

An Act

ENROLLED HOUSE
BILL NO. 2406

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

An Act relating to insurance; creating the Oklahoma Individual Health Insurance Market Stabilization Act; providing payments to health insurance plans; providing market stabilization activities; providing legislative intent; defining terms; providing Individual Health Insurance Market Stabilization Program eligibility requirements; establishing the Oklahoma Individual Health Insurance Market Stabilization Program; providing Board of Directors membership; providing Board member reimbursement; requiring adoption of plan of operation, bylaws and rules; requiring administrative rules be promulgated and revoked under certain circumstances; authorizing hiring of Executive Director; providing administrative and operational support to the Program; requiring annual audit; providing certain duties of the Board; requiring sunset of the Program under certain conditions; granting certain powers to the Program; providing assessment of insurers and reinsurers; requiring participation be determined annually; prohibiting certain tax credit under certain circumstances; allowing the Board to abate or defer assessment under certain circumstances; providing certain actions shall not violate certain laws; authorizing the Secretary of Health and Human Services to apply for certain waiver; providing for codification; and declaring an emergency.

SUBJECT: Oklahoma Individual Health Insurance Market Stabilization Act

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 6530.1 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 "Oklahoma Individual Health Insurance Market Stabilization Act". It is the intent of the Legislature to provide payments to health insurance plans with respect to claims for eligible individuals for the purpose of lowering premiums for health insurance coverage offered in the individual market. Market stabilization activities shall include establishment of a high-risk pool, reinsurance, hybrid programs or any combination thereof. It is the further intent of the Legislature to bestow upon the Oklahoma Insurance Commissioner the authority to appoint a Board of Directors which shall create, implement, oversee and monitor the high-risk pool, reinsurance or hybrid programs under provisions of this act. The Board of Directors and the Oklahoma Secretary of Health and Human Services are authorized to apply for, accept and receive federal funds to implement and sustain market stabilization programs. Preliminary planning and analysis shall continue under the direction of the Oklahoma Insurance Commissioner. The onset of market stabilization implementation shall be contingent upon Oklahoma's approval for and receipt of federal funds to implement and sustain market stabilization programs.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Individual Health Insurance Market Stabilization Act:

1. "Agent" means any person who is licensed to sell health insurance in this state;

2. "Board" means the Board of Directors of the Oklahoma Individual Health Insurance Market Stabilization Program;

3. "Health insurance" means any individual or group hospital or medical-expense-incurred policy or health care benefits plan or

contract providing insurance against loss through illness or injury of the insured. The term does not include any policy governing short-term accidents only, a fixed indemnity policy, a limited benefit policy, a specified accident policy, a specified disease policy, a Medicare supplement policy, a long-term care policy, medical payment or personal injury coverage in a motor vehicle policy, coverage issued as a supplement to liability insurance, a disability policy or workers' compensation;

4. "High-risk pool" means specially designated health insurance plans organized by federal or state entities, or a combination of federal and state entities, to serve high-risk, high-cost or both high-risk and high-cost individuals who meet enrollment criteria and do not have access to group insurance. They are organized as independent entities governed by their own boards and administrators and supported by the state's department of insurance;

5. "Insurer" means any individual, corporation, association, partnership, fraternal benefit society or any other entity engaged in the health insurance business, except insurance agents and brokers. This term shall also include not-for-profit hospital service and medical indemnity plans, health maintenance organizations, preferred provider organizations, prepaid health plans, the State and Education Employees Group Health Insurance Plan, stop-loss insurance plans and any reinsurer reinsuring health insurance in this state, which shall be designated as engaged in the business of insurance for the purposes of the Oklahoma Individual Health Insurance Market Stabilization Act;

6. "Market" means the individual health insurance market in Oklahoma, wherein income-eligible individuals may receive federal financial assistance for the purchase of qualified health plans as provided by Section 36B of Title 26 of the United States Code and Section 1301 of the federal Patient Protection and Affordable Care Act;

7. "Market stabilization activities" means a high-risk pool, reinsurance, hybrid programs or any combination thereof authorized by this act;

8. "Plan" means any of the comprehensive health insurance benefit plans as approved by the Board of Directors of the Oklahoma Individual Health Insurance Market Stabilization Program or qualified for participation in the market or by rule;

9. "Program" means the Oklahoma Individual Health Insurance Market Stabilization Program;

10. "Reinsurer" means any insurer from whom any insurer providing health insurance to Oklahomans procures insurance for itself with respect to all or part of the health insurance risk of the person; and

11. "Reinsurance" means the contract made between an entity providing insurance coverage and a third party to protect the insurer from losses. The contract provides for the third party to pay for the loss sustained by the insurer when the insurer makes a payment on the original contract. Reinsurance lets insurers cover a portion of their financial risks by recovering some or all of the claimed amounts they pay.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in this section, any person who is qualified for and enrolled in coverage through the market and is a permanent resident of the State of Oklahoma shall be eligible for coverage under the Oklahoma Individual Health Insurance Market Stabilization Program except that:

1. No person who is currently receiving or is entitled to receive health care benefits under any other federal or state program providing financial assistance or preventive and rehabilitative social services is eligible for coverage under the Program; and

2. No inmate incarcerated in any state penal institution or confined to any narcotic detention, treatment and rehabilitation facility shall be eligible for coverage under the Program.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a nonprofit legal entity to be known as the "Oklahoma Individual Health Insurance Market Stabilization Program".

B. 1. The Program shall operate under the management of a nine-member Board of Directors appointed by the Insurance Commissioner. The Board shall consist of:

- a. two representatives of domestic insurance companies licensed to do business in this state,
- b. one member from the general public who is a member of the class of individuals to which the program would apply,
- c. one representative of a health maintenance organization,
- d. one member from a health-related profession,
- e. one member from the general public who is not associated with the medical profession, a hospital or an insurer,
- f. one representative of reinsurers, and
- g. two representatives from the providers of individual plans licensed to do business in this state.

2. The original Board shall be appointed for the following terms:

- a. three members for a term of one (1) year,
- b. three members for a term of two (2) years, and
- c. three members for a term of three (3) years.

3. All terms after the initial term shall be for three (3) years.

4. The Board shall elect one of its members as chairperson.

5. Members of the Board may be reimbursed from monies of the Program for actual and necessary expenses incurred by them in the performance of their official duties as members of the Board but shall not otherwise be compensated for their services.

6. The Board shall adopt a plan of operation and submit its articles, bylaws and operating rules to the Insurance Commissioner for approval. If the Board fails to submit a suitable plan of operation, articles, bylaws and operating rules within one hundred eighty (180) days, then the Insurance Commissioner shall promulgate rules governing the operation of the Program. If the Board subsequently adopts and submits any plan of operation, articles, bylaws or operating rules that are approved by the Commissioner, then the Commissioner shall revoke prior adopted administrative rules that the Commissioner determines to be inconsistent with the approved plan of operation, articles, bylaws or operating rules.

7. The Board shall have the authority to hire an Executive Director of the Program.

8. The Oklahoma Insurance Department shall provide administrative and operational support to the Program and to the Board. The Board shall reimburse the Insurance Commissioner for any direct and actual administrative costs associated with administering the provisions of this act from monies collected by the Board.

C. The Board shall cause an audit to be made of, including, but not limited to, the funds, accounts and fiscal affairs of the Program which shall be prepared by an independent certified public accountant or a licensed public accountant. One copy of the annual audit shall be filed with the State Auditor and Inspector, and one copy shall be presented to the Board not more than one hundred twenty (120) days following the close of each fiscal year. In the event that a copy of the audit as required by this section is not filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector is authorized to either commence an audit or employ a certified public accountant or licensed public accountant to make the audit herein required at the cost and expense of the Program.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Board of Directors of the Oklahoma Individual Health Insurance Market Stabilization Program shall:

1. Develop, implement and administer the Program. Implementation of the Program shall be contingent upon Oklahoma's

approval for and receipt of federal funds to implement and sustain the Program;

2. Levy and collect all assessments from all health insurers and reinsurers;

3. Make payments to provide for the market stabilization activities authorized by this act and for administrative expenses incurred or estimated to be incurred during the period for which assessment is made;

4. Establish administrative and accounting processes and procedures for the operation of the Program and create operating rules to effectuate the provisions of this act including but not limited to:

- a. determine eligibility of individuals to receive coverage under the Program,
- b. establish standards for qualification based upon health status, health conditions, prior or current insurance coverage status, health costs as a result of utilization of consuming health care,
- c. determine amount of the assessment and the amount or percentage of the premiums paid to health insurance plans for health insurance coverage by eligible individuals, that shall be collected and deposited to the credit of, and available for use by, the Program,
- d. establish the dollar amount of claims for eligible individuals after which the Program will provide payments to health insurance plans and the proportion of such claims above such dollar amount that the Program will pay,
- e. establish the rate at which the Program will reimburse a health insurance plan for claims incurred for an enrolled individual's claims, above the attachment point and below the reinsurance cap,
- f. determine the threshold amount for claims costs incurred by a health insurance plan for an enrolled individual's claims, after which the claims costs for

benefits are no longer eligible for reinsurance payments, and

- g. determine the diagnosed health condition of an eligible individual for which the Program will provide payments to health insurance plans for claims incurred after such diagnosis is made; and

5. Apply for, accept and receive federal funding for the operation of the Program, including the following:

- a. approval of a waiver provided by Section 1332 of the Patient Protection and Affordable Care Act, "1332 State Innovation Waiver", authorizing federal funding to support market stabilization program payments,
- b. Oklahoma's participation in any federal grant program or programs, or
- c. any combination of the above approaches.

B. In the event Oklahoma is unable to secure federal approval of a 1332 State Innovation Waiver or secure funding from federal grant programs within two (2) years from the effective date of this act, the Oklahoma Individual Health Insurance Market Stabilization Program shall sunset, and any remaining monies shall be returned to insurers on a pro rata basis based on the amount each insurer has paid in assessments since the creation of the Program.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Board may:

1. Exercise powers granted to insurers under the laws of this state;

2. Sue or be sued;

3. In addition to imposing assessments under Sections 5 and 7 of this act, levy interim assessments against insurers and reinsurers to ensure the financial ability of the Program to cover the market stabilization activities authorized by this act and any administrative expenses incurred or estimated to be incurred in the

operation of the Program prior to the end of a calendar year. Any interim assessment shall be due and payable within thirty (30) days of the receipt of the assessment notice by the insurer. Interim assessments shall be credited against the insurer's and reinsurer's annual assessment; and

4. Request the Insurance Commissioner to check the reports, records, books and papers of the Insurance Department to determine the financial condition of an insurer for purposes of Section 8 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing the funds necessary to carry out the provisions of this act, each insurer and each reinsurer shall be assessed by the Board of Directors of the Oklahoma Individual Health Insurance Market Stabilization Program according to such assessment methodology and at such time and for such amount as the Board finds necessary.

B. Each insurer's or reinsurer's proportion of participation in the Program shall be determined annually by the Board based on annual statements and other reports deemed necessary by the Board and filed with it by the insurer.

C. An insurer or reinsurer which has paid an assessment levied pursuant to this section shall not take a credit on the premium tax return for that insurer or reinsurer but may include the assessment amount in the insurer's or reinsurer's claims cost calculation for the purpose of determining the insurer's or reinsurer's rates for premiums charged for insurance policies to which the act applies. The rates shall not be deemed excessive for the sole reason of including in the calculation an amount reasonably calculated to recoup the assessment amount paid by the insurer or reinsurer.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Board may abate or defer, in whole or in part, the assessment of any insurer or reinsurer if determined by the Commissioner and the Board, payment of the assessment would place the insurer or reinsurer at an action control level as defined in

subparagraph a, b, c or d of paragraph 11 of Section 1522 of Title 36 of the Oklahoma Statutes or prevent the insurer or reinsurer from fulfilling the contractual obligations of the insurer or reinsurer.

B. In the event that an assessment against an insurer or reinsurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other insurers or reinsurers in a manner consistent with the basis for assessments set forth in Sections 5 and 7 of this act, and the insurer or reinsurer receiving the abatement or deferment shall remain liable to the Program for the deficiency for four (4) years.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

It shall constitute an unfair practice for the purposes of Sections 1201 through 1220 of Title 36 of the Oklahoma Statutes for an insurer, insurance agent, insurance broker or third-party administrator to refer an individual employee to the Program or arrange for an individual employee to apply for the Program, for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6530.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Secretary of Health and Human Services may apply to the United States Secretary of Health and Human Services for a waiver pursuant to Section 1332 of the Patient Protection and Affordable Care Act (42 U.S.C., Section 18052), "1332 State Innovation Waiver", with respect to health insurance coverage in the state for a plan year beginning on or after January 1, 2018. The Secretary may implement a state plan meeting the waiver requirements in a manner consistent with state and federal law and as approved by the United States Secretary of Health and Human Services.

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

Passed the House of Representatives the 24th day of May, 2017.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of May, 2017.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____