

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1150 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

by deleting Sections 5, 7, and 8 in their entirety and by replacing in lieu thereof the following Sections 5, 7, and 8:

SEE ATTACHED

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Doug Cox

Reading Clerk

"SECTION 5. AMENDATORY 59 O.S. 2011, Section 353.24, as amended by Section 16, Chapter 230, O.S.L. 2015 (59 O.S. Supp. 2015, Section 353.24), is amended to read as follows:

Section 353.24. A. It shall be unlawful for any licensee or other person to:

1. Forge or increase the quantity of drug in any prescription, or to present a prescription bearing forged, fictitious or altered information or to possess any drug secured by such forged, fictitious or altered prescription;

2. Sell, offer for sale, barter or give away any unused quantity of drugs obtained by prescription, except through a program pursuant to the Utilization of Unused Prescription Medications Act or as otherwise provided by the State Board of Pharmacy;

3. Sell, offer for sale, barter or give away any drugs damaged by fire, water, or other causes without first obtaining the written approval of the Board or the State Department of Health;

4. ~~Enter into any arrangement whereby prescription orders are received, or prescriptions are delivered at a place other than the pharmacy in which they are filled, compounded or dispensed.~~ No person, firm or business establishment shall offer to the public, in any manner, their services as a "pick-up station" or intermediary for the purpose of having prescriptions filled or delivered, whether for profit or gratuitously. Nor may the owner of any pharmacy or drug store authorize any person, firm or business establishment to act for them in this manner with these exceptions:

- a. patient-specific filled prescriptions may be delivered or shipped to a prescriber's clinic for pick-up by those patients who the prescriber has individually determined and documented do not have a permanent or secure mailing address,
- b. patient-specific filled prescriptions for drugs which require special handling written by a prescriber may be delivered or shipped to the prescriber's clinic for administration or pick-up at the prescriber's office,
- c. patient-specific filled prescriptions, including sterile compounded drugs, may be delivered or shipped to a prescriber's clinic where they shall be administered,
- d. patient-specific filled prescriptions for patients under Medicare and/or Medicaid for End Stage Renal Disease (ESRD) may be delivered or shipped to a prescriber's clinic for administration or final delivery to the patient, or
- e. patient-specific filled prescriptions for radiopharmaceuticals may be delivered or shipped to a prescriber's clinic for administration or pick-up.

However, nothing in this paragraph shall prevent a pharmacist or an employee of the pharmacy from personally receiving a prescription or delivering a legally filled prescription to a residence, office or place of employment of the patient for whom the prescription was written. Provided further, the provisions of this paragraph shall not apply to any Department of Mental Health and Substance Abuse Services employee or any person whose facility contracts with the Department of Mental Health and

Substances Abuse Services whose possession of any dangerous drug, as defined in Section 353.1 of this title, is for the purpose of delivery of a mental health consumer's medicine to the consumer's home or residence. Nothing in this paragraph shall prevent veterinary prescription drugs from being shipped directly from an Oklahoma licensed wholesaler or distributor registered with the Oklahoma Board of Veterinary Medical Examiners to a client; provided, such drugs may be dispensed only on prescription of a licensed veterinarian and only when an existing veterinary-client-patient relationship exists;

5. Sell, offer for sale or barter or buy any professional samples except through a program pursuant to the Utilization of Unused Prescription Medications Act;

6. Refuse to permit or otherwise prevent members of the Board or such representatives thereof from entering and inspecting any and all places, including premises, vehicles, equipment, contents, and records, where drugs, medicine, chemicals or poisons are stored, sold, vended, given away, compounded, dispensed, repackaged, transported, or manufactured;

7. Interfere, refuse to participate in, impede or otherwise obstruct any inspection, investigation or disciplinary proceeding authorized by the Oklahoma Pharmacy Act;

8. Possess dangerous drugs without a valid prescription or a valid license to possess such drugs; provided, however, this provision shall not apply to any Department of Mental Health and Substance Abuse Services employee or any person whose facility contracts with the Department of Mental Health and Substances Abuse Services whose possession of any dangerous drug, as defined in Section 353.1 of this title, is for the

purpose of delivery of a mental health consumer's medicine to the consumer's home or residence;

9. Fail to establish and maintain effective controls against the diversion of drugs for any other purpose than legitimate medical, scientific or industrial uses as provided by state, ~~and~~ federal, and local law;

10. Fail to have a written drug diversion detection and prevention policy;

11. Possess, sell, offer for sale, barter or give away any quantity of dangerous drugs not listed as a scheduled drug pursuant to Sections 2-201 through 2-212 of Title 63 of the Oklahoma Statutes when obtained by prescription bearing forged, fictitious or altered information.

a. A first violation of this section shall constitute a misdemeanor and upon conviction shall be punishable by imprisonment in the county jail for a term not more than one (1) year and a fine in an amount not more than One Thousand Dollars (\$1,000.00).

b. A second violation of this section shall constitute a felony and upon conviction shall be punishable by imprisonment in the Department of Corrections for a term not exceeding five (5) years and a fine in an amount not more than Two Thousand Dollars (\$2,000.00);

12. Violate a Board order or agreed order;

13. Compromise the security of licensure examination materials; or

14. Fail to notify the Board, in writing, within ten (10) days of a licensee or permit holder's address change.

B. 1. It shall be unlawful for any person other than a licensed pharmacist or physician to certify a prescription before delivery to the patient or the patient's representative or caregiver.

2. It shall be unlawful for any person to institute or manage a pharmacy unless such person is a licensed pharmacist or has placed a licensed pharmacist in charge of such pharmacy7.

3. No licensed pharmacist shall manage, supervise or be in charge of more than one pharmacy.

4. No pharmacist being requested to sell, furnish or compound any drug, medicine, chemical or other pharmaceutical preparation, by prescription or otherwise, shall substitute or cause to be substituted for it, without authority of the prescriber or purchaser, any like drug, medicine, chemical or pharmaceutical preparation.

5. No pharmacy, pharmacist-in-charge or other person shall permit the practice of pharmacy except by a licensed pharmacist or assistant pharmacist.

6. No person shall subvert the authority of the pharmacist-in-charge of the pharmacy by impeding the management of the prescription department to act in compliance with federal and state law.

C. 1. It shall be unlawful for a pharmacy to resell dangerous drugs to any wholesale distributor.

2. It shall be unlawful for a wholesale distributor to purchase drugs from a pharmacy.

SECTION 7. AMENDATORY Section 1, Chapter 263, O.S.L. 2014 (59 O.S. Supp. 2015, Section 357), is amended to read as follows:

Section 357. As used in this act:

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

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

3. "Department" means the Oklahoma Insurance Department;

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

5. "Multisource drug product reimbursement" (reimbursement) means the total amount paid to a pharmacy inclusive of any reduction in payment to the pharmacy, excluding prescription dispense fees;

6. "Pharmacy benefits management" means a service provided to covered entities to facilitate the provision of prescription drug benefits to covered individuals within the state, including negotiating pricing and

other terms with drug manufacturers and providers. Pharmacy benefits management may include any or all of 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.~~ 7. "Pharmacy benefits manager" or "PBM" means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by an agency of this state;

~~7.~~ 8. "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; and

~~8.~~ 9. "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.

SECTION 8. AMENDATORY Section 4, Chapter 263, O.S.L. 2014 (59 O.S. Supp. 2015, Section 360), is amended to read as follows:

Section 360. A. The pharmacy benefits manager shall, with respect to contracts between a pharmacy benefits manager and a provider:

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

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

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

4. Provide a reasonable administration appeals procedure to allow a provider or a provider's representative to contest ~~maximum allowable cost rates~~ reimbursement amounts within ten (10) business days of ~~prescription claim~~ the final adjusted payment date. The pharmacy benefits manager must respond to a provider or provider's representative who has contested a ~~maximum allowable cost rate~~ reimbursement amount through this procedure within ten (10) business days. If a price update is warranted, the pharmacy benefits manager shall make the change in the ~~MAC~~ reimbursement

amount, permit the challenging pharmacy to reverse and rebill the claim in question, and make the ~~MAC~~ reimbursement amount change effective for each similarly contracted Oklahoma provider; and

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

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

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

