

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 821, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator McCortney

McCortney-CB-FS-Req#1947
3/4/2021 4:36 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 821

By: McCortney, Murdock, Kidd,
Pemberton, Stephens,
Daniels, Garvin, Stanley,
Bullard, Rogers,
Standridge, Hicks, Weaver,
Jett, Dugger, Simpson,
Hamilton, Hall, Jech,
Taylor and Boren of the
Senate

and

McEntire, Moore, Frix,
Grego and Pae of the House

An Act relating to the Patient's Right to Pharmacy Choice Act; amending Section 3, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6960), which relates to definitions; adding definitions of pharmacy benefits management and retail pharmacy; modifying definitions; amending Section 4, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6961), which relates to retail pharmacy network access standards; specifying access standards; modifying prohibition on pharmacy benefit managers; amending Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6962), which relates to compliance review; modifying certain contract restrictions; updating statutory reference; amending Section 6, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6963), which relates to health insurer monitoring; modifying certain prohibitions on health insurers and pharmacy benefit managers; conforming language; repealing Section 7, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6964), which relates to health insurer formularies; and providing an effective date.

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

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

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

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

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

3. "Pharmacy benefits management" means any or all of the following activities:

- a. provider contract negotiation and/or provider network administration including decisions related to provider network participation status,
- b. drug rebate contract negotiation or drug rebate administration, and
- c. claims processing which may include claim billing and payment services;

1 4. "Pharmacy benefits manager" or "PBM" means a person or
2 entity that performs pharmacy benefits management activities and any
3 other person or entity acting for ~~such~~ a person or entity performing
4 pharmacy benefits management activities ~~under a contractual or~~
5 ~~employment relationship in the performance of pharmacy benefits~~
6 ~~management for a managed-care company, nonprofit hospital, medical~~
7 ~~service organization, insurance company, third party payor or a~~
8 ~~health program administered by a department of this state;~~

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

12 5. "Retail pharmacy" or "provider" means a pharmacy, as defined
13 in Section 353.1 of Title 59 of the Oklahoma Statutes licensed by
14 the State Board of Pharmacy or an agent or representative of a
15 pharmacy;

16 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers
17 contracted with a PBM in which the pharmacy primarily fills and
18 sells prescriptions via a retail, storefront location;

19 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
20 the population density is less than one thousand (1,000) individuals
21 per square mile;

22 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
23 which the population density is between one thousand (1,000) and
24 three thousand (3,000) individuals per square mile; and

1 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
2 the population density is greater than three thousand (3,000)
3 individuals per square mile.

4 SECTION 2. AMENDATORY Section 4, Chapter 426, O.S.L.
5 2019 (36 O.S. Supp. 2020, Section 6961), is amended to read as
6 follows:

7 Section 6961. A. Pharmacy benefits managers (PBMs) shall
8 comply with the following retail pharmacy network access standards:

9 1. At least ninety percent (90%) of covered individuals
10 residing in ~~a~~ each urban service area live within two (2) miles of
11 a retail pharmacy participating in the PBM's retail pharmacy
12 network;

13 2. At least ninety percent (90%) of covered individuals
14 residing in ~~a~~ each urban service area live within five (5) miles of
15 a retail pharmacy designated as a preferred participating pharmacy
16 in the PBM's retail pharmacy network;

17 3. At least ninety percent (90%) of covered individuals
18 residing in ~~a~~ each suburban service area live within five (5) miles
19 of a retail pharmacy participating in the PBM's retail pharmacy
20 network;

21 4. At least ninety percent (90%) of covered individuals
22 residing in ~~a~~ each suburban service area live within seven (7) miles
23 of a retail pharmacy designated as a preferred participating
24 pharmacy in the PBM's retail pharmacy network;

1 5. At least seventy percent (70%) of covered individuals
2 residing in a each rural service area live within fifteen (15) miles
3 of a retail pharmacy participating in the PBM's retail pharmacy
4 network; and

5 6. At least seventy percent (70%) of covered individuals
6 residing in a each rural service area live within eighteen (18)
7 miles of a retail pharmacy designated as a preferred participating
8 pharmacy in the PBM's retail pharmacy network.

9 B. Mail-order pharmacies shall not be used to meet access
10 standards for retail pharmacy networks.

11 C. Pharmacy benefits managers shall not require patients to use
12 pharmacies that are directly or indirectly owned by ~~the~~ or
13 affiliated with a pharmacy benefits manager, including all regular
14 prescriptions, refills or specialty drugs regardless of day supply.

15 D. Pharmacy benefits managers shall not in any manner on any
16 material, including but not limited to mail and ID cards, include
17 the name of any pharmacy, hospital or other providers unless it
18 specifically lists all pharmacies, hospitals and providers
19 participating in the preferred and nonpreferred pharmacy and health
20 networks.

21 SECTION 3. AMENDATORY Section 5, Chapter 426, O.S.L.
22 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
23 follows:
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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 form
2 of pharmacy network at preferred participation status, whether in-
3 network, preferred or otherwise, if the pharmacy is willing to
4 accept the terms and conditions that the PBM has established for
5 other pharmacies as a condition of preferred network for
6 participation status in the network or networks of the pharmacy's
7 choice;

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

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

- 15 a. the original claim was submitted fraudulently, or
- 16 b. to correct errors identified in an audit, so long as
17 the audit was conducted in compliance with Sections
18 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 19 or

20 7. Fail to make any payment due to a pharmacy or pharmacist for
21 covered services properly rendered in the event a PBM terminates a
22 pharmacy or pharmacist from a pharmacy benefits manager network.
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1 C. The prohibitions under this section shall apply to contracts
2 between pharmacy benefits managers and ~~pharmacists or pharmacies~~
3 providers for participation in retail pharmacy networks.

4 1. A ~~PBM~~ provider contract shall not prohibit, restrict or
5 penalize a pharmacy or pharmacist in any way for disclosing to an
6 individual any health care information that the pharmacy or
7 pharmacist deems appropriate regarding:

8 a. ~~not restrict, directly or indirectly, any pharmacy~~
9 ~~that dispenses a prescription drug from informing, or~~
10 ~~penalize such pharmacy for informing, an individual of~~
11 ~~any differential between the individual's out-of-~~
12 ~~pocket cost or coverage with respect to acquisition of~~
13 ~~the drug and the amount an individual would pay to~~
14 ~~purchase the drug directly~~ the nature of treatment,
15 risks or alternatives to the prescription drug being
16 dispensed, and

17 b. ~~ensure that any entity that provides pharmacy benefits~~
18 ~~management services under a contract with any such~~
19 ~~health plan or health insurance coverage does not,~~
20 ~~with respect to such plan or coverage, restrict,~~
21 ~~directly or indirectly, a pharmacy that dispenses a~~
22 ~~prescription drug from informing, or penalize such~~
23 ~~pharmacy for informing, a covered individual of any~~
24 ~~differential between the individual's out-of-pocket~~

1 ~~cost under the plan or coverage with respect to~~
2 ~~acquisition of the drug and the amount an individual~~
3 ~~would pay for acquisition of the drug without using~~
4 ~~any health plan or health insurance coverage~~ the
5 availability of alternate therapies, consultations or
6 tests,

7 c. the decision of utilization reviewers or similar
8 persons to authorize or deny services, and

9 d. the process that is used to authorize or deny
10 healthcare services and structures used by the health
11 insurer.

12 2. Provider contracts shall not prohibit a pharmacy or
13 pharmacist from discussing information regarding the total cost of
14 pharmacist services for a prescription drug or from selling a more
15 affordable alternative to the covered person if such alternative is
16 available.

17 ~~A pharmacy benefits manager's contract with a participating~~
18 ~~pharmacist or pharmacy~~ 3. Provider contracts shall not prohibit,
19 restrict or limit disclosure of information to the Insurance
20 Commissioner, law enforcement or state and federal governmental
21 officials investigating or examining a complaint or conducting a
22 review of a pharmacy benefits manager's compliance with the
23 requirements under the Patient's Right to Pharmacy Choice Act.
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1 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
2 an electronic claim inquiry processing system using the National
3 Council for Prescription Drug Programs' current standards to
4 communicate information to pharmacies submitting claim inquiries.

5 SECTION 4. AMENDATORY Section 6, Chapter 426, O.S.L.
6 2019 (36 O.S. Supp. 2020, Section 6963), is amended to read as
7 follows:

8 Section 6963. A. A health insurer shall be responsible for
9 monitoring all activities carried out by, or on behalf of, the
10 health insurer under the Patient's Right to Pharmacy Choice Act, and
11 for ensuring that all requirements of this act are met.

12 B. Whenever a health insurer performs pharmacy benefit
13 management on its own behalf or contracts with another person or
14 entity to perform ~~activities required under this act~~ pharmacy
15 benefit management, the health insurer shall be responsible for
16 monitoring the activities and conduct of that person or entity with
17 whom the health insurer contracts and for ensuring that the
18 requirements of this act are met.

19 C. An individual may be notified at the point of sale when the
20 cash price for the purchase of a prescription drug is less than the
21 individual's copayment or coinsurance price for the purchase of the
22 same prescription drug.

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1 D. A health insurer or pharmacy benefits manager (PBM) shall
2 not restrict an individual's choice of in-network provider for
3 prescription drugs.

4 E. ~~An individual's~~ A patient's choice of in-network provider
5 may include ~~a retail~~ an in-network pharmacy, whether that pharmacy
6 is in a preferred or nonpreferred network, a retailer pharmacy, or a
7 mail-order pharmacy or any other pharmacy. A health insurer or PBM
8 shall not restrict ~~such a patient's~~ choice of in-network pharmacy
9 providers. ~~Such~~ A health insurer or PBM shall not require or
10 incentivize individuals by:

11 1. using Using any discounts in cost-sharing or a reduction in
12 copay or the number of copays to individuals to receive prescription
13 drugs ~~from an individual's choice of in-network pharmacy~~ from an
14 individual's choice of in-network pharmacy; or

15 2. Differentiating between in-network pharmacies, whether that
16 pharmacy is in a preferred or nonpreferred network, a retail
17 pharmacy, mail order pharmacy or any other type of pharmacy.

18 The provisions of this subsection shall not apply to any plan
19 subject to regulation under Medicare Part D, 42 U.S.C. Section
20 1395w-101, et seq.

21 F. A health insurer, pharmacy or PBM shall adhere to all
22 Oklahoma laws, statutes and rules when mailing, shipping and/or
23 causing to be mailed or shipped prescription drugs into ~~the State of~~
24 ~~Oklahoma~~ this state.

1 SECTION 5. REPEALER Section 7, Chapter 426, O.S.L. 2019
2 (36 O.S. Supp. 2020, Section 6964), is hereby repealed.

3 SECTION 6. This act shall become effective November 1, 2021.
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5 58-1-1947 CB 3/4/2021 4:36:09 PM
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