

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB737 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Marcus McEntire _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 737

6 By: McCortney of the Senate

7 and

8 McEntire of the House

9 FLOOR SUBSTITUTE

10 An Act relating to the Patient's Right to Pharmacy
11 Choice Act; amending Section 3, Chapter 426, O.S.L.
12 2019 (36 O.S. Supp. 2020, Section 6960), which
13 relates to definitions; adding definitions; amending
14 Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp.
15 2020, Section 6962), which relates to compliance
16 review; updating references; adding prohibited
17 activity; requiring pharmacy benefits managers to
18 maintain certain documentation for a certain period
19 of time; amending Section 8, Chapter 426, O.S.L. 2019
20 (36 O.S. Supp. 2020, Section 6965), which relates to
21 power to investigate; modifying time frame of certain
22 required response; authorizing Commissioner to
23 censure, suspend or revoke license of certain persons
24 for violating act; specifying amount of certain civil
fine; authorizing Commissioner to enforce provisions
of act; providing that fees and costs of hearing
examiner be assessed against respondent; authorizing
right of appeal for certain pharmacy benefits
managers; establishing standard of judicial review
for appeal; authorizing Commissioner to require
reports from certain pharmacy benefits managers;
providing for codification; and providing an
effective date.

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

2 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.
3 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as
4 follows:

5 Section 6960. For purposes of the Patient's Right to Pharmacy
6 Choice Act:

7 1. "Health insurer" means any corporation, association, benefit
8 society, exchange, partnership or individual licensed by the
9 Oklahoma Insurance Code;

10 2. "Mail-order pharmacy" means a pharmacy licensed by this
11 state that primarily dispenses and delivers covered drugs via common
12 carrier;

13 3. "Pharmacy benefits manager" or "PBM" means a person that
14 performs pharmacy benefits management and any other person acting
15 for such person under a contractual or employment relationship in
16 the performance of pharmacy benefits management for a managed-care
17 company, nonprofit hospital, medical service organization, insurance
18 company, third-party payor or a health program administered by a
19 department of this state;

20 4. "Pharmacy and therapeutics committee" or "P&T committee"
21 means a committee at a hospital or a health insurance plan that
22 decides which drugs will appear on that entity's drug formulary;

23 5. "Provider" means a pharmacy, as defined in Section 353.1 of
24 Title 59 of the Oklahoma Statutes, licensed by the State Board of

1 Pharmacy or an agent or representative of a pharmacy including, but
2 not limited to, the contracting agent of a pharmacy who dispenses
3 prescription drugs or devices to covered individuals;

4 6. "Retail pharmacy network" means retail pharmacy providers
5 contracted with a PBM in which the pharmacy primarily fills and
6 sells prescriptions via a retail, storefront location;

7 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
8 the population density is less than one thousand (1,000) individuals
9 per square mile;

10 8. "Spread pricing" shall mean the model of prescription drug
11 pricing in which the pharmacy benefits manager charges a health
12 benefit plan a contracted price for prescription drugs, and the
13 contracted price for the prescription drugs differs from the amount
14 the pharmacy benefits manager directly or indirectly pays the
15 pharmacy or pharmacist for providing pharmacy services;

16 ~~7.~~ 9. "Suburban service area" means a five-digit ZIP code in
17 which the population density is between one thousand (1,000) and
18 three thousand (3,000) individuals per square mile; and

19 ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in
20 which the population density is greater than three thousand (3,000)
21 individuals per square mile.

22 SECTION 2. AMENDATORY Section 5, Chapter 426, O.S.L.
23 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
24 follows:

1 Section 6962. A. The Oklahoma Insurance Department shall
2 review and approve retail pharmacy network access for all pharmacy
3 benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~
4 act 6961 of this title.

5 B. A PBM, or an agent of a PBM, shall not:

6 1. Cause or knowingly permit the use of advertisement,
7 promotion, solicitation, representation, proposal or offer that is
8 untrue, deceptive or misleading;

9 2. Charge a pharmacist or pharmacy a fee related to the
10 adjudication of a claim, including without limitation a fee for:

11 a. the submission of a claim,

12 b. enrollment or participation in a retail pharmacy
13 network, or

14 c. the development or management of claims processing
15 services or claims payment services related to
16 participation in a retail pharmacy network;

17 3. Reimburse a pharmacy or pharmacist in the state an amount
18 less than the amount that the PBM reimburses a pharmacy owned by or
19 under common ownership with a PBM for providing the same covered
20 services. The reimbursement amount paid to the pharmacy shall be
21 equal to the reimbursement amount calculated on a per-unit basis
22 using the same generic product identifier or generic code number
23 paid to the PBM-owned or PBM-affiliated pharmacy;

1 4. Deny a pharmacy the opportunity to participate in any
2 pharmacy network at preferred participation status if the pharmacy
3 is willing to accept the terms and conditions that the PBM has
4 established for other pharmacies as a condition of preferred network
5 participation status;

6 5. Deny, limit or terminate a pharmacy's contract based on
7 employment status of any employee who has an active license to
8 dispense, despite probation status, with the State Board of
9 Pharmacy;

10 6. Retroactively deny or reduce reimbursement for a covered
11 service claim after returning a paid claim response as part of the
12 adjudication of the claim, unless:

- 13 a. the original claim was submitted fraudulently, or
- 14 b. to correct errors identified in an audit, so long as
15 the audit was conducted in compliance with Sections
16 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

17 ~~or~~

18 7. Fail to make any payment due to a pharmacy or pharmacist for
19 covered services properly rendered in the event a PBM terminates a
20 pharmacy or pharmacist from a pharmacy benefits manager network; or

21 8. Conduct spread pricing, as defined in Section 6960 of this
22 title, in this state.

1 C. The prohibitions under this section shall apply to contracts
2 between pharmacy benefits managers and pharmacists or pharmacies for
3 participation in retail pharmacy networks.

4 1. A PBM contract shall:

5 a. not restrict, directly or indirectly, any pharmacy
6 that dispenses a prescription drug from informing, or
7 penalize such pharmacy for informing, an individual of
8 any differential between the individual's out-of-
9 pocket cost or coverage with respect to acquisition of
10 the drug and the amount an individual would pay to
11 purchase the drug directly, and

12 b. ensure that any entity that provides pharmacy benefits
13 management services under a contract with any such
14 health plan or health insurance coverage does not,
15 with respect to such plan or coverage, restrict,
16 directly or indirectly, a pharmacy that dispenses a
17 prescription drug from informing, or penalize such
18 pharmacy for informing, a covered individual of any
19 differential between the individual's out-of-pocket
20 cost under the plan or coverage with respect to
21 acquisition of the drug and the amount an individual
22 would pay for acquisition of the drug without using
23 any health plan or health insurance coverage.

1 2. A pharmacy benefits manager's contract with a participating
2 pharmacist or pharmacy shall not prohibit, restrict or limit
3 disclosure of information to the Insurance Commissioner, law
4 enforcement or state and federal governmental officials
5 investigating or examining a complaint or conducting a review of a
6 pharmacy benefits manager's compliance with the requirements under
7 the Patient's Right to Pharmacy Choice Act.

8 3. A pharmacy benefits manager shall establish and maintain an
9 electronic claim inquiry processing system using the National
10 Council for Prescription Drug Programs' current standards to
11 communicate information to pharmacies submitting claim inquiries.

12 D. A pharmacy benefits manager shall maintain documentation
13 relating to any denial of a pharmacy to join a network for a period
14 of five (5) years.

15 SECTION 3. AMENDATORY Section 8, Chapter 426, O.S.L.
16 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
17 follows:

18 Section 6965. A. The Insurance Commissioner shall have power
19 to examine and investigate into the affairs of every pharmacy
20 benefits manager (PBM) engaged in pharmacy benefits management in
21 this state in order to determine whether such entity is in
22 compliance with the Patient's Right to Pharmacy Choice Act.

23 B. All PBM files and records shall be subject to examination by
24 the Insurance Commissioner or by duly appointed designees. The

1 Insurance Commissioner, authorized employees and examiners shall
2 have access to any of a PBM's files and records that may relate to a
3 particular complaint under investigation or to an inquiry or
4 examination by the Insurance Department.

5 C. Every officer, director, employee or agent of the PBM, upon
6 receipt of any inquiry from the Commissioner shall, within ~~thirty~~
7 ~~(30)~~ twenty (20) days from the date the inquiry is sent, furnish the
8 Commissioner with an adequate response to the inquiry.

9 D. When making an examination under this section, the Insurance
10 Commissioner may retain subject matter experts, attorneys,
11 appraisers, independent actuaries, independent certified public
12 accountants or an accounting firm or individual holding a permit to
13 practice public accounting, certified financial examiners or other
14 professionals and specialists as examiners, the cost of which shall
15 be borne by the PBM which is the subject of the examination.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The Insurance Commissioner may censure, suspend, revoke or
20 refuse to renew a license of or levy a civil penalty against any
21 person licensed under the insurance laws of this state for any
22 violation of the Patient's Right to Pharmacy Choice Act, Section
23 6958 et seq. of Title 36 of the Oklahoma Statutes.

24

1 B. A pharmacy benefits manager may be censured, a penalty or
2 remedy authorized by this act may be imposed, and the license of a
3 pharmacy benefits manager may be suspended or revoked if the
4 Commissioner finds, after notice and opportunity for a hearing, that
5 the pharmacy benefits manager violated one or more provisions of the
6 Patient's Right to Pharmacy Choice Act or the provisions of Sections
7 356 through 360 of Title 59 of the Oklahoma Statutes.

8 C. In addition to or in lieu of any censure, suspension or
9 revocation of a license, a pharmacy benefits manager may, after
10 notice and opportunity for a hearing, be subject to a civil fine of
11 not less than One Hundred Dollars (\$100.00) and not greater than Ten
12 Thousand Dollars (\$10,000.00) for each violation. The penalty may
13 be enforced in the same manner in which civil judgments may be
14 enforced.

15 D. The Commissioner shall be authorized to enforce the
16 provisions of the Patient's Right to Pharmacy Choice Act and impose
17 any penalty or remedy authorized under the act against a pharmacy
18 benefits manager under investigation for or charged with a violation
19 of the act or any provision of Title 36 or any provision of Sections
20 356 through 360 of Title 59 of the Oklahoma Statutes,
21 notwithstanding whether the license of the pharmacy benefits manager
22 has been issued, suspended, revoked, surrendered or lapsed by
23 operation of law. Each day that a pharmacy benefits manager
24 conducts business in the State of Oklahoma without a license from

1 the Oklahoma Insurance Department shall be deemed an instance of
2 violation.

3 E. 1. All hearings shall be public and held in accordance with
4 the Administrative Procedures Act.

5 2. Hearings shall be held at the office of the Insurance
6 Commissioner or at any other place as the Commissioner may deem
7 convenient.

8 3. The Commissioner, upon written request reasonably made by
9 the pharmacy benefits manager affected by the hearing, shall cause a
10 full stenographic record of the proceedings to be made by a
11 competent court reporter. This record shall be at the expense of
12 the pharmacy benefits manager.

13 4. The ordinary fees and costs of the hearing examiner
14 appointed pursuant to Section 319 of Title 36 of the Oklahoma
15 Statutes may be assessed by the hearing examiner against the
16 respondent unless the respondent is the prevailing party.

17 F. Any pharmacy benefits manager whose license has been
18 censured, suspended, revoked or denied renewal, or who has had a
19 fine levied against him or her, shall have the right of appeal from
20 the final order of the Commissioner, pursuant to Section 318 et seq.
21 of Title 75 of the Oklahoma Statutes.

22 G. If the Insurance Commissioner determines, based upon an
23 investigation of complaints, that a pharmacy benefits manager has
24 engaged in violations of the provisions of the Patient's Right to

1 Pharmacy Choice Act with such frequency as to indicate a general
2 business practice, and that the pharmacy benefits manager should be
3 subjected to closer supervision with respect to such practices, the
4 Commissioner may require the pharmacy benefits manager to file a
5 report at any periodic intervals the Commissioner deems necessary.

6 SECTION 5. This act shall become effective November 1, 2021.

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8 58-1-8142 AB 04/13/21

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