

1 ENGROSSED HOUSE  
2 BILL NO. 2870

By: Kiger, Perryman and  
Luttrell of the House

3 and

4 Paxton of the Senate

5  
6  
7 [ insurance - creating the Small Rural Oklahoma  
8 Hospital Survival Act - effective date ]  
9  
10

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

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

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

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

20 A. The purpose of the Small Rural Oklahoma Hospital Survival  
21 Act is to provide for parity, equity and fairness in negotiating and  
22 contracting with and obtaining reimbursement from health insurance  
23 companies.

24 B. The Legislature makes the following findings:

1           1. Small rural Oklahoma hospitals must remain viable, vibrant  
2 and financially stable to provide health care to the populations  
3 that they serve;

4           2. Small rural Oklahoma hospitals are essential to the health,  
5 safety and welfare of all Oklahomans regardless of where they live  
6 or travel in the State of Oklahoma;

7           3. Parity, equity and fairness in reimbursement rates and  
8 contractual transparency are essential elements to the survival of  
9 small rural hospitals in Oklahoma and the absence of parity, equity  
10 and fairness in reimbursement rates and the absence of contractual  
11 transparency are primary factors that result in the economic  
12 hardships faced by small rural Oklahoma hospitals;

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

17           5. Contract restrictions by commercial insurance companies that  
18 lead to narrow or limited provider networks result in patients  
19 having fewer choices and limited access to health care in rural  
20 Oklahoma and other vulnerable communities.

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

24           As used in the Small Rural Oklahoma Hospital Survival Act:

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

5           a.    serve in another provider network utilized by the  
6                contracting entity or a health care insurer affiliated  
7                with the contracting entity, or

8           b.    provide health care services under another health  
9                benefit plan or product offered by a contracting  
10               entity or a health care insurer affiliated with the  
11               contracting entity;

12          2. "Contracting entity" means a health care insurer or a  
13 subcontractor, affiliate, or other entity that contracts directly or  
14 indirectly with a health care provider for the delivery of health  
15 care services to enrollees;

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

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

24           a.    a disability income plan,

- b. a credit insurance plan,
- c. insurance coverage issued as a supplement to liability insurance,
- d. a medical payment under automobile or homeowners insurance plans,
- e. a health benefit plan provided under the Oklahoma workers' compensation law,
- f. a plan that provides only indemnity for hospital confinement,
- g. an accident-only plan,
- h. a specified disease plan,
- i. a long-term-care-only plan,
- j. a dental-only plan, or
- k. a vision-only plan;

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

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

- a. an insurance company,
- b. a health maintenance organization,
- c. a hospital and medical service corporation,

- d. a risk-based provider organization, and
- e. a sponsor of a nonfederal self-funded governmental plan;

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

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

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

- a. a decrease in fees, payments, or reimbursement to a 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:

- 1 a. prohibits or grants a contracting entity an option to  
2 prohibit a participating health care provider from  
3 contracting with another contracting entity to provide  
4 health care services at a lower price than the payment  
5 specified in the health care contract,
- 6 b. requires or grants a contracting entity an option to  
7 require a participating health care provider to accept  
8 a lower payment in the event the participating health  
9 care provider agrees to provide health care services  
10 to another contracting entity at a lower price,
- 11 c. requires or grants a contracting entity an option to  
12 require termination or renegotiation of an existing  
13 health care contract if a participating health care  
14 provider agrees to provide health care services to  
15 another contracting entity at a lower price, or
- 16 d. requires a participating health care provider to  
17 disclose the participating health care provider's  
18 contractual reimbursement rates with other contracting  
19 entities;

20 11. "Participating health care provider" means a health care  
21 provider that has a health care contract with a contracting entity  
22 to provide health care services to enrollees with the expectation of  
23 receiving payment from the contracting entity or a health care  
24 insurer affiliated with the contracting entity;

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

4 13. "Small rural Oklahoma hospital" shall mean any hospital,  
5 public or private, with less than one hundred staffed beds or having  
6 an acute care average daily census of less than fifty patients that  
7 is located in a county with a population of less than three hundred  
8 thousand (300,000) people.

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

12 A. All health care contracts between a health care insurer and  
13 a small rural Oklahoma hospital shall provide for a minimum  
14 guaranteed reimbursement rate equal to:

15 1. One hundred percent (100%) of the prevailing market rate for  
16 tests, procedures and similar services paid to urban hospitals; or

17 2. If the prevailing market rate is disputed, one hundred  
18 percent (100%) of the hospital's billed charges.

19 B. Payment for services rendered by a small rural Oklahoma  
20 hospital pursuant to a valid prior authorization shall not be denied  
21 by an insurance company for any reason.

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

1 A. All contracts between health care insurers and health care  
2 providers, including all Oklahoma hospitals and other medical  
3 providers, are open records and shall be posted on the website of  
4 the Oklahoma Insurance Department and shall be publicly available to  
5 evaluate payment methodology, accuracy of reimbursement and  
6 examination of explanations of benefits.

7 B. It shall be the duty of the Oklahoma Insurance Commissioner  
8 to analyze, publish and maintain updated data regarding prevailing  
9 market reimbursement rates for Medicare reimbursement, urban  
10 hospitals, rural hospitals and small rural Oklahoma hospitals.

11 C. Any health care insurer doing business in the State of  
12 Oklahoma must provide a reasonable contract to small rural Oklahoma  
13 hospitals. No contract between a health care insurer and a small  
14 rural Oklahoma hospital shall be unreasonably complex, and in no  
15 event shall the contract exceed twenty-five pages in length, with  
16 font no smaller than twelve-point, nor can any payment attachment  
17 exceed ten pages. All contracts between a health care insurer and  
18 small Oklahoma hospitals must be standard agreements, the form of  
19 which must be approved by the Insurance Commissioner.

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

23 No health care insurer shall directly or indirectly, including  
24 through the use of a prior authorization process, steer an insured



1 away from a small rural Oklahoma hospital for services such as lab  
2 work or imaging services that the small rural Oklahoma hospital  
3 routinely provides unless the services provided by the small rural  
4 Oklahoma hospital are unsafe or place the health of the insured at  
5 risk.

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

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

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

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

22 1. Is owned or controlled by the state or by a political  
23 subdivision of the state; and  
24

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

3       B. 1. Except as provided in paragraph 2 of this subsection, a  
4 contracting entity shall not:

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

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

- 14           a. offering a health care provider a contract that covers  
15           multiple health benefit plans that have the same  
16           reimbursement rates and other financial terms for the  
17           health care provider,
- 18           b. adding a new health benefit plan to an existing health  
19           care contract with a health care provider under the  
20           same reimbursement rates and other financial terms  
21           applicable under the original health care contract, or
- 22           c. requiring a health care provider to accept multiple  
23           health benefit plans that do not differ in  
24

1 reimbursement rates or other financial terms for the  
2 health care provider.

3 3. A health care contract may include health benefit plans or  
4 coverage options for enrollees within a health benefit plan with  
5 different cost-sharing structures, including different deductibles  
6 or copayments, as long as the reimbursement rates and other  
7 financial terms between the contracting entity and the health care  
8 provider remain the same for each plan or coverage option included  
9 in the health care contract.

10 C. This section does not authorize a health care provider to:

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

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

16 D. A contracting entity shall not:

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

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

21 3. Amend or renew an existing health care contract previously  
22 entered into with a health care provider so that the contract as  
23 amended or renewed adds or continues to include a most-favored  
24 nation clause.

1 E. A violation of this section is:

2 1. An unfair trade practice; and

3 2. Subject to the Oklahoma Deceptive Trade Practices Act.

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

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

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

13 2. The notice required under paragraph 1 of this subsection  
14 shall specify the precise health care contract or health care  
15 contracts to which the material amendment applies and be  
16 conspicuously labeled as follows: "Notice of Material Amendment to  
17 Health Care Contract".

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

21 B. A notice described under paragraph 1 of subsection A of this  
22 section is not required for a material amendment resulting solely  
23 from a change in a fee schedule or code set if:  
24

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

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

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

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

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

14           1. A party to the health care contract is not required to  
15 terminate the health care contract in order to open the health care  
16 contract for renegotiation of the terms.

17           2. This section does not prohibit a renegotiation of a health  
18 care contract at any time during the term of the health care  
19 contract.

20           E. A violation of this section is:

21           1. An unfair trade practice; and

22           2. Subject to the Oklahoma Deceptive Trade Practices Act.

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

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

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

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

8 2. Prohibits a contracting entity from entering into a health  
9 care contract with another health care provider.

10 B. A violation of this section is:

11 1. An unfair trade practice; and

12 2. Subject to the Oklahoma Deceptive Trade Practices Act.

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

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

18 No health care insurer shall deny a request by an Oklahoma-  
19 licensed physician practicing in Oklahoma to become an in-network  
20 physician by requiring that the requesting physician have admitting  
21 privileges at an in-network hospital.

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

1           A. The Oklahoma Insurance Commissioner shall have the duty and  
2 responsibility to enforce the Small Rural Oklahoma Hospital Survival  
3 Act and shall have the responsibility to establish fines, fees and  
4 penalties for noncompliance with this act by any insurance company  
5 licensed in this state to provide health insurance for citizens of  
6 this state or authorized to pay any claim to any hospital or other  
7 health care provider.

8           B. The Commissioner shall promulgate rules necessary to ensure  
9 compliance with this act.

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

