

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2100

By: Derby

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7 COMMITTEE SUBSTITUTE

8 An Act relating to pharmacies; defining terms;  
9 requiring certain license in order to provide  
10 pharmacy benefits management; requiring State Board  
11 of Pharmacy to adopt certain licensure procedures;  
12 permitting Board to subpoena witnesses and  
13 information and to take certain action against a  
14 license for certain reasons; prohibiting pharmacy  
15 benefits manager from taking certain action;  
16 requiring pharmacy benefits manager to provide  
17 certain information to covered entity; requiring  
18 contract between pharmacy benefits manager and  
19 provider to include certain information; providing  
20 certain requirements of a drug product; providing for  
21 codification; and providing an effective date.

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

26 SECTION 1. NEW LAW A new section of law to be codified  
27 in the Oklahoma Statutes as Section 357 of Title 59, unless there is  
28 created a duplication in numbering, reads as follows:

29 As used in this act:

30 1. "Board" means the State Board of Pharmacy;

1           2. "Covered entity" means a nonprofit hospital or medical  
2 service organization, insurer, health coverage plan or health  
3 maintenance organization; a health program administered by the state  
4 in the capacity of provider of health coverage; or an employer,  
5 labor union, or other entity organized in the state that provides  
6 health coverage to covered individuals who are employed or reside in  
7 the state. This term does not include a health plan that provides  
8 coverage only for accidental injury, specified disease, hospital  
9 indemnity, disability income, or other limited benefit health  
10 insurance policies and contracts that do not include prescription  
11 drug coverage;

12           3. "Covered individual" means a member, participant, enrollee,  
13 contract holder or policy holder or beneficiary of a covered entity  
14 who is provided health coverage by the covered entity. A covered  
15 individual includes any dependent or other person provided health  
16 coverage through a policy, contract or plan for a covered  
17 individual;

18           4. "Maximum allowable cost" or "MAC" means the list of drug  
19 products delineating the maximum per unit reimbursement for  
20 multiple source prescription drugs, medical product or device;

21           5. "Payor" means a covered entity that makes payment to a PBM  
22 for services;

23           6. "Pharmacy benefits management" means a service provided to  
24 covered entities to facilitate the provision of prescription drug

1 benefits to covered individuals within the state, including  
2 negotiating pricing and other terms with drug manufacturers and  
3 providers. Pharmacy benefits management may include any or all of  
4 the following services:

- 5 a. claims processing, retail network management and  
6 payment of claims to pharmacies for prescription drugs  
7 dispensed to covered individuals,
- 8 b. clinical formulary development and management  
9 services,
- 10 c. rebate contracting and administration,
- 11 d. certain patient compliance, therapeutic intervention  
12 and generic substitution programs, or
- 13 e. disease management programs;

14 7. "Pharmacy benefits manager" or "PBM" means any entity that  
15 performs pharmacy benefits management. Pharmacy benefits manager or  
16 PBM includes a person or entity acting for a pharmacy benefits  
17 manager in a contractual or employment relationship in the  
18 performance of pharmacy benefits management for a covered entity;

19 8. "Plan sponsor" means the employers, insurance companies,  
20 unions and health maintenance organizations or any other entity  
21 responsible for establishing, maintaining, or administering a health  
22 benefit plan on behalf of covered individuals;

23 9. "Provider" means a pharmacy licensed by the State Board of  
24 Pharmacy, or an agent or representative of a pharmacy, including but

1 not limited to the pharmacy's contracting agent, which dispenses  
2 prescription drugs or devices to covered individuals; and

3 10. "Published drug price effective date" means the effective  
4 date associated with the Average Wholesale Price or Wholesale  
5 Acquisition Cost or other price index used to calculate prescription  
6 drug reimbursement as supplied by FirstData, MediSpan or other  
7 nationally recognized pricing source.

8 SECTION 2. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 358 of Title 59, unless there is  
10 created a duplication in numbering, reads as follows:

11 A. In order to provide pharmacy benefits management or any of  
12 the services included under the definition of pharmacy benefits  
13 management in this state, a pharmacy benefits manager or any entity  
14 acting as one in a contractual or employment relationship for a  
15 covered entity shall first obtain a license from the State Board of  
16 Pharmacy, and the Board may charge a fee for such licensure.

17 B. The Board shall establish, by regulation, licensure  
18 procedures, required disclosures for pharmacy benefits managers  
19 (PBMs) and other rules as may be necessary for carrying out and  
20 enforcing the provisions of this act. The licensure procedures  
21 shall, at a minimum, include the completion of an application form  
22 that shall include the name and address of an agent for service of  
23 process, the payment of a requisite fee, and evidence of the  
24 procurement of a surety bond.

1 C. The Board may subpoena witnesses and information. Its  
2 compliance officers may take and copy records for investigative use  
3 and prosecutions. Nothing in this subsection shall limit the Office  
4 of the Attorney General from using its investigative demand  
5 authority to investigate and prosecute violations of the law.

6 D. The Board may suspend, revoke or refuse to issue or renew a  
7 license for noncompliance with any of the provisions hereby  
8 established or with the rules promulgated by the Board; for conduct  
9 likely to mislead, deceive or defraud the public or the Board; for  
10 unfair or deceptive business practices or for nonpayment of a  
11 renewal fee or fine. The Board may also levy administrative fines  
12 for each count of which a licensee has been convicted in a Board  
13 hearing.

14 SECTION 3. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 359 of Title 59, unless there is  
16 created a duplication in numbering, reads as follows:

17 A pharmacy benefit manager (PBM) shall:

18 1. Not provide, sell, lease or rent drug utilization or claims  
19 data unless the sale complies with all federal and state laws and  
20 the PBM has received written approval for such provision, sale,  
21 lease or rental from the plan sponsor;

22 2. Not directly contact a covered individual by any means  
23 (including via electronic delivery, telephone, SMS text or direct  
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1 mail) without the express written permission of the plan sponsor;  
2 and

3 3. Not transmit or provide any personally identifiable  
4 demographic, drug, utilization or claims data to a pharmacy owned  
5 by, affiliated with or under contract with the PBM or plan sponsor  
6 if the covered individual has not voluntarily elected in writing to  
7 obtain prescription services at the pharmacy owned by, affiliated  
8 with or contracted with the PBM or plan sponsor.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 360 of Title 59, unless there is  
11 created a duplication in numbering, reads as follows:

12 A. A pharmacy benefits manager shall provide, upon request by a  
13 covered entity, all claims financial and utilization information  
14 requested by the covered entity regarding the provision of benefits  
15 to covered individuals through the covered entity and all financial  
16 and utilization information relating to services to that entity.

17 A pharmacy benefits manager providing information under this  
18 subsection may designate that material as confidential. Information  
19 designated as confidential by a pharmacy benefits manager and  
20 provided to a covered entity under this subsection may not be  
21 disclosed by the covered entity to any person or entity without the  
22 consent of the pharmacy benefits manager, except that disclosure may  
23 be ordered by a court of this state or made in a court filing under  
24 seal.

1 B. A pharmacy benefits manager shall provide, upon request by  
2 the covered entity, information regarding the difference in the  
3 amount paid to providers for prescription services rendered to  
4 covered individuals and the amount billed by the pharmacy benefits  
5 manager to the covered entity or plan sponsor to pay for  
6 prescription services rendered to covered individuals.

7 C. If a pharmacy benefits manager authorizes or requires a  
8 substitution in which the substitute drug costs more than the  
9 prescribed drug, the pharmacy benefits manager shall disclose to the  
10 covered entity the cost of both drugs and any benefit or payment  
11 directly or indirectly accruing to the pharmacy benefits manager as  
12 a result of the substitution.

13 D. When a covered individual's out-of-pocket cost or copay is  
14 percentage based, the pharmacy benefits manager shall calculate the  
15 percentage owed or the amount of the copay based upon the amount  
16 actually paid to the pharmacy for the medication in question.

17 SECTION 5. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 360.1 of Title 59, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. With respect to contracts between a pharmacy benefits  
21 manager and a provider, the pharmacy benefits manager must have a  
22 written executed contract with the provider before requiring that  
23 provider to fill prescriptions for covered individuals under benefit  
24 programs managed or administered by the pharmacy benefits manager.

1 Executed contracts shall contain all rates, terms and conditions  
2 governing claims payments for prescriptions filled by the provider.

3 B. To ensure a covered individual's access to prescription  
4 drugs, the pharmacy benefits manager shall, with respect to  
5 contracts between a pharmacy benefits manager and a provider:

6 1. Include in such contracts the basis of the methodology and  
7 sources utilized to determine the maximum allowable cost pricing of  
8 the pharmacy, update maximum allowable cost pricing at least every  
9 seven (7) calendar days, and establish a process for the prompt  
10 notification of such pricing updates to providers;

11 2. Use the published drug price effective date from the pricing  
12 source used, i.e., First Data, MediSpan or other nationally  
13 recognized pricing source to calculate reimbursement on prescription  
14 drugs;

15 3. Maintain a procedure to eliminate products from the list or  
16 modify maximum allowable cost rates in a timely fashion in order to  
17 remain consistent with pricing changes in the marketplace;

18 4. Provide a reasonable administration appeals procedure to  
19 allow a provider to contest maximum allowable cost rates. The  
20 pharmacy benefits manager must respond to a provider who has  
21 contested a maximum allowable cost rate through this procedure  
22 within fifteen (15) calendar days. Maximum allowable cost price  
23 increases shall be given if the maximum allowable cost rate  
24 established by the pharmacy benefits manager is below the provider's

1 invoice cost. If a price update is warranted, the pharmacy benefits  
2 manager shall make the change retroactive to the fill date reported  
3 by the provider and shall make the adjustment effective for all  
4 providers;

5 5. Adjust maximum allowable values within seven (7) days in the  
6 event the maximum allowable rate is below the provider's invoice  
7 cost documented by the provider; and

8 6. Not require providers to dispense medication if the  
9 reimbursement for the medication is below the provider's invoice  
10 cost.

11 C. In order to place a particular drug product on a maximum  
12 allowable cost list, the pharmacy benefits manager must, at a  
13 minimum, ensure that the drug product must have at least two or more  
14 nationally available, therapeutically equivalent, multiple source  
15 drug products available.

16 1. The drug product must be listed as therapeutically and  
17 pharmaceutically equivalent or AA or AB rated in the Food and Drug  
18 Administration's more recent version of the Orange Book.

19 2. The drug product must be available for purchase without  
20 limitations by all pharmacies in the state from national or regional  
21 wholesalers and not be obsolete or temporarily unavailable.

22 D. The pharmacy benefits manager shall not require  
23 accreditation or licensing of providers other than by the Board or  
24 other state or federal government entity.

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SECTION 6. This act shall become effective November 1, 2013.

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