

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2950

By: Wallace and Hilbert of the
House

and

Thompson and Hall of the
Senate

COMMITTEE SUBSTITUTE

An Act relating to ambulance service providers;
creating the Ambulance Service Provider Access
Payment Program Act; providing short title; defining
terms; providing for certain assessment; exempting
certain ambulance services; providing assessment
methodology; providing for adjusted assessments under
certain conditions; voiding program under certain
conditions; directing promulgation of rules;
providing for administrative penalties; creating
Ambulance Service Provider Access Payment Program
Fund; providing source of monies; providing for
notice of assessment; requiring quarterly payments;
providing exception for first installment; providing
certain penalty; specifying certain appeals
procedures; providing assessment for new provider;
providing for ambulance service provider access
payments; specifying date and frequency of payments,
calculation methodology, eligibility, prohibiting
offset of certain payments; requiring refund under
certain condition; directing budgeting and
expenditure of monies; stating allowed expense;
prohibiting certain use of monies; providing certain
exemption; stipulating certain lack of guarantee;
providing for certain appeals; specifying that monies
are supplemental; prohibiting certain adjustment of

1 Medicaid reimbursement; requiring Oklahoma Health
2 Care Authority to cease collection of fees and refund
3 providers under certain condition; directing
4 Authority to seek certain federal approval; requiring
5 certain actions if approval denied; providing for
6 codification; and providing an effective date.

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

8 SECTION 1. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3242.1 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 This act shall be known and may be cited as the "Ambulance
12 Service Provider Access Payment Program Act".

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3242.2 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 As used in the Ambulance Service Provider Access Payment Program
17 Act:

18 1. "Air ambulance" means ambulance services provided by fixed
19 or rotor wing ambulance services;

20 2. "Alliance" means the Oklahoma Ambulance Alliance or its
21 successor association;

22 3. "Ambulance" means a motor vehicle that is primarily used or
23 designated as available to provide transportation and basic life
24 support or advanced life support;

1 4. "Ambulance service" or "ambulance service provider" means
2 any private firm or governmental agency which is or should be
3 licensed by the State Department of Health to provide levels of
4 medical care based on certification rules or standards promulgated
5 by the State Commissioner of Health;

6 5. "Department" means the State Department of Health;

7 6. "Emergency" or "emergent" means a serious situation or
8 occurrence that happens unexpectedly and demands immediate action,
9 such as a medical condition manifesting itself by acute symptoms of
10 sufficient severity including severe pain such that the absence of
11 immediate medical attention could reasonably be expected, by a
12 reasonable and prudent layperson, to result in placing the patient's
13 health in serious jeopardy, serious impairment to bodily function or
14 serious dysfunction of any bodily organ or part;

15 7. "Emergency transport" means the movement of an acutely ill
16 or injured patient from the scene to a health care facility or the
17 movement of an acutely ill or injured patient from one health care
18 facility to another health care facility;

19 8. "Licensure" means the licensing of emergency ambulance
20 services pursuant to rules and standards promulgated by the State
21 Commissioner of Health;

22 9. "Net operating revenue" means the gross revenues earned for
23 providing emergency and nonemergency transports in Oklahoma
24 excluding revenues earned for providing air ambulance services and

1 amounts refunded to or recouped, offset or otherwise deducted by a
2 patient or payer for ground medical transportation;

3 10. "Nonemergency transport" means the movement of any patient
4 in an ambulance other than an emergency transport;

5 11. "Upper payment limit" means the lesser of the customary
6 charges of the ambulance service provider or the prevailing charges
7 in the locality of the ambulance service provider for comparable
8 services under comparable circumstances, calculated according to
9 methodology in an approved state plan amendment for the state
10 Medicaid program; and

11 12. "Upper payment limit gap" means the difference between the
12 upper payment limit of the ambulance service provider and the
13 Medicaid payments not financed using the ambulance service provider
14 assessments made to all ambulance service providers, provided that
15 the upper payment limit gap shall not include air ambulance
16 services.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3242.3 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. For the purpose of assuring access to quality emergency and
21 nonemergency transports for state Medicaid beneficiaries, the
22 Oklahoma Health Care Authority shall, after considering input and
23 recommendations from the Oklahoma Ambulance Alliance, assess
24 ambulance service providers licensed in Oklahoma, unless exempt

1 under subsection B of this section, an ambulance service provider
2 access payment program fee.

3 B. The following ambulance services shall be exempt from the
4 ambulance service provider access payment fee:

5 1. An ambulance service that is owned or operated by the state
6 or a state agency, the federal government, a federally recognized
7 Indian tribe, or the Indian Health Service;

8 2. An ambulance service that is eligible for supplemental
9 Medicaid reimbursement under Section 3242 of Title 63 of the
10 Oklahoma Statutes;

11 3. An ambulance service that provides air ambulance services
12 only; or

13 4. An ambulance service that provides nonemergency transports
14 only or a de minimis amount of emergency medical transportation
15 services, as determined by the Authority.

16 C. 1. The ambulance service provider access payment program
17 fee shall be an assessment imposed on each ambulance service
18 provider, except those exempted under subsection B of this section,
19 for each calendar year in an amount calculated as a percentage of
20 each ambulance service provider's net operating revenue.

21 2. The assessment rate shall be determined annually based upon
22 the percentage of net operating revenue needed to generate an amount
23 up to the sum of:
24

- a. the nonfederal portion of the upper payment limit gap for all ambulance service providers eligible to receive Medicaid ambulance service provider access payments, plus
- b. the annual fee to be paid to the Authority under subparagraph b of paragraph 2 of subsection F of Section 4 of this act, plus
- c. the amount to be transferred by the Authority to the Medical Payments Cash Management Improvement Act Programs Disbursing Fund under subparagraph a of paragraph 2 of subsection F of Section 4 of this act.

In no event shall the assessment rate exceed the maximum rate allowed by federal law or regulation.

3. The assessment rate described in this subsection shall be determined after consultation with the Alliance. The base year for assessment, the method for calculating net operating revenue and related matters not provided for in this section shall be determined by rules promulgated by the Oklahoma Health Care Authority Board.

D. 1. If an ambulance service provider conducts, operates or maintains more than one licensed ambulance service, the ambulance service provider shall pay the ambulance service provider access payment program fee for each ambulance service separately. However, if the ambulance service provider operates more than one ambulance service under one Medicaid provider number, the ambulance service

1 provider may pay the fee for the ambulance services in the
2 aggregate.

3 2. Notwithstanding any other provision of this section, if an
4 ambulance service provider subject to the ambulance service provider
5 access payment fee operates or conducts business only for a portion
6 of a year, the assessment for the year shall be adjusted by
7 multiplying the annual assessment by a fraction, the numerator of
8 which is the number of days in the year during which the ambulance
9 service operates and the denominator of which is three hundred
10 sixty-five (365). Immediately upon ceasing to operate, the
11 ambulance service provider shall pay the assessment for the year as
12 so adjusted, to the extent not previously paid.

13 3. The Authority shall determine the assessment for new
14 ambulance services and ambulance services that undergo a change of
15 ownership in accordance with this section, using the best available
16 information, as determined by the Authority.

17 E. 1. In the event that federal financial participation
18 pursuant to Title XIX of the Social Security Act is not available to
19 the state Medicaid Program for purposes of matching expenditures
20 from the Ambulance Service Provider Access Payment Program Fund at
21 the approved federal medical assistance percentage for the
22 applicable year, the ambulance service provider access payment
23 program fee shall be null and void as of the date of the
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1 nonavailability of such federal funding through and during any
2 period of nonavailability.

3 2. In the event of an invalidation of the Ambulance Service
4 Provider Access Payment Program by any court of last resort, the
5 program shall be null and void as of the effective date of that
6 invalidation.

7 3. In the event that the Ambulance Service Provider Access
8 Payment Program is determined to be null and void for any of the
9 reasons described in this subsection, any ambulance service provider
10 access payment program fee assessed and collected for any period to
11 which such invalidation applies shall be returned in full within
12 forty-five (45) days by the Authority to the ambulance service from
13 which it was collected.

14 F. The Oklahoma Health Care Authority Board, after considering
15 the input and recommendations of the Alliance, shall promulgate
16 rules for the implementation and enforcement of the ambulance
17 service provider access payment program fee. Unless otherwise
18 provided, the rules promulgated under this subsection shall not
19 grant any exceptions to or exemptions from the ambulance service
20 provider access payment program fee imposed under this section.

21 G. The Authority shall provide for administrative penalties in
22 the event an ambulance service provider fails to:

23 1. Submit the ambulance service provider access payment program
24 fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by the Authority; or

4. Submit reports timely.

H. The Oklahoma Health Care Authority Board shall have the power to promulgate emergency rules to implement the provisions of Ambulance Service Provider Access Payment Program Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund to be designated the "Ambulance Service Provider Access Payment Program Fund".

B. The fund shall be a continuing fund, not subject to fiscal year limitations, be interest bearing and consist of:

1. All monies received by the Oklahoma Health Care Authority from ambulance services pursuant to the Ambulance Service Provider Access Payment Program Act and otherwise specified or authorized by law;

2. Any interest or penalties levied and collected in conjunction with the administration of this section; and

3. All interest attributable to investment of money in the fund.

C. 1. The Authority shall send a notice of assessment to each ambulance service provider informing the ambulance service provider

1 of the assessment rate, the ambulance service provider's net
2 operating revenue calculation, and the assessment amount owed by the
3 ambulance service provider for the applicable year.

4 2. Annual notices of assessment shall be sent at least thirty
5 (30) days before the due date for the first quarterly assessment
6 payment of each year.

7 3. The first notice of assessment shall be sent within forty-
8 five (45) days after receipt by the Authority of notification from
9 the Centers for Medicare and Medicaid Services that assessments and
10 payments required under the Ambulance Service Provider Access
11 Payment Program Act and, if necessary, the wavier granted under 42
12 C.F.R., Section 433.68 have been approved.

13 4. The ambulance service provider shall have thirty (30) days
14 from the date of its receipt of a notice of assessment to review and
15 verify the assessment rate, the ambulance service provider's net
16 operating revenue calculation and the assessment amount.

17 D. 1. The annual assessment imposed under Section 3 of this
18 act shall be due and payable on a quarterly basis. However, the
19 first installment payment of an assessment imposed by the Ambulance
20 Service Provider Access Payment Act shall not be due and payable
21 until:

22 a. the Authority issues written notice stating that the
23 assessment and payment methodologies required under
24 the Ambulance Service Provider Access Payment Act,

1 have been approved by Centers for Medicare and
2 Medicaid Services and the waiver under 42 C.F.R.,
3 Section 433.68, if necessary, has been granted by the
4 Centers for Medicare and Medicaid Services,

5 b. the thirty-day verification period required by
6 paragraph 4 of subsection C of this section has
7 expired, and

8 c. the Authority issues a notice giving a due date for
9 the first payment.

10 2. After the initial installment of an annual assessment has
11 been paid under this section, each subsequent quarterly installment
12 payment shall be due and payable by the fifteenth day of the first
13 month of the applicable quarter.

14 3. If an ambulance service provider fails to timely pay the
15 full amount of a quarterly assessment, the Authority shall add to
16 the assessment:

17 a. a penalty assessment equal to five percent (5%) of the
18 quarterly amount not paid on or before the due date,
19 and

20 b. on the last day of each quarter after the due date
21 until the assessed amount and the penalty imposed
22 under subparagraph a of this paragraph are paid in
23 full, an additional five-percent penalty assessment on
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1 any unpaid quarterly and unpaid penalty assessment
2 amounts.

3 4. The quarterly assessment including applicable penalties must
4 be paid regardless of any appeals action requested by the ambulance
5 provider. If a provider fails to pay the Authority the assessment
6 within the time frames noted on the invoice to the provider, the
7 assessment and applicable penalty shall be deducted from the
8 provider's payment. Any change in payment amount resulting from an
9 appeals decision will be adjusted in future payments.

10 5. An ambulance service provider subject to the assessment
11 under the Ambulance Service Provider Access Payment Program Act that
12 has not been previously licensed as an ambulance service in Oklahoma
13 and that commences operations during a year, shall pay the required
14 assessment computed under Section 3 of this act and shall be
15 eligible for ambulance service provider access payments under this
16 section on the date specified in the rules promulgated by the
17 Authority after consideration of input and recommendations of the
18 Oklahoma Ambulance Alliance.

19 E. 1. To preserve the quality and improve access to ambulance
20 services rendered on or after the effective date of this act, the
21 Authority shall make ambulance service provider access payments as
22 set forth in this section.

23 2. The Authority shall pay all quarterly ambulance service
24 provider access payments within ten (10) calendar days of the due

1 date for quarterly assessment payments established in subsection D
2 of this section.

3 3. The Authority shall calculate the ambulance service provider
4 access payment amount as the balance of the Ambulance Service
5 Provider Access Payment Program Fund plus any federal matching funds
6 earned on the balance, up to but not to exceed the upper payment
7 limit gap for all ambulance service providers.

8 4. All ambulance service providers shall be eligible for
9 ambulance service provider access payments each year as set forth in
10 this subsection except ambulance services excluded or exempted in
11 subsection B of Section 3 of this act.

12 5. Access payments shall be made on a quarterly basis.

13 6. Ambulance service provider access payments shall not be used
14 to offset any other payment by Medicaid for services to Medicaid
15 beneficiaries.

16 7. If the Centers for Medicare and Medicaid Services finds that
17 the Authority has made payments to ambulance service providers that
18 exceed the upper payment limits, ambulance service providers shall
19 refund to the Authority a share of the recouped federal funds that
20 is proportionate to the ambulance services' contribution to the
21 upper payment limit.

22 F. 1. All monies accruing to the credit of the Ambulance
23 Service Provider Access Payment Program Fund are hereby appropriated
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1 and shall be budgeted and expended by the Authority after
2 consideration of the input and recommendation of the Alliance.

3 2. Monies in the Ambulance Service Provider Access Payment
4 Program Fund shall be used only for:

- 5 a. transfers to the Medical Payments Cash Management
6 Improvement Act Programs Disbursing Fund for the state
7 share of ambulance service provider access payments
8 for ambulance service providers that participate in
9 the assessment,
- 10 b. transfers to the Administrative Revolving Fund for the
11 state share of payment of administrative expenses
12 incurred by the Authority or its agents and employees
13 in performing the activities authorized by the
14 Ambulance Service Provider Access Payment Program Act
15 but not more than Two Hundred Thousand Dollars
16 (\$200,000.00) each year, and
- 17 c. the reimbursement of monies collected by the Authority
18 from ambulance services through error or mistake in
19 performing the activities authorized under the
20 Ambulance Service Provider Access Payment Program Act.

21 3. The Authority shall pay from the Ambulance Service Provider
22 Access Payment Program Fund quarterly installment payments to
23 ambulance service providers of amounts available for ambulance
24 service provider access payments.

1 4. Monies in the Ambulance Service Provider Access Payment
2 Program Fund shall not be used to replace other general revenues
3 appropriated and funded by the Legislature or other revenues used to
4 support Medicaid.

5 5. The Ambulance Service Provider Access Payment Program Fund
6 and the program specified in the Ambulance Service Provider Access
7 Payment Program Act are exempt from budgetary reductions or
8 eliminations caused by the lack of general revenue funds or other
9 funds designated for or appropriated to the Authority.

10 6. No ambulance service provider shall be guaranteed, expressly
11 or otherwise, that any additional costs reimbursed to the provider
12 will equal or exceed the amount of the ambulance service provider
13 access payment program fee paid by the ambulance service.

14 G. After considering input and recommendations from the
15 Alliance, the Oklahoma Health Care Authority Board shall promulgate
16 rules that:

17 1. Allow for an appeal of the annual assessment of the
18 Ambulance Service Provider Access Payment Program payable under this
19 act; and

20 2. Allow for an appeal of an assessment of any fees or
21 penalties determined.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3242.5 of Title 63, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The ambulance service provider access payment program fee is
2 to supplement, not supplant, appropriations to support ambulance
3 service provider reimbursement. If Medicaid reimbursement rates to
4 providers are adjusted, ambulance service provider rates shall not
5 be adjusted less favorably than the average percentage-rate
6 reduction or increase applicable to the majority of other provider
7 groups.

8 B. Notwithstanding any other provision of the Ambulance Service
9 Provider Access Payment Program Act, if, after receipt of
10 authorization to receive federal matching funds for monies generated
11 by the Ambulance Service Provider Access Payment Program Act, the
12 authorization is withdrawn or changed so that federal matching funds
13 are no longer available, the Oklahoma Health Care Authority shall
14 cease collecting the provider fee and shall repay to the ambulance
15 services any money received by the Ambulance Service Provider Access
16 Payment Program that is not subject to federal matching funds.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3242.6 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Oklahoma Health Care Authority shall submit to the
21 Oklahoma Ambulance Alliance a proposed state plan amendment to
22 implement the requirements of the Ambulance Service Provider Access
23 Payment Program Act including the payment of ambulance service
24 provider access payments under Section 4 of this act no later than

1 forty-five (45) days after the effective date of this act, and shall
2 submit the state plan amendment to the Centers for Medicare and
3 Medicaid Services after consideration of the input and
4 recommendations of the Alliance.

5 B. If the state plan amendment is not approved by the Centers
6 for Medicare and Medicaid Services, the Authority shall:

7 1. Not implement the assessment imposed under the Ambulance
8 Service Provider Access Payment Program Act; and

9 2. Return any fees to ambulance services that paid the fees if
10 any such fees have been collected.

11 SECTION 7. This act shall become effective November 1, 2021.

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