STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2719

By: Case, Nance, Perry and Pettigrew of the House

and

Herbert of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; requiring health insurance carriers to furnish specified data to certain employers; requiring initial written request; providing that information in subsequent years shall be provided automatically; providing for additional requests; requiring data to be provided within a certain time period; prohibiting reporting of certain information; providing scope of information; providing penalty; authorizing waiver of penalty in certain circumstances; providing for enforcement of penalty and appeals; requiring the Insurance Commissioner to promulgate rules; defining term; stating legislative intent; requiring certain health benefit plans to issue certain cards or other technology containing uniform prescription drug information; providing for certain approval; providing for content; providing for issuance; defining term; providing exceptions; providing for applicability; providing for enforcement; requiring promulgation of rules; requiring Insurance Commissioner to enforce compliance; amending 36 O.S. 2001, Sections 6602, as amended by Section 1 of Enrolled Senate Bill No. 1342 of the 2nd Session of the 48th Oklahoma Legislature, 6619 and 6620, which relate to the Service Warranty Insurance Act; modifying definitions; modifying who may supervise sales representatives; excluding certain persons from registration and filing fee requirements; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4512 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. This section applies to an insured employer health benefit plan providing health insurance to employees of employers employing fifty (50) or more full-time or full-time-equivalent employees.

B. An employer carrier, on written request from an insured employer covered by that carrier, shall report to the employer information from the twelve (12) months preceding the date of the report regarding:

1. The total amount of charges submitted to the carrier for persons covered under the employer health benefit plan;

2. The total amount of premium payments made by the policyholder to the insured carrier;

3. The total amount of payments made by the carrier to health care providers for persons covered under the plan; and

4. For any claims for an individual paid in excess of Ten Thousand Dollars ($10,000.00), information on claims paid, listed by diagnostic categories based on current procedure terminology (CPT) codes, including the total hospital charges, physician charges, pharmaceutical charges, and diagnostic and prognostic evaluations.

C. An employer shall have to make a written request for information only one time. After the initial year for which information was requested, the employer carrier automatically shall provide the information on an annual basis within the time period specified in subsection D of this section. In addition, an employer may make additional written requests for the information, provided the employer shall not make more than one additional request in any one (1) year.

D. An employer carrier shall provide the information provided for in this section not later than thirty (30) days before the anniversary or annual renewal date, or the date of any rate change action of the employer's benefit plan.

E. An employer carrier shall not report any information required under this section if the release of such information is prohibited by federal law or regulation.

F. Claim information provided by an employer carrier under this section shall be provided in the aggregate, without information through which a specific individual covered by the health insurance or evidence or coverage may be identified. Claim information shall include the total claims made, the total claims paid, the total plan charges and the head count by coverage.

G. 1. If an employer carrier fails to provide the information in the time required by subsection D of this section, the Insurance Commissioner may, after notice and hearing, subject an insurer to a civil penalty of One Hundred Dollars ($100.00) for each day that the information is delinquent.

2. If an employer carrier has a risk-bearing contract with a medical group, independent practice association (IPA), or management services organization (MSO) that stipulates the delegation of claims payment, and the carrier satisfies the Insurance Commissioner that the medical group, IPA, or MSO has failed to provide the information to the employer carrier in a sufficient time for the carrier to comply with subsection D of this section, the Commissioner may waive the penalty provided for in paragraph 1 of this subsection.

3. The civil penalty may be enforced in the same manner in which civil judgments may be enforced, as provided in Section 312A of Title 36 of the Oklahoma Statutes. Such penalties shall be placed in the State Insurance Commissioner Revolving Fund. Any person aggrieved by the determination of the Insurance Commissioner may seek judicial review pursuant to Section 320 of Title 36 of the Oklahoma Statutes.

H. The Insurance Commissioner shall promulgate rules for the implementation and administration of this section.

I. As used in this section, "carrier" means any entity which provides health insurance in this state. For the purposes of this section, carrier includes a licensed insurance company, not-for-profit hospital service or medical indemnity corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement or any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3634.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. It is the intent of the Legislature to:

a. lessen waiting times of patients,

b. decrease administrative burdens for pharmacies, and

c. improve care to patients

by minimizing confusion, eliminating unnecessary paperwork and streamlining dispensing of prescription products paid for by third-party payors.

2. This section shall be broadly applied and interpreted to effectuate this purpose.

B. 1. Each health benefit plan that provides coverage for prescription drugs or devices, or administers such a plan including, but not limited to, third-party administrators for self-insured plans, to the extent permitted by the Employee Retirement Income Security Act of 1974 (ERISA), and state-administered plans, or the plan’s agents or contractors that issue a card or other technology for prescription claims submission and adjudication, shall issue to its insureds covered by such plan a card or other technology containing uniform prescription drug information. Nothing in this section shall require any health benefit plan, or the plan’s agents or contractors to issue a separate card of other technology for

prescription coverage, provided that the card issued can accommodate the information required by this section.

2. The uniform prescription drug information contained on the insured's card or other technology shall be in the format approved by the National Council for Prescription Drug Programs (NCPDP), and shall include the following fields:

a. card issuer name or logo on the front of the card,

b. complete information for electronic claims routing including:

(1) issuer identification number (IIN/BIN) labeled as IIN or BIN,

(2) the Processor Control Number (PCN), labeled as PCN, if required for proper routing of electronic claim transactions for prescription benefits, and

(3) the group number, labeled as GRP, if required for proper routing of electronic claim transactions for prescription benefits,

c. card issuer identification,

d. card holder identification, which shall be displayed on the front of the card,

e. card holder name, which shall be displayed on the front of the card,

f. claims processor name and, if not filed electronically, address, and

g. a help desk phone number that pharmacy providers may call for pharmacy benefit claims assistance.

C. 1. The new uniform prescription drug information contained on the insured's card or other technology, as required by subsection B of this section, shall be issued by a health benefit plan or the plan's administrators, agents or contractors upon enrollment, and reissued within a reasonable time upon any change in the coverage of the insured person that impacts data contained on the card, or upon

any change in the National Council for Prescription Drug Programs implementation guide.

2. Newly issued cards or technology shall be updated with the latest coverage information and shall conform to the National Council for Prescription Drug Programs standards then in effect and the implementation guide then in use.

D. As used in this section, "health benefit plan" means an accident and health insurance policy or certificate, a nonprofit hospital or medical service corporation contract, a health maintenance organization subscriber contract, a plan provided by a multiple employer welfare arrangement, or a plan provided by another benefit arrangement, to the extent permitted by ERISA of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. The term "health benefit plan" shall not include the following types of insurance:

1. Accident;

2. Credit;

3. Disability income;

4. Long-term or nursing home care;

5. Specified disease;

6. Dental or vision;

7. Coverage issued as a supplement to liability insurance;

8. Medical payments under automobile or homeowners;

9. Insurance under which benefits are payable with or without regard to fault and this is statutorily required to be contained in any liability policy or equivalent self-insurance;

10. Health benefit plans that participate or contract with the Oklahoma Health Care Authority as the state Medicaid agency; and

11. Hospital income or indemnity.

E. The provisions of this section shall apply to health benefit plans that are delivered, issued for delivery, or renewed on and after January 1, 2004.

F. 1. Enforcement of the provisions of this section shall be the responsibility of the Insurance Commissioner.

2. The Insurance Commissioner shall promulgate rules necessary to effectuate the provisions of this section.

3. The Insurance Commissioner shall take action or impose appropriate penalties to bring non-complying entities into full compliance with the provisions of this section.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6602, as amended by Section 1 of Enrolled Senate Bill No. 1342 of the 2nd Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 6602. As used in the Service Warranty Insurance Act:

1. "Commissioner" means the Insurance Commissioner;

2. "Consumer product" means tangible personal property primarily used for personal, family, or household purposes;

3. "Department" means the Insurance Department;

4. "Gross income" means the total amount of revenue received in connection with business-related activity;

5. "Gross written premiums" means the total amount of premiums, inclusive of commissions, for which the association is obligated under service warranties issued in this state;

6. "Impaired" means having liabilities in excess of assets;

7. "Indemnify" means to undertake repair or replacement of a consumer product or a newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated premium, when the consumer product or residential structure becomes defective or suffers operational failure;

8. "Insolvent" means any actual or threatened delinquency including, but not limited to, any one or more of the following circumstances:

a. an association's net assets exceed the total liabilities of the association,

b. the business of any such association is being conducted fraudulently, or

c. the association has knowingly overvalued its assets;

9. "Insurer" means any property or casualty insurer duly authorized to transact such business in this state;

10. "Net assets" means the amount by which the total assets of an association, excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, exceed the total liabilities of the association. For purposes of the Service Warranty Insurance Act, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earning of an association;

11. "Person" includes an individual, company, corporation, association, insurer, agent and any other legal entity;

12. "Premium" means the total consideration received or to be received, by whatever name called, by an insurer or service warranty association for, or related to, the issuance and delivery of a service warranty, including any charges designated as assessments or fees for membership, policy, survey, inspection, or service or other charges. However, a repair charge is not a premium unless it exceeds the usual and customary repair fee charged by the association, provided the repair is made before the issuance and delivery of the warranty;

13. "Sales representative" means any person utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties and includes any individual possessing a certificate of competency who has the power to legally obligate the insurer or service warranty association or who merely acts as the qualifying agent to qualify the association in instances when a

state statute or local ordinance requires a certificate of competency to engage in a particular business. However, in the case of service warranty associations selling service warranties from five or more business locations, the store manager or other person in charge of each such location shall be considered the sales representative;

14. "Service warranty" means any warranty, home warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise entered into between a consumer and a service warranty association under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product or newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated charge by the consumer; however:

a. maintenance service contracts under the terms of which there are no provisions for such indemnification are expressly excluded from this definition,

b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from a company licensed in the state, which covers one hundred percent (100%) of its claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,

c. the term "service warranty" does not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium

owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property, and

d. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which performs at least seventy percent (70%) of the service work itself and not through subcontractors, which has been selling and honoring such contracts in Oklahoma for at least twenty (20) years, or which has net assets in excess of One Hundred Million Dollars ($100,000,000.00);

15. "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties; provided, this term shall not mean any person engaged in the business of erecting or otherwise constructing a new home;

16. "Warrantor" means any service warranty association engaged in the sale of service warranties and deriving not more than fifty percent (50%) of its gross income from the sale of service warranties; and

17. "Warranty seller" means any service warranty association engaged in the sale of service warranties and deriving more than fifty percent (50%) of its gross income from the sale of service warranties.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 6619, is amended to read as follows:

Section 6619. No person shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person is registered as a sales representative or acts under the supervision of a sales representative, an attorney licensed to practice law in the State of Oklahoma, or an individual licensed under the Oklahoma Real Estate License Code, Oklahoma Mortgage

Broker Licensure Act, or Home Inspection Licensing Act. Sales representatives shall be responsible for the actions of persons under their supervision.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6620, is amended to read as follows:

Section 6620. Each service warranty association or insurer shall register, on forms prescribed by the Insurance Commissioner, on or before March 1 of each odd-numbered year, the name and business address of each sales representative utilized by it in this state and, within thirty (30) days after termination of the contract, shall notify the Commissioner of such termination. At the time of biennial registration, a filing fee of Forty Dollars ($40.00) for each sales representative shall be paid by the service warranty association or insurer to the Commissioner. All such filing fees shall be deposited in the State Treasury to the credit of the Insurance Commissioner Revolving Fund to be used for the implementation of the Service Warranty Insurance Act. Any sales representative utilized subsequent to the March 1 filing date shall be registered with the Commissioner within ten (10) days after such utilization. Pursuant to Section 6619 of this title, any individual who is an attorney licensed to practice law in the State of Oklahoma or an individual licensed under the Oklahoma Real Estate License Code, Oklahoma Mortgage Broker Licensure Act, or Home Inspection Licensing Act, shall not be subject to the registration or filing fee requirements of this section. No employee or sales representative of a service warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent, unless so qualified and licensed pursuant to Section 1421 et seq. of Title 36 of the Oklahoma Statutes.

SECTION 6. Section 2 of this act shall become effective November 1, 2003.

SECTION 7. Sections 3, 4 and 5 of this act shall become effective November 1, 2002.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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