

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2100

By: Derby

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5  
6 AS INTRODUCED

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

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24 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. "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 a  
18 multiple source prescription drugs, medical product or device;

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

21 6. "Pharmacy benefits management" means a service provided to  
22 covered entities to facilitate the provision of prescription drug  
23 benefits to covered individuals within the state, including  
24 negotiating pricing and other terms with drug manufacturers and

1 providers. Pharmacy benefits management may include any or all of  
2 the following services:

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

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

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

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

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

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

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

15 B. The Board 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 Board 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 Board may suspend, revoke or refuse to issue or renew a  
5 license for noncompliance with any of the provisions hereby  
6 established or with the rules promulgated by the Board; for conduct  
7 likely to mislead, deceive or defraud the public or the Board; for  
8 unfair or deceptive business practices or for nonpayment of a  
9 renewal fee or fine. The Board may also levy administrative fines  
10 for each count of which a licensee has been convicted in a Board  
11 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 A pharmacy benefit manager (PBM) shall:

16 1. Notify a plan sponsor if such PBM intends to provide, sell,  
17 lease, or rent drug utilization or claims data to any third-party  
18 entity;

19 2. Notify the plan sponsor in writing at least thirty (30) days  
20 before providing, selling, leasing, or renting such data and shall  
21 provide the plan sponsor with the name of the potential recipient of  
22 such data and the expected use of any utilization or claims data by  
23 such recipient;

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1 3. Not provide, sell, lease or rent such data unless the sale  
2 complies with all federal and state laws and the PBM has received  
3 written approval for such provision, sale, lease or rental from the  
4 plan sponsor;

5 4. Not directly contact a covered individual by any means  
6 (including via electronic delivery, telephone, SMS text or direct  
7 mail) without the express written permission of the plan sponsor and  
8 the covered individual;

9 5. Not transmit or provide any personally identifiable  
10 demographic, drug, utilization or claims data to a pharmacy owned  
11 by, affiliated with or under contract with the PBM or plan sponsor  
12 if the covered individual has not voluntarily elected in writing to  
13 obtain prescription services at the pharmacy owned by, affiliated  
14 with or contracted with the PBM or plan sponsor; and

15 6. Obtain the affirmative opt-in of each covered individual  
16 prior to entering into an agreement for the provision, lease, rental  
17 or sale of that individual's information to any third-party entity.

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

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

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

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

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

23 4. When a covered individual's out-of-pocket cost or copay is  
24 percentage based, the pharmacy benefits manager shall calculate the

1 percentage owed or the amount of the copay based upon the amount  
2 actually paid to the pharmacy for the medication in question.

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

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

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

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

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

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

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

15           5. Adjust maximum allowable values in the event the maximum  
16 allowable rate is below the provider's invoice cost documented by  
17 the provider; and

18           6. Not require providers to dispense medication if the  
19 reimbursement for the medication is below the provider's invoice  
20 cost.

21           C. In order to place a particular drug product on a maximum  
22 allowable cost list, the pharmacy benefits manager must, at a  
23 minimum ensure that the drug product must have at least three or  
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1 more nationally available, therapeutically equivalent, multiple  
2 source drug products available.

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

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

9 D. The pharmacy benefits manager shall not require  
10 accreditation or licensing of providers other than by the Board or  
11 other state or federal government entity.

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

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