

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2161 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Marcus McEntire \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2161

By: McEntire

7  
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to insurance; creating the Small  
10 Rural Oklahoma Hospital Survival Act; declaring  
11 purpose; stating legislative findings; defining  
12 terms; requiring insurers to provide certain  
13 contracts; prohibiting certain acts; prohibiting  
14 certain provisions in contracts; prohibiting  
15 discrimination in the establishment of provider  
16 networks for certain health care insurers; providing  
17 exceptions; providing for violation; prescribing  
18 contracting process; requiring notice; requiring  
19 renegotiation and revision; providing for violation;  
20 prohibiting certain contract terms; providing for  
21 duties of the Insurance Commissioner; providing for  
22 codification; and providing an effective date.

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

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

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

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

4 A. The purpose of the Small Rural Oklahoma Hospital Survival  
5 Act is to provide for parity, equity and fairness in negotiating and  
6 contracting with and obtaining reimbursement from health insurance  
7 companies.

8 B. The Legislature makes the following findings:

9 1. Small rural Oklahoma hospitals must remain viable, vibrant  
10 and financially stable to provide health care to the populations  
11 that they serve during a pandemic and beyond;

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

15 3. Parity, equity, fairness and contractual transparency are  
16 essential elements to the survival of small rural hospitals in  
17 Oklahoma.

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

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

22 1. "All-products clause" means a provision in a health care  
23 contract that requires a health care provider, as a condition of  
24

1 participation or continuation in a provider network or a health  
2 benefit plan, to:

- 3 a. serve in another provider network utilized by the  
4 contracting entity or a health care insurer affiliated  
5 with the contracting entity, or
- 6 b. provide health care services under another health  
7 benefit plan or product offered by a contracting  
8 entity or a health care insurer affiliated with the  
9 contracting entity;

10 2. "Contracting entity" means a health care insurer or a  
11 subcontractor, affiliate, or other entity that contracts directly or  
12 indirectly with a health care provider for the delivery of health  
13 care services to enrollees;

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

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

- 22 a. a disability income plan,
- 23 b. a credit insurance plan,

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- c. insurance coverage issued as a supplement to liability insurance,
- d. a medical payment under automobile or homeowners 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;

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

1 e. a sponsor of a nonfederal self-funded governmental  
2 plan;

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

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

10 9. "Material amendment" means a change in a health care  
11 contract that results in:

12 a. a decrease in fees, payments, or reimbursement to a  
13 participating health care provider,

14 b. a change in the payment methodology for determining  
15 fees, payments, or reimbursement to a participating  
16 health care provider,

17 c. a new or revised coding guideline,

18 d. a new or revised payment rule, or

19 e. a change of procedures that may reasonably be expected  
20 to significantly increase a health care provider's  
21 administrative expenses;

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

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- 1 a. prohibits or grants a contracting entity an option to  
2 prohibit a participating health care provider from  
3 contracting with another contracting entity to provide  
4 health care services at a lower price than the payment  
5 specified in the health care contract,
- 6 b. requires or grants a contracting entity an option to  
7 require a participating health care provider to accept  
8 a lower payment in the event the participating health  
9 care provider agrees to provide health care services  
10 to another contracting entity at a lower price,
- 11 c. requires or grants a contracting entity an option to  
12 require termination or renegotiation of an existing  
13 health care contract if a participating health care  
14 provider agrees to provide health care services to  
15 another contracting entity at a lower price, or
- 16 d. requires a participating health care provider to  
17 disclose the participating health care provider's  
18 contractual reimbursement rates with other contracting  
19 entities;

20 11. "Participating health care provider" means a health care  
21 provider that has a health care contract with a contracting entity  
22 to provide health care services to enrollees with the expectation of  
23 receiving payment from the contracting entity or a health care  
24 insurer affiliated with the contracting entity;

1 12. "Provider network" means a group of health care providers  
2 that are contracted to provide health care services to enrollees at  
3 contracted rates; and

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

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

12 Any health care insurer doing business in the State of Oklahoma  
13 must provide a reasonable contract to small Oklahoma hospitals. No  
14 contract between a health care insurer and a small rural Oklahoma  
15 hospital shall be unreasonably complex, and in no event shall the  
16 contract exceed twenty-five pages in length, with font no smaller  
17 than twelve-point, nor can any payment attachment exceed ten pages.  
18 All contracts between a health care insurer and small Oklahoma  
19 hospitals must be standard agreements, the form of which must be  
20 approved by the State Insurance Commissioner.

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

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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 6. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3315 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 B. No health care contract or health benefit plan providing  
13 coverage for care at any hospital which provides nursing, medical,  
14 or surgical coverage that is issued or delivered on or after  
15 November 1, 2021, shall include a provision that prevents payment of  
16 benefits for expenses of a nonindigent patient incurred in a  
17 hospital facility that:

18 1. Is owned or controlled by the state or by a political  
19 subdivision of the state; and

20 2. Regularly and customarily demands and collects from  
21 nonindigent persons payments for those expenses.

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

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

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

- a. offering a health care provider a contract that covers multiple health benefit plans that have the same reimbursement rates and other financial terms for the health care provider,
- b. adding a new health benefit plan to an existing health care contract with a health care provider under the same reimbursement rates and other financial terms applicable under the original health care contract, or
- c. requiring a health care provider to accept multiple health benefit plans that do not differ in reimbursement rates or other financial terms for the health care provider.

3. A health care contract may include health benefit plans or coverage options for enrollees within a health benefit plan with different cost-sharing structures, including different deductibles

1 or copayments, as long as the reimbursement rates and other  
2 financial terms between the contracting entity and the health care  
3 provider remain the same for each plan or coverage option included  
4 in the health care contract.

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

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

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

11 E. A contracting entity shall not:

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

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

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

20 F. A violation of this section is:

21 1. An unfair trade practice; and

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

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

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

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

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

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

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

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

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

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

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

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

9 1. A party to the health care contract is not required to  
10 terminate the health care contract in order to open the health care  
11 contract for renegotiation of the terms.

12 2. This section does not prohibit a renegotiation of a health  
13 care contract at any time during the term of the health care  
14 contract.

15 E. A violation of this section is:

16 1. An unfair trade practice; and

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

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

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

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

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

3 2. Prohibits a contracting entity from entering into a health  
4 care contract with another health care provider.

5 B. A violation of this section is:

6 1. An unfair trade practice; and

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

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

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

13 A. The Oklahoma Insurance Commissioner shall have the duty and  
14 responsibility to enforce the Small Rural Oklahoma Hospital Survival  
15 Act and shall have the responsibility to establish fines, fees and  
16 penalties for noncompliance with this act by any insurance company  
17 licensed in this state to provide health insurance for citizens of  
18 this state or authorized to pay any claim to any hospital or other  
19 health care provider.

20 B. The Commissioner shall promulgate rules necessary to ensure  
21 compliance with this act.

22 C. The Commissioner shall have the duty to regulate the form  
23 and simplicity of all health care contracts between health care  
24 insurers' companies and small Oklahoma hospitals to ensure that

1 small rural Oklahoma hospitals are not required to retain the  
2 services of consultants, attorneys or modeling analytics firms to be  
3 able to reasonably interpret health insurance contracts and  
4 administer them to serve the insureds of said companies. If a  
5 dispute arises as to the complexity of such contracts, the Oklahoma  
6 Insurance Department shall serve as an arbitrator to determine if  
7 such proffered contracts violate the intent of this subsection to  
8 the detriment of the small rural Oklahoma hospital and the well-  
9 being of the citizens who may be patients of small rural Oklahoma  
10 hospitals and shall have the power to direct insurance companies to  
11 amend the forms of their contracts to an acceptable model in order  
12 to provide comprehensive access to hospital care throughout the  
13 state.

14 SECTION 10. This act shall become effective November 1, 2021.

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