An Act

ENROLLED HOUSE
BILL NO. 1381

By: Cox, Roan, Shelton, Pittman, Sears and Kirby of the House

and

Myers, Adelson, Garrison and Paddack of the Senate

An Act relating to the Supplemental Hospital Offset Payment Program; creating the Supplemental Hospital Offset Payment Program Act; defining terms; requiring assessment of certain fees; making certain exemptions; specifying certain assessment; providing certain limits; establishing basis for certain fees; providing for certain exceptions; requiring certain reviews; prohibiting certain charges; providing for the closure, merger and creation of new hospitals; making certain fee null and void in specified circumstances; requiring certain fee to be returned in specified circumstances; directing promulgation of certain rules; providing for certain penalties; providing termination date for assessment of certain fees; permitting promulgation of emergency rules; establishing the Supplemental Hospital Offset Payment Program Fund; providing for composition of certain fund; permitting transfer of certain funds; requiring certain notice; providing certain time limit; requiring certain timely payments; providing for certain payments; prohibiting use of certain monies to offset specified payments; requiring refund in certain circumstance; providing for budget and expenditure of certain monies; exempting certain funds from specified reductions or eliminations; limiting certain guarantee; providing for certain appeal; prohibiting certain adjustments; requiring repayment of certain funds in specified circumstance; requiring submission of certain proposed state plan

amendment; providing for non-approval of proposed state plan amendment; and providing for codification.

SUBJECT: Supplemental Hospital Offset Payment Program Act

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 3241.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Supplemental Hospital Offset Payment Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Supplemental Hospital Offset Payment Program Act:

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

2. "Base year" means a hospital's fiscal year ending in 2009, as reported in the Medicare Cost Report or as determined by the Authority if the hospital's data is not included in the Medicare Cost Report. The base year data will be used in all assessment calculations through 2014;

3. "Net hospital patient revenue" means the gross hospital revenue as reported on Worksheet G-2 (Columns 1 and 2, Lines 16, 17 and 18) of the Medicare Cost Report, multiplied by the hospital's ratio of total net to gross revenue, as reported on Worksheet G-3 (Column 1, Line 3) and Worksheet G-2 (Part I, Column 3, Line 25);

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

5. "Hospital Advisory Committee" means the Committee established for the purposes of advising the Oklahoma Health Care Authority and recommending provisions within and approval of any

state plan amendment or waiver affecting hospital reimbursement made necessary or advisable by the Supplemental Hospital Offset Payment Program Act. In order to expedite the submission of the state plan amendment required by Section 6 of this act, the Committee shall initially be appointed by the Executive Director of the Authority from recommendations submitted by a statewide association representing rural and urban hospitals. The permanent Committee shall be appointed no later than thirty (30) days after the effective date of this act, and shall be composed of five (5) members to serve until December 31, 2014, from lists of names submitted by a statewide association representing rural and urban hospitals, as follows:

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

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

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

7. "Medicare Cost Report" means Form CMS-2552-96, the Hospital Cost Report, as it existed on January 1, 2011;

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of assuring access to quality care for Oklahoma Medicaid consumers, the Oklahoma Health Care Authority, after considering input and recommendations from the Hospital Advisory Committee, shall assess hospitals licensed in Oklahoma,

unless exempt under subsection B of this section, a supplemental hospital offset payment program fee.

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

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

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

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

a. treatment of a neurological injury,

b. treatment of cancer,

c. treatment of cardiovascular disease,

d. obstetrical or childbirth services,

e. surgical care, except that this exemption shall not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery;

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

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

C. The supplemental hospital offset payment program fee shall be an assessment imposed on each hospital, except those exempted under subsection B of this section, for each calendar year in an

amount calculated as a percentage of each hospital's net patient revenue.

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

a. the nonfederal portion of the upper payment limit gap, plus

b. the annual fee to be paid to the Authority under subparagraph c of paragraph 1 of subsection G of Section 4 of this act, plus

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

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

3. Net hospital patient revenue shall be determined using the data from each hospital's fiscal year 2009 Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated December 31, 2010.

4. If a hospital's fiscal year 2009 Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated December 31, 2010, the hospital shall submit a copy of the hospital's 2009 Medicare Cost Report to the Authority in order to allow the Authority to determine the hospital's net hospital patient revenue for the base year.

5. If a hospital commenced operations after the due date for a 2009 Medicare Cost Report, the hospital shall submit its initial Medicare Cost Report to the Authority in order to allow the Authority to determine the hospital's net patient revenue for the base year.

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

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

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

9. The Authority shall review and determine the amount of the annual assessment. Such review and determination shall occur within the twenty (20) days of federal approval and annually thereafter in December of each year.

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

E. Closure, merger and new hospitals.

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

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

F. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to the Oklahoma Medicaid program for purposes of matching expenditures from the Supplemental Hospital Offset Payment Program Fund at the approved federal medical assistance percentage for the applicable year, the supplemental hospital offset payment program fee shall be null and void as of the date of the nonavailability of such federal funding through and during any period of nonavailability.

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

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

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

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

1. Submit the supplemental hospital offset payment program fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by this section; or

4. Submit reports timely.

I. The supplemental hospital offset payment program fee shall terminate effective December 31, 2014.

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

D. Notice of Assessment.

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

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

3. The first notice of assessment shall be sent within forty-five days (45) days after receipt by the Authority of notification from the Centers for Medicare and Medicaid Services that the assessments and payments required under the Supplemental Hospital Offset Payment Program Act and, if necessary, the waiver granted under 42 C.F.R., Section 433.68 have been approved.

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

5. A hospital subject to an assessment under the Supplemental Hospital Offset Payment Program Act that has not been previously licensed as a hospital in Oklahoma and that commences hospital operations during a year shall pay the required assessment computed under subsection E of Section 3 of this act and shall be eligible for hospital access payments under subsection E of this section on the date specified in rules promulgated by the Authority after consideration of input and recommendations of the Hospital Advisory Committee.

E. Quarterly Notice and Collection.

1. The annual assessment imposed under subsection A of Section 3 of this act shall be due and payable on a quarterly basis. However, the first installment payment of an assessment imposed by the Supplemental Hospital Offset Payment Program Act shall not be due and payable until:

a. the Authority issues written notice stating that the assessment and payment methodologies required under the Supplemental Hospital Offset Payment Program Act have been approved by the Centers for Medicare and Medicaid Services and the waiver under 42 C.F.R., Section 433.68, if necessary, has been granted by the Centers for Medicare and Medicaid Services,

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

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

2. After the initial installment of an annual assessment has been paid under this section, each subsequent quarterly installment payment shall be due and payable by the fifteenth day of the first month of the applicable quarter.

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

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

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

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

F. Medicaid Hospital Access Payments.

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

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

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

4. All hospitals shall be eligible for inpatient and outpatient hospital access payments each year as set forth in this subsection

except hospitals described in paragraph 1, 2, 3 or 4 of subsection B of Section 3 of this act.

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

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

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

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

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

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

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

a. In addition to any other funds paid to critical access hospitals for inpatient and outpatient hospital services to Medicaid patients, each critical access hospital shall receive hospital access payments equal to the amount by which the payment for these services

was less than one hundred one percent (101%) of the hospital's cost of providing these services, as determined using the Medicare Cost Report.

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

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

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

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

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

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

a. supplemental payments for Medicaid and SCHIP inpatient and outpatient services to hospitals that participate in the assessment,

b. supplemental payments for Critical Access Hospitals,

c. payment of administrative expenses incurred by the Authority or its agents and employees in performing the activities authorized by the Supplemental Hospital

Offset Payment Program Act but not more than Two Hundred Thousand Dollars ($200,000.00) each year,

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

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

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

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

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

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

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

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

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The supplemental hospital offset payment program fee is to supplement, not supplant, appropriations to support hospital reimbursement. If Medicaid payment rates to providers are adjusted, hospital rates shall not be adjusted less favorably than the average percentage-rate reduction or increase applicable to the majority of other provider groups.

B. Notwithstanding any other provision of the Supplemental Hospital Offset Payment Program Act, if, after receipt of authorization to receive federal matching funds for monies generated by the Supplemental Hospital Offset Payment Program Act, the authorization is withdrawn or changed so that federal matching funds are no longer available, the Oklahoma Health Care Authority shall cease collecting the provider fee and shall repay to the hospitals any money received by the Supplemental Hospital Offset Payment Program Fund that is not subject to federal matching funds.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Health Care Authority shall submit to the Hospital Advisory Committee a proposed state plan amendment to implement the requirements of the Supplemental Hospital Offset Payment Program Act, including the payment of hospital access payments under Section 4 of this act no later than forty-five (45) days after the effective date of this act, and shall submit the state plan amendment to the Centers for Medicare and Medicaid Services after consideration of the input and recommendations of the Hospital Advisory Committee.

B. If the state plan amendment is not approved by the Centers for Medicare and Medicaid Services, the Authority shall:

1. Not implement the assessment imposed under the Supplemental Hospital Offset Payment Program Act; and

2. Return any fees to hospitals that paid the fees if any such fees have been collected.

Passed the House of Representatives the 11th day of May, 2011.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 12th
day of May, **20** 11,
at 4:20 **o'clock** PM.

By: Jessica R. Pryor

Approved by the Governor of the State of Oklahoma the 13th **day of**
May, **20** 11, **at** 11:20 **o'clock** AM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
13th **day of** May, **20** 11,
at 4:49 **o'clock** PM.

By: Michelle R. Day