COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2100
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

Amendment submitted by: David Derby

Adopted: _____

_____
Reading Clerk

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 2100 By: Derby

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to pharmacies; defining terms; requiring certain license in order to provide pharmacy benefits management; requiring State Board of Pharmacy to adopt certain licensure procedures; permitting Board to subpoena witnesses and information and to take certain action against a license for certain reasons; prohibiting pharmacy benefits manager from taking certain action; requiring pharmacy benefits manager to provide certain information to covered entity; requiring contract between pharmacy benefits manager and provider to include certain information; providing certain requirements of a drug product; providing for codification; and providing an effective date.

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 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;

3. “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;

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

5. “Payor” means a covered entity that makes payment to a PBM for services;

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;

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

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;

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; and

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

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

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

B. The Board shall establish, by regulation, licensure procedures, required disclosures for pharmacy benefits managers (PBMs) and other rules as may be necessary for carrying out and enforcing the provisions of this act. The licensure procedures shall, at a minimum, include the completion of an application form that shall include the name and address of an agent for service of process, the payment of a requisite fee, and evidence of the procurement of a surety bond.

C. The Board may subpoena witnesses and information. Its compliance officers may take and copy records for investigative use and prosecutions. Nothing in this subsection shall limit the Office of the Attorney General from using its investigative demand authority to investigate and prosecute violations of the law.

D. The Board may suspend, revoke or refuse to issue or renew a license for noncompliance with any of the provisions hereby established or with the rules promulgated by the Board; for conduct likely to mislead, deceive or defraud the public or the Board; for unfair or deceptive business practices or for nonpayment of a renewal fee or fine. The Board may also levy administrative fines for each count of which a licensee has been convicted in a Board hearing.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 359 of Title 59, unless there is created a duplication in numbering, reads as follows:

A pharmacy benefit manager (PBM) shall:

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

2. Not directly contact a covered individual by any means (including via electronic delivery, telephone, SMS text or direct

mail) without the express written permission of the plan sponsor and the covered individual; and

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

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

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

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

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

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

D. When a covered individual's out-of-pocket cost or copay is percentage based, the pharmacy benefits manager shall calculate the percentage owed or the amount of the copay based upon the amount actually paid to the pharmacy for the medication in question.

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

A. With respect to contracts between a pharmacy benefits manager and a provider, the pharmacy benefits manager must have a written executed contract with the provider before requiring that provider to fill prescriptions for covered individuals under benefit programs managed or administered by the pharmacy benefits manager.

Executed contracts shall contain all rates, terms and conditions governing claims payments for prescriptions filled by the provider.

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

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

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

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

4. Provide a reasonable administration appeals procedure to allow a provider to contest maximum allowable cost rates. The pharmacy benefits manager must respond to a provider who has contested a maximum allowable cost rate through this procedure within fifteen (15) calendar days. Maximum allowable cost price increases shall be given if the maximum allowable cost rate established by the pharmacy benefits manager is below the provider's

invoice cost. If a price update is warranted, the pharmacy benefits manager shall make the change retroactive to the fill date reported by the provider and shall make the adjustment effective for all providers;

5. Adjust maximum allowable values within seven (7) days in the event the maximum allowable rate is below the provider's invoice cost documented by the provider; and

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

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

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

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

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

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

54-1-7098 AM 02/18/13