

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1908

By: Paxton

AS INTRODUCED

An Act relating to rural hospitals; creating the Oklahoma Small Hospital Survival Act; stating purpose of act and legislative findings; defining terms; providing for minimum guaranteed reimbursement rates; prohibiting denial of certain payment after prior authorization; declaring certain contracts as open records and posted on Insurance Commissioner website for certain purpose; requiring Commissioner to publish and maintain certain data; establishing terms and requirements of contract between insurers and certain hospitals; prohibiting encouraging patients toward certain healthcare providers in certain circumstances; declaring certain contract terms void; prohibiting insurer from excluding certain hospitals from network; providing exception; prohibiting insurer from making certain payments; prohibiting contracting entities from including certain terms in contract with insurers; authorizing amendments to healthcare contracts in certain circumstances and subject to certain terms; requiring insurer to provide certain notice of contract to providers; establishing terms for contract renegotiation; prohibiting certain entity from entering into contract with certain terms; prohibiting insurers from requiring certain physician to have admitting privileges at certain hospital; requiring Insurance Commissioner to enforce act; requiring Commissioner to promulgate rules; establishing Commissioner as arbitrator in certain circumstances; prohibiting certain persons from working in the Insurance Commission for certain time period; providing for codification; and providing an effective date.

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

3 SECTION 1. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3401 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 This act shall be known and may be cited as the "Oklahoma Small
7 Hospital Survival Act".

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3402 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

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

15 B. The Legislature makes the following findings:

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

19 2. Small hospitals in Oklahoma are essential to the health,
20 safety and welfare of all Oklahomans regardless of where they live
21 or travel in this state;

22 3. Parity, equity and fairness in reimbursement rates and
23 contractual transparency are essential elements to the survival of
24 small hospitals in Oklahoma and the absence of these are factors
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1 that resulting in the economic hardships faced by small Oklahoma
2 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 3403 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Small Oklahoma hospital" shall mean any hospital, public or
16 private located in the State of Oklahoma with less than one-hundred
17 (100) beds or having an acute care average daily census of less than
18 fifty (50) patients;

19 2. "All products clause" means a provision in a healthcare
20 contract that requires a healthcare provider, as a condition of
21 participation or continuation in a provider network or a health
22 benefit plan, to:

- a. serve in another provider network utilized by the contracting entity or a healthcare insurer affiliated with the contracting entity, or
- b. provide healthcare services under another health benefit plan or product offered by a contracting entity or a healthcare insurer affiliated with the contracting entity;

3. "Contracting entity" means a healthcare insurer or a sub-contractor, affiliate or other entity that contracts directly or indirectly with a healthcare provider for the delivery of healthcare services to enrollees;

4. "Enrollee" means an individual who is entitled to receive healthcare services under the terms of a health benefit plan;

5. "Health benefit plan" means a plan, policy, contract, certificate, agreement or other evidence of coverage for healthcare services offered or issued by a healthcare insurer in this state, and Health benefit plan includes nonfederal governmental plans, as defined on the effective date of this act, in 29 U.S.C. § 1002(32). Health benefit plan does not include:

- a. a disability income plan,
- b. a credit insurance plan,
- c. insurance coverage issued as a supplement to liability insurance,

- d. a medical payment under automobile or homeowner insurance plans,
- e. a health benefit plan provided under the Oklahoma Workers Compensation Law,
- f. a plan that provides only indemnity for hospital 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;

6. "Healthcare contract" means a contract entered into, materially amended or renewed between a contracting entity and a healthcare provider for the delivery of healthcare services to enrollees;

7. "Healthcare insurer" means an entity that is subject to state insurance regulation and provides health insurance in this state, and includes:

- 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;

1 8. "Healthcare provider" means a person or entity that is
2 licensed, certified or otherwise authorized by the laws of this
3 state to provide healthcare services;

4 9. "Healthcare services" means services or goods provided for
5 the purpose of or incidental to the purpose of preventing,
6 diagnosing, treating, alleviating, relieving, curing or healing
7 human illness, disease, condition, disability or injury;

8 10. "Material amendment" means a change in a healthcare
9 contract resulting in:

- 10 a. a decrease in fees, payments or reimbursement to a
11 participating healthcare provider,
- 12 b. a change in the payment methodology for determining
13 fees, payments or reimbursement to a participating
14 healthcare provider,
- 15 c. a new or revised coding guideline,
- 16 d. a new or revised payment rule, or
- 17 e. a change of procedures that may reasonably be expected
18 to significantly increase the administrative expenses
19 of a healthcare provider;

20 11. "Most favored nation clause" means a provision in a
21 healthcare contract that:

- 22 a. prohibits or grants a contracting entity an option to
23 prohibit a participating healthcare provider from
24 contracting with another contracting entity to provide

1 healthcare services at a lower price than the payment
2 specified in the healthcare contract,

3 b. requires or grants a contracting entity an option to
4 require a participating healthcare provider to accept
5 a lower payment in the event the participating
6 healthcare provider agrees to provide healthcare
7 services to another contracting entity at a lower
8 price, or

9 c. requires a participating healthcare provider to
10 disclose the participating healthcare provider's
11 contractual reimbursement rates with other contracting
12 entities;

13 12. "Participating healthcare provider" means a healthcare
14 provider who has a healthcare contract with a contracting entity to
15 provide healthcare services to enrollees with the expectation of
16 receiving payment from the contracting entity or a healthcare
17 insurer affiliated with the contracting entity; and

18 13. "Provider network" means a group of healthcare providers
19 that are contracted to provide healthcare services to enrollees at
20 contracted rates.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3404 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

1 A. All healthcare contracts between a healthcare insurer and a
2 small Oklahoma hospital shall provide for a minimum guaranteed
3 reimbursement rate equal to:

4 1. One hundred fifty percent (150%) of the published Medicare
5 reimbursement rate; or

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

8 3. If the prevailing market rate is disputed, the rate shall be
9 defined as one hundred sixty-five percent (165%) of the published
10 Medicare reimbursement rate.

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 3405 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. All contracts between healthcare insurers and healthcare
18 providers, including all Oklahoma hospitals and other medical
19 providers shall be open records and shall be posted on the website
20 of the Insurance Commissioner. The contracts shall be available to
21 the public for evaluation of payment methodology, accuracy of
22 reimbursement and examination of explanations of benefits.

23 B. It shall be the duty of the Insurance Commissioner to
24 analyze, publish and maintain updated data regarding prevailing
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1 market reimbursement rates for Medicare reimbursement, urban
2 hospitals, rural hospitals and small Oklahoma hospitals.

3 C. Any healthcare insurer doing business in this state shall
4 provide a reasonable contract to small Oklahoma hospitals. No
5 contract between a healthcare insurer and a small Oklahoma hospital
6 shall be unreasonably complex, and in no event shall the contract
7 exceed twenty-five (25) pages in length, with font no smaller than
8 twelve (12) point, nor can any payment document attachment exceed
9 ten (10) pages. All contracts between a healthcare insurer and
10 small Oklahoma hospitals shall be standard agreements, in a manner
11 and form to be prescribed by the Commissioner.

12 D. No healthcare insurer shall directly or indirectly,
13 including using the prior authorization process, steer an insured
14 away from a small Oklahoma hospital for services such as lab work or
15 imaging services that the small Oklahoma hospital routinely
16 provides, unless the services provided by the small Oklahoma
17 hospital are unsafe or places the health of the insured at risk, as
18 determined by the Department of Health.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3406 of Title 63, unless there
21 is created a duplication in numbering, reads as follows:

22 Any provision in a contract between a healthcare insurer and an
23 Oklahoma hospital asserting confidentiality of contract terms, a gag
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1 order or a non-disparagement clause is against the public policy of
2 this state and shall be considered void.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3407 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any healthcare insurer that has one-thousand (1,000)
7 subscribers or more or three-thousand (3,000) beneficiaries or more
8 shall not exclude a small Oklahoma hospital from its network, except
9 if the small Oklahoma hospital refuses to accept a healthcare
10 contract that provides, at a minimum, the guaranteed reimbursement
11 rates set forth in this act.

12 B. For any healthcare contract or health benefit plan issued or
13 delivered on or after the effective date of this act, if the
14 contract or plan provides coverage for care at any hospital that
15 provides nursing, medical or surgical coverage, the contract or plan
16 shall include a provision that prevents payment of benefits for
17 expenses of a non-indigent patient incurred in a hospital facility
18 that:

19 1. Is owned or controlled by the state or by a unit of local
20 government; and

21 2. Regularly and customarily demands and collects from non-
22 indigent persons payments for those expenses.

23 C. Except as provided in subsections D and E of this section, a
24 contracting entity shall not:

1. Offer to a healthcare provider a healthcare contract that includes an all-products clause;
2. Enter into a healthcare contract with a healthcare provider that includes an all-products clause; or
3. Amend or renew an existing healthcare contract previously entered into with a healthcare provider so that the healthcare contract as amended or renewed adds or continues to include an all-products clause.

D. This section shall not be construed as prohibiting a contracting entity from:

1. Offering a healthcare provider a contract covering multiple health benefit plans that have the same reimbursement rates and other financial terms for the healthcare provider;
2. Adding a new health benefit plan to an existing healthcare contract with a healthcare provider under the same reimbursement rates and other financial terms applicable under the original healthcare contract; or
3. Requiring a healthcare provider to accept multiple health benefit plans that do not differ in reimbursement rates or other financial terms for the healthcare provider.

E. A healthcare contract may include health benefit plans or coverage options for enrollees within a health benefit plan with different cost-sharing structures, including different deductibles or copayments, so long as the reimbursement rates and other

1 financial terms between the contracting entity and the healthcare
2 provider remain the same for each plan or coverage option included
3 in the healthcare contract.

4 F. This section does not authorize a healthcare provider to:

5 1. Opt out of providing services to an enrollee of a particular
6 health benefit plan after the healthcare provider has entered into a
7 valid contract under this section to provide the services; or

8 2. Refuse to disclose the provider networks or health benefit
9 plans in which the healthcare provider participates.

10 G. A contracting entity shall not:

11 1. Offer to a healthcare provider a healthcare contract that
12 includes a most favored nation clause;

13 2. Enter into a healthcare contract with a healthcare provider
14 that includes a most favored nation clause; or

15 3. Amend or renew an existing healthcare contract previously
16 entered into with a healthcare provider so that the contract as
17 amended or renewed adds or continues to include a most favored
18 nation clause.

19 H. A violation of this section shall constitute an unfair trade
20 practice pursuant to Section 1201 et seq. of Title 36 of the
21 Oklahoma Statutes and shall be a violation of the provisions of the
22 Oklahoma Consumer Protection Act, Section 751 et seq. of Title 15 of
23 the Oklahoma Statutes.

1 I. If a healthcare contract contains a provision that violates
2 this section, the contract shall be deemed void.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3408 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. 1. A material amendment to a healthcare contract is allowed
7 if a contracting entity provides notice, in writing, to a
8 participating healthcare provider of the material amendment at least
9 ninety (90) days before the effective date of the amendment.

10 2. The notice required under paragraph 1 of this subsection
11 shall specify the precise healthcare contract or healthcare
12 contracts to which the material amendment applies and be
13 conspicuously labeled as follows: "Notice of Material Amendment to
14 Healthcare Contract".

15 3. The notice shall contain sufficient information about the
16 amendment to allow a healthcare provider to assess the financial
17 impact, if any, of the amendment.

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

21 1. The fee schedule or code set is published by the federal
22 government or another third party; and
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1 2. The terms of the healthcare contract expressly states that
2 the compensation of the healthcare provider or claims submission is
3 based on the fee schedule or code set.

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

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

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

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

15 2. This section shall not be construed as prohibiting a
16 renegotiation of a healthcare contract at any time during the term
17 of the healthcare contract.

18 3. A violation of this section shall constitute an unfair trade
19 practice pursuant to Section 1201 et seq. of Title 36 of the
20 Oklahoma Statutes and shall be a violation of the provisions of the
21 Oklahoma Consumer Protection Act, Section 751 et seq. of Title 15 of
22 the Oklahoma Statutes.

23 4. If a healthcare contract contains a provision that violates
24 this section, the contract shall be deemed void.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3409 of Title 63, 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 healthcare contract that:

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

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

10 B. A violation of this section shall constitute an unfair trade
11 practice pursuant to Section 1201 et seq. of Title 36 of the
12 Oklahoma Statutes and shall be a violation of the provisions of the
13 Oklahoma Consumer Protection Act, Section 751 et seq. of Title 15 of
14 the Oklahoma Statutes.

15 C. If a healthcare contract contains a provision that violates
16 this section, the contract shall be deemed void.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3410 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 No healthcare insurer shall require that a licensed physician
21 practicing in this state have admitting privileges at an in-network
22 hospital to become an in-network provider.
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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3411 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Insurance Commissioner shall have the duty and
5 responsibility to enforce the provisions of this act and shall have
6 the responsibility to establish fines, fees and penalties for non-
7 compliance with this act by any insurance company licensed in this
8 state to provide health insurance or authorized to pay any claim to
9 any hospital or other health care provider.

10 B. The Commissioner shall promulgate rules pursuant to the
11 provisions of this act.

12 C. The Commissioner shall have the duty to regulate the form
13 and simplicity of all healthcare contracts between healthcare
14 insurers companies and small Oklahoma hospitals to insure that small
15 Oklahoma hospitals are not required to retain the services of
16 consultants, attorneys or both, or modeling analytics firms to be
17 able to reasonably interpret health insurance contracts and
18 administer them to serve the insured of the companies. In the event
19 a dispute arises as to the complexity of such contracts, the
20 Department of Insurance shall serve as an arbitrator to determine if
21 the contracts violate the intent of this section to the detriment of
22 the small Oklahoma hospital and the well-being of the citizens who
23 may be patients of these hospitals, and shall have the power to
24 direct insurance companies to amend the forms of their contract to

1 an acceptable model in order to provide comprehensive access to
2 hospital care throughout this state.

3 D. Former officers, agents, directors or employees of any
4 healthcare insurer doing business in this state shall be ineligible
5 to be elected, appointed or hired to work in the Department of
6 Insurance for a period of at least twenty-four (24) months following
7 their last date of employment.

8 SECTION 12. This act shall become effective November 1, 2020.

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