

1 **SENATE FLOOR VERSION**

2 March 30, 2016

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2267

By: Cox, Bennett and Sherrer of
the House

and

Justice of the Senate

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10 **[public health and safety - Supplemental Hospital**
11 **Offset Payment Program Act - Supplemental Hospital**
12 **Offset Payment Program Fund - effective date]**

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

21 2. "Base year" means a hospital's fiscal year as reported in
22 the Medicare Cost Report or as determined by the Authority if the
23 hospital's data is not included in the Medicare Cost Report. The
24 base year data will be used in all assessment calculations;

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

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

12 5. "Hospital Advisory Committee" means the Committee
13 established for the purposes of advising the Oklahoma Health Care
14 Authority and recommending provisions within and approval of any
15 state plan amendment or waiver affecting hospital reimbursement made
16 necessary or advisable by the Supplemental Hospital Offset Payment
17 Program Act. In order to expedite the submission of the state plan
18 amendment required by Section 3241.6 of this title, the Committee
19 shall initially be appointed by the Executive Director of the
20 Authority from recommendations submitted by a statewide association
21 representing rural and urban hospitals. The permanent Committee
22 shall be appointed no later than thirty (30) days after November 1,
23 2011, and shall be composed of five (5) members to serve until
24

1 December 31, ~~2014~~ 2020, from lists of names submitted by a statewide
2 association representing rural and urban hospitals, as follows:

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

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

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

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

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

15 8. "Upper payment limit" means the maximum ceiling imposed by
16 42 C.F.R., Sections 447.272 and 447.321 on hospital Medicaid
17 reimbursement for inpatient and outpatient services, other than to
18 hospitals owned or operated by state government; and

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

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

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

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

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

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

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

24 a. treatment of a neurological injury,

- 1 b. treatment of cancer,
2 c. treatment of cardiovascular disease,
3 d. obstetrical or childbirth services,
4 e. surgical care, except that this exemption shall not
5 apply to any hospital located in a city of less than
6 five hundred thousand (500,000) population and for
7 which the majority of inpatient days are for back,
8 neck, or spine surgery;

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

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

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

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

- 22 a. the nonfederal portion of the upper payment limit gap,
23 plus
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1 b. the annual fee to be paid to the Authority under
2 subparagraph c of paragraph 1 of subsection G of
3 Section 3241.4 of this title, plus

4 c. the amount to be transferred by the Authority to the
5 Medical Payments Cash Management Improvement Act
6 Programs Disbursing Fund under subsection C of Section
7 3241.4 of this title.

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

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

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

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

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

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

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

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

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

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

22 9. The Authority shall review and determine the amount of the
23 annual assessment. Such review and determination shall occur within
24

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

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

5 E. Closure, merger and new hospitals.

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

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

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

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

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

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

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

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

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

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

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

11 SECTION 3. AMENDATORY 63 O.S. 2011, Section 3241.4, as
12 amended by Section 3, Chapter 132, O.S.L. 2013 (63 O.S. Supp. 2015,
13 Section 3241.4), is amended to read as follows:

14 Section 3241.4. A. There is hereby created in the State
15 Treasury a revolving fund to be designated the "Supplemental
16 Hospital Offset Payment Program Fund".

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

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

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

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

5 4. All interest attributable to investment of money in the
6 fund.

7 C. Notwithstanding any other provisions of law, the Oklahoma
8 Health Care Authority is authorized to transfer Seven Million Five
9 Hundred Thousand Dollars (\$7,500,000.00) each fiscal quarter from
10 the Supplemental Hospital Offset Payment Program Fund to the
11 Authority's Medical Payments Cash Management Improvement Act
12 Programs Disbursing Fund.

13 D. Notice of Assessment.

14 1. The Authority shall send a notice of assessment to each
15 hospital informing the hospital of the assessment rate, the
16 hospital's net patient revenue calculation, and the assessment
17 amount owed by the hospital for the applicable year.

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

21 3. The first notice of assessment shall be sent within forty-
22 five (45) days after receipt by the Authority of notification from
23 the Centers for Medicare and Medicaid Services that the assessments
24 and payments required under the Supplemental Hospital Offset Payment

1 Program Act and, if necessary, the waiver granted under 42 C.F.R.,
2 Section 433.68 have been approved.

3 4. The hospital shall have thirty (30) days from the date of
4 its receipt of a notice of assessment to review and verify the
5 assessment rate, the hospital's net patient revenue calculation, and
6 the assessment amount.

7 5. A hospital subject to an assessment under the Supplemental
8 Hospital Offset Payment Program Act that has not been previously
9 licensed as a hospital in Oklahoma and that commences hospital
10 operations during a year shall pay the required assessment computed
11 under subsection E of Section 3241.3 of this title and shall be
12 eligible for hospital access payments under subsection E of this
13 section on the date specified in rules promulgated by the Authority
14 after consideration of input and recommendations of the Hospital
15 Advisory Committee.

16 E. Quarterly Notice and Collection.

17 1. The annual assessment imposed under subsection A of Section
18 3241.3 of this title shall be due and payable on a quarterly basis.
19 However, the first installment payment of an assessment imposed by
20 the Supplemental Hospital Offset Payment Program Act shall not be
21 due and payable until:

22 a. the Authority issues written notice stating that the
23 assessment and payment methodologies required under
24 the Supplemental Hospital Offset Payment Program Act

1 have been approved by the Centers for Medicare and
2 Medicaid Services and the waiver under 42 C.F.R.,
3 Section 433.68, if necessary, has been granted by the
4 Centers for Medicare and Medicaid Services,

5 b. the thirty-day verification period required by
6 paragraph 4 of subsection C of this section has
7 expired, and

8 c. the Authority issues a notice giving a due date for
9 the first payment.

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 by the fifteenth day of the first
13 month of the applicable quarter.

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

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

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

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

9 F. Medicaid Hospital Access Payments.

10 1. To preserve the quality and improve access to hospital
11 services for hospital inpatient and outpatient services rendered on
12 or after the effective date of this act, the Authority shall make
13 hospital access payments as set forth in this section.

14 2. The Authority shall pay all quarterly hospital access
15 payments within ten (10) calendar days of the due date for quarterly
16 assessment payments established in subsection E of this section.

17 3. The Authority shall calculate the hospital access payment
18 amount up to but not to exceed the upper payment limit gap for
19 inpatient and outpatient services.

20 4. All hospitals shall be eligible for inpatient and outpatient
21 hospital access payments each year as set forth in this subsection
22 except hospitals described in paragraph 1, 2, 3 or 4 of subsection B
23 of Section 3241.3 of this title.

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1 5. A portion of the hospital access payment amount, not to
2 exceed the upper payment limit gap for inpatient services, shall be
3 designated as the inpatient hospital access payment pool.

4 a. In addition to any other funds paid to hospitals for
5 inpatient hospital services to Medicaid patients, each
6 eligible hospital shall receive inpatient hospital
7 access payments each year equal to the hospital's pro
8 rata share of the inpatient hospital access payment
9 pool based upon the hospital's Medicaid payments for
10 inpatient services divided by the total Medicaid
11 payments for inpatient services of all eligible.

12 b. Inpatient hospital access payments shall be made on a
13 quarterly basis.

14 6. A portion of the hospital access payment amount, not to
15 exceed the upper payment limit gap for outpatient services, shall be
16 designated as the outpatient hospital access payment pool.

17 a. In addition to any other funds paid to hospitals for
18 outpatient hospital services to Medicaid patients,
19 each eligible hospital shall receive outpatient
20 hospital access payments each year equal to the
21 hospital's pro rata share of the outpatient hospital
22 access payment pool based upon the hospital's Medicaid
23 payments for outpatient services divided by the total
24

1 Medicaid payments for outpatient services of all
2 eligible.

3 b. Outpatient hospital access payments shall be made on a
4 quarterly basis.

5 7. A portion of the inpatient hospital access payment pool and
6 of the outpatient hospital access payment pool shall be designated
7 as the critical access hospital payment pool.

8 a. In addition to any other funds paid to critical access
9 hospitals for inpatient and outpatient hospital
10 services to Medicaid patients, each critical access
11 hospital shall receive hospital access payments equal
12 to the amount by which the payment for these services
13 was less than one hundred one percent (101%) of the
14 hospital's cost of providing these services, as
15 determined using the Medicare Cost Report.

16 b. The Authority shall calculate hospital access payments
17 for critical access hospitals and deduct these
18 payments from the inpatient hospital access payment
19 pool and the outpatient hospital access payment pool
20 before allocating the remaining balance in each pool
21 as provided in subparagraph a of paragraph 4 and
22 subparagraph a of paragraph 5 of this section.

23 c. Critical access hospital payments shall be made on a
24 quarterly basis.

1 8. A hospital access payment shall not be used to offset any
2 other payment by Medicaid for hospital inpatient or outpatient
3 services to Medicaid beneficiaries, including without limitation any
4 fee-for-service, per diem, private hospital inpatient adjustment, or
5 cost-settlement payment.

6 9. If the Centers for Medicare and Medicaid Services finds that
7 the Authority has made payments to hospitals that exceed the upper
8 payment limits determined in accordance with 42 C.F.R. 447.272 and
9 42 C.F.R. 447.321, hospitals shall refund to the Authority a share
10 of the recouped federal funds that is proportionate to the
11 hospitals' positive contribution to the upper payment limit.

12 G. All monies accruing to the credit of the Supplemental
13 Hospital Offset Payment Program Fund are hereby appropriated and
14 shall be budgeted and expended by the Authority after consideration
15 of the input and recommendation of the Hospital Advisory Committee.

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

- 18 a. transfers to the Medical Payments Cash Management
19 Improvement Act Programs Disbursing Fund (Fund 340)
20 for the state share of supplemental payments for
21 Medicaid and SCHIP inpatient and outpatient services
22 to hospitals that participate in the assessment,
- 23 b. transfers to the Medical Payments Cash Management
24 Improvement Act Programs Disbursing Fund (Fund 340)

1 for the state share of supplemental payments for
2 Critical Access Hospitals,

3 c. transfers to the Administrative Revolving Fund (Fund
4 200) for the state share of payment of administrative
5 expenses incurred by the Authority or its agents and
6 employees in performing the activities authorized by
7 the Supplemental Hospital Offset Payment Program Act
8 but not more than Two Hundred Thousand Dollars
9 (\$200,000.00) each year,

10 d. transfers to the Medical Payments Cash Management
11 Improvement Act Programs Disbursing Fund (Fund 340) in
12 an amount not to exceed Seven Million Five Hundred
13 Thousand Dollars (\$7,500,000.00) each fiscal quarter,
14 and

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

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

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1 3. Except for the transfers described in subsection C of this
2 section, monies in the Supplemental Hospital Offset Payment Program
3 Fund shall not be used to replace other general revenues
4 appropriated and funded by the Legislature or other revenues used to
5 support Medicaid.

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

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

15 H. After considering input and recommendations from the
16 Hospital Advisory Committee, the Authority shall promulgate
17 regulations that:

18 1. Allow for an appeal of the annual assessment of the
19 Supplemental Hospital Offset Payment Program payable under this act;
20 and

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

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1 SECTION 4. This act shall become effective November 1, 2016.

2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
3 March 30, 2016 - DO PASS AS AMENDED
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