

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1381

By: Cox

4
5 AS INTRODUCED

6 An Act relating to public health and safety; creating
7 the Supplemental Hospital Offset Payment Program Act;
8 defining terms; requiring assessment of certain fees;
9 providing certain limits; establishing basis for
10 certain fees; providing an exception; providing for
11 certain reports; authorizing promulgation of rules;
12 providing for certain penalties; providing
13 termination date for assessment of certain fees;
14 establishing Supplemental Hospital Offset Payment
15 Program Fund; providing for composition of certain
16 fund; providing for budgeting of certain fund;
17 providing for certain expenditures; providing for
18 exemptions; providing for certain unavailable funds;
19 providing for codification; providing an effective
20 date; and declaring an emergency.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3241.1 of Title 63, unless there
24 is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Supplemental
Hospital Offset Payment Program Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3241.2 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Supplemental Hospital Offset Payment Program Act:

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

6 2. "Base year" means a hospital's fiscal year ending in 2009,
7 as reported in the Medicare Cost Report or as determined by the
8 Authority if the hospital's data is not included in the Medicare
9 Cost Report. The base year data will be used in all assessment
10 calculations through state fiscal year 2014;

11 3. "Net hospital patient revenue" means the gross hospital
12 revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines 1, 2,
13 2.01, 15, 17 and 18) of the Medicare Cost Report, excluding
14 estimated nonhospital ancillary revenue as reported on Worksheet D-
15 4, multiplied by the hospital's ratio of total net to gross revenue,
16 as reported on Worksheet G-3 (Column 1, Line 3) and Worksheet G-2
17 (Part I, Column 3, Line 25);

18 4. "Hospital" means an institution licensed by the State
19 Department of Health as a general or specialized hospital pursuant
20 to Section 1-701 of Title 63 of the Oklahoma Statutes maintained
21 primarily for the diagnosis, treatment, or care of patients;

22 5. "Hospital Advisory Committee" means the Committee
23 established for the purposes of advising the Oklahoma Health Care
24 Authority and recommending provisions within and approval of any

1 state plan amendment or waiver affecting hospital reimbursement made
2 necessary or advisable by the Supplemental Hospital Offset Payment
3 Program Act. The Committee shall be appointed no later than May 1,
4 2011, and shall be composed of five (5) members to serve until June
5 30, 2014, from lists of names submitted by the Oklahoma Hospital
6 Association, as follows:

7 a. one member, appointed by the Governor, who shall serve
8 as chairman, and

9 b. two members appointed each by the President Pro
10 Tempore of the Oklahoma State Senate and the Speaker
11 of the Oklahoma House of Representatives;

12 6. "Medicaid" means the medical assistance program established
13 in Title XIX of the federal Social Security Act and administered in
14 this state by the Oklahoma Health Care Authority;

15 7. "Medicare Cost Report" means Form CMS-2552-96, the Hospital
16 Cost Report, as it existed on January 1, 2011;

17 8. "Upper payment limit" means the maximum ceiling imposed by
18 42 C.F.R, Sections 447.272 and 447.321 on hospital Medicaid
19 reimbursement for inpatient and outpatient services, other than to
20 hospitals owned or operated by state government; and

21 9. "Upper payment limit gap" means the difference between the
22 upper payment limit and Medicaid payments not financed using
23 hospital assessments made to all hospitals other than hospitals
24 owned or operated by state government.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3241.3 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. For the purpose of assuring access to quality care for
5 Oklahoma Medicaid consumers, the Oklahoma Health Care Authority,
6 after considering input and recommendations from the Hospital
7 Advisory Committee, shall assess hospitals licensed in Oklahoma,
8 unless exempt under subsection B of this section, a supplemental
9 hospital offset payment program fee.

10 B. Unless adjudged to be unconstitutional or otherwise invalid,
11 in which case the hospital shall pay the supplemental hospital
12 offset payment program fee, the following hospitals shall be exempt
13 from the supplemental hospital offset payment program fee:

14 1. A hospital that is owned or operated by the state or a state
15 agency;

16 2. A hospital for which the majority of its inpatient
17 admissions are for cardiac, brain injury, cancer, surgical or
18 obstetrical services;

19 3. A hospital that is certified by the federal Centers for
20 Medicaid and Medicare Services as a long-term acute care hospital;
21 and

22 4. A hospital that is certified by the federal Centers for
23 Medicaid and Medicare Services as a critical access hospital.

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1 C. The supplemental hospital offset payment program fee shall
2 be an assessment imposed on each hospital, except those exempted
3 under subsection B of this section, for each state fiscal year in an
4 amount calculated as a percentage of each hospital's net patient
5 revenue.

6 1. The assessment rate shall be determined annually based upon
7 the percentage of net hospital patient revenue needed to generate an
8 amount up to the nonfederal portion of the upper payment limit gap
9 plus the annual fee to be paid to the Authority under subparagraph c
10 of paragraph 1 of subsection F of Section 4 of this act. The
11 assessment rate for state fiscal year 2012 shall be fixed at two
12 percent (2%). At no time in subsequent years shall the assessment
13 rate exceed four percent (4%).

14 2. Net hospital patient revenue shall be determined using the
15 data from each hospital's fiscal year 2009 Medicare Cost Report
16 contained in the Centers for Medicare and Medicaid Services'
17 Healthcare Cost Report Information System file dated December 31,
18 2010.

19 3. If a hospital's fiscal year 2009 Medicare Cost Report is not
20 contained in the Centers for Medicare and Medicaid Services'
21 Healthcare Cost Report Information System file dated December 31,
22 2010, the hospital shall submit a copy of the hospital's 2009
23 Medicare Cost Report to the Authority in order to allow the
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1 Authority to determine the hospital's net hospital patient revenue
2 for the base year.

3 4. If a hospital commenced operations after the due date for a
4 2009 Medicare Cost Report, the hospital shall submit its 2010
5 Medicare Cost Report to the Authority in order to allow the
6 Authority to determine the hospital's net patient revenue for the
7 base year.

8 5. Partial year reports may be prorated for an annual basis.

9 D. A hospital may not charge any patient for any portion of the
10 supplemental hospital offset payment program fee.

11 E. Closure, merger and new hospitals.

12 1. If a hospital ceases to operate as a hospital or for any
13 reason ceases to be subject to the fee imposed under the
14 Supplemental Hospital Offset Payment Program Act, the assessment for
15 the state fiscal year in which the cessation occurs shall be
16 adjusted by multiplying the annual assessment by a fraction, the
17 numerator of which is the number of days in the year during which
18 the hospital is subject to the assessment and the denominator of
19 which is 365. Immediately upon ceasing to operate as a hospital, or
20 otherwise ceasing to be subject to the supplemental hospital offset
21 payment program fee, the hospital shall pay the assessment for the
22 year as so adjusted, to the extent not previously paid.

23 2. In the case of a hospital that did not operate as a hospital
24 throughout the base year, its assessment and any potential receipt

1 of a hospital access payment will commence in accordance with rules
2 for implementation and enforcement promulgated by the Authority,
3 after consideration of the input and recommendations of the Hospital
4 Advisory Committee.

5 F. 1. In the event that federal financial participation
6 pursuant to Title XIX of the Social Security Act is not available to
7 the Oklahoma Medicaid program for purposes of matching expenditures
8 from the Supplemental Hospital Offset Payment Program Fund at the
9 approved federal medical assistance percentage for the applicable
10 fiscal year, the supplemental hospital offset payment program fee
11 shall be null and void as of the date of the nonavailability of such
12 federal funding through and during any period of nonavailability.

13 2. In the event of an invalidation of the Supplemental Hospital
14 Offset Payment Program Act by any court of last resort, the
15 supplemental hospital offset payment program fee shall be null and
16 void as of the effective date of that invalidation.

17 3. In the event that the supplemental hospital offset payment
18 program fee is determined to be null and void for any of the reasons
19 enumerated in this subsection, any supplemental hospital offset
20 payment program fee assessed and collected for any period after such
21 invalidation shall be returned in full within sixty (60) days by the
22 Authority to the hospital from which it was collected.

23 G. The Authority, after considering the input and
24 recommendations of the Hospital Advisory Committee, shall promulgate

1 rules for the implementation and enforcement of the supplemental
2 hospital offset payment program fee. Unless otherwise provided, the
3 rules adopted under this subsection shall not grant any exceptions
4 to or exemptions from the hospital assessment imposed under this
5 section.

6 H. The Authority shall provide for administrative penalties in
7 the event a hospital fails to:

- 8 1. Submit the supplemental hospital offset payment program fee;
- 9 2. Submit the fee in a timely manner;
- 10 3. Submit reports as required by this section; or
- 11 4. Submit reports timely.

12 I. The supplemental hospital offset payment program fee shall
13 terminate effective June 30, 2014.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3241.4 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. There is hereby created in the State Treasury a revolving
18 fund to be designated the "Supplemental Hospital Offset Payment
19 Program Fund".

20 B. The fund shall be a continuing fund, not subject to fiscal
21 year limitations, consisting of:

- 22 1. All monies received by the Oklahoma Health Care Authority
23 from hospitals pursuant to the Supplemental Hospital Offset Payment
24 Program Act and otherwise specified or authorized by law;

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

3 3. All monies received by the Authority due to federal
4 financial participation pursuant to Title XIX of the Social Security
5 Act as the result of the assessment and receipt of fees imposed by
6 the Supplemental Hospital Offset Payment Program Act; and

7 4. All interest attributable to investment of money in the
8 fund.

9 C. Notice of Assessment.

10 1. The Authority shall send a notice of assessment to each
11 hospital informing the hospital of the assessment rate, the
12 hospital's net patient revenue calculation, and the assessment
13 amount owed by the hospital for the applicable fiscal year.

14 2. Annual notices of assessment shall be sent at least forty-
15 five (45) days before the due date for the first quarterly
16 assessment payment of each fiscal year.

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

23 4. The hospital shall have thirty (30) days from the date of
24 its receipt of a notice of assessment to review and verify the

1 assessment rate, the hospital's net patient revenue calculation, and
2 the assessment amount. The Authority shall establish, after
3 consideration of input and recommendations by the Hospital Advisory
4 Committee, a method to resolve any errors or disputes in the
5 calculation of the assessment.

6 5. A hospital subject to an assessment under the Supplemental
7 Hospital Offset Payment Program Act that has not been previously
8 licensed as a hospital in Oklahoma and that commences hospital
9 operations during a state fiscal year shall pay the required
10 assessment computed under subsection E of Section 3 of this act and
11 shall be eligible for hospital access payments under subsection E of
12 this section on the date specified in rules promulgated by the
13 Authority after consideration of input and recommendations of the
14 Hospital Advisory Committee.

15 6. A hospital that is exempted from payment of the assessment
16 under subsection B of Section 3 of this act at the beginning of a
17 state fiscal year but during the state fiscal year experiences a
18 change in status so that it becomes subject to the assessment shall
19 pay the required assessment computed under subsection E of Section 3
20 of this act and shall be eligible for hospital access payments under
21 subsection E of this section on the date specified in rules
22 promulgated by the Authority after consideration of input and
23 recommendations of the Hospital Advisory Committee.

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1 7. A hospital that is subject to payment of the assessment
2 imposed by subsection A of Section 3 of this act at the beginning of
3 a state fiscal year, but during the state fiscal year experiences a
4 change in status so that it becomes exempted from payment under
5 subsection B of Section 3 of this act, shall be relieved of its
6 obligation to pay the hospital assessment and shall become
7 ineligible for hospital access payments under subsection E of this
8 section on the date specified in rules promulgated by the Authority
9 after consideration of input and recommendations of the Hospital
10 Advisory Committee.

11 D. Quarterly Notice and Collection.

12 1. The annual assessment imposed under subsection A of Section
13 3 of this act shall be due and payable on a quarterly basis.
14 However, the first installment payment of an assessment imposed by
15 the Supplemental Hospital Offset Payment Program Act shall not be
16 due and payable until:

17 a. the Authority issues written notice stating that the
18 assessment and payment methodologies required under
19 the Supplemental Hospital Offset Payment Program Act
20 have been approved by the Centers for Medicare and
21 Medicaid Services and the waiver under 42 C.F.R.,
22 Section 433.68, if necessary, has been granted by the
23 Centers for Medicare and Medicaid Services,

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1 b. the thirty-day verification period required by
2 paragraph 4 of subsection C of this section has
3 expired and any disputed amount of assessment has been
4 resolved, and

5 c. the Authority has made all quarterly installments of
6 inpatient and outpatient hospital access payments that
7 were otherwise due under subsection E of this section
8 consistent with the effective date of the approved
9 state plan amendment and waiver.

10 2. After the initial installment of an annual assessment has
11 been paid under this section, each subsequent quarterly installment
12 payment shall be due and payable within ten (10) business days after
13 the hospital has received its inpatient and outpatient access
14 payments due for the applicable quarter.

15 3. If a hospital fails to timely pay the full amount of a
16 quarterly assessment, the Authority shall add to the assessment:

17 a. a penalty assessment equal to five percent (5%) of the
18 quarterly amount not paid on or before the due date,
19 and

20 b. on the last day of each quarter after the due date
21 until the assessed amount and the penalty imposed
22 under subparagraph a of this paragraph are paid in
23 full, an additional five-percent penalty assessment on
24

1 any unpaid quarterly and unpaid penalty assessment
2 amounts.

3 4. Payments shall be credited first to unpaid quarterly
4 amounts, rather than to penalty or interest amounts, beginning with
5 the most delinquent installment.

6 E. Medicaid Hospital Access Payments.

7 1. To preserve the quality and improve access to hospital
8 services for hospital inpatient and outpatient services rendered on
9 or after April 1, 2011, the Authority shall make hospital access
10 payments as set forth in this section.

11 2. The Authority shall calculate the hospital access payment
12 amount up to but not to exceed the upper payment limit gap for
13 inpatient and outpatient services.

14 3. All hospitals shall be eligible for inpatient and outpatient
15 hospital access payments each state fiscal year as set forth in this
16 subsection except hospitals described in paragraph 1, 2 or 3 of
17 subsection B of Section 3 of this act.

18 4. A portion of the hospital access payment amount, not to
19 exceed the upper payment limit gap for inpatient services, shall be
20 designated as the inpatient hospital access payment pool.

21 a. In addition to any other funds paid to hospitals for
22 inpatient hospital services to Medicaid patients, each
23 eligible hospital shall receive inpatient hospital
24 access payments each state fiscal year equal to the

1 hospital's pro rata share of the inpatient hospital
2 access payment pool based upon the hospital's Medicaid
3 payments for inpatient services divided by the total
4 Medicaid payments for inpatient services of all
5 eligible.

6 b. Inpatient hospital access payments shall be made on a
7 quarterly basis.

8 5. A portion of the hospital access payment amount, not to
9 exceed the upper payment limit gap for outpatient services, shall be
10 designated as the outpatient hospital access payment pool.

11 a. In addition to any other funds paid to hospitals for
12 outpatient hospital services to Medicaid patients,
13 each eligible hospital shall receive outpatient
14 hospital access payments each state fiscal year equal
15 to the hospital's pro rata share of the outpatient
16 hospital access payment pool based upon the hospital's
17 Medicaid payments for outpatient services divided by
18 the total Medicaid payments for outpatient services of
19 all eligible.

20 b. Outpatient hospital access payments shall be made on a
21 quarterly basis.

22 6. A portion of the inpatient hospital access payment pool and
23 of the outpatient hospital access payment pool shall be designated
24 as the critical access hospital payment pool.

1 a. In addition to any other funds paid to critical access
2 hospitals for inpatient and outpatient hospital
3 services to Medicaid patients, each critical access
4 hospital shall receive hospital access payments equal
5 to the amount by which the payment for these services
6 was less than one hundred one percent (101%) of the
7 hospital's cost of providing these services, as
8 determined using the Medicare Cost Report.

9 b. The Authority shall calculate hospital access payments
10 for critical access hospitals and deduct these
11 payments from the inpatient hospital access payment
12 pool and the outpatient hospital access payment pool
13 before allocating the remaining balance in each pool
14 as provided in subparagraph a of paragraph 4 and
15 subparagraph a of paragraph 5 of this section.

16 c. Critical access hospital payments shall be made on a
17 quarterly basis.

18 7. A hospital access payment shall not be used to offset any
19 other payment by Medicaid for hospital inpatient or outpatient
20 services to Medicaid beneficiaries, including without limitation any
21 fee-for-service, per diem, private hospital inpatient adjustment, or
22 cost-settlement payment.

23 F. All monies accruing to the credit of the Supplemental
24 Hospital Offset Payment Program Fund are hereby appropriated and

1 shall be budgeted and expended by the Authority after consideration
2 of the input and recommendation of the Hospital Advisory Committee.

3 1. Monies in the Supplemental Hospital Offset Payment Program
4 Fund shall be used only for:

5 a. supplemental payments for Medicaid and SCHIP inpatient
6 and outpatient services to hospitals that participate
7 in the assessment,

8 b. supplemental payments for Critical Access Hospitals,

9 c. payment of administrative expenses incurred by the
10 Authority or its agents and employees in performing
11 the activities authorized by the Supplemental Hospital
12 Offset Payment Program Act but not more than Two

13 Hundred Thousand Dollars (\$200,000.00) each year, and

14 d. the reimbursement of monies collected by the Authority
15 from hospitals through error or mistake in performing
16 the activities authorized under the Supplemental
17 Hospital Offset Payment Program Act.

18 2. The Authority shall pay from the Supplemental Hospital
19 Offset Payment Program Fund quarterly installment payments to
20 hospitals of amounts available for supplemental inpatient and
21 outpatient payments, and supplemental payments for Critical Access
22 Hospitals.

23 3. Monies in the Supplemental Hospital Offset Payment Program
24 Fund shall not be used to replace other general revenues

1 appropriated and funded by the Legislature or other revenues used to
2 support Medicaid.

3 4. The Supplemental Hospital Offset Payment Program Fund and
4 the program specified in the Supplemental Hospital Offset Payment
5 Program Act are exempt from budgetary reductions or eliminations
6 caused by the lack of general revenue funds or other funds
7 designated for or appropriated to the Authority.

8 5. No hospital shall be guaranteed, expressly or otherwise,
9 that any additional costs reimbursed to the facility will equal or
10 exceed the amount of the supplemental hospital offset payment
11 program fee paid by the hospital.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3241.5 of Title 63, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The supplemental hospital offset payment program fee is to
16 supplement, not supplant, appropriations to support hospital
17 reimbursement. If Medicaid payment rates to providers are adjusted,
18 hospital rates shall not be adjusted more than the percentage-rate
19 reduction or increase for any other provider group.

20 B. Notwithstanding any other provision of the Supplemental
21 Hospital Offset Payment Program Act, if, after receipt of
22 authorization to receive federal matching funds for monies generated
23 by the Supplemental Hospital Offset Payment Program Act, the
24 authorization is withdrawn or changed so that federal matching funds

1 are no longer available, the Oklahoma Health Care Authority shall
2 cease collecting the provider fee and shall repay to the hospitals
3 any money received by the Supplemental Hospital Offset Payment
4 Program Fund that is not subject to federal matching funds.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3241.6 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Oklahoma Health Care Authority shall submit to the
9 Hospital Advisory Committee a proposed state plan amendment to
10 implement the requirements of the Supplemental Hospital Offset
11 Payment Program Act, including the payment of hospital access
12 payments under Section 4 of this act no later than May 15, 2011, and
13 shall submit the state plan amendment to the Centers for Medicare
14 and Medicaid Services after consideration of the input and
15 recommendations of the Hospital Advisory Committee.

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

18 1. Not implement the assessment imposed under the Supplemental
19 Hospital Offset Payment Program Act; and

20 2. Return any fees to hospitals that paid the fees if any such
21 fees have been collected.

22 SECTION 7. This act shall become effective April 1, 2011.

23 SECTION 8. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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