

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1546 \_\_\_\_\_  
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: Lewis Moore

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

PROPOSED  
COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1546

By: David of the Senate  
  
and  
  
Moore of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Patient's Right to Pharmacy Choice Act; stating purpose; defining terms; requiring retail pharmacy networks to comply with certain access standards; prohibiting use of mail-order pharmacies for certain purposes; directing Oklahoma Insurance Department to promulgate certain necessary rules; requiring the Department to review and approve retail pharmacy networks; prohibiting certain actions by pharmacy benefits manager or representative; prohibiting certain contract provisions; providing validity of certain contract provisions; granting certain authority and jurisdiction to the Oklahoma Board of Pharmacy under certain conditions; authorizing fines for certain violations; 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 6961 of Title 36, unless there is created a duplication in numbering, reads as follows:

1       A. This act shall be known and may be cited as the "Patient's  
2 Right to Pharmacy Choice Act".

3       B. The purpose of the Patient's Right to Pharmacy Choice Act is  
4 to establish minimum and uniform access standards and prohibitions  
5 on restriction of patient's right to choose a pharmacy provider.

6       SECTION 2.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section 6962 of Title 36, unless there  
8 is created a duplication in numbering, reads as follows:

9       For purposes of the Patient's Right to Pharmacy Choice Act:

10      1. "Benefit plan" means any health benefit plan offered by a  
11 health insurance carrier, health maintenance organization, managed  
12 care entity, or any other entity that provides prescription drug  
13 benefits to covered individuals, including workers' compensation  
14 programs, state-administered health benefit plans and self-funded  
15 benefit programs;

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

19      3. "Pharmacy benefits manager" or "PBM" means a person,  
20 business or other entity that performs pharmacy benefits management.  
21 The term includes a person or entity acting for a PBM in a  
22 contractual or employment relationship in the performance of  
23 pharmacy benefits management for a managed-care company, nonprofit  
24 hospital, medical service organization, insurance company, third-

1 party payor or a health program administered by a department of this  
2 state; and

3 4. "Retail pharmacy network" means retail pharmacy providers  
4 contracted with the entity providing or administering a benefit plan  
5 in which the pharmacy primarily fills and sells prescriptions via a  
6 retail, storefront location.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 6963 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. Retail pharmacy networks shall comply with the following  
11 access standards:

12 1. At least ninety percent (90%) of covered individuals in the  
13 benefit plan's Urban Service Area live within two (2) miles of a  
14 retail pharmacy participating in the benefit plan's retail pharmacy  
15 network;

16 2. At least ninety percent (90%) of covered individuals in the  
17 benefit plan's Urban Service Area live within five (5) miles of a  
18 retail pharmacy designated as a preferred participating pharmacy in  
19 the benefit plan's retail pharmacy network;

20 3. At least ninety percent (90%) of covered individuals in the  
21 benefit plan's Suburban Service Area live within five (5) miles of a  
22 retail pharmacy participating in the benefit plan's retail pharmacy  
23 network;

1        4. At least ninety percent (90%) of covered individuals in the  
2 benefit plan's Suburban Service Area live within seven (7) miles of  
3 a retail pharmacy designated as a preferred participating pharmacy  
4 in the benefit plan's retail pharmacy network;

5        5. At least seventy percent (70%) of covered individuals in the  
6 benefit plan's Rural Service Area live within fifteen (15) miles of  
7 a retail pharmacy participating in the benefit plan's retail  
8 pharmacy network; and

9        6. At least seventy percent (70%) of covered individuals in the  
10 benefit plan's Rural Service Area live within eighteen (18) miles of  
11 a retail pharmacy designated as a preferred participating pharmacy  
12 in the benefit plan's retail pharmacy network.

13        B. Mail-order pharmacies may not be used to meet access  
14 standards for retail pharmacy networks.

15        C. The Oklahoma Insurance Department shall promulgate any rules  
16 necessary to administer and enforce the provisions of this section.

17        SECTION 4.        NEW LAW        A new section of law to be codified  
18 in the Oklahoma Statutes as Section 6964 of Title 36, unless there  
19 is created a duplication in numbering, reads as follows:

20        A. The Oklahoma Insurance Department shall review and approve  
21 retail pharmacy network access for all benefit plans to ensure  
22 compliance with Section 3 of this act.

23        B. A pharmacy benefits manager or representative of a pharmacy  
24 benefits manager shall not:

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

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

6            a. the submission of a claim,

7            b. enrollment or participation in a retail pharmacy  
8 network, or

9            c. the development or management of claims processing  
10 services or claims payment services related to  
11 participation in a retail pharmacy network;

12        3. Reimburse a pharmacy or pharmacist in the state an amount  
13 less than the amount that the pharmacy benefits manager reimburses a  
14 pharmacy owned by or under common ownership with a PBM for providing  
15 the same covered services. The reimbursement amount shall be  
16 calculated on a per-unit basis using the same generic product  
17 identifier or generic code number submitted by the PBM-owned or  
18 -affiliated pharmacy;

19        4. Deny a pharmacy the opportunity to participate in any  
20 pharmacy network at standard or preferred participation status if  
21 the pharmacy is willing to accept the terms and conditions that the  
22 PBM has established for other pharmacies as a condition of standard  
23 network participation or preferred network participation status;

1        5. Impose on a covered individual a monetary advantage or  
2 penalty, including a higher cost-sharing or additional fee which  
3 would affect a covered individual's choice of network pharmacy;

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

7            a. the original claim was submitted fraudulently, or

8            b. the pharmacy service provided related to the subject  
9 claim violated the Oklahoma Pharmacy Act; or

10       7. Fail to make any payment due to a pharmacy or pharmacist for  
11 covered services properly rendered in the event a PBM terminates a  
12 pharmacy or pharmacist from a pharmacy benefits manager network.

13       SECTION 5.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section 6965 of Title 36, unless there  
15 is created a duplication in numbering, reads as follows:

16       A. The prohibitions under this section apply to contracts  
17 between pharmacy benefits managers and pharmacists or pharmacies for  
18 participation in retail pharmacy networks.

19       B. A pharmacy benefits manager contract with a pharmacist or  
20 pharmacy shall not contain a provision prohibiting disclosure to  
21 patients of billed or allowed amounts, reimbursement rates or out-  
22 of-pocket costs.

23       C. A pharmacy benefits manager contract with a participating  
24 pharmacist or pharmacy shall not prohibit, restrict or limit

1 disclosure of information to the Insurance Commissioner, law  
2 enforcement, or state and federal governmental officials  
3 investigating or examining a complaint or conducting a review of a  
4 pharmacy benefits manager's compliance with the requirements under  
5 the Patient's Right to Pharmacy Choice Act.

6 D. Any and all contracts described in subsection A of this  
7 section issued, entered into, amended or renewed after November 1,  
8 2018, containing any provisions contrary to or in conflict with  
9 subsections B and C of this section are void as to those provisions  
10 only; all remaining provisions in the contract not in conflict with  
11 these sections that are severable shall remain in full force and  
12 effect.

13 SECTION 6. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 6966 of Title 36, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. Should the Oklahoma Insurance Department fail to act upon  
17 and resolve complaints filed against PBMs for violations of the  
18 Patient's Right to Pharmacy Choice Act, the provisions of Sections  
19 357 through 360 of Title 59 of the Oklahoma Statutes or Sections 25-  
20 29-1 through 25-29-11 of Title 365 of the Oklahoma Administrative  
21 Rules within one hundred eighty (180) days from the date the  
22 violation is identified or one hundred eighty (180) days from the  
23 date the complaint is made, whichever is less, the Oklahoma Board  
24 of Pharmacy shall have authority and jurisdiction to initiate



1 disciplinary proceedings against the entity or entities violating  
2 the Patient's Right to Pharmacy Choice Act, the provisions of  
3 Sections 357 through 360 of Title 59 of the Oklahoma Statutes or  
4 Sections 25-29-1 through 25-29-11 of Title 365 of the Oklahoma  
5 Administrative Rules.

6 B. The Oklahoma Insurance Department or the Oklahoma Board of  
7 Pharmacy may impose fines for violations of the Patient's Right to  
8 Pharmacy Choice Act for reimbursement of costs incurred by the  
9 Department, including, but not limited to, staff time, salary,  
10 travel expense, witness fees and attorney fees. The Oklahoma  
11 Insurance Department or the Oklahoma Board of0. Pharmacy may retain  
12 one hundred percent (100%) of any fines assessed for use to fund the  
13 enforcement of the provisions of the Patient's Right to Pharmacy  
14 Choice Act.

15 SECTION 7. This act shall become effective November 1, 2018.

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