

1 ENGROSSED HOUSE
2 BILL NO. 1688

By: McEntire of the House

3 and

4 Haste of the Senate
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8 An Act relating to health information; creating the
9 Oklahoma Health Care Transparency Initiative Act of
10 2023; amending Section 1, Chapter 250, O.S.L. 2022
11 (63 O.S. Supp. 2022, Section 1-132.1), which relates
12 to the Office of the State Coordinator for Health
13 Information Exchange; broadening powers and duties of
14 the Office; amending 63 O.S. 2021, Section 1-133, as
15 amended by Section 2, Chapter 250, O.S.L. 2022 (63
16 O.S. Supp. 2022, Section 1-133), which relates to
17 state-designated entity for health information
18 exchange; modifying time period of certain
19 requirement; modifying and adding certain exemptions;
20 stating legislative intent and purpose of act;
21 defining terms; creating the Oklahoma Health Care
22 Transparency Initiative; providing for governance and
23 administration of the initiative; directing
24 implementation of sustainability plan; requiring
submitting entity to submit certain information to
state-designated entity; allowing voluntary
submission of certain information by certain health
benefit plan, person, or entity; mandating compliance
with certain requirements; providing for
confidentiality, privacy, and security of certain
data; listing circumstances under which certain data
may be made available; prohibiting certain use or
disclosure of data; authorizing certain penalties;
providing for certain remittance or mitigation of
penalties; specifying allowed use of certain funds;
requiring submission of public health data for
integration into the initiative; requiring assignment
of unique identifier; amending 51 O.S. 2021, Section
24A.3, as last amended by Section 1, Chapter 402,
O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3),

1 which relates to the Oklahoma Open Records Act;
2 modifying certain definition; providing for
3 codification; and declaring an emergency.

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

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

10 Sections 4 through 10 of this act shall be known and may be
11 cited as the "Oklahoma Health Care Transparency Initiative Act of
12 2023".

13 SECTION 2. AMENDATORY Section 1, Chapter 250, O.S.L.
14 2022 (63 O.S. Supp. 2022, Section 1-132.1), is amended to read as
15 follows:

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

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

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

23 2. For the purpose of implementing the Oklahoma Health Care
24 Transparency Initiative Act of 2023:

- a. collect, validate, analyze, and present health data, including claims data,
- b. assess penalties for noncompliance with the Oklahoma Health Care Transparency Initiative Act of 2023,
- c. establish policies and procedures necessary for the administration and oversight of the Oklahoma Health Care Transparency Initiative including procedures for the collection, processing, storage, analysis, use, and release of data,
- d. identify and explore the key health care issues, questions, and problems that may be improved through more transparent information including, but not limited to, data required to be disclosed to patients related to provider relationships or affiliations with payers and providers, financial interests in health care businesses, and payments or items of any value given to providers from pharmaceutical or medical device manufacturers or agents thereof, and
- e. provide a biennial report to the Legislature on the operations of the Oklahoma Health Care Transparency Initiative.

C. The Office shall consist of the State Coordinator for Health Information Exchange, who shall be appointed by and serve at the pleasure of the Administrator of the Authority, and such other

1 employees of the Authority as the Administrator may assign to the
2 Office.

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

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

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

11 2. "Health information exchange organization" means an entity
12 whose primary business activity is health information exchange and
13 which is governed by its stakeholders.

14 B. The State of Oklahoma:

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

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

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

21 C. ~~Beginning July 1, 2023, all~~ 1. All health care providers as
22 defined by the rules promulgated by the Oklahoma Health Care
23 Authority Board and who are licensed by and located in this state
24 shall report data to and utilize the state-designated entity. The

1 Office of the State Coordinator for Health Information Exchange
2 shall begin implementation of this requirement on or before July 1,
3 2023.

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

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

14 D. 1. A person who participates in the services or information
15 provided by the state-designated entity shall not be liable in any
16 action for damages or costs of any nature that result solely from
17 the person's use or failure to use information or data from the
18 state-designated entity that was entered or retrieved under relevant
19 state or federal privacy laws, rules, regulations, or policies
20 including, but not limited to, the Health Insurance Portability and
21 Accountability Act of 1996.

22 2. A person shall not be subject to antitrust or unfair
23 competition liability based on participation with the state-
24 designated entity as long as the participation provides an essential

1 governmental function for the public health and safety and enjoys
2 state action immunity.

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

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

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

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-134.2 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 A. It is the intent of the Legislature to create and maintain
20 an informative source of health care information to support
21 consumers, researchers, and policymakers in health care decisions
22 within this state.

23 B. The purpose of the Oklahoma Health Care Transparency
24 Initiative Act of 2023 is to:

1 1. Create the Oklahoma Health Care Transparency Initiative;

2 2. Establish governance of the Oklahoma Health Care

3 Transparency Initiative;

4 3. Provide authority to collect health care information from
5 insurance carriers and other entities; and

6 4. Establish appropriate methods for collecting, maintaining,
7 and reporting health care information including privacy and security
8 safeguards.

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

12 As used in the Oklahoma Health Care Transparency Initiative Act
13 of 2023:

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

15 2. "Claims data" means information included in an
16 institutional, professional, or pharmacy claim or equivalent
17 information transaction for a covered individual including the
18 amount paid to a provider of health care services plus any amount
19 owed by the covered individual;

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

1 4. "Direct personal identifiers" means information relating to
2 a covered individual that contains primary or obvious identifiers,
3 such as the individual's name, street address, email address,
4 telephone number, or Social Security number. Direct personal
5 identifiers shall not include geographic or demographic information
6 that would not allow the identification of a covered individual;

7 5. "Enrollment data" means demographic information and other
8 identifying information relating to covered individuals including
9 direct personal identifiers;

10 6. "Office" means the Office of the State Coordinator for
11 Health Information Exchange created under Section 1-132.1 of Title
12 63 of the Oklahoma Statutes;

13 7. "Oklahoma Health Care Transparency Initiative" means an
14 initiative to create a database including ongoing all-payer claims
15 database projects that receive and store data from a submitting
16 entity relating to medical, dental, pharmaceutical, and other
17 insurance claims information, unique identifiers, and geographic and
18 demographic information for covered individuals as permitted in the
19 Oklahoma Health Care Transparency Initiative Act of 2023, and
20 provider files, for the purposes of the Oklahoma Health Care
21 Transparency Initiative Act of 2023;

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

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

3 10. "State-designated entity for health information exchange"
4 or "state-designated entity" means the health information exchange
5 organization designated by the State of Oklahoma as the state-
6 designated entity for health information exchange under Section 1-
7 133 of Title 63 of the Oklahoma Statutes;

8 11. a. "Submitting entity" means:

9 (1) an entity that provides health or dental
10 insurance or a health or dental benefit plan in
11 the state including but not limited to an
12 insurance company, medical services plan, managed
13 care organization, hospital plan, hospital
14 medical service corporation, health maintenance
15 organization, or fraternal benefit society,
16 provided that the entity has covered individuals
17 and the entity had at least two thousand (2,000)
18 covered individuals in the previous calendar
19 year,

20 (2) a health benefit plan offered or administered by
21 or on behalf of the state or an agency or
22 instrumentality of the state including but not
23 limited to benefits administered by a managed
24

1 care organization, notwithstanding the number of
2 covered individuals in the previous year,

3 (3) a health benefit plan offered or administered by
4 or on behalf of the federal government with the
5 agreement of the federal government,

6 (4) the Workers' Compensation Commission,

7 (5) any other entity providing a plan of health
8 insurance or health benefits subject to state
9 insurance regulation, or a third-party
10 administrator; provided, that the entity has
11 covered individuals and the entity had at least
12 two thousand (2,000) covered individuals in the
13 previous calendar year,

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

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

19 (8) any entity that contracts with the Department of
20 Corrections to provide medical, dental, or
21 pharmaceutical care to inmates.

22 b. A submitting entity shall not include:

23 (1) an entity that provides health insurance or a
24 health benefit plan that is accident-only,

1 specified disease, hospital indemnity, long-term
2 care, disability income, or other supplemental
3 benefit coverage,

4 (2) an employee of a welfare benefit plan as defined
5 by federal law that is also a trust established
6 pursuant to collective bargaining subject to the
7 Labor Management Relations Act of 1947, Pub. L.
8 No. 80-101,

9 (3) a health benefit plan subject to the Employee
10 Retirement Income Security Act of 1974, Pub. L.
11 No. 93-406, that is self-funded,

12 (4) a Medicare supplemental policy as defined by 42
13 C.F.R., Section 403.205, or

14 (5) a pharmacy benefits manager; and

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

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

21 A. Beginning July 1, 2024, there is hereby created the Oklahoma
22 Health Care Transparency Initiative, which shall be governed by the
23 Office of the State Coordinator for Health Information Exchange.
24

1 B. The Office shall be the administrator of the Oklahoma Health
2 Care Transparency Initiative and shall, in collaboration with the
3 state-designated entity for health information exchange, develop and
4 implement a sustainability plan subject to data use and disclosure
5 requirements of the Oklahoma Health Care Transparency Initiative Act
6 of 2023 and any rules promulgated by the Oklahoma Health Care
7 Authority Board under the Oklahoma Health Care Transparency
8 Initiative Act of 2023.

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

12 A. No later than July 1, 2024, and thereafter in a frequency
13 specified in rules promulgated by the Oklahoma Health Care Authority
14 Board, a submitting entity shall submit claims data, unique
15 identifiers, and geographic and demographic information for covered
16 individuals as permitted in the Oklahoma Health Care Transparency
17 Initiative Act of 2023, and provider files to the state-designated
18 entity for health information exchange in accordance with standards
19 and procedures promulgated by the Board.

20 B. 1. A health benefit plan, person, or entity excluded from
21 the definition of submitting entity as provided by Section 5 of this
22 act shall not be subject to the requirements of subsection A of this
23 section, but may voluntarily submit claims data, unique identifiers,
24 and geographic and demographic information for covered individuals

1 as permitted in the Oklahoma Health Care Transparency Initiative Act
2 of 2023, and provider files to the state-designated entity in
3 accordance with standards and procedures promulgated by the Board.

4 2. To the extent the excluded health benefit plan, person, or
5 entity voluntarily submits data described in this subsection to the
6 state-designated entity, the health benefit plan, person, or entity
7 shall comply with all requirements of the Oklahoma Health Care
8 Transparency Initiative Act of 2023, other than subsection A of this
9 section, including, but not limited to, compliance with applicable
10 state and federal data privacy and security laws.

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

16 D. The collection, storage, and release of data and other
17 information pursuant to this section is subject to applicable state
18 and federal data privacy and security law.

19 E. The Oklahoma Health Care Transparency Initiative Act of 2023
20 shall not be construed to supersede, limit, amend, or abrogate any
21 data privacy or security law, rule, or policy.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-134.6 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 A. Data in the Oklahoma Health Care Transparency Initiative
2 shall, to the extent authorized by rules promulgated by the Oklahoma
3 Health Care Authority 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 B. Data in the Oklahoma Health Care Transparency Initiative
17 shall not be used to disclose trade secrets of submitting entities,
18 and shall be used or disclosed only in compliance with applicable
19 state and federal data privacy and security law and in compliance
20 with the policies established by the Board or the state-designated
21 entity for health information exchange.

22 C. Notwithstanding any other section of law, the Oklahoma
23 Health Care Transparency Initiative shall not publicly disclose any
24 data that contains direct personal identifiers.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-134.7 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 penalty.

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

12 C. A penalty imposed under this section may be remitted or
13 mitigated upon such terms and conditions as the Board considers
14 proper and consistent with public health and safety.

15 D. A penalty remitted under this section shall be used to fund
16 operations of the Oklahoma Health Care Transparency Initiative.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-134.8 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 A. The State Department of Health shall submit all public
21 health data and vital statistics data collected by the Department
22 pursuant to Title 63 of the Oklahoma Statutes to the state-
23 designated entity for health information exchange for integration
24 into the Oklahoma Health Care Transparency Initiative database

1 created pursuant to Section 6 of this act including, but not limited
2 to, data collected regarding hospital discharge and emergency
3 department records for the uninsured, birth and death records, and
4 disease registry data.

5 B. The data submitted pursuant to subsection A of this section
6 shall be assigned a unique identifier and may be used in accordance
7 with the purposes of the Oklahoma Health Care Transparency
8 Initiative and the rules promulgated pursuant to the Oklahoma Health
9 Care Transparency Initiative Act of 2023.

10 SECTION 11. AMENDATORY 51 O.S. 2021, Section 24A.3, as
11 last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp.
12 2022, Section 24A.3), is amended to read as follows:

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

14 1. "Record" means all documents including, but not limited to,
15 any book, paper, photograph, microfilm, data files created by or
16 used with computer software, computer tape, disk, record, sound
17 recording, film recording, video record or other material regardless
18 of physical form or characteristic, created by, received by, under
19 the authority of, or coming into the custody, control or possession
20 of public officials, public bodies or their representatives in
21 connection with the transaction of public business, the expenditure
22 of public funds or the administering of public property. "Record"
23 does not mean:

24 a. computer software,

- b. nongovernment personal effects,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with a public body,
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department,
- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk including any DD Form 214 filed before July 1, 2002,

1 h. except as provided for in Section 2-110 of Title 47 of
2 the Oklahoma Statutes,

3 (1) any record in connection with a Motor Vehicle
4 Report issued by the Department of Public Safety,
5 as prescribed in Section 6-117 of Title 47 of the
6 Oklahoma Statutes, or

7 (2) personal information within driver records, as
8 defined by the Driver's Privacy Protection Act,
9 18 United States Code, Sections 2721 through
10 2725, which are stored and maintained by the
11 Department of Public Safety, ~~or~~

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

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

- a. a member, officer, or employee of the Oklahoma State Regents for Higher Education,

1 b. a member of the board of regents or other governing
2 board of the college or university that is the sole
3 beneficiary of the organization, or

4 c. an officer or employee of the college or university
5 that is the sole beneficiary of the organization;

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

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

10 5. "Law enforcement agency" means any public body charged with
11 enforcing state or local criminal laws and initiating criminal
12 prosecutions including, but not limited to, police departments,
13 county sheriffs, the Department of Public Safety, the Oklahoma State
14 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
15 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
16 of Investigation.

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

1 Passed the House of Representatives the 22nd day of March, 2023.

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3 _____
4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ____ day of _____, 2023.

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8 _____
9 Presiding Officer of the Senate