

1 ENGROSSED HOUSE
2 BILL NO. 2100

By: Derby and Pittman of the
House

3 and

4 Standridge of the Senate

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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; and providing
21 for codification.

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

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

As used in this act:

1. "Board" means the State Board of Pharmacy;
2. "Covered entity" means a nonprofit hospital or medical
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 3. "Covered individual" means a member, participant, enrollee,
11 contract holder or policy holder or beneficiary of a covered entity
12 who is provided health coverage by the covered entity. A covered
13 individual includes any dependent or other person provided health
14 coverage through a policy, contract or plan for a covered
15 individual;

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

19 5. "Pharmacy benefits management" means a service provided to
20 covered entities to facilitate the provision of prescription drug
21 benefits to covered individuals within the state, including
22 negotiating pricing and other terms with drug manufacturers and
23 providers. Pharmacy benefits management may include any or all of
24 the following services:

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

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

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

8. "Provider" means a pharmacy licensed by the State Board of Pharmacy, or an agent or representative of a pharmacy, including but not limited to the pharmacy's contracting agent, which dispenses prescription drugs or devices to covered individuals; and

9. "Published drug price effective date" means the effective date associated with the Average Wholesale Price or Wholesale

1 Acquisition Cost or other price index used to calculate prescription
2 drug reimbursement as supplied by First Data, MediSpan or other
3 nationally recognized pricing source.

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

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

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

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

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

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

14 A pharmacy benefit manager (PBM) shall:

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

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

23 3. Not transmit or provide any personally identifiable
24 demographic, drug, utilization or claims data to a pharmacy owned

1 by, affiliated with or under contract with the PBM or plan sponsor
2 if the covered individual has not voluntarily elected in writing to
3 obtain prescription services at the pharmacy owned by, affiliated
4 with or contracted with the PBM or plan sponsor.

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

8 A pharmacy benefits manager shall provide, upon request by the
9 covered entity, information regarding the difference in the amount
10 paid to providers for prescription services rendered to covered
11 individuals and the amount billed by the pharmacy benefits manager
12 to the covered entity or plan sponsor to pay for prescription
13 services rendered to covered individuals.

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

17 A. With respect to contracts between a pharmacy benefits
18 manager and a provider, the pharmacy benefits manager must have a
19 written executed contract with the provider before requiring that
20 provider to fill prescriptions for covered individuals under benefit
21 programs managed or administered by the pharmacy benefits manager.
22 Executed contracts shall contain all rates, terms and conditions
23 governing claims payments for prescriptions filled by the provider.

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

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

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

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

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

1 by the provider and shall make the adjustment effective for all
2 providers;

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

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

9 C. In order to place a particular drug product on a maximum
10 allowable cost list, the pharmacy benefits manager must, at a
11 minimum, ensure that the drug product is available from multiple
12 manufacturers and shall not be the brand name originator product.
13 The drug product must be available for purchase without limitations
14 by all pharmacies in the state from national or regional wholesalers
15 and not be obsolete or temporarily unavailable.

16 D. The pharmacy benefits manager shall not require
17 accreditation or licensing of providers other than by the Board or
18 other state or federal government entity.

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