

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2322

By: Frix, Sims, Sneed, and
Roberts (Eric) of the House

7 and

Bullard and Pemberton of
the Senate

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9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to the state Medicaid program;
12 amending 56 O.S. 2021, Section 4002.2, as amended by
13 Section 2 of Enrolled Senate Bill No. 1337 of the 2nd
14 Session of the 58th Oklahoma Legislature, which
15 relates to definitions used in the Ensuring Access to
16 Medicaid Act; broadening certain definition; amending
17 56 O.S. 2021, Section 4002.12, as amended by Section
18 15 of Enrolled Senate Bill No. 1337 of the 2nd
19 Session of the 58th Oklahoma Legislature, which
20 relates to reimbursement of providers; requiring
21 certain reimbursement for pharmacist; providing an
22 effective date; declaring an emergency; and creating
23 contingent effectiveness.
24

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

SECTION 1. AMENDATORY 56 O.S. 2021, Section 4002.2, as
amended by Section 2 of Enrolled Senate Bill No. 1337 of the 2nd
Session of the 58th Oklahoma Legislature, is amended to read as
follows:

1 Section 4002.2. As used in the Ensuring Access to Medicaid Act:

2 1. "Adverse determination" has the same meaning as provided by
3 Section 6475.3 of Title 36 of the Oklahoma Statutes;

4 2. "Accountable care organization" means a network of
5 physicians, hospitals, and other health care providers that provides
6 coordinated care to Medicaid members;

7 3. "Claims denial error rate" means the rate of claims denials
8 that are overturned on appeal;

9 4. "Capitated contract" means a contract between the Oklahoma
10 Health Care Authority and a contracted entity for delivery of
11 services to Medicaid members in which the Authority pays a fixed,
12 per-member-per-month rate based on actuarial calculations;

13 5. "Children's Specialty Plan" means a health care plan that
14 covers all Medicaid services other than dental services and is
15 designed to provide care to:

- 16 a. children in foster care,
- 17 b. former foster care children up to twenty-five (25)
18 years of age,
- 19 c. juvenile justice involved children, and
- 20 d. children receiving adoption assistance;

21 6. "Clean claim" means a properly completed billing form with
22 Current Procedural Terminology, 4th Edition or a more recent
23 edition, the Tenth Revision of the International Classification of
24 Diseases coding or a more recent revision, or Healthcare Common

1 Procedure Coding System coding where applicable that contains
2 information specifically required in the Provider Billing and
3 Procedure Manual of the Oklahoma Health Care Authority, as defined
4 in 42 C.F.R., Section 447.45(b);

5 7. "Commercial plan" means an organization or entity that
6 undertakes to provide or arrange for the delivery of health care
7 services to Medicaid members on a prepaid basis and is subject to
8 all applicable federal and state laws and regulations;

9 8. "Contracted entity" means an organization or entity that
10 enters into or will enter into a capitated contract with the
11 Oklahoma Health Care Authority for the delivery of services
12 specified in ~~this act~~ the Ensuring Access to Medicaid Act that will
13 assume financial risk, operational accountability, and statewide or
14 regional functionality as defined in ~~this act~~ the Ensuring Access to
15 Medicaid Act in managing comprehensive health outcomes of Medicaid
16 members. For purposes of ~~this act~~ the Ensuring Access to Medicaid
17 Act, the term contracted entity includes an accountable care
18 organization, a provider-led entity, a commercial plan, a dental
19 benefit manager, or any other entity as determined by the Authority;

20 9. "Dental benefit manager" means an entity that handles claims
21 payment and prior authorizations and coordinates dental care with
22 participating providers and Medicaid members;

23 10. "Essential community provider" means:

24 a. a Federally Qualified Health Center,

- b. a community mental health center,
- c. an Indian Health Care Provider,
- d. a rural health clinic,
- e. a state-operated mental health hospital,
- f. a long-term care hospital serving children (LTCH-C),
- g. a teaching hospital owned, jointly owned, or affiliated with and designated by the University Hospitals Authority, University Hospitals Trust, Oklahoma State University Medical Authority, or Oklahoma State University Medical Trust,
- h. a provider employed by or contracted with, or otherwise a member of the faculty practice plan of:
 - (1) a public, accredited medical school in this state, or
 - (2) a hospital or health care entity directly or indirectly owned or operated by the University Hospitals Trust or the Oklahoma State University Medical Trust,
- i. a county department of health or city-county health department,
- j. a comprehensive community addiction recovery center,
- k. a hospital licensed by the State of Oklahoma including all hospitals participating in the Supplemental Hospital Offset Payment Program,

- 1 l. a Certified Community Behavioral Health Clinic
2 (CCBHC),
- 3 m. a provider employed by or contracted with a primary
4 care residency program accredited by the Accreditation
5 Council for Graduate Medical Education,
- 6 n. any additional Medicaid provider as approved by the
7 Authority if the provider either offers services that
8 are not available from any other provider within a
9 reasonable access standard or provides a substantial
10 share of the total units of a particular service
11 utilized by Medicaid members within the region during
12 the last three (3) years, and the combined capacity of
13 other service providers in the region is insufficient
14 to meet the total needs of the Medicaid members, ~~or~~
- 15 o. a pharmacy or pharmacist, or
- 16 p. any provider not otherwise mentioned in this paragraph
17 that meets the definition of "essential community
18 provider" under 45 C.F.R., Section 156.235;

19 11. "Material change" includes, but is not limited to, any
20 change in overall business operations such as policy, process or
21 protocol which affects, or can reasonably be expected to affect,
22 more than five percent (5%) of enrollees or participating providers
23 of the contracted entity;

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1 12. "Governing body" means a group of individuals appointed by
2 the contracted entity who approve policies, operations, profit/loss
3 ratios, executive employment decisions, and who have overall
4 responsibility for the operations of the contracted entity of which
5 they are appointed;

6 13. "Local Oklahoma provider organization" means any state
7 provider association, accountable care organization, Certified
8 Community Behavioral Health Clinic, Federally Qualified Health
9 Center, Native American tribe or tribal association, hospital or
10 health system, academic medical institution, currently practicing
11 licensed provider, or other local Oklahoma provider organization as
12 approved by the Authority;

13 14. "Medical necessity" has the same meaning as provided by
14 rules promulgated by the Oklahoma Health Care Authority Board;

15 15. "Participating provider" means a provider who has a
16 contract with or is employed by a contracted entity to provide
17 services to Medicaid members as authorized by ~~this act~~ the Ensuring
18 Access to Medicaid Act;

19 16. "Provider" means a health care or dental provider licensed
20 or certified in this state or a provider that meets the Authority's
21 provider enrollment criteria to contract with the Authority as a
22 SoonerCare provider;

23 17. "Provider-led entity" means an organization or entity that
24 meets the criteria of at least one of following two subparagraphs:

1 a. a majority of the entity's ownership is held by
2 Medicaid providers in this state or is held by an
3 entity that directly or indirectly owns or is under
4 common ownership with Medicaid providers in this
5 state, or

6 b. a majority of the entity's governing body is composed
7 of individuals who:

8 (1) have experience serving Medicaid members and:

9 (a) are licensed in this state as physicians,
10 physician assistants, nurse practitioners,
11 certified nurse-midwives, or certified
12 registered nurse anesthetists,

13 (b) at least one board member is a licensed
14 behavioral health provider, or

15 (c) are employed by:

16 i. a hospital or other medical facility
17 licensed by this state and operating in
18 this state, or

19 ii. an inpatient or outpatient mental
20 health or substance abuse treatment
21 facility or program licensed or
22 certified by this state and operating
23 in this state,
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- 1 (2) represent the providers or facilities described
2 in division (1) of this subparagraph including,
3 but not limited to, individuals who are employed
4 by a statewide provider association, or
5 (3) are nonclinical administrators of clinical
6 practices serving Medicaid members;

7 18. "Statewide" means all counties of this state including the
8 urban region; and

9 19. "Urban region" means:

- 10 a. all counties of this state with a county population of
11 not less than five hundred thousand (500,000)
12 according to the latest Federal Decennial Census, and
13 b. all counties that are contiguous to the counties
14 described in subparagraph a of this paragraph,
15 combined into one region.

16 SECTION 2. AMENDATORY 56 O.S. 2021, Section 4002.12, as
17 amended by Section 15 of Enrolled Senate Bill No. 1337 of the 2nd
18 Session of the 58th Oklahoma Legislature, is amended to read as
19 follows:

20 Section 4002.12. A. Until July 1, 2026, the Oklahoma Health
21 Care Authority shall establish minimum rates of reimbursement from
22 contracted entities to providers who elect not to enter into value-
23 based payment arrangements under subsection B of this section or
24 other alternative payment agreements for health care items and

1 services furnished by such providers to enrollees of the state
2 Medicaid program. Except as provided by subsection I of this
3 section, until July 1, 2026, such reimbursement rates shall be equal
4 to or greater than:

5 1. For an item or service provided by a participating provider
6 who is in the network of the contracted entity, one hundred percent
7 (100%) of the reimbursement rate for the applicable service in the
8 applicable fee schedule of the Authority; or

9 2. For an item or service provided by a non-participating
10 provider or a provider who is not in the network of the contracted
11 entity, ninety percent (90%) of the reimbursement rate for the
12 applicable service in the applicable fee schedule of the Authority
13 as of January 1, 2021.

14 B. A contracted entity shall offer value-based payment
15 arrangements to all providers in its network capable of entering
16 into value-based payment arrangements. Such arrangements shall be
17 optional for the provider but shall be tied to reimbursement
18 incentives when quality metrics are met. The quality measures used
19 by a contracted entity to determine reimbursement amounts to
20 providers in value-based payment arrangements shall align with the
21 quality measures of the Authority for contracted entities.

22 C. Notwithstanding any other provision of this section, the
23 Authority shall comply with payment methodologies required by
24 federal law or regulation for specific types of providers including,

1 but not limited to, Federally Qualified Health Centers, rural health
2 clinics, pharmacies, Indian Health Care Providers and emergency
3 services.

4 D. A contracted entity shall offer all rural health clinics
5 (RHCs) contracts that reimburse RHCs using the methodology in place
6 for each specific RHC prior to January 1, 2023, including any and
7 all annual rate updates. The contracted entity shall comply with
8 all federal program rules and requirements, and the transformed
9 Medicaid delivery system shall not interfere with the program as
10 designed.

11 E. The Oklahoma Health Care Authority shall establish minimum
12 rates of reimbursement from contracted entities to Certified
13 Community Behavioral Health Clinic (CCBHC) providers who elect
14 alternative payment arrangements equal to the prospective payment
15 system rate under the Medicaid State Plan.

16 F. The Authority shall establish an incentive payment under the
17 Supplemental Hospital Offset Payment Program that is determined by
18 value-based outcomes for providers other than hospitals.

19 G. Psychologist reimbursement shall reflect outcomes.
20 Reimbursement shall not be limited to therapy and shall include but
21 not be limited to testing and assessment.

22 H. Coverage for Medicaid ground transportation services by
23 licensed Oklahoma emergency medical services shall be reimbursed at
24 no less than the published Medicaid rates as set by the Authority.

1 All currently published Medicaid Healthcare Common Procedure Coding
2 System (HCPCS) codes paid by the Authority shall continue to be paid
3 by the contracted entity. The contracted entity shall comply with
4 all reimbursement policies established by the Authority for the
5 ambulance providers. Contracted entities shall accept the modifiers
6 established by the Centers for Medicare and Medicaid Services
7 currently in use by Medicare at the time of the transport of a
8 member that is dually eligible for Medicare and Medicaid.

9 I. 1. The rate paid to participating pharmacy providers is
10 independent of subsection A of this section and shall be the same as
11 the fee-for-service rate employed by the Authority for the Medicaid
12 program as stated in the payment methodology at OAC 317:30-5-78,
13 unless the participating pharmacy provider elects to enter into
14 other alternative payment agreements.

15 2. A pharmacy or pharmacist shall receive direct payment or
16 reimbursement from the Authority or contracted entity when providing
17 a healthcare service to the Medicaid member at a rate no less than
18 that of other healthcare providers for providing the same service.

19 J. The Authority shall specify in the requests for proposals a
20 reasonable time frame in which a contracted entity shall have
21 entered into a certain percentage, as determined by the Authority,
22 of value-based contracts with providers.

23 K. Capitation rates established by the Oklahoma Health Care
24 Authority and paid to contracted entities under capitated contracts

1 shall be updated annually and in accordance with 42 C.F.R., Section
2 438.3. Capitation rates shall be approved as actuarially sound as
3 determined by the Centers for Medicare and Medicaid Services in
4 accordance with 42 C.F.R., Section 438.4 and the following:

5 1. Actuarial calculations must include utilization and
6 expenditure assumptions consistent with industry and local
7 standards; and

8 2. Capitation rates shall be risk-adjusted and shall include a
9 portion that is at risk for achievement of quality and outcomes
10 measures.

11 L. The Authority may establish a symmetric risk corridor for
12 contracted entities.

13 M. The Authority shall establish a process for annual recovery
14 of funds from, or assessment of penalties on, contracted entities
15 that do not meet the medical loss ratio standards stipulated in
16 Section 4002.5 of this title.

17 N. 1. The Authority shall, through the financial reporting
18 required under subsection G of Section ~~17 of this act~~ 4002.13 of
19 this title, determine the percentage of health care expenses by each
20 contracted entity on primary care services.

21 2. Not later than the end of the fourth year of the initial
22 contracting period, each contracted entity shall be currently
23 spending not less than eleven percent (11%) of its total health care
24 expenses on primary care services.

1 3. The Authority shall monitor the primary care spending of
2 each contracted entity and require each contracted entity to
3 maintain the level of spending on primary care services stipulated
4 in paragraph 2 of this subsection.

5 SECTION 3. This act shall become effective July 1, 2022.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10 SECTION 5. The provisions of this act shall be contingent upon
11 the enactment of Enrolled Senate Bill No. 1337 of the 2nd Session of
12 the 58th Oklahoma Legislature and shall not become effective as law
13 otherwise.

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