

1 **SENATE FLOOR VERSION**

2 February 8, 2021

3 SENATE BILL NO. 821

4 By: McCortney, Murdock, Kidd,
5 Pemberton, Stephens,
6 Daniels, Garvin, Stanley,
7 Bullard, Rogers,
8 Standridge, Hicks and
9 Weaver

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

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

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

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

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

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

9 3. "Pharmacy benefits management" means any or all of the
10 following activities:

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

14 b. drug rebate contract negotiation or drug rebate
15 administration, and

16 c. claims processing which may include claim billing and
17 payment services;

18 4. "Pharmacy benefits manager" or "PBM" means a person or
19 entity that performs pharmacy benefits management activities and any
20 other person or entity acting for ~~such~~ a person or entity performing
21 pharmacy benefits management activities ~~under a contractual or~~
22 ~~employment relationship in the performance of pharmacy benefits~~
23 ~~management for a managed-care company, nonprofit hospital, medical~~

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1 ~~service organization, insurance company, third party payor or a~~
2 ~~health program administered by a department of this state;~~

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

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

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

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

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

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

22 SECTION 2. AMENDATORY Section 4, Chapter 426, O.S.L.
23 2019 (36 O.S. Supp. 2020, Section 6961), is amended to read as
24 follows:

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

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

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

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

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

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

23 6. At least seventy percent (70%) of covered individuals
24 residing in ~~a~~ each rural service area live within eighteen (18)

1 miles of a retail pharmacy designated as a preferred participating
2 pharmacy in the PBM's retail pharmacy network.

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

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

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

15 SECTION 3. AMENDATORY Section 5, Chapter 426, O.S.L.
16 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
17 follows:

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

22 B. A PBM, or an agent of a PBM, shall not:
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1 1. Cause or knowingly permit the use of advertisement,
2 promotion, solicitation, representation, proposal or offer that is
3 untrue, deceptive or misleading;

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

6 a. the submission of a claim,

7 b. enrollment or participation in a retail pharmacy
8 network, or

9 c. the development or management of claims processing
10 services or claims payment services related to
11 participation in a retail pharmacy network;

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

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

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

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

- 8 a. the original claim was submitted fraudulently, or
9 b. to correct errors identified in an audit, so long as
10 the audit was conducted in compliance with Sections
11 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
12 or

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

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

19 1. A ~~PBM~~ provider contract shall not prohibit, restrict or
20 penalize a pharmacy or pharmacist in any way for disclosing to an
21 individual any health care information that the pharmacy or
22 pharmacist deems appropriate regarding:

- 23 a. ~~not restrict, directly or indirectly, any pharmacy~~
24 ~~that dispenses a prescription drug from informing, or~~

1 ~~penalize such pharmacy for informing, an individual of~~
2 ~~any differential between the individual's out-of-~~
3 ~~pocket cost or coverage with respect to acquisition of~~
4 ~~the drug and the amount an individual would pay to~~
5 ~~purchase the drug directly~~ the nature of treatment,
6 risks or alternatives to the prescription drug being
7 dispensed, and

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

22 c. the decision of utilization reviewers or similar
23 persons to authorize or deny services, and
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1 d. the process that is used to authorize or deny
2 healthcare services and structures used by the health
3 insurer.

4 2. Provider contracts shall not prohibit a pharmacy or
5 pharmacist from discussing information regarding the total cost of
6 pharmacist services for a prescription drug or from selling a more
7 affordable alternative to the covered person if such alternative is
8 available.

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

16 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
17 an electronic claim inquiry processing system using the National
18 Council for Prescription Drug Programs' current standards to
19 communicate information to pharmacies submitting claim inquiries.

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

1 cost minus two percent (2%) of the cost, plus Twelve Dollars
2 (\$12.00).

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

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

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

17 C. An individual may be notified at the point of sale when the
18 cash price for the purchase of a prescription drug is less than the
19 individual's copayment or coinsurance price for the purchase of the
20 same prescription drug.

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
16 February 8, 2021 - DO PASS

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