

1 **SENATE FLOOR VERSION**

2 March 27, 2014

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2100

By: Derby, Pittman and Perryman
of the House

and

Standridge of the Senate

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

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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 357 of Title 59, unless there is
created a duplication in numbering, reads as follows:

As used in this act:

1 1. "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 2. "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 3. "Department" means the Oklahoma Insurance Department;

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

22 5. "Pharmacy benefits management" means a service provided to
23 covered entities to facilitate the provision of prescription drug
24 benefits to covered individuals within the state, including

1 negotiating pricing and other terms with drug manufacturers and
2 providers. Pharmacy benefits management may include any or all of
3 the following services:

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

13 6. "Pharmacy benefits manager" or "PBM" means a person,
14 business or other entity that performs pharmacy benefits management.
15 The term includes a person or entity acting for a PBM in a
16 contractual or employment relationship in the performance of
17 pharmacy benefits management for a managed care company, nonprofit
18 hospital, medical service organization, insurance company, third-
19 party payor, or a health program administered by an agency of this
20 state;

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

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

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

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

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

23 C. The Department may subpoena witnesses and information. Its
24 compliance officers may take and copy records for investigative use

1 and prosecutions. Nothing in this subsection shall limit the Office
2 of the Attorney General from using its investigative demand
3 authority to investigate and prosecute violations of the law.

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

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

15 Unless otherwise provided by contract, a pharmacy benefits
16 manager shall provide, upon request by the covered entity,
17 information regarding the difference in the amount paid to providers
18 for prescription services rendered to covered individuals and the
19 amount billed by the pharmacy benefits manager to the covered entity
20 or plan sponsor to pay for prescription services rendered to covered
21 individuals.

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

1 A. The pharmacy benefits manager shall, with respect to
2 contracts between a pharmacy benefits manager and a provider:

3 1. Include in such contracts the sources utilized to determine
4 the maximum allowable cost pricing of the pharmacy, update maximum
5 allowable cost pricing at least every seven (7) calendar days, and
6 establish a process for providers to readily access the MAC list
7 specific to that provider;

8 2. In order to place a drug on the MAC list, ensure that the
9 drug is listed as "A" or "B" rated in the most recent version of the
10 FDA's Approved Drug Products with Therapeutic Equivalence
11 Evaluations, also known as the Orange Book, or has an "NR" or "NA"
12 rating or a similar rating by a nationally recognized reference, and
13 the drug is generally available for purchase by pharmacies in the
14 state from national or regional wholesalers and is not obsolete;

15 3. Ensure dispensing fees are not included in the calculation
16 of MAC price reimbursement to pharmacy providers;

17 4. Provide a reasonable administration appeals procedure to
18 allow a provider or a provider's representative to contest maximum
19 allowable cost rates within ten (10) business days of prescription
20 claim date. The pharmacy benefits manager must respond to a
21 provider who has contested a maximum allowable cost rate through
22 this procedure within ten (10) business days. If a price update is
23 warranted, the pharmacy benefits manager shall make the change in
24 the MAC, permit the challenging pharmacy to reverse and rebill the

1 claim in question, and make the MAC change effective for each
2 similarly contracted Oklahoma provider; and

3 5. If the MAC appeal is denied, the PBM shall provide the
4 reason for the denial, including the National Drug Code number from
5 national or regional wholesalers where the drug is generally
6 available for purchase by pharmacies in the state at or below the
7 PBM's Maximum Allowable Cost.

8 B. The pharmacy benefits manager may not place a drug on a
9 maximum allowable cost list, unless there are at least two
10 therapeutically equivalent, multiple-source drugs, or at least one
11 generic drug available from only one manufacturer, generally
12 available for purchase by network pharmacies from national or
13 regional wholesalers.

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

17 SECTION 5. This act shall become effective July 1, 2014.

18 SECTION 6. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
23 March 27, 2014 - DO PASS AS AMENDED
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