

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1688 _____
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

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE
FOR

HOUSE BILL NO. 1688

By: McEntire of the House

and

Haste of the Senate

FLOOR SUBSTITUTE

An Act relating to health information; creating the Oklahoma Health Care Transparency Initiative Act of 2023; 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; broadening powers and duties of the Office; amending 63 O.S. 2021, Section 1-133, as amended by Section 2, Chapter 250, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-133), which relates to state-designated entity for health information exchange; modifying time period of certain requirement; modifying and adding certain exemptions; stating legislative intent and purpose of act; defining terms; creating the Oklahoma Health Care Transparency Initiative; providing for governance and administration of the initiative; directing 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

1 penalties; specifying allowed use of certain funds;
2 requiring submission of public health data for
3 integration into the initiative; requiring assignment
4 of unique identifier; amending 51 O.S. 2021, Section
5 24A.3, as last amended by Section 1, Chapter 402,
6 O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3),
7 which relates to the Oklahoma Open Records Act;
8 modifying certain definition; providing for
9 codification; and declaring an emergency.

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

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

14 Sections 4 through 10 of this act shall be known and may be
15 cited as the "Oklahoma Health Care Transparency Initiative Act of
16 2023".

17 SECTION 2. AMENDATORY Section 1, Chapter 250, O.S.L.
18 2022 (63 O.S. Supp. 2022, Section 1-132.1), is amended to read as
19 follows:

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

23 B. The Office shall have the power and duty to ~~oversee~~:
24

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

4 2. For the purpose of implementing the Oklahoma Health Care
5 Transparency Initiative Act:

6 a. collect, validate, analyze, and present health data,
7 including claims data,

8 b. assess penalties for noncompliance with the Oklahoma
9 Health Care Transparency Initiative Act,

10 c. establish policies and procedures necessary for the
11 administration and oversight of the Oklahoma Health
12 Care Transparency Initiative including procedures for
13 the collection, processing, storage, analysis, use,
14 and release of data,

15 d. identify and explore the key health care issues,
16 questions, and problems that may be improved through
17 more transparent information including, but not
18 limited to, data required to be disclosed to patients
19 related to provider relationships or affiliations with
20 payers and providers, financial interests in health
21 care businesses, and payments or items of any value
22 given to providers from pharmaceutical or medical
23 device manufacturers or agents thereof, and

1 e. provide a biennial report to the Legislature on the
2 operations of the Oklahoma Health Care Transparency
3 Initiative.

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

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

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

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

17 2. "Health information exchange organization" means an entity
18 whose primary business activity is health information exchange and
19 which is governed by its stakeholders.

20 B. The State of Oklahoma:

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

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

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

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

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

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

D. 1. A person who participates in the services or information provided by the state-designated entity shall not be liable in any action for damages or costs of any nature that result solely from the person's use or failure to use information or data from the state-designated entity that was entered or retrieved under relevant

1 state or federal privacy laws, rules, regulations, or policies
2 including, but not limited to, the Health Insurance Portability and
3 Accountability Act of 1996.

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

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

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

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

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

1 A. It is the intent of the Legislature to create and maintain
2 an informative source of health care information to support
3 consumers, researchers, and policymakers in health care decisions
4 within this state.

5 B. The purpose of the Oklahoma Health Care Transparency
6 Initiative Act is to:

7 1. Create the Oklahoma Health Care Transparency Initiative;

8 2. Establish governance of the Oklahoma Health Care
9 Transparency Initiative;

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

12 4. Establish appropriate methods for collecting, maintaining,
13 and reporting health care information including privacy and security
14 safeguards.

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

18 As used in the Oklahoma Health Care Transparency Initiative Act
19 of 2023:

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

21 2. "Claims data" means information included in an
22 institutional, professional, or pharmacy claim or equivalent
23 information transaction for a covered individual including the
24

1 amount paid to a provider of health care services plus any amount
2 owed by the covered individual;

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

8 4. "Direct personal identifiers" means information relating to
9 a covered individual that contains primary or obvious identifiers,
10 such as the individual's name, street address, email address,
11 telephone number, or Social Security number. Direct personal
12 identifiers shall not include geographic or demographic information
13 that would not allow the identification of a covered individual;

14 5. "Enrollment data" means demographic information and other
15 identifying information relating to covered individuals including
16 direct personal identifiers;

17 6. "Office" means the Office of the State Coordinator for
18 Health Information Exchange created under Section 1-132.1 of Title
19 63 of the Oklahoma Statutes;

20 7. "Oklahoma Health Care Transparency Initiative" means an
21 initiative to create a database including ongoing all-payer claims
22 database projects that receive and store data from a submitting
23 entity relating to medical, dental, pharmaceutical, and other
24 insurance claims information, unique identifiers, and geographic and

1 demographic information for covered individuals as permitted in the
2 Oklahoma Health Care Transparency Initiative Act, and provider
3 files, for the purposes of the Oklahoma Health Care Transparency
4 Initiative Act;

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

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

10 10. "State-designated entity for health information exchange"
11 or "state-designated entity" means the health information exchange
12 organization designated by the State of Oklahoma as the state-
13 designated entity for health information exchange under Section 1-
14 133 of Title 63 of the Oklahoma Statutes;

15 11. a. "Submitting entity" means:

16 (1) an entity that provides health or dental
17 insurance or a health or dental benefit plan in
18 the state including but not limited to an
19 insurance company, medical services plan, managed
20 care organization, hospital plan, hospital
21 medical service corporation, health maintenance
22 organization, or fraternal benefit society,
23 provided that the entity has covered individuals
24 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
administrator; provided, that the entity has
covered individuals and the entity had at least
two thousand (2,000) covered individuals in the
previous calendar year,

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

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

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

b. A submitting entity shall not include:

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

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

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

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

(5) a pharmacy benefits manager; and

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

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

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

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

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

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

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

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

16 C. Data submitted pursuant to this section shall be treated as
17 confidential and shall be exempt from disclosure as a record under
18 the Oklahoma Open Records Act as defined in Section 24A.3 of Title
19 51 of the Oklahoma Statutes and are not subject to subpoena except
20 to the extent provided in the Oklahoma Insurance Code.

21 D. The collection, storage, and release of data and other
22 information pursuant to this section is subject to applicable state
23 and federal data privacy and security law.
24

1 E. The Oklahoma Health Care Transparency Initiative Act shall
2 not be construed to supersede, limit, amend, or abrogate any data
3 privacy or security law, rule, or policy.

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

7 A. Data in the Oklahoma Health Care Transparency Initiative
8 shall, to the extent authorized by rules promulgated by the Oklahoma
9 Health Care Authority Board, be available:

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

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

22 B. Data in the Oklahoma Health Care Transparency Initiative
23 shall not be used to disclose trade secrets of submitting entities,
24 and shall be used or disclosed only in compliance with applicable

1 state and federal data privacy and security law and in compliance
2 with the policies established by the Board or the state-designated
3 entity for health information exchange.

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

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-134.7 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 A. Except for state or federal agencies that are submitting
11 entities, a submitting entity that fails to submit data as required
12 by the Oklahoma Health Care Transparency Initiative Act or the rules
13 promulgated by the Oklahoma Health Care Authority Board may be
14 subject to a penalty.

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

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

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

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

4 A. The State Department of Health shall submit all public
5 health data and vital statistics data collected by the Department
6 pursuant to Title 63 of the Oklahoma Statutes to the state-
7 designated entity for health information exchange for integration
8 into the Oklahoma Health Care Transparency Initiative database
9 created pursuant to Section 6 of this act including, but not limited
10 to, data collected regarding hospital discharge and emergency
11 department records for the uninsured, birth and death records, and
12 disease registry data.

13 B. The data submitted pursuant to subsection A of this section
14 shall be assigned a unique identifier and may be used in accordance
15 with the purposes of the Oklahoma Health Care Transparency
16 Initiative and the rules promulgated pursuant to the Oklahoma Health
17 Care Transparency Initiative Act.

18 SECTION 11. AMENDATORY 51 O.S. 2021, Section 24A.3, as
19 last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp.
20 2022, Section 24A.3), is amended to read as follows:

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

22 1. "Record" means all documents including, but not limited to,
23 any book, paper, photograph, microfilm, data files created by or
24 used with computer software, computer tape, disk, record, sound

1 recording, film recording, video record or other material regardless
2 of physical form or characteristic, created by, received by, under
3 the authority of, or coming into the custody, control or possession
4 of public officials, public bodies or their representatives in
5 connection with the transaction of public business, the expenditure
6 of public funds or the administering of public property. "Record"
7 does not mean:

- 8 a. computer software,
- 9 b. nongovernment personal effects,
- 10 c. unless public disclosure is required by other laws or
11 regulations, vehicle movement records of the Oklahoma
12 Transportation Authority obtained in connection with
13 the Authority's electronic toll collection system,
- 14 d. personal financial information, credit reports or
15 other financial data obtained by or submitted to a
16 public body for the purpose of evaluating credit
17 worthiness, obtaining a license, permit or for the
18 purpose of becoming qualified to contract with a
19 public body,
- 20 e. any digital audio/video recordings of the toll
21 collection and safeguarding activities of the Oklahoma
22 Transportation Authority,
- 23 f. any personal information provided by a guest at any
24 facility owned or operated by the Oklahoma Tourism and

1 Recreation Department to obtain any service at the
2 facility or by a purchaser of a product sold by or
3 through the Oklahoma Tourism and Recreation
4 Department,

5 g. a Department of Defense Form 214 (DD Form 214) filed
6 with a county clerk including any DD Form 214 filed
7 before July 1, 2002,

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

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

14 (2) personal information within driver records, as
15 defined by the Driver's Privacy Protection Act,
16 18 United States Code, Sections 2721 through
17 2725, which are stored and maintained by the
18 Department of Public Safety, ~~or~~

19 i. any portion of any document or information provided to
20 an agency or entity of the state or a political
21 subdivision to obtain licensure under the laws of this
22 state or a political subdivision that contains an
23 applicant's personal address, personal phone number,
24 personal electronic mail address or other contact

1 information. Provided, however, lists of persons
2 licensed, the existence of a license of a person, or a
3 business or commercial address, or other business or
4 commercial information disclosable under state law
5 submitted with an application for licensure shall be
6 public record, or

7 j. data submitted under the Oklahoma Health Care
8 Transparency Initiative Act of 2023;

9 2. "Public body" shall include, but not be limited to, any
10 office, department, board, bureau, commission, agency, trusteeship,
11 authority, council, committee, trust or any entity created by a
12 trust, county, city, village, town, township, district, school
13 district, fair board, court, executive office, advisory group, task
14 force, study group or any subdivision thereof, supported in whole or
15 in part by public funds or entrusted with the expenditure of public
16 funds or administering or operating public property, and all
17 committees, or subcommittees thereof. Except for the records
18 required by Section 24A.4 of this title, "public body" does not mean
19 judges, justices, the Council on Judicial Complaints, the
20 Legislature or legislators. "Public body" shall not include an
21 organization that is exempt from federal income tax under Section
22 501(c)(3) of the Internal Revenue Code of 1986, as amended, and
23 whose sole beneficiary is a college or university, or an affiliated
24 entity of the college or university, that is a member of The

1 Oklahoma State System of Higher Education. Such organization shall
2 not receive direct appropriations from the Oklahoma Legislature.
3 The following persons shall not be eligible to serve as a voting
4 member of the governing board of the organization:

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

7 b. a member of the board of regents or other governing
8 board of the college or university that is the sole
9 beneficiary of the organization, or

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

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

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

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

23 SECTION 12. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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