

1 **SENATE FLOOR VERSION**

2 February 16, 2015

3 SENATE BILL NO. 734

By: Sykes of the Senate

4 and

5 Osborn of the House

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7
8 An Act relating to the Administrator of the Oklahoma
9 Health Care Authority; amending 63 O.S. 2011, Section
10 5008, which relates to powers and duties of the
11 Administrator; requiring certain functions to be
12 subject to the Administrative Procedures Act;
13 amending 75 O.S. 2011, Section 250.4, as last amended
14 by Section 12, Chapter 430, O.S.L. 2014 (75 O.S.
15 Supp. 2014, Section 250.4), which relates to
16 exceptions to the Administrative Procedures Act;
17 removing certain exceptions; and providing an
18 effective date.

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

20 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5008, is
21 amended to read as follows:

22 Section 5008. A. The Administrator of the Authority shall have
23 the training and experience necessary for the administration of the
24 Authority, as determined by the Oklahoma Health Care Authority
Board, including, but not limited to, prior experience in the
administration of managed health care. The Administrator shall
serve at the pleasure of the Board.

1 B. The Administrator of the Oklahoma Health Care Authority
2 shall be the chief executive officer of the Authority and shall act
3 for the Authority in all matters except as may be otherwise provided
4 by law; provided that all functions executed by the Administrator in
5 his or her official capacity shall be in compliance with the
6 provisions of the Administrative Procedures Act. The powers and
7 duties of the Administrator shall include but not be limited to:
8 1. Supervision of the activities of the Authority;
9 2. Formulation and recommendation of rules for approval or
10 rejection by the Oklahoma Health Care Authority Board and
11 enforcement of rules and standards promulgated by the Board;
12 3. Preparation of the plans, reports and proposals required by
13 the Oklahoma Health Care Authority Act, Section 5003 et seq. of this
14 title, other reports as necessary and appropriate, and an annual
15 budget for the review and approval of the Board;
16 4. Employment of such staff as may be necessary to perform the
17 duties of the Authority including but not limited to an attorney to
18 provide legal assistance to the Authority for the state Medicaid
19 program; and
20 5. Establishment of a contract bidding process which:
21 a. encourages competition among entities contracting with
22 the Authority for state-purchased and state-subsidized
23 health care; provided, however, the Authority may make
24 patient volume adjustments to any managed care plan

1 whose prime contractor is a state-sponsored,
2 nationally accredited medical school. The Authority
3 may also make education or research supplemental
4 payments to state-sponsored, nationally accredited
5 medical schools based on the level of participation in
6 any managed care plan by managed care plan
7 participants,

8 b. coincides with the state budgetary process, and

9 c. specifies conditions for awarding contracts to any
10 insuring entity.

11 C. The Administrator may appoint advisory committees as
12 necessary to assist the Authority with the performance of its duties
13 or to provide the Authority with expertise in technical matters.

14 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.4, as
15 last amended by Section 12, Chapter 430, O.S.L. 2014 (75 O.S. Supp.
16 2014, Section 250.4), is amended to read as follows:

17 Section 250.4. A. 1. Except as is otherwise specifically
18 provided in this subsection, each agency is required to comply with
19 Article I of the Administrative Procedures Act.

20 2. The Corporation Commission shall be required to comply with
21 the provisions of Article I of the Administrative Procedures Act
22 except for subsections A, B, C and E of Section 303 of this title
23 and Section 306 of this title. To the extent of any conflict or
24 inconsistency with Article I of the Administrative Procedures Act,

1 pursuant to Section 35 of Article IX of the Oklahoma Constitution,
2 it is expressly declared that Article I of the Administrative
3 Procedures Act is an amendment to and alteration of Sections 18
4 through 34 of Article IX of the Oklahoma Constitution.

5 3. The Oklahoma Military Department shall be exempt from the
6 provisions of Article I of the Administrative Procedures Act to the
7 extent it exercises its responsibility for military affairs.

8 4. The Oklahoma Ordnance Works Authority, the Northeast
9 Oklahoma Public Facilities Authority, the Oklahoma Office of
10 Homeland Security and the Board of Trustees of the Oklahoma College
11 Savings Plan shall be exempt from Article I of the Administrative
12 Procedures Act.

13 5. The Transportation Commission and the Department of
14 Transportation shall be exempt from Article I of the Administrative
15 Procedures Act to the extent they exercise their authority in
16 adopting standard specifications, special provisions, plans, design
17 standards, testing procedures, federally imposed requirements and
18 generally recognized standards, project planning and programming,
19 and the operation and control of the State Highway System.

20 6. The Oklahoma State Regents for Higher Education shall be
21 exempt from Article I of the Administrative Procedures Act with
22 respect to:

23 a. prescribing standards of higher education,
24

- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license regulations, for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.

b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after

1 notice of adoption is published in "The Oklahoma
2 Register". Such publication need not set forth the
3 full text of the rule but may incorporate the federal
4 rules and regulations by reference.

5 c. Such copies of promulgated rules shall be filed with
6 the Secretary as required by Section 251 of this
7 title.

8 d. For any rules for which the Commissioner has
9 discretion to allow variances, tolerances or
10 modifications from the federal rules and regulations,
11 the Commissioner shall fully comply with Article I of
12 the Administrative Procedures Act.

13 9. The Council on Judicial Complaints shall be exempt from
14 Section 306 of Article I of the Administrative Procedures Act, with
15 respect to review of the validity or applicability of a rule by an
16 action for declaratory judgment, or any other relief based upon the
17 validity or applicability of a rule, in the district court or by an
18 appellate court. A party aggrieved by the validity or applicability
19 of a rule made by the Council on Judicial Complaints may petition
20 the Court on the Judiciary to review the rules and issue opinions
21 based upon them.

22 10. The Department of Corrections, State Board of Corrections,
23 county sheriffs and managers of city jails shall be exempt from
24 Article I of the Administrative Procedures Act with respect to:

- a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and
- b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

11. The State Board of Education shall be exempt from Article I of the Administrative Procedures Act with respect to prescribing subject matter standards as provided for in Section 11-103.6a of Title 70 of the Oklahoma Statutes.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;

1 10. The Board of Trustees of the Oklahoma College Savings Plan;

2 11. The supervisory or administrative agency of any penal,
3 mental, medical or eleemosynary institution, only with respect to
4 the institutional supervision, custody, control, care or treatment
5 of inmates, prisoners or patients therein; provided, that the
6 provisions of Article II shall apply to and govern all
7 administrative actions of the Oklahoma Alcohol Prevention, Training,
8 Treatment and Rehabilitation Authority;

9 12. The Board of Regents or employees of any university,
10 college, or other institution of higher learning;

11 13. The Oklahoma Horse Racing Commission, its employees or
12 agents only with respect to hearing and notice requirements on the
13 following classes of violations which are an imminent peril to the
14 public health, safety and welfare:

- 15 a. any rule regarding the running of a race,
16 b. any violation of medication laws and rules,
17 c. any suspension or revocation of an occupation license
18 by any racing jurisdiction recognized by the
19 Commission,
20 d. any assault or other destructive acts within
21 Commission-licensed premises,
22 e. any violation of prohibited devices, laws and rules,
23 or
24 f. any filing of false information;

1 14. The Commissioner of Public Safety only with respect to
2 driver license hearings and hearings conducted pursuant to the
3 provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

4 15. The Administrator of the Department of Securities only with
5 respect to hearings conducted pursuant to provisions of the Oklahoma
6 Take-over Disclosure Act of 1985;

7 16. Hearings conducted by a public agency pursuant to Section
8 962 of Title 47 of the Oklahoma Statutes;

9 17. The Oklahoma Military Department;

10 18. The University Hospitals Authority, including all hospitals
11 or other institutions operated by the University Hospitals
12 Authority; and

13 ~~19. The Oklahoma Health Care Authority Board and the~~
14 ~~Administrator of the Oklahoma Health Care Authority; and~~

15 ~~20.~~ The Oklahoma Office of Homeland Security.

16 SECTION 3. This act shall become effective November 1, 2015.

17 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
18 February 16, 2015 - DO PASS