

1 **SENATE FLOOR VERSION**

2 February 27, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 456

6 By: Treat and Simpson

7 An Act relating to administration of the Oklahoma
8 Health Care Authority; amending 63 O.S. 2011, Section
9 5007, which relates to Health Care Authority Act;
10 requiring Administrator of the Oklahoma Health Care
11 Authority be appointed by the Governor with advice
12 and consent of the Senate; requiring service at the
13 pleasure of the Governor; abolishing Oklahoma Health
14 Care Authority Board and transferring powers, duties
15 and responsibilities to the Administrator; modifying
16 references to Board; providing that actions taken by
17 the Board remain in effect unless changed by the
18 Administrator; amending 10 O.S. 2011, Section 603.4,
19 which relates to day treatment programs; modifying
20 references to Board; amending 10A O.S. 2011, Section
21 1-7-114, which relates to foster parent eligibility
22 assessment; modifying references to Board; amending
23 43A O.S. 2011, Section 3-406.1, which relates to the
24 Oklahoma Alcohol and Drug Abuse Services Act;
modifying references to Board; amending 56 O.S. 2011,
Sections 1010.2, 1010.4, 1010.5, 1011.11, 1017.4 and
1017.5, which relate to the Oklahoma Medicaid Program
Reform Act of 2003; modifying references to Board;
amending 56 O.S. 2011, Sections 198.11a, 198.16 and
198.17, which relate to the Oklahoma Consumer-
Directed Personal Assistance and Support Services
Act; modifying references to Board; amending 63 O.S.
2011, Section 3250.9, which relates to the Oklahoma
Community Hospitals Public Trust Authorities Act;
modifying references to Board; amending 63 O.S. 2011,
Sections 5000.24, 5005, 5007.1, 5008, 5015.1, 5017,
as amended by Section 524, Chapter 304, O.S.L. 2012,
5020, as amended by Section 525, Chapter 304, O.S.L.
2012, 5024, 5026, 5027, Section 1, Chapter 244,
O.S.L. 2015, Section 1, Chapter 208, O.S.L. 2017,
Section 1, Chapter 324, O.S.L. 2015, 5030.1, 5030.3,

1 5030.4, 5030.5, as last amended by Section 1, Chapter
2 306, O.S.L. 2015, 5051.4, 5051.5 and 5052 (63 O.S.
3 Supp. 2018, Sections 5017, 5020, 5028, 5028.1 and
4 5029), which relate to Health Care Services;
5 modifying references to Board; amending 75 O.S.
6 250.4, as last amended by Section 12, Chapter 430,
7 O.S.L. 2014 (75 O.S. Supp. 2018, Section 250.4),
8 which relates to the Administrative Procedures Act;
9 modifying references to Board; and declaring an
10 emergency.

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

12 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5007, is
13 amended to read as follows:

14 Section 5007. A. ~~There is hereby created the Oklahoma Health~~
15 ~~Care Authority Board. On and after July 1, 1994, as the terms of~~
16 ~~the initially appointed members expire, the Board shall be composed~~
17 ~~of seven appointed members who shall serve for terms of four (4)~~
18 ~~years and shall be appointed as follows:~~

19 1. ~~Two members shall be appointed by the President Pro Tempore~~
20 ~~of the Senate;~~

21 2. ~~Two members shall be appointed by the Speaker of the House~~
22 ~~of Representatives; and~~

23 3. ~~Three members shall be appointed by the Governor. Two of~~
24 ~~the members appointed by the Governor shall be consumers.~~

B. ~~Members appointed pursuant to this paragraph, with the~~
exception of the consumer members, shall include persons having
experience in medical care, health care services, health care

1 ~~delivery, health care finance, health insurance and managed health~~
2 ~~care. Consumer members shall have no financial or professional~~
3 ~~interest in medical care, health care services, health care~~
4 ~~delivery, health finance, health insurance or managed care. In~~
5 ~~making the appointments, the appointing authority shall also give~~
6 ~~consideration to urban, rural, gender and minority representation.~~

7 C. 1. ~~As the terms of office of members appointed before July~~
8 ~~1, 1995, expire, appointments made on or after July 1, 1995, shall~~
9 ~~be subject to the following requirements:~~

10 a. ~~One member appointed by the Governor shall be a~~
11 ~~resident of the First Congressional District. The~~
12 ~~term of office of the member appointed by the Governor~~
13 ~~and serving as of the effective date of this act shall~~
14 ~~expire on September 1, 2003;~~

15 b. ~~One member appointed by the President Pro Tempore of~~
16 ~~the Senate shall be a resident of the Second~~
17 ~~Congressional District and a consumer. The term of~~
18 ~~office of the member appointed by the President Pro~~
19 ~~Tempore of the Senate and serving as of the effective~~
20 ~~date of this act shall expire on September 1, 1999;~~

21 c. ~~One member appointed by the President Pro Tempore of~~
22 ~~the Senate shall be a resident of the Third~~
23 ~~Congressional District. The term of office of the~~
24 ~~member appointed by the President Pro Tempore of the~~

1 ~~Senate and serving as of the effective date of this~~
2 ~~act shall expire on September 1, 2004;~~

3 ~~d. One member appointed by the Speaker of the House of~~
4 ~~Representatives shall be a resident of the Fourth~~
5 ~~Congressional District. The term of office of the~~
6 ~~member appointed by the Speaker of the House of~~
7 ~~Representatives and serving as of the effective date~~
8 ~~of this act shall expire on September 1, 2001;~~

9 ~~e. One member appointed by the Speaker of the House of~~
10 ~~Representatives shall be a resident of the Fifth~~
11 ~~Congressional District and a consumer. The term of~~
12 ~~office of the member appointed by the Speaker of the~~
13 ~~House of Representatives and serving as of the~~
14 ~~effective date of this act shall expire on September~~
15 ~~1, 1998;~~

16 ~~f. One member appointed by the Governor shall be a~~
17 ~~resident of the Sixth Congressional District and a~~
18 ~~consumer. The term of office of the member appointed~~
19 ~~by the Governor and serving as of the effective date~~
20 ~~of this act shall expire on September 1, 2000; and~~

21 ~~g. The second consumer member appointed by the Governor~~
22 ~~shall be appointed at large. The term of office of~~
23 ~~the member appointed by the Governor and serving as of~~

24

1 ~~the effective date of this act shall expire on~~
2 ~~September 1, 2002.~~

3 ~~2. Appointments made subsequent to the effective date of this~~
4 ~~act shall not be restricted to any particular congressional~~
5 ~~district. Appointments made after July 1 of the year in which a~~
6 ~~redrawing of a congressional district becomes effective shall be~~
7 ~~from the state at large. However, no appointments may be made after~~
8 ~~July 1 of the year in which such modification becomes effective if~~
9 ~~such appointment would result in more than two members serving from~~
10 ~~the same modified district.~~

11 ~~D. The terms of the members serving on the Board as of the~~
12 ~~effective date of this act shall expire on September 1 of the year~~
13 ~~in which the respective terms expire. Thereafter, as new terms~~
14 ~~begin, members shall be appointed to four-year staggered terms which~~
15 ~~shall expire on September 1. Should a member serve less than a~~
16 ~~four-year term, the term of office of the member subsequently~~
17 ~~appointed shall be for the remainder of the four-year term.~~

18 ~~E. On and after July 1, 1994, any subsequently appointed~~
19 ~~administrator of the Authority shall be appointed by the Board The~~
20 ~~Administrator of the Oklahoma Health Care Authority shall be~~
21 ~~appointed by the Governor, with the advice and consent of the~~
22 ~~Senate, and shall serve at the pleasure of the Governor. The~~
23 ~~administrator shall have the training and experience necessary for~~
24 ~~the administration of the Authority, as determined by the Board,~~

1 including, but not limited to, prior experience in the
2 administration of managed health care. ~~The administrator shall~~
3 ~~serve at the pleasure of the Board.~~

4 ~~F.~~ B. The ~~Board~~ Administrator shall have the power and duty to:

5 1. Establish the policies of the Oklahoma Health Care
6 Authority;

7 2. ~~Appoint the Administrator of the Authority;~~

8 ~~3.~~ Adopt and promulgate rules as necessary and appropriate to
9 carry out the duties and responsibilities of the Authority. The
10 ~~Board~~ Administrator shall be the rulemaking body for the Authority;
11 and

12 ~~4.~~ 3. Adopt, publish and submit by January 1 of each year to
13 the Governor, the President Pro Tempore of the Senate, and the
14 Speaker of the House of Representatives appropriate administrative
15 policies and the business plan for that year. All actions governed
16 by said administrative policies and annual business plan shall be
17 examined annually in an independent audit.

18 ~~G.~~ 1. ~~A vacancy in a position shall be filled in the same~~
19 ~~manner as provided in subsection A of this section.~~

20 2. ~~A majority of the members of the Board shall constitute a~~
21 ~~quorum for the transaction of business and for taking any official~~
22 ~~action. Official action of the Board must have a favorable vote by~~
23 ~~a majority of the members present.~~

24

1 ~~3. Members appointed pursuant to subsection A of this section~~
2 ~~shall serve without compensation but shall be reimbursed for~~
3 ~~expenses incurred in the performance of their duties in accordance~~
4 ~~with the State Travel Reimbursement Act.~~

5 H. C. The ~~Board and the~~ Authority shall act in accordance with
6 the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open
7 Records Act and the Administrative Procedures Act.

8 D. The Oklahoma Health Care Authority Board is hereby abolished
9 and its powers, duties and responsibilities are hereby transferred
10 to the Administrator of the Oklahoma Health Care Authority. Any
11 reference in the Oklahoma Statutes to the Board shall be deemed to
12 be a reference to the Administrator. Any administrative rules or
13 policies or performance standards adopted by, or any actions taken
14 by, the Oklahoma Health Care Authority Board prior to November 1,
15 2019, shall be and remain in effect until amended, repealed or
16 superseded by actions of the Administrator as provided in this
17 section.

18 SECTION 2. AMENDATORY 10 O.S. 2011, Section 603.4, is
19 amended to read as follows:

20 Section 603.4. A. In accordance with the standards recommended
21 by the Committee on Day Treatment Standards in its report dated
22 November 2, 1994, the State Board of Health, the Board of Mental
23 Health and Substance Abuse Services and the Oklahoma Health Care
24 Authority ~~Board~~ Administrator shall promulgate rules establishing

1 standards for day treatment programs, as defined in Section 175.20
2 of this title, and shall monitor, not less than annually, compliance
3 with the standards, if funds are available. The responsibilities of
4 the boards regarding enforcement of and monitoring of compliance
5 with the rules shall be as follows:

6 1. The State Board of Health shall be responsible for the
7 promulgation of rules establishing standards for day treatment
8 programs other than those operated by community mental health
9 centers;

10 2. The Board of Mental Health and Substance Abuse Services
11 shall be responsible for the promulgation of rules for day treatment
12 programs operated by community mental health centers; and

13 3. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
14 monitor compliance of outpatient hospital day treatment services
15 with the standards in the Medical Providers-Hospital Specific
16 Manual, OAC 317:30-5-42(a)(6). Any program found to be out of
17 compliance with such standards shall be subject to cancellation of
18 its authorization for day treatment services within its contract
19 with the Oklahoma Health Care Authority according to rules governing
20 such contract cancellations.

21 B. The boards and Administrator shall coordinate development
22 and monitoring of rules to the maximum extent reasonable and
23 practical in order to avoid unnecessary contradiction or conflict
24

1 and to minimize the incidence of duplicative monitoring of day
2 treatment program.

3 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-7-114, is
4 amended to read as follows:

5 Section 1-7-114. A. The Department of Human Services and the
6 Office of Juvenile Affairs shall be responsible for the completion
7 of and costs of the foster parent eligibility assessment and any
8 national criminal history records search based upon submission of
9 fingerprints, preparation of a treatment and service plan, and a
10 medical examination only for the children placed in the custody of
11 the state agency. The state agency may provide for reimbursement of
12 such expenses, costs, and charges so incurred pursuant to the
13 Oklahoma Children's Code or the Oklahoma Juvenile Code, as
14 applicable.

15 B. No child shall be eligible for any reimbursement through the
16 state Medicaid program for placement in therapeutic foster care
17 unless such placement has been reviewed and approved pursuant to
18 rules regarding medical necessity for therapeutic foster care
19 placement promulgated by the Oklahoma Health Care Authority ~~Board~~
20 Administrator.

21 SECTION 4. AMENDATORY 43A O.S. 2011, Section 3-406.1, is
22 amended to read as follows:

23 Section 3-406.1. A. Until June 30, 2013, the Department of
24 Mental Health and Substance Abuse Services and the Oklahoma Health

1 Care Authority shall continue to purchase, on a fee-for-service
2 basis, therapy provided by certified alcohol and drug counselors, as
3 defined in Chapter 43B, Section 1871 of Title 59 of the Oklahoma
4 Statutes, provided such therapy is provided by certified alcohol and
5 drug counselors employed from organizations or individuals under
6 contract with the Department of Mental Health and Substance Abuse
7 Services or the Oklahoma Health Care Authority.

8 B. Nothing in this section shall prohibit the Board of Mental
9 Health and Substance Abuse Services or the Oklahoma Health Care
10 Authority ~~Board~~ Administrator from initiating or terminating
11 contracts with certified substance abuse providers, establishing
12 contract limits, developing or modifying reimbursement schedules, or
13 otherwise managing appropriated resources on behalf of the state.

14 SECTION 5. AMENDATORY 56 O.S. 2011, Section 1010.2, is
15 amended to read as follows:

16 Section 1010.2. A. As used in the Oklahoma Medicaid Program
17 Reform Act of 2003:

18 1. "Authority" means the Oklahoma Health Care Authority;

19 2. ~~"Board" means the Oklahoma Health Care Authority Board;~~

20 3. "Administrator" means the chief executive officer of the
21 Oklahoma Health Care Authority;

22 4. 3. "Eligible person" means any person who meets the minimum
23 requirements established by:

24

- 1 a. rules promulgated by the Oklahoma Health Care
2 Authority ~~Board~~ Administrator pursuant to the
3 requirements of Title XIX of the federal Social
4 Security Act, 42 U.S.C., Section 1396 et seq.,
5 b. a waiver under the provisions of this act, or
6 c. any state law authorizing the purchase of small
7 employer buy-in coverage;

8 ~~5.~~ 4. "Member" means an eligible person who enrolls in the
9 Oklahoma Medicaid Healthcare Options System;

10 ~~6.~~ 5. "Nonparticipating provider" means a person who provides
11 hospital or medical care pursuant to the Oklahoma Medicaid Program
12 but does not have a managed care health services contract or
13 subcontract within the Oklahoma Medicaid Healthcare Options System;

14 ~~7.~~ 6. "Prepaid capitated" means a mode of payment by which a
15 health care provider directly delivers health care services for the
16 duration of a contract to a maximum specified number of members
17 based on a fixed rate per member, regardless of the actual number of
18 members who receive care from the provider or the amount of health
19 care services provided to any member;

20 ~~8.~~ 7. "Participating provider" means any person or organization
21 who contracts with the Authority for the delivery of
22 hospitalization, eye care, dental care, medical care and other
23 medically related services to members or any subcontractor of such
24

1 provider delivering services pursuant to the Oklahoma Medicaid
2 Healthcare Options System; and

3 ~~9.~~ 8. "System" means the Oklahoma Medicaid Healthcare Options
4 System established by the Oklahoma Medicaid Program Reform Act of
5 2003.

6 SECTION 6. AMENDATORY 56 O.S. 2011, Section 1010.4, is
7 amended to read as follows:

8 Section 1010.4. A. The Oklahoma Health Care Authority shall
9 take all steps necessary to implement the Oklahoma Medicaid
10 Healthcare Options System as required by the Oklahoma Medicaid
11 Program Reform Act of 2003.

12 B. The implementation of the System shall include, but not be
13 limited to, the following:

14 1. Development of operations plans for the System which include
15 reasonable access to hospitalization, eye care, dental care, medical
16 care and other medically related services for members including, but
17 not limited to, access to twenty-four-hour emergency care;

18 2. Contract administration and oversight of participating
19 providers;

20 3. Technical assistance services to participating providers and
21 potential providers;

22 4. Development of a complete plan of accounts and controls for
23 the System including, but not limited to, provisions designed to
24

1 ensure necessary and reasonable usage of covered health and medical
2 services provided through the System;

3 5. Establishment of peer review and utilization study functions
4 for all participating providers;

5 6. Technical assistance for the formation of medical care
6 consortiums to provide covered health and medical services under the
7 System. Development of service plans and consortiums may be on the
8 basis of medical referral patterns;

9 7. Development and management of a provider payment system;

10 8. Establishment and management of a comprehensive plan for
11 ensuring the quality of care delivered by the System;

12 9. Establishment and management of a comprehensive plan to
13 prevent fraud against the System by members, eligible persons and
14 participating providers;

15 10. Coordination of benefits provided under the Oklahoma
16 Medicaid Program Reform Act of 2003 to any member;

17 11. Development of a health education and information program;

18 12. Development and management of a participant enrollment
19 system;

20 13. Establishment and maintenance of a claims resolution
21 procedure to ensure that a submitted claim is resolved within forty-
22 five (45) days of the date the claim is correctly submitted;

23 14. Establishment of standards for the coordination of medical
24 care and patient transfers;

1 15. Provision for the transition of patients between
2 participating providers and nonparticipating providers;

3 16. Provision for the transfer of members and persons who have
4 been determined eligible from hospitals which do not have contracts
5 to care for such persons;

6 17. Specification of enrollment procedures including, but not
7 limited to, notice to providers of enrollment. Such procedures may
8 provide for varying time limits for enrollment in different
9 situations;

10 18. Establishment of uniform forms and procedures to be used by
11 all participating providers;

12 19. Methods of identification of members to be used for
13 determining and reporting eligibility of members;

14 20. Establishment of a comprehensive eye care and dental care
15 system which:

16 a. includes practitioners as participating providers,

17 b. provides for quality care and reasonable and equal
18 access to such practitioners, and

19 c. provides for the development of service plans,
20 referral plans and consortiums which result in
21 referral practices that reflect timely, convenient and
22 cost-effective access to such care for members in both
23 rural and urban areas;

24

1 21. a. Development of a program for Medicaid eligibility and
2 services for individuals who are in need of breast or
3 cervical cancer treatment and who:

4 (1) have family incomes that are below one hundred
5 eighty-five percent (185%) of the federal poverty
6 level,

7 (2) have not attained the age of sixty-five (65)
8 years,

9 (3) have no or have inadequate health insurance or
10 health benefit coverage for treatment of breast
11 and cervical cancer, and

12 (4) meet the requirements for treatment and have been
13 screened for breast or cervical cancer.

14 b. The program shall include presumptive eligibility and
15 shall provide for treatment throughout the period of
16 time required for treatment of the individual's breast
17 or cervical cancer,

18 c. On or before July 1, 2002, the Oklahoma Health Care
19 Authority shall coordinate with the State Commissioner
20 of Health to develop procedures to implement the
21 program, contingent upon funds becoming available; and

22 22. Establishment of co-payments, premiums and enrollment fees,
23 and the establishment of policy for those members who do not pay co-
24 payments, premiums or enrollment fees.

1 C. Except for reinsurance obtained by providers, the Authority
2 shall coordinate benefits provided under the Oklahoma Medicaid
3 Program Reform Act of 2003 to any eligible person who is covered by
4 workers' compensation, disability insurance, a hospital and medical
5 service corporation, a health care services organization or other
6 health or medical or disability insurance plan, or who receives
7 payments for accident-related injuries, so that any costs for
8 hospitalization and medical care paid by the System are recovered
9 first from any other available third party payors. The System shall
10 be the payor of last resort for eligible persons.

11 D. Prior to the development of the plan of accounts and
12 controls required by this section and periodically thereafter, the
13 Authority shall compare the scope, utilization rates, utilization
14 control methods and unit prices of major health and medical services
15 provided in this state with health care services in other states to
16 identify any unnecessary or unreasonable utilization within the
17 System. The Authority shall periodically assess the cost
18 effectiveness and health implications of alternate approaches to the
19 provision of covered health and medical services through the System
20 in order to reduce unnecessary or unreasonable utilization.

21 E. The Authority may contract distinct administrative functions
22 to one or more persons or organizations who may be participating
23 providers within the System.

24

1 F. Contracts for managed health care plans, authorized pursuant
2 to paragraph 2 of subsection A of Section 1010.3 of this title and
3 necessary to implement the System, and other contracts entered into
4 prior to July 1, 1996, shall not be subject to the provisions of the
5 Oklahoma Central Purchasing Act.

6 G. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
7 promulgate rules:

8 1. Establishing appropriate competitive bidding criteria and
9 procedures for contracts awarded pursuant to the Oklahoma Medicaid
10 Program Reform Act of 2003;

11 2. Which provide for the withholding or forfeiture of payments
12 to be made to a participating provider by the Oklahoma Medicaid
13 Healthcare Options System for the failure of the participating
14 provider to comply with a provision of the participating provider's
15 contract with the System or with the provisions of promulgated rules
16 or law; and

17 3. Necessary to carry out the provisions of the Oklahoma
18 Medicaid Program Reform Act of 2003. Such rules shall consider the
19 differences between rural and urban conditions on the delivery of
20 hospitalization services, eye care, dental care and medical care.

21 SECTION 7. AMENDATORY 56 O.S. 2011, Section 1010.5, is
22 amended to read as follows:

23 Section 1010.5. As a condition of the contract with any
24 proposed or potential participating provider pursuant to the

1 Oklahoma Medicaid Program Reform Act of 2003, the Oklahoma Health
2 Care Authority shall require such contract terms as are necessary,
3 in its judgment, to ensure adequate performance by a participating
4 provider of the provisions of each contract executed pursuant to the
5 Oklahoma Medicaid Program Reform Act of 2003. Required contract
6 provisions shall include, but are not limited to:

7 1. The maintenance of deposits, performance bonds, financial
8 reserves or other financial providers which have posted other
9 security, equal to or greater than that required by the System, with
10 a state agency for the performance of managed care contracts if
11 funds would be available from such security for the System upon
12 default by the participating provider;

13 2. A requirement that whenever the state appropriates funds for
14 specific purposes, including, but not limited to, increases in
15 reimbursement rates, a participating provider and any subcontractor
16 shall apportion such funds pursuant to legislative directive;

17 3. Requirements that all records relating to contract
18 compliance shall be available for inspection by the Authority or are
19 submitted in accordance with rules promulgated by the Oklahoma
20 Health Care Authority ~~Board~~ Administrator and that such records be
21 maintained by the participating provider for five (5) years. Such
22 records shall also be made available by a participating provider on
23 request of the secretary of the United States Department of Health
24 and Human Services, or its successor agency;

1 4. Authorization for the Authority to directly assume the
2 operations of a participating provider under circumstances specified
3 in the contract. Operations of the participating provider shall be
4 assumed only as long as it is necessary to ensure delivery of
5 uninterrupted care to members enrolled with the participating
6 provider and accomplish the orderly transition of those members to
7 other providers participating in the System, or until the
8 participating provider reorganizes or otherwise corrects the
9 contract performance failure. The operations of a participating
10 provider shall not be assumed unless, prior to that action, notice
11 is delivered to the provider and an opportunity for a hearing is
12 provided; and

13 5. A requirement that, if the Authority finds that the public
14 health, safety or welfare requires emergency action, it may assume
15 the operations of the participating provider on notice to the
16 participating provider and pending an administrative hearing which
17 it shall promptly institute. Notice, hearings and actions pursuant
18 to this subsection shall be in accordance with Article II of the
19 Administrative Procedures Act.

20 SECTION 8. AMENDATORY 56 O.S. 2011, Section 1011.11, is
21 amended to read as follows:

22 Section 1011.11. A. The Oklahoma Health Care Authority shall
23 develop and implement, as funds become available, a durable medical
24 equipment retrieval program that will allow the Authority to:

1 1. Retrieve durable medical equipment, purchased with Medicaid
2 funds, from the Medicaid consumers who no longer utilize the
3 equipment; and

4 2. Donate such equipment to community-based programs that will
5 distribute the equipment to individuals who are disabled or elderly.

6 B. The Oklahoma Health Care Authority ~~Board~~ Authority shall
7 promulgate rules and establish procedures necessary to implement the
8 program established in this section.

9 C. For the purpose of this section, "durable medical equipment"
10 means equipment that is primarily and customarily used to serve a
11 medical purpose, can withstand repeated use and is appropriate for
12 use in the home.

13 SECTION 9. AMENDATORY 56 O.S. 2011, Section 1017.4, is
14 amended to read as follows:

15 Section 1017.4. A. The Oklahoma Health Care Authority is
16 directed to create a system of enrollment, Medicaid eligibility, and
17 certification for home- and community-based services provided by the
18 ADvantage Waiver Program that provides for presumptive Medicaid
19 eligibility and certification that is the same as that which exists
20 for nursing facilities as provided for in administrative rules
21 promulgated by the Oklahoma Health Care Authority ~~Board~~
22 Administrator. The system shall facilitate the provision of home-
23 and community-based services to persons at risk of placement in a
24

1 nursing facility but who elect to be served in a home- and
2 community-based setting in lieu of nursing facility services.

3 B. The Department of Human Services is directed to make such
4 changes in its regulations, policies and procedures as are necessary
5 to implement the enrollment, Medicaid eligibility, and certification
6 requirements established pursuant to subsection A of this section.

7 C. The Oklahoma Health Care Authority shall develop and submit
8 for approval no later than November 1, 2011, applications for
9 waivers or amendments to waivers of applicable federal laws and
10 regulations as necessary to implement the provisions of the Oklahoma
11 Choices for Long-Term Care Act. Copies of all waivers submitted to
12 the United States Centers for Medicare and Medicaid Services shall
13 be provided to the Governor, the Speaker of the Oklahoma House of
14 Representatives and the President Pro Tempore of the Oklahoma State
15 Senate within ten (10) days of their submissions. Waivers and
16 amendments to waivers approved by the United States Centers for
17 Medicare and Medicaid Services as provided in this section shall be
18 provided to the Governor, the Speaker of the Oklahoma House of
19 Representatives and the President Pro Tempore of the Oklahoma State
20 Senate within ten (10) days of their approval. The Oklahoma Health
21 Care Authority shall implement any waivers and amendments to waivers
22 approved by the United States Centers for Medicare and Medicaid
23 Services no later than January 1, 2012, or within sixty (60) days of
24 their approval. The Oklahoma Health Care Authority shall report the

1 savings as the result of the Oklahoma Choices for Long-Term Care Act
2 each year in its annual report.

3 SECTION 10. AMENDATORY 56 O.S. 2011, Section 1017.5, is
4 amended to read as follows:

5 Section 1017.5. A. On or before January 1, 2012, the Oklahoma
6 Health Care Authority shall initiate a Request for Proposal (RFP)
7 which shall outline specific expectations and requirements of
8 suppliers to competitively bid on administrative agent services for
9 the ADvantage Waiver Program. The RFP shall comply with all
10 requirements of The Oklahoma Central Purchasing Act related to state
11 procurement.

12 The RFP shall:

- 13 1. Require outsourcing of administrative agent services for a
14 period of one (1) year;
- 15 2. Outline minimum requirements;
- 16 3. Direct the Oklahoma Central Purchasing Office to award a
17 contract for administrative agent services;
- 18 4. Have a submission deadline of April 1, 2012;
- 19 5. Provide that the administrative agent contract award be
20 announced on May 15, 2012; and
- 21 6. Provide that the administrative agent contract awarded begin
22 July 1, 2012.

23 B. The State of Oklahoma shall not discriminate against
24 suppliers from states or nations outside Oklahoma and shall

1 reciprocate the bidding preference given by other states or nations
2 to suppliers domiciled in their jurisdictions for acquisitions
3 pursuant to The Oklahoma Central Purchasing Act. The state shall
4 give preference to a resident bidder over other state or foreign
5 bidders if goods or services provided in this state are equal in
6 price, fitness, availability or quality.

7 C. Suppliers shall be required to have comprehensive experience
8 in the administration of a Medicaid home- and community-based
9 service delivery system for elders in frail health and adults with
10 disabilities. The administrative agent contract shall be awarded to
11 one supplier based on qualification, merit and cost competitiveness
12 and evaluation criteria that include:

- 13 1. Qualifications and experience in providing similar services;
- 14 2. Knowledge and technical competence;
- 15 3. Management, key personnel and other professional

16 certifications;

- 17 4. Timeliness and responsiveness of services;
- 18 5. Detailed budget/costs;
- 19 6. Proposal for management and administration with detailed

- 20 description of:
- 21 a. administrative structures that shall be in place prior
22 to contract implementation to support the scope of
23 services,
 - 24 b. processes and procedures for daily operations,

- c. expected outcomes along with the performance measures used to measure the effectiveness of each function,
- d. description of data collection methods and reporting mechanisms,
- e. methods used to collaborate and communicate with members, service providers, local and state health and human service agencies, regulatory agencies, and other stakeholders, and
- f. detailed description and supporting documentation of how each waiver assurance will be met.

D. State employees currently performing such function shall be allowed to compete by submitting a bid to perform the administrative agency functions required in the day-to-day operations of the ADvantage Waiver Program; provided, however, that any and all such bids shall be submitted to and certified by the Oklahoma Health Care Authority, who shall for purposes of this section constitute the "agency" as such term is defined in the Oklahoma Privatization of State Functions Act.

E. The Oklahoma Health Care Authority ~~Board~~ Administrator shall promulgate rules and establish procedures necessary to implement the request for proposals and for the administration of the ADvantage Waiver Program pursuant to this section.

SECTION 11. AMENDATORY 56 O.S. 2011, Section 198.11a, is amended to read as follows:

1 Section 198.11a. A. The Aging Services Division within the
2 Department of Human Services, upon the approval of the Centers for
3 Medicare and Medicaid Services, shall establish the Oklahoma
4 Consumer-Directed Personal Assistance and Support Services (Oklahoma
5 CD-PASS) Demonstration Program. The purpose of the Oklahoma
6 Consumer-Directed Personal Assistance and Support Services
7 Demonstration Program shall be to enhance the range of choices and
8 options for Medicaid-eligible consumers, on a voluntary basis, who
9 require long-term care support services, and to assist families with
10 a Medicaid-eligible member who requires long-term care support
11 services to arrange and purchase their own personal care and related
12 services.

13 B. The Oklahoma Consumer-Directed Personal Assistance and
14 Support Services Demonstration Program includes, but is not limited
15 to, the following types of services:

- 16 1. a. Basic services, such as getting a recipient in and out
17 of a bed or in or out of a wheelchair or motorized
18 chair, or both,
- 19 b. Assisting with certain bodily functions, such as
20 bathing and personal hygiene, dressing and grooming,
21 and feeding including preparation and cleanup;
- 22 2. Ancillary services such as shopping and cleaning;
- 23 3. Companion-type services such as transportation, letter
24 writing and reading; and

1 4. Any other service requested by the eligible recipient
2 needing care and services.

3 C. 1. In developing the Oklahoma Consumer-Directed Personal
4 Assistance and Support Services Demonstration Program, the Aging
5 Services Division shall develop guidelines, eligibility criteria,
6 program performance standards, and techniques to evaluate the
7 outcomes of the Oklahoma Consumer-Directed Personal Assistance and
8 Support Services Demonstration Program.

9 2. The Demonstration Program, at a minimum, shall have the
10 following requirements:

11 a. the cost in the aggregate of the services offered
12 through the CD-PASS Program care plan shall be equal
13 to or less than the average cost of the Advantage
14 Waiver Program service or personal care plan as
15 applicable,

16 b. the baseline level of consumer satisfaction shall be
17 measured by an independent third party prior to
18 initiation of the Demonstration Program,

19 c. the scope of services offered within the CD-PASS
20 Program shall comply with current state statutes and
21 rules, and federal regulations, and

22 d. program evaluation which shall include an indication
23 of whether:
24

- 1 (1) consumer satisfaction for CD-PASS Program
2 participants is higher than or equal to consumer
3 satisfaction for Advantage Waiver Program
4 clients, as measured by an independent third
5 party, and
- 6 (2) the percentage of delivered hours of the CD-PASS
7 Program client care plan are greater than or
8 equal to the percentage of delivered hours of the
9 Advantage Waiver Program service or personal care
10 plan.

11 D. The Aging Services Division may:

12 1. Consult with various federal, state and local entities in
13 order to fulfill the purposes of the Oklahoma Consumer-Directed
14 Personal Assistance and Support Services Demonstration Program;

15 2. Contract with entities in fulfilling the purposes of the
16 Oklahoma Consumer-Directed Personal Assistance and Support Services
17 Demonstration Program; and

18 3. Upon the approval of the Centers for Medicare and Medicaid
19 Services and the availability of funds, expand the Oklahoma
20 Consumer-Directed Personal Assistance and Support Services
21 Demonstration Program statewide if the evaluation provided for in
22 subsection C of this section demonstrates consumer satisfaction with
23 and cost effectiveness in the delivery of the Program.

1 E. The Commission for Human Services and the Oklahoma Health
2 Care Authority ~~Board~~ Administrator shall promulgate any rules
3 necessary to implement the provisions of the Oklahoma Consumer-
4 Directed Personal Assistance and Support Services Act.

5 SECTION 12. AMENDATORY 56 O.S. 2011, Section 198.16, is
6 amended to read as follows:

7 Section 198.16. A. In order to implement the Oklahoma Self-
8 Directed Care Act:

9 1. The Oklahoma Health Care Authority ~~Board~~ Administrator and
10 the Commission for Human Services are hereby authorized to
11 promulgate rules necessary to enact the provisions of this act;

12 2. The Oklahoma Health Care Authority shall take all actions
13 necessary to ensure state compliance with federal regulations;

14 3. The Authority shall apply for any necessary federal waivers
15 or waiver amendments required to implement the program;

16 4. The Legislature intends that, as consumers relocate from
17 institutional settings to community-based options, funds used to
18 serve consumers in institutional settings shall follow consumers to
19 cover the cost of community-based services; and

20 5. The Department of Human Services or other applicable state
21 entity for the population served may develop an electronic benefit
22 transfer feature for the provision of self-directed care services to
23 consumers.

24

1 B. The Oklahoma Self-Directed Care Act, at a minimum, shall
2 meet the following requirements:

3 1. The cost in the aggregate of the services offered through
4 the self-directed care plan shall be equal to or less than the cost
5 of a home- and community-based waiver or comparable waiver program;

6 2. The baseline level of consumer satisfaction shall be
7 measured by a third party prior to initiation of the Oklahoma Self-
8 Directed Care Act;

9 3. The scope of services offered within the Self-Directed Care
10 Program shall comply with current state statutes and rules, and
11 federal regulations; and

12 4. Program evaluation which shall include an indication of
13 whether consumer satisfaction for Self-Directed Care Program
14 consumers is higher than or equal to consumer satisfaction for home-
15 and community-based waiver clients or other comparable waiver
16 programs, as measured by a third party.

17 C. Upon the approval of the Centers for Medicare and Medicaid
18 Services and the availability of funds, the Authority and the
19 Department shall implement the Self-Directed Care Program statewide
20 if the evaluation provided for in subsection B of this section
21 demonstrates consumer satisfaction with and cost-effectiveness in
22 the delivery of the program.

23 D. The Authority and the Department shall conduct a feasibility
24 study on the future design and implementation of expanding the home-

1 and community-based waiver program to include additional people with
2 developmental disabilities, spinal cord injury or traumatic brain
3 injury; provided, however, before allocating any new monies to such
4 program, the Department and the Authority shall prepare and submit
5 to the Legislature the results of the feasibility study and a fiscal
6 impact statement.

7 E. The Authority and the Department of Human Services shall
8 each, on an ongoing basis, review and assess the implementation of
9 the Self-Directed Care Program. By January 15 of each year, the
10 Authority shall submit a written report to the Governor and
11 Legislature that includes each agency's review of the program.

12 F. The Department of Human Services shall appoint a committee
13 to assist the Department in the development of waivers and rules
14 related to self-directed services, including the functional needs
15 assessment used for determination of eligibility for the Self-
16 Directed Services program. The committee shall be composed of two
17 self advocates or adults with developmental disabilities; two
18 parents or family members of consumers; two advocates; two
19 representatives of an agency providing Developmental Disabilities
20 Services Division waiver services; one representative from the
21 Oklahoma Parent Center; and one representative from the University
22 of Oklahoma Health Sciences Center for Learning and Leadership. The
23 committee shall sunset no later than four (4) years after
24 implementation of programs indicated in this act. The Governor,

1 President Pro Tempore of the Senate and the Speaker of the House of
2 Representatives shall each appoint an at-large representative to the
3 Committee.

4 The Authority is hereby directed to modify the state Medicaid
5 program Personal Care Program to allow any person to self-direct his
6 or her own personal care services who:

- 7 1. Is eligible to receive Personal Care Program services;
- 8 2. Chooses to receive Personal Care Program services; and
- 9 3. Is able to direct his or her own care or to designate an
10 eligible representative to assist in directing such care.

11 SECTION 13. AMENDATORY 56 O.S. 2011, Section 198.17, is
12 amended to read as follows:

13 Section 198.17. A. The Oklahoma Health Care Authority, the
14 Department of Human Services and the Department of Mental Health and
15 Substance Abuse Services, in cooperation with community
16 stakeholders, shall develop a prescreening process to be utilized
17 prior to an individual being admitted to a nursing facility or
18 within twenty (20) days of admission to such a facility. The
19 purpose of the screening process shall be to ensure that individuals
20 who wish to avoid placement in a nursing facility have access to
21 supports necessary to remain in the community. The prescreening
22 process shall include, but not be limited to, the use of the
23 following tools:

24

- 1 1. Resident Assessment Instrument - Minimum Data Set (RAI-MDS),
- 2 as designated by the Centers for Medicare and Medicaid Services;
- 3 2. Universal Comprehensive Assessment Tool (UCAT);
- 4 3. Preadmission Screening and Annual Resident Review (PASARR);
- 5 4. Inventory for Client and Agency Planning (ICAP); and
- 6 5. Uniform Case Assessment Protocol (UCAP).

7 B. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
8 promulgate rules necessary to implement the prescreening process
9 developed pursuant to this section, provided funding is made
10 available to implement the process.

11 SECTION 14. AMENDATORY 63 O.S. 2011, Section 3250.9, is
12 amended to read as follows:

13 Section 3250.9. The Oklahoma Health Care Authority ~~Board~~
14 Administrator shall submit an application for any waiver necessary
15 to authorize Medicaid supplements to hospital districts to the
16 extent permitted by federal law and pursuant to the Oklahoma
17 Community Hospitals Public Trust Authorities Act.

18 SECTION 15. AMENDATORY 63 O.S. 2011, Section 5000.24, is
19 amended to read as follows:

20 Section 5000.24. A. The Oklahoma Health Care Authority,
21 following directives of and upon approval of the Health Care
22 Financing Administration, is directed to implement a Medicaid Buy-In
23 Program for persons with disabilities, if funds become available.
24 Components of such program shall include, but not be limited to:

1 1. Allowing individuals with disabilities who are sixteen (16)
2 years of age and over, but under sixty-five (65) years of age, and
3 who, except for earned income, would be eligible to receive
4 Supplemental Security Income (SSI) benefits, regardless of whether
5 they have ever received Supplemental Security Income (SSI) cash
6 benefits, the option of purchasing Medicaid coverage that will
7 enable individuals with disabilities to gain and/or maintain
8 employment and reduce their dependency on existing cash benefit
9 programs;

10 2. Removing work disincentives that inhibit individuals with
11 disabilities from engaging in work that is commensurate with their
12 abilities and capabilities;

13 3. Developing an infrastructure within and outside state
14 government that supports efforts to enhance employment opportunities
15 for individuals with disabilities; and

16 4. Ensuring meaningful input in the design, implementation, and
17 evaluation of programs, policies, and procedures developed under
18 such program by individuals with disabilities and other interested
19 parties.

20 B. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
21 promulgate any rules necessary to implement provisions of the
22 Oklahoma Ticket to Work and Work Incentives Improvement Act
23 regarding the Medicaid Buy-In Program.

1 SECTION 16. AMENDATORY 63 O.S. 2011, Section 5005, is
2 amended to read as follows:

3 Section 5005. For purposes of the Oklahoma Health Care
4 Authority Act:

5 1. "Administrator" means the chief executive officer of the
6 Authority;

7 2. "Authority" means the Oklahoma Health Care Authority;

8 3. ~~"Board" means the Oklahoma Health Care Authority Board;~~

9 ~~4.~~ "Health services provider" means health insurance carriers,
10 pre-paid health plans, hospitals, physicians and other health care
11 professionals, and other entities who contract with the Authority
12 for the delivery of health care services to state and education
13 employees and persons covered by the state Medicaid program; and

14 ~~5.~~ 4. "State-purchased health care" or "state-subsidized health
15 care" means medical and health care, pharmaceuticals and medical
16 equipment purchased with or supported by state and federal funds
17 through the Oklahoma Health Care Authority, the Department of Mental
18 Health and Substance Abuse Services, the State Department of Health,
19 the Department of Human Services, the Department of Corrections, the
20 Department of Veterans Affairs, other state agencies administering
21 state-purchased or state-subsidized health care programs, the
22 Oklahoma State Regents for Higher Education, the State Board of
23 Education and local school districts.

24

1 SECTION 17. AMENDATORY 63 O.S. 2011, Section 5007.1, is
2 amended to read as follows:

3 Section 5007.1. A. This act shall be known and may be cited as
4 the "Oklahoma Medicaid Accountability and Outcomes Act".

5 B. 1. Subject to the availability of funds, the Joint
6 Legislative Oversight Committee for the Oklahoma Health Care
7 Authority shall enter into a contract for a study of the Oklahoma
8 Medicaid Program. The contract shall be executed with an
9 organization having nationally recognized expertise in the area of
10 health care and health care service delivery.

11 2. The study shall include the entire Oklahoma Medicaid
12 Program, including the Medicaid managed care programs and services
13 delivered pursuant to the Oklahoma Medicaid Program Reform Act of
14 2003.

15 3. The purpose of the study shall be to evaluate access to
16 care, health care outcomes, and the quality and cost of health care
17 and related services delivered through the Oklahoma Medicaid
18 Program.

19 4. A report of the study and findings shall be made to the
20 Oklahoma Health Care Authority ~~Board~~ Administrator, the Governor,
21 and the appropriate committees of the Oklahoma State Senate and the
22 Oklahoma House of Representatives.

23 SECTION 18. AMENDATORY 63 O.S. 2011, Section 5008, is
24 amended to read as follows:

1 Section 5008. A. The Administrator of the Authority shall have
2 the training and experience necessary for the administration of the
3 Authority, ~~as determined by the Oklahoma Health Care Authority~~
4 ~~Board,~~ including, but not limited to, prior experience in the
5 administration of managed health care. The Administrator shall
6 serve at the pleasure of the ~~Board~~ Governor.

7 B. The Administrator of the Oklahoma Health Care Authority
8 shall be the chief executive officer of the Authority and shall act
9 for the Authority in all matters except as may be otherwise provided
10 by law. The powers and duties of the Administrator shall include
11 but not be limited to:

12 1. Supervision of the activities of the Authority;

13 2. Formulation ~~and recommendation~~ of rules ~~for approval or~~
14 ~~rejection by the Oklahoma Health Care Authority Board and~~
15 ~~enforcement of rules and standards promulgated by the Board;~~

16 3. Preparation of the plans, reports and proposals required by
17 the Oklahoma Health Care Authority Act, Section 5003 et seq. of this
18 title, other reports as necessary and appropriate, and an annual
19 budget ~~for the review and approval of the Board;~~

20 4. Employment of such staff as may be necessary to perform the
21 duties of the Authority including but not limited to an attorney to
22 provide legal assistance to the Authority for the state Medicaid
23 program; and

24 5. Establishment of a contract bidding process which:

- 1 a. encourages competition among entities contracting with
2 the Authority for state-purchased and state-subsidized
3 health care; provided, however, the Authority may make
4 patient volume adjustments to any managed care plan
5 whose prime contractor is a state-sponsored,
6 nationally accredited medical school. The Authority
7 may also make education or research supplemental
8 payments to state-sponsored, nationally accredited
9 medical schools based on the level of participation in
10 any managed care plan by managed care plan
11 participants,
- 12 b. coincides with the state budgetary process, and
- 13 c. specifies conditions for awarding contracts to any
14 insuring entity.

15 C. The Administrator may appoint advisory committees as
16 necessary to assist the Authority with the performance of its duties
17 or to provide the Authority with expertise in technical matters.

18 SECTION 19. AMENDATORY 63 O.S. 2011, Section 5015.1, is
19 amended to read as follows:

20 Section 5015.1. A. The Oklahoma Health Care Authority ~~Board~~
21 Administrator shall establish a legal division or unit in the
22 Oklahoma Health Care Authority. The Administrator of the Oklahoma
23 Health Care Authority may employ attorneys as needed, which may be
24 on full-time and part-time basis. Provided the Oklahoma Health Care

1 Authority shall not exceed the authorized full-time equivalent limit
2 for attorneys as specified by the Legislature in the appropriations
3 bill for the Authority. Except as otherwise provided by this
4 section, such attorneys, in addition to advising the ~~Board,~~
5 Administrator and Authority personnel on legal matters, may appear
6 for and represent the ~~Board,~~ Administrator and Authority in legal
7 actions and proceedings.

8 B. The Legislature shall establish full-time-equivalent limits
9 for attorneys employed by the Oklahoma Health Care Authority.

10 C. It shall continue to be the duty of the Attorney General to
11 give official opinions to the ~~Board,~~ Administrator and Authority,
12 and to prosecute and defend actions therefor, if requested to do so.
13 The Attorney General may levy and collect costs, expenses of
14 litigation and a reasonable attorney fee for such legal services
15 from the Authority. The Attorney General is authorized to levy and
16 collect costs, expenses and fees which exceed the costs associated
17 with the salary and benefits of one attorney FTE position per fiscal
18 year.

19 D. The ~~Board,~~ Administrator or Authority shall not contract for
20 representation by private legal counsel unless approved by the
21 Attorney General. Such contract for private legal counsel shall be
22 in the best interests of the state.

23 E. 1. The Attorney General shall be notified by the ~~Board~~
24 Administrator or its counsel of all lawsuits against the Authority,

1 its officers or employees that seek injunctive relief which would
2 impose obligations requiring the expenditure of funds in excess of
3 unencumbered monies in the agency's appropriations or beyond the
4 current fiscal year.

5 2. The Attorney General shall review any such cases and may
6 represent the interests of the state, if the Attorney General
7 considers it to be in the best interest of the state to do so, in
8 which case the Attorney General shall be paid as provided in
9 subsection C of this section. Representation of multiple defendants
10 in such actions may, at the discretion of the Attorney General, be
11 divided with counsel for the ~~Board~~, Administrator and Authority as
12 necessary to avoid conflicts of interest.

13 SECTION 20. AMENDATORY 63 O.S. 2011, Section 5017, as
14 amended by Section 524, Chapter 304, O.S.L. 2012 (63 O.S. Supp.
15 2018, Section 5017), is amended to read as follows:

16 Section 5017. There is hereby created in the State Treasury a
17 fund for the Oklahoma Health Care Authority to be designated the
18 "Oklahoma Health Care Authority Federal Disallowance Fund". The
19 fund shall be a continuing fund, not subject to fiscal year
20 limitations. It shall consist of monies received by the Oklahoma
21 Health Care Authority which, in the opinion of the Oklahoma Health
22 Care Authority ~~Board~~ Administrator, may be subject to federal
23 disallowances and interest which may accrue on said receipts. All
24 monies accruing to the credit of said fund are hereby appropriated

1 and may be budgeted and expended by the Oklahoma Health Care
2 Authority at the discretion of the Oklahoma Health Care Authority
3 ~~Board~~ Administrator for eventual settlement of the appropriate
4 pending disallowances. Expenditures from said fund shall be made
5 upon warrants issued by the State Treasurer against claims filed as
6 prescribed by law with the Director of the Office of Management and
7 Enterprise Services for approval and payment.

8 The Administrator of the Oklahoma Health Care Authority may
9 request the Director of the Office of Management and Enterprise
10 Services to transfer monies between the Oklahoma Health Care
11 Authority Federal Disallowance Fund and any other fund of the
12 authority, as needed for the expenditure of funds.

13 SECTION 21. AMENDATORY 63 O.S. 2011, Section 5020, as
14 amended by Section 525, Chapter 304, O.S.L. 2012 (63 O.S. Supp.
15 2018, Section 5020), is amended to read as follows:

16 Section 5020. There is hereby created in the State Treasury a
17 fund for the Oklahoma Health Care Authority to be designated the
18 "Oklahoma Health Care Authority Medicaid Program Fund". The fund
19 shall be a continuing fund, not subject to fiscal year limitations.
20 All monies accruing to the credit of said fund are hereby
21 appropriated and may be budgeted and expended by the Oklahoma Health
22 Care Authority at the discretion of the Oklahoma Health Care
23 Authority ~~Board~~ Administrator. Expenditures from said fund shall be
24 made upon warrants issued by the State Treasurer against claims

1 filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

3 The Administrator of the Oklahoma Health Care Authority may
4 request the Director of the Office of Management and Enterprise
5 Services to transfer monies between the Oklahoma Health Care
6 Authority Medicaid Program Fund and any other fund of the Authority,
7 as needed for the expenditure of funds.

8 SECTION 22. AMENDATORY 63 O.S. 2011, Section 5024, is
9 amended to read as follows:

10 Section 5024. A. 1. Effective July 1, 2001, the Oklahoma
11 Health Care Authority is authorized to offer to eligible contracted
12 incorporated physician providers, elective income deferral programs
13 which can result in federal income tax advantages and other
14 advantages to such providers and their employees. These deferral
15 programs shall take into account present and future provisions of
16 the United States Internal Revenue Code which now or in the future
17 might have the beneficial effect of magnifying the after-tax value
18 payments made by the state to incorporated physician providers.

19 2. The Oklahoma Health Care Authority may adopt a plan that
20 provides for the investment of deferral amounts in life insurance or
21 annuity contracts which offer a choice of underlying investment
22 options. Contract-issuing companies shall be limited to companies
23 that are licensed to do business in this state.

24

1 3. As a condition of participation in these income deferral
2 programs, all participating incorporated physician providers shall
3 be subject to provisions for forfeiture of benefits for failure to
4 maintain in force a Medicaid provider agreement and to furnish
5 services to Medicaid recipients for a specified duration.

6 B. The Oklahoma Health Care Authority may consult with the
7 State Treasurer and the Attorney General of the state for advice in
8 establishing the program.

9 C. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
10 have the authority to promulgate rules regarding the operation of
11 the program.

12 SECTION 23. AMENDATORY 63 O.S. 2011, Section 5026, is
13 amended to read as follows:

14 Section 5026. A. The Oklahoma Health Care Authority ~~Board~~
15 Administrator shall, in administering the Medicaid prescription drug
16 program, utilize the following definition for "phenylketonuria" to
17 mean: An inborn error of metabolism attributable to a deficiency of
18 or a defect in phenylalanine hydroxylase, the enzyme that catalyzes
19 the conversion of phenylalanine to tyrosine. The deficiency permits
20 the accumulation of phenylalanine and its metabolic products in the
21 body fluids. The deficiency can result in mental retardation
22 (phenylpyruvic oligophrenia), neurologic manifestations (including
23 hyperkinesia, epilepsy, and microcephaly), light pigmentation, and
24

1 eczema. The disorder is transmitted as an autosomal recessive trait
2 and can be treated by administration of a diet low in phenylalanine.

3 B. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
4 promulgate any rules necessary to effectuate the provisions of this
5 section.

6 SECTION 24. AMENDATORY 63 O.S. 2011, Section 5027, is
7 amended to read as follows:

8 Section 5027. A. As used in this section "health care
9 district" means a subordinate health care entity that better
10 promotes efficient administration of health care service delivery
11 for counties with a population of one hundred thousand (100,000) or
12 less to eligible persons in this state.

13 B. A locally designated health care district shall:

14 1. Coordinate the delivery of health care services in local
15 jurisdictions such as municipalities and counties; provided,
16 however, jurisdictions containing multiple areas shall be contiguous
17 and shall possess commonality as it relates to need;

18 2. Be authorized to adjust Medicaid provider rates above the
19 state minimum established by the Oklahoma Health Care Authority;

20 3. Be authorized to contract with employer-sponsored health
21 plans or private health plans to provide services to Medicaid and
22 indigent beneficiaries; and

23 4. Be authorized to expand health care services or health care
24 providers within health care districts.

1 C. Health care districts may be established by local
2 communities wherein locally generated tax dollars are received for
3 the benefit of local hospitals or other local health care services.
4 The districts shall have the same boundaries as the area over which
5 the locally assessed tax is levied.

6 D. Health care districts may be established by the governing
7 boards of the hospitals located within the area over which the
8 locally assessed tax for the benefit of the local hospital or other
9 local health care service is levied. The governing board of the
10 hospital shall be the governing board of the local health care
11 district.

12 E. 1. Each health care district may certify to the Oklahoma
13 Health Care Authority the amount of funds generated by tax
14 assessment within the health care district for the benefit of the
15 local hospital or other local health care services.

16 2. The Authority shall submit such information to the Centers
17 for Medicare and Medicaid Services (CMS) for the purpose of applying
18 for federal matching funds. The Authority shall submit any
19 necessary applications for waivers to accomplish the provisions of
20 this act.

21 F. The Oklahoma Health Care Authority ~~Board~~ Administrator is
22 hereby directed to promulgate rules to enact the provisions of this
23 section. The rules shall, at a minimum, address:
24

1 1. Internal establishment of local health care district
2 accounts within the Authority including, but not limited to,
3 procedures for remitting funds out of such accounts back to the
4 local health care district; and

5 2. Methods for certifying funds for each local health care
6 district and for reporting such amounts to the Centers for Medicare
7 and Medicaid Services for federal matching purposes. The revenue
8 for each health care district account shall consist of federal
9 matching dollars received for such certified funds.

10 The Oklahoma Health Care Authority shall apply for federal
11 matching funds based on the amount of funds certified by the local
12 health care district for such purposes. The Authority shall not
13 reduce the amount of disbursements otherwise due to a health care
14 district based on the health care district's receipt of the local
15 area dedicated monies and any attributable federal matching funds;
16 and

17 3. Procedures for continuing the Authority's claims payment
18 function, pursuant to a draw-down process for funds, for each
19 Medicaid service within the local health care district.

20 SECTION 25. AMENDATORY Section 1, Chapter 244, O.S.L.
21 2015 (63 O.S. Supp. 2018, Section 5028), is amended to read as
22 follows:

23 Section 5028. A. The Oklahoma Health Care Authority shall
24 initiate requests for proposals for care coordination models for

1 aged, blind and disabled persons. Care coordination models for
2 members receiving institutional care shall be phased in two (2)
3 years after the initial enrollment period of a care coordination
4 program.

5 B. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
6 promulgate rules to implement the provisions of this act.

7 SECTION 26. AMENDATORY Section 1, Chapter 208, O.S.L.
8 2017 (63 O.S. Supp. 2018, Section 5028.1), is amended to read as
9 follows:

10 Section 5028.1. A. The Oklahoma Health Care Authority, with
11 assistance from the Department of Human Services and the Department
12 of Mental Health and Substance Abuse Services, shall initiate a
13 request for information for care coordination models for newborns
14 through children eighteen (18) years of age in the custody of the
15 Department of Human Services.

16 B. Any request for information shall require consideration of
17 and incorporate efforts to continue the implementation of relevant
18 initiatives as provided by the Master Settlement Agreement
19 ("Pinnacle Plan") and administered by the Department of Human
20 Services.

21 C. The Oklahoma Health Care Authority, with assistance from the
22 Department of Human Services and the Department of Mental Health and
23 Substance Abuse Services, shall provide a summary of the request for
24 information responses to the President Pro Tempore of the Oklahoma

1 State Senate, the Speaker of the Oklahoma House of Representatives
2 and the Governor on or before January 1, 2018.

3 D. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
4 promulgate rules to implement the provisions of this section.

5 SECTION 27. AMENDATORY Section 1, Chapter 324, O.S.L.
6 2015 (63 O.S. Supp. 2018, Section 5029), is amended to read as
7 follows:

8 Section 5029. A. The Oklahoma Health Care Authority shall
9 coordinate with domestic violence sexual assault programs certified
10 by the Office of the Attorney General who provide counseling
11 services for victims of domestic violence to ensure that any
12 information relating to billing or explanation of benefits (EOB)
13 provided, maintained, monitored or otherwise handled by the
14 Authority or any other state agency including, but not limited to,
15 services rendered by such facilities, is not sent by paper mail to
16 the actual physical address of persons receiving such services.

17 B. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
18 promulgate rules to implement the provisions of this act.

19 SECTION 28. AMENDATORY 63 O.S. 2011, Section 5030.1, is
20 amended to read as follows:

21 Section 5030.1. A. There is hereby created within the Oklahoma
22 Health Care Authority the Medicaid Drug Utilization Review Board,
23 which shall be responsible for the development, implementation and
24

1 assessment of retrospective and prospective drug utilization
2 programs under the direction of the Authority.

3 B. The Medicaid Drug Utilization Review Board shall consist of
4 ten (10) members appointed by the administrator of the Authority as
5 follows:

6 1. Four physicians, licensed and actively engaged in the
7 practice of medicine or osteopathic medicine in this state, of
8 which:

9 a. three shall be physicians chosen from a list of not
10 less than six names submitted by the Oklahoma State
11 Medical Association, and

12 b. one shall be a physician chosen from a list of not
13 less than two names submitted by the Oklahoma
14 Osteopathic Association;

15 2. Four licensed pharmacists actively engaged in the practice
16 of pharmacy, chosen from a list of not less than six names submitted
17 by the Oklahoma Pharmaceutical Association;

18 3. One person representing the lay community, who shall not be
19 a physician or a pharmacist, but shall be a health care professional
20 with recognized knowledge and expertise in at least one of the
21 following:

22 a. clinically appropriate prescribing of covered
23 outpatient drugs,

24

- b. clinically appropriate dispensing and monitoring of covered outpatient drugs,
- c. drug use review, evaluation and intervention, and
- d. medical quality assurance; and

4. One person representing the pharmaceutical industry who is a resident of the State of Oklahoma, chosen from a list of not less than two names submitted by the Pharmaceutical Research and Manufacturers of America. The member representing the pharmaceutical industry shall be prohibited from voting on action items involving drugs or classes of drugs.

C. Members shall serve terms of three (3) years, except that one physician, one pharmacist and the lay representative shall each be initially appointed for two-year terms in order to stagger the terms. In making the appointments, the administrator shall provide, to the extent possible, for geographic balance in the representation on the Medicaid Drug Utilization Review Board. Members may be reappointed for a period not to exceed three three-year terms and one partial term. Vacancies on the Medicaid Drug Utilization Review Board shall be filled for the balance of the unexpired term from new lists submitted by the entity originally submitting the list for the position vacated.

D. The Medicaid Drug Utilization Review Board shall elect from among its members a chair and a vice-chair who shall serve one-year terms, provided they may succeed themselves.

1 E. The proceedings of all meetings of the Medicaid Drug
2 Utilization Review Board shall comply with the provisions of the
3 Oklahoma Open Meeting Act and shall be subject to the provisions of
4 the Administrative Procedures Act.

5 F. The Medicaid Drug Utilization Review Board may advise and
6 make recommendations to the Authority regarding existing, proposed
7 and emergency rules governing retrospective and prospective drug
8 utilization programs. The Oklahoma Health Care Authority ~~Board~~
9 Administrator shall promulgate rules pursuant to the provisions of
10 the Administrative Procedures Act for implementation of the
11 provisions of this section.

12 SECTION 29. AMENDATORY 63 O.S. 2011, Section 5030.3, is
13 amended to read as follows:

14 Section 5030.3. A. The Medicaid Drug Utilization Review Board
15 shall have the power and duty to:

16 1. Advise and make recommendations regarding rules promulgated
17 by the Oklahoma Health Care Authority ~~Board~~ Administrator to
18 implement the provisions of this act;

19 2. Oversee the development, implementation and assessment of a
20 Medicaid retrospective and prospective drug utilization review
21 program, including making recommendations regarding contractual
22 agreements of the Oklahoma Health Care Authority with any entity
23 involved in processing and reviewing Medicaid drug profiles for the
24

1 drug utilization review program in accordance with the provisions of
2 this act;

3 3. Develop and apply the criteria and standards to be used in
4 retrospective and prospective drug utilization review. The criteria
5 and standards shall be based on the compendia and federal Food and
6 Drug Act approved labeling, and shall be developed with professional
7 input;

8 4. Provide a period for public comment on each meeting agenda.
9 As necessary, the Medicaid Drug Utilization Review Board may include
10 a public hearing as part of a meeting agenda to solicit public
11 comment regarding proposed changes in the prior authorization
12 program and the retrospective and prospective drug utilization
13 review processes. Notice of proposed changes to the prior
14 authorization status of a drug or drugs shall be included in the
15 monthly meeting agenda at least thirty (30) days prior to the
16 consideration or recommendation of any proposed changes in prior
17 authorization by the Medicaid Drug Utilization Review Board;

18 5. Establish provisions to timely reassess and, as necessary,
19 revise the retrospective and prospective drug utilization review
20 process;

21 6. Make recommendations regarding the prior authorization of
22 prescription drugs pursuant to the provisions of Section 5 of this
23 act; and
24

1 7. Provide members of the provider community with educational
2 opportunities related to the clinical appropriateness of
3 prescription drugs.

4 B. Any party aggrieved by a decision of the ~~Oklahoma Health~~
5 ~~Care Authority Board or the~~ Administrator of the Oklahoma Health
6 Care Authority, pursuant to a recommendation of the Medicaid Drug
7 Utilization Review Board, shall be entitled to an administrative
8 hearing before the Oklahoma Health Care Authority ~~Board~~ pursuant to
9 the provisions of the Administrative Procedures Act.

10 SECTION 30. AMENDATORY 63 O.S. 2011, Section 5030.4, is
11 amended to read as follows:

12 Section 5030.4. 1. The Medicaid Drug Utilization Review Board
13 shall develop and recommend to the Oklahoma Health Care Authority
14 ~~Board~~ Administrator a retrospective and prospective drug utilization
15 review program for medical outpatient drugs to ensure that
16 prescriptions are appropriate, medically necessary, and not likely
17 to result in adverse medical outcomes.

18 2. The retrospective and prospective drug utilization review
19 program shall be operated under guidelines established by the
20 Medicaid Drug Utilization Review Board as follows:

21 a. The retrospective drug utilization review program
22 shall be based on guidelines established by the
23 Medicaid Drug Utilization Review Board using the
24

1 mechanized drug claims processing and information
2 retrieval system to analyze claims data in order to:

3 (1) identify patterns of fraud, abuse, gross overuse
4 or underuse, and inappropriate or medically
5 unnecessary care,

6 (2) assess data on drug use against explicit
7 predetermined standards that are based on the
8 compendia and other sources for the purpose of
9 monitoring:

10 (a) therapeutic appropriateness,

11 (b) overutilization or underutilization,

12 (c) appropriate use of generic drugs,

13 (d) therapeutic duplication,

14 (e) drug-disease contraindications

15 (f) drug-drug interactions,

16 (g) incorrect drug dosage,

17 (h) duration of drug treatment, and

18 (i) clinical abuse or misuse, and

19 (3) introduce remedial strategies in order to improve
20 the quality of care and to conserve program funds
21 or personal expenditures.

22 b. (1) The prospective drug utilization review program
23 shall be based on guidelines established by the
24 Medicaid Drug Utilization Review Board and shall

1 provide that, before a prescription is filled or
2 delivered, a review will be conducted by the
3 pharmacist at the point of sale to screen for
4 potential drug therapy problems resulting from:

- 5 (a) therapeutic duplication,
- 6 (b) drug-drug interactions,
- 7 (c) incorrect drug dosage or duration of drug
8 treatment,
- 9 (d) drug-allergy interactions, and
- 10 (e) clinical abuse or misuse.

11 (2) In conducting the prospective drug utilization
12 review, a pharmacist may not alter the prescribed
13 outpatient drug therapy without the consent of
14 the prescribing physician or purchaser.

15 SECTION 31. AMENDATORY 63 O.S. 2011, Section 5030.5, as
16 last amended by Section 1, Chapter 306, O.S.L. 2015 (63 O.S. Supp.
17 2018, Section 5030.5), is amended to read as follows:

18 Section 5030.5. A. Except as provided in subsection F of this
19 section, any drug prior authorization program approved or
20 implemented by the Medicaid Drug Utilization Review Board shall meet
21 the following conditions:

22 1. The Medicaid Drug Utilization Review Board shall make note
23 of and consider information provided by interested parties,
24 including, but not limited to, physicians, pharmacists, patients,

1 and pharmaceutical manufacturers, related to the placement of a drug
2 or drugs on prior authorization;

3 2. Any drug or drug class placed on prior authorization shall
4 be reconsidered no later than twelve (12) months after such
5 placement;

6 3. The program shall provide either telephone or fax approval
7 or denial within twenty-four (24) hours after receipt of the prior
8 authorization request; and

9 4. In an emergency situation, including a situation in which an
10 answer to a prior authorization request is unavailable, a seventy-
11 two-hour supply shall be dispensed, or, at the discretion of the
12 Medicaid Drug Utilization Review Board, a greater amount that will
13 assure a minimum effective duration of therapy for an acute
14 intervention.

15 B. In formulating its recommendations for placement of a drug
16 or drug class on prior authorization to the Oklahoma Health Care
17 Authority ~~Board~~ Administrator, the Medicaid Drug Utilization Review
18 Board shall:

19 1. Consider the potential impact of any administrative delay on
20 patient care and the potential fiscal impact of such prior
21 authorization on pharmacy, physician, hospitalization and outpatient
22 costs. Any recommendation making a drug subject to placement on
23 prior authorization shall be accompanied by a statement of the cost
24 and clinical efficacy of such placement;

1 2. Provide a period for public comment on each meeting agenda.
2 Prior to making any recommendations, the Medicaid Drug Utilization
3 Review Board shall solicit public comment regarding proposed changes
4 in the prior authorization program in accordance with the provisions
5 of the Oklahoma Open Meeting Act and the Administrative Procedures
6 Act; and

7 3. Review Oklahoma-Medicaid-specific data related to
8 utilization criterion standards as provided in division (1) of
9 subparagraph b of paragraph 2 of Section 5030.4 of this title.

10 C. The Oklahoma Health Care Authority ~~Board~~ Administrator may
11 accept or reject the recommendations of the Medicaid Drug
12 Utilization Review Board in whole or in part, and may amend or add
13 to such recommendations.

14 D. The Oklahoma Health Care Authority shall immediately provide
15 coverage under prior authorization for any new drug approved by the
16 United States Food and Drug Administration. If a new drug does not
17 fall in a class that is already placed under prior authorization,
18 that drug must be reviewed by the Drug Utilization Review Board
19 within one hundred (100) days of approval by the United States Food
20 and Drug Administration to determine whether to continue the prior
21 authorization criteria.

22 E. 1. Prior to a vote by the Medicaid Drug Utilization Review
23 Board to consider expansion of product-based prior authorization,
24 the Authority shall:

- 1 a. develop a written estimate of savings expected to
2 accrue from the proposed expansion, and
3 b. make the estimate of savings available, on request of
4 interested persons, no later than the day following
5 the first scheduled discussion of the estimate by the
6 Medicaid Drug Utilization Review Board at a regularly
7 scheduled meeting.

8 2. The written savings estimate based upon savings estimate
9 assumptions specified by paragraph 3 of this subsection prepared by
10 the Authority shall include as a minimum:

- 11 a. a summary of all paid prescription claims for patients
12 with a product in the therapeutic category under
13 consideration during the most recent month with
14 complete data, plus a breakdown, as available, of
15 these patients according to whether the patients are
16 residents of a long-term care facility or are
17 receiving Advantage Waiver program services,
18 b. current number of prescriptions, amount reimbursed and
19 trend for each product within the category under
20 consideration,
21 c. average active ingredient cost reimbursed per day of
22 therapy for each product and strength within the
23 category under consideration,
24

- 1 d. for each product and strength within the category
2 under consideration, where applicable, the prevailing
3 State Maximum Allowable Cost reimbursed per dosage
4 unit,
5 e. the anticipated impact of any patent expiration of any
6 product within the category under consideration
7 scheduled to occur within two (2) years from the
8 anticipated implementation date of the proposed prior
9 authorization expansion, and
10 f. a detailed estimate of administrative costs involved
11 in the prior authorization expansion including, but
12 not limited to, the anticipated increase in petition
13 volume.

14 3. Savings estimate assumptions shall include, at a minimum:

- 15 a. the prescription conversion rate of products requiring
16 prior authorization (Tier II) to products not
17 requiring prior authorization (Tier I) and to other
18 alternative products,
19 b. aggregated rebate amount for the proposed Tier I and
20 Tier II products within the category under
21 consideration,
22 c. market shift of Tier II products due to other causes
23 including, but not limited to, patent expiration,
24 d. Tier I to Tier II prescription conversion rate, and

1 e. nature of medical benefits and complications typically
2 seen with products in this class when therapy is
3 switched from one product to another.

4 4. The Medicaid Drug Utilization Review Board shall consider
5 prior authorization expansion in accordance with the following
6 Medicaid Drug Utilization Review Board meeting sequence:

7 a. first meeting: publish the category or categories to
8 be considered for prior authorization expansion in the
9 future business section of the Medicaid Drug
10 Utilization Review Board agenda,

11 b. second meeting: presentation and discussion of the
12 written estimate of savings,

13 c. third meeting: make formal notice in the agenda of
14 intent to vote on the proposed prior authorization
15 expansion, and

16 d. fourth meeting: vote on prior authorization
17 expansion.

18 F. The Medicaid Drug Utilization Review Board may establish
19 protocols and standards for the use of any prescription drug
20 determined to be medically necessary, proven to be effective and
21 approved by the United States Food and Drug Administration (FDA) for
22 the treatment and prevention of human immunodeficiency
23 virus/acquired immune deficiency syndrome (HIV/AIDS) without prior
24

1 authorization, except when there is a generic equivalent drug
2 available.

3 SECTION 32. AMENDATORY 63 O.S. 2011, Section 5051.4, is
4 amended to read as follows:

5 Section 5051.4. The Oklahoma Health Care Authority is hereby
6 authorized to charge an enrollment fee and/or premium for the
7 provision of health care coverage under the Oklahoma Medicaid
8 Program Reform Act of 2003. Such charges, if unpaid, create a debt
9 to the state and are subject to recovery by the Authority by any
10 legal action against an enrollee, the heirs or next of kin of the
11 enrollee in the event of the death of the enrollee. The Authority
12 may end coverage for the nonpayment of such enrollment and/or
13 premium pursuant to rules promulgated by the Oklahoma Health Care
14 Authority ~~Board~~ Administrator.

15 SECTION 33. AMENDATORY 63 O.S. 2011, Section 5051.5, is
16 amended to read as follows:

17 Section 5051.5. A. 1. On or after November 1, 2003, any
18 entity that provides health insurance in this state including, but
19 not limited to, a licensed insurance company, not-for-profit
20 hospital service, medical indemnity corporation, managed care
21 organization, self-insured plan, pharmacy benefit manager or other
22 party that is, by statute, contract, or agreement, legally
23 responsible for payment of a claim for a health care item or service
24 is hereby required to compare data from its files with data in files

1 provided to the entity by the Oklahoma Health Care Authority and
2 accept the Authority's right of recovery and the assignment of
3 rights and not charge the Authority or any of its authorized agents
4 any fees for the processing of claims or eligibility requests. Data
5 files requested by or provided to the Authority shall provide the
6 Authority with eligibility and coverage information that will enable
7 the Authority to determine the existence of third party coverage for
8 Medicaid recipients and the necessary information to determine
9 during what period Medicaid recipients may be or may have been
10 covered by the health insurer and the nature of the coverage that is
11 or was provided, including the name, address, and identifying number
12 of the plan.

13 2. The insurer shall transmit to the Authority, in a manner
14 prescribed by the Centers for Medicare and Medicaid Services or as
15 agreed between insurer and the Authority, an electronic file of all
16 identified subscribers or policyholders, or their dependents, for
17 whom there is data corresponding to the information contained in
18 subsection C of this section.

19 B. 1. An insurer shall comply with a request under the
20 provisions of this subsection no later than sixty (60) days after
21 the date of transmission by the Authority and shall only be required
22 to provide the Authority with the information required by subsection
23 C of this section.

24

1 2. The Authority may make such request for data from an insurer
2 no more than once every six (6) months, as determined by the date of
3 the Authority's original request.

4 C. Each insurer shall maintain a file system containing the
5 name, address, group policy number, coverage type, social security
6 number, and date of birth of each subscriber or policyholder, and
7 each dependent of the subscriber or policyholder covered by the
8 insurer, including policy effective and termination dates, claim
9 submission address, and employer's mailing address.

10 D. The Oklahoma Health Care Authority ~~Board~~ Administrator shall
11 promulgate rules governing the exchange of information under this
12 section. Such rules shall be consistent with all laws relating to
13 the confidentiality or privacy of personal information or medical
14 records including, but not limited to, provisions under the federal
15 Health Insurance Portability and Accountability Act (HIPAA).

16 SECTION 34. AMENDATORY 63 O.S. 2011, Section 5052, is
17 amended to read as follows:

18 Section 5052. A. Any applicant or recipient, adversely
19 affected by a decision of the Oklahoma Health Care Authority on
20 benefits or services provided pursuant to the provisions of this
21 title, shall be afforded an opportunity for a hearing pursuant to
22 the provisions of subsection B of this section after such applicant
23 or recipient has been notified of the adverse decision of the
24 Authority.

1 B. 1. Upon timely receipt of a request for a hearing as
2 specified in the notice of adverse decision and exhaustion of other
3 available administrative remedies, the Authority shall hold a
4 hearing pursuant to the provisions of rules promulgated by the
5 Oklahoma Health Care Authority ~~Board~~ Administrator pursuant to this
6 section.

7 2. The record of the hearing shall include, but shall not be
8 limited to:

- 9 a. all pleadings, motions, and intermediate rulings,
- 10 b. evidence received or considered,
- 11 c. any decision, opinion, or report by the officer
12 presiding at the hearing, and
- 13 d. all staff memoranda or data submitted to the hearing
14 officer or members of the agency in connection with
15 their consideration of the case.

16 3. Oral proceedings shall be electronically recorded by the
17 Authority. Any party may request a copy of the tape recording of
18 such person's administrative hearing or may request a transcription
19 of the tape recording to comply with any federal or state law.

20 C. Any decision of the Authority after such a hearing pursuant
21 to subsection B of this section shall be subject to review by the
22 Administrator of the Oklahoma Health Care Authority upon a timely
23 request for review by the applicant or recipient. The Administrator
24 shall issue a decision after review. A hearing decision of the

1 Authority shall be final and binding unless a review is requested
2 pursuant to the provisions of this subsection. The decision of the
3 Administrator may be appealed to the district court in which the
4 applicant or recipient resides within thirty (30) days of the date
5 of the decision of the Administrator as provided by the provisions
6 of subsection D of this section.

7 D. Any applicant or recipient under this title who is aggrieved
8 by a decision of the Administrator rendered pursuant to this section
9 may petition the district court in which the applicant or recipient
10 resides for a judicial review of the decision pursuant to the
11 provisions of Sections 318 through 323 of Title 75 of the Oklahoma
12 Statutes. A copy of the petition shall be served by mail upon the
13 general counsel of the Authority.

14 SECTION 35. AMENDATORY 75 O.S. 2011, Section 250.4, as
15 last amended by Section 12, Chapter 430, O.S.L. 2014 (75 O.S. Supp.
16 2018, Section 250.4), is amended to read as follows:

17 Section 250.4. A. 1. Except as is otherwise specifically
18 provided in this subsection, each agency is required to comply with
19 Article I of the Administrative Procedures Act.

20 2. The Corporation Commission shall be required to comply with
21 the provisions of Article I of the Administrative Procedures Act
22 except for subsections A, B, C and E of Section 303 of this title
23 and Section 306 of this title. To the extent of any conflict or
24 inconsistency with Article I of the Administrative Procedures Act,

1 pursuant to Section 35 of Article IX of the Oklahoma Constitution,
2 it is expressly declared that Article I of the Administrative
3 Procedures Act is an amendment to and alteration of Sections 18
4 through 34 of Article IX of the Oklahoma Constitution.

5 3. The Oklahoma Military Department shall be exempt from the
6 provisions of Article I of the Administrative Procedures Act to the
7 extent it exercises its responsibility for military affairs.

8 4. The Oklahoma Ordnance Works Authority, the Northeast
9 Oklahoma Public Facilities Authority, the Oklahoma Office of
10 Homeland Security and the Board of Trustees of the Oklahoma College
11 Savings Plan shall be exempt from Article I of the Administrative
12 Procedures Act.

13 5. The Transportation Commission and the Department of
14 Transportation shall be exempt from Article I of the Administrative
15 Procedures Act to the extent they exercise their authority in
16 adopting standard specifications, special provisions, plans, design
17 standards, testing procedures, federally imposed requirements and
18 generally recognized standards, project planning and programming,
19 and the operation and control of the State Highway System.

20 6. The Oklahoma State Regents for Higher Education shall be
21 exempt from Article I of the Administrative Procedures Act with
22 respect to:

23 a. prescribing standards of higher education,
24

- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license regulations, for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.
- b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after

1 notice of adoption is published in "The Oklahoma
2 Register". Such publication need not set forth the
3 full text of the rule but may incorporate the federal
4 rules and regulations by reference.

5 c. Such copies of promulgated rules shall be filed with
6 the Secretary as required by Section 251 of this
7 title.

8 d. For any rules for which the Commissioner has
9 discretion to allow variances, tolerances or
10 modifications from the federal rules and regulations,
11 the Commissioner shall fully comply with Article I of
12 the Administrative Procedures Act.

13 9. The Council on Judicial Complaints shall be exempt from
14 Section 306 of Article I of the Administrative Procedures Act, with
15 respect to review of the validity or applicability of a rule by an
16 action for declaratory judgment, or any other relief based upon the
17 validity or applicability of a rule, in the district court or by an
18 appellate court. A party aggrieved by the validity or applicability
19 of a rule made by the Council on Judicial Complaints may petition
20 the Court on the Judiciary to review the rules and issue opinions
21 based upon them.

22 10. The Department of Corrections, State Board of Corrections,
23 county sheriffs and managers of city jails shall be exempt from
24 Article I of the Administrative Procedures Act with respect to:

- a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and
- b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

11. The State Board of Education shall be exempt from Article I of the Administrative Procedures Act with respect to prescribing subject matter standards as provided for in Section 11-103.6a of Title 70 of the Oklahoma Statutes.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;

1 10. The Board of Trustees of the Oklahoma College Savings Plan;

2 11. The supervisory or administrative agency of any penal,
3 mental, medical or eleemosynary institution, only with respect to
4 the institutional supervision, custody, control, care or treatment
5 of inmates, prisoners or patients therein; provided, that the
6 provisions of Article II shall apply to and govern all
7 administrative actions of the Oklahoma Alcohol Prevention, Training,
8 Treatment and Rehabilitation Authority;

9 12. The Board of Regents or employees of any university,
10 college, or other institution of higher learning;

11 13. The Oklahoma Horse Racing Commission, its employees or
12 agents only with respect to hearing and notice requirements on the
13 following classes of violations which are an imminent peril to the
14 public health, safety and welfare:

- 15 a. any rule regarding the running of a race,
16 b. any violation of medication laws and rules,
17 c. any suspension or revocation of an occupation license
18 by any racing jurisdiction recognized by the
19 Commission,
20 d. any assault or other destructive acts within
21 Commission-licensed premises,
22 e. any violation of prohibited devices, laws and rules,
23 or
24 f. any filing of false information;

1 14. The Commissioner of Public Safety only with respect to
2 driver license hearings and hearings conducted pursuant to the
3 provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

4 15. The Administrator of the Department of Securities only with
5 respect to hearings conducted pursuant to provisions of the Oklahoma
6 Take-over Disclosure Act of 1985;

7 16. Hearings conducted by a public agency pursuant to Section
8 962 of Title 47 of the Oklahoma Statutes;

9 17. The Oklahoma Military Department;

10 18. The University Hospitals Authority, including all hospitals
11 or other institutions operated by the University Hospitals
12 Authority;

13 19. ~~The Oklahoma Health Care Authority Board and the~~
14 Administrator of the Oklahoma Health Care Authority; and

15 20. The Oklahoma Office of Homeland Security.

16 SECTION 36. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON RULES
21 February 27, 2019 - DO PASS AS AMENDED
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23
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