

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2870

By: Perryman

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5
6 AS INTRODUCED

7 An Act relating to insurance; creating the Small
8 Oklahoma Hospital Survival Act; declaring purpose;
9 stating legislative findings; defining terms;
10 providing for guaranteed reimbursement rates and
11 payment for services rendered; providing for
12 contractual transparency and replication of
13 reimbursement methodology; prohibiting certain acts;
14 prohibiting certain provisions in contracts;
15 prohibiting discrimination in the establishment of
16 provider networks for certain health care insurers;
17 providing exceptions; providing for violation;
18 providing contracting process; requiring notice;
19 requiring renegotiation and revision; providing for
20 violation; prohibiting certain contract terms;
21 prohibiting a health care insurer from denying
22 certain status; providing for duties of the Insurance
23 Commissioner; providing for enforcement; providing
24 for codification; and providing an effective date.

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

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

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

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

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

8 B. The Legislature makes the following findings:

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

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

15 3. Parity, equity and fairness in reimbursement rates and
16 contractual transparency are essential elements to the survival of
17 small hospitals in Oklahoma and the absence of parity, equity and
18 fairness in reimbursement rates and the absence of contractual
19 transparency are primary factors that result in the economic
20 hardships faced by small Oklahoma hospitals;

21 4. The needs of the citizens of this state and health care
22 infrastructure of this state will be best served by enacting
23 legislation that promotes parity, equity and fairness in
24 reimbursement rates and contractual transparency; and

1 5. Contract restrictions by commercial insurance companies that
2 lead to narrow or limited provider networks result in patients
3 having fewer choices and limited access to health care in rural
4 Oklahoma and other vulnerable communities.

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

8 As used in the Small Oklahoma Hospital Survival Act:

9 1. "All-products clause" means a provision in a health care
10 contract that requires a health care provider, as a condition of
11 participation or continuation in a provider network or a health
12 benefit plan, to:

13 a. serve in another provider network utilized by the
14 contracting entity or a health care insurer affiliated
15 with the contracting entity, or

16 b. provide health care services under another health
17 benefit plan or product offered by a contracting
18 entity or a health care insurer affiliated with the
19 contracting entity;

20 2. "Contracting entity" means a health care insurer or a
21 subcontractor, affiliate, or other entity that contracts directly or
22 indirectly with a health care provider for the delivery of health
23 care services to enrollees;

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

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

- 9 a. a disability income plan,
- 10 b. a credit insurance plan,
- 11 c. insurance coverage issued as a supplement to liability
12 insurance,
- 13 d. a medical payment under automobile or homeowners
14 insurance plans,
- 15 e. a health benefit plan provided under the Oklahoma
16 Workers' Compensation Law,
- 17 f. a plan that provides only indemnity for hospital
18 confinement,
- 19 g. an accident-only plan,
- 20 h. a specified disease plan,
- 21 i. a long-term-care-only plan,
- 22 j. a dental-only plan, or
- 23 k. a vision-only plan;

1 5. "Health care contract" means a contract entered into,
2 materially amended, or renewed between a contracting entity and a
3 health care provider for the delivery of health care services to
4 enrollees;

5 6. "Health care insurer" means an entity that is subject to
6 state insurance regulation and provides health insurance in this
7 state, including, but not limited to the following:

- 8 a. an insurance company,
- 9 b. a health maintenance organization,
- 10 c. a hospital and medical service corporation,
- 11 d. a risk-based provider organization, and
- 12 e. a sponsor of a nonfederal self-funded governmental
13 plan;

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

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

21 9. "Material amendment" means a change in a health care
22 contract that results in:

- 23 a. a decrease in fees, payments, or reimbursement to a
24 participating health care provider,

- b. a change in the payment methodology for determining fees, payments, or reimbursement to a participating health care provider,
- c. a new or revised coding guideline,
- d. a new or revised payment rule, or
- e. a change of procedures that may reasonably be expected to significantly increase a health care provider's administrative expenses;

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

- a. prohibits or grants a contracting entity an option to prohibit a participating health care provider from contracting with another contracting entity to provide health care services at a lower price than the payment specified in the health care contract,
- b. requires or grants a contracting entity an option to require a participating health care provider to accept a lower payment in the event the participating health care provider agrees to provide health care services to another contracting entity at a lower price,
- c. requires or grants a contracting entity an option to require termination or renegotiation of an existing health care contract if a participating health care

1 provider agrees to provide health care services to
2 another contracting entity at a lower price, or
3 d. requires a participating health care provider to
4 disclose the participating health care provider's
5 contractual reimbursement rates with other contracting
6 entities;

7 11. "Participating health care provider" means a health care
8 provider that has a health care contract with a contracting entity
9 to provide health care services to enrollees with the expectation of
10 receiving payment from the contracting entity or a health care
11 insurer affiliated with the contracting entity;

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

15 13. "Small Oklahoma hospital" shall mean any hospital, public
16 or private located in the State of Oklahoma with less than one
17 hundred beds or having an acute care average daily census of less
18 than fifty patients.

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

22 A. All health care contracts between a health care insurer and
23 a small Oklahoma hospital shall provide for a minimum guaranteed
24 reimbursement rate equal to:

1 1. One hundred fifty percent (150%) of the published Medicare
2 reimbursement rate; or

3 2. One hundred percent (100%) of the prevailing market rate for
4 tests, procedures and similar services paid to urban hospitals. If
5 the prevailing market rate is disputed, it is defined as one hundred
6 sixty-five percent (165%) of the published Medicare reimbursement
7 rate.

8 B. Payment for services rendered by a small Oklahoma hospital
9 pursuant to a valid prior authorization shall not be denied by an
10 insurance company for any reason.

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

14 A. All contracts between health care insurers and health care
15 providers, including all Oklahoma hospitals and other medical
16 providers, are open records and shall be posted on the website of
17 the Oklahoma State Insurance Department and shall be publicly
18 available to evaluate payment methodology, accuracy of reimbursement
19 and examination of explanations of benefits.

20 B. It shall be the duty of the Oklahoma State Insurance
21 Commissioner to analyze, publish and maintain updated data regarding
22 prevailing market reimbursement rates for Medicare reimbursement,
23 urban hospitals, rural hospitals and small Oklahoma hospitals.

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1 C. Any health care insurer doing business in the State of
2 Oklahoma must provide a reasonable contract to small Oklahoma
3 hospitals. No contract between a health care insurer and a small
4 Oklahoma hospital shall be unreasonably complex, and in no event
5 shall the contract exceed twenty-five pages in length, with font no
6 smaller than twelve-point, nor can any payment attachment exceed ten
7 pages. All contracts between a health care insurer and small
8 Oklahoma hospitals must be standard agreements, the form of which
9 must be approved by the State Insurance Commissioner.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3315 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 No health care insurer shall directly or indirectly, including
14 through the use of a prior authorization process, steer an insured
15 away from a small Oklahoma hospital for services such as lab work or
16 imaging services that the small Oklahoma hospital routinely provides
17 unless the services provided by the small Oklahoma hospital are
18 unsafe or place the health of the insured at risk.

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

22 Any provision in a contract between a health care insurer and an
23 Oklahoma hospital that asserts confidentiality of contract terms, a
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1 gag order or a nondisparagement clause is against the public policy
2 of this state and is void.

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

6 A. No health care insurer that has one thousand or more
7 subscribers or has three thousand or more beneficiaries shall
8 exclude a small Oklahoma hospital from its network unless the small
9 Oklahoma hospital refuses to accept a health care contract that
10 provides at a minimum, the guaranteed reimbursement rates set forth
11 in Section 4 of this act.

12 B. No health care contract or health benefit plan providing
13 coverage for care at any hospital which provides nursing, medical,
14 or surgical coverage that is issued or delivered on or after
15 November 1, 2020, shall include a provision that prevents payment of
16 benefits for expenses of a nonindigent patient incurred in a
17 hospital facility that:

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

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

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

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

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

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

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

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

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

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

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

11 E. A contracting entity shall not:

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

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

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

20 F. A violation of this section is:

21 1. An unfair trade practice; and

22 2. Subject to the Oklahoma Trade Practices Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 E. A violation of this section is:

16 1. An unfair trade practice; and

17 2. Subject to the Oklahoma Trade Practices Act.

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

20 SECTION 10. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3319 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

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

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

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

5 B. A violation of this section is:

6 1. An unfair trade practice; and

7 2. Subject to the Oklahoma Trade Practices Act.

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

10 SECTION 11. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3320 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 No health care insurer shall deny a request by an Oklahoma-
14 licensed physician practicing in Oklahoma to become an in-network
15 physician by requiring that the requesting physician have admitting
16 privileges at an in-network hospital.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 3321 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Oklahoma Insurance Commissioner shall have the duty and
21 responsibility to enforce the Small Oklahoma Hospital Survival Act
22 and shall have the responsibility to establish fines, fees and
23 penalties for noncompliance with this act by any insurance company
24 licensed in this state to provide health insurance for citizens of

1 this state or authorized to pay any claim to any hospital or other
2 health care provider.

3 B. The Commissioner shall promulgate rules necessary to ensure
4 compliance with this act.

5 C. The Commissioner shall have the duty to regulate the form
6 and simplicity of all health care contracts between health care
7 insurers' companies and small Oklahoma hospitals to ensure that
8 small Oklahoma hospitals are not required to retain the services of
9 consultants, attorneys or modeling analytics firms to be able to
10 reasonably interpret health insurance contracts and administer them
11 to serve the insureds of said companies. If a dispute arises as to
12 the complexity of such contracts, the Oklahoma Insurance Department
13 shall serve as an arbitrator to determine if such proffered
14 contracts violate the intent of this subsection to the detriment of
15 the small Oklahoma hospital and the well-being of the citizens who
16 may be patients of small Oklahoma hospitals and shall have the power
17 to direct insurance companies to amend the forms of their contract
18 to an acceptable model in order to provide comprehensive access to
19 hospital care throughout the state.

20 D. Former officers, agents, directors or employees of any
21 health care insurer doing business in the State of Oklahoma shall be
22 ineligible to be elected, appointed or hired to work in the office
23 of the Oklahoma Insurance Department for a period of at least
24 twenty-four (24) months following their last date of employment.

1 E. The Commissioner shall declare, in writing, to the Oklahoma
2 Ethics Commission, any conflict of interest and shall defer any
3 conflict to a judicial referee appointed by the Oklahoma Supreme
4 Court and such judicial referee shall have the jurisdiction to
5 determine an equitable resolution.

6 SECTION 13. This act shall become effective November 1, 2020.

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