

1 STATE OF OKLAHOMA

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

3 SENATE BILL 821

By: McCortney

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5
6 AS INTRODUCED

7 An Act relating to the Patient's Right to Pharmacy
8 Choice Act; amending Section 3, Chapter 426, O.S.L.
9 2019 (36 O.S. Supp. 2020, Section 6960), which
10 relates to definitions; adding definitions of
11 pharmacy benefits management and retail pharmacy;
12 modifying definitions; amending Section 4, Chapter
13 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6961),
14 which relates to retail pharmacy network access
15 standards; specifying access standards; modifying
16 prohibition by pharmacy benefit managers; amending
17 Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp.
18 2020, Section 6962), which relates to compliance
19 review; modifying certain contract restrictions;
20 amending Section 6, Chapter 426, O.S.L. 2019 (36 O.S.
21 Supp. 2020, Section 6963), which relates to health
22 insurer monitoring; modifying monitoring requirements
23 of certain insurers; conforming language; repealing
24 Section 7, Chapter 426, O.S.L. 2019 (36 O.S. Supp.
25 2020, Section 6964), which relates to health insurer
26 formularies; and providing an effective date.

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

20 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.
21 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as
22 follows:

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

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

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

7 3. "Pharmacy benefits management" means any or all of the
8 following activities:

9 a. provider contract negotiation and/or provider network
10 administration, including decisions related to
11 provider network participation status,

12 b. drug rebate contract negotiation or drug rebate
13 administration, and

14 c. claims processing which may include claim billing and
15 payment services;

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

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. "Retail pharmacy" or "provider" means a pharmacy, as defined
5 in Section 353.1 of Title 59 of the Oklahoma Statutes licensed by
6 the State Board of Pharmacy or an agent or representative of a
7 pharmacy;

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

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

14 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
15 which the population density is between one thousand (1,000) and
16 three thousand (3,000) individuals per square mile; and

17 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
18 the population density is greater than three thousand (3,000)
19 individuals per square mile.

20 SECTION 2. AMENDATORY Section 4, Chapter 426, O.S.L.
21 2019 (36 O.S. Supp. 2020, Section 6961), is amended to read as
22 follows:

23 Section 6961. A. Pharmacy benefits managers (PBMs) shall
24 comply with the following retail pharmacy network access standards:

1 1. At least ninety percent (90%) of covered individuals
2 residing in ~~a~~ each urban service area live within two (2) miles of
3 a retail pharmacy participating in the PBM's retail pharmacy
4 network;

5 2. At least ninety percent (90%) of covered individuals
6 residing in ~~a~~ each urban service area live within five (5) miles of
7 a retail pharmacy designated as a preferred participating pharmacy
8 in the PBM's retail pharmacy network;

9 3. At least ninety percent (90%) of covered individuals
10 residing in ~~a~~ each suburban service area live within five (5) miles
11 of a retail pharmacy participating in the PBM's retail pharmacy
12 network;

13 4. At least ninety percent (90%) of covered individuals
14 residing in ~~a~~ each suburban service area live within seven (7) miles
15 of a retail pharmacy designated as a preferred participating
16 pharmacy in the PBM's retail pharmacy network;

17 5. At least seventy percent (70%) of covered individuals
18 residing in ~~a~~ each rural service area live within fifteen (15) miles
19 of a retail pharmacy participating in the PBM's retail pharmacy
20 network; and

21 6. At least seventy percent (70%) of covered individuals
22 residing in ~~a~~ each rural service area live within eighteen (18)
23 miles of a retail pharmacy designated as a preferred participating
24 pharmacy in the PBM's retail pharmacy network.

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

3 C. Pharmacy benefits managers shall not require patients to use
4 pharmacies that are directly or indirectly owned by ~~the~~ or
5 affiliated with a pharmacy benefits manager, including all regular
6 prescriptions, refills or specialty drugs regardless of day supply.

7 D. Pharmacy benefits managers shall not in any manner on any
8 material, including but not limited to mail and ID cards, include
9 the name of any pharmacy, hospital or other providers unless it
10 specifically lists all pharmacies, hospitals and providers
11 participating in the preferred and nonpreferred pharmacy and health
12 networks.

13 SECTION 3. AMENDATORY Section 5, Chapter 426, O.S.L.
14 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
15 follows:

16 Section 6962. A. The Oklahoma Insurance Department shall
17 review and approve retail pharmacy network access for all pharmacy
18 benefits managers (PBMs) to ensure compliance with Section 4 of this
19 act.

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

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

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

3 a. the submission of a claim,

4 b. enrollment or participation in a retail pharmacy
5 network, or

6 c. the development or management of claims processing
7 services or claims payment services related to
8 participation in a retail pharmacy network;

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

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

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

1 6. 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. to correct errors identified in an audit, so long as
6 the audit was conducted in compliance with Sections
7 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
8 or

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

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 provider contract shall not prohibit, restrict or
16 penalize a pharmacy or pharmacist in any way for disclosing to an
17 individual any health care information that the pharmacy or
18 pharmacist deems appropriate regarding:

- 19 a. ~~not restrict, directly or indirectly, any pharmacy~~
20 ~~that dispenses a prescription drug from informing, or~~
21 ~~penalize such pharmacy for informing, an individual of~~
22 ~~any differential between the individual's out-of-~~
23 ~~pocket cost or coverage with respect to acquisition of~~
24 ~~the drug and the amount an individual would pay to~~

1 ~~purchase the drug directly~~ the nature of treatment,
2 risks or alternatives to the prescription drug being
3 dispensed, and

4 b. ~~ensure that any entity that provides pharmacy benefits~~
5 ~~management services under a contract with any such~~
6 ~~health plan or health insurance coverage does not,~~
7 ~~with respect to such plan or coverage, restrict,~~
8 ~~directly or indirectly, a pharmacy that dispenses a~~
9 ~~prescription drug from informing, or penalize such~~
10 ~~pharmacy for informing, a covered individual of any~~
11 ~~differential between the individual's out-of-pocket~~
12 ~~cost under the plan or coverage with respect to~~
13 ~~acquisition of the drug and the amount an individual~~
14 ~~would pay for acquisition of the drug without using~~
15 ~~any health plan or health insurance coverage~~ the
16 availability of alternate therapies, consultations or
17 tests,

18 c. the decision of utilization reviewers or similar
19 persons to authorize or deny services, and

20 d. the process that is used to authorize or deny
21 healthcare services and structures used by the health
22 insurer.

23 2. Provider contracts shall not prohibit a pharmacy or
24 pharmacist from discussing information regarding the total cost of
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1 pharmacist services for a prescription drug or from selling a more
2 affordable alternative to the covered person if such alternative is
3 available.

4 ~~A pharmacy benefits manager's contract with a participating~~
5 ~~pharmacist or pharmacy~~ 3. Provider contracts shall not prohibit,
6 restrict or limit disclosure of information to the Insurance
7 Commissioner, law enforcement or state and federal governmental
8 officials investigating or examining a complaint or conducting a
9 review of a pharmacy benefits manager's compliance with the
10 requirements under the Patient's Right to Pharmacy Choice Act.

11 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
12 an electronic claim inquiry processing system using the National
13 Council for Prescription Drug Programs' current standards to
14 communicate information to pharmacies submitting claim inquiries.

15 5. Provider contracts shall not establish drug product
16 reimbursement terms that fall below a price point of the National
17 Average Drug Acquisition Cost plus six percent (6%) of that cost,
18 plus Twelve Dollars (\$12.00) or in the event a National Average Drug
19 Acquisition Cost has not been established, the wholesale acquisition
20 cost minus two percent (2%) of the cost, plus Twelve Dollars
21 (\$12.00).

22 SECTION 4. AMENDATORY Section 6, Chapter 426, O.S.L.
23 2019 (36 O.S. Supp. 2020, Section 6963), is amended to read as
24 follows:

1 Section 6963. A. A health insurer shall be responsible for
2 monitoring all activities carried out by, or on behalf of, the
3 health insurer under the Patient's Right to Pharmacy Choice Act, and
4 for ensuring that all requirements of this act are met.

5 B. Whenever a health insurer performs pharmacy benefit
6 management on its own behalf or contracts with another person or
7 entity to perform ~~activities required under this act~~ pharmacy
8 benefit management, the health insurer shall be responsible for
9 monitoring the activities and conduct of that person or entity with
10 whom the health insurer contracts and for ensuring that the
11 requirements of this act are met.

12 C. An individual may be notified at the point of sale when the
13 cash price for the purchase of a prescription drug is less than the
14 individual's copayment or coinsurance price for the purchase of the
15 same prescription drug.

16 D. A health insurer or pharmacy benefits manager (PBM) shall
17 not restrict an individual's choice of in-network provider for
18 prescription drugs.

19 E. ~~An individual's~~ A patient's choice of in-network provider
20 may include a retail pharmacy or a mail-order pharmacy. A health
21 insurer or PBM shall not restrict ~~such~~ the choice of pharmacy
22 provider. ~~Such~~ A health insurer or PBM shall not require or
23 incentivize using any discounts in cost-sharing or a reduction in
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copay or the number of copays to individuals to receive prescription drugs ~~from an individual's choice of in-network pharmacy.~~

F. A health insurer, pharmacy or PBM shall adhere to all Oklahoma laws, statutes and rules when mailing, shipping and/or causing to be mailed or shipped prescription drugs into the State of Oklahoma.

SECTION 5. REPEALER O.S. 2011, Section 7, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6964), is hereby repealed.

SECTION 6. This act shall become effective November 1, 2021.

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