STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2100

By: Derby, Pittman and Perryman of the House

and

Standridge of the Senate

COMMITTEE SUBSTITUTE

An Act relating to pharmacies; defining terms; requiring certain license in order to provide pharmacy benefits management; requiring Oklahoma Insurance Department to adopt certain licensure procedures; permitting Department 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; providing an effective date; and declaring an emergency.

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. "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. "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. "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. "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. "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 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 Oklahoma Insurance Department, and the Department may charge a fee for such licensure.

B. The Department 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 Department 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 Department 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 Department; for conduct likely to mislead, deceive or defraud the public or the Department; for unfair or deceptive business practices or for nonpayment of a renewal fee or fine. The Department may also levy administrative fines for each count of which a licensee has been convicted in a Department 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:

Unless otherwise provided by contract, 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.

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. 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 pricing of the pharmacy, update maximum allowable cost 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 within ten (10) business days of prescription claim date. The pharmacy benefits manager must respond to a provider who has contested a maximum allowable cost rate 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, permit the challenging pharmacy to reverse and rebill the

claim in question, and make the MAC change effective for each similarly contracted Oklahoma provider; and

5. If the MAC 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.

B. The pharmacy benefits manager may not place a drug on a maximum allowable cost 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.

SECTION 5. This act shall become effective July 1, 2014.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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