

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2100

By: Derby of the House

and

Standridge of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

4 As used in this act:

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

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

17 3. "Covered individual" means a member, participant, enrollee,
18 contract holder or policy holder or beneficiary of a covered entity
19 who is provided health coverage by the covered entity. A covered
20 individual includes any dependent or other person provided health
21 coverage through a policy, contract or plan for a covered
22 individual;

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

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

6 6. "Pharmacy benefits management" means a service provided to
7 covered entities to facilitate the provision of prescription drug
8 benefits to covered individuals within the state, including
9 negotiating pricing and other terms with drug manufacturers and
10 providers. Pharmacy benefits management may include any or all of
11 the following services:

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

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

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

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

11 10. "Published drug price effective date" means the effective
12 date associated with the Average Wholesale Price or Wholesale
13 Acquisition Cost or other price index used to calculate prescription
14 drug reimbursement as supplied by FirstData, MediSpan or other
15 nationally recognized pricing source.

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

19 A. In order to provide pharmacy benefits management or any of
20 the services included under the definition of pharmacy benefits
21 management in this state, a pharmacy benefits manager or any entity
22 acting as one in a contractual or employment relationship for a
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1 covered entity shall first obtain a license from the State Board of
2 Pharmacy, and the Board may charge a fee for such licensure.

3 B. The Board shall establish, by regulation, licensure
4 procedures, required disclosures for pharmacy benefits managers
5 (PBMs) and other rules as may be necessary for carrying out and
6 enforcing the provisions of this act. The licensure procedures
7 shall, at a minimum, include the completion of an application form
8 that shall include the name and address of an agent for service of
9 process, the payment of a requisite fee, and evidence of the
10 procurement of a surety bond.

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

16 D. The Board may suspend, revoke or refuse to issue or renew a
17 license for noncompliance with any of the provisions hereby
18 established or with the rules promulgated by the Board; for conduct
19 likely to mislead, deceive or defraud the public or the Board; for
20 unfair or deceptive business practices or for nonpayment of a
21 renewal fee or fine. The Board may also levy administrative fines
22 for each count of which a licensee has been convicted in a Board
23 hearing.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

4 A pharmacy benefit manager (PBM) shall:

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

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

13 3. Not transmit or provide any personally identifiable
14 demographic, drug, utilization or claims data to a pharmacy owned
15 by, affiliated with or under contract with the PBM or plan sponsor
16 if the covered individual has not voluntarily elected in writing to
17 obtain prescription services at the pharmacy owned by, affiliated
18 with or contracted with the PBM or plan sponsor.

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

22 A. A pharmacy benefits manager shall provide, upon request by a
23 covered entity, all claims financial and utilization information
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1 requested by the covered entity regarding the provision of benefits
2 to covered individuals through the covered entity and all financial
3 and utilization information relating to services to that entity.

4 A pharmacy benefits manager providing information under this
5 subsection may designate that material as confidential. Information
6 designated as confidential by a pharmacy benefits manager and
7 provided to a covered entity under this subsection may not be
8 disclosed by the covered entity to any person or entity without the
9 consent of the pharmacy benefits manager, except that disclosure may
10 be ordered by a court of this state or made in a court filing under
11 seal.

12 B. A pharmacy benefits manager shall provide, upon request by
13 the covered entity, information regarding the difference in the
14 amount paid to providers for prescription services rendered to
15 covered individuals and the amount billed by the pharmacy benefits
16 manager to the covered entity or plan sponsor to pay for
17 prescription services rendered to covered individuals.

18 C. If a pharmacy benefits manager authorizes or requires a
19 substitution in which the substitute drug costs more than the
20 prescribed drug, the pharmacy benefits manager shall disclose to the
21 covered entity the cost of both drugs and any benefit or payment
22 directly or indirectly accruing to the pharmacy benefits manager as
23 a result of the substitution.

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

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

8 A. With respect to contracts between a pharmacy benefits
9 manager and a provider, the pharmacy benefits manager must have a
10 written executed contract with the provider before requiring that
11 provider to fill prescriptions for covered individuals under benefit
12 programs managed or administered by the pharmacy benefits manager.
13 Executed contracts shall contain all rates, terms and conditions
14 governing claims payments for prescriptions filled by the provider.

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

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

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

8 4. Provide a reasonable administration appeals procedure to
9 allow a provider to contest maximum allowable cost rates. The
10 pharmacy benefits manager must respond to a provider who has
11 contested a maximum allowable cost rate through this procedure
12 within fifteen (15) calendar days. Maximum allowable cost price
13 increases shall be given if the maximum allowable cost rate
14 established by the pharmacy benefits manager is below the provider's
15 invoice cost. If a price update is warranted, the pharmacy benefits
16 manager shall make the change retroactive to the fill date reported
17 by the provider and shall make the adjustment effective for all
18 providers;

19 5. Adjust maximum allowable values within seven (7) days in the
20 event the maximum allowable rate is below the provider's invoice
21 cost documented by the provider; and
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1 6. Not require providers to dispense medication if the
2 reimbursement for the medication is below the provider's invoice
3 cost.

4 C. In order to place a particular drug product on a maximum
5 allowable cost list, the pharmacy benefits manager must, at a
6 minimum, ensure that the drug product must have at least two or more
7 nationally available, therapeutically equivalent, multiple source
8 drug products available.

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

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

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

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

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20 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/25/2013 -
21 DO PASS, As Amended and Coauthored.

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