

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2406

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to insurance; creating the Oklahoma
13 Individual Health Insurance Market Stabilization Act;
14 providing payments to health insurance plans;
15 providing market stabilization activities; providing
16 legislative intent; defining terms; providing
17 Individual Health Insurance Market Stabilization
18 Program eligibility requirements; establishing the
19 Oklahoma Individual Health Insurance Market
20 Stabilization Program; providing Board of Directors
21 membership; providing Board member reimbursement;
22 requiring adoption of plan of operation, bylaws and
23 rules; requiring administrative rules be promulgated
24 and revoked under certain circumstances; authorizing
 hiring of Executive Director; providing
 administrative and operational support to the
 Program; requiring annual audit; providing certain
 duties of the Board; requiring sunset of the Program
 under certain conditions; granting certain powers to
 the Program; providing assessment of insurers and
 reinsurers; requiring participation be determined
 annually; prohibiting certain tax credit under
 certain circumstances; allowing the Board to abate or
 defer assessment under certain circumstances;
 providing certain actions shall not violate certain
 laws; authorizing the Secretary of Health and Human

1 Services to apply for certain waiver; providing for
2 codification; and declaring an emergency.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6530.1 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as the "Oklahoma
9 Individual Health Insurance Market Stabilization Act". It is the
10 intent of the Legislature to provide payments to health insurance
11 plans with respect to claims for eligible individuals for the
12 purpose of lowering premiums for health insurance coverage offered
13 in the individual market. Market stabilization activities shall
14 include establishment of a high-risk pool, reinsurance, hybrid
15 programs or any combination thereof. It is the further intent of
16 the Legislature to bestow upon the Oklahoma Insurance Commissioner
17 the authority to appoint a Board of Directors which shall create,
18 implement, oversee and monitor the high-risk pool, reinsurance or
19 hybrid programs under provisions of this act. The Board of
20 Directors and the Oklahoma Secretary of Health and Human Services
21 are authorized to apply for, accept and receive federal funds to
22 implement and sustain market stabilization programs. Preliminary
23 planning and analysis shall continue under the direction of the
24 Oklahoma Insurance Commissioner. The onset of market stabilization

1 implementation shall be contingent upon Oklahoma's approval for and
2 receipt of federal funds to implement and sustain market
3 stabilization programs.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6530.2 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 As used in the Oklahoma Individual Health Insurance Market
8 Stabilization Act:

9 1. "Agent" means any person who is licensed to sell health
10 insurance in this state;

11 2. "Board" means the Board of Directors of the Oklahoma
12 Individual Health Insurance Market Stabilization Program;

13 3. "Health insurance" means any individual or group hospital or
14 medical-expense-incurred policy or health care benefits plan or
15 contract providing insurance against loss through illness or injury
16 of the insured. The term does not include any policy governing
17 short-term accidents only, a fixed indemnity policy, a limited
18 benefit policy, a specified accident policy, a specified disease
19 policy, a Medicare supplement policy, a long-term care policy,
20 medical payment or personal injury coverage in a motor vehicle
21 policy, coverage issued as a supplement to liability insurance, a
22 disability policy or workers' compensation;

23 4. "High-risk pool" means specially designated health insurance
24 plans organized by federal or state entities, or a combination of

1 federal and state entities, to serve high-risk, high-cost or both
2 high-risk and high-cost individuals who meet enrollment criteria and
3 do not have access to group insurance. They are organized as
4 independent entities governed by their own boards and administrators
5 and supported by the state's department of insurance;

6 5. "Insurer" means any individual, corporation, association,
7 partnership, fraternal benefit society or any other entity engaged
8 in the health insurance business, except insurance agents and
9 brokers. This term shall also include not-for-profit hospital
10 service and medical indemnity plans, health maintenance
11 organizations, preferred provider organizations, prepaid health
12 plans, the State and Education Employees Group Health Insurance
13 Plan, stop-loss insurance plans and any reinsurer reinsuring health
14 insurance in this state, which shall be designated as engaged in the
15 business of insurance for the purposes of the Oklahoma Individual
16 Health Insurance Market Stabilization Act;

17 6. "Market" means the individual health insurance market in
18 Oklahoma, wherein income-eligible individuals may receive federal
19 financial assistance for the purchase of qualified health plans as
20 provided by Section 36B of Title 26 of the United States Code and
21 Section 1301 of the federal Patient Protection and Affordable Care
22 Act;

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1 7. "Market stabilization activities" means a high-risk pool,
2 reinsurance, hybrid programs or any combination thereof authorized
3 by this act;

4 8. "Plan" means any of the comprehensive health insurance
5 benefit plans as approved by the Board of Directors of the Oklahoma
6 Individual Health Insurance Market Stabilization Program or
7 qualified for participation in the market or by rule;

8 9. "Program" means the Oklahoma Individual Health Insurance
9 Market Stabilization Program;

10 10. "Reinsurer" means any insurer from whom any insurer
11 providing health insurance to Oklahomans procures insurance for
12 itself with respect to all or part of the health insurance risk of
13 the person; and

14 11. "Reinsurance" means the contract made between an entity
15 providing insurance coverage and a third party to protect the
16 insurer from losses. The contract provides for the third party to
17 pay for the loss sustained by the insurer when the insurer makes a
18 payment on the original contract. Reinsurance lets insurers cover a
19 portion of their financial risks by recovering some or all of the
20 claimed amounts they pay.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6530.3 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

1 Except as otherwise provided in this section, any person who is
2 qualified for and enrolled in coverage through the market and is a
3 permanent resident of the State of Oklahoma shall be eligible for
4 coverage under the Oklahoma Individual Health Insurance Market
5 Stabilization Program except that:

6 1. No person who is currently receiving or is entitled to
7 receive health care benefits under any other federal or state
8 program providing financial assistance or preventive and
9 rehabilitative social services is eligible for coverage under the
10 Program; and

11 2. No inmate incarcerated in any state penal institution or
12 confined to any narcotic detention, treatment and rehabilitation
13 facility shall be eligible for coverage under the Program.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6530.4 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. There is hereby created a nonprofit legal entity to be known
18 as the "Oklahoma Individual Health Insurance Market Stabilization
19 Program".

20 B. 1. The Program shall operate under the management of a
21 nine-member Board of Directors appointed by the Insurance
22 Commissioner. The Board shall consist of:

23 a. two representatives of domestic insurance companies
24 licensed to do business in this state,

- b. one member from the general public who is a member of the class of individuals to which the program would apply,
- c. one representative of a health maintenance organization,
- d. one member from a health-related profession,
- e. one member from the general public who is not associated with the medical profession, a hospital or an insurer,
- f. one representative of reinsurers, and
- g. two representatives from the providers of individual plans licensed to do business in this state.

2. The original Board shall be appointed for the following terms:

- a. three members for a term of one (1) year,
- b. three members for a term of two (2) years, and
- c. three members for a term of three (3) years.

3. All terms after the initial term shall be for three (3) years.

4. The Board shall elect one of its members as chairperson.

5. Members of the Board may be reimbursed from monies of the Program for actual and necessary expenses incurred by them in the performance of their official duties as members of the Board but shall not otherwise be compensated for their services.

1 6. The Board shall adopt a plan of operation and submit its
2 articles, bylaws and operating rules to the Insurance Commissioner
3 for approval. If the Board fails to submit a suitable plan of
4 operation, articles, bylaws and operating rules within one hundred
5 eighty (180) days, then the Insurance Commissioner shall promulgate
6 rules governing the operation of the Program. If the Board
7 subsequently adopts and submits any plan of operation, articles,
8 bylaws or operating rules that are approved by the Commissioner,
9 then the Commissioner shall revoke prior adopted administrative
10 rules that the Commissioner determines to be inconsistent with the
11 approved plan of operation, articles, bylaws or operating rules.

12 7. The Board shall have the authority to hire an Executive
13 Director of the Program.

14 8. The Oklahoma Insurance Department shall provide
15 administrative and operational support to the Program and to the
16 Board. The Board shall reimburse the Insurance Commissioner for any
17 direct and actual administrative costs associated with administering
18 the provisions of this act from monies collected by the Board.

19 C. The Board shall cause an audit to be made of, including, but
20 not limited to, the funds, accounts and fiscal affairs of the
21 Program which shall be prepared by an independent certified public
22 accountant or a licensed public accountant. One copy of the annual
23 audit shall be filed with the State Auditor and Inspector, and one
24 copy shall be presented to the Board not more than one hundred

1 twenty (120) days following the close of each fiscal year. In the
2 event that a copy of the audit as required by this section is not
3 filed with the State Auditor and Inspector within the time herein
4 provided, the State Auditor and Inspector is authorized to either
5 commence an audit or employ a certified public accountant or
6 licensed public accountant to make the audit herein required at the
7 cost and expense of the Program.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 6530.5 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. The Board of Directors of the Oklahoma Individual Health
12 Insurance Market Stabilization Program shall:

13 1. Develop, implement and administer the Program.

14 Implementation of the Program shall be contingent upon Oklahoma's
15 approval for and receipt of federal funds to implement and sustain
16 the Program;

17 2. Levy and collect all assessments from all health insurers
18 and reinsurers;

19 3. Make payments to provide for the market stabilization
20 activities authorized by this act and for administrative expenses
21 incurred or estimated to be incurred during the period for which
22 assessment is made;

23 4. Establish administrative and accounting processes and
24 procedures for the operation of the Program and create operating

1 rules to effectuate the provisions of this act including but not
2 limited to:

- 3 a. determine eligibility of individuals to receive
4 coverage under the Program,
- 5 b. establish standards for qualification based upon
6 health status, health conditions, prior or current
7 insurance coverage status, health costs as a result of
8 utilization of consuming health care,
- 9 c. determine amount of the assessment and the amount or
10 percentage of the premiums paid to health insurance
11 plans for health insurance coverage by eligible
12 individuals, that shall be collected and deposited to
13 the credit of, and available for use by, the Program,
- 14 d. establish the dollar amount of claims for eligible
15 individuals after which the Program will provide
16 payments to health insurance plans and the proportion
17 of such claims above such dollar amount that the
18 Program will pay,
- 19 e. establish the rate at which the Program will reimburse
20 a health insurance plan for claims incurred for an
21 enrolled individual's claims, above the attachment
22 point and below the reinsurance cap,
- 23 f. determine the threshold amount for claims costs
24 incurred by a health insurance plan for an enrolled

1 individual's claims, after which the claims costs for
2 benefits are no longer eligible for reinsurance
3 payments, and

- 4 g. determine the diagnosed health condition of an
5 eligible individual for which the Program will provide
6 payments to health insurance plans for claims incurred
7 after such diagnosis is made; and

8 5. Apply for, accept and receive federal funding for the
9 operation of the Program, including the following:

- 10 a. approval of a waiver provided by Section 1332 of the
11 Patient Protection and Affordable Care Act, "1332
12 State Innovation Waiver", authorizing federal funding
13 to support market stabilization program payments,
14 b. Oklahoma's participation in any federal grant program
15 or programs, or
16 c. any combination of the above approaches.

17 B. In the event Oklahoma is unable to secure federal approval
18 of a 1332 State Innovation Waiver or secure funding from federal
19 grant programs within two (2) years from the effective date of this
20 act, the Oklahoma Individual Health Insurance Market Stabilization
21 Program shall sunset, and any remaining monies shall be returned to
22 insurers on a pro rata basis based on the amount each insurer has
23 paid in assessments since the creation of the Program.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6530.6 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 The Board may:

5 1. Exercise powers granted to insurers under the laws of this
6 state;

7 2. Sue or be sued;

8 3. In addition to imposing assessments under Sections 5 and 7
9 of this act, levy interim assessments against insurers and
10 reinsurers to ensure the financial ability of the Program to cover
11 the market stabilization activities authorized by this act and any
12 administrative expenses incurred or estimated to be incurred in the
13 operation of the Program prior to the end of a calendar year. Any
14 interim assessment shall be due and payable within thirty (30) days
15 of the receipt of the assessment notice by the insurer. Interim
16 assessments shall be credited against the insurer's and reinsurer's
17 annual assessment; and

18 4. Request the Insurance Commissioner to check the reports,
19 records, books and papers of the Insurance Department to determine
20 the financial condition of an insurer for purposes of Section 8 of
21 this act.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6530.7 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. For the purpose of providing the funds necessary to carry
2 out the provisions of this act, each insurer and each reinsurer
3 shall be assessed by the Board of Directors of the Oklahoma
4 Individual Health Insurance Market Stabilization Program according
5 to such assessment methodology and at such time and for such amount
6 as the Board finds necessary.

7 B. Each insurer's or reinsurer's proportion of participation in
8 the Program shall be determined annually by the Board based on
9 annual statements and other reports deemed necessary by the Board
10 and filed with it by the insurer.

11 C. An insurer or reinsurer which has paid an assessment levied
12 pursuant to this section shall not take a credit on the premium tax
13 return for that insurer or reinsurer but may include the assessment
14 amount in the insurer's or reinsurer's claims cost calculation for
15 the purpose of determining the insurer's or reinsurer's rates for
16 premiums charged for insurance policies to which the act applies.
17 The rates shall not be deemed excessive for the sole reason of
18 including in the calculation an amount reasonably calculated to
19 recoup the assessment amount paid by the insurer or reinsurer.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6530.8 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Board may abate or defer, in whole or in part, the
24 assessment of any insurer or reinsurer if determined by the

1 Commissioner and the Board, payment of the assessment would place
2 the insurer or reinsurer at an action control level as defined in
3 subparagraph a, b, c or d of paragraph 11 of Section 1522 of Title
4 36 of the Oklahoma Statutes or prevent the insurer or reinsurer from
5 fulfilling the contractual obligations of the insurer or reinsurer.

6 B. In the event that an assessment against an insurer or
7 reinsurer is abated or deferred, in whole or in part, the amount by
8 which such assessment is abated or deferred may be assessed against
9 the other insurers or reinsurers in a manner consistent with the
10 basis for assessments set forth in Sections 5 and 7 of this act, and
11 the insurer or reinsurer receiving the abatement or deferment shall
12 remain liable to the Program for the deficiency for four (4) years.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6530.9 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 It shall constitute an unfair practice for the purposes of
17 Sections 1201 through 1220 of Title 36 of the Oklahoma Statutes for
18 an insurer, insurance agent, insurance broker or third-party
19 administrator to refer an individual employee to the Program or
20 arrange for an individual employee to apply for the Program, for the
21 purpose of separating that employee from group health insurance
22 coverage provided in connection with the employee's employment.

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1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6530.10 of Title 36, unless
3 there is created a duplication in numbering, reads as follows:

4 The Oklahoma Secretary of Health and Human Services may apply to
5 the United States Secretary of Health and Human Services for a
6 waiver pursuant to Section 1332 of the Patient Protection and
7 Affordable Care Act (42 U.S.C., Section 18052), "1332 State
8 Innovation Waiver", with respect to health insurance coverage in the
9 state for a plan year beginning on or after January 1, 2018. The
10 Secretary may implement a state plan meeting the waiver requirements
11 in a manner consistent with state and federal law and as approved by
12 the United States Secretary of Health and Human Services.

13 SECTION 11. It being immediately necessary for the preservation
14 of the public peace, health or safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

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18 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
19 AND BUDGET, dated 05/23/2017 - DO PASS, As Amended.
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