

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 1056

By: Standridge of the Senate

and

6 Derby of the House

7  
8  
9 COMMITTEE SUBSTITUTE

10 An Act relating to professional services and  
11 products; creating the Professional Services  
12 Acquisition Act; defining terms; prohibiting certain  
13 contracts, solicitations and acquisitions without  
14 certain compliance; providing exception; providing  
15 for rescinding of contract for violation; directing  
16 review of state contracts within certain time for  
17 certain compliance; requiring replacement contract  
18 for noncompliance; construing application of certain  
19 provisions; establishing jurisdiction for  
20 proceedings; requiring certain license in order to  
21 provide pharmacy benefits management; requiring State  
22 Board of Pharmacy to adopt certain licensure  
23 procedures; permitting Board to subpoena witnesses  
24 and information and to take certain action against a  
license for certain reasons; providing for  
codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 375.1 of Title 59, unless there  
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Professional  
2 Services Acquisition Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 375.2 of Title 59, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Professional Services Acquisition Act, unless the  
7 context otherwise requires:

8 1. "Acquisition" means items, products and professional  
9 services acquired by purchase;

10 2. "Board" means the State Board of Pharmacy;

11 3. "Business entity" means individuals, partnerships, business  
12 trusts, cooperatives, associates, corporations, or any other firm,  
13 group or concern which functions as a separate entity for business  
14 purposes;

15 4. "Contract" means a mutually binding legal relationship  
16 obligating the seller to furnish an acquisition and the buyer to pay  
17 for it;

18 5. "Contracting" means purchasing or otherwise obtaining  
19 acquisitions from private sources;

20 6. "Contractor" means an individual or business entity entering  
21 into a contract for goods and/or services or contracting with a  
22 person or agency as a result of a solicitation;

23 7. "Covered entity" means a nonprofit hospital or medical  
24 service organization, insurer, health coverage plan or health

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

10 8. "Item" or "product" means some quantity or kind of materials  
11 or supplies with respect to any controlled substance, compounded  
12 pharmaceutical substance or prescription drug controlled by the  
13 Uniform Controlled Dangerous Substances Act and its rules, or any  
14 medical, podiatric or optometric device, materials or supplies  
15 required after a diagnosis or recommendation by a licensed  
16 physician;

17 9. "Materials" or "supplies" includes all property an  
18 individual acquires for his or her personal use or consumption by a  
19 medical prescription to treat any condition, injury, illness or  
20 ailment, or by a medical diagnosis or recommendation for treatment  
21 of a condition, injury, illness or ailment, and shall include such  
22 items as eyeglasses, contact lenses, arch supports, prescriptions  
23 and compounded pharmaceutical substances;

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1 10. "Pharmacy benefits manager" or "PBM" means any entity that  
2 performs pharmacy benefits management. Pharmacy benefits manager or  
3 PBM includes a person or entity acting for a pharmacy benefits  
4 manager in a contractual or employment relationship in the  
5 performance of pharmacy benefits management for a covered entity;

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

10 12. "Professional services" means acts performed and regulated  
11 by valid license issued and regulated pursuant to laws of this  
12 state, another state or the United States for allopathic physicians,  
13 osteopathic physicians, pharmacists, dentists, podiatrists or  
14 optometrists which are performed directly upon or on behalf of a  
15 person after physical examination of the person for purposes of  
16 diagnosis or treatment recommendation for a medical condition,  
17 injury, illness or ailment and which require by law direct  
18 engagement or supervision of the Professional Services Acquisition  
19 Act, time, effort or skills involved in performing or completing the  
20 act. Professional services as used in this act shall not include  
21 contracted Medicaid services for emergency care, medical specialty  
22 care, quality care services or for contracted Medicaid services  
23 provided in border states;

1 13. "Solicit" or "solicitation" means a request or invitation  
2 by a business entity or agency to supply or acquire items, products  
3 or professional services for a price and for purposes of selling or  
4 purchasing acquisitions by use of electronic commerce; and

5 14. "Electronic commerce" means use of electronic methods to  
6 enable solicitation, supplier response, contracting, notice of  
7 contract award, acquisition processes or any other function to make  
8 an acquisition.

9 SECTION 3. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 375.3 of Title 59, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. A person or business entity whose physical place of business  
13 is located outside of the physical boundaries of this state shall  
14 not be authorized to solicit, contract or provide an acquisition in  
15 this state with respect to professional services, or its related  
16 products, where public funds from this state are paid on behalf of  
17 the solicitation, contract or acquisition, except when such person  
18 or business entity is in compliance with the same rules, regulations  
19 and laws imposed on a person or business entity whose physical place  
20 of business is located in this state.

21 B. The State of Oklahoma, including its agencies, contractors  
22 and subcontractors, is prohibited from using state funds in any  
23 manner relative to solicitation, bid, acquisition, contracting or  
24 hiring an out-of-state person or business entity to provide

1 professional services, or its related products, except when the  
2 person or business entity is in compliance with the same rules,  
3 regulations and laws required for the same type of business entity  
4 or person physically located in this state.

5 C. The provisions of subsections A and B of this section shall  
6 apply to allopathic physicians, osteopathic physicians, pharmacists,  
7 dentists, podiatrists and optometrists offering professional  
8 services and related products in this state.

9 D. Any state agency soliciting, entering into a contract or  
10 contracting for any acquisition in violation of the provisions of  
11 this section shall be required to either rescind the contract or  
12 decline to renew the contract until compliance is met. Within  
13 ninety (90) days from the effective date of this section, each state  
14 agency in this state to which the provisions of this section may  
15 apply shall immediately review each of its out-of-state contractors  
16 and contracting sources to confirm compliance with the provisions of  
17 this section. The review shall be completed within thirty (30) days  
18 and any contractor or contracting source that does not comply with  
19 the provisions of this section shall be replaced in a timely manner,  
20 but not later than a renewal of such contract, with an alternative  
21 contractor or contracting source that is in compliance with the  
22 provisions of this section.

23 E. Nothing in this section shall be construed to limit the  
24 authority of any licensure board in this state from bringing an

1 action pursuant to its authority to regulate the products or  
2 professional services or to enforce license violations.

3 F. For purposes of any administrative, civil or criminal action  
4 to enforce the provisions of this section, the use of a computer,  
5 computer system, computer network or any electronic means to obtain  
6 an acquisition of product or professional services defined in this  
7 section in one jurisdiction to or from another jurisdiction is  
8 deemed to have occurred in this jurisdiction.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 375.4 of Title 59, unless there  
11 is created a duplication in numbering, reads as follows:

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

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

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

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

16 SECTION 5. This act shall become effective November 1, 2013.

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