

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2870

By: **Kiger** and Perryman of the
House

and

Paxton of the Senate

10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; creating the Small
12 Rural Oklahoma Hospital Survival Act; declaring
13 purpose; stating legislative findings; defining
14 terms; providing for guaranteed reimbursement rates
15 and payment for services rendered; providing for
16 contractual transparency and replication of
17 reimbursement methodology; prohibiting certain acts;
18 prohibiting certain provisions in contracts;
19 prohibiting discrimination in the establishment of
20 provider networks for certain health care insurers;
21 providing exceptions; providing for violation;
22 providing contracting process; requiring notice;
23 requiring renegotiation and revision; providing for
24 violation; prohibiting certain contract terms;
prohibiting a health care insurer from denying
certain status; providing for duties of the Insurance
Commissioner; providing for codification; and
providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3310 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Small Rural
5 Oklahoma Hospital Survival Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3311 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The purpose of the Small Rural Oklahoma Hospital Survival
10 Act is to provide for parity, equity and fairness in negotiating and
11 contracting with and obtaining reimbursement from health insurance
12 companies.

13 B. The Legislature makes the following findings:

14 1. Small rural Oklahoma hospitals must remain viable, vibrant
15 and financially stable to provide health care to the populations
16 that they serve;

17 2. Small rural Oklahoma hospitals are essential to the health,
18 safety and welfare of all Oklahomans regardless of where they live
19 or travel in the State of Oklahoma;

20 3. Parity, equity and fairness in reimbursement rates and
21 contractual transparency are essential elements to the survival of
22 small rural hospitals in Oklahoma and the absence of parity, equity
23 and fairness in reimbursement rates and the absence of contractual
24

1 transparency are primary factors that result in the economic
2 hardships faced by small Oklahoma hospitals;

3 4. The needs of the citizens of this state and health care
4 infrastructure of this state will be best served by enacting
5 legislation that promotes parity, equity and fairness in
6 reimbursement rates and contractual transparency; and

7 5. Contract restrictions by commercial insurance companies that
8 lead to narrow or limited provider networks result in patients
9 having fewer choices and limited access to health care in rural
10 Oklahoma and other vulnerable communities.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3312 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in the Small Rural Oklahoma Hospital Survival Act:

15 1. "All-products clause" means a provision in a health care
16 contract that requires a health care provider, as a condition of
17 participation or continuation in a provider network or a health
18 benefit plan, to:

- 19 a. serve in another provider network utilized by the
20 contracting entity or a health care insurer affiliated
21 with the contracting entity, or
22 b. provide health care services under another health
23 benefit plan or product offered by a contracting
24

1 entity or a health care insurer affiliated with the
2 contracting entity;

3 2. "Contracting entity" means a health care insurer or a
4 subcontractor, affiliate, or other entity that contracts directly or
5 indirectly with a health care provider for the delivery of health
6 care services to enrollees;

7 3. "Enrollee" means an individual who is entitled to receive
8 health care services under the terms of a health benefit plan;

9 4. "Health benefit plan" means a plan, policy, contract,
10 certificate, agreement, or other evidence of coverage for health
11 care services offered or issued by a health care insurer in this
12 state and includes nonfederal governmental plans as defined in 29
13 U.S.C., Section 1002(32), as it existed on January 1, 2019. "Health
14 benefit plan" does not include:

- 15 a. a disability income plan,
- 16 b. a credit insurance plan,
- 17 c. insurance coverage issued as a supplement to liability
18 insurance,
- 19 d. a medical payment under automobile or homeowners
20 insurance plans,
- 21 e. a health benefit plan provided under the Oklahoma
22 Workers' Compensation Law,
- 23 f. a plan that provides only indemnity for hospital
24 confinement,

- g. an accident-only plan,
- h. a specified disease plan,
- i. a long-term-care-only plan,
- j. a dental-only plan, or
- k. a vision-only plan;

5. "Health care contract" means a contract entered into, materially amended, or renewed between a contracting entity and a health care provider for the delivery of health care services to enrollees;

6. "Health care insurer" means an entity that is subject to state insurance regulation and provides health insurance in this state, including, but not limited to, the following:

- a. an insurance company,
- b. a health maintenance organization,
- c. a hospital and medical service corporation,
- d. a risk-based provider organization, and
- e. a sponsor of a nonfederal self-funded governmental plan;

7. "Health care provider" means a person or entity that is licensed, certified, or otherwise authorized by the laws of this state to provide health care services;

8. "Health care services" means services or goods provided for the purpose of or incidental to the purpose of preventing,

1 diagnosing, treating, alleviating, relieving, curing, or healing
2 human illness, disease, condition, disability, or injury;

3 9. "Material amendment" means a change in a health care
4 contract that results in:

- 5 a. a decrease in fees, payments, or reimbursement to a
6 participating health care provider,
- 7 b. a change in the payment methodology for determining
8 fees, payments, or reimbursement to a participating
9 health care provider,
- 10 c. a new or revised coding guideline,
- 11 d. a new or revised payment rule, or
- 12 e. a change of procedures that may reasonably be expected
13 to significantly increase a health care provider's
14 administrative expenses;

15 10. "Most-favored nation clause" means a provision in a health
16 care contract that:

- 17 a. prohibits or grants a contracting entity an option to
18 prohibit a participating health care provider from
19 contracting with another contracting entity to provide
20 health care services at a lower price than the payment
21 specified in the health care contract,
- 22 b. requires or grants a contracting entity an option to
23 require a participating health care provider to accept
24 a lower payment in the event the participating health

- 1 care provider agrees to provide health care services
2 to another contracting entity at a lower price,
- 3 c. requires or grants a contracting entity an option to
4 require termination or renegotiation of an existing
5 health care contract if a participating health care
6 provider agrees to provide health care services to
7 another contracting entity at a lower price, or
- 8 d. requires a participating health care provider to
9 disclose the participating health care provider's
10 contractual reimbursement rates with other contracting
11 entities;

12 11. "Participating health care provider" means a health care
13 provider that has a health care contract with a contracting entity
14 to provide health care services to enrollees with the expectation of
15 receiving payment from the contracting entity or a health care
16 insurer affiliated with the contracting entity;

17 12. "Provider network" means a group of health care providers
18 that are contracted to provide health care services to enrollees at
19 contracted rates; and

20 13. "Small rural Oklahoma hospital" shall mean any hospital,
21 public or private, with less than one hundred beds or having an
22 acute care average daily census of less than fifty patients that is
23 located in a county with a population of less than three hundred
24 thousand (300,000) people.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3313 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. All health care contracts between a health care insurer and
5 a small Oklahoma hospital shall provide for a minimum guaranteed
6 reimbursement rate equal to:

7 1. One hundred percent (100%) of the prevailing market rate for
8 tests, procedures and similar services paid to urban hospitals; or

9 2 If the prevailing market rate is disputed, one hundred
10 percent (100%) of the hospital's billed charges.

11 B. Payment for services rendered by a small Oklahoma hospital
12 pursuant to a valid prior authorization shall not be denied by an
13 insurance company for any reason.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3314 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. All contracts between health care insurers and health care
18 providers, including all Oklahoma hospitals and other medical
19 providers, are open records and shall be posted on the website of
20 the Oklahoma Insurance Department and shall be publicly available to
21 evaluate payment methodology, accuracy of reimbursement and
22 examination of explanations of benefits.

23 B. It shall be the duty of the Oklahoma Insurance Commissioner
24 to analyze, publish and maintain updated data regarding prevailing

1 market reimbursement rates for Medicare reimbursement, urban
2 hospitals, rural hospitals and small rural Oklahoma hospitals.

3 C. Any health care insurer doing business in the State of
4 Oklahoma must provide a reasonable contract to small Oklahoma
5 hospitals. No contract between a health care insurer and a small
6 rural Oklahoma hospital shall be unreasonably complex, and in no
7 event shall the contract exceed twenty-five pages in length, with
8 font no smaller than twelve-point, nor can any payment attachment
9 exceed ten pages. All contracts between a health care insurer and
10 small Oklahoma hospitals must be standard agreements, the form of
11 which must be approved by the State Insurance Commissioner.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3315 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 No health care insurer shall directly or indirectly, including
16 through the use of a prior authorization process, steer an insured
17 away from a small rural Oklahoma hospital for services such as lab
18 work or imaging services that the small Oklahoma hospital routinely
19 provides unless the services provided by the small rural Oklahoma
20 hospital are unsafe or place the health of the insured at risk.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3316 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

1 Any provision in a contract between a health care insurer and an
2 Oklahoma hospital that asserts confidentiality of contract terms, a
3 gag order or a nondisparagement clause is against the public policy
4 of this state and is void.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3317 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. No health care insurer that has one thousand or more
9 subscribers or has three thousand or more beneficiaries shall
10 exclude a small rural Oklahoma hospital from its network unless the
11 small Oklahoma hospital refuses to accept a health care contract
12 that provides, at a minimum, the guaranteed reimbursement rates set
13 forth in Section 4 of this act.

14 B. No health care contract or health benefit plan providing
15 coverage for care at any hospital which provides nursing, medical,
16 or surgical coverage that is issued or delivered on or after
17 November 1, 2020, shall include a provision that prevents payment of
18 benefits for expenses of a nonindigent patient incurred in a
19 hospital facility that:

20 1. Is owned or controlled by the state or by a political
21 subdivision of the state; and

22 2. Regularly and customarily demands and collects from
23 nonindigent persons payments for those expenses.

24

1 C. 1. Except as provided in paragraph 2 of this subsection, a
2 contracting entity shall not:

- 3 a. offer to a health care provider a health care contract
4 that includes an all-products clause,
- 5 b. enter into a health care contract with a health care
6 provider that includes an all-products clause, or
- 7 c. amend or renew an existing health care contract
8 previously entered into with a health care provider so
9 that the health care contract as amended or renewed
10 adds or continues to include an all-products clause.

11 2. This section does not prohibit a contracting entity from:

- 12 a. offering a health care provider a contract that covers
13 multiple health benefit plans that have the same
14 reimbursement rates and other financial terms for the
15 health care provider,
- 16 b. adding a new health benefit plan to an existing health
17 care contract with a health care provider under the
18 same reimbursement rates and other financial terms
19 applicable under the original health care contract, or
- 20 c. requiring a health care provider to accept multiple
21 health benefit plans that do not differ in
22 reimbursement rates or other financial terms for the
23 health care provider.

1 3. A health care contract may include health benefit plans or
2 coverage options for enrollees within a health benefit plan with
3 different cost-sharing structures, including different deductibles
4 or copayments, as long as the reimbursement rates and other
5 financial terms between the contracting entity and the health care
6 provider remain the same for each plan or coverage option included
7 in the health care contract.

8 D. This section does not authorize a health care provider to:

9 1. Opt out of providing services to an enrollee of a particular
10 health benefit plan after the health care provider has entered into
11 a valid contract under this section to provide the services; or

12 2. Refuse to disclose the provider networks or health benefit
13 plans in which the health care provider participates.

14 E. A contracting entity shall not:

15 1. Offer to a health care provider a health care contract that
16 includes a most-favored nation clause;

17 2. Enter into a health care contract with a health care
18 provider that includes a most-favored nation clause; or

19 3. Amend or renew an existing health care contract previously
20 entered into with a health care provider so that the contract as
21 amended or renewed adds or continues to include a most-favored
22 nation clause.

23 F. A violation of this section is:

24 1. An unfair trade practice; and

2. Subject to the Oklahoma Deceptive Trade Practices Act.

G. If a health care contract contains a provision that violates this section, the health care contract is void.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3318 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. A material amendment to a health care contract is allowed if a contracting entity provides to a participating health care provider the material amendment in writing at least ninety (90) days before the effective date of the material amendment.

2. The notice required under paragraph 1 of this subsection shall specify the precise health care contract or health care contracts to which the material amendment applies and be conspicuously labeled as follows: "Notice of Material Amendment to Health Care Contract."

3. The notice shall contain sufficient information about the amendment to allow a health care provider to assess the financial impact, if any, of the amendment.

B. A notice described under paragraph 1 of subsection A of this section is not required for a material amendment resulting solely from a change in a fee schedule or code set if:

1. The fee schedule or code set is published by the federal government or another third party; and

1 2. The terms of the health care contract expressly state that
2 the health care provider's compensation or claims submission is
3 based on the fee schedule or code set.

4 C. 1. Within ten (10) business days of a health care
5 provider's request, a contracting entity shall provide to the health
6 care provider a full and complete copy of each health care contract
7 between the contracting entity and the health care provider.

8 2. A full and complete copy of the health care contract shall
9 include any amendments to the health care contract.

10 D. A health care contract shall open for renegotiation and
11 revision at least one time every three (3) years.

12 1. A party to the health care contract is not required to
13 terminate the health care contract in order to open the health care
14 contract for renegotiation of the terms.

15 2. This section does not prohibit a renegotiation of a health
16 care contract at any time during the term of the health care
17 contract.

18 E. A violation of this section is:

19 1. An unfair trade practice; and

20 2. Subject to the Oklahoma Deceptive Trade Practices Act.

21 F. If a health care contract contains a provision that violates
22 this section, the health care contract is void.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3319 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A contracting entity shall not, directly or indirectly,
5 offer or enter into a health care contract that:

6 1. Prohibits a participating health care provider from entering
7 into a health care contract with another contracting entity; or

8 2. Prohibits a contracting entity from entering into a health
9 care contract with another health care provider.

10 B. A violation of this section is:

11 1. An unfair trade practice; and

12 2. Subject to the Oklahoma Deceptive Trade Practices Act.

13 C. If a health care contract contains a provision that violates
14 this section, the health care contract is void.

15 SECTION 11. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3320 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 No health care insurer shall deny a request by an Oklahoma-
19 licensed physician practicing in Oklahoma to become an in-network
20 physician by requiring that the requesting physician have admitting
21 privileges at an in-network hospital.

22 SECTION 12. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3321 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The Oklahoma Insurance Commissioner shall have the duty and
2 responsibility to enforce the Small Rural Oklahoma Hospital Survival
3 Act and shall have the responsibility to establish fines, fees and
4 penalties for noncompliance with this act by any insurance company
5 licensed in this state to provide health insurance for citizens of
6 this state or authorized to pay any claim to any hospital or other
7 health care provider.

8 B. The Commissioner shall promulgate rules necessary to ensure
9 compliance with this act.

10 C. The Commissioner shall have the duty to regulate the form
11 and simplicity of all health care contracts between health care
12 insurers' companies and small Oklahoma hospitals to ensure that
13 small rural Oklahoma hospitals are not required to retain the
14 services of consultants, attorneys or modeling analytics firms to be
15 able to reasonably interpret health insurance contracts and
16 administer them to serve the insureds of said companies. If a
17 dispute arises as to the complexity of such contracts, the Oklahoma
18 Insurance Department shall serve as an arbitrator to determine if
19 such proffered contracts violate the intent of this subsection to
20 the detriment of the small rural Oklahoma hospital and the well-
21 being of the citizens who may be patients of small rural Oklahoma
22 hospitals and shall have the power to direct insurance companies to
23 amend the forms of their contract to an acceptable model in order to
24 provide comprehensive access to hospital care throughout the state.

SECTION 13. This act shall become effective November 1, 2020.

COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/02/2020 - DO PASS,
As Amended and Coauthored.