ENGROSSED HOUSE
BILL NO. 2267

By: Cox, Bennett and Sherrer of the House

and

Justice of the Senate

An Act relating to public health and safety; amending 63 O.S. 2011, Sections 3241.2 and 3241.3, as amended by Sections 1 and 2, Chapter 132, O.S.L. 2013 (63 O.S. Supp. 2015, Sections 3241.2 and 3241.3), which relate to the Supplemental Hospital Offset Payment Program Act; updating statutory reference; modifying certain definition; extending termination date of certain fee; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 3241.2, as amended by Section 1, Chapter 132, O.S.L. 2013 (63 O.S. Supp. 2015, Section 3241.2), is amended to read as follows:

Section 3241.2 As used in the Supplemental Hospital Offset Payment Program Act:

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

2. "Base year" means a hospital's fiscal year as reported in the Medicare Cost Report or as determined by the Authority if the

hospital's data is not included in the Medicare Cost Report. The base year data will be used in all assessment calculations;

3. "Net hospital patient revenue" means the gross hospital revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines "Total inpatient routine care services", "Ancillary services", and "Outpatient services") of the Medicare Cost Report, multiplied by the hospital's ratio of total net to gross revenue, as reported on Worksheet G-3 (Column 1, Line "Net patient revenues") and Worksheet G-2 (Part I, Column 3, Line "Total patient revenues");

4. "Hospital" means an institution licensed by the State Department of Health as a hospital pursuant to Section ~~1-701.1~~ 1-701 of ~~Title 63 of the Oklahoma Statutes~~ this title maintained primarily for the diagnosis, treatment, or care of patients;

5. "Hospital Advisory Committee" means the Committee established for the purposes of advising the Oklahoma Health Care Authority and recommending provisions within and approval of any state plan amendment or waiver affecting hospital reimbursement made necessary or advisable by the Supplemental Hospital Offset Payment Program Act. In order to expedite the submission of the state plan amendment required by Section 3241.6 of this title, the Committee shall initially be appointed by the Executive Director of the Authority from recommendations submitted by a statewide association representing rural and urban hospitals. The permanent Committee shall be appointed no later than thirty (30) days after November 1,

2011, and shall be composed of five (5) members to serve until December 31, ~~2014~~ 2020, from lists of names submitted by a statewide association representing rural and urban hospitals, as follows:

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

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

Membership shall be extended until December 31, ~~2017~~ 2020, for those members who are serving as of December 31, ~~2014~~ 2016;

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

7. "Medicare Cost Report" means the Hospital Cost Report, Form CMS-2552-96 or subsequent versions;

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

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

SECTION 2. AMENDATORY 63 O.S. 2011, Section 3241.3, as amended by Section 2, Chapter 132, O.S.L. 2013 (63 O.S. Supp. 2015, Section 3241.3), is amended to read as follows:

Section 3241.3 A. For the purpose of assuring access to quality care for Oklahoma Medicaid consumers, the Oklahoma Health Care Authority, after considering input and recommendations from the Hospital Advisory Committee, shall assess hospitals licensed in Oklahoma, unless exempt under subsection B of this section, a supplemental hospital offset payment program fee.

B. The following hospitals shall be exempt from the supplemental hospital offset payment program fee:

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

2. A hospital that provides more than fifty percent (50%) of its inpatient days under a contract with a state agency other than the Authority;

3. A hospital for which the majority of its inpatient days are for any one of the following services, as determined by the Authority using the Inpatient Discharge Data File published by the Oklahoma State Department of Health, or in the case of a hospital not included in the Inpatient Discharge Data File, using substantially equivalent data provided by the hospital:

a. treatment of a neurological injury,

b. treatment of cancer,

c. treatment of cardiovascular disease,

d. obstetrical or childbirth services,

e. surgical care, except that this exemption shall not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery;

4. A hospital that is certified by the federal Centers for Medicaid and Medicare Services as a long-term acute care hospital or as a children's hospital; and

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

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

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

a. the nonfederal portion of the upper payment limit gap, plus

b. the annual fee to be paid to the Authority under subparagraph c of paragraph 1 of subsection G of Section 3241.4 of this title, plus

c. the amount to be transferred by the Authority to the Medical Payments Cash Management Improvement Act Programs Disbursing Fund under subsection C of Section 3241.4 of this title.

2. The assessment rate until December 31, 2012, shall be fixed at two and one-half percent (2.5%). At no time in subsequent years shall the assessment rate exceed four percent (4%).

3. Net hospital patient revenue shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file.

a. Through 2013, the base year for assessment shall be the hospital's fiscal year that ended in 2009, as contained in the Healthcare Cost Report Information System file dated December 31, 2010.

b. For years after 2013, the base year for assessment shall be determined by rules established by the Authority.

4. If a hospital's applicable Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file, the hospital shall

submit a copy of the hospital's applicable Medicare Cost Report to the Authority in order to allow the Authority to determine the hospital's net hospital patient revenue for the base year.

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

6. Partial year reports may be prorated for an annual basis.

7. In the event that a hospital does not file a uniform cost report under 42 U.S.C., Section 1396a(a)(40), the Authority shall establish a uniform cost report for such facility subject to the Supplemental Hospital Offset Payment Program provided for in this section.

8. The Authority shall review what hospitals are included in the Supplemental Hospital Offset Payment Program provided for in subsection C of this section and what hospitals are exempted from the Supplemental Hospital Offset Payment Program pursuant to subsection B of this section. Such review shall occur at a fixed period of time. This review and decision shall occur within twenty (20) days of the time of federal approval and annually thereafter in December of each year.

9. The Authority shall review and determine the amount of the annual assessment. Such review and determination shall occur within

the twenty (20) days of federal approval and annually thereafter in December of each year.

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

E. Closure, merger and new hospitals.

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

2. In the case of a hospital that did not operate as a hospital throughout the base year, its assessment and any potential receipt of a hospital access payment will commence in accordance with rules for implementation and enforcement promulgated by the Authority, after consideration of the input and recommendations of the Hospital Advisory Committee.

F. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to

the Oklahoma Medicaid program for purposes of matching expenditures from the Supplemental Hospital Offset Payment Program Fund at the approved federal medical assistance percentage for the applicable year, the supplemental hospital offset payment program fee shall be null and void as of the date of the nonavailability of such federal funding through and during any period of nonavailability.

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

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

G. The Authority, after considering the input and recommendations of the Hospital Advisory Committee, shall promulgate rules for the implementation and enforcement of the supplemental hospital offset payment program fee. Unless otherwise provided, the rules adopted under this subsection shall not grant any exceptions to or exemptions from the hospital assessment imposed under this section.

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

1. Submit the supplemental hospital offset payment program fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by this section; or

4. Submit reports timely.

I. The supplemental hospital offset payment program fee shall terminate effective December 31, ~~2017~~ 2020.

J. The Authority shall have the power to promulgate emergency rules to enact the provisions of this act.

SECTION 3. This act shall become effective November 1, 2016.

Passed the House of Representatives the 1st day of March, 2016.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ___ day of _____, 2016.

_____
Presiding Officer of the Senate