

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3481 _____
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: Marcus McEntire

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3481

By: McEntire

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to pharmacy management consultants;
defining terms; prohibiting certain payments and
reimbursements; requiring dispensing fee; prohibiting
use of mail order pharmacies; establishing that a
pharmacy management consultant shall have a fiduciary
duty to its clients; providing certain performance
standards; requiring an annual report; listing
components of annual report; requiring most recent
data in reports; prohibiting contract waiver of
fiduciary duty; 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 360.1 of Title 36, unless there
is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Average reimbursement" means a statistical methodology
selected by the Oklahoma Health Care Authority through

1 administrative rules promulgated pursuant to this section which
2 shall include, at minimum, the median and mean;

3 2. "Fiduciary duty" means the same duties imposed by law upon a
4 trustee of an express private trust;

5 3. "Network pharmacy" means a pharmacy that contracts with a
6 pharmacy benefits manager;

7 4. "Pharmacy management consultant" or "PMC" means any entity,
8 including but not limited to, pharmaceutical consultants, pharmacy
9 benefit managers, and managed care organizations, that provide
10 pharmacy benefits management services to the state through contract;

11 5. "Pharmacy benefits management services" means services
12 provided to the state through contract to facilitate the provision
13 of prescription drug benefits to covered individuals within the
14 state including:

- 15 a. negotiating prices and other terms with drug
16 manufacturers and providers, or
- 17 b. claims processing, retail network management, and
18 payment of claims to pharmacies for prescription drugs
19 dispensed to covered individuals, or
- 20 c. rebate contracting and administration, or
- 21 d. certain patient compliance, therapeutic intervention,
22 and generic substitution programs, or
- 23 e. disease management programs, or
- 24 f. formulary consultation, or

1 g. developing value-based contracts analytics, or

2 h. drug utilization review; and

3 6. "Spread pricing" means any amount charged or claimed by a
4 PMC to a managed care organization that is in excess of the amount
5 paid to the pharmacy that filled the prescription.

6 B. A PMC shall:

7 1. Not pay or reimburse a pharmacy or pharmacist for the
8 ingredient drug component of pharmacist services in an amount less
9 than the lessor of the following:

10 a. the pharmacy's usual and customary price,

11 b. the current National Average Drug Acquisition Cost
12 (NADAC) as published by the Center for Medicare and
13 Medicaid Services,

14 c. wholesale acquisition cost, or

15 d. the pharmacy's wholesale acquisition cost if the
16 national average drug acquisition cost is unavailable;

17 2. Pay to every pharmacy a professional dispensing fee that is
18 equal to the dispensing fee set in the state program for medical
19 assistance; and

20 3. Not utilize mail order pharmacies in the pharmacy network.

21 C. A PMC shall owe a fiduciary duty to its clients and shall:

22 1. Exercise good faith and fair dealing in the performance of
23 its contractual duties;

1 2. Notify its clients in writing of any activities, policies or
2 practices that may directly or indirectly present a conflict of
3 interest with the duties imposed in this section;

4 3. Retain any portion of any manufacturer rebates including,
5 but not limited to, state supplemental rebates submitted to the
6 state by any pharmaceutical manufacturer; and

7 4. Retain any portion of spread pricing.

8 D. A PMC contracting with a managed care organization to
9 administer Medicaid benefits shall provide an annual report to the
10 Oklahoma Health Care Authority no later than November 1, 2021, and
11 for each year thereafter that the PMC is contracted with the managed
12 care organization to administer Medicaid benefits. Each annual
13 report shall contain the following:

14 1. Total dollars paid to the PMC by a managed care organization
15 for any reason other than claims payments;

16 2. Total dollars paid to the PMC from drug manufacturers or
17 wholesalers for all reasons;

18 3. Total dollars paid to managed care organizations for drug
19 manufacturer rebates;

20 4. Total dollars paid to Oklahoma pharmacies for claims
21 payments;

22 5. Total dollars paid to non-Oklahoma pharmacies for claims
23 payments;

1 6. The average ingredient cost reimbursement by drug,
2 dispensing fee, and any other fee paid by a PMC to licensed
3 pharmacies with which the PMC shares common ownership, management,
4 or control; or which are owned, managed, or controlled by any of the
5 PMC's management companies, parent companies, subsidiary companies,
6 jointly held companies or companies otherwise affiliated by a common
7 owner, manager or holding company; or which share any common members
8 on the board of directors; or which share managers in common;

9 7. The average ingredient cost reimbursement by drug,
10 dispensing fee, and any other fee paid by a PMC to licensed
11 pharmacies with which the PMC does not share common ownership,
12 management or control; nor which are owned, managed or controlled by
13 any of the PMC's management companies parent companies, subsidiary
14 companies, jointly held companies or companies otherwise affiliated
15 by a common owner, manager or holding company; nor which share any
16 common members on the board of directors; or which share managers in
17 common; and

18 8. Any direct or indirect fees, charges, or any kind of
19 assessments imposed by the PMC on pharmacies.

20 E. All information provided by a PMC pursuant to subsection D
21 of this section shall reflect data for the most recent full calendar
22 year and shall be divided by month. This information shall be
23 managed by the Oklahoma Health Care Authority.

1 F. Any provision of a contract between a PMC and its clients
2 that waives or limits the obligations as set forth in this section
3 violates public policy and is void and unenforceable.

4 SECTION 2. This act shall become effective November 1, 2020.
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