

1 **SENATE FLOOR VERSION**

2 April 3, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1089

6 By: McEntire, McDugle and West  
7 (Josh) of the House

8 and

9 McCortney, Scott and  
10 Montgomery of the Senate

11  
12 **[ public health and safety - Supplemental Hospital  
13 Offset Payment Program Act - Hospital Advisory  
14 Committee - membership - effective date ]**

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

16 SECTION 1. AMENDATORY 63 O.S. 2011, Section 3241.2, as  
17 last amended by Section 1, Chapter 345, O.S.L. 2016 (63 O.S. Supp.  
18 2018, Section 3241.2), is amended to read as follows:

19 Section 3241.2 As used in the Supplemental Hospital Offset  
20 Payment Program Act:

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

22 2. "Base year" means a hospital's fiscal year as reported in  
23 the Medicare Cost Report or as determined by the Authority if the  
24 hospital's data is not included in the Medicare Cost Report. The  
base year data will be used in all assessment calculations;

3. "Net hospital patient revenue" means the gross hospital  
revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines "Total

1 inpatient routine care services", "Ancillary services", and  
2 "Outpatient services") of the Medicare Cost Report, multiplied by  
3 the hospital's ratio of total net to gross revenue, as reported on  
4 Worksheet G-3 (Column 1, Line "Net patient revenues") and Worksheet  
5 G-2 (Part I, Column 3, Line "Total patient revenues");

6 4. "Hospital" means an institution licensed by the State  
7 Department of Health as a hospital pursuant to Section 1-701 of this  
8 title maintained primarily for the diagnosis, treatment, or care of  
9 patients;

10 5. "Hospital Advisory Committee" means the Committee  
11 established for the purposes of advising the Oklahoma Health Care  
12 Authority and recommending provisions within and approval of any  
13 state plan amendment or waiver affecting hospital reimbursement made  
14 necessary or advisable by the Supplemental Hospital Offset Payment  
15 Program Act. In order to expedite the submission of the state plan  
16 amendment required by Section 3241.6 of this title, the Committee  
17 shall initially be appointed by the Executive Director of the  
18 Authority from recommendations submitted by a statewide association  
19 representing rural and urban hospitals. The permanent Committee  
20 shall be appointed no later than thirty (30) days after November 1,  
21 2011, and shall be composed of five (5) members to serve until  
22 ~~December 31, 2020~~ December 31, 2025, from lists of names submitted  
23 by a statewide association representing rural and urban hospitals,  
24 as follows:

- 1 a. one member, appointed by the Governor, who shall serve  
2 as chairman, and
- 3 b. two members appointed each by the President Pro  
4 Tempore of the Oklahoma State Senate and the Speaker  
5 of the Oklahoma House of Representatives.

6 Membership shall be extended until ~~December 31, 2020~~ December 31,  
7 2025, for those members who are serving as of ~~December 31, 2016~~  
8 December 31, 2019;

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

12 7. "Medicare Cost Report" means the Hospital Cost Report, Form  
13 CMS-2552-96 or subsequent versions;

14 8. "Upper payment limit" means the maximum ceiling imposed by  
15 42 C.F.R., Sections 447.272 and 447.321 on hospital Medicaid  
16 reimbursement for inpatient and outpatient services, other than to  
17 hospitals owned or operated by state government; and

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

22 SECTION 2. AMENDATORY 63 O.S. 2011, Section 3241.3, as  
23 last amended by Section 2, Chapter 345, O.S.L. 2016 (63 O.S. Supp.  
24 2018, Section 3241.3), is amended to read as follows:

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

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

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

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

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

- 21 a. treatment of a neurological injury,
- 22 b. treatment of cancer,
- 23 c. treatment of cardiovascular disease,
- 24 d. obstetrical or childbirth services,

1 e. surgical care, except that this exemption shall not  
2 apply to any hospital located in a city of less than  
3 five hundred thousand (500,000) population and for  
4 which the majority of inpatient days are for back,  
5 neck, or spine surgery;

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

9 5. A hospital that is certified by the federal Centers for  
10 Medicaid and Medicare Services as a critical access hospital.

11 C. The supplemental hospital offset payment program fee shall  
12 be an assessment imposed on each hospital, except those exempted  
13 under subsection B of this section, for each calendar year in an  
14 amount calculated as a percentage of each hospital's net patient  
15 revenue.

16 1. The assessment rate shall be determined annually based upon  
17 the percentage of net hospital patient revenue needed to generate an  
18 amount up to the sum of:

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

21 b. the annual fee to be paid to the Authority under  
22 subparagraph c of paragraph 1 of subsection G of  
23 Section 3241.4 of this title, plus

24

1           c.    the amount to be transferred by the Authority to the  
2                    Medical Payments Cash Management Improvement Act  
3                    Programs Disbursing Fund under subsection C of Section  
4                    3241.4 of this title.

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

8           3.    Net hospital patient revenue shall be determined using the  
9 data from each hospital's Medicare Cost Report contained in the  
10 Centers for Medicare and Medicaid Services' Healthcare Cost Report  
11 Information System file.

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

16           b.    For years after 2013, the base year for assessment  
17                    shall be determined by rules established by the  
18                    Authority.

19           4.    If a hospital's applicable Medicare Cost Report is not  
20 contained in the Centers for Medicare and Medicaid Services'  
21 Healthcare Cost Report Information System file, the hospital shall  
22 submit a copy of the hospital's applicable Medicare Cost Report to  
23 the Authority in order to allow the Authority to determine the  
24 hospital's net hospital patient revenue for the base year.

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

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

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

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

19           9. The Authority shall review and determine the amount of the  
20 annual assessment. Such review and determination shall occur within  
21 the twenty (20) days of federal approval and annually thereafter in  
22 November of each year.

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

1 E. Closure, merger and new hospitals.

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

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

19 F. 1. In the event that federal financial participation  
20 pursuant to Title XIX of the Social Security Act is not available to  
21 the Oklahoma Medicaid program for purposes of matching expenditures  
22 from the Supplemental Hospital Offset Payment Program Fund at the  
23 approved federal medical assistance percentage for the applicable  
24 year, the supplemental hospital offset payment program fee shall be



1 null and void as of the date of the nonavailability of such federal  
2 funding through and during any period of nonavailability.

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

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

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

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

- 22 1. Submit the supplemental hospital offset payment program fee;
- 23 2. Submit the fee in a timely manner;
- 24 3. Submit reports as required by this section; or

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4. Submit reports timely.

I. The supplemental hospital offset payment program fee shall terminate effective ~~December 31, 2020~~ December 31, 2025.

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

SECTION 3. This act shall become effective November 1, 2019.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
April 3, 2019 - DO PASS AS AMENDED