

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 or practice spread pricing, as defined in Section
22 6960 of this 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 D. A Pharmacy Benefits Manager shall:

9 1.3. A pharmacy benefits manager shall e Establish and maintain
10 an electronic claim inquiry processing system using the National
11 Council for Prescription Drug Programs' current standards to
12 communicate information to pharmacies submitting claim inquiries.

13 2. Be fully transparent with insurers, self-funded employers,
14 unions and other PBM clients with regard to prescription drug
15 discounts, rebates received from drug manufacturers, and pharmacy
16 audit recoupments.

17 3. Provide insurers, self-funded employer plans, unions, and the
18 Insurance Commissioner unrestricted audit rights of and access to
19 PBM pharmaceutical manufacturer and pharmacy contracts, plan
20 utilization data, plan pricing data, pharmacy utilization data, and
21 pharmacy pricing data.

22 4. D. - A pharmacy benefits manager shall m Maintain
23 documentation of all network development activities including but
24 not limited to contract negotiations and relating to any denials to

1 pharmacies to join networks for no less than three (3) years and make
2 said documentation available to the Insurance Commissioner upon
3 request.

4 5. Report to the Insurance Commissioner on a quarterly basis for
5 each healthcare insurer payor the following information:

6 a. The aggregate amount of rebates received by the Pharmacy
7 Benefits Manager;

8 b. The aggregate amount of rebates distributed to the
9 appropriate healthcare insurer payor;

10 c. The aggregate amount of rebates passed on to the enrollees of
11 each healthcare insurer payor at the point of sale that reduced the
12 enrollees applicable deductible, copayment, coinsurance, or other
13 cost sharing amount;

14 d. The individual and aggregate amount paid by the healthcare
15 insurer payor to the pharmacy benefits manager for pharmacist
16 services itemized by pharmacy, by product, and by good and services;
17 and

18 e. The individual and aggregate amount a pharmacy benefits
19 manager paid for pharmacist services itemized by pharmacy, by
20 product and by goods and services.

21 SECTION 3. AMENDATORY Section 8, Chapter 426, O.S.L.
22 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
23 follows:
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1 Section 6965. A. The Insurance Commissioner shall have power
2 to examine and investigate into the affairs of every pharmacy
3 benefits manager (PBM) engaged in pharmacy benefits management in
4 this state in order to determine whether such entity is in
5 compliance with the Patient's Right to Pharmacy Choice Act.

6 B. All PBM files and records shall be subject to examination by
7 the Insurance Commissioner or by duly appointed designees. The
8 Insurance Commissioner, authorized employees and examiners shall
9 have access to any of a PBM's files and records that may relate to a
10 particular complaint under investigation or to an inquiry or
11 examination by the Insurance Department.

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

16 D. When making an examination under this section, the Insurance
17 Commissioner may retain subject matter experts, attorneys,
18 appraisers, independent actuaries, independent certified public
19 accountants or an accounting firm or individual holding a permit to
20 practice public accounting, certified financial examiners or other
21 professionals and specialists as examiners, the cost of which shall
22 be borne by the PBM which is the subject of the examination.

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

4 A. The Insurance Commissioner may censure, suspend, revoke or
5 refuse to renew a license of or levy a civil penalty against any
6 person licensed under the insurance laws of this state for any
7 violation of the Patient's Right to Pharmacy Choice Act, Section
8 6958 et seq. of Title 36 of the Oklahoma Statutes.

9 B. A pharmacy benefits manager may be censured, a penalty or
10 remedy authorized by this act may be imposed, and the license of a
11 pharmacy benefits manager may be suspended or revoked if the
12 Commissioner finds, after notice and opportunity for a hearing, that
13 the pharmacy benefits manager violated one or more provisions of the
14 Patient's Right to Pharmacy Choice Act or the provisions of Sections
15 356 through 360 of Title 59 of the Oklahoma Statutes.

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

23 D. The Commissioner shall be authorized to enforce the
24 provisions of the Patient's Right to Pharmacy Choice Act and impose

1 any penalty or remedy authorized under the act against a pharmacy
2 benefits manager under investigation for or charged with a violation
3 of the act or any provision of Title 36 or any provision of Sections
4 356 through 360 of Title 59 of the Oklahoma Statutes,
5 notwithstanding whether the license of the pharmacy benefits manager
6 has been issued, suspended, revoked, surrendered or lapsed by
7 operation of law. Each day that a pharmacy benefits manager
8 conducts business in the State of Oklahoma without a license from
9 the Oklahoma Insurance Department shall be deemed an instance of
10 violation.

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

13 2. Hearings shall be held at the office of the Insurance
14 Commissioner or at any other place as the Commissioner may deem
15 convenient.

16 3. The Commissioner, upon written request reasonably made by
17 the pharmacy benefits manager affected by the hearing, shall cause a
18 full stenographic record of the proceedings to be made by a
19 competent court reporter. This record shall be at the expense of
20 the pharmacy benefits manager.

21 4. The ordinary fees and costs of the hearing examiner
22 appointed pursuant to Section 319 of Title 36 of the Oklahoma
23 Statutes may be assessed by the hearing examiner against the
24 respondent unless the respondent is the prevailing party.

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

6 G. If the Insurance Commissioner determines, based upon an
7 investigation of complaints, that a pharmacy benefits manager has
8 engaged in violations of the provisions of the Patient's Right to
9 Pharmacy Choice Act with such frequency as to indicate a general
10 business practice, and that the pharmacy benefits manager should be
11 subjected to closer supervision with respect to such practices, the
12 Commissioner may require the pharmacy benefits manager to file a
13 report at any periodic intervals the Commissioner deems necessary.

14 SECTION 5. It being immediately necessary for the preservation
15 of public peace, health or safety, an emergency is hereby declared
16 to exist, by reason whereof this act shall take effect and be in
17 full force from and after its passage and approval.

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19 58-1-8150 MAH 04/13/21

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