

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2934

By: Mulready

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Health Care Authority; amending 56 O.S. 2011, Section 198.11a, which relates to the Oklahoma Consumer-Directed Personal Assistance and Support Services Act; modifying entities responsible for promulgation of rules; amending 56 O.S. 2011, Sections 198.16 and 198.17, which relate to the Oklahoma Self-Directed Care Act; modifying entities responsible for promulgation of rules; amending 56 O.S. 2011, Sections 1010.2, 1010.4 and 1010.5, which relate to the Oklahoma Medicaid Program Reform Act of 2003; deleting definition; modifying definitions; modifying entity responsible for promulgation of rules; amending 56 O.S. 2011, Section 1011.11, which relates to the durable medical equipment retrieval program; modifying entity responsible for promulgation of rules; amending 56 O.S. 2011, Sections 1017.4 and 1017.5, which relate to the Oklahoma Choices for Long-Term Care Act; modifying entity responsible for promulgation of rules; amending 63 O.S. 2011, Section 3250.9, which relates to waivers authorizing Medicaid supplements to hospital districts; modifying who submits application; amending 63 O.S. 2011, Section 5000.24, which relates to the Medicaid Buy-In Program for persons with disabilities; modifying entity responsible for promulgation of rules; amending 63 O.S. 2011, Sections 5005, 5007, 5008 and 5015.1, which relate to the Oklahoma Health Care Authority Act; modifying definitions; making Board an advisory body; transferring duties to the Administrator of the Oklahoma Health Care Authority; transferring appointing authority for the Administrator to the Governor; requiring Senate confirmation; providing

1 for determination of compensation; modifying powers
2 and duties of the Administrator; transferring duties
3 of the Oklahoma Health Care Authority Board to the
4 Administrator; amending 63 O.S. 2011, Section 5017,
5 as amended by Section 524, Chapter 304, O.S.L. 2012
6 (63 O.S. Supp. 2017, Section 5017), which relates to
7 the Oklahoma Health Care Authority Federal
8 Disallowance Fund; modifying administration of the
9 fund; amending 63 O.S. 2011, Section 5020, as amended
10 by Section 525, Chapter 304, O.S.L. 2012 (63 O.S.
11 Supp. 2017, Section 5020), which relates to the
12 Oklahoma Health Care Authority Medicaid Program Fund;
13 modifying administration of the fund; amending 63
14 O.S. 2011, Section 5024, which relates to elective
15 income deferral programs; modifying entity
16 responsible for promulgating rules; amending 63 O.S.
17 2011, Section 5026, which relates to the Medicaid
18 prescription drug program; modifying entity
19 responsible for administration of program; modifying
20 entity responsible for promulgating rules; amending
21 63 O.S. 2011, Section 5027, which relates to health
22 care districts; modifying entity responsible for
23 promulgating rules; amending Section 1, Chapter 244,
24 O.S.L. 2015 (63 O.S. Supp. 2017, Section 5028), which
relates to care coordination models for the aged,
blind and disabled; modifying entity responsible for
promulgating rules; amending Section 1, Chapter 208,
O.S.L. 2017 (63 O.S. Supp. 2017, Section 5028.1),
which relates to care coordination models for
newborns through children 18 years of age; modifying
entity responsible for promulgating rules; amending
Section 1, Chapter 324, O.S.L. 2015 (63 O.S. Supp.
2017, Section 5029), which relates to mailing
information to victims of domestic violence;
modifying entity responsible for promulgating rules;
amending 63 O.S. 2011, Sections 5030.1, 5030.3,
5030.4 and 5030.5, as last amended by Section 1,
Chapter 306, O.S.L. 2015 (63 O.S. Supp. 2017, Section
5030.5), which relate to the Medicaid Drug
Utilization Review Board; modifying entity
responsible for promulgating rules; modifying the
administrative hearing procedure; modifying duties of
the Medicaid Drug Utilization Review Board; amending
63 O.S. 2011, Sections 5051.4 and 5051.5, which
relate to the recovery of expenses by the Oklahoma
Health Care Authority; modifying entity responsible
for promulgating rules; amending 63 O.S. 2011,

1 Section 5052, which relates to opportunity for
2 hearing before the Oklahoma Health Care Authority;
3 modifying entity responsible for promulgating rules;
4 repealing 63 O.S. 2011, Section 5007.1, which relates
5 to the Oklahoma Medicaid Accountability and Outcomes
6 Act; and providing an effective date.

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

8 SECTION 1. AMENDATORY 56 O.S. 2011, Section 198.11a, is
9 amended to read as follows:

10 Section 198.11a A. The Aging Services Division within the
11 Department of Human Services, upon the approval of the Centers for
12 Medicare and Medicaid Services, shall establish the Oklahoma
13 Consumer-Directed Personal Assistance and Support Services (Oklahoma
14 CD-PASS) Demonstration Program. The purpose of the Oklahoma
15 Consumer-Directed Personal Assistance and Support Services
16 Demonstration Program shall be to enhance the range of choices and
17 options for Medicaid-eligible consumers, on a voluntary basis, who
18 require long-term care support services, and to assist families with
19 a Medicaid-eligible member who requires long-term care support
20 services to arrange and purchase their own personal care and related
21 services.

22 B. The Oklahoma Consumer-Directed Personal Assistance and
23 Support Services Demonstration Program includes, but is not limited
24 to, the following types of services:

1 1. a. Basic services, such as getting a recipient in and out
2 of a bed or in or out of a wheelchair or motorized
3 chair, or both,

4 b. Assisting with certain bodily functions, such as
5 bathing and personal hygiene, dressing and grooming,
6 and feeding including preparation and cleanup;

7 2. Ancillary services such as shopping and cleaning;

8 3. Companion-type services such as transportation, letter
9 writing and reading; and

10 4. Any other service requested by the eligible recipient
11 needing care and services.

12 C. 1. In developing the Oklahoma Consumer-Directed Personal
13 Assistance and Support Services Demonstration Program, the Aging
14 Services Division shall develop guidelines, eligibility criteria,
15 program performance standards, and techniques to evaluate the
16 outcomes of the Oklahoma Consumer-Directed Personal Assistance and
17 Support Services Demonstration Program.

18 2. The Demonstration Program, at a minimum, shall have the
19 following requirements:

20 a. the cost in the aggregate of the services offered
21 through the CD-PASS Program care plan shall be equal
22 to or less than the average cost of the Advantage
23 Waiver Program service or personal care plan as
24 applicable,

1 b. the baseline level of consumer satisfaction shall be
2 measured by an independent third party prior to
3 initiation of the Demonstration Program,

4 c. the scope of services offered within the CD-PASS
5 Program shall comply with current state statutes and
6 rules, and federal regulations, and

7 d. program evaluation which shall include an indication
8 of whether:

9 (1) consumer satisfaction for CD-PASS Program
10 participants is higher than or equal to consumer
11 satisfaction for Advantage Waiver Program
12 clients, as measured by an independent third
13 party, and

14 (2) the percentage of delivered hours of the CD-PASS
15 Program client care plan are greater than or
16 equal to the percentage of delivered hours of the
17 Advantage Waiver Program service or personal care
18 plan.

19 D. The Aging Services Division may:

20 1. Consult with various federal, state and local entities in
21 order to fulfill the purposes of the Oklahoma Consumer-Directed
22 Personal Assistance and Support Services Demonstration Program;
23
24

1 2. Contract with entities in fulfilling the purposes of the
2 Oklahoma Consumer-Directed Personal Assistance and Support Services
3 Demonstration Program; and

4 3. Upon the approval of the Centers for Medicare and Medicaid
5 Services and the availability of funds, expand the Oklahoma
6 Consumer-Directed Personal Assistance and Support Services
7 Demonstration Program statewide if the evaluation provided for in
8 subsection C of this section demonstrates consumer satisfaction with
9 and cost effectiveness in the delivery of the Program.

10 E. The ~~Commission for~~ Department of Human Services and the
11 Oklahoma Health Care Authority ~~Board~~ shall promulgate any rules
12 necessary to implement the provisions of the Oklahoma Consumer-
13 Directed Personal Assistance and Support Services Act.

14 SECTION 2. AMENDATORY 56 O.S. 2011, Section 198.16, is
15 amended to read as follows:

16 Section 198.16 A. In order to implement the Oklahoma Self-
17 Directed Care Act:

18 1. The Oklahoma Health Care Authority ~~Board~~ and the ~~Commission~~
19 ~~for~~ Department of Human Services are hereby authorized to promulgate
20 rules necessary to enact the provisions of this act;

21 2. The Oklahoma Health Care Authority shall take all actions
22 necessary to ensure state compliance with federal regulations;

23 3. The Authority shall apply for any necessary federal waivers
24 or waiver amendments required to implement the program;

1 4. The Legislature intends that, as consumers relocate from
2 institutional settings to community-based options, funds used to
3 serve consumers in institutional settings shall follow consumers to
4 cover the cost of community-based services; and

5 5. The Department of Human Services or other applicable state
6 entity for the population served may develop an electronic benefit
7 transfer feature for the provision of self-directed care services to
8 consumers.

9 B. The Oklahoma Self-Directed Care Act, at a minimum, shall
10 meet the following requirements:

11 1. The cost in the aggregate of the services offered through
12 the self-directed care plan shall be equal to or less than the cost
13 of a home- and community-based waiver or comparable waiver program;

14 2. The baseline level of consumer satisfaction shall be
15 measured by a third party prior to initiation of the Oklahoma Self-
16 Directed Care Act;

17 3. The scope of services offered within the Self-Directed Care
18 Program shall comply with current state statutes and rules, and
19 federal regulations; and

20 4. Program evaluation which shall include an indication of
21 whether consumer satisfaction for Self-Directed Care Program
22 consumers is higher than or equal to consumer satisfaction for
23 home- and community-based waiver clients or other comparable waiver
24 programs, as measured by a third party.

1 C. Upon the approval of the Centers for Medicare and Medicaid
2 Services and the availability of funds, the Authority and the
3 Department shall implement the Self-Directed Care Program statewide
4 if the evaluation provided for in subsection B of this section
5 demonstrates consumer satisfaction with and cost-effectiveness in
6 the delivery of the program.

7 D. The Authority and the Department shall conduct a feasibility
8 study on the future design and implementation of expanding the home-
9 and community-based waiver program to include additional people with
10 developmental disabilities, spinal cord injury or traumatic brain
11 injury; provided, however, before allocating any new monies to such
12 program, the Department and the Authority shall prepare and submit
13 to the Legislature the results of the feasibility study and a fiscal
14 impact statement.

15 E. The Authority and the Department of Human Services shall
16 each, on an ongoing basis, review and assess the implementation of
17 the Self-Directed Care Program. By January 15 of each year, the
18 Authority shall submit a written report to the Governor and
19 Legislature that includes each agency's review of the program.

20 F. The Department of Human Services shall appoint a committee
21 to assist the Department in the development of waivers and rules
22 related to self-directed services, including the functional needs
23 assessment used for determination of eligibility for the Self-
24 Directed Services program. The committee shall be composed of two

1 self advocates or adults with developmental disabilities; two
2 parents or family members of consumers; two advocates; two
3 representatives of an agency providing Developmental Disabilities
4 Services Division waiver services; one representative from the
5 Oklahoma Parent Center; and one representative from the University
6 of Oklahoma Health Sciences Center for Learning and Leadership. The
7 committee shall sunset no later than four (4) years after
8 implementation of programs indicated in this act. The Governor,
9 President Pro Tempore of the Senate and the Speaker of the House of
10 Representatives shall each appoint an at-large representative to the
11 Committee.

12 The Authority is hereby directed to modify the state Medicaid
13 program Personal Care Program to allow any person to self-direct his
14 or her own personal care services who:

- 15 1. Is eligible to receive Personal Care Program services;
- 16 2. Chooses to receive Personal Care Program services; and
- 17 3. Is able to direct his or her own care or to designate an
18 eligible representative to assist in directing such care.

19 SECTION 3. AMENDATORY 56 O.S. 2011, Section 198.17, is
20 amended to read as follows:

21 Section 198.17 A. The Oklahoma Health Care Authority, the
22 Department of Human Services and the Department of Mental Health and
23 Substance Abuse Services, in cooperation with community
24 stakeholders, shall develop a prescreening process to be utilized

1 prior to an individual being admitted to a nursing facility or
2 within twenty (20) days of admission to such a facility. The
3 purpose of the screening process shall be to ensure that individuals
4 who wish to avoid placement in a nursing facility have access to
5 supports necessary to remain in the community. The prescreening
6 process shall include, but not be limited to, the use of the
7 following tools:

- 8 1. Resident Assessment Instrument - Minimum Data Set (RAI-MDS),
9 as designated by the Centers for Medicare and Medicaid Services;
- 10 2. Universal Comprehensive Assessment Tool (UCAT);
- 11 3. Preadmission Screening and Annual Resident Review (PASARR);
- 12 4. Inventory for Client and Agency Planning (ICAP); and
- 13 5. Uniform Case Assessment Protocol (UCAP).

14 B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
15 rules necessary to implement the prescreening process developed
16 pursuant to this section, provided funding is made available to
17 implement the process.

18 SECTION 4. AMENDATORY 56 O.S. 2011, Section 1010.2, is
19 amended to read as follows:

20 Section 1010.2 ~~A.~~ As used in the Oklahoma Medicaid Program
21 Reform Act of 2003:

- 22 1. "Authority" means the Oklahoma Health Care Authority;
- 23 2. ~~"Board" means the Oklahoma Health Care Authority Board;~~

1 ~~3.~~ "Administrator" means the chief executive officer of the
2 Oklahoma Health Care Authority;

3 ~~4.~~ 3. "Eligible person" means any person who meets the minimum
4 requirements established by:

5 a. rules promulgated by the Oklahoma Health Care
6 Authority ~~Board~~ pursuant to the requirements of Title
7 XIX of the federal Social Security Act, 42 U.S.C.,
8 Section 1396 et seq.,

9 b. a waiver under the provisions of this act, or

10 c. any state law authorizing the purchase of small
11 employer buy-in coverage;

12 ~~5.~~ 4. "Member" means an eligible person who enrolls in the
13 Oklahoma Medicaid Healthcare Options System;

14 ~~6.~~ 5. "Nonparticipating provider" means a person who provides
15 hospital or medical care pursuant to the Oklahoma Medicaid Program
16 but does not have a managed care health services contract or
17 subcontract within the Oklahoma Medicaid Healthcare Options System;

18 ~~7.~~ 6. "Prepaid capitated" means a mode of payment by which a
19 health care provider directly delivers health care services for the
20 duration of a contract to a maximum specified number of members
21 based on a fixed rate per member, regardless of the actual number of
22 members who receive care from the provider or the amount of health
23 care services provided to any member;

1 ~~8.~~ 7. "Participating provider" means any person or organization
2 who contracts with the Authority for the delivery of
3 hospitalization, eye care, dental care, medical care and other
4 medically related services to members or any subcontractor of such
5 provider delivering services pursuant to the Oklahoma Medicaid
6 Healthcare Options System; and

7 ~~9.~~ 8. "System" means the Oklahoma Medicaid Healthcare Options
8 System established by the Oklahoma Medicaid Program Reform Act of
9 2003.

10 SECTION 5. AMENDATORY 56 O.S. 2011, Section 1010.4, is
11 amended to read as follows:

12 Section 1010.4 A. The Oklahoma Health Care Authority shall
13 take all steps necessary to implement the Oklahoma Medicaid
14 Healthcare Options System as required by the Oklahoma Medicaid
15 Program Reform Act of 2003.

16 B. The implementation of the System shall include, but not be
17 limited to, the following:

18 1. Development of operations plans for the System which include
19 reasonable access to hospitalization, eye care, dental care, medical
20 care and other medically related services for members including, but
21 not limited to, access to twenty-four-hour emergency care;

22 2. Contract administration and oversight of participating
23 providers;
24

1 3. Technical assistance services to participating providers and
2 potential providers;

3 4. Development of a complete plan of accounts and controls for
4 the System including, but not limited to, provisions designed to
5 ensure necessary and reasonable usage of covered health and medical
6 services provided through the System;

7 5. Establishment of peer review and utilization study functions
8 for all participating providers;

9 6. Technical assistance for the formation of medical care
10 consortiums to provide covered health and medical services under the
11 System. Development of service plans and consortiums may be on the
12 basis of medical referral patterns;

13 7. Development and management of a provider payment system;

14 8. Establishment and management of a comprehensive plan for
15 ensuring the quality of care delivered by the System;

16 9. Establishment and management of a comprehensive plan to
17 prevent fraud against the System by members, eligible persons and
18 participating providers;

19 10. Coordination of benefits provided under the Oklahoma
20 Medicaid Program Reform Act of 2003 to any member;

21 11. Development of a health education and information program;

22 12. Development and management of a participant enrollment
23 system;

1 13. Establishment and maintenance of a claims resolution
2 procedure to ensure that a submitted claim is resolved within forty-
3 five (45) days of the date the claim is correctly submitted;

4 14. Establishment of standards for the coordination of medical
5 care and patient transfers;

6 15. Provision for the transition of patients between
7 participating providers and nonparticipating providers;

8 16. Provision for the transfer of members and persons who have
9 been determined eligible from hospitals which do not have contracts
10 to care for such persons;

11 17. Specification of enrollment procedures including, but not
12 limited to, notice to providers of enrollment. Such procedures may
13 provide for varying time limits for enrollment in different
14 situations;

15 18. Establishment of uniform forms and procedures to be used by
16 all participating providers;

17 19. Methods of identification of members to be used for
18 determining and reporting eligibility of members;

19 20. Establishment of a comprehensive eye care and dental care
20 system which:

- 21 a. includes practitioners as participating providers,
- 22 b. provides for quality care and reasonable and equal
- 23 access to such practitioners, and

1 c. provides for the development of service plans,
2 referral plans and consortiums which result in
3 referral practices that reflect timely, convenient and
4 cost-effective access to such care for members in both
5 rural and urban areas;

6 21. a. Development of a program for Medicaid eligibility and
7 services for individuals who are in need of breast or
8 cervical cancer treatment and who:

9 (1) have family incomes that are below one hundred
10 eighty-five percent (185%) of the federal poverty
11 level,

12 (2) have not attained the age of sixty-five (65)
13 years,

14 (3) have no or have inadequate health insurance or
15 health benefit coverage for treatment of breast
16 and cervical cancer, and

17 (4) meet the requirements for treatment and have been
18 screened for breast or cervical cancer.

19 b. The program shall include presumptive eligibility and
20 shall provide for treatment throughout the period of
21 time required for treatment of the individual's breast
22 or cervical cancer,

23 c. On or before July 1, 2002, the Oklahoma Health Care
24 Authority shall coordinate with the State Commissioner

1 of Health to develop procedures to implement the
2 program, contingent upon funds becoming available; and

3 22. Establishment of co-payments, premiums and enrollment fees,
4 and the establishment of policy for those members who do not pay co-
5 payments, premiums or enrollment fees.

6 C. Except for reinsurance obtained by providers, the Authority
7 shall coordinate benefits provided under the Oklahoma Medicaid
8 Program Reform Act of 2003 to any eligible person who is covered by
9 workers' compensation, disability insurance, a hospital and medical
10 service corporation, a health care services organization or other
11 health or medical or disability insurance plan, or who receives
12 payments for accident-related injuries, so that any costs for
13 hospitalization and medical care paid by the System are recovered
14 first from any other available third party payors. The System shall
15 be the payor of last resort for eligible persons.

16 D. Prior to the development of the plan of accounts and
17 controls required by this section and periodically thereafter, the
18 Authority shall compare the scope, utilization rates, utilization
19 control methods and unit prices of major health and medical services
20 provided in this state with health care services in other states to
21 identify any unnecessary or unreasonable utilization within the
22 System. The Authority shall periodically assess the cost
23 effectiveness and health implications of alternate approaches to the
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1 provision of covered health and medical services through the System
2 in order to reduce unnecessary or unreasonable utilization.

3 E. The Authority may contract distinct administrative functions
4 to one or more persons or organizations who may be participating
5 providers within the System.

6 F. Contracts for managed health care plans, authorized pursuant
7 to paragraph 2 of subsection A of Section 1010.3 of this title and
8 necessary to implement the System, and other contracts entered into
9 prior to July 1, 1996, shall not be subject to the provisions of the
10 Oklahoma Central Purchasing Act.

11 G. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
12 rules:

13 1. Establishing appropriate competitive bidding criteria and
14 procedures for contracts awarded pursuant to the Oklahoma Medicaid
15 Program Reform Act of 2003;

16 2. Which provide for the withholding or forfeiture of payments
17 to be made to a participating provider by the Oklahoma Medicaid
18 Healthcare Options System for the failure of the participating
19 provider to comply with a provision of the participating provider's
20 contract with the System or with the provisions of promulgated rules
21 or law; and

22 3. Necessary to carry out the provisions of the Oklahoma
23 Medicaid Program Reform Act of 2003. Such rules shall consider the
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1 differences between rural and urban conditions on the delivery of
2 hospitalization services, eye care, dental care and medical care.

3 SECTION 6. AMENDATORY 56 O.S. 2011, Section 1010.5, is
4 amended to read as follows:

5 Section 1010.5 As a condition of the contract with any proposed
6 or potential participating provider pursuant to the Oklahoma
7 Medicaid Program Reform Act of 2003, the Oklahoma Health Care
8 Authority shall require such contract terms as are necessary, in its
9 judgment, to ensure adequate performance by a participating provider
10 of the provisions of each contract executed pursuant to the Oklahoma
11 Medicaid Program Reform Act of 2003. Required contract provisions
12 shall include, but are not limited to:

13 1. The maintenance of deposits, performance bonds, financial
14 reserves or other financial providers which have posted other
15 security, equal to or greater than that required by the System, with
16 a state agency for the performance of managed care contracts if
17 funds would be available from such security for the System upon
18 default by the participating provider;

19 2. A requirement that whenever the state appropriates funds for
20 specific purposes, including, but not limited to, increases in
21 reimbursement rates, a participating provider and any subcontractor
22 shall apportion such funds pursuant to legislative directive;

23 3. Requirements that all records relating to contract
24 compliance shall be available for inspection by the Authority or are

1 submitted in accordance with rules promulgated by the Oklahoma
2 Health Care Authority ~~Board~~ and that such records be maintained by
3 the participating provider for five (5) years. Such records shall
4 also be made available by a participating provider on request of the
5 secretary of the United States Department of Health and Human
6 Services, or its successor agency;

7 4. Authorization for the Authority to directly assume the
8 operations of a participating provider under circumstances specified
9 in the contract. Operations of the participating provider shall be
10 assumed only as long as it is necessary to ensure delivery of
11 uninterrupted care to members enrolled with the participating
12 provider and accomplish the orderly transition of those members to
13 other providers participating in the System, or until the
14 participating provider reorganizes or otherwise corrects the
15 contract performance failure. The operations of a participating
16 provider shall not be assumed unless, prior to that action, notice
17 is delivered to the provider and an opportunity for a hearing is
18 provided; and

19 5. A requirement that, if the Authority finds that the public
20 health, safety or welfare requires emergency action, it may assume
21 the operations of the participating provider on notice to the
22 participating provider and pending an administrative hearing which
23 it shall promptly institute. Notice, hearings and actions pursuant
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1 to this subsection shall be in accordance with Article II of the
2 Administrative Procedures Act.

3 SECTION 7. AMENDATORY 56 O.S. 2011, Section 1011.11, is
4 amended to read as follows:

5 Section 1011.11 A. The Oklahoma Health Care Authority shall
6 develop and implement, as funds become available, a durable medical
7 equipment retrieval program that will allow the Authority to:

8 1. Retrieve durable medical equipment, purchased with Medicaid
9 funds, from the Medicaid consumers who no longer utilize the
10 equipment; and

11 2. Donate such equipment to community-based programs that will
12 distribute the equipment to individuals who are disabled or elderly.

13 B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
14 rules and establish procedures necessary to implement the program
15 established in this section.

16 C. For the purpose of this section, "durable medical equipment"
17 means equipment that is primarily and customarily used to serve a
18 medical purpose, can withstand repeated use and is appropriate for
19 use in the home.

20 SECTION 8. AMENDATORY 56 O.S. 2011, Section 1017.4, is
21 amended to read as follows:

22 Section 1017.4 A. The Oklahoma Health Care Authority is
23 directed to create a system of enrollment, Medicaid eligibility, and
24 certification for home- and community-based services provided by the

1 ADvantage Waiver Program that provides for presumptive Medicaid
2 eligibility and certification that is the same as that which exists
3 for nursing facilities as provided for in administrative rules
4 promulgated by the Oklahoma Health Care Authority ~~Board~~. The system
5 shall facilitate the provision of home- and community-based services
6 to persons at risk of placement in a nursing facility but who elect
7 to be served in a home- and community-based setting in lieu of
8 nursing facility services.

9 B. The Department of Human Services is directed to make such
10 changes in its regulations, policies and procedures as are necessary
11 to implement the enrollment, Medicaid eligibility, and certification
12 requirements established pursuant to subsection A of this section.

13 C. The Oklahoma Health Care Authority shall develop and submit
14 for approval no later than November 1, 2011, applications for
15 waivers or amendments to waivers of applicable federal laws and
16 regulations as necessary to implement the provisions of the Oklahoma
17 Choices for Long-Term Care Act. Copies of all waivers submitted to
18 the United States Centers for Medicare and Medicaid Services shall
19 be provided to the Governor, the Speaker of the Oklahoma House of
20 Representatives and the President Pro Tempore of the Oklahoma State
21 Senate within ten (10) days of their submissions. Waivers and
22 amendments to waivers approved by the United States Centers for
23 Medicare and Medicaid Services as provided in this section shall be
24 provided to the Governor, the Speaker of the Oklahoma House of

1 Representatives and the President Pro Tempore of the Oklahoma State
2 Senate within ten (10) days of their approval. The Oklahoma Health
3 Care Authority shall implement any waivers and amendments to waivers
4 approved by the United States Centers for Medicare and Medicaid
5 Services no later than January 1, 2012, or within sixty (60) days of
6 their approval. The Oklahoma Health Care Authority shall report the
7 savings as the result of the Oklahoma Choices for Long-Term Care Act
8 each year in its annual report.

9 SECTION 9. AMENDATORY 56 O.S. 2011, Section 1017.5, is
10 amended to read as follows:

11 Section 1017.5 A. On or before January 1, 2012, the Oklahoma
12 Health Care Authority shall initiate a Request for Proposal (RFP)
13 which shall outline specific expectations and requirements of
14 suppliers to competitively bid on administrative agent services for
15 the ADvantage Waiver Program. The RFP shall comply with all
16 requirements of The Oklahoma Central Purchasing Act related to state
17 procurement.

18 The RFP shall:

19 1. Require outsourcing of administrative agent services for a
20 period of one (1) year;

21 2. Outline minimum requirements;

22 3. Direct the Oklahoma Central Purchasing Office to award a
23 contract for administrative agent services;

24 4. Have a submission deadline of April 1, 2012;

1 5. Provide that the administrative agent contract award be
2 announced on May 15, 2012; and

3 6. Provide that the administrative agent contract awarded begin
4 July 1, 2012.

5 B. The State of Oklahoma shall not discriminate against
6 suppliers from states or nations outside Oklahoma and shall
7 reciprocate the bidding preference given by other states or nations
8 to suppliers domiciled in their jurisdictions for acquisitions
9 pursuant to The Oklahoma Central Purchasing Act. The state shall
10 give preference to a resident bidder over other state or foreign
11 bidders if goods or services provided in this state are equal in
12 price, fitness, availability or quality.

13 C. Suppliers shall be required to have comprehensive experience
14 in the administration of a Medicaid home- and community-based
15 service delivery system for elders in frail health and adults with
16 disabilities. The administrative agent contract shall be awarded to
17 one supplier based on qualification, merit and cost competitiveness
18 and evaluation criteria that include:

- 19 1. Qualifications and experience in providing similar services;
- 20 2. Knowledge and technical competence;
- 21 3. Management, key personnel and other professional
22 certifications;
- 23 4. Timeliness and responsiveness of services;
- 24 5. Detailed budget/costs;

1 6. Proposal for management and administration with detailed
2 description of:

- 3 a. administrative structures that shall be in place prior
4 to contract implementation to support the scope of
5 services,
- 6 b. processes and procedures for daily operations,
- 7 c. expected outcomes along with the performance measures
8 used to measure the effectiveness of each function,
- 9 d. description of data collection methods and reporting
10 mechanisms,
- 11 e. methods used to collaborate and communicate with
12 members, service providers, local and state health and
13 human service agencies, regulatory agencies, and other
14 stakeholders, and
- 15 f. detailed description and supporting documentation of
16 how each waiver assurance will be met.

17 D. State employees currently performing such function shall be
18 allowed to compete by submitting a bid to perform the administrative
19 agency functions required in the day-to-day operations of the
20 ADvantage Waiver Program; provided, however, that any and all such
21 bids shall be submitted to and certified by the Oklahoma Health Care
22 Authority, who shall for purposes of this section constitute the
23 "agency" as such term is defined in the Oklahoma Privatization of
24 State Functions Act.

1 E. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
2 rules and establish procedures necessary to implement the request
3 for proposals and for the administration of the ADvantage Waiver
4 Program pursuant to this section.

5 SECTION 10. AMENDATORY 63 O.S. 2011, Section 3250.9, is
6 amended to read as follows:

7 Section 3250.9 The Administrator of the Oklahoma Health Care
8 Authority ~~Board~~ shall submit an application for any waiver necessary
9 to authorize Medicaid supplements to hospital districts to the
10 extent permitted by federal law and pursuant to the Oklahoma
11 Community Hospitals Public Trust Authorities Act.

12 SECTION 11. AMENDATORY 63 O.S. 2011, Section 5000.24, is
13 amended to read as follows:

14 Section 5000.24 A. The Oklahoma Health Care Authority,
15 following directives of and upon approval of the Health Care
16 Financing Administration, is directed to implement a Medicaid Buy-In
17 Program for persons with disabilities, if funds become available.
18 Components of such program shall include, but not be limited to:

19 1. Allowing individuals with disabilities who are sixteen (16)
20 years of age and over, but under sixty-five (65) years of age, and
21 who, except for earned income, would be eligible to receive
22 Supplemental Security Income (SSI) benefits, regardless of whether
23 they have ever received Supplemental Security Income (SSI) cash
24 benefits, the option of purchasing Medicaid coverage that will

1 enable individuals with disabilities to gain and/or maintain
2 employment and reduce their dependency on existing cash benefit
3 programs;

4 2. Removing work disincentives that inhibit individuals with
5 disabilities from engaging in work that is commensurate with their
6 abilities and capabilities;

7 3. Developing an infrastructure within and outside state
8 government that supports efforts to enhance employment opportunities
9 for individuals with disabilities; and

10 4. Ensuring meaningful input in the design, implementation, and
11 evaluation of programs, policies, and procedures developed under
12 such program by individuals with disabilities and other interested
13 parties.

14 B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
15 any rules necessary to implement provisions of the Oklahoma Ticket
16 to Work and Work Incentives Improvement Act regarding the Medicaid
17 Buy-In Program.

18 SECTION 12. AMENDATORY 63 O.S. 2011, Section 5005, is
19 amended to read as follows:

20 Section 5005. For purposes of the Oklahoma Health Care
21 Authority Act:

22 1. "Administrator" means the chief executive officer of the
23 Authority;

24 2. "Authority" means the Oklahoma Health Care Authority;

1 3. ~~"Board" means the Oklahoma Health Care Authority Board;~~

2 4. "Health services provider" means health insurance carriers,
3 pre-paid health plans, hospitals, physicians and other health care
4 professionals, and other entities who contract with the Authority
5 for the delivery of health care services to state and education
6 employees and persons covered by the state Medicaid program; and

7 5. 4. "State-purchased health care" or "state-subsidized health
8 care" means medical and health care, pharmaceuticals and medical
9 equipment purchased with or supported by state and federal funds
10 through the Oklahoma Health Care Authority, the Department of Mental
11 Health and Substance Abuse Services, the State Department of Health,
12 the Department of Human Services, the Department of Corrections, the
13 Department of Veterans Affairs, other state agencies administering
14 state-purchased or state-subsidized health care programs, the
15 Oklahoma State Regents for Higher Education, the State Board of
16 Education and local school districts.

17 SECTION 13. AMENDATORY 63 O.S. 2011, Section 5007, is
18 amended to read as follows:

19 Section 5007. A. There is hereby created the Oklahoma Health
20 Care Authority Board which shall be an advisory body to the
21 Administrator of the Oklahoma Health Care Authority. Effective
22 January 14, 2019, all duties and powers of the Board shall be
23 transferred to the Administrator. Any provision in statute that
24 provides to the Board authority that is not advisory in nature shall

1 be deemed to grant the duty or power to the Administrator. On and
2 after July 1, 1994, as the terms of the initially appointed members
3 expire, the Board shall be composed of seven (7) appointed members
4 who shall serve for terms of four (4) years and shall be appointed
5 as follows:

6 1. Two members shall be appointed by the President Pro Tempore
7 of the Senate;

8 2. Two members shall be appointed by the Speaker of the House
9 of Representatives; and

10 3. Three members shall be appointed by the Governor. Two of
11 the members appointed by the Governor shall be consumers.

12 B. Members appointed pursuant to this paragraph, with the
13 exception of the consumer members, shall include persons having
14 experience in medical care, health care services, health care
15 delivery, health care finance, health insurance and managed health
16 care. Consumer members shall have no financial or professional
17 interest in medical care, health care services, health care
18 delivery, health finance, health insurance or managed care. In
19 making the appointments, the appointing authority shall also give
20 consideration to urban, rural, gender and minority representation.

21 C. 1. As the terms of office of members appointed before July
22 1, 1995, expire, appointments made on or after July 1, 1995, shall
23 be subject to the following requirements:
24

- 1 a. One member appointed by the Governor shall be a
2 resident of the First Congressional District. The
3 term of office of the member appointed by the Governor
4 and serving as of the effective date of this act shall
5 expire on September 1, 2003;
- 6 b. One member appointed by the President Pro Tempore of
7 the Senate shall be a resident of the Second
8 Congressional District and a consumer. The term of
9 office of the member appointed by the President Pro
10 Tempore of the Senate and serving as of the effective
11 date of this act shall expire on September 1, 1999;
- 12 c. One member appointed by the President Pro Tempore of
13 the Senate shall be a resident of the Third
14 Congressional District. The term of office of the
15 member appointed by the President Pro Tempore of the
16 Senate and serving as of the effective date of this
17 act shall expire on September 1, 2004;
- 18 d. One member appointed by the Speaker of the House of
19 Representatives shall be a resident of the Fourth
20 Congressional District. The term of office of the
21 member appointed by the Speaker of the House of
22 Representatives and serving as of the effective date
23 of this act shall expire on September 1, 2001;
- 24

1 e. One member appointed by the Speaker of the House of
2 Representatives shall be a resident of the Fifth
3 Congressional District and a consumer. The term of
4 office of the member appointed by the Speaker of the
5 House of Representatives and serving as of the
6 effective date of this act shall expire on September
7 1, 1998;

8 f. One member appointed by the Governor shall be a
9 resident of the Sixth Congressional District and a
10 consumer. The term of office of the member appointed
11 by the Governor and serving as of the effective date
12 of this act shall expire on September 1, 2000; and

13 g. The second consumer member appointed by the Governor
14 shall be appointed at large. The term of office of
15 the member appointed by the Governor and serving as of
16 the effective date of this act shall expire on
17 September 1, 2002.

18 2. Appointments made subsequent to the effective date of this
19 act shall not be restricted to any particular congressional
20 district. Appointments made after July 1 of the year in which a
21 redrawing of a congressional district becomes effective shall be
22 from the state at large. However, no appointments may be made after
23 July 1 of the year in which such modification becomes effective if
24

1 such appointment would result in more than two members serving from
2 the same modified district.

3 D. The terms of the members serving on the Board as of the
4 effective date of this act shall expire on September 1 of the year
5 in which the respective terms expire. Thereafter, as new terms
6 begin, members shall be appointed to four-year staggered terms which
7 shall expire on September 1. Should a member serve less than a
8 four-year term, the term of office of the member subsequently
9 appointed shall be for the remainder of the four-year term.

10 ~~E. On and after July 1, 1994, any subsequently appointed~~
11 ~~administrator of the Authority shall be appointed by the Board. The~~
12 ~~administrator shall have the training and experience necessary for~~
13 ~~the administration of the Authority, as determined by the Board,~~
14 ~~including, but not limited to, prior experience in the~~
15 ~~administration of managed health care. The administrator shall~~
16 ~~serve at the pleasure of the Board.~~

17 ~~F.~~ The Board Administrator shall have the power and duty to:

18 1. Establish the policies of the Oklahoma Health Care
19 Authority;

20 2. ~~Appoint the Administrator of the Authority;~~

21 ~~3.~~ Adopt and promulgate rules as necessary and appropriate to
22 carry out the duties and responsibilities of the Authority. The
23 ~~Board~~ Administrator shall be the rulemaking body for the Authority;
24 and

1 ~~4.~~ 3. Adopt, publish and submit by January 1 of each year to
2 the Governor, the President Pro Tempore of the Senate, and the
3 Speaker of the House of Representatives appropriate administrative
4 policies and the business plan for that year. All actions governed
5 by said administrative policies and annual business plan shall be
6 examined annually in an independent audit.

7 ~~G.~~ ~~1.~~ F. A vacancy in a position shall be filled in the same
8 manner as provided in subsection A of this section.

9 ~~2. A majority of the members of the Board shall constitute a~~
10 ~~quorum for the transaction of business and for taking any official~~
11 ~~action. Official action of the Board must have a favorable vote by~~
12 ~~a majority of the members present.~~

13 ~~3. Members appointed pursuant to subsection A of this section~~
14 ~~shall serve without compensation but shall be reimbursed for~~
15 ~~expenses incurred in the performance of their duties in accordance~~
16 ~~with the State Travel Reimbursement Act.~~

17 ~~H.~~ G. The ~~Board and the~~ Authority shall act in accordance with
18 the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open
19 Records Act and the Administrative Procedures Act.

20 SECTION 14. AMENDATORY 63 O.S. 2011, Section 5008, is
21 amended to read as follows:

22 Section 5008. A. The Administrator of the Oklahoma Health Care
23 Authority shall have the training and experience necessary for the
24 administration of the Authority, ~~as determined by the Oklahoma~~

1 ~~Health Care Authority Board, including, but not limited to, prior~~
2 ~~experience in the administration of managed health care. The~~
3 Administrator shall be appointed by the Governor, with the advice
4 and consent of the Senate, and shall serve at the pleasure of the
5 ~~Board~~ Governor and may be removed or replaced without cause.
6 Compensation for the Administrator shall be determined pursuant to
7 Section 3601.2 of Title 74 of the Oklahoma Statutes.

8 B. The Administrator of the Oklahoma Health Care Authority
9 shall be the chief executive officer of the Authority and shall act
10 for the Authority in all matters except as may be otherwise provided
11 by law. The powers and duties of the Administrator shall include
12 but not be limited to:

13 1. Supervision of the activities of the Authority;

14 2. Formulation and recommendation of rules for approval or
15 rejection ~~by the Oklahoma Health Care Authority Board~~ and
16 enforcement of rules and standards promulgated by the ~~Board~~
17 Authority;

18 3. Preparation of the plans, reports and proposals required by
19 the Oklahoma Health Care Authority Act, Section 5003 et seq. of this
20 title, other reports as necessary and appropriate, and an annual
21 budget for the review and approval of the ~~Board~~ Authority;

22 4. Employment of such staff as may be necessary to perform the
23 duties of the Authority including but not limited to an attorney to
24

1 provide legal assistance to the Authority for the state Medicaid
2 program; and

3 5. Establishment of a contract bidding process which:

- 4 a. encourages competition among entities contracting with
5 the Authority for state-purchased and state-subsidized
6 health care; provided, however, the Authority may make
7 patient volume adjustments to any managed care plan
8 whose prime contractor is a state-sponsored,
9 nationally accredited medical school. The Authority
10 may also make education or research supplemental
11 payments to state-sponsored, nationally accredited
12 medical schools based on the level of participation in
13 any managed care plan by managed care plan
14 participants,
- 15 b. coincides with the state budgetary process, and
- 16 c. specifies conditions for awarding contracts to any
17 insuring entity.

18 C. The Administrator may appoint advisory committees as
19 necessary to assist the Authority with the performance of its duties
20 or to provide the Authority with expertise in technical matters.

21 SECTION 15. AMENDATORY 63 O.S. 2011, Section 5015.1, is
22 amended to read as follows:

23 Section 5015.1 A. The Administrator of the Oklahoma Health
24 Care Authority ~~Board~~ shall establish a legal division or unit in the

1 Oklahoma Health Care Authority. The Administrator ~~of the Oklahoma~~
2 ~~Health Care Authority~~ may employ attorneys as needed, which may be
3 on full-time and part-time basis. Provided the Oklahoma Health Care
4 Authority shall not exceed the authorized full-time equivalent limit
5 for attorneys as specified by the Legislature in the appropriations
6 bill for the Authority. Except as otherwise provided by this
7 section, such attorneys, in addition to advising the ~~Board,~~
8 Administrator and Authority personnel on legal matters, may appear
9 for and represent the ~~Board,~~ Administrator and Authority in legal
10 actions and proceedings.

11 B. The Legislature shall establish full-time-equivalent limits
12 for attorneys employed by the Oklahoma Health Care Authority.

13 C. It shall continue to be the duty of the Attorney General to
14 give official opinions to the ~~Board,~~ Administrator and Authority,
15 and to prosecute and defend actions therefor, if requested to do so.
16 The Attorney General may levy and collect costs, expenses of
17 litigation and a reasonable attorney fee for such legal services
18 from the Authority. The Attorney General is authorized to levy and
19 collect costs, expenses and fees which exceed the costs associated
20 with the salary and benefits of one attorney FTE position per fiscal
21 year.

22 D. The ~~Board,~~ Administrator or Authority shall not contract for
23 representation by private legal counsel unless approved by the
24

1 Attorney General. Such contract for private legal counsel shall be
2 in the best interests of the state.

3 E. 1. The Attorney General shall be notified by the ~~Board~~
4 Administrator or ~~its~~ counsel for the Administrator of all lawsuits
5 against the Authority, its officers or employees that seek
6 injunctive relief which would impose obligations requiring the
7 expenditure of funds in excess of unencumbered monies in the
8 agency's appropriations or beyond the current fiscal year.

9 2. The Attorney General shall review any such cases and may
10 represent the interests of the state, if the Attorney General
11 considers it to be in the best interest of the state to do so, in
12 which case the Attorney General shall be paid as provided in
13 subsection C of this section. Representation of multiple defendants
14 in such actions may, at the discretion of the Attorney General, be
15 divided with counsel for the ~~Board~~, Administrator and Authority as
16 necessary to avoid conflicts of interest.

17 SECTION 16. AMENDATORY 63 O.S. 2011, Section 5017, as
18 amended by Section 524, Chapter 304, O.S.L. 2012 (63 O.S. Supp.
19 2017, Section 5017), is amended to read as follows:

20 Section 5017. There is hereby created in the State Treasury a
21 fund for the Oklahoma Health Care Authority to be designated the
22 "Oklahoma Health Care Authority Federal Disallowance Fund". The
23 fund shall be a continuing fund, not subject to fiscal year
24 limitations. It shall consist of monies received by the Oklahoma

1 Health Care Authority which, in the opinion of the Administrator of
2 the Oklahoma Health Care Authority ~~Board~~, may be subject to federal
3 disallowances and interest which may accrue on said receipts. All
4 monies accruing to the credit of said fund are hereby appropriated
5 and may be budgeted and expended by the Oklahoma Health Care
6 Authority at the discretion of the ~~Oklahoma Health Care Authority~~
7 ~~Board~~ Administrator for eventual settlement of the appropriate
8 pending disallowances. Expenditures from said fund shall be made
9 upon warrants issued by the State Treasurer against claims filed as
10 prescribed by law with the Director of the Office of Management and
11 Enterprise Services for approval and payment.

12 The Administrator of the Oklahoma Health Care Authority may
13 request the Director of the Office of Management and Enterprise
14 Services to transfer monies between the Oklahoma Health Care
15 Authority Federal Disallowance Fund and any other fund of the
16 authority, as needed for the expenditure of funds.

17 SECTION 17. AMENDATORY 63 O.S. 2011, Section 5020, as
18 amended by Section 525, Chapter 304, O.S.L. 2012 (63 O.S. Supp.
19 2017, Section 5020), is amended to read as follows:

20 Section 5020. There is hereby created in the State Treasury a
21 fund for the Oklahoma Health Care Authority to be designated the
22 "Oklahoma Health Care Authority Medicaid Program Fund". The fund
23 shall be a continuing fund, not subject to fiscal year limitations.
24 All monies accruing to the credit of said fund are hereby

1 appropriated and may be budgeted and expended by the Oklahoma Health
2 Care Authority at the discretion of the ~~Oklahoma Health Care~~
3 ~~Authority Board Administrator~~. Expenditures from said fund shall be
4 made upon warrants issued by the State Treasurer against claims
5 filed as prescribed by law with the Director of the Office of
6 Management and Enterprise Services for approval and payment.

7 The Administrator ~~of the Oklahoma Health Care Authority~~ may
8 request the Director of the Office of Management and Enterprise
9 Services to transfer monies between the Oklahoma Health Care
10 Authority Medicaid Program Fund and any other fund of the Authority,
11 as needed for the expenditure of funds.

12 SECTION 18. AMENDATORY 63 O.S. 2011, Section 5024, is
13 amended to read as follows:

14 Section 5024. A. 1. Effective July 1, 2001, the Oklahoma
15 Health Care Authority is authorized to offer to eligible contracted
16 incorporated physician providers, elective income deferral programs
17 which can result in federal income tax advantages and other
18 advantages to such providers and their employees. These deferral
19 programs shall take into account present and future provisions of
20 the United States Internal Revenue Code which now or in the future
21 might have the beneficial effect of magnifying the after-tax value
22 payments made by the state to incorporated physician providers.

23 2. The Oklahoma Health Care Authority may adopt a plan that
24 provides for the investment of deferral amounts in life insurance or

1 annuity contracts which offer a choice of underlying investment
2 options. Contract-issuing companies shall be limited to companies
3 that are licensed to do business in this state.

4 3. As a condition of participation in these income deferral
5 programs, all participating incorporated physician providers shall
6 be subject to provisions for forfeiture of benefits for failure to
7 maintain in force a Medicaid provider agreement and to furnish
8 services to Medicaid recipients for a specified duration.

9 B. The Oklahoma Health Care Authority may consult with the
10 State Treasurer and the Attorney General of the state for advice in
11 establishing the program.

12 C. The Oklahoma Health Care Authority ~~Board~~ shall have the
13 authority to promulgate rules regarding the operation of the
14 program.

15 SECTION 19. AMENDATORY 63 O.S. 2011, Section 5026, is
16 amended to read as follows:

17 Section 5026. A. The Oklahoma Health Care Authority ~~Board~~
18 shall, in administering the Medicaid prescription drug program,
19 utilize the following definition for "phenylketonuria" to mean: An
20 inborn error of metabolism attributable to a deficiency of or a
21 defect in phenylalanine hydroxylase, the enzyme that catalyzes the
22 conversion of phenylalanine to tyrosine. The deficiency permits the
23 accumulation of phenylalanine and its metabolic products in the body
24 fluids. The deficiency can result in mental retardation

(phenylpyruvic oligophrenia), neurologic manifestations (including hyperkinesia, epilepsy, and microcephaly), light pigmentation, and eczema. The disorder is transmitted as an autosomal recessive trait and can be treated by administration of a diet low in phenylalanine.

B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate any rules necessary to effectuate the provisions of this section.

SECTION 20. AMENDATORY 63 O.S. 2011, Section 5027, is amended to read as follows:

Section 5027. A. As used in this section "health care district" means a subordinate health care entity that better promotes efficient administration of health care service delivery for counties with a population of one hundred thousand (100,000) or less to eligible persons in this state.

B. A locally designated health care district shall:

1. Coordinate the delivery of health care services in local jurisdictions such as municipalities and counties; provided, however, jurisdictions containing multiple areas shall be contiguous and shall possess commonality as it relates to need;

2. Be authorized to adjust Medicaid provider rates above the state minimum established by the Oklahoma Health Care Authority;

3. Be authorized to contract with employer-sponsored health plans or private health plans to provide services to Medicaid and indigent beneficiaries; and

1 4. Be authorized to expand health care services or health care
2 providers within health care districts.

3 C. Health care districts may be established by local
4 communities wherein locally generated tax dollars are received for
5 the benefit of local hospitals or other local health care services.
6 The districts shall have the same boundaries as the area over which
7 the locally assessed tax is levied.

8 D. Health care districts may be established by the governing
9 boards of the hospitals located within the area over which the
10 locally assessed tax for the benefit of the local hospital or other
11 local health care service is levied. The governing board of the
12 hospital shall be the governing board of the local health care
13 district.

14 E. 1. Each health care district may certify to the Oklahoma
15 Health Care Authority the amount of funds generated by tax
16 assessment within the health care district for the benefit of the
17 local hospital or other local health care services.

18 2. The Authority shall submit such information to the Centers
19 for Medicare and Medicaid Services (CMS) for the purpose of applying
20 for federal matching funds. The Authority shall submit any
21 necessary applications for waivers to accomplish the provisions of
22 this act.

1 F. The Oklahoma Health Care Authority ~~Board~~ is hereby directed
2 to promulgate rules to enact the provisions of this section. The
3 rules shall, at a minimum, address:

4 1. Internal establishment of local health care district
5 accounts within the Authority including, but not limited to,
6 procedures for remitting funds out of such accounts back to the
7 local health care district; and

8 2. Methods for certifying funds for each local health care
9 district and for reporting such amounts to the Centers for Medicare
10 and Medicaid Services for federal matching purposes. The revenue
11 for each health care district account shall consist of federal
12 matching dollars received for such certified funds.

13 The Oklahoma Health Care Authority shall apply for federal
14 matching funds based on the amount of funds certified by the local
15 health care district for such purposes. The Authority shall not
16 reduce the amount of disbursements otherwise due to a health care
17 district based on the health care district's receipt of the local
18 area dedicated monies and any attributable federal matching funds;
19 and

20 3. Procedures for continuing the Authority's claims payment
21 function, pursuant to a draw-down process for funds, for each
22 Medicaid service within the local health care district.
23
24

1 SECTION 21. AMENDATORY Section 1, Chapter 244, O.S.L.
2 2015 (63 O.S. Supp. 2017, Section 5028), is amended to read as
3 follows:

4 Section 5028. A. The Oklahoma Health Care Authority shall
5 initiate requests for proposals for care coordination models for
6 aged, blind and disabled persons. Care coordination models for
7 members receiving institutional care shall be phased in two (2)
8 years after the initial enrollment period of a care coordination
9 program.

10 B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
11 rules to implement the provisions of this act.

12 SECTION 22. AMENDATORY Section 1, Chapter 208, O.S.L.
13 2017 (63 O.S. Supp. 2017, Section 5028.1), is amended to read as
14 follows:

15 Section 5028.1 A. The Oklahoma Health Care Authority, with
16 assistance from the Department of Human Services and the Department
17 of Mental Health and Substance Abuse Services, shall initiate a
18 request for information for care coordination models for newborns
19 through children eighteen (18) years of age in the custody of the
20 Department of Human Services.

21 B. Any request for information shall require consideration of
22 and incorporate efforts to continue the implementation of relevant
23 initiatives as provided by the Master Settlement Agreement
24

1 ("Pinnacle Plan") and administered by the Department of Human
2 Services.

3 C. The Oklahoma Health Care Authority, with assistance from the
4 Department of Human Services and the Department of Mental Health and
5 Substance Abuse Services, shall provide a summary of the request for
6 information responses to the President Pro Tempore of the Oklahoma
7 State Senate, the Speaker of the Oklahoma House of Representatives
8 and the Governor on or before January 1, 2018.

9 D. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
10 rules to implement the provisions of this section.

11 SECTION 23. AMENDATORY Section 1, Chapter 324, O.S.L.
12 2015 (63 O.S. Supp. 2017, Section 5029), is amended to read as
13 follows:

14 Section 5029. A. The Oklahoma Health Care Authority shall
15 coordinate with domestic violence sexual assault programs certified
16 by the Office of the Attorney General who provide counseling
17 services for victims of domestic violence to ensure that any
18 information relating to billing or explanation of benefits (EOB)
19 provided, maintained, monitored or otherwise handled by the
20 Authority or any other state agency including, but not limited to,
21 services rendered by such facilities, is not sent by paper mail to
22 the actual physical address of persons receiving such services.

23 B. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
24 rules to implement the provisions of this act.

1 SECTION 24. AMENDATORY 63 O.S. 2011, Section 5030.1, is
2 amended to read as follows:

3 Section 5030.1 A. There is hereby created within the Oklahoma
4 Health Care Authority the Medicaid Drug Utilization Review Board,
5 which shall be responsible for the development, implementation and
6 assessment of retrospective and prospective drug utilization
7 programs under the direction of the Authority.

8 B. The Medicaid Drug Utilization Review Board shall consist of
9 ten (10) members appointed by the administrator of the Authority as
10 follows:

11 1. Four physicians, licensed and actively engaged in the
12 practice of medicine or osteopathic medicine in this state, of
13 which:

14 a. three shall be physicians chosen from a list of not
15 less than six names submitted by the Oklahoma State
16 Medical Association, and

17 b. one shall be a physician chosen from a list of not
18 less than two names submitted by the Oklahoma
19 Osteopathic Association;

20 2. Four licensed pharmacists actively engaged in the practice
21 of pharmacy, chosen from a list of not less than six names submitted
22 by the Oklahoma Pharmaceutical Association;

23 3. One person representing the lay community, who shall not be
24 a physician or a pharmacist, but shall be a health care professional

1 with recognized knowledge and expertise in at least one of the
2 following:

- 3 a. clinically appropriate prescribing of covered
- 4 outpatient drugs,
- 5 b. clinically appropriate dispensing and monitoring of
- 6 covered outpatient drugs,
- 7 c. drug use review, evaluation and intervention, and
- 8 d. medical quality assurance; and

9 4. One person representing the pharmaceutical industry who is a
10 resident of the State of Oklahoma, chosen from a list of not less
11 than two names submitted by the Pharmaceutical Research and
12 Manufacturers of America. The member representing the
13 pharmaceutical industry shall be prohibited from voting on action
14 items involving drugs or classes of drugs.

15 C. Members shall serve terms of three (3) years, except that
16 one physician, one pharmacist and the lay representative shall each
17 be initially appointed for two-year terms in order to stagger the
18 terms. In making the appointments, the administrator shall provide,
19 to the extent possible, for geographic balance in the representation
20 on the Medicaid Drug Utilization Review Board. Members may be
21 reappointed for a period not to exceed three three-year terms and
22 one partial term. Vacancies on the Medicaid Drug Utilization Review
23 Board shall be filled for the balance of the unexpired term from new
24

1 lists submitted by the entity originally submitting the list for the
2 position vacated.

3 D. The Medicaid Drug Utilization Review Board shall elect from
4 among its members a chair and a vice-chair who shall serve one-year
5 terms, provided they may succeed themselves.

6 E. The proceedings of all meetings of the Medicaid Drug
7 Utilization Review Board shall comply with the provisions of the
8 Oklahoma Open Meeting Act and shall be subject to the provisions of
9 the Administrative Procedures Act.

10 F. The Medicaid Drug Utilization Review Board may advise and
11 make recommendations to the Authority regarding existing, proposed
12 and emergency rules governing retrospective and prospective drug
13 utilization programs. The Oklahoma Health Care Authority ~~Board~~
14 shall promulgate rules pursuant to the provisions of the
15 Administrative Procedures Act for implementation of the provisions
16 of this section.

17 SECTION 25. AMENDATORY 63 O.S. 2011, Section 5030.3, is
18 amended to read as follows:

19 Section 5030.3 A. The Medicaid Drug Utilization Review Board
20 shall have the power and duty to:

21 1. Advise and make recommendations regarding rules promulgated
22 by the Oklahoma Health Care Authority ~~Board~~ to implement the
23 provisions of this act;

1 2. Oversee the development, implementation and assessment of a
2 Medicaid retrospective and prospective drug utilization review
3 program, including making recommendations regarding contractual
4 agreements of the Oklahoma Health Care Authority with any entity
5 involved in processing and reviewing Medicaid drug profiles for the
6 drug utilization review program in accordance with the provisions of
7 this act;

8 3. Develop and apply the criteria and standards to be used in
9 retrospective and prospective drug utilization review. The criteria
10 and standards shall be based on the compendia and federal Food and
11 Drug Act approved labeling, and shall be developed with professional
12 input;

13 4. Provide a period for public comment on each meeting agenda.
14 As necessary, the Medicaid Drug Utilization Review Board may include
15 a public hearing as part of a meeting agenda to solicit public
16 comment regarding proposed changes in the prior authorization
17 program and the retrospective and prospective drug utilization
18 review processes. Notice of proposed changes to the prior
19 authorization status of a drug or drugs shall be included in the
20 monthly meeting agenda at least thirty (30) days prior to the
21 consideration or recommendation of any proposed changes in prior
22 authorization by the Medicaid Drug Utilization Review Board;

1 5. Establish provisions to timely reassess and, as necessary,
2 revise the retrospective and prospective drug utilization review
3 process;

4 6. Make recommendations regarding the prior authorization of
5 prescription drugs pursuant to the provisions of Section ~~5~~ 5030.5 of
6 this ~~act~~ title; and

7 7. Provide members of the provider community with educational
8 opportunities related to the clinical appropriateness of
9 prescription drugs.

10 B. Any party aggrieved by a decision of the ~~Oklahoma Health~~
11 ~~Care Authority Board or the~~ Administrator of the Oklahoma Health
12 Care Authority, pursuant to a recommendation of the Medicaid Drug
13 Utilization Review Board, shall be entitled to an administrative
14 hearing before the ~~Oklahoma Health Care Authority Board~~ chief
15 medical officer pursuant to the provisions of the Administrative
16 Procedures Act.

17 SECTION 26. AMENDATORY 63 O.S. 2011, Section 5030.4, is
18 amended to read as follows:

19 Section 5030.4 1. The Medicaid Drug Utilization Review Board
20 shall develop and recommend to the Administrator of the Oklahoma
21 Health Care Authority ~~Board~~ a retrospective and prospective drug
22 utilization review program for medical outpatient drugs to ensure
23 that prescriptions are appropriate, medically necessary, and not
24 likely to result in adverse medical outcomes.

1 2. The retrospective and prospective drug utilization review
2 program shall be operated under guidelines established by the
3 Medicaid Drug Utilization Review Board as follows:

4 a. The retrospective drug utilization review program
5 shall be based on guidelines established by the
6 Medicaid Drug Utilization Review Board using the
7 mechanized drug claims processing and information
8 retrieval system to analyze claims data in order to:

9 (1) identify patterns of fraud, abuse, gross overuse
10 or underuse, and inappropriate or medically
11 unnecessary care,

12 (2) assess data on drug use against explicit
13 predetermined standards that are based on the
14 compendia and other sources for the purpose of
15 monitoring:

16 (a) therapeutic appropriateness,

17 (b) overutilization or underutilization,

18 (c) appropriate use of generic drugs,

19 (d) therapeutic duplication,

20 (e) drug-disease contraindications,

21 (f) drug-drug interactions,

22 (g) incorrect drug dosage,

23 (h) duration of drug treatment, and

24 (i) clinical abuse or misuse, and

1 (3) introduce remedial strategies in order to improve
2 the quality of care and to conserve program funds
3 or personal expenditures.

4 b. (1) The prospective drug utilization review program
5 shall be based on guidelines established by the
6 Medicaid Drug Utilization Review Board and shall
7 provide that, before a prescription is filled or
8 delivered, a review will be conducted by the
9 pharmacist at the point of sale to screen for
10 potential drug therapy problems resulting from:

11 (a) therapeutic duplication,

12 (b) drug-drug interactions,

13 (c) incorrect drug dosage or duration of drug
14 treatment,

15 (d) drug-allergy interactions, and

16 (e) clinical abuse or misuse.

17 (2) In conducting the prospective drug utilization
18 review, a pharmacist may not alter the prescribed
19 outpatient drug therapy without the consent of
20 the prescribing physician or purchaser.

21 SECTION 27. AMENDATORY 63 O.S. 2011, Section 5030.5, as
22 last amended by Section 1, Chapter 306, O.S.L. 2015 (63 O.S. Supp.
23 2017, Section 5030.5), is amended to read as follows:
24

1 Section 5030.5 A. Except as provided in subsection F of this
2 section, any drug prior authorization program approved or
3 implemented by the Medicaid Drug Utilization Review Board shall meet
4 the following conditions:

5 1. The Medicaid Drug Utilization Review Board shall make note
6 of and consider information provided by interested parties,
7 including, but not limited to, physicians, pharmacists, patients,
8 and pharmaceutical manufacturers, related to the placement of a drug
9 or drugs on prior authorization;

10 2. Any drug or drug class placed on prior authorization shall
11 be reconsidered no later than twelve (12) months after such
12 placement;

13 3. The program shall provide either telephone or fax approval
14 or denial within twenty-four (24) hours after receipt of the prior
15 authorization request; and

16 4. In an emergency situation, including a situation in which an
17 answer to a prior authorization request is unavailable, a seventy-
18 two-hour supply shall be dispensed, or, at the discretion of the
19 Medicaid Drug Utilization Review Board, a greater amount that will
20 assure a minimum effective duration of therapy for an acute
21 intervention.

22 B. In formulating its recommendations for placement of a drug
23 or drug class on prior authorization to the Administrator of the
24

Oklahoma Health Care Authority ~~Board~~, the Medicaid Drug Utilization Review Board shall:

1. Consider the potential impact of any administrative delay on patient care and the potential fiscal impact of such prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any recommendation making a drug subject to placement on prior authorization shall be accompanied by a statement of the cost and clinical efficacy of such placement;

2. Provide a period for public comment on each meeting agenda. Prior to making any recommendations, the Medicaid Drug Utilization Review Board shall solicit public comment regarding proposed changes in the prior authorization program in accordance with the provisions of the Oklahoma Open Meeting Act and the Administrative Procedures Act; and

3. Review Oklahoma-Medicaid-specific data related to utilization criterion standards as provided in division (1) of subparagraph b of paragraph 2 of Section 5030.4 of this title.

C. The ~~Oklahoma Health Care~~ Administrator of the Authority ~~Board~~ may accept or reject the recommendations of the Medicaid Drug Utilization Review Board in whole or in part, and may amend or add to such recommendations.

D. The Oklahoma Health Care Authority shall immediately provide coverage under prior authorization for any new drug approved by the United States Food and Drug Administration. If a new drug does not

1 fall in a class that is already placed under prior authorization,
2 that drug must be reviewed by the Drug Utilization Review Board
3 within one hundred (100) days of approval by the United States Food
4 and Drug Administration to determine whether to continue the prior
5 authorization criteria.

6 E. 1. Prior to a vote by the Medicaid Drug Utilization Review
7 Board to consider expansion of product-based prior authorization,
8 the Authority shall:

9 a. develop a written estimate of savings expected to
10 accrue from the proposed expansion, and

11 b. make the estimate of savings available, on request of
12 interested persons, no later than the day following
13 the first scheduled discussion of the estimate by the
14 Medicaid Drug Utilization Review Board at a regularly
15 scheduled meeting.

16 2. The written savings estimate based upon savings estimate
17 assumptions specified by paragraph 3 of this subsection prepared by
18 the Authority shall include as a minimum:

19 a. a summary of all paid prescription claims for patients
20 with a product in the therapeutic category under
21 consideration during the most recent month with
22 complete data, plus a breakdown, as available, of
23 these patients according to whether the patients are
24

- 1 residents of a long-term care facility or are
2 receiving Advantage Waiver program services,
- 3 b. current number of prescriptions, amount reimbursed and
4 trend for each product within the category under
5 consideration,
- 6 c. average active ingredient cost reimbursed per day of
7 therapy for each product and strength within the
8 category under consideration,
- 9 d. for each product and strength within the category
10 under consideration, where applicable, the prevailing
11 State Maximum Allowable Cost reimbursed per dosage
12 unit,
- 13 e. the anticipated impact of any patent expiration of any
14 product within the category under consideration
15 scheduled to occur within two (2) years from the
16 anticipated implementation date of the proposed prior
17 authorization expansion, and
- 18 f. a detailed estimate of administrative costs involved
19 in the prior authorization expansion including, but
20 not limited to, the anticipated increase in petition
21 volume.
- 22 3. Savings estimate assumptions shall include, at a minimum:
- 23 a. the prescription conversion rate of products requiring
24 prior authorization (Tier II) to products not

- 1 requiring prior authorization (Tier I) and to other
2 alternative products,
- 3 b. aggregated rebate amount for the proposed Tier I and
4 Tier II products within the category under
5 consideration,
- 6 c. market shift of Tier II products due to other causes
7 including, but not limited to, patent expiration,
- 8 d. Tier I to Tier II prescription conversion rate, and
- 9 e. nature of medical benefits and complications typically
10 seen with products in this class when therapy is
11 switched from one product to another.

12 4. The Medicaid Drug Utilization Review Board shall consider
13 prior authorization expansion in accordance with the following
14 Medicaid Drug Utilization Review Board meeting sequence:

- 15 a. first meeting: publish the category or categories to
16 be considered for prior authorization expansion in the
17 future business section of the Medicaid Drug
18 Utilization Review Board agenda,
- 19 b. second meeting: presentation and discussion of the
20 written estimate of savings,
- 21 c. third meeting: make formal notice in the agenda of
22 intent to vote on the proposed prior authorization
23 expansion, and
24

d. fourth meeting: vote on prior authorization expansion.

F. The Medicaid Drug Utilization Review Board may establish protocols and standards for the use of any prescription drug determined to be medically necessary, proven to be effective and approved by the United States Food and Drug Administration (FDA) for the treatment and prevention of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) without prior authorization, except when there is a generic equivalent drug available.

SECTION 28. AMENDATORY 63 O.S. 2011, Section 5051.4, is amended to read as follows:

Section 5051.4 The Oklahoma Health Care Authority is hereby authorized to charge an enrollment fee and/or premium for the provision of health care coverage under the Oklahoma Medicaid Program Reform Act of 2003. Such charges, if unpaid, create a debt to the state and are subject to recovery by the Authority by any legal action against an enrollee, the heirs or next of kin of the enrollee in the event of the death of the enrollee. The Authority may end coverage for the nonpayment of such enrollment and/or premium pursuant to rules promulgated by the Oklahoma Health Care Authority ~~Board~~.

SECTION 29. AMENDATORY 63 O.S. 2011, Section 5051.5, is amended to read as follows:

1 Section 5051.5 A. 1. On or after November 1, 2003, any entity
2 that provides health insurance in this state including, but not
3 limited to, a licensed insurance company, not-for-profit hospital
4 service, medical indemnity corporation, managed care organization,
5 self-insured plan, pharmacy benefit manager or other party that is,
6 by statute, contract, or agreement, legally responsible for payment
7 of a claim for a health care item or service is hereby required to
8 compare data from its files with data in files provided to the
9 entity by the Oklahoma Health Care Authority and accept the
10 Authority's right of recovery and the assignment of rights and not
11 charge the Authority or any of its authorized agents any fees for
12 the processing of claims or eligibility requests. Data files
13 requested by or provided to the Authority shall provide the
14 Authority with eligibility and coverage information that will enable
15 the Authority to determine the existence of third party coverage for
16 Medicaid recipients and the necessary information to determine
17 during what period Medicaid recipients may be or may have been
18 covered by the health insurer and the nature of the coverage that is
19 or was provided, including the name, address, and identifying number
20 of the plan.

21 2. The insurer shall transmit to the Authority, in a manner
22 prescribed by the Centers for Medicare and Medicaid Services or as
23 agreed between insurer and the Authority, an electronic file of all
24 identified subscribers or policyholders, or their dependents, for

1 | whom there is data corresponding to the information contained in
2 | subsection C of this section.

3 | B. 1. An insurer shall comply with a request under the
4 | provisions of this subsection no later than sixty (60) days after
5 | the date of transmission by the Authority and shall only be required
6 | to provide the Authority with the information required by subsection
7 | C of this section.

8 | 2. The Authority may make such request for data from an insurer
9 | no more than once every six (6) months, as determined by the date of
10 | the Authority's original request.

11 | C. Each insurer shall maintain a file system containing the
12 | name, address, group policy number, coverage type, Social Security
13 | number, and date of birth of each subscriber or policyholder, and
14 | each dependent of the subscriber or policyholder covered by the
15 | insurer, including policy effective and termination dates, claim
16 | submission address, and employer's mailing address.

17 | D. The Oklahoma Health Care Authority ~~Board~~ shall promulgate
18 | rules governing the exchange of information under this section.
19 | Such rules shall be consistent with all laws relating to the
20 | confidentiality or privacy of personal information or medical
21 | records including, but not limited to, provisions under the federal
22 | Health Insurance Portability and Accountability Act (HIPAA).

23 | SECTION 30. AMENDATORY 63 O.S. 2011, Section 5052, is
24 | amended to read as follows:

1 Section 5052. A. Any applicant or recipient, adversely
2 affected by a decision of the Oklahoma Health Care Authority on
3 benefits or services provided pursuant to the provisions of this
4 title, shall be afforded an opportunity for a hearing pursuant to
5 the provisions of subsection B of this section after such applicant
6 or recipient has been notified of the adverse decision of the
7 Authority.

8 B. 1. Upon timely receipt of a request for a hearing as
9 specified in the notice of adverse decision and exhaustion of other
10 available administrative remedies, the Authority shall hold a
11 hearing pursuant to the provisions of rules promulgated by the
12 Oklahoma Health Care Authority ~~Board~~ pursuant to this section.

13 2. The record of the hearing shall include, but shall not be
14 limited to:

- 15 a. all pleadings, motions, and intermediate rulings,
- 16 b. evidence received or considered,
- 17 c. any decision, opinion, or report by the officer
18 presiding at the hearing, and
- 19 d. all staff memoranda or data submitted to the hearing
20 officer or members of the agency in connection with
21 their consideration of the case.

22 3. Oral proceedings shall be electronically recorded by the
23 Authority. Any party may request a copy of the tape recording of
24

1 such person's administrative hearing or may request a transcription
2 of the tape recording to comply with any federal or state law.

3 C. Any decision of the Authority after such a hearing pursuant
4 to subsection B of this section shall be subject to review by the
5 Administrator of the Oklahoma Health Care Authority upon a timely
6 request for review by the applicant or recipient. The Administrator
7 shall issue a decision after review. A hearing decision of the
8 Authority shall be final and binding unless a review is requested
9 pursuant to the provisions of this subsection. The decision of the
10 Administrator may be appealed to the district court in which the
11 applicant or recipient resides within thirty (30) days of the date
12 of the decision of the Administrator as provided by the provisions
13 of subsection D of this section.

14 D. Any applicant or recipient under this title who is aggrieved
15 by a decision of the Administrator rendered pursuant to this section
16 may petition the district court in which the applicant or recipient
17 resides for a judicial review of the decision pursuant to the
18 provisions of Sections 318 through 323 of Title 75 of the Oklahoma
19 Statutes. A copy of the petition shall be served by mail upon the
20 general counsel of the Authority.

21 SECTION 31. REPEALER 63 O.S. 2011, Section 5007.1, is
22 hereby repealed.
23
24

SECTION 32. This act shall become effective January 14, 2019.

56-2-10012 LRB 02/28/18