates and supplementary rate information
19 need not be filed for commercial risks, which by general custom are
20 not written according to manual rules or rating plans.

21 B. In a noncompetitive market, every insurer shall file with
22 the Commissioner all rates, supplementary rate information and
23 supporting information at least thirty (30) days before the proposed
24 effective date of the new rates. The Commissioner may give written

1 notice, within thirty (30) days of receipt of the filing, that the
2 Commissioner needs additional time, not to exceed thirty (30) days
3 from the date of the notice to consider the filing. Upon written
4 application of the insurer, the Commissioner may authorize rates to
5 be effective before the expiration of the waiting period or an
6 extension thereof. A filing shall be deemed to meet the
7 requirements of the Health Insurance Competitive Loss Rating Act and
8 to become effective unless disapproved pursuant to the provisions of
9 Title 36 of the Oklahoma Statutes by the Commissioner before the
10 expiration of the waiting period or an extension thereof.

11 In a noncompetitive market, the filing shall be deemed in
12 compliance with the filing provision of this section unless the
13 Commissioner informs the insurer within ten (10) days after receipt
14 of the filings as to what supplementary rate information or
15 supporting information is required to complete the filing.

16 C. Every insurer shall file with the Commissioner, except as to
17 rates for those lines of insurance exempted from the provisions of
18 the Health Insurance Competitive Loss Rating Act by the Commissioner
19 pursuant to the provisions of subsections E and F of this section,
20 all rates, supplementary rate information and any changes and
21 amendments which it proposes to use. An insurer may file its rates
22 by either filing its final rates or by filing a multiplier and, if
23 applicable, an expense constant adjustment to be applied to
24 prospective loss costs that have been filed by an advisory

1 organization as permitted by this title. Such loss cost multiplier
2 filing and expense constant filings made by insurers shall remain in
3 effect until amended or withdrawn by the insurer. Every filing
4 shall state the effective date.

5 D. Under rules as may be adopted, the Commissioner may, by
6 written order, suspend or modify the requirement of filing as to any
7 kind of insurance, subdivision or combination thereof, or as to
8 classes of risks.

9 E. Notwithstanding any other provision of the Health Insurance
10 Competitive Loss Rating Act, upon the written consent of the insured
11 in a separate written document, a rate in excess of that determined
12 in accordance with the other provisions of the Health Insurance
13 Competitive Loss Rating Act may be used on a specific risk.

14 F. A filing and any supporting information required to be filed
15 shall be open to public inspection once the filing becomes effective
16 except information marked confidential, trade secret, or proprietary
17 by the insurer or filer. The insurer or filer shall have the burden
18 of asserting to the Commissioner that a filing and supporting
19 information are confidential, upon the request of the Commissioner.
20 The Commissioner may disapprove of the insurer's request for
21 confidential filing status.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 4420.7 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. 1. The Insurance Commissioner shall disapprove a rate in a
2 competitive market only if the Commissioner finds, pursuant to
3 subsection B of this section, that the rate is inadequate, excessive
4 or unfairly discriminatory pursuant to the provisions of the Health
5 Insurance Competitive Loss Rating Act.

6 2. The Commissioner may disapprove a rate for use in a
7 noncompetitive market only if the Commissioner finds, pursuant to
8 subsection B of this section, that the rate is excessive, inadequate
9 or unfairly discriminatory under this subsection.

10 B. 1. Prior to the expiration of a waiting period or an
11 extension thereof, made pursuant to subsection B of Section 6 of
12 this act, the Commissioner may disapprove, by written order, rates
13 filed pursuant to subsection B of Section 6 of this act. The order
14 shall specify in what respects the filing fails to meet the
15 requirements of this act. Any insurer whose rates are disapproved
16 pursuant to this section shall be given a hearing upon written
17 request made within thirty (30) days of disapproval.

18 2. If, at any time, the Commissioner finds that a rate
19 applicable to insurance sold in a noncompetitive market does not
20 comply with the standards set forth in Section 4 of this act, the
21 Commissioner may, after a hearing held upon not less than twenty
22 (20) days' written notice, issue an order pursuant to subsection C
23 of this section, disapproving such rate. The hearing notice shall
24 be sent to every insurer and advisory organization that adopted the

1 rate and shall specify the matters to be considered at the hearing.
2 The disapproval order shall not affect any contract or policy made
3 or issued prior to the effective date set forth in the order.

4 3. If, at any time, the Commissioner finds that a rate
5 applicable to insurance sold in a competitive market is inadequate
6 or unfairly discriminatory under Section 4 of this act, the
7 Commissioner may issue an order pursuant to subsection C of this
8 section disapproving the rate. The order shall not affect any
9 contract or policy made or issued prior to the effective date set
10 forth in the order.

11 C. If the Commissioner disapproves a rate pursuant to
12 subsection B of this section, the Commissioner shall issue an order
13 within thirty (30) days of the close of the hearing specifying in
14 what respects the rate fails to meet the requirements of the Health
15 Insurance Competitive Loss Rating Act. The order shall state an
16 effective date no sooner than thirty (30) business days after the
17 date of the order when the use of the rate shall be discontinued.
18 This order shall not affect any policy made before the effective
19 date of the order.

20 D. An order of disapproval may be appealed to the district
21 court upon sixty (60) days of written receipt of the Commissioner's
22 notice of disapproval. The insurer may implement the disapproved
23 rate upon notification to the court, in which case any excess of the
24 disapproved rate over a rate previously in effect shall be placed in

1 a reserve established by the insurer. The court shall have control
2 over the disbursement of funds from such reserve. The funds shall
3 be distributed as determined by the court in its final order except
4 that de minimus refunds to policyholders shall not be required.

5 E. All determinations made by the Commissioner pursuant to this
6 section shall be on the basis of findings of fact and conclusions of
7 law.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 4420.8 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Every advisory organization and every insurer subject to the
12 Health Insurance Competitive Loss Rating Act which makes its own
13 rates shall provide within this state reasonable means whereby any
14 insured aggrieved by the application of its rating system may, upon
15 that insured's written request, be heard in person or by the
16 insured's authorized representative to review the manner in which
17 such rating system has been applied in connection with the insurance
18 afforded the aggrieved insurer.

19 B. An insurer or any party affected by the action of an
20 advisory organization may, within thirty (30) days after written
21 notice of that action, make application, in writing, for an appeal
22 to the Insurance Commissioner, setting forth the basis for the
23 appeal and the grounds to be relied upon by the applicant.

24

1 C. Within thirty (30) days, the Commissioner shall review the
2 application and, if the Commissioner finds that the application is
3 made in good faith and that it sets forth on its face grounds which
4 reasonably justify holding a hearing, the Commissioner shall conduct
5 a hearing held not less than ten (10) days after written notice to
6 the applicant and to the advisory organization or insurer. The
7 Commissioner, after a hearing, shall affirm or reverse the action of
8 the advisory organization or insurer.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4420.9 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 Every advisory organization shall file with the Insurance
13 Commissioner for approval every statistical plan, all prospective
14 loss costs, provisions for special assessments and all supplementary
15 rating information and every change or amendment or modification of
16 any of the foregoing proposed for use in this state at least thirty
17 (30) days prior to its effective date. The filings will be deemed
18 approved unless disapproved within the waiting period

19 SECTION 10. This act shall become effective November 1, 2011.
20

21 53-1-1166 ARE 1/4/2011 2:14:41 PM
22
23
24