SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

■ FLOOR AMENDMENT No. 1

☐ COMMITTEE AMENDMENT

(Date)

I move to amend Senate Bill No. 1628 by substituting the attached floor substitute (Request No. 3607) for the title, enacting clause and entire body of the measure.

Submitted by:

Brent Howard

Senator Howard

I hereby grant permission for the floor substitute to be adopted.

Senator Pemberton, Chair (required)

Senator Hamilton

Senator Jett

Senator Matthews

Senator Coleman

Senator Prieto

Senator Dugger

Senator Woods

Senator Garvin

Senator Young

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Retirement and Insurance committee majority requires six (6) members' signatures.

Howard-RD-FS-SB1628
3/5/2024 9:53 AM

(Floor Amendments Only) Date and Time Filed: 3-7-24 9:48am SR

☐ Untimely ☐ Amendment Cycle Extended ☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 1628 By: Howard of the Senate

and

McEntire of the House

FLOOR SUBSTITUTE

[prescription drug pricing - pharmacy benefits manager - contracts - actions - codification - effective date]

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 5400 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Health Care Safety Net and Affordable Prescriptions Accessibility Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5401 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "340B drug" means a drug that has been subject to any reduced purchase price by a manufacturer pursuant to Section 256b of Title 42 of the United States Code and is purchased by a covered entity as defined in Section 256b(a)(4) of Title 42 of the United States Code;

2. "340B entity" means an entity participating or authorized to participate in the federal 340B drug pricing program, as described in Section 256b of Title 42 of the United States Code, including its pharmacy, or any pharmacy contracted with the participating entity to dispense drugs purchased through the 340B drug pricing program;

3. "Distributor" means a person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or repackager engaged in wholesale distribution as defined by Section 353(e)(4) of Title 21 of the United States Code as amended by the Drug Supply Chain Security Act;

4. "Manufacturer" means:

a. a person that holds an application approved under Section 355 of Title 21 of the United States Code or a license issued under Section 262 of Title 42 of the United States Code for such product, or if such product is not the subject of an approved application or license, the person who manufactured the product,

b. a co-licensed partner of the person described in subparagraph a of this paragraph that obtains the

product directly from a person described in this subparagraph or subparagraph a of this paragraph,

c. an affiliate of a person described in subparagraph a or b of this paragraph who receives the product directly from a person described in this subparagraph or in subparagraph a or b of this paragraph, or

d. a person who contracts with another to manufacture a product;

5. "Pharmacy" means a pharmacy licensed by the State Board of Pharmacy, provided patients who receive pharmacy care shall be physically located in the state; and

6. "Pharmacy benefits manager" means a person that performs pharmacy benefits management and any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by a department of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5402 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. With respect to reimbursement to a 340B entity for 340B drugs, a health insurance issuer, pharmacy benefits manager, other third-party payor, or its agent shall not:

1. Reimburse a 340B entity for 340B drugs at a rate lower than that paid for the same drug to entities that are not 340B entities or lower reimbursement for a claim on the basis that the claim is for a 340B drug;

2. Impose any terms or conditions on any 340B entity with respect to any of the following that differ from such terms or conditions applied to non-340B entities on the basis that the entity participates in the federal 340B drug pricing program set forth in Section 256b of Title 42 of the United States Code or that a drug is a 340B drug including, without limitation, any of the following:

a. fees, charges, clawbacks, or other adjustments or assessments. For purposes of this subparagraph, the term "other adjustments" includes placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that result in administrative costs or fees to the 340B entity that are not placed upon other entities that do not participate in the 340B drug pricing program, including affiliate pharmacies of the health insurance issuer, pharmacy benefits manager, or other third-party payor,

b. dispensing fees that are less than the dispensing fees for non-340B entities,

c. restrictions or requirements regarding participation in standard or preferred pharmacy networks,

d. requirements relating to the frequency or scope of audits of inventory management systems,

e. requirements that a claim for a drug include any identification, billing modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or the Oklahoma Health Care Authority for the administration of the Oklahoma Medicaid Program, or

f. any other restrictions, conditions, practices, or policies that are not imposed on non-340B entities;

3. Require a 340B entity to reverse, resubmit, or clarify a claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing;

4. Discriminate against a 340B entity in a manner that prevents or interferes with any patient's choice to receive such drugs from the 340B entity, including the administration of such drugs. For purposes of this subsection, it is considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a health insurance issuer, pharmacy benefits manager, or other third-party payor places any

additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity including, but not limited to, requiring a claim for a drug to include any identification, billing modifier, attestation, or other indication that a drug is a 340B drug in order to be processed or resubmitted unless it is required by the Centers for Medicare and Medicaid Services or the Oklahoma Health Care Authority in administration of the Oklahoma Medicaid Program;

5. Include any other provision in a contract between a health insurance issuer, pharmacy benefits manager, or other third-party payor and a 340B entity that discriminates against the 340B entity or prevents or interferes with an individual's choice to receive a prescription drug from a 340B entity, including the administration of the drug, in person or via direct delivery, mail, or other form of shipment, or creation of a restriction or additional charge on a patient who chooses to receive drugs from a 340B entity;

6. Require or compel the submission of ingredient costs or pricing data pertaining to 340B drugs to any health insurance issuer, pharmacy benefits manager, or other third-party payor; or

7. Exclude any 340B entity from the health insurance issuer, pharmacy benefits manager, or other third-party payor network on the basis that the 340B entity dispenses drugs subject to an agreement under Section 256b of Title 42 of the United State Code, or refusing

to contract with a 340B entity for reasons other than those that apply equally to non-340B entities.

B. Nothing in this section applies to the Oklahoma Medicaid Program as payor when Medicaid provides reimbursement for covered outpatient drugs as defined in Section 1396r-8(k) of Title 42 of the United States Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5403 of Title 36, unless there is created a duplication in numbering, reads as follows:

A manufacturer or distributor shall not:

1. Deny, prohibit, condition, discriminate against, refuse, or withhold 340B drug pricing for, or otherwise limit the dispensing, purchase, ordering, delivery, or receipt of, a drug purchased by a 340B entity including, but not limited to, a drug purchased to be dispensed or administered under a contract pharmacy agreement; or

2. Prohibit a pharmacy from contracting or participating with a 340B entity by denying 340B pricing on, or the pharmacy's access to, a drug that is manufactured by a manufacturer based on a pharmacy's relationship with a 340B entity.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5404 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Attorney General may promulgate rules to effectuate the provisions of this act and shall make recommendations to the

Insurance Commissioner for enforcement within the jurisdiction of the Insurance Commissioner.

The Insurance Commissioner may censure, suspend, revoke, or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of this act.

In addition to or in lieu of any applicable censure, suspension, or revocation of a license, a manufacturer, distributor, health insurance issuer, pharmacy benefits manager, other third-party payor, or its agent may be subject to a civil fine not less than One Hundred Dollars ($100.00) and not greater than Ten Thousand Dollars ($10,000.00) for each violation of the provisions of this act. A violation occurs each time a prohibited act is committed.

SECTION 6. This act shall become effective November 1, 2024.

59-2-3607 RD 3/7/2024 10:25:08 AM