

An Act

ENROLLED HOUSE
BILL NO. 2950

By: Wallace and Hilbert of the
House

and

Thompson and Hall of the
Senate

An Act relating to ambulance service providers; creating the Ambulance Service Provider Access Payment Program Act; providing short title; defining terms; providing for certain assessment; exempting certain ambulance services; providing assessment methodology; providing for adjusted assessments under certain conditions; voiding program under certain conditions; directing promulgation of rules; providing for administrative penalties; creating Ambulance Service Provider Access Payment Program Fund; providing source of monies; providing for notice of assessment; requiring quarterly payments; providing exception for first installment; providing certain penalty; specifying certain appeals procedures; providing assessment for new provider; providing for ambulance service provider access payments; specifying date and frequency of payments, calculation methodology, and eligibility; prohibiting offset of certain payments; requiring refund under certain condition; directing budgeting and expenditure of monies; stating allowed expense; prohibiting certain use of monies; providing certain exemption; stipulating certain lack of guarantee; providing for certain appeals; specifying that monies are supplemental; prohibiting certain adjustment of Medicaid reimbursement; requiring Oklahoma Health Care Authority to cease collection of fees and refund providers under certain condition; directing Authority to seek certain federal approval; requiring certain actions if approval denied; providing for codification; and providing an effective date.

SUBJECT: Ambulance service providers

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 3242.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Ambulance Service Provider Access Payment Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Ambulance Service Provider Access Payment Program Act:

1. "Air ambulance" means ambulance services provided by fixed or rotor wing ambulance services;

2. "Alliance" means the Oklahoma Ambulance Alliance or its successor association;

3. "Ambulance" means a motor vehicle that is primarily used or designated as available to provide transportation and basic life support or advanced life support;

4. "Ambulance service" or "ambulance service provider" means any private firm or governmental agency which is or should be licensed by the State Department of Health to provide levels of medical care based on certification rules or standards promulgated by the State Commissioner of Health;

5. "Department" means the State Department of Health;

6. "Emergency" or "emergent" means a serious situation or occurrence that happens unexpectedly and demands immediate action, such as a medical condition manifesting itself by acute symptoms of sufficient severity including severe pain such that the absence of immediate medical attention could reasonably be expected, by a reasonable and prudent layperson, to result in placing the patient's health in serious jeopardy, serious impairment to bodily function or serious dysfunction of any bodily organ or part;

7. "Emergency transport" means the movement of an acutely ill or injured patient from the scene to a health care facility or the movement of an acutely ill or injured patient from one health care facility to another health care facility;

8. "Licensure" means the licensing of emergency ambulance services pursuant to rules and standards promulgated by the State Commissioner of Health;

9. "Net operating revenue" means the gross revenues earned for providing emergency and nonemergency transports in Oklahoma excluding revenues earned for providing air ambulance services and amounts refunded to or recouped, offset or otherwise deducted by a patient or payer for ground medical transportation;

10. "Nonemergency transport" means the movement of any patient in an ambulance other than an emergency transport;

11. "Upper payment limit" means the lesser of the customary charges of the ambulance service provider or the prevailing charges in the locality of the ambulance service provider for comparable services under comparable circumstances, calculated according to methodology in an approved state plan amendment for the state Medicaid program; and

12. "Upper payment limit gap" means the difference between the upper payment limit of the ambulance service provider and the Medicaid payments not financed using the ambulance service provider assessments made to all ambulance service providers, provided that the upper payment limit gap shall not include air ambulance services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of assuring access to quality emergency and nonemergency transports for state Medicaid beneficiaries, the Oklahoma Health Care Authority shall, after considering input and recommendations from the Oklahoma Ambulance Alliance, assess ambulance service providers licensed in Oklahoma, unless exempt under subsection B of this section, an ambulance service provider access payment program fee.

B. The following ambulance services shall be exempt from the ambulance service provider access payment fee:

1. An ambulance service that is owned or operated by the state or a state agency, the federal government, a federally recognized Indian tribe, or the Indian Health Service;

2. An ambulance service that is eligible for supplemental Medicaid reimbursement under Section 3242 of Title 63 of the Oklahoma Statutes;

3. An ambulance service that provides air ambulance services only; or

4. An ambulance service that provides nonemergency transports only or a de minimis amount of emergency medical transportation services, as determined by the Authority.

C. 1. The ambulance service provider access payment program fee shall be an assessment imposed on each ambulance service provider, except those exempted under subsection B of this section, for each calendar year in an amount calculated as a percentage of each ambulance service provider's net operating revenue.

2. The assessment rate shall be determined annually based upon the percentage of net operating revenue needed to generate an amount up to the sum of:

- a. the nonfederal portion of the upper payment limit gap for all ambulance service providers eligible to receive Medicaid ambulance service provider access payments, plus
- b. the annual fee to be paid to the Authority under subparagraph b of paragraph 2 of subsection F of Section 4 of this act, plus
- c. the amount to be transferred by the Authority to the Medical Payments Cash Management Improvement Act Programs Disbursing Fund under subparagraph a of paragraph 2 of subsection F of Section 4 of this act.

In no event shall the assessment rate exceed the maximum rate allowed by federal law or regulation.

3. The assessment rate described in this subsection shall be determined after consultation with the Alliance. The base year for assessment, the method for calculating net operating revenue and related matters not provided for in this section shall be determined by rules promulgated by the Oklahoma Health Care Authority Board.

D. 1. If an ambulance service provider conducts, operates or maintains more than one licensed ambulance service, the ambulance service provider shall pay the ambulance service provider access payment program fee for each ambulance service separately. However, if the ambulance service provider operates more than one ambulance service under one Medicaid provider number, the ambulance service provider may pay the fee for the ambulance services in the aggregate.

2. Notwithstanding any other provision of this section, if an ambulance service provider subject to the ambulance service provider access payment fee operates or conducts business only for a portion of a year, the assessment for the year shall be adjusted by multiplying the annual assessment by a fraction, the numerator of which is the number of days in the year during which the ambulance service operates and the denominator of which is three hundred sixty-five (365). Immediately upon ceasing to operate, the ambulance service provider shall pay the assessment for the year as so adjusted, to the extent not previously paid.

3. The Authority shall determine the assessment for new ambulance services and ambulance services that undergo a change of ownership, in accordance with this section, using the best available information, as determined by the Authority.

E. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to the state Medicaid program for purposes of matching expenditures from the Ambulance Service Provider Access Payment Program Fund at the approved federal medical assistance percentage for the applicable year, the ambulance service provider access payment program fee shall be null and void as of the date of the nonavailability of such federal funding through and during any period of nonavailability.

2. In the event of an invalidation of the Ambulance Service Provider Access Payment Program by any court of last resort, the program shall be null and void as of the effective date of that invalidation.

3. In the event that the Ambulance Service Provider Access Payment Program is determined to be null and void for any of the reasons described in this subsection, any ambulance service provider access payment program fee assessed and collected for any period to which such invalidation applies shall be returned in full within forty-five (45) days by the Authority to the ambulance service from which it was collected.

F. The Oklahoma Health Care Authority Board, after considering the input and recommendations of the Alliance, shall promulgate rules for the implementation and enforcement of the ambulance service provider access payment program fee. Unless otherwise provided, the rules promulgated under this subsection shall not grant any exceptions to or exemptions from the ambulance service provider access payment program fee imposed under this section.

G. The Authority shall provide for administrative penalties in the event an ambulance service provider fails to:

1. Submit the ambulance service provider access payment program fee;
2. Submit the fee in a timely manner;
3. Submit reports as required by the Authority; or
4. Submit reports timely.

H. The Oklahoma Health Care Authority Board shall have the power to promulgate emergency rules to implement the provisions of the Ambulance Service Provider Access Payment Program Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund to be designated the "Ambulance Service Provider Access Payment Program Fund".

B. The fund shall be a continuing fund, not subject to fiscal year limitations, be interest bearing and consist of:

1. All monies received by the Oklahoma Health Care Authority from ambulance services pursuant to the Ambulance Service Provider Access Payment Program Act and otherwise specified or authorized by law;

2. Any interest or penalties levied and collected in conjunction with the administration of this section; and

3. All interest attributable to investment of money in the fund.

C. 1. The Authority shall send a notice of assessment to each ambulance service provider informing the ambulance service provider of the assessment rate, the ambulance service provider's net operating revenue calculation, and the assessment amount owed by the ambulance service provider for the applicable year.

2. Annual notices of assessment shall be sent at least thirty (30) days before the due date for the first quarterly assessment payment of each year.

3. The first notice of assessment shall be sent within forty-five (45) days after receipt by the Authority of notification from the Centers for Medicare and Medicaid Services that assessments and payments required under the Ambulance Service Provider Access Payment Program Act and, if necessary, the waiver granted under 42 C.F.R., Section 433.68 have been approved.

4. The ambulance service provider shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate, the ambulance service provider's net operating revenue calculation and the assessment amount.

D. 1. The annual assessment imposed under Section 3 of this act shall be due and payable on a quarterly basis. However, the first installment payment of an assessment imposed by the Ambulance Service Provider Access Payment Program Act shall not be due and payable until:

- a. the Authority issues written notice stating that the assessment and payment methodologies required under the Ambulance Service Provider Access Payment Program Act have been approved by the Centers for Medicare and Medicaid Services and the waiver under 42 C.F.R.,

Section 433.68, if necessary, has been granted by the Centers for Medicare and Medicaid Services,

- b. the thirty-day verification period required by paragraph 4 of subsection C of this section has expired, and
- c. the Authority issues a notice giving a due date for the first payment.

2. After the initial installment of an annual assessment has been paid under this section, each subsequent quarterly installment payment shall be due and payable by the fifteenth day of the first month of the applicable quarter.

3. If an ambulance service provider fails to timely pay the full amount of a quarterly assessment, the Authority shall add to the assessment:

- a. a penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date, and
- b. on the last day of each quarter after the due date until the assessed amount and the penalty imposed under subparagraph a of this paragraph are paid in full, an additional five-percent penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

4. The quarterly assessment including applicable penalties must be paid regardless of any appeals action requested by the ambulance provider. If a provider fails to pay the Authority the assessment within the time frames noted on the invoice to the provider, the assessment and applicable penalty shall be deducted from the provider's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments.

5. An ambulance service provider subject to the assessment under the Ambulance Service Provider Access Payment Program Act that has not been previously licensed as an ambulance service in Oklahoma and that commences operations during a year shall pay the required assessment computed under Section 3 of this act and shall be eligible for ambulance service provider access payments under this section on the date specified in the rules promulgated by the

Authority after consideration of input and recommendations of the Oklahoma Ambulance Alliance.

E. 1. To preserve the quality and improve access to ambulance services rendered on or after the effective date of this act, the Authority shall make ambulance service provider access payments as set forth in this section.

2. The Authority shall pay all quarterly ambulance service provider access payments within ten (10) calendar days of the due date for quarterly assessment payments established in subsection D of this section.

3. The Authority shall calculate the ambulance service provider access payment amount as the balance of the Ambulance Service Provider Access Payment Program Fund plus any federal matching funds earned on the balance up to, but not to exceed, the upper payment limit gap for all ambulance service providers.

4. All ambulance service providers shall be eligible for ambulance service provider access payments each year as set forth in this subsection except ambulance services excluded or exempted in subsection B of Section 3 of this act.

5. Access payments shall be made on a quarterly basis.

6. Ambulance service provider access payments shall not be used to offset any other payment by Medicaid for services to Medicaid beneficiaries.

7. If the Centers for Medicare and Medicaid Services finds that the Authority has made payments to ambulance service providers that exceed the upper payment limits, ambulance service providers shall refund to the Authority a share of the recouped federal funds that is proportionate to the ambulance services' contribution to the upper payment limit.

F. 1. All monies accruing to the credit of the Ambulance Service Provider Access Payment Program Fund are hereby appropriated and shall be budgeted and expended by the Authority after consideration of the input and recommendation of the Alliance.

2. Monies in the Ambulance Service Provider Access Payment Program Fund shall be used only for:

- a. transfers to the Medical Payments Cash Management Improvement Act Programs Disbursing Fund for the state share of ambulance service provider access payments for ambulance service providers that participate in the assessment,
- b. transfers to the Administrative Revolving Fund for the state share of payment of administrative expenses incurred by the Authority or its agents and employees in performing the activities authorized by the Ambulance Service Provider Access Payment Program Act but not more than Two Hundred Thousand Dollars (\$200,000.00) each year, and
- c. the reimbursement of monies collected by the Authority from ambulance services through error or mistake in performing the activities authorized under the Ambulance Service Provider Access Payment Program Act.

3. The Authority shall pay from the Ambulance Service Provider Access Payment Program Fund quarterly installment payments to ambulance service providers of amounts available for ambulance service provider access payments.

4. Monies in the Ambulance Service Provider Access Payment Program Fund shall not be used to replace other general revenues appropriated and funded by the Legislature or other revenues used to support Medicaid.

5. The Ambulance Service Provider Access Payment Program Fund and the program specified in the Ambulance Service Provider Access Payment Program Act are exempt from budgetary reductions or eliminations caused by the lack of general revenue funds or other funds designated for or appropriated to the Authority.

6. No ambulance service provider shall be guaranteed, expressly or otherwise, that any additional costs reimbursed to the provider will equal or exceed the amount of the ambulance service provider access payment program fee paid by the ambulance service.

G. After considering input and recommendations from the Alliance, the Oklahoma Health Care Authority Board shall promulgate rules that:

1. Allow for an appeal of the annual assessment of the Ambulance Service Provider Access Payment Program payable under this act; and

2. Allow for an appeal of an assessment of any fees or penalties determined.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The ambulance service provider access payment program fee is to supplement, not supplant, appropriations to support ambulance service provider reimbursement. If Medicaid reimbursement rates to providers are adjusted, ambulance service provider rates shall not be adjusted less favorably than the average percentage-rate reduction or increase applicable to the majority of other provider groups.

B. Notwithstanding any other provision of the Ambulance Service Provider Access Payment Program Act, if, after receipt of authorization to receive federal matching funds for monies generated by the Ambulance Service Provider Access Payment Program Act, the authorization is withdrawn or changed so that federal matching funds are no longer available, the Oklahoma Health Care Authority shall cease collecting the provider fee and shall repay to the ambulance services any money received by the Ambulance Service Provider Access Payment Program that is not subject to federal matching funds.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Health Care Authority shall submit to the Oklahoma Ambulance Alliance a proposed state plan amendment to implement the requirements of the Ambulance Service Provider Access Payment Program Act including the payment of ambulance service provider access payments under Section 4 of this act no later than forty-five (45) days after the effective date of this act and shall submit the state plan amendment to the Centers for Medicare and Medicaid Services after consideration of the input and recommendations of the Alliance.

B. If the state plan amendment is not approved by the Centers for Medicare and Medicaid Services, the Authority shall:

1. Not implement the assessment imposed under the Ambulance Service Provider Access Payment Program Act; and

2. Return any fees to ambulance services that paid the fees if any such fees have been collected.

SECTION 7. This act shall become effective November 1, 2021.

Passed the House of Representatives the 18th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of May, 2021.

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: _____