

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2406

By: Osborn (Leslie) and Wallace  
of the House

and

David and Fields of the  
Senate

COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Oklahoma Individual Health Insurance Market Stabilization Act; providing payments to health insurance plans; providing market stabilization activities; providing legislative intent; defining terms; providing Individual Health Insurance Market Stabilization Program eligibility requirements; establishing the Oklahoma Individual Health Insurance Market Stabilization Program; providing Board of Directors membership; providing Board member reimbursement; requiring adoption of plan of operation, bylaws and rules; requiring administrative rules be promulgated and revoked under certain circumstances; authorizing hiring of Executive Director; providing administrative and operational support to the Program; requiring annual audit; providing certain duties of the Board; requiring sunset of the Program under certain conditions; granting certain powers to the Program; providing assessment of insurers and reinsurers; requiring participation be determined annually; prohibiting certain tax credit under certain circumstances; allowing the Board to abate or defer assessment under certain circumstances; providing certain actions shall not violate certain laws; authorizing the Secretary of Health and Human Services to apply for certain waiver; providing for codification; and declaring an emergency.

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 6530.1 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 "Oklahoma  
6 Individual Health Insurance Market Stabilization Act". It is the  
7 intent of the Legislature to provide payments to health insurance  
8 plans with respect to claims for eligible individuals for the  
9 purpose of lowering premiums for health insurance coverage offered  
10 in the individual market. Market stabilization activities shall  
11 include establishment of a high-risk pool, reinsurance, hybrid  
12 programs or any combination thereof. It is the further intent of  
13 the Legislature to bestow upon the Oklahoma Insurance Commissioner  
14 the authority to appoint a Board of Directors which shall create,  
15 implement, oversee and monitor the high-risk pool, reinsurance or  
16 hybrid programs under provisions of this act. The Board of  
17 Directors and the Oklahoma Secretary of Health and Human Services  
18 are authorized to apply for, accept and receive federal funds to  
19 implement and sustain market stabilization programs. Preliminary  
20 planning and analysis shall continue under the direction of the  
21 Oklahoma Insurance Commissioner. The onset of market stabilization  
22 implementation shall be contingent upon Oklahoma's approval for and  
23 receipt of federal funds to implement and sustain market  
24 stabilization programs.

1       SECTION 2.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6530.2 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4       As used in the Oklahoma Individual Health Insurance Market  
5 Stabilization Act:

6       1. "Agent" means any person who is licensed to sell health  
7 insurance in this state;

8       2. "Board" means the Board of Directors of the Oklahoma  
9 Individual Health Insurance Market Stabilization Program;

10       3. "Health insurance" means any individual or group hospital or  
11 medical-expense-incurred policy or health care benefits plan or  
12 contract providing insurance against loss through illness or injury  
13 of the insured. The term does not include any policy governing  
14 short-term accidents only, a fixed indemnity policy, a limited  
15 benefit policy, a specified accident policy, a specified disease  
16 policy, a Medicare supplement policy, a long-term care policy,  
17 medical payment or personal injury coverage in a motor vehicle  
18 policy, coverage issued as a supplement to liability insurance, a  
19 disability policy or workers' compensation;

20       4. "High-risk pool" means specially designated health insurance  
21 plans organized by federal or state entities, or a combination of  
22 federal and state entities, to serve high-risk, high-cost or both  
23 high-risk and high-cost individuals who meet enrollment criteria and  
24 do not have access to group insurance. They are organized as

1 independent entities governed by their own boards and administrators  
2 and supported by the state's department of insurance;

3 5. "Insurer" means any individual, corporation, association,  
4 partnership, fraternal benefit society or any other entity engaged  
5 in the health insurance business, except insurance agents and  
6 brokers. This term shall also include not-for-profit hospital  
7 service and medical indemnity plans, health maintenance  
8 organizations, preferred provider organizations, prepaid health  
9 plans, the State and Education Employees Group Health Insurance  
10 Plan, stop-loss insurance plans and any reinsurer reinsuring health  
11 insurance in this state, which shall be designated as engaged in the  
12 business of insurance for the purposes of the Oklahoma Individual  
13 Health Insurance Market Stabilization Act;

14 6. "Market" means the individual health insurance market in  
15 Oklahoma, wherein income-eligible individuals may receive federal  
16 financial assistance for the purchase of qualified health plans as  
17 provided by Section 36B of Title 26 of the United States Code and  
18 Section 1301 of the federal Patient Protection and Affordable Care  
19 Act;

20 7. "Market stabilization activities" means a high-risk pool,  
21 reinsurance, hybrid programs or any combination thereof authorized  
22 by this act;

23 8. "Plan" means any of the comprehensive health insurance  
24 benefit plans as approved by the Board of Directors of the Oklahoma

1 Individual Health Insurance Market Stabilization Program or  
2 qualified for participation in the market or by rule;

3 9. "Program" means the Oklahoma Individual Health Insurance  
4 Market Stabilization Program;

5 10. "Reinsurer" means any insurer from whom any insurer  
6 providing health insurance to Oklahomans procures insurance for  
7 itself with respect to all or part of the health insurance risk of  
8 the person; and

9 11. "Reinsurance" means the contract made between an entity  
10 providing insurance coverage and a third party to protect the  
11 insurer from losses. The contract provides for the third party to  
12 pay for the loss sustained by the insurer when the insurer makes a  
13 payment on the original contract. Reinsurance lets insurers cover a  
14 portion of their financial risks by recovering some or all of the  
15 claimed amounts they pay.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 6530.3 of Title 36, unless there  
18 is created a duplication in numbering, reads as follows:

19 Except as otherwise provided in this section, any person who is  
20 qualified for and enrolled in coverage through the market and is a  
21 permanent resident of the State of Oklahoma shall be eligible for  
22 coverage under the Oklahoma Individual Health Insurance Market  
23 Stabilization Program except that:

24

1        1. No person who is currently receiving or is entitled to  
2 receive health care benefits under any other federal or state  
3 program providing financial assistance or preventive and  
4 rehabilitative social services is eligible for coverage under the  
5 Program; and

6        2. No inmate incarcerated in any state penal institution or  
7 confined to any narcotic detention, treatment and rehabilitation  
8 facility shall be eligible for coverage under the Program.

9        SECTION 4.        NEW LAW        A new section of law to be codified  
10 in the Oklahoma Statutes as Section 6530.4 of Title 36, unless there  
11 is created a duplication in numbering, reads as follows:

12        A. There is hereby created a nonprofit legal entity to be known  
13 as the "Oklahoma Individual Health Insurance Market Stabilization  
14 Program".

15        B. 1. The Program shall operate under the management of a  
16 nine-member Board of Directors appointed by the Insurance  
17 Commissioner. The Board shall consist of:

18            a. two representatives of domestic insurance companies  
19            licensed to do business in this state,

20            b. one member from the general public who is a member of  
21            the class of individuals to which the program would  
22            apply,

23            c. one representative of a health maintenance  
24            organization,

- d. one member from a health-related profession,
- e. one member from the general public who is not associated with the medical profession, a hospital or an insurer,
- f. one representative of reinsurers, and
- g. two representatives from the providers of individual plans licensed to do business in this state.

2. The original Board shall be appointed for the following terms:

- a. three members for a term of one (1) year,
- b. three members for a term of two (2) years, and
- c. three members for a term of three (3) years.

3. All terms after the initial term shall be for three (3) years.

4. The Board shall elect one of its members as chairperson.

5. Members of the Board may be reimbursed from monies of the Program for actual and necessary expenses incurred by them in the performance of their official duties as members of the Board but shall not otherwise be compensated for their services.

6. The Board shall adopt a plan of operation and submit its articles, bylaws and operating rules to the Insurance Commissioner for approval. If the Board fails to submit a suitable plan of operation, articles, bylaws and operating rules within one hundred eighty (180) days, then the Insurance Commissioner shall promulgate

1 rules governing the operation of the Program. If the Board  
2 subsequently adopts and submits any plan of operation, articles,  
3 bylaws or operating rules that are approved by the Commissioner,  
4 then the Commissioner shall revoke prior adopted administrative  
5 rules that the Commissioner determines to be inconsistent with the  
6 approved plan of operation, articles, bylaws or operating rules.

7 7. The Board shall have the authority to hire an Executive  
8 Director of the Program.

9 8. The Oklahoma Insurance Department shall provide  
10 administrative and operational support to the Program and to the  
11 Board. The Board shall reimburse the Insurance Commissioner for any  
12 direct and actual administrative costs associated with administering  
13 the provisions of this act from monies collected by the Board.

14 C. The Board shall cause an audit to be made of, including, but  
15 not limited to, the funds, accounts and fiscal affairs of the  
16 Program which shall be prepared by an independent certified public  
17 accountant or a licensed public accountant. One copy of the annual  
18 audit shall be filed with the State Auditor and Inspector, and one  
19 copy shall be presented to the Board not more than one hundred  
20 twenty (120) days following the close of each fiscal year. In the  
21 event that a copy of the audit as required by this section is not  
22 filed with the State Auditor and Inspector within the time herein  
23 provided, the State Auditor and Inspector is authorized to either  
24 commence an audit or employ a certified public accountant or

1 licensed public accountant to make the audit herein required at the  
2 cost and expense of the Program.

3 SECTION 5. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 6530.5 of Title 36, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. The Board of Directors of the Oklahoma Individual Health  
7 Insurance Market Stabilization Program shall:

8 1. Develop, implement and administer the Program.

9 Implementation of the Program shall be contingent upon Oklahoma's  
10 approval for and receipt of federal funds to implement and sustain  
11 the Program;

12 2. Levy and collect all assessments from all health insurers  
13 and reinsurers;

14 3. Make payments to provide for the market stabilization  
15 activities authorized by this act and for administrative expenses  
16 incurred or estimated to be incurred during the period for which  
17 assessment is made;

18 4. Establish administrative and accounting processes and  
19 procedures for the operation of the Program and create operating  
20 rules to effectuate the provisions of this act including but not  
21 limited to:

22 a. determine eligibility of individuals to receive  
23 coverage under the Program,  
24

- 1           b.    establish standards for qualification based upon  
2                health status, health conditions, prior or current  
3                insurance coverage status, health costs as a result of  
4                utilization of consuming health care,
- 5           c.    determine amount of the assessment and the amount or  
6                percentage of the premiums paid to health insurance  
7                plans for health insurance coverage by eligible  
8                individuals, that shall be collected and deposited to  
9                the credit of, and available for use by, the Program,
- 10          d.    establish the dollar amount of claims for eligible  
11                individuals after which the Program will provide  
12                payments to health insurance plans and the proportion  
13                of such claims above such dollar amount that the  
14                Program will pay,
- 15          e.    establish the rate at which the Program will reimburse  
16                a health insurance plan for claims incurred for an  
17                enrolled individual's claims, above the attachment  
18                point and below the reinsurance cap,
- 19          f.    determine the threshold amount for claims costs  
20                incurred by a health insurance plan for an enrolled  
21                individual's claims, after which the claims costs for  
22                benefits are no longer eligible for reinsurance  
23                payments, and  
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1           g.     determine the diagnosed health condition of an  
2                 eligible individual for which the Program will provide  
3                 payments to health insurance plans for claims incurred  
4                 after such diagnosis is made; and

5         5.     Apply for, accept and receive federal funding for the  
6     operation of the Program, including the following:

- 7           a.     approval of a waiver provided by Section 1332 of the  
8                 Patient Protection and Affordable Care Act, "1332  
9                 State Innovation Waiver", authorizing federal funding  
10                to support market stabilization program payments,  
11           b.     Oklahoma's participation in any federal grant program  
12                 or programs, or  
13           c.     any combination of the above approaches.

14         B.     In the event Oklahoma is unable to secure federal approval  
15     of a 1332 State Innovation Waiver or secure funding from federal  
16     grant programs within two (2) years from the effective date of this  
17     act, the Oklahoma Individual Health Insurance Market Stabilization  
18     Program shall sunset, and any remaining monies shall be returned to  
19     insurers on a pro rata basis based on the amount each insurer has  
20     paid in assessments since the creation of the Program.

21         SECTION 6.         NEW LAW         A new section of law to be codified  
22     in the Oklahoma Statutes as Section 6530.6 of Title 36, unless there  
23     is created a duplication in numbering, reads as follows:

24         The Board may:

1        1. Exercise powers granted to insurers under the laws of this  
2 state;

3        2. Sue or be sued;

4        3. In addition to imposing assessments under Sections 5 and 7  
5 of this act, levy interim assessments against insurers and  
6 reinsurers to ensure the financial ability of the Program to cover  
7 the market stabilization activities authorized by this act and any  
8 administrative expenses incurred or estimated to be incurred in the  
9 operation of the Program prior to the end of a calendar year. Any  
10 interim assessment shall be due and payable within thirty (30) days  
11 of the receipt of the assessment notice by the insurer. Interim  
12 assessments shall be credited against the insurer's and reinsurer's  
13 annual assessment; and

14        4. Request the Insurance Commissioner to check the reports,  
15 records, books and papers of the Insurance Department to determine  
16 the financial condition of an insurer for purposes of Section 8 of  
17 this act.

18        SECTION 7.        NEW LAW        A new section of law to be codified  
19 in the Oklahoma Statutes as Section 6530.7 of Title 36, unless there  
20 is created a duplication in numbering, reads as follows:

21        A. For the purpose of providing the funds necessary to carry  
22 out the provisions of this act, each insurer and each reinsurer  
23 shall be assessed by the Board of Directors of the Oklahoma  
24 Individual Health Insurance Market Stabilization Program according

1 to such assessment methodology and at such time and for such amount  
2 as the Board finds necessary.

3 B. Each insurer's or reinsurer's proportion of participation in  
4 the Program shall be determined annually by the Board based on  
5 annual statements and other reports deemed necessary by the Board  
6 and filed with it by the insurer.

7 C. An insurer or reinsurer which has paid an assessment levied  
8 pursuant to this section shall not take a credit on the premium tax  
9 return for that insurer or reinsurer but may include the assessment  
10 amount in the insurer's or reinsurer's claims cost calculation for  
11 the purpose of determining the insurer's or reinsurer's rates for  
12 premiums charged for insurance policies to which the act applies.  
13 The rates shall not be deemed excessive for the sole reason of  
14 including in the calculation an amount reasonably calculated to  
15 recoup the assessment amount paid by the insurer or reinsurer.

16 SECTION 8. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 6530.8 of Title 36, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. The Board may abate or defer, in whole or in part, the  
20 assessment of any insurer or reinsurer if determined by the  
21 Commissioner and the Board, payment of the assessment would place  
22 the insurer or reinsurer at an action control level as defined in  
23 subparagraph a, b, c or d of paragraph 11 of Section 1522 of Title  
24

1 36 of the Oklahoma Statutes or prevent the insurer or reinsurer from  
2 fulfilling the contractual obligations of the insurer or reinsurer.

3 B. In the event that an assessment against an insurer or  
4 reinsurer is abated or deferred, in whole or in part, the amount by  
5 which such assessment is abated or deferred may be assessed against  
6 the other insurers or reinsurers in a manner consistent with the  
7 basis for assessments set forth in Sections 5 and 7 of this act, and  
8 the insurer or reinsurer receiving the abatement or deferment shall  
9 remain liable to the Program for the deficiency for four (4) years.

10 SECTION 9. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 6530.9 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13 It shall constitute an unfair practice for the purposes of  
14 Sections 1201 through 1220 of Title 36 of the Oklahoma Statutes for  
15 an insurer, insurance agent, insurance broker or third-party  
16 administrator to refer an individual employee to the Program or  
17 arrange for an individual employee to apply for the Program, for the  
18 purpose of separating that employee from group health insurance  
19 coverage provided in connection with the employee's employment.

20 SECTION 10. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 6530.10 of Title 36, unless  
22 there is created a duplication in numbering, reads as follows:

23 The Oklahoma Secretary of Health and Human Services may apply to  
24 the United States Secretary of Health and Human Services for a

1 waiver pursuant to Section 1332 of the Patient Protection and  
2 Affordable Care Act (42 U.S.C., Section 18052), "1332 State  
3 Innovation Waiver", with respect to health insurance coverage in the  
4 state for a plan year beginning on or after January 1, 2018. The  
5 Secretary may implement a state plan meeting the waiver requirements  
6 in a manner consistent with state and federal law and as approved by  
7 the United States Secretary of Health and Human Services.

8 SECTION 11. It being immediately necessary for the preservation  
9 of the public peace, health or safety, an emergency is hereby  
10 declared to exist, by reason whereof this act shall take effect and  
11 be in full force from and after its passage and approval.

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