

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2315

By: Marti

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6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the Patient's Right to Pharmacy Choice Act;
9 declaring purpose; defining terms; providing for
10 compliance standards for retail pharmacy networks;
11 directing the Insurance Department to promulgate
12 rules; providing for review of retail pharmacy
13 network access; prohibiting certain actions;
14 prohibiting certain restrictions; requiring health
15 insurer to monitor compliance; requiring specific
16 uses for certain compensation; requiring health
17 insurer file annual report; directing a health
18 insurer's pharmacy and therapeutics committee to
19 establish a formulary; prohibiting conflicts of
20 interest; providing conditions for persons to serve
21 on pharmacy and therapeutics committee; prohibiting
22 compensation; providing for publication of drug
23 formulary; requiring regular updates; authorizing
24 Insurance Commissioner investigative powers;
authorizing Insurance Commissioner to hire additional
employees; establishing a Right to Patient Choice
Advisory Committee; providing the Right to Patient
Choice Advisory Committee with certain powers;
providing for composition and appointment of the
Right to Patient Choice Advisory Committee; providing
term length; providing hearings be held in accordance
with the Administrative Procedures Act; providing for
confidentiality; providing exception; providing for
codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6958 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Patient's Right
5 to Pharmacy Choice Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 6959 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 The purpose of the Patient's Right to Pharmacy Choice Act is to
10 establish minimum and uniform access and standards and prohibitions
11 on restrictions of patient's right to choose a pharmacy provider.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 6960 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 For purposes of the Patient's Right to Pharmacy Choice Act:

16 1. "Benefit plan" means any health benefit plan offered by a
17 health insurance carrier, health maintenance organization, managed
18 care entity, or any other entity that provides prescription drug
19 benefits to covered individuals, including workers' compensation
20 programs, state-administered health benefit plans and self-funded
21 benefit programs;

22 2. "Mail-order pharmacy" means a pharmacy licensed by this
23 state that primarily dispenses and delivers covered drugs via common
24 carrier;

1 3. "Pharmacy benefits manager" or "PBM" means a person,
2 business or other entity that performs pharmacy benefits management.
3 The term includes a person or entity acting for a PBM in a
4 contractual or employment relationship in the performance of
5 pharmacy benefits management for a managed-care company, nonprofit
6 hospital, medical service organization, insurance company, third-
7 party payor or a health program administered by a department of this
8 state;

9 4. "Pharmacy and therapeutics committee (P&T committee)" means
10 a committee at a hospital or a health insurance plan that decides
11 which drugs will appear on that entity's drug formulary;

12 5. "Retail pharmacy network" means retail pharmacy providers
13 contracted with the entity providing or administering a benefit plan
14 in which the pharmacy primarily fills and sells prescriptions via a
15 retail, storefront location;

16 6. "Rural service area" means a five-digit ZIP code in which
17 the population density is greater than three thousand (3,000)
18 individuals per square mile;

19 7. "Suburban service area" means a five-digit ZIP code in which
20 the population density is between one thousand (1,000) and three
21 thousand (3,000) individuals per square mile; and

22 8. "Urban service area" means a five-digit ZIP code in which
23 the population density is greater than three thousand (3,000)
24 individuals per square mile.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6961 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Retail pharmacy networks shall comply with the following
5 access standards:

6 1. At least ninety percent (90%) of covered individuals in the
7 benefit plan's urban service area live within two (2) miles of a
8 retail pharmacy participating in the benefit plan's retail pharmacy
9 network;

10 2. At least ninety percent (90%) of covered individuals in the
11 benefit plan's urban service area live within five (5) miles of a
12 retail pharmacy designated as a preferred participating pharmacy in
13 the benefit plan's retail pharmacy network;

14 3. At least ninety percent (90%) of covered individuals in the
15 benefit plan's suburban service area live within five (5) miles of a
16 retail pharmacy participating in the benefit plan's retail pharmacy
17 network;

18 4. At least ninety percent (90%) of covered individuals in the
19 benefit plan's suburban service area live within seven (7) miles of
20 a retail pharmacy designated as a preferred participating pharmacy
21 in the benefit plan's retail pharmacy network;

22 5. At least seventy percent (70%) of covered individuals in the
23 benefit plan's rural service area live within fifteen (15) miles of
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1 a retail pharmacy participating in the benefit plan's retail
2 pharmacy network; and

3 6. At least seventy percent (70%) of covered individuals in the
4 benefit plan's rural service area live within eighteen (18) miles of
5 a retail pharmacy designated as a preferred participating pharmacy
6 in the benefit plan's retail pharmacy network.

7 B. Mail-order pharmacies shall not be used to meet access
8 standards for retail pharmacy networks.

9 C. Pharmacy benefits managers and benefit plans shall invite
10 all health care providers, including but not limited to pharmacies,
11 physicians, clinics, to join their networks, and shall set the same
12 criteria for all providers including those providers that are
13 directly or indirectly owned by or working in conjunction with the
14 PBM or benefit plan.

15 D. Pharmacy benefits managers and benefit plans shall allow all
16 patients to use any health care provider - in or out of network - if
17 that provider accepts the same conditions as those within the
18 network.

19 E. Pharmacy benefits managers and benefit plans shall not
20 require patients to use pharmacies that are directly or indirectly
21 owned by or working in conjunction with the pharmacy benefits
22 manager or benefit plan - including all regular prescriptions,
23 refills or specialty drugs regardless of day supply.

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1 F. Pharmacy benefits managers and benefit plans shall not in
2 any manner on any material, including but not limited to mail and ID
3 cards, include the name of any pharmacy, hospital or other providers
4 unless it specifically lists ALL pharmacies, hospitals and providers
5 participating in the preferred and nonpreferred pharmacy and health
6 networks.

7 G. The Oklahoma Insurance Department shall promulgate any rules
8 necessary to administer and enforce the provisions of this section.

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6962 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The Oklahoma Insurance Department shall review and approve
13 retail pharmacy network access for all benefit plans to ensure
14 compliance with Section 4 of this act.

15 B. A pharmacy benefits manager or representative of a pharmacy
16 benefits manager shall not:

17 1. Cause or knowingly permit the use of advertisement,
18 promotion, solicitation, representation, proposal or offer that is
19 untrue, deceptive or misleading;

20 2. Charge a pharmacist or pharmacy a fee related to the
21 adjudication of a claim, including without limitation a fee for:

- 22 a. the submission of a claim,
- 23 b. enrollment or participation in a retail pharmacy
24 network, or

1 c. the development or management of claims processing
2 services or claims payment services related to
3 participation in a retail pharmacy network;

4 3. Reimburse a pharmacy or pharmacist in the state an amount
5 less than the amount that the pharmacy benefits manager reimburses a
6 pharmacy owned by or under common ownership with a PBM for providing
7 the same covered services. The reimbursement amount shall be
8 calculated on a per-unit basis using the same generic product
9 identifier or generic code number submitted by the PBM-owned or PBM-
10 affiliated pharmacy;

11 4. Deny a pharmacy the opportunity to participate in any
12 pharmacy network at standard or preferred participation status if
13 the pharmacy is willing to accept the terms and conditions that the
14 PBM has established for other pharmacies as a condition of standard
15 network participation or preferred network participation status;

16 5. Deny, limit or terminate a contract based on employment
17 status of any employee that has a license currently in good
18 standing, despite probation status, with the Oklahoma State Board of
19 Pharmacy;

20 6. Impose on a covered individual a monetary advantage or
21 penalty, including a higher cost-sharing or additional fee which
22 would affect a covered individual's choices of network pharmacy;
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1 7. Retroactively deny or reduce reimbursement for a covered
2 service claim after returning a paid claim response as part of the
3 adjudication of the claim, unless:

- 4 a. the original claim was submitted fraudulently, or
- 5 b. the pharmacy service provided related to the subject
6 claim violated the Oklahoma Pharmacy Act; or

7 8. Fail to make any payment due to a pharmacy or pharmacist for
8 covered services properly rendered in the event a PBM terminates a
9 pharmacy or pharmacist from a pharmacy benefits manager network.

10 C. The prohibitions under this section shall apply to contracts
11 between pharmacy benefits managers and pharmacists or pharmacies for
12 participation in retail pharmacy networks.

13 1. A pharmacy benefits manager contract with a pharmacist or
14 pharmacy shall not contain a provision prohibiting disclosure to
15 patients of billed or allowed amounts, reimbursement rates or out-
16 of-pocket costs.

17 2. A pharmacy benefits manager contract with a participating
18 pharmacist or pharmacy shall not prohibit, restrict or limit
19 disclosure of information to the Insurance Commissioner, law
20 enforcement, or state and federal governmental officials
21 investigating or examining a complaint or conducting a review of a
22 pharmacy benefits manager's compliance with the requirements under
23 the Patient's Right to Pharmacy Choice Act.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6963 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A health insurer shall be responsible for monitoring all
5 activities carried out by, or on behalf of, the health insurer under
6 the Patient's Right to Pharmacy Choice Act, and for ensuring that
7 all requirements of this act are met.

8 B. Whenever a health insurer contracts with another person to
9 perform activities required under this act, the health insurer shall
10 be responsible for monitoring the activities of that person with
11 whom the health insurer contracts and for ensuring that the
12 requirements of this act are met.

13 C. A health insurer owes a fiduciary duty to all covered
14 persons with respect to the provision of prescription drug benefits.

15 D. A covered person shall be notified at the point of sale when
16 the cash price for the purchase of a prescription drug is less than
17 the covered person's copayment or coinsurance price for the purchase
18 of the same prescription drug.

19 E. A health insurer or any entity hired or employed to manage a
20 prescription drug plan or plans shall not restrict a covered
21 person's choice of provider for prescription drugs and shall not
22 require or incentivize using any discounts in cost sharing to
23 covered persons to receive prescription drugs from mail order
24 pharmacies.

1 F. A health insurer, pharmacy or any entity hired or employed
2 to manage prescription drug plan(s) shall adhere to all Oklahoma
3 laws, statutes and rules when mailing, shipping and/or causing to be
4 mailed or shipped into the State of Oklahoma.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6964 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. All compensation remitted by a pharmaceutical manufacturer,
9 developer or labeler, directly or indirectly related to a health
10 benefit plan or pharmacy benefit plan, shall be remitted to, and
11 retained by, that health benefit plan or pharmacy benefit plan for
12 the purposes described in subsection C of this section.

13 B. All compensation received by or on behalf of a health
14 insurer from a pharmaceutical manufacturer, developer or labeler
15 shall be used by the health insurer to:

16 1. Lower health benefit plan or pharmacy benefit plan premiums
17 for covered persons;

18 2. Lower copayment and coinsurance amounts for covered persons;

19 or

20 3. Expand pharmacy benefit plan coverage.

21 C. A health insurer shall file with the Insurance Commissioner,
22 on or before March 1 each year, an annual report, in a manner and
23 form established by rule promulgated by the Commissioner,

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1 demonstrating the amount and nature of how compensation received
2 from pharmaceutical manufacturers, developers or labelers has:

3 1. Lowered health benefit plan or pharmacy benefit plan
4 premiums for covered persons;

5 2. Lowered copayment and coinsurance amounts for covered
6 persons; and/or

7 3. Expanded pharmacy benefit plan coverage.

8 D. The annual report filing requirement in subsection C of this
9 section shall not begin until March 1, 2021.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6965 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A health insurer's pharmacy and therapeutics committee (P&T
14 committee) shall establish a formulary, which shall be a list of
15 prescription drugs, both generic and brand name, used by
16 practitioners to identify drugs that offer the greatest overall
17 value.

18 B. A health insurer shall prohibit conflicts of interest for
19 members of the P&T committee.

20 1. A person may not serve on a P&T committee if the person is:
21 a. currently employed or was employed within the
22 preceding year by a pharmaceutical manufacturer,
23 developer, labeler, wholesaler or distributor, or
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1 b. currently receiving compensation, or received
2 compensation within the preceding year, from a
3 pharmaceutical manufacturer, developer, labeler,
4 wholesaler or distributor.

5 2. A health insurer shall prohibit the P&T committee, and any
6 member of the P&T committee, from receiving any compensation or
7 funding from a pharmaceutical manufacturer, developer, labeler,
8 wholesaler or distributor.

9 C. A health insurer shall display its formulary on its website
10 to be publicly accessible.

11 1. The formulary shall be electronically searchable by drug
12 name and any other means required by the Insurance Commissioner, as
13 established by rule.

14 2. The formulary shall include, at a minimum, the following:

- 15 a. an indication of whether each drug on the formulary is
16 preferred under the plan,
- 17 b. an indication of whether each drug on the formulary
18 requires prior authorization or has step therapy or
19 quantity limit restrictions,
- 20 c. the specific tier the drug falls under, if the health
21 insurer's plan uses a tiered formulary,
- 22 d. the amount of the drug copayment, if applicable,
- 23 e. the amount of the drug coinsurance, if applicable,

- 1 f. whether the drug is subject to a deductible, and if
2 so, the amount of the deductible,
3 g. whether the drug is included on the health insurer's
4 maximum allowable cost (MAC) list and, if so, the
5 price of the drug as established by the health
6 insurer's MAC list, and
7 h. for drugs not included on the health insurer's MAC
8 list, the average wholesale price (AWP) as established
9 by the standards required in Section 4 of this act.

10 3. The health insurer shall update drugs included on the health
11 insurer's MAC list no less than every seven (7) days.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 6966 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The Insurance Commissioner shall have power to examine and
16 investigate into the affairs of every pharmacy benefits manager
17 (PBM) engaged in pharmacy benefits management in this state in order
18 to determine whether such entity is in compliance with the Patient's
19 Right to Pharmacy Choice Act.

20 B. All PBM files and records shall be subject to examination by
21 the Insurance Commissioner or by duly appointed designees. The
22 Insurance Commissioner, authorized employees, state legislators, and
23 examiners shall have access to any of a PBM's files and records that
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1 may relate to a particular complaint under investigation or to an
2 inquiry or examination by the Insurance Department.

3 C. Every officer, director, employee or agent of the PBM, upon
4 receipt of any inquiry from the Commissioner shall, within thirty
5 (30) days from the date the inquiry is sent, furnish the
6 Commissioner with an adequate response to the inquiry.

7 D. When making an examination under this section, the Insurance
8 Commissioner may retain subject matter experts, attorneys,
9 appraisers, independent actuaries, independent certified public
10 accountants or an accounting firm or individual holding a permit to
11 practice public accounting, certified financial examiners or other
12 professionals and specialists as examiners, the cost of which shall
13 be borne by the PBM which is the subject of the examination.

14 SECTION 10. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6967 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The Insurance Commissioner may hire additional employees and
18 examiners as needed for the enforcement of the provisions of the
19 Patient's Right to Pharmacy Choice Act.

20 B. The Commissioner may retain other governmental or
21 nongovernmental entities or individuals as needed for the
22 enforcement of the provisions of this act.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6968 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Insurance Commissioner shall provide for the receiving
5 and processing of individual complaints alleging violations of the
6 provisions of the Patient's Right to Pharmacy Choice Act.

7 B. The Commissioner shall establish a Right to Patient Choice
8 Advisory Committee (Advisory Committee) to review complaints, hold
9 hearings and subpoena witnesses and records, initiate prosecution,
10 reprimand, place on probation, suspend, revoke, and/or levy fines
11 not to exceed Ten Thousand Dollars (\$10,000.00) for each count for
12 which any pharmacy benefits manager (PBM) has violated a provision
13 of this act. The Advisory Committee may impose as part of any
14 disciplinary action the payment of costs expended by the Insurance
15 Department for any legal fees and costs, including but not limited
16 to staff time, salary and travel expense, witness fees and attorney
17 fees. The Advisory Committee may take such actions singly or in
18 combination, as the nature of the violation requires.

19 C. The Advisory Committee shall consist of seven (7) persons
20 appointed as follows:

21 1. Two persons who shall be nominated by the Oklahoma
22 Pharmacists Association;

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1 2. Two consumer members not employed or related to insurance,
2 pharmacy or pharmacy benefit management nominated by the Governor's
3 office;

4 3. Two persons representing the PBM or insurance industry
5 nominated by the Insurance Commissioner; and

6 4. One person representing the Attorney General's Office
7 nominated by the Attorney General.

8 D. Committee members shall be appointed for terms of five (5)
9 years. The terms of the members of the Advisory Committee shall
10 expire on the 30th day of June of the year designated for the
11 expiration of the term for which appointed but the member shall
12 serve until a qualified successor has been duly appointed. No
13 person shall be appointed to serve more than two consecutive terms.

14 E. Hearings shall be held in the Insurance Commissioner's
15 offices or at such other place as the Insurance Commissioner may
16 deem convenient.

17 F. The Insurance Commissioner shall issue and serve upon the
18 PBM a statement of the charges and a notice of hearing in accordance
19 with the Administrative Procedures Act, Sections 250.1 through 323
20 of Title 75 of the Oklahoma Statutes.

21 G. At the time and place fixed for a hearing, the PBM shall
22 have an opportunity to be heard and to show cause why the Insurance
23 Commissioner or his duly appointed hearing examiner should not
24 revoke and/or suspend the PBM's license and levy administrative

1 fines for each violation. Upon good cause shown, the Commissioner
2 shall permit any person to intervene, appear and be heard at the
3 hearing by counsel or in person.

4 H. All hearings will be public and held in accordance with, and
5 governed by, Sections 250.1 through 323 of Title 75 of the Oklahoma
6 Statutes.

7 I. The Insurance Commissioner, upon written request reasonably
8 made by the licensed PBM affected by the hearing, and at such PBM's
9 expense, shall cause a full stenographic record of the proceedings
10 to be made by a competent court reporter.

11 J. If the Insurance Commissioner determines, based on an
12 investigation of complaints, that a PBM has engaged in violations of
13 this act with such frequency as to indicate a general business
14 practice and that such PBM should be subjected to closer supervision
15 with respect to such practices, the Insurance Commissioner may
16 require the PBM to file a report at such periodic intervals as the
17 Insurance Commissioner deems necessary.

18 SECTION 12. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6969 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Documents, materials, reports, complaints or other
22 information in the possession or control of the Insurance Department
23 that are obtained by or disclosed to the Insurance Commissioner or
24 any other person in the course of an evaluation, examination,

1 investigation or review made pursuant to the provisions of the
2 Patient's Right to Pharmacy Choice Act shall be confidential by law
3 and privileged, shall not be subject to open records request, shall
4 not be subject to subpoena, and shall not be subject to discovery or
5 admissible in evidence in any private civil action if obtained from
6 the Insurance Commissioner or any employees or representatives of
7 the Insurance Commissioner.

8 B. Nothing in this section shall prevent the disclosure of a
9 final order issued against a pharmacy benefits manager by the
10 Insurance Commissioner or his duly appointed hearing examiner. Such
11 orders shall be open records.

12 SECTION 13. This act shall become effective November 1, 2019.

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