

1 **SENATE FLOOR VERSION**

2 April 3, 2013

3 **AS AMENDED**

4 ENGROSSED HOUSE  
5 BILL NO. 1031

6 By: Cox, Sherrer and Hoskin of  
7 the House

8 and

9 David and Ivester of the  
10 Senate

11 **[ public health and safety - extending date of**  
12 **supplemental hospital offset payment program fee -**  
13 **effective date ]**

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

15 SECTION 1. AMENDATORY 63 O.S. 2011, Section 3241.2, is  
16 amended to read as follows:

17 Section 3241.2 As used in the Supplemental Hospital Offset  
18 Payment Program Act:

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

20 2. "Base year" means a hospital's fiscal year ~~ending in 2009,~~

21 as reported in the Medicare Cost Report or as determined by the  
22 Authority if the hospital's data is not included in the Medicare  
23 Cost Report. The base year data will be used in all assessment  
24 calculations ~~through 2014;~~

1 3. "Net hospital patient revenue" means the gross hospital  
2 revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines ~~16, 17~~  
3 ~~and 18~~ "Total inpatient routine care services", "Ancillary  
4 services", and "Outpatient services") of the Medicare Cost Report,  
5 multiplied by the hospital's ratio of total net to gross revenue, as  
6 reported on Worksheet G-3 (Column 1, Line ~~3~~ "Net patient revenues")  
7 and Worksheet G-2 (Part I, Column 3, Line ~~25~~ "Total patient  
8 revenues");

9 4. "Hospital" means an institution licensed by the State  
10 Department of Health as a hospital pursuant to Section 1-701.1 of  
11 Title 63 of the Oklahoma Statutes maintained primarily for the  
12 diagnosis, treatment, or care of patients;

13 5. "Hospital Advisory Committee" means the Committee  
14 established for the purposes of advising the Oklahoma Health Care  
15 Authority and recommending provisions within and approval of any  
16 state plan amendment or waiver affecting hospital reimbursement made  
17 necessary or advisable by the Supplemental Hospital Offset Payment  
18 Program Act. In order to expedite the submission of the state plan  
19 amendment required by Section ~~6~~ 3241.6 of this ~~act~~ title, the  
20 Committee shall initially be appointed by the Executive Director of  
21 the Authority from recommendations submitted by a statewide  
22 association representing rural and urban hospitals. The permanent  
23 Committee shall be appointed no later than thirty (30) days after  
24 ~~the effective date of this act~~ November 1, 2011, and shall be

1 composed of five (5) members to serve until December 31, 2014, from  
2 lists of names submitted by a statewide association representing  
3 rural and urban hospitals, as follows:

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

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

9 Membership shall be extended until December 31, 2017, for those  
10 members who are serving as of December 31, 2014;

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

14 7. "Medicare Cost Report" means ~~Form CMS-2552-96,~~ the Hospital  
15 Cost Report, ~~as it existed on January 1, 2011~~ Form CMS-2552-96 or  
16 subsequent versions;

17 8. "Upper payment limit" means the maximum ceiling imposed by  
18 42 C.F.R., Sections 447.272 and 447.321 on hospital Medicaid  
19 reimbursement for inpatient and outpatient services, other than to  
20 hospitals owned or operated by state government; and

21 9. "Upper payment limit gap" means the difference between the  
22 upper payment limit and Medicaid payments not financed using  
23 hospital assessments made to all hospitals other than hospitals  
24 owned or operated by state government.

1 SECTION 2. AMENDATORY 63 O.S. 2011, Section 3241.3, is  
2 amended to read as follows:

3 Section 3241.3 A. For the purpose of assuring access to  
4 quality care for Oklahoma Medicaid consumers, the Oklahoma Health  
5 Care Authority, after considering input and recommendations from the  
6 Hospital Advisory Committee, shall assess hospitals licensed in  
7 Oklahoma, unless exempt under subsection B of this section, a  
8 supplemental hospital offset payment program fee.

9 B. The following hospitals shall be exempt from the  
10 supplemental hospital offset payment program fee:

11 1. A hospital that is owned or operated by the state or a state  
12 agency, the federal government, a federally recognized Indian tribe,  
13 or the Indian Health Service;

14 2. A hospital that provides more than fifty percent (50%) of  
15 its inpatient days under a contract with a state agency other than  
16 the Authority;

17 3. A hospital for which the majority of its inpatient days are  
18 for any one of the following services, as determined by the  
19 Authority using the Inpatient Discharge Data File published by the  
20 Oklahoma State Department of Health, or in the case of a hospital  
21 not included in the Inpatient Discharge Data File, using  
22 substantially equivalent data provided by the hospital:

- 23 a. treatment of a neurological injury,
- 24 b. treatment of cancer,

- c. treatment of cardiovascular disease,
- d. obstetrical or childbirth services,
- e. surgical care, except that this exemption shall not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery;

4. A hospital that is certified by the federal Centers for Medicaid and Medicare Services as a long-term acute care hospital or as a children's hospital; and

5. 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 calendar 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 sum of:

- a. the nonfederal portion of the upper payment limit gap,  
plus

1           b.    the annual fee to be paid to the Authority under  
2                    subparagraph c of paragraph 1 of subsection G of  
3                    Section 4 3241.4 of this ~~act~~ title, plus

4           c.    the amount to be transferred by the Authority to the  
5                    Medical Payments Cash Management Improvement Act  
6                    Programs Disbursing Fund under subsection C of Section  
7                    4 3241.4 of this ~~act~~ title.

8           2.    The assessment rate until December 31, 2012, shall be fixed  
9           at two and one-half percent (2.5%). At no time in subsequent years  
10           shall the assessment rate exceed four percent (4%).

11           3.    Net hospital patient revenue shall be determined using the  
12           data from each hospital's ~~fiscal year 2009~~ Medicare Cost Report  
13           contained in the Centers for Medicare and Medicaid Services'  
14           Healthcare Cost Report Information System file.

15           a.    Through 2013, the base year for assessment shall be  
16                    the hospital's fiscal year that ended in 2009, as  
17                    contained in the Healthcare Cost Report Information  
18                    System file dated December 31, 2010.

19           b.    For years after 2013, the base year for assessment  
20                    shall be determined by rules established by the  
21                    Authority.

22           4.    If a hospital's ~~fiscal year 2009~~ applicable Medicare Cost  
23           Report is not contained in the Centers for Medicare and Medicaid  
24           Services' Healthcare Cost Report Information System file ~~dated~~

1 ~~December 31, 2010~~, the hospital shall submit a copy of the  
2 hospital's ~~2009~~ applicable Medicare Cost Report to the Authority in  
3 order to allow the Authority to determine the hospital's net  
4 hospital patient revenue for the base year.

5 5. If a hospital commenced operations after the due date for a  
6 ~~2009~~ Medicare Cost Report, the hospital shall submit its initial  
7 Medicare Cost Report to the Authority in order to allow the  
8 Authority to determine the hospital's net patient revenue for the  
9 base year.

10 6. Partial year reports may be prorated for an annual basis.

11 7. In the event that a hospital does not file a uniform cost  
12 report under 42 U.S.C., Section 1396a(a)(40), the Authority shall  
13 establish a uniform cost report for such facility subject to the  
14 Supplemental Hospital Offset Payment Program provided for in this  
15 section.

16 8. The Authority shall review what hospitals are included in  
17 the Supplemental Hospital Offset Payment Program provided for in  
18 subsection C of this section and what hospitals are exempted from  
19 the Supplemental Hospital Offset Payment Program pursuant to  
20 subsection B of this section. Such review shall occur at a fixed  
21 period of time. This review and decision shall occur within twenty  
22 (20) days of the time of federal approval and annually thereafter in  
23 December of each year.

24

1           9. The Authority shall review and determine the amount of the  
2 annual assessment. Such review and determination shall occur within  
3 the twenty (20) days of federal approval and annually thereafter in  
4 December of each year.

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

7           E. Closure, merger and new hospitals.

8           1. If a hospital ceases to operate as a hospital or for any  
9 reason ceases to be subject to the fee imposed under the  
10 Supplemental Hospital Offset Payment Program Act, the assessment for  
11 the year in which the cessation occurs shall be adjusted by  
12 multiplying the annual assessment by a fraction, the numerator of  
13 which is the number of days in the year during which the hospital is  
14 subject to the assessment and the denominator of which is 365.  
15 Immediately upon ceasing to operate as a hospital, or otherwise  
16 ceasing to be subject to the supplemental hospital offset payment  
17 program fee, the hospital shall pay the assessment for the year as  
18 so adjusted, to the extent not previously paid.

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

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

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

13 3. In the event that the supplemental hospital offset payment  
14 program fee is determined to be null and void for any of the reasons  
15 enumerated in this subsection, any supplemental hospital offset  
16 payment program fee assessed and collected for any period after such  
17 invalidation shall be returned in full within twenty (20) days by  
18 the Authority to the hospital from which it was collected.

19 G. The Authority, after considering the input and  
20 recommendations of the Hospital Advisory Committee, shall promulgate  
21 rules for the implementation and enforcement of the supplemental  
22 hospital offset payment program fee. Unless otherwise provided, the  
23 rules adopted under this subsection shall not grant any exceptions  
24

1 to or exemptions from the hospital assessment imposed under this  
2 section.

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

- 5 1. Submit the supplemental hospital offset payment program fee;
- 6 2. Submit the fee in a timely manner;
- 7 3. Submit reports as required by this section; or
- 8 4. Submit reports timely.

9 I. The supplemental hospital offset payment program fee shall  
10 terminate effective December 31, ~~2014~~ 2017.

11 J. The Authority shall have the power to promulgate emergency  
12 rules to enact the provisions of this act.

13 SECTION 3. AMENDATORY 63 O.S. 2011, Section 3241.4, is  
14 amended to read as follows:

15 Section 3241.4 A. There is hereby created in the State  
16 Treasury a revolving fund to be designated the "Supplemental  
17 Hospital Offset Payment Program Fund".

18 B. The fund shall be a continuing fund, not subject to fiscal  
19 year limitations, be interest bearing and consisting of:

- 20 1. All monies received by the Oklahoma Health Care Authority  
21 from hospitals pursuant to the Supplemental Hospital Offset Payment  
22 Program Act and otherwise specified or authorized by law;
- 23 2. Any interest or penalties levied and collected in  
24 conjunction with the administration of this section;

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

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

7           C. Notwithstanding any other provisions of law, the Oklahoma  
8 Health Care Authority is authorized to transfer Seven Million Five  
9 Hundred Thousand Dollars (\$7,500,000.00) each fiscal quarter from  
10 the Supplemental Hospital Offset Payment Program Fund to the  
11 Authority's Medical Payments Cash Management Improvement Act  
12 Programs Disbursing Fund.

13           D. Notice of Assessment.

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

18           2. Annual notices of assessment shall be sent at least thirty  
19 (30) days before the due date for the first quarterly assessment  
20 payment of each year.

21           3. The first notice of assessment shall be sent within forty-  
22 five ~~days~~ (45) days after receipt by the Authority of notification  
23 from the Centers for Medicare and Medicaid Services that the  
24 assessments and payments required under the Supplemental Hospital

1 Offset Payment Program Act and, if necessary, the waiver granted  
2 under 42 C.F.R., Section 433.68 have been approved.

3 4. The hospital shall have thirty (30) days from the date of  
4 its receipt of a notice of assessment to review and verify the  
5 assessment rate, the hospital's net patient revenue calculation, and  
6 the assessment amount.

7 5. A hospital subject to an assessment under the Supplemental  
8 Hospital Offset Payment Program Act that has not been previously  
9 licensed as a hospital in Oklahoma and that commences hospital  
10 operations during a year shall pay the required assessment computed  
11 under subsection E of Section ~~3~~ 3241.3 of this ~~act~~ title and shall  
12 be eligible for hospital access payments under subsection E of this  
13 section on the date specified in rules promulgated by the Authority  
14 after consideration of input and recommendations of the Hospital  
15 Advisory Committee.

16 E. Quarterly Notice and Collection.

17 1. The annual assessment imposed under subsection A of Section  
18 ~~3~~ 3241.3 of this ~~act~~ title shall be due and payable on a quarterly  
19 basis. However, the first installment payment of an assessment  
20 imposed by the Supplemental Hospital Offset Payment Program Act  
21 shall not be due and payable until:

22 a. the Authority issues written notice stating that the  
23 assessment and payment methodologies required under  
24 the Supplemental Hospital Offset Payment Program Act

1 have been approved by the Centers for Medicare and  
2 Medicaid Services and the waiver under 42 C.F.R.,  
3 Section 433.68, if necessary, has been granted by the  
4 Centers for Medicare and Medicaid Services,

5 b. the thirty-day verification period required by  
6 paragraph 4 of subsection C of this section has  
7 expired, and

8 c. the Authority issues a notice giving a due date for  
9 the first payment.

10 2. After the initial installment of an annual assessment has  
11 been paid under this section, each subsequent quarterly installment  
12 payment shall be due and payable by the fifteenth day of the first  
13 month of the applicable quarter.

14 3. If a hospital fails to timely pay the full amount of a  
15 quarterly assessment, the Authority shall add to the assessment:

16 a. a penalty assessment equal to five percent (5%) of the  
17 quarterly amount not paid on or before the due date,  
18 and

19 b. on the last day of each quarter after the due date  
20 until the assessed amount and the penalty imposed  
21 under subparagraph a of this paragraph are paid in  
22 full, an additional five-percent penalty assessment on  
23 any unpaid quarterly and unpaid penalty assessment  
24 amounts.

1 4. The quarterly assessment including applicable penalties and  
2 interest must be paid regardless of any appeals action requested by  
3 the facility. If a provider fails to pay the Authority the  
4 assessment within the time frames noted on the invoice to the  
5 provider, the assessment, applicable penalty, and interest will be  
6 deducted from the facility's payment. Any change in payment amount  
7 resulting from an appeals decision will be adjusted in future  
8 payments.

9 F. Medicaid Hospital Access Payments.

10 1. To preserve the quality and improve access to hospital  
11 services for hospital inpatient and outpatient services rendered on  
12 or after the effective date of this act, the Authority shall make  
13 hospital access payments as set forth in this section.

14 2. The Authority shall pay all quarterly hospital access  
15 payments within ten (10) calendar days of the due date for quarterly  
16 assessment payments established in subsection E of this section.

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

20 4. All hospitals shall be eligible for inpatient and outpatient  
21 hospital access payments each year as set forth in this subsection  
22 except hospitals described in paragraph 1, 2, 3 or 4 of subsection B  
23 of Section ~~3~~ 3241.3 of this ~~act~~ title.

24

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

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

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

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

17           a. In addition to any other funds paid to hospitals for  
18 outpatient hospital services to Medicaid patients,  
19 each eligible hospital shall receive outpatient  
20 hospital access payments each year equal to the  
21 hospital's pro rata share of the outpatient hospital  
22 access payment pool based upon the hospital's Medicaid  
23 payments for outpatient services divided by the total  
24

1 Medicaid payments for outpatient services of all  
2 eligible.

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

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

8 a. In addition to any other funds paid to critical access  
9 hospitals for inpatient and outpatient hospital  
10 services to Medicaid patients, each critical access  
11 hospital shall receive hospital access payments equal  
12 to the amount by which the payment for these services  
13 was less than one hundred one percent (101%) of the  
14 hospital's cost of providing these services, as  
15 determined using the Medicare Cost Report.

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

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

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

6 9. If the Centers for Medicare and Medicaid Services finds that  
7 the Authority has made payments to hospitals that exceed the upper  
8 payment limits determined in accordance with 42 C.F.R. 447.272 and  
9 42 C.F.R. 447.321, hospitals shall refund to the Authority a share  
10 of the recouped federal funds that is proportionate to the  
11 hospitals' positive contribution to the upper payment limit.

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

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

- 18 a. transfers to the Medical Payments Cash Management  
19 Improvement Act Programs Disbursing Fund (Fund 340)  
20 for the state share of supplemental payments for  
21 Medicaid and SCHIP inpatient and outpatient services  
22 to hospitals that participate in the assessment,
- 23 b. transfers to the Medical Payments Cash Management  
24 Improvement Act Programs Disbursing Fund (Fund 340)

1           for the state share of supplemental payments for  
2           Critical Access Hospitals,

3           c.   transfers to the Administrative Revolving Fund (Fund  
4           200) for the state share of payment of administrative  
5           expenses incurred by the Authority or its agents and  
6           employees in performing the activities authorized by  
7           the Supplemental Hospital Offset Payment Program Act  
8           but not more than Two Hundred Thousand Dollars  
9           (\$200,000.00) each year,

10          d.   transfers to the Medical Payments Cash Management  
11          Improvement Act Programs Disbursing Fund (Fund 340) in  
12          an amount not to exceed Seven Million Five Hundred  
13          Thousand Dollars (\$7,500,000.00) each fiscal quarter,  
14          and

15          e.   the reimbursement of monies collected by the Authority  
16          from hospitals through error or mistake in performing  
17          the activities authorized under the Supplemental  
18          Hospital Offset Payment Program Act.

19          2.   The Authority shall pay from the Supplemental Hospital  
20          Offset Payment Program Fund quarterly installment payments to  
21          hospitals of amounts available for supplemental inpatient and  
22          outpatient payments, and supplemental payments for Critical Access  
23          Hospitals.

1           3. Except for the transfers described in subsection C of this  
2 section, monies in the Supplemental Hospital Offset Payment Program  
3 Fund shall not be used to replace other general revenues  
4 appropriated and funded by the Legislature or other revenues used to  
5 support Medicaid.

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

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

15           H. After considering input and recommendations from the  
16 Hospital Advisory Committee, the Authority shall promulgate  
17 regulations that:

18           1. Allow for an appeal of the annual assessment of the  
19 Supplemental Hospital Offset Payment Program payable under this act;  
20 and

21           2. Allow for an appeal of an assessment of any fees or  
22 penalties determined.

23           SECTION 4. This act shall become effective November 1, 2013.  
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1 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
April 3, 2013 - DO PASS AS AMENDED

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