

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1573

By: Standridge

AS INTRODUCED

An Act relating to pharmacy benefit plans; amending Section 4, Chapter 263, O.S.L. 2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2017, Section 360), which relates to pharmacy benefits manager; prohibiting assessment of fee under certain conditions; defining terms; setting forth prohibited acts; directing Oklahoma Insurance Commissioner to promulgate certain rules; providing subpoena power; setting forth certain administrative penalties; specifying that certain persons may maintain civil action for certain purposes; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 263, O.S.L. 2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2017, Section 360), is amended to read as follows:

Section 360. 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 (MAC) pricing of the pharmacy, update MAC pricing at least every seven (7) calendar days, and establish a

1 process for providers to readily access the MAC list specific to
2 that provider;

3 2. In order to place a drug on the MAC list, ensure that the
4 drug is listed as "A" or "B" rated in the most recent version of the
5 FDA's Approved Drug Products with Therapeutic Equivalence
6 Evaluations, also known as the Orange Book, or has an "NR" or "NA"
7 rating or a similar rating by a nationally recognized reference, and
8 the drug is generally available for purchase by pharmacies in the
9 state from national or regional wholesalers and is not obsolete;

10 3. Ensure dispensing fees are not included in the calculation
11 of MAC price reimbursement to pharmacy providers;

12 4. Provide a reasonable administration appeals procedure to
13 allow a provider or a provider's representative to contest
14 reimbursement amounts within ten (10) business days of the final
15 adjusted payment date. The pharmacy benefits manager must respond
16 to a provider or provider's representative who has contested a
17 reimbursement amount through this procedure within ten (10) business
18 days. If a price update is warranted, the pharmacy benefits manager
19 shall make the change in the reimbursement amount, permit the
20 challenging pharmacy to reverse and rebill the claim in question,
21 and make the reimbursement amount change effective for each
22 similarly contracted Oklahoma provider; and

23 5. If the reimbursement appeal is denied, the PBM shall provide
24 the reason for the denial, including the National Drug Code number

1 from national or regional wholesalers where the drug is generally
2 available for purchase by pharmacies in the state at or below the
3 PBM's reimbursement.

4 B. The pharmacy benefits manager may not place a drug on a MAC
5 list, unless there are at least two therapeutically equivalent,
6 multiple-source drugs, or at least one generic drug available from
7 only one manufacturer, generally available for purchase by network
8 pharmacies from national or regional wholesalers.

9 C. The pharmacy benefits manager shall not require
10 accreditation or licensing of providers other than by the State
11 Board of Pharmacy or other state or federal government entity.

12 D. The pharmacy benefit manager shall not charge or hold a
13 provider responsible for any fee that is related to a claim unless
14 the amount of the fee can be determined and has been disclosed to
15 the provider at the time of the claim's adjudication.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 360.1 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in this act:

20 1. "Covered entity" means a nonprofit hospital or medical
21 service organization, insurer, health coverage plan or health
22 maintenance organization; a health program administered by the state
23 in the capacity of provider of health coverage; or an employer,
24 labor union or other entity organized in the state that provides

1 health coverage to covered individuals who are employed or reside in
2 the state;

3 2. "Covered individual" means a member, participant, enrollee,
4 contract holder or policy holder or beneficiary of a covered entity
5 who is provided health coverage by the covered entity. A covered
6 individual includes any dependent or other person provided health
7 coverage through a policy, contract or plan for a covered
8 individual;

9 3. "Department" means the Oklahoma Insurance Department;

10 4. "Pharmacy benefits management" means a service provided to
11 covered entities to facilitate the provision of prescription drug
12 benefits to covered individuals within the state, including
13 negotiating pricing and other terms with drug manufacturers and
14 providers. Pharmacy benefits management may include any or all of
15 the following services:

- 16 a. claims processing, retail network management and
17 payment of claims to pharmacies for prescription drugs
18 dispensed to covered individuals,
- 19 b. clinical formulary development and management
20 services,
- 21 c. rebate contracting and administration,
- 22 d. certain patient compliance, therapeutic intervention
23 and generic substitution programs, or
- 24 e. disease management programs;

1 5. "Pharmacy benefits manager" or "PBM" means a person,
2 business or other entity, other than a covered entity, that performs
3 pharmacy benefits management. The term includes a person or entity
4 acting for a PBM in a contractual or employment relationship in the
5 performance of pharmacy benefits management for a managed care
6 company, nonprofit hospital, medical service organization, insurance
7 company, third-party payor, or a health program administered by an
8 agency of this state;

9 6. "Provider" means a pharmacy licensed by the State Board of
10 Pharmacy, or an agent or representative of a pharmacy, including,
11 but not limited to, the pharmacy's contracting agent, which
12 dispenses prescription drugs or devices to covered individuals.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 360.2 of Title 59, unless there
15 is created a duplication in numbering, reads as follows:

16 A pharmacy benefits manager shall not do either of the
17 following:

18 1. Require a covered individual to obtain prescription drugs
19 from a mail order pharmacy or through the mail or other common
20 carrier; or

21 2. Impose an additional cost sharing, fee, limitation on
22 benefits or other condition or requirement on a covered individual
23 who obtains a prescription from a retail network pharmacy instead of
24 through a mail order pharmacy.

1 SECTION 4. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 360.3 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A pharmacy benefits manager shall not do any of the
5 following:

6 1. Deny a pharmacy the opportunity to participate in the PBM's
7 network if the pharmacy is willing to accept the terms and
8 conditions that the PBM has established for other pharmacies as a
9 condition of network participation;

10 2. Prohibit a covered individual from utilizing the pharmacy of
11 their choice, provided the pharmacy participates in the PBM's
12 network; or

13 3. Impose on a covered individual a monetary advantage or
14 penalty, including a higher cost sharing or additional fee, which
15 would affect a covered individual's choice of network pharmacy.

16 B. This section shall not apply to a policy or contract
17 providing any prescription drug benefits pursuant to Part D of
18 Subchapter XVIII, Chapter 7 of Title 42 of the United States Code,
19 commonly known as Medicare Part D, or any regulations issued
20 pursuant thereto.

21 SECTION 5. NEW LAW A new section of law to be codified

22 in the Oklahoma Statutes as Section 360.4 of Title 59, unless there
23 is created a duplication in numbering, reads as follows:

1 A. The Insurance Commissioner shall establish rules as may be
2 necessary for carrying out and enforcing the provisions of this act.

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

8 C. The Commissioner may suspend, revoke or refuse to issue or
9 renew a license for noncompliance with any of the provisions hereby
10 established or with the rules promulgated by the Department or for
11 nonpayment of a fine. The Commissioner may also levy administrative
12 fines for each count of which a licensed pharmacy benefits manager
13 has been convicted in a hearing before the Commissioner.

14 D. Any person injured as a result of a violation of this
15 section may maintain a civil action in a court of competent
16 jurisdiction to enjoin the practice or recover damages.

17 SECTION 6. This act shall become effective November 1, 2018.

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