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ENROLLED HOUSE

BILL NO. 2437 By: Cox, Lamons, Pittman and
Cannaday of the House

and

Johnson (Mike) and Myers of the Senate

An Act relating to insurance; defining terms; creating the Health Carrier Access Payment Revolving Fund for the Oklahoma Health Care Authority; stating purpose of the fund; requiring health carrier to make certain access payment; specifying calculation of claims paid under certain situations; specifying due date for access payments; authorizing the Insurance Commissioner to refuse to renew, suspend or revoke the certificate of authority to transact insurance of any health carrier failing to pay an access payment; authorizing the Insurance Commissioner to assess civil penalties for failure to pay access payments; allowing reasonable attorney fees to be awarded to the Insurance Commissioner if certain action is necessary; requiring the Insurance Commissioner to promulgate certain rules; specifying that certain payments shall not be a part of the State Insurance Commissioner Revolving Fund; amending Section 1, Chapter 432, O.S.L. 2009 (36 O.S. Supp. 2009, Section 307.3), as amended by Section 3 of Enrolled Senate Bill No. 2054 of the 2nd Session of the 52nd Oklahoma Legislature, which relates to the State Insurance Commissioner Revolving Fund; excluding certain revenues

1 from deposit; modifying provisions related to State Insurance
2 Commissioner Revolving Fund; and providing for codification.

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

4 SECTION 1. NEW LAW A new section of law to be
5 codified in the Oklahoma Statutes as Section 7101 of Title 36,
6 unless there is created a duplication in numbering, reads as
7 follows:

8 As used in this act:

9 1. "Access payments" means an amount paid to the Insurance
10 Commissioner based upon a percentage of claims paid by a health
11 carrier to be used to fund the state's Medicaid program and make
12 full use of any federal matching funds available to the state;

13 2. "Claims paid" means all payments made by a health
14 carrier for health and medical services for residents of this
15 state. "Claims paid" shall not include:

16 a. claims-related expenses and general administrative
17 expenses,

18 b. payments made to qualifying providers under a "pay-
19 for-performance" or other incentive compensation arrangement if
20 the payments are not reflected in the processing of claims
21 submitted for services rendered to specific covered individuals,

22 c. claims paid by health carriers with respect to
23 accidental injury, specified disease, hospital indemnity, dental,
24 vision, disability income, long-term care, Medicare supplement or
25 other limited benefit health insurance, except claims paid for
26 dental services covered under a medical policy,

27 d. claims paid for services rendered to nonresidents of

1 this state,

2 e. claims paid under retiree health benefit plans that
3 are separate from and not included within benefit plans for
4 existing employees,

5 f. claims paid by an employee benefit excess insurance
6 carrier that have been counted by a third-party administrator for
7 determining an access payment,

8 g. claims paid for services rendered to a person
9 covered under a benefit plan for federal employees,

10 h. claims paid for services rendered outside of this
11 state to a person who is a resident of this state, and

12 i. claims paid pursuant to Medicare or Medicaid;

13 3. "Claims-related expenses" means:

14 a. payments for utilization review, care management,
15 disease management, risk assessment and similar administrative
16 services intended to reduce the claims paid for health and medical
17 services rendered to cover individuals for the purposes of
18 attempting to ensure that needed services are delivered in an
19 efficacious manner or by helping to maintain or improve the health
20 of a covered individual, and

21 b. payments made to or by organized groups of providers
22 of health and medical services in accordance with managed care
23 risk arrangements or network access agreements that are unrelated
24 to the provision of services to specific covered individuals;

25 4. "Health and medical services" means, but is not limited
26 to:

27 a. any services included in the furnishing of medical

1 care,

2 b. dental care to the extent covered under a medical
3 insurance policy,

4 c. pharmaceutical benefits or hospitalization,
5 including, but not limited to, services provided in a hospital or
6 other medical facility,

7 d. ancillary services, including, but not limited to,
8 ambulatory services,

9 e. physician and other practitioner services,
10 including, but not limited to, services provided by an assistant
11 to a physician, nurse practitioner or midwife, and

12 f. behavioral health services, including, but not
13 limited to, mental health and substance abuse services;

14 5. "Health carrier" means any entity or insurer authorized
15 to provide health insurance or health benefits pursuant to the
16 laws of this state and any entity or person engaged in the
17 business of making contracts of accident or health insurance.

18 "Health carrier" includes, but is not limited to:

19 a. third-party administrators as provided for in
20 Sections 1441 through 1452 of Title 36 of the Oklahoma Statutes,

21 b. health maintenance organizations as provided for in
22 Sections 6901 through 6936 of Title 36 of the Oklahoma Statutes,

23 c. self-insured employer welfare arrangements,

24 d. excess carriers,

25 e. stop loss carriers,

26 f. multiple employer welfare arrangements (MEWA) as
27 provided for in Sections 633 through 650 of Title 36 of the

1 Oklahoma Statutes,

2 g. professional employer organizations (PEO), and

3 h. the Oklahoma State and Education Employees Group
4 Insurance Board (OSEEGIB); and

5 6. "Insurance Commissioner" or "Commissioner" means the
6 Oklahoma Insurance Commissioner.

7 SECTION 2. NEW LAW A new section of law to be
8 codified in the Oklahoma Statutes as Section 7102 of Title 36,
9 unless there is created a duplication in numbering, reads as
10 follows:

11 A. There is hereby created a mechanism of funding through
12 health carrier access payments, as defined in Section 1 of this
13 act, in order to stabilize the state's Medicaid program.

14 B. There is hereby created in the State Treasury a
15 revolving fund for the Oklahoma Health Care Authority to be
16 designated the "Health Carrier Access Payment Revolving Fund".
17 The revolving fund shall be used to fund the state's Medicaid
18 program and make full use of any federal matching funds available
19 to the state.

20 1. The revolving fund shall consist of all monies collected
21 and received by the Insurance Commissioner pursuant to Sections 3
22 and 4 of this act, which shall be deposited by the Insurance
23 Commissioner into the revolving fund, as well as interest
24 attributable to investment of money in the fund.

25 2. The revolving fund shall be a continuing fund, not
26 subject to fiscal year limitations. All monies accruing to the
27 credit of said fund are hereby appropriated and may be budgeted

1 and expended by the Oklahoma Health Care Authority. Expenditures
2 from the revolving fund shall be made pursuant to the laws of this
3 state and the statutes relating to the state's Medicaid program.
4 Expenditures from the revolving fund shall be made upon warrants
5 issued by the State Treasurer, based on claims filed as prescribed
6 by law with the Director of the Office of State Finance for
7 approval and payment.

8 C. All monies collected under Sections 3 and 4 of this act
9 shall be used and expended by the Oklahoma Health Care Authority
10 for the support of the state's Medicaid program and make full use
11 of any federal matching funds available to the state.

12 D. The Oklahoma Health Care Authority is hereby authorized
13 to transfer funds from the Health Carrier Access Payment Revolving
14 Fund to the 340 CMIA Programs Disbursing Fund administered by the
15 Oklahoma Health Care Authority for the purpose of carrying out the
16 provisions of this act.

17 E. No monies collected from health carriers as access
18 payments shall be expended for any wage or salary of any employee
19 of any state agency and shall not provide any general or
20 administrative funding for the state or any of its agencies,
21 except for reasonable expenses incurred by the Insurance
22 Commissioner for the express purpose of collecting the funds and
23 by the Oklahoma Health Care Authority for the express purposes and
24 administration of the fund.

25 SECTION 3. NEW LAW A new section of law to be
26 codified in the Oklahoma Statutes as Section 7103 of Title 36,

27 unless there is created a duplication in numbering, reads as

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1 follows:

2 A. From the effective date of this act until January 1,
3 2015, all health carriers shall pay to the Insurance Commissioner
4 an access payment of one percent (1.0%) on all claims paid.

5 B. If a health carrier is contractually entitled to
6 withhold certain amounts from payments due to providers of health
7 and medical services for the purpose of ensuring that providers
8 fulfill any financial obligations under a managed care risk
9 arrangement, the full amounts due to the providers before the
10 application of the contractual withholdings shall be reflected in
11 the calculation of claims paid.

12 SECTION 4. NEW LAW A new section of law to be
13 codified in the Oklahoma Statutes as Section 7104 of Title 36,
14 unless there is created a duplication in numbering, reads as
15 follows:

16 A. Except as provided in subsection B of this section, the
17 access payments required to be paid by health carriers in Section
18 3 of this act shall be due and reported to the Insurance
19 Commissioner on claims paid and incurred beginning July 1, 2010.

20 B. The access payments required in Section 3 of this act by
21 a health carrier that is a third-party administrator or a self-
22 insured employer shall be reported and paid on the basis of claims
23 incurred and paid beginning July 1, 2010.

24 C. Access payments shall be made monthly to the Insurance
25 Commissioner and are due thirty (30) days after the end of each
26 month, except that access payments for third-party administrators

27 for groups of fifty or fewer members may be made annually not less

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1 than sixty (60) days after the close of the plan year.

2 D. All monies collected by the Insurance Commissioner
3 pursuant to this act shall be paid into the State Treasury weekly
4 and transferred monthly to the Health Carrier Access Payment
5 Revolving Fund created in Section 2 of this act.

6 E. The Insurance Commissioner may refuse to renew, suspend
7 or revoke, after notice and hearing, the certificate of authority
8 to transact insurance in this state of any health carrier failing
9 to pay an access payment. In addition to failing to renew,
10 suspension or revocation of the certificate of authority, the
11 Insurance Commissioner may assess civil penalties in accordance
12 with Section 619 of Title 36 of the Oklahoma Statutes against any
13 health carrier failing to pay an access payment or may take any
14 other enforcement action authorized by the Oklahoma Insurance Code
15 to collect any unpaid access payments.

16 F. Reasonable attorney fees shall be awarded to the
17 Insurance Commissioner if judicial action is necessary for the
18 enforcement of this act. Attorney fees shall be based upon those
19 prevailing in the community. Attorney fees collected by the
20 Insurance Commissioner without the assistance of the Attorney
21 General shall be credited to the State Insurance Commissioner
22 Revolving Fund.

23 G. The Insurance Commissioner shall promulgate rules and
24 the procedures necessary for the implementation and administration
25 of this act.

26 SECTION 5. AMENDATORY Section 1, Chapter 432, O.S.L.
27 2009 (36 O.S. Supp. 2009, Section 307.3), as amended by Section 3

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1 of Enrolled Senate Bill No. 2054 of the 2nd Session of the 52nd
2 Oklahoma Legislature, is amended to read as follows:

3 Section 307.3 A. Effective July 1, 2009, there is hereby
4 created in the State Treasury a revolving fund for the Insurance
5 Commissioner called the State Insurance Commissioner Revolving
6 Fund. The revolving fund shall be used to fund the operations of
7 the Office of the Insurance Commissioner.

8 1. Notwithstanding any other law to the contrary, the
9 revolving fund shall consist of and consolidate all funds that are
10 or have been paid or collected by the Insurance Commissioner
11 pursuant to the laws of this state and the rules of the Insurance
12 Department except that the revolving fund shall not include:

13 a. premium taxes,

14 b. monies transferred to the Attorney General's
15 Insurance Fraud Unit Revolving Fund pursuant to Section 362 of
16 this title, ~~and~~

17 c. funds paid to and collected pursuant to the Oklahoma
18 Certified Real Estate Appraisers Act, Sections 858-700 through
19 858-732 of Title 59 of the Oklahoma Statutes, and

20 d. health carrier access payments paid to and
21 collected by the Insurance Commissioner and deposited into the
22 Health Carrier Access Payment Revolving Fund.

23 2. The revolving fund shall be a continuing fund, not
24 subject to fiscal year limitations. Expenditures from the
25 revolving fund shall be made pursuant to the laws of this state

26 and the statutes relating to the Insurance Department. Warrants
27 for expenditures from the revolving fund shall be drawn by the

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1 State Treasurer, based on claims signed by an authorized employee
2 or employees of the Insurance Department and filed with the
3 Director of State Finance.

4 B. All funds collected by the Insurance Commissioner shall
5 be paid into the State Treasury weekly.

6 C. After the effective date of this act, the State Treasury
7 is authorized and directed to deduct from the funds paid or
8 collected by the Insurance Commissioner a sum equal to seventy-six
9 and one_ half percent (76.5%) of the payment and place the same
10 to the credit of the General Revenue Fund of the state. The State
11 Treasurer shall place to the credit of the State Insurance
12 Commissioner Revolving Fund the remainder of the funds so paid and
13 collected by the Insurance Commissioner.

14 Passed the House of Representatives the 21st day of May, 2010.

15 Presiding Officer of the House of
16 Representatives

17 Passed the Senate the 24th day of May, 2010.

18
19 Presiding Officer of the Senate

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