

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 737

By: McCortney of the Senate

and

6 McEntire and Phillips of
7 the House

8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to pharmacy benefits management;
11 amending Section 3, Chapter 426, O.S.L. 2019 (36 O.S.
12 Supp. 2020, Section 6960), which relates to
13 definitions; adding definition of provider and spread
14 pricing; deleting definition; amending Section 5,
15 Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section
16 6962), which relates to compliance review; updating
17 reference; adding prohibited activities; adding
18 duties of pharmacy benefits managers; authorizing
19 Commissioner to take certain actions on PBM licenses
20 for certain violations; authorizing fine for
21 violation of certain acts; authorizing Insurance
22 Commissioner to enforce Patient's Right to Pharmacy
23 Choice Act and investigate violations of certain
24 acts; specifying that operating without a PBM license
is a violation of Patient's Right to Pharmacy Choice
Act; specifying certain hearings be conducted
pursuant to Administrative Procedures Act;
establishing procedures for certain hearings;
authorizing full stenographic record of hearing
proceedings in certain circumstances; providing for
payment of certain costs and fees; authorizing appeal
from certain final order of Commissioner; authorizing
Commissioner to require certain reporting from PBMs
in certain circumstances; providing for codification;
and declaring an emergency.

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

2 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.
3 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as
4 follows:

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

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

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

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

17 ~~3.~~ 4. "Pharmacy benefits manager" or "PBM" means a person that
18 performs pharmacy benefits management and any other person acting
19 for such person under a contractual or employment relationship in
20 the performance of pharmacy benefits management for a managed-care
21 company, nonprofit hospital, medical service organization, insurance
22 company, third-party payor or a health program administered by a
23 department of this state;

24

1 ~~4. "Pharmacy and therapeutics committee" or "P&T committee"~~
2 ~~means a committee at a hospital or a health insurance plan that~~
3 ~~decides which drugs will appear on that entity's drug formulary~~

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

7 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers
8 contracted with a PBM in which the pharmacy primarily fills and
9 sells prescriptions via a retail, storefront location;

10 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
11 the population density is less than one thousand (1,000) individuals
12 per square mile;

13 ~~7.~~ 8. "Spread pricing" means a prescription drug pricing model
14 utilized by a pharmacy benefits manager in which the PBM charges a
15 health benefit plan a contracted price for prescription drugs that
16 differs from the amount the PBM directly or indirectly pays the
17 pharmacy or pharmacist for providing pharmacy services;

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

21 ~~9.~~ 10. "Urban service area" means a five-digit ZIP code in
22 which the population density is greater than three thousand (3,000)
23 individuals per square mile.

1 SECTION 2. AMENDATORY Section 5, Chapter 426, O.S.L.
2 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
3 follows:

4 Section 6962. A. The Oklahoma Insurance Department shall
5 review and approve retail pharmacy network access for all pharmacy
6 benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~
7 ~~act~~ 6961 of this title.

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

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

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

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

20 3. Reimburse a pharmacy or pharmacist in the state an amount
21 less than the amount that the PBM reimburses a pharmacy owned by or
22 under common ownership with a PBM for providing the same covered
23 services. The reimbursement amount paid to the pharmacy shall be
24 equal to the reimbursement amount calculated on a per-unit basis

1 using the same generic product identifier or generic code number
2 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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

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

- 15 a. the original claim was submitted fraudulently, or
16 b. to correct errors identified in an audit, so long as
17 the audit was conducted in compliance with Sections
18 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

19 ~~or~~

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

24

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

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

- 6 a. an application fee,
- 7 b. an enrollment or participation fee,
- 8 c. a credentialing or re-credentialing fee,
- 9 d. a change of ownership fee, or
- 10 e. a fee for the development or management of claims
11 processing services or claims payment services.

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

15 1. A PBM contract shall:

- 16 a. not restrict, directly or indirectly, any pharmacy
17 that dispenses a prescription drug from informing, or
18 penalize such pharmacy for informing, an individual of
19 any differential between the individual's out-of-
20 pocket cost or coverage with respect to acquisition of
21 the drug and the amount an individual would pay to
22 purchase the drug directly, and
- 23 b. ensure that any entity that provides pharmacy benefits
24 management services under a contract with any such

1 health plan or health insurance coverage does not,
2 with respect to such plan or coverage, restrict,
3 directly or indirectly, a pharmacy that dispenses a
4 prescription drug from informing, or penalize such
5 pharmacy for informing, a covered individual of any
6 differential between the individual's out-of-pocket
7 cost under the plan or coverage with respect to
8 acquisition of the drug and the amount an individual
9 would pay for acquisition of the drug without using
10 any health plan or health insurance coverage.

11 2. A pharmacy benefits manager's contract with a ~~participating~~
12 ~~pharmacist or pharmacy~~ provider shall not prohibit, restrict or
13 limit disclosure of information to the Insurance Commissioner, law
14 enforcement or state and federal governmental officials
15 investigating or examining a complaint or conducting a review of a
16 pharmacy benefits manager's compliance with the requirements under
17 the Patient's Right to Pharmacy Choice Act.

18 ~~3. D.~~ D. A pharmacy benefits manager shall ~~establish:~~

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

23 2. Fully disclose to insurers, self-funded employers, unions or
24 other PBM clients the existence of the respective aggregate

1 prescription drug discounts, rebates received from drug
2 manufacturers and pharmacy audit recoupments;

3 3. Provide the Insurance Commissioner, insurers, self-funded
4 employer plans and unions unrestricted audit rights of and access to
5 the respective PBM pharmaceutical manufacturer and provider
6 contracts, plan utilization data, plan pricing data, pharmacy
7 utilization data and pharmacy pricing data;

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

13 5. Report to the Commissioner, on a quarterly basis for each
14 health insurer payor, on the following information:

15 a. the aggregate amount of rebates received by the PBM,

16 b. the aggregate amount of rebates distributed to the
17 appropriate health insurer payor,

18 c. the aggregate amount of rebates passed on to the
19 enrollees of each health insurer payor at the point of
20 sale that reduced the applicable deductible,
21 copayment, coinsure or other cost sharing amount of
22 the enrollee,

23 d. the individual and aggregate amount paid by the health
24 insurer payor to the PBM for pharmacy services

1 itemized by pharmacy, drug product and service
2 provided, and

3 e. the individual and aggregate amount a PBM paid a
4 provider for pharmacy services itemized by pharmacy,
5 drug product and service provided.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The Insurance Commissioner may censure, suspend, revoke or
10 refuse to issue or renew a license of or levy a civil penalty
11 against any person licensed under the insurance laws of this state
12 for any violation of the Patient's Right to Pharmacy Choice Act,
13 Section 6958 et seq. of Title 6 of the Oklahoma Statutes.

14 B. 1. If the Commissioner finds, after notice and opportunity
15 for hearing, that a pharmacy benefits manager (PBM) violated one or
16 more provisions of the Patient's Right to Pharmacy Choice Act, the
17 Pharmacy Audit Integrity Act or the provisions of Sections 357
18 through 360 of Title 59 of the Oklahoma Statutes, the PBM may be
19 censured, his or her license may be suspended or revoked and a
20 penalty or remedy authorized by this act may be imposed.

21 2. In addition to or in lieu of any censure, suspension or
22 revocation of a license, a PBM may be subject to a civil fine of not
23 less than One Hundred Dollars (\$100.00) and not greater than Ten
24 Thousand Dollars (\$10,000.00) for each violation of the provisions

1 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit
2 Integrity Act or the provisions of Sections 357 through 360 of Title
3 59 of the Oklahoma Statutes, following notice and an opportunity for
4 a hearing.

5 C. Notwithstanding whether the license of a PBM has been
6 issued, suspended, revoked, surrendered or lapsed by operation of
7 law, the Commissioner is hereby authorized to enforce the provisions
8 of the Patient's Right to Pharmacy Choice Act and impose any penalty
9 or remedy authorized under the Act against a PBM under investigation
10 for or charged with a violation of the Patient's Right to Pharmacy
11 Choice Act, the Pharmacy Audit Integrity Act, the provisions of
12 Sections 357 through 360 of Title 59 of the Oklahoma Statutes or any
13 provision of the insurance laws of this state.

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

17 E. 1. All hearings conducted by the Insurance Department
18 pursuant to this section shall be public and held in accordance with
19 the Administrative Procedures Act.

20 2. Hearings shall be held at the office of the Insurance
21 Commissioner or any other place the Commissioner may deem
22 convenient.

23 3. The Commissioner, upon written request from a PBM affected
24 by the hearing, shall cause a full stenographic record of the

1 proceedings to be made by a competent court reporter. This record
2 shall be at the expense of the PBM.

3 4. The ordinary fees and costs of the hearing examiner
4 appointed pursuant to Section 319 of Title 36 of the Oklahoma
5 Statutes may be assessed by the hearing examiner against the
6 respondent unless the respondent is the prevailing party.

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

12 G. If the Insurance Commissioner determines, based upon an
13 investigation of complaints, that a PBM has engaged in violations of
14 the provisions of the Patient's Right to Pharmacy Choice Act with
15 such frequency as to indicate a general business practice, and that
16 the PBM should be subjected to closer supervision with respect to
17 those practices, the Commissioner may require the PBM to file a
18 report at any periodic interval the Commissioner deems necessary.

19 SECTION 4. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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