

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

HOUSE BILL 1688

By: McEntire of the House

5 and

6 Haste of the Senate

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to health information; creating the
11 Oklahoma Health Care Transparency Initiative Act of
12 2023; providing short title; amending Section 1,
Chapter 250, O.S.L. 2022 (63 O.S. Supp. 2022, Section
1-132.1), which relates to the Office of the State
Coordinator for Health Information Exchange;
13 modifying powers and duties of the Office; amending
63 O.S. 2021, Section 1-133, as amended by Section 2,
14 Chapter 250, O.S.L. 2022 (63 O.S. Supp. 2022, Section
1-133), which relates to state-designated entity for
15 health information exchange; modifying time period of
certain requirement; modifying and adding certain
16 exemptions; defining terms; creating the Oklahoma
Health Care Transparency Initiative; providing for
17 governance and oversight of the initiative; requiring
submitting entity to submit certain information to
18 state-designated entity; allowing voluntary
submission of certain information by certain health
19 benefit plan, person, or entity; mandating compliance
with certain requirements; requiring submission of
20 public health data for integration into the
initiative; requiring assignment of unique
21 identifier; providing for confidentiality, privacy,
and security of certain data; listing circumstances
22 under which certain data may be made available;
prohibiting certain use or disclosure of data;
23 providing certain construction; authorizing certain
penalties; limiting amount of penalties; providing
24 for certain remittance or mitigation of penalties;

1 requiring the Insurance Department to remit certain
2 proceeds to the Oklahoma Health Care Authority;
3 specifying allowed uses of certain funds; amending 51
4 O.S. 2021, Section 24A.3, as amended by Section 1,
5 Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section
6 24A.3), which relates to the Oklahoma Open Records
7 Act; modifying certain definition; providing for
8 codification; and declaring an emergency.

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

10 SECTION 1. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-134.1 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 Sections 4 through 7 of this act shall be known and may be cited
14 as the "Oklahoma Health Care Transparency Initiative Act of 2023".

15 SECTION 2. AMENDATORY Section 1, Chapter 250, O.S.L.
16 2022 (63 O.S. Supp. 2022, Section 1-132.1), is amended to read as
17 follows:

18 Section 1-132.1 A. There is hereby created the Office of the
19 State Coordinator for Health Information Exchange within the
20 Oklahoma Health Care Authority.

21 B. The Office shall have the power and duty to ~~oversee~~:

22 1. Oversee the state-designated entity for health information
23 exchange, as described under Section 1-133 of Title 63 of the
24 Oklahoma Statutes this title; and

2. Oversee the Oklahoma Health Care Transparency Initiative.

1 C. The Office shall consist of the State Coordinator for Health
2 Information Exchange, who shall be appointed by and serve at the
3 pleasure of the Administrator of the Authority, and such other
4 employees of the Authority as the Administrator may assign to the
5 Office.

6 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-133, as
7 amended by Section 2, Chapter 250, O.S.L. 2022 (63 O.S. Supp. 2022,
8 Section 1-133), is amended to read as follows:

9 Section 1-133. A. As used in this section:

10 1. "Health information exchange" means the electronic movement
11 of health-related information among organizations according to
12 nationally recognized standards for purposes including, but not
13 limited to, payment, treatment, and administration; and

14 2. "Health information exchange organization" means an entity
15 whose primary business activity is health information exchange and
16 which is governed by its stakeholders.

17 B. The State of Oklahoma:

18 1. Shall designate a health information exchange organization
19 as the state-designated entity for health information exchange;

20 2. Shall establish a transition plan to ensure continued
21 operation of the health information exchange; and

22 3. May temporarily serve as the state-designated entity as part
23 of the transition plan described in paragraph 2 of this subsection.
24

1 C. ~~Beginning July 1, 2023, all~~ 1. All health care providers as
2 defined by the rules promulgated by the Oklahoma Health Care
3 Authority Board and who are licensed by and located in this state
4 shall report data to and utilize the state-designated entity. The
5 Office of the State Coordinator for Health Information Exchange
6 shall begin implementation of this requirement on or before July 1,
7 2023.

8 2. The Office ~~of the State Coordinator for Health Information~~
9 ~~Exchange~~ may, as provided by rules promulgated by the Board, allow
10 exemptions from the requirement provided by paragraph 1 of this
11 subsection on the basis of:

- 12 a. financial hardship,
- 13 b. size of the practice, ~~or~~
- 14 c. technological capability ~~of a,~~
- 15 d. type of health care provider, or
- 16 e. such other bases as may be provided by rules
17 promulgated by the Board.

18 D. 1. A person who participates in the services or information
19 provided by the state-designated entity shall not be liable in any
20 action for damages or costs of any nature that result solely from
21 the person's use or failure to use information or data from the
22 state-designated entity that was entered or retrieved under relevant
23 state or federal privacy laws, rules, regulations, or policies
24

1 including, but not limited to, the Health Insurance Portability and
2 Accountability Act of 1996.

3 2. A person shall not be subject to antitrust or unfair
4 competition liability based on participation with the state-
5 designated entity as long as the participation provides an essential
6 governmental function for the public health and safety and enjoys
7 state action immunity.

8 E. A person who provides information and data to the state-
9 designated entity retains a property right in the information or
10 data, but grants to the other participants or subscribers a
11 nonexclusive license to retrieve and use that information or data
12 under relevant state or federal privacy laws, rules, regulations, or
13 policies including, but not limited to, the Health Insurance
14 Portability and Accountability Act of 1996.

15 F. Patient-specific protected health information shall only be
16 disclosed in compliance with relevant state or federal privacy laws,
17 rules, regulations, or policies including, but not limited to, the
18 Health Insurance Portability and Accountability Act of 1996.

19 G. The Oklahoma Health Care Authority Board shall promulgate
20 rules to implement the provisions of this section.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-134.2 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:
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1 As used in the Oklahoma Health Care Transparency Initiative Act
2 of 2023:

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

4 2. "Claims data" means information included in an
5 institutional, professional, or pharmacy claim or equivalent
6 information transaction for a covered individual including the
7 amount paid to a provider of health care services plus any amount
8 owed by the covered individual;

9 3. "Covered individual" means a natural person who is a
10 resident of this state and is eligible to receive medical, dental,
11 or pharmaceutical benefits under any policy, contract, certificate,
12 evidence of coverage, rider, binder, or endorsement that provides
13 for or describes coverage;

14 4. "Direct personal identifiers" means information relating to
15 a covered individual that contains primary or obvious identifiers,
16 such as the individual's name, street address, email address,
17 telephone number, or Social Security number. Direct personal
18 identifiers shall not include geographic or demographic information
19 that would not allow the identification of a covered individual;

20 5. "Enrollment data" means demographic information and other
21 identifying information relating to covered individuals including
22 direct personal identifiers;

23

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1 6. "Office" means the Office of the State Coordinator for
2 Health Information Exchange created under Section 1-132.1 of Title
3 63 of the Oklahoma Statutes;

4 7. "Oklahoma Health Care Transparency Initiative" means an
5 initiative to create a database including ongoing all-payer claims
6 database projects that receive and store data from a submitting
7 entity relating to medical, dental, pharmaceutical, and other
8 insurance claims information, unique identifiers, and geographic and
9 demographic information for covered individuals as permitted in the
10 Oklahoma Health Care Transparency Initiative Act of 2023, and
11 provider files, for the purpose of implementing the Oklahoma Health
12 Care Transparency Initiative Act of 2023;

13 8. "Protected health information" means health information as
14 protected by the Health Insurance Portability and Accountability Act
15 of 1996, Pub. L. No. 104-191;

16 9. "Provider" means an individual or entity licensed by the
17 state to provide health care services;

18 10. "State-designated entity for health information exchange"
19 or "state-designated entity" means the health information exchange
20 organization designated by the State of Oklahoma as the state-
21 designated entity for health information exchange under Section 1-
22 133 of Title 63 of the Oklahoma Statutes;

23 11. a. "Submitting entity" means:
24

- (1) an entity that provides health or dental insurance or a health or dental benefit plan in the state including but not limited to an insurance company, medical services plan, managed care organization, hospital plan, hospital medical service corporation, health maintenance organization, or fraternal benefit society, provided that the entity has covered individuals and the entity had at least two thousand (2,000) covered individuals in the previous calendar year,
- (2) a health benefit plan offered or administered by or on behalf of the state or an agency or instrumentality of the state including but not limited to benefits administered by a managed care organization, notwithstanding the number of covered individuals in the previous year,
- (3) a health benefit plan offered or administered by or on behalf of the federal government with the agreement of the federal government,
- (4) the Workers' Compensation Commission,
- (5) any other entity providing a plan of health insurance or health benefits subject to state insurance regulation, or a third-party

1 administrator; provided, that the entity has
2 covered individuals and the entity had at least
3 two thousand (2,000) covered individuals in the
4 previous calendar year,

5 (6) a health benefit plan subject to the Employee
6 Retirement Income Security Act of 1974, Pub. L.
7 No. 93-406, and that is fully insured,

8 (7) a risk-based provider organization licensed by
9 the Insurance Department, and

10 (8) any entity that contracts with the Department of
11 Corrections to provide medical, dental, or
12 pharmaceutical care to inmates.

13 b. A submitting entity shall not include:

14 (1) an entity that provides health insurance or a
15 health benefit plan that is accident-only,
16 specified disease, hospital indemnity, long-term
17 care, disability income, or other supplemental
18 benefit coverage,

19 (2) an employee of a welfare benefit plan as defined
20 by federal law that is also a trust established
21 pursuant to collective bargaining subject to the
22 Labor Management Relations Act of 1947, Pub. L.
23 No. 80-101,
24

- 1 (3) a health benefit plan subject to the Employee
2 Retirement Income Security Act of 1974, Pub. L.
3 No. 93-406, that is self-funded,
4 (4) a Medicare supplemental policy as defined by 42
5 C.F.R., Section 403.205, or
6 (5) a pharmacy benefits manager; and

7 12. "Unique identifier" means any identifier that is guaranteed
8 to be unique among all identifiers for covered individuals but does
9 not include direct personal identifiers.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-134.3 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 A. Beginning July 1, 2024, there is hereby created the Oklahoma
14 Health Care Transparency Initiative. The initiative shall be
15 governed by the state-designated entity for health information
16 exchange and overseen by the Office of the State Coordinator for
17 Health Information Exchange.

18 B. Beginning on a date determined by the Oklahoma Health Care
19 Authority Board, and thereafter in a frequency specified in rules
20 promulgated by the Board, a submitting entity shall submit claims
21 data, unique identifiers, and geographic and demographic information
22 for covered individuals as permitted in the Oklahoma Health Care
23 Transparency Initiative Act of 2023, and provider files to the
24 state-designated entity for health information exchange in

1 accordance with standards and procedures promulgated by the Board.
2 The Office shall begin implementation of the requirements of this
3 subsection on or before July 1, 2024.

4 C. 1. A health benefit plan, person, or entity excluded from
5 the definition of submitting entity as provided by Section 4 of this
6 act shall not be subject to the requirements of subsection B of this
7 section, but may voluntarily submit claims data, unique identifiers,
8 and geographic and demographic information for covered individuals
9 as permitted in the Oklahoma Health Care Transparency Initiative Act
10 of 2023, and provider files to the state-designated entity in
11 accordance with standards and procedures promulgated by the Board.

12 2. To the extent the excluded health benefit plan, person, or
13 entity voluntarily submits data described in this subsection to the
14 state-designated entity, the health benefit plan, person, or entity
15 shall comply with all requirements of the Oklahoma Health Care
16 Transparency Initiative Act of 2023, other than subsection B of this
17 section, including, but not limited to, compliance with applicable
18 state and federal data privacy and security laws.

19 D. 1. The State Department of Health shall submit all public
20 health data and vital statistics data collected by the Department
21 under Title 63 of the Oklahoma Statutes to the state-designated
22 entity for integration into the Oklahoma Health Care Transparency
23 Initiative database created under this section including, but not
24 limited to, data collected regarding hospital discharge and

1 emergency department records for the uninsured, birth and death
2 records, and disease registry data.

3 2. The data submitted under paragraph 1 of this subsection
4 shall be assigned a unique identifier and may be used in accordance
5 with the Oklahoma Health Care Transparency Initiative Act of 2023
6 and the rules promulgated under the Oklahoma Health Care
7 Transparency Initiative Act of 2023.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-134.4 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Data and other information submitted under Section 5 of this
12 act shall be treated as confidential and shall be exempt from
13 disclosure as a record under the Oklahoma Open Records Act as
14 defined in Section 24A.3 of Title 51 of the Oklahoma Statutes and
15 are not subject to subpoena except to the extent provided in the
16 Oklahoma Insurance Code.

17 B. Data and other information submitted under Section 5 of this
18 act may only be collected, stored, used, disclosed, or released in
19 compliance with applicable state and federal data privacy and
20 security law, rules promulgated by the Oklahoma Health Care
21 Authority Board, and data governance policies established by the
22 state-designated entity for health information exchange.

1 C. Data and other information in the Oklahoma Health Care
2 Transparency Initiative shall, to the extent authorized by rules
3 promulgated by the Board, be available:

4 1. When disclosed in a form and manner that ensures the privacy
5 and security of protected health information as required by state
6 and federal laws, as a resource to insurers, employers, purchasers
7 of health care, researchers, state agencies, and health care
8 providers to allow for assessment of health care utilization,
9 expenditures, and performance in this state including, but not
10 limited to, as a resource for hospital community health needs
11 assessments; and

12 2. To state programs regarding health care quality and costs
13 for use in improving health care in the state, subject to rules
14 prescribed by the Board conforming to state and federal privacy laws
15 or limiting access to limited-use data sets.

16 D. Data and other information in the Oklahoma Health Care
17 Transparency Initiative shall not be used to disclose trade secrets
18 of submitting entities.

19 E. Notwithstanding any other section of law, the Oklahoma
20 Health Care Transparency Initiative shall not publicly disclose any
21 data or other information that contains direct personal identifiers.

22 F. The Oklahoma Health Care Transparency Initiative Act of 2023
23 shall not be construed to supersede, limit, amend, or abrogate any
24 data privacy or security law, rule, or policy.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-134.5 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Except for state or federal agencies that are submitting
5 entities, a submitting entity that fails to submit data as required
6 by the Oklahoma Health Care Transparency Initiative Act of 2023 or
7 the rules promulgated by the Oklahoma Health Care Authority Board
8 may be subject to a fine assessed by the Insurance Department.

9 B. The Insurance Commissioner shall adopt a schedule of fines
10 not to exceed One Thousand Dollars (\$1,000.00) per day for each day
11 the violation occurs, to be determined by the severity of the
12 violation.

13 C. A fine assessed under this section may be remitted or
14 mitigated upon such terms and conditions as the Insurance
15 Commissioner considers proper and consistent with public health and
16 safety.

17 D. Of the proceeds from fines remitted under this section, the
18 Insurance Department shall retain a portion of such proceeds
19 necessary to cover the cost to the Department of administering the
20 assessment and collection of such fines, and the Department shall
21 remit the remainder of the proceeds to the Oklahoma Health Care
22 Authority. The Authority may only use proceeds from fines assessed
23 under this section to fund operations of the Oklahoma Health Care
24 Transparency Initiative.

1 SECTION 8. AMENDATORY 51 O.S. 2021, Section 24A.3, as
2 amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022,
3 Section 24A.3), is amended to read as follows:

4 Section 24A.3 As used in the Oklahoma Open Records Act:

5 1. "Record" means all documents including, but not limited to,
6 any book, paper, photograph, microfilm, data files created by or
7 used with computer software, computer tape, disk, record, sound
8 recording, film recording, video record or other material regardless
9 of physical form or characteristic, created by, received by, under
10 the authority of, or coming into the custody, control or possession
11 of public officials, public bodies or their representatives in
12 connection with the transaction of public business, the expenditure
13 of public funds or the administering of public property. "Record"
14 does not mean:

- 15 a. computer software,
- 16 b. nongovernment personal effects,
- 17 c. unless public disclosure is required by other laws or
18 regulations, vehicle movement records of the Oklahoma
19 Transportation Authority obtained in connection with
20 the Authority's electronic toll collection system,
- 21 d. personal financial information, credit reports or
22 other financial data obtained by or submitted to a
23 public body for the purpose of evaluating credit
24 worthiness, obtaining a license, permit or for the

- 1 purpose of becoming qualified to contract with a
2 public body,
- 3 e. any digital audio/video recordings of the toll
4 collection and safeguarding activities of the Oklahoma
5 Transportation Authority,
- 6 f. any personal information provided by a guest at any
7 facility owned or operated by the Oklahoma Tourism and
8 Recreation Department to obtain any service at the
9 facility or by a purchaser of a product sold by or
10 through the Oklahoma Tourism and Recreation
11 Department,
- 12 g. a Department of Defense Form 214 (DD Form 214) filed
13 with a county clerk including any DD Form 214 filed
14 before July 1, 2002,
- 15 h. except as provided for in Section 2-110 of Title 47 of
16 the Oklahoma Statutes⁷:
- 17 (1) any record in connection with a Motor Vehicle
18 Report issued by the Department of Public Safety,
19 as prescribed in Section 6-117 of Title 47 of the
20 Oklahoma Statutes, or
- 21 (2) personal information within driver records, as
22 defined by the Driver's Privacy Protection Act,
23 18 United States Code, Sections 2721 through
24

2725, which are stored and maintained by the
Department of Public Safety, ~~or~~

i. any portion of any document or information provided to
an agency or entity of the state or a political
subdivision to obtain licensure under the laws of this
state or a political subdivision that contains an
applicant's personal address, personal phone number,
personal electronic mail address or other contact
information. Provided, however, lists of persons
licensed, the existence of a license of a person, or a
business or commercial address, or other business or
commercial information disclosable under state law
submitted with an application for licensure shall be
public record, or

j. data or other information submitted to the state-
designated entity for health information exchange
under Section 1-133 of Title 63 of the Oklahoma
Statutes or under the Oklahoma Health Care
Transparency Initiative Act of 2023;

2. "Public body" shall include, but not be limited to, any
office, department, board, bureau, commission, agency, trusteeship,
authority, council, committee, trust or any entity created by a
trust, county, city, village, town, township, district, school
district, fair board, court, executive office, advisory group, task

1 force, study group or any subdivision thereof, supported in whole or
2 in part by public funds or entrusted with the expenditure of public
3 funds or administering or operating public property, and all
4 committees, or subcommittees thereof. Except for the records
5 required by Section 24A.4 of this title, "public body" does not mean
6 judges, justices, the Council on Judicial Complaints, the
7 Legislature or legislators. "Public body" shall not include an
8 organization that is exempt from federal income tax under Section
9 501(c)(3) of the Internal Revenue Code of 1986, as amended, and
10 whose sole beneficiary is a college or university, or an affiliated
11 entity of the college or university, that is a member of The
12 Oklahoma State System of Higher Education. Such organization shall
13 not receive direct appropriations from the Oklahoma Legislature.
14 The following persons shall not be eligible to serve as a voting
15 member of the governing board of the organization:

- 16 a. a member, officer, or employee of the Oklahoma State
17 Regents for Higher Education,
- 18 b. a member of the board of regents or other governing
19 board of the college or university that is the sole
20 beneficiary of the organization, or
- 21 c. an officer or employee of the college or university
22 that is the sole beneficiary of the organization;

23 3. "Public office" means the physical location where public
24 bodies conduct business or keep records;

1 4. "Public official" means any official or employee of any
2 public body as defined herein; and

3 5. "Law enforcement agency" means any public body charged with
4 enforcing state or local criminal laws and initiating criminal
5 prosecutions including, but not limited to, police departments,
6 county sheriffs, the Department of Public Safety, the Oklahoma State
7 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
8 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
9 of Investigation.

10 SECTION 9. It being immediately necessary for the preservation
11 of the public peace, health or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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