

1 ENGROSSED SENATE
2 BILL NO. 1369

By: Haste of the Senate

3 and

4 McEntire of the House

5
6 [health information - Oklahoma Healthcare
7 Transparency Initiative Act of 2022 - Office of the
8 State Coordinator for Health Information Exchange -
9 health information exchange legislative intent -
10 definitions - Oklahoma Healthcare Transparency
11 Initiative - submission of claims data - disclosure
12 of data - penalty schedule - Oklahoma Open Records
13 Act - codification - effective date -
14 emergency]

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-134.1 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 Sections 4 through 10 of this act shall be known and may be
20 cited as the "Oklahoma Healthcare Transparency Initiative Act of
21 2022".

22 SECTION 2. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-132.1 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

A. There is hereby created the Office of the State Coordinator
for Health Information Exchange within the Oklahoma Health Care
Authority.

1 B. The Office shall have the power and duty to:

2 1. a. Serve as the state designated entity for health
3 information exchange, if the State of Oklahoma serves
4 as the state designated entity for health information
5 exchange under Section 1-133 of Title 63 of the
6 Oklahoma Statutes, or

7 b. Oversee the state designated entity for health
8 information exchange, if the State of Oklahoma
9 designates a state designated entity for health
10 information exchange under Section 1-133 of Title 63
11 of the Oklahoma Statutes; and

12 2. Implement and govern the Oklahoma Healthcare Transparency
13 Initiative created under Sections 4 through 10 of this act.

14 C. The Office shall consist of the State Coordinator for Health
15 Information Exchange, who shall be appointed by and serve at the
16 pleasure of the Administrator of the Authority, and such other
17 employees of the Authority as the Administrator may assign to the
18 Office.

19 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-133, is
20 amended to read as follows:

21 Section 1-133. A. As used in this section:

22 1. "Health care entity" means:

23 a. a health plan that, either as an individual or group,
24 provides for, or pays the cost of, medical care,

1 b. a health care provider that offers or renders medical
2 or health services, or

3 c. any further individual or association defined as a
4 covered entity under 45 C.F.R., Section 160.103; and

5 2. "Health information exchange" means the electronic movement
6 of health-related information among organizations according to
7 nationally recognized standards for purposes including, but not
8 limited to, payment, treatment, and administration;

9 ~~2. "Health information exchange organization" means an entity~~
10 ~~whose primary business activity is health information exchange; and~~

11 ~~3. "Oklahoma State Health Information Network and Exchange" or~~
12 ~~"OKSHINE" means a health information exchange organization charged~~
13 ~~with facilitating the exchange of health information to and from~~
14 ~~authorized individuals and health care organizations in this state~~
15 ~~and.~~

16 B. The State of Oklahoma shall serve as or shall designate the
17 ~~state-designated~~ state designated entity for health information
18 exchange.

19 ~~B. The Oklahoma Health Care Authority (OHCA) shall establish a~~
20 ~~health information exchange certification with input from~~
21 ~~stakeholders. Such certification shall be required in order for a~~
22 ~~health information exchange organization to qualify as an Oklahoma~~
23 ~~Statewide Health Information Exchange (OKHIE). Until such time as~~
24 ~~the health information exchange certification is established by~~

1 ~~OHCA, an OKHIE shall mean either OKSHINE or a health information~~
2 ~~exchange organization that was previously certified by the Oklahoma~~
3 ~~Health Information Exchange Trust.~~

4 ~~C. The Oklahoma State Health Information Network and Exchange~~
5 ~~(OKSHINE) shall be organized for the purpose of improving the health~~
6 ~~of residents of this state by:~~

7 ~~1. Promoting efficient and effective communication among~~
8 ~~multiple health care providers including, but not limited to,~~
9 ~~hospitals, physicians, payers, employers, pharmacies, laboratories,~~
10 ~~and other health care entities or health information exchange~~
11 ~~networks and organizations;~~

12 ~~2. Creating efficiencies in health care costs by eliminating~~
13 ~~redundancy in data capture and storage and reducing administrative,~~
14 ~~billing, and data collection costs;~~

15 ~~3. Creating the ability to monitor community health status; and~~

16 ~~4. Providing reliable information to health care consumers and~~
17 ~~purchasers regarding the quality of health care.~~

18 C. Beginning July 1, 2023, all health care entities licensed by
19 and located in this state shall report data to and utilize the state
20 designated entity. The Office of the State Coordinator for Health
21 Information Exchange may, as provided by rules promulgated by the
22 Oklahoma Health Care Authority Board, allow exemptions from the
23 requirement provided by this subsection on the basis of financial
24 hardship, size, or technological capability of a health care entity

1 or such other bases as may be provided by rules promulgated by the
2 Board.

3 D. 1. A person who participates in the services or information
4 provided by ~~OKSHINE or an OKHIE~~ the state designated entity shall
5 not be liable in any action for damages or costs of any nature that
6 result solely from the person's use or failure to use ~~either an~~
7 ~~OKHIE or OKSHINE~~ information or data from the state designated
8 entity that was entered or retrieved under relevant state or federal
9 privacy laws, rules, regulations, or policies including, but not
10 limited to, the Health Insurance Portability and Accountability Act
11 of 1996.

12 2. A person shall not be subject to antitrust or unfair
13 competition liability based on participation ~~in OKSHINE or an OKHIE~~
14 with the state designated entity as long as the participation
15 provides an essential governmental function for the public health
16 and safety and enjoys state action immunity.

17 ~~3. Participating in an OKHIE shall qualify as meeting any~~
18 ~~requirement to send data to OKSHINE.~~

19 E. ~~1.~~ A person who provides information and data to ~~OKSHINE~~
20 the state designated entity retains a property right in the
21 information or data, but grants to the other participants or
22 subscribers a nonexclusive license to retrieve and use that
23 information or data under relevant state or federal privacy laws,
24

1 rules, regulations, or policies including, but not limited to, the
2 Health Insurance Portability and Accountability Act of 1996.

3 ~~2. All processes or software developed, designed, or purchased~~
4 ~~by OKSHINE shall remain the property of OKSHINE subject to use by~~
5 ~~participants or subscribers.~~

6 F. Patient-specific protected health information shall only be
7 disclosed in accordance with the patient's authorization or in
8 compliance with relevant state or federal privacy laws, rules,
9 regulations, or policies including, but not limited to, the Health
10 Insurance Portability and Accountability Act of 1996.

11 G. The Oklahoma Health Care Authority Board shall promulgate
12 rules to implement the provisions of this section.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-134.2 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. It is the intent of the Legislature to create and maintain
17 an informative source of healthcare information to support
18 consumers, researchers, and policymakers in healthcare decisions
19 within this state.

20 B. The purpose of the Oklahoma Healthcare Transparency
21 Initiative Act is to:

- 22 1. Create the Oklahoma Healthcare Transparency Initiative;
- 23 2. Establish governance of the Oklahoma Healthcare Transparency
24 Initiative;

1 3. Provide authority to collect healthcare information from
2 insurance carriers and other entities; and

3 4. Establish appropriate methods for collecting, maintaining,
4 and reporting healthcare information including privacy and security
5 safeguards.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-134.3 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 As used in the Oklahoma Healthcare Transparency Initiative Act
10 of 2022:

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

12 2. "Claims data" means information included in an
13 institutional, professional, or pharmacy claim or equivalent
14 information transaction for a covered individual including the
15 amount paid to a provider of healthcare services plus any amount
16 owed by the covered individual;

17 3. "Covered individual" means a natural person who is a
18 resident of this state and is eligible to receive medical, dental,
19 or pharmaceutical benefits under any policy, contract, certificate,
20 evidence of coverage, rider, binder, or endorsement that provides
21 for or describes coverage;

22 4. "Direct personal identifiers" means information relating to
23 a covered individual that contains primary or obvious identifiers,
24 such as the individual's name, street address, e-mail address,

1 telephone number, or Social Security number. Direct personal
2 identifiers shall not include geographic or demographic information
3 that would not allow the identification of a covered individual;

4 5. "Enrollment data" means demographic information and other
5 identifying information relating to covered individuals including
6 direct personal identifiers;

7 6. "Office" means the Office of the State Coordinator for
8 Health Information Exchange;

9 7. "Oklahoma Healthcare Transparency Initiative" means an
10 initiative to create a database including ongoing all-payer claims
11 database projects that receive and store data from a submitting
12 entity relating to medical, dental, pharmaceutical, and other
13 insurance claims information, unique identifiers, and geographic and
14 demographic information for covered individuals as permitted in the
15 Oklahoma Healthcare Transparency Initiative Act, and provider files,
16 for the purposes of the Oklahoma Healthcare Transparency Initiative
17 Act;

18 8. "Protected health information" means health information as
19 protected by the Health Insurance Portability and Accountability Act
20 of 1996, Pub. L. No. 104-191;

21 9. "Provider" means an individual or entity licensed by the
22 state to provide healthcare services;

23 10. a. "Submitting entity" means:
24

- 1 (1) an entity that provides health or dental
2 insurance or a health or dental benefit plan in
3 the state including but not limited to an
4 insurance company, medical services plan, managed
5 care organization, hospital plan, hospital
6 medical service corporation, health maintenance
7 organization, or fraternal benefit society,
8 provided that the entity has covered individuals
9 and the entity had at least two thousand covered
10 individuals in the previous calendar year,
- 11 (2) a health benefit plan offered or administered by
12 or on behalf of the state or an agency or
13 instrumentality of the state including but not
14 limited to benefits administered by a managed
15 care organization, notwithstanding the number of
16 covered individuals in the previous year,
- 17 (3) a health benefit plan offered or administered by
18 or on behalf of the federal government with the
19 agreement of the federal government,
- 20 (4) the Workers' Compensation Commission,
- 21 (5) any other entity providing a plan of health
22 insurance or health benefits subject to state
23 insurance regulation, a third-party
24 administrator, or a pharmacy benefits manager;

1 provided, that the entity has covered individuals
2 and the entity had at least two thousand covered
3 individuals in the previous calendar year,

4 (6) a health benefit plan subject to the Employee
5 Retirement Income Security Act of 1974, Pub. L.
6 No. 93-406, and that is fully insured,

7 (7) a risk-based provider organization licensed by
8 the Insurance Department, and

9 (8) any entity that contracts with the Department of
10 Corrections to provide medical, dental, or
11 pharmaceutical care to inmates.

12 b. A submitting entity shall not include:

13 (1) an entity that provides health insurance or a
14 health benefit plan that is accident-only,
15 specified disease, hospital indemnity, long-term
16 care, disability income, or other supplemental
17 benefit coverage,

18 (2) an employee of a welfare benefit plan as defined
19 by federal law that is also a trust established
20 pursuant to collective bargaining subject to the
21 Labor Management Relations Act of 1947, Pub. L.
22 No. 80-101, or
23
24

1 (3) a health benefit plan subject to the Employee
2 Retirement Income Security Act of 1974, Pub. L.
3 No. 93-406, that is self-funded; and

4 11. "Unique identifier" means any identifier that is guaranteed
5 to be unique among all identifiers for covered individuals but does
6 not include direct personal identifiers.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-134.4 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 A. There is hereby created the Oklahoma Healthcare Transparency
11 Initiative, which shall be governed by the Office of the State
12 Coordinator for Health Information Exchange.

13 B. The Office shall be the administrator of the Oklahoma
14 Healthcare Transparency Initiative and shall, in collaboration with
15 the state designated entity for health information exchange, be
16 responsible for development and implementation of a sustainability
17 plan subject to data use and disclosure requirements of the Oklahoma
18 Healthcare Transparency Initiative Act and any rules promulgated by
19 the Oklahoma Health Care Authority Board under the Oklahoma
20 Healthcare Transparency Initiative Act.

21 C. The Office shall have the power and duty to:

22 1. Collect, validate, analyze, and present health data
23 including claims data;

24 2. Assess penalties for noncompliance with this section;

1 3. Establish policies and procedures necessary for the
2 administration and oversight of the Oklahoma Healthcare Transparency
3 Initiative including procedures for the collection, processing,
4 storage, analysis, use, and release of data;

5 4. Identify and explore the key healthcare issues, questions,
6 and problems that may be improved through more transparent
7 information including but not limited to data required to be
8 disclosed to patients related to provider relationships or
9 affiliations with payers and providers, financial interests in
10 healthcare businesses, and payments or items of any value given to
11 providers from pharmaceutical or medical device manufacturers or
12 agents thereof; and

13 5. Provide a biennial report to the Legislature on the
14 operations of the Oklahoma Healthcare Transparency Initiative.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-134.5 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. No later than July 1, 2023, and thereafter in a frequency
19 specified in rules promulgated by the Oklahoma Health Care Authority
20 Board, a submitting entity shall submit claims data, unique
21 identifiers, and geographic and demographic information for covered
22 individuals as permitted in the Oklahoma Healthcare Transparency
23 Initiative Act, and provider files to the Oklahoma Healthcare
24

1 Transparency Initiative in accordance with standards and procedures
2 promulgated by the Board.

3 B. Data submitted under this section shall be treated as
4 confidential and shall be exempt from disclosure as a record under
5 the Oklahoma Open Records Act as defined pursuant to Section 24A.3
6 of Title 51 of the Oklahoma Statutes and are not subject to subpoena
7 except to the extent provided in the Oklahoma Insurance Code.

8 C. The collection, storage, and release of data and other
9 information under this section is subject to applicable state and
10 federal data privacy and security law.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-134.6 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Data in the Oklahoma Healthcare Transparency Initiative
15 shall, to the extent authorized by rules promulgated by the Oklahoma
16 Health Care Authority Board, be available:

17 1. When disclosed in a form and manner that ensures the privacy
18 and security of protected health information as required by state
19 and federal laws, as a resource to insurers, employers, purchasers
20 of health care, researchers, state agencies, and healthcare
21 providers to allow for assessment of healthcare utilization,
22 expenditures, and performance in this state including but not
23 limited to as a resource for hospital community health needs
24 assessments; and

1 2. To state programs regarding healthcare quality and costs for
2 use in improving health care in the state, subject to rules
3 prescribed by the Board conforming to state and federal privacy laws
4 or limiting access to limited-use data sets.

5 B. Data in the Oklahoma Healthcare Transparency Initiative
6 shall not be used to disclose trade secrets of submitting entities,
7 and shall be used or disclosed only in compliance with applicable
8 state and federal data privacy and security law and in compliance
9 with the policies established by the Board.

10 C. Notwithstanding any other section of law, the Oklahoma
11 Healthcare Transparency Initiative shall not publicly disclose any
12 data that contains direct personal identifiers.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-134.7 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Except for state or federal agencies that are submitting
17 entities, a submitting entity that fails to submit data as required
18 by the Oklahoma Healthcare Transparency Initiative Act or the rules
19 promulgated by the Oklahoma Health Care Authority Board may be
20 subject to a penalty.

21 B. The Board shall adopt a schedule of penalties not to exceed
22 One Thousand Dollars (\$1,000.00) per day for each day the violation
23 occurs, determined by the severity of the violation.

24

1 C. A penalty imposed under this section may be remitted or
2 mitigated upon such terms and conditions as the Board considers
3 proper and consistent with the public health and safety.

4 D. A penalty remitted under this section shall be used to fund
5 operations of the Oklahoma Healthcare Transparency Initiative.

6 SECTION 10. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-134.8 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. The State Department of Health shall submit all public
10 health data and vital statistics data collected by the Department to
11 the Oklahoma Healthcare Transparency Initiative for integration into
12 the Initiative database created under Section 6 of this act
13 including but not limited to data collected regarding hospital
14 discharge and emergency department records for the uninsured, birth
15 and death records, and disease registry data under Sections 1-115 et
16 seq., 1-323 et seq., 1-541, and 1-551.1 of Title 63 of the Oklahoma
17 Statutes.

18 B. The data submitted under subsection A of this section shall
19 be assigned a unique identifier and may be used in accordance with
20 the purposes of the Oklahoma Healthcare Transparency Initiative and
21 the rules promulgated pursuant to the Oklahoma Healthcare
22 Transparency Initiative Act.

23 SECTION 11. AMENDATORY 51 O.S. 2021, Section 24A.3, is
24 amended to read as follows:

1 Section 24A.3. As used in the Oklahoma Open Records Act:

2 1. "Record" means all documents, including, but not limited to,
3 any book, paper, photograph, microfilm, data files created by or
4 used with computer software, computer tape, disk, record, sound
5 recording, film recording, video record or other material regardless
6 of physical form or characteristic, created by, received by, under
7 the authority of, or coming into the custody, control or possession
8 of public officials, public bodies, or their representatives in
9 connection with the transaction of public business, the expenditure
10 of public funds or the administering of public property. ~~"Record"~~

11 Record does not mean:

- 12 a. computer software,
- 13 b. nongovernment personal effects,
- 14 c. unless public disclosure is required by other laws or
15 regulations, vehicle movement records of the Oklahoma
16 Transportation Authority obtained in connection with
17 the Authority's electronic toll collection system,
- 18 d. personal financial information, credit reports or
19 other financial data obtained by or submitted to a
20 public body for the purpose of evaluating credit
21 worthiness, obtaining a license, permit, or for the
22 purpose of becoming qualified to contract with a
23 public body,

- 1 e. any digital audio/video recordings of the toll
2 collection and safeguarding activities of the Oklahoma
3 Transportation Authority,
- 4 f. any personal information provided by a guest at any
5 facility owned or operated by the Oklahoma Tourism and
6 Recreation Department or the Board of Trustees of the
7 Quartz Mountain Arts and Conference Center and Nature
8 Park to obtain any service at the facility or by a
9 purchaser of a product sold by or through the Oklahoma
10 Tourism and Recreation Department or the Quartz
11 Mountain Arts and Conference Center and Nature Park,
- 12 g. a Department of Defense Form 214 (DD Form 214) filed
13 with a county clerk, including any DD Form 214 filed
14 before July 1, 2002, ~~or~~
- 15 h. except as provided for in Section 2-110 of Title 47 of
16 the Oklahoma Statutes,
- 17 (1) any record in connection with a Motor Vehicle
18 Report issued by the Department of Public Safety,
19 as prescribed in Section 6-117 of Title 47 of the
20 Oklahoma Statutes, or
- 21 (2) personal information within driver records, as
22 defined by the Driver's Privacy Protection Act,
23 18 United States Code, Sections 2721 through
24

1 2725, which are stored and maintained by the
2 Department of Public Safety, or

3 i. data submitted under the Oklahoma Healthcare
4 Transparency Initiative Act of 2022;

5 2. "Public body" shall include, but not be limited to, any
6 office, department, board, bureau, commission, agency, trusteeship,
7 authority, council, committee, trust or any entity created by a
8 trust, county, city, village, town, township, district, school
9 district, fair board, court, executive office, advisory group, task
10 force, study group, or any subdivision thereof, supported in whole
11 or in part by public funds or entrusted with the expenditure of
12 public funds or administering or operating public property, and all
13 committees, or subcommittees thereof. Except for the records
14 required by Section 24A.4 of this title, ~~"public body"~~ public body
15 does not mean judges, justices, the Council on Judicial Complaints,
16 the Legislature, or legislators;

17 3. "Public office" means the physical location where public
18 bodies conduct business or keep records;

19 4. "Public official" means any official or employee of any
20 public body as defined herein; and

21 5. "Law enforcement agency" means any public body charged with
22 enforcing state or local criminal laws and initiating criminal
23 prosecutions, including, but not limited to, police departments,
24 county sheriffs, the Department of Public Safety, the Oklahoma State

1 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
2 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
3 of Investigation.

4 SECTION 12. This act shall become effective July 1, 2022.

5 SECTION 13. It being immediately necessary for the preservation
6 of the public peace, health or safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

9 Passed the Senate the 23rd day of March, 2022.

10
11 _____
12 Presiding Officer of the Senate

13 Passed the House of Representatives the ____ day of _____,
14 2022.

15
16 _____
17 Presiding Officer of the House
18 of Representatives