

An Act

ENROLLED HOUSE
BILL NO. 3376

By: McEntire of the House

and

McCortney of the Senate

An Act relating to pharmacy benefits management; amending 36 O.S. 2021, Sections 6960, as amended by Section 1, Chapter 38, O.S.L. 2022, 6962, as last amended by Section 1, Chapter 293, O.S.L. 2023, 6965, as amended by Section 2, Chapter 293, O.S.L. 2023, Section 3, Chapter 38, O.S.L. 2022, as amended by Section 3, Chapter 293, O.S.L. 2023, and 6967 (36 O.S. Supp. 2023, Sections 6960, 6962, 6965, and 6966.1), which relate to the Patient's Right to Pharmacy Choice Act; defining terms; modifying definitions; prohibiting certain contract terms from restricting document disclosure to certain entities; modifying certain compliance provisions; conforming language; construing provisions; providing for rule promulgation; establishing requirements for disclosure of protected health information; modifying certain fine amount; providing for certain fines and fees; creating the Attorney General's Pharmacy Benefits Manager Enforcement Revolving Fund; establishing fund source; stating purpose; establishing provisions relating to public disclosure of certain report and certain information obtained by the Attorney General; repealing 36 O.S. 2021, Section 6966, which relates to the Patient's Right to Pharmacy Choice Commission; providing for codification; and declaring an emergency.

SUBJECT: Pharmacy benefits management

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, as amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2023, Section 6960), is amended to read as follows:

Section 6960. A. For purposes of the Patient's Right to Pharmacy Choice Act:

1. "Covered entity" means a nonprofit hospital or medical service organization, for-profit hospital or medical service organization, insurer, health benefit plan, health maintenance organization, health program administered by the state in the capacity of providing health coverage, or an employer, labor union, or other group of persons that provides health coverage to persons in this state. This term does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, disability income, or other limited benefit health insurance policies and contracts that do not include prescription drug coverage;

2. "Health insurer" means any corporation, association, benefit society, exchange, partnership or individual licensed by the Oklahoma Insurance Code;

~~2.~~ 3. "Health insurer payor" means a health insurance company, health maintenance organization, union, hospital and medical services organization or any entity providing or administering a self-funded health benefit plan;

~~3.~~ 4. "Mail-order pharmacy" means a pharmacy licensed by this state that primarily dispenses and delivers covered drugs via common carrier;

~~4.~~ 5. "Pharmacy benefits manager" or "PBM" means a person, business, or other entity that performs pharmacy benefits management and any other person acting for such person under. The term shall include a person or entity acting on behalf of a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor or a health program administered by a department of this state;

6. "Pharmacy benefits management" means a service provided to covered entities to facilitate the provisions of prescription drug benefits to covered individuals within the state, including, but not

limited to, negotiating pricing and other terms with drug manufacturers and providers. Pharmacy benefits management may include any or all of the following services:

- a. claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals,
- b. administration or management of pharmacy discount cards or programs,
- c. clinical formulary development and management services, or
- d. rebate contracting and administration;

~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes or an agent or representative of a pharmacy;

~~6.~~ 8. "Retail pharmacy network" means retail pharmacy providers contracted with a PBM in which the pharmacy primarily fills and sells prescriptions via a retail, storefront location;

~~7.~~ 9. "Rural service area" means a five-digit ZIP code in which the population density is less than one thousand (1,000) individuals per square mile;

~~8.~~ 10. "Spread pricing" means a prescription drug pricing model utilized by a pharmacy benefits manager in which the PBM charges a health benefit plan a contracted price for prescription drugs that differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;

~~9.~~ 11. "Suburban service area" means a five-digit ZIP code in which the population density is between one thousand (1,000) and three thousand (3,000) individuals per square mile; and

~~10.~~ 12. "Urban service area" means a five-digit ZIP code in which the population density is greater than three thousand (3,000) individuals per square mile.

B. Nothing in the definitions of pharmacy benefits manager or pharmacy benefits management as such terms are defined in the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity

Act, or Sections 357 through 360 of Title 59 of the Oklahoma Statutes shall be construed to deem the following entities to be a pharmacy benefits manager:

1. An employer of its own self-funded health benefit plan, except, to the extent permitted by applicable law, where the employer without the utilization of a third party and unrelated to the employer's own pharmacy:

- a. negotiates directly with drug manufacturers,
- b. processes claims on behalf of its members, or
- c. manages its own retail network of pharmacies; or

2. A pharmacy that provides a patient with a discount card or program that is for exclusive use at the pharmacy offering the discount.

SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, as last amended by Section 1, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023, Section 6962), is amended to read as follows:

Section 6962. A. The Attorney General shall review and approve retail pharmacy network access for all pharmacy benefits managers (PBMs) to ensure compliance with Section 6961 of this title.

B. A PBM, or an agent of a PBM, shall not:

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

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

- a. the submission of a claim,
- b. enrollment or participation in a retail pharmacy network, or
- c. the development or management of claims processing services or claims payment services related to participation in a retail pharmacy network;

3. Reimburse a pharmacy or pharmacist in the state an amount less than the amount that the PBM reimburses a pharmacy owned by or under common ownership with a PBM for providing the same covered services. The reimbursement amount paid to the pharmacy shall be equal to the reimbursement amount calculated on a per-unit basis using the same generic product identifier or generic code number paid to the PBM-owned or PBM-affiliated pharmacy;

4. Deny a provider the opportunity to participate in any pharmacy network at preferred participation status if the provider is willing to accept the terms and conditions that the PBM has established for other providers as a condition of preferred network participation status;

5. Deny, limit or terminate a provider's contract based on employment status of any employee who has an active license to dispense, despite probation status, with the State Board of Pharmacy;

6. Retroactively deny or reduce reimbursement for a covered service claim after returning a paid claim response as part of the adjudication of the claim, unless:

- a. the original claim was submitted fraudulently, or
- b. to correct errors identified in an audit, so long as the audit was conducted in compliance with Sections 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

8. Conduct or practice spread pricing, as defined in ~~Section 1 of this act~~ Section 6960 of this title, in this state; or

9. Charge a pharmacist or pharmacy a fee related to participation in a retail pharmacy network including but not limited to the following:

- a. an application fee,
- b. an enrollment or participation fee,
- c. a credentialing or re-credentialing fee,

- d. a change of ownership fee, or
- e. a fee for the development or management of claims processing services or claims payment services.

C. The prohibitions under this section shall apply to contracts between pharmacy benefits managers and providers for participation in retail pharmacy networks.

1. A PBM contract shall:

- a. not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, and
- b. ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict, directly or indirectly, a pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, a covered individual of any differential between the individual's out-of-pocket cost under the plan or coverage with respect to acquisition of the drug and the amount an individual would pay for acquisition of the drug without using any health plan or health insurance coverage.

2. A pharmacy benefits manager's contract with a provider shall not prohibit, restrict, or limit disclosure of information or documents to the Attorney General, law enforcement or state and federal governmental officials investigating or examining a complaint or conducting a review of a pharmacy benefits manager's compliance with the requirements under the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

D. A pharmacy benefits manager shall:

1. Establish and maintain an electronic claim inquiry processing system using the National Council for Prescription Drug Programs' current standards to communicate information to pharmacies submitting claim inquiries;

2. Fully disclose to insurers, self-funded employers, unions or other PBM clients the existence of the respective aggregate prescription drug discounts, rebates received from drug manufacturers and pharmacy audit recoupments;

3. Provide the Attorney General, insurers, self-funded employer plans and unions unrestricted audit rights of and access to the respective PBM pharmaceutical manufacturer and provider contracts, plan utilization data, plan pricing data, pharmacy utilization data and pharmacy pricing data;

4. Maintain, for no less than three (3) years, documentation of all network development activities including but not limited to contract negotiations and any denials to providers to join networks. This documentation shall be made available to the Attorney General upon request; and

5. Report to the Attorney General, on a quarterly basis for each health insurer payor, on the following information:

- a. the aggregate amount of rebates received by the PBM,
- b. the aggregate amount of rebates distributed to the appropriate health insurer payor,
- c. the aggregate amount of rebates passed on to the enrollees of each health insurer payor at the point of sale that reduced the applicable deductible, copayment, coinsure or other cost sharing amount of the enrollee,
- d. the individual and aggregate amount paid by the health insurer payor to the PBM for pharmacy services itemized by pharmacy, drug product and service provided, and
- e. the individual and aggregate amount a PBM paid a provider for pharmacy services itemized by pharmacy, drug product and service provided.

E. Nothing in the Patient's Right to Pharmacy Choice Act shall prohibit the Attorney General from requesting and obtaining detailed data, including raw data, in response to the information provided by a PBM in the quarterly reports required by this section. The Attorney General may alter the frequency of the reports required by this section at his or her sole discretion.

F. The Attorney General may promulgate rules to implement the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 36 O.S. 2021, Section 6965, as amended by Section 2, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023, Section 6965), is amended to read as follows:

Section 6965. A. The Attorney General shall have power and authority to examine and investigate the affairs of every pharmacy benefits manager (PBM) engaged in pharmacy benefits management in this state in order to determine whether such entity is in compliance with the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

B. The Attorney General shall have the power and authority to subpoena witnesses and records, whether prior to or during an investigation or prosecution of a complaint, from any relevant entity or persons to ensure compliance with the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

C. All PBM files and records shall be subject to examination by the Attorney General or by duly appointed designees. The Attorney General, authorized employees and examiners shall have access to any of a PBM's files and records that may relate to a particular complaint under investigation or to an inquiry or examination by the Attorney General.

~~C.~~ D. Every officer, director, employee or agent of the PBM, upon receipt of any inquiry from the Attorney General, shall, within twenty (20) days from the date the inquiry is sent, furnish the Attorney General with an adequate response to the inquiry.

~~D.~~ E. When making an examination under this section, the Attorney General may retain subject matter experts, attorneys,

appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the PBM that is the subject of the examination.

F. 1. Protected health information (PHI) held by a PBM shall be provided at the request of the Attorney General for the purpose of conducting investigations into potential violations of state laws and regulations related to the PBM. Disclosure of protected health information shall be limited to the extent necessary for the investigation and enforcement of state law.

2. All disclosures of protected health information shall be made in compliance with all applicable federal and state privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other relevant laws protecting the privacy and confidentiality of health information.

3. Any protected health information obtained for an investigation shall be handled and maintained per applicable federal and state privacy laws and regulations, including HIPAA.

4. Unauthorized disclosure of protected health information obtained during an investigation is strictly prohibited and subject to legal penalties.

G. 1. If the Attorney General, after notice and opportunity for hearing, finds that any PBM operating within this state has not fully cooperated with an investigation or inquiry conducted by the Attorney General related to compliance with the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney General may instruct the Insurance Commissioner that the PBM be censured or his or her license be suspended or revoked. If the Attorney General makes such instruction, the Commissioner shall enforce the instructed action within thirty (30) days.

2. In addition to or in lieu of any censure, suspension, or revocation by the Commissioner, the Attorney General may levy a civil or administrative fine not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation of this subsection and assess any other penalty or remedy authorized by this act. For purposes of this section, each

day a PBM fails to comply with an investigation or inquiry may be considered a separate violation.

SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L. 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023, Section 6966.1), is amended to read as follows:

Section 6966.1 A. 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 the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of this title.

B. 1. If the Attorney General finds, after notice and opportunity for hearing, that a pharmacy benefits manager (PBM) violated one or more provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney General may ~~recommend~~ instruct the Insurance Commissioner that the PBM be censured, or his or her license may be suspended or revoked and a penalty or remedy authorized by this act may be imposed. If the Attorney General makes such ~~recommendation~~ instruction, the Commissioner shall ~~take the recommended action~~ enforce such action within thirty (30) days.

2. In addition to or in lieu of any censure, or suspension or revocation of a license by the Commissioner, a PBM the Attorney General may be subject to levy a civil or administrative fine of 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 the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, following notice and an opportunity for a hearing Statutes.

3. The Attorney General may order restitution for economic loss suffered by pharmacies or patients for violations of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

C. Notwithstanding whether the license of a PBM has been issued, suspended, revoked, surrendered or lapsed by operation of law, the Attorney General is hereby authorized to enforce the provisions of the Patient's Right to Pharmacy Choice Act and impose

any penalty or remedy authorized under the act against a PBM under investigation for or charged with a violation of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the provisions of Sections 357 through 360 of Title 59 of the Oklahoma ~~Statutes~~ Statutes or any provision of the insurance laws of this state.

D. Each day that a PBM conducts business in this state without a license from the Insurance Department shall be deemed a violation of the Patient's Right to Pharmacy Choice Act.

E. 1. All hearings conducted by the Office of the Attorney General pursuant to this section shall be public and held in accordance with the Administrative Procedures Act.

2. Hearings shall be held at the ~~office~~ Office of the Attorney General or any other place the Attorney General may deem convenient.

3. The Attorney General, upon written request from a PBM affected by the hearing, shall cause a full stenographic record of the proceedings to be made by a competent court reporter. This record shall be at the expense of the PBM.

4. The ordinary fees and costs of the hearing examiner appointed pursuant to Section 319 of this title may be assessed by the hearing examiner against the respondent unless the respondent is the prevailing party.

F. Any PBM whose license has been censured, suspended, revoked or denied renewal or who has had a fine levied against him or her shall have the right of appeal from the final order of the Attorney General, pursuant to Section 318 et seq. of Title 75 of the Oklahoma Statutes.

G. If the Attorney General determines, based upon an investigation of complaints, that a PBM has engaged in violations of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes with such frequency as to indicate a general business practice, and that the PBM should be subjected to closer supervision with respect to those practices, the Attorney General may require the PBM to file a report at any periodic interval the Attorney General deems necessary.

H. 1. The Attorney General shall have the authority to collect all fines, penalties, restitution, and interest thereon pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, or any other charge, cause of action, prelitigation settlement, or other settlement that requires the recovery of money as a result of violations of the Patient's Right to Pharmacy Choice Act. Funds collected by the Attorney General pursuant to the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title 59 of the Oklahoma Statutes shall be deposited into the Attorney General's Pharmacy Benefits Manager Enforcement Revolving Fund created in Section 5 of this act.

2. Costs of investigation, litigation, attorney fees, and other expenses incurred shall be retained by the Office of the Attorney General. Remaining funds shall be distributed to pharmacists, patients, or other injured parties as determined by the Attorney General.

3. The Attorney General shall promulgate rules for the distribution of funds pursuant to this subsection.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Attorney General's Pharmacy Benefits Manager Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies collected by the Attorney General and designated to the fund by law, including those levied for activities related to enforcement of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purposes provided in this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 6. AMENDATORY 36 O.S. 2021, Section 6967, is amended to read as follows:

Section 6967. A. Documents, evidence, materials, records, reports, complaints or other information in the possession or control of the Office of the Attorney General or Insurance Department ~~or the Right to Pharmacy Choice Commission~~ that are obtained by, created by or disclosed to the Office of the Attorney General or Insurance Commissioner, ~~Pharmacy Choice Commission~~ or any other person in the course of an evaluation, examination, investigation or review made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Integrity Audit Integrity Act or Sections 357 through 360 of Title 59 of the Oklahoma Statutes, except as provided in subsection C of this section, shall be confidential by law and privileged, shall not be subject to open records request, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Attorney General, Insurance Commissioner, ~~the Pharmacy Choice Commission~~ or any employees or representatives of the Attorney General or Insurance Commissioner.

B. Nothing in this section shall prevent the disclosure of a final order issued against a pharmacy benefits manager by the Office of the Attorney General or Insurance Commissioner ~~or Pharmacy Choice Commission~~. Such orders shall be open records.

C. Nothing in this section shall prevent the Attorney General from making public, in the form of an examination report, any findings from an examination pursuant to Section 6965 of this title. It shall be the Attorney General's sole discretion to determine whether it is in the public's interest to publish these findings. Only the final examination report shall be made public. Any documents, evidence, materials, records, reports, complaints, or other information in possession or control of the Attorney General obtained through the examination shall be confidential by law and privileged, shall not be subject to the Oklahoma Open Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible evidence in any private civil action if obtained from the Attorney General.

D. In the course of any hearing made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Integrity Audit Integrity Act or Sections 357 through 360 of Title 59 of the Oklahoma Statutes, nothing in this section shall be

construed to prevent the Insurance Commissioner or any employees or representatives of the Insurance Commissioner from presenting admissible documents, evidence, materials, records, reports or complaints to the adjudicating authority.

SECTION 7. REPEALER 36 O.S. 2021, Section 6966, is hereby repealed.

SECTION 8. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 8th day of May, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____