

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2617

By: Echols

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8                               COMMITTEE SUBSTITUTE

9           An Act relating to pharmacy consultants; defining  
10 terms; establishing that a pharmacy consultant  
11 performing pharmacy benefit management services shall  
12 have a fiduciary duty to the state; requiring certain  
13 performance standards and notification; requiring  
14 certain disclosure; prohibiting contract waiver of  
15 fiduciary duty; providing for codification; and  
16 providing an effective date.

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

18           SECTION 1.       NEW LAW       A new section of law to be codified  
19 in the Oklahoma Statutes as Section 360.1 of Title 59, unless there  
20 is created a duplication in numbering, reads as follows:

21           A. As used in this act:

22           1. "Covered individual" means a policy holder, subscriber,  
23 enrollee or other individual participating in a health benefit plan  
24 offered by the state;

1        2. "Entity" means a sole proprietor, general partnership,  
2 limited partnership, limited liability partnership, limited  
3 liability limited partnership, corporation, limited liability  
4 company or any other lawfully recognized business entity;

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

7        4. "Pharmacy consultant" means any entity, including but not  
8 limited to pharmaceutical consultants, pharmacy benefits managers,  
9 and managed care organizations, that provides pharmacy benefits  
10 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,
- 17           b. claims processing, retail network management, and  
18           payment of claims to pharmacies for prescription drugs  
19           dispensed to covered individuals,
- 20           c. rebate contracting and administration,
- 21           d. certain patient compliance, therapeutic intervention,  
22           and generic substitution programs,
- 23           e. disease management programs,
- 24           f. formulary consultation,

1           g.     developing value-based contracts analytics, or

2           h.     drug utilization review; and

3           6.     "State" means Oklahoma Health Care Authority or the Office  
4 of Management and Enterprise Services.

5           B.     Any pharmacy consultant that enters into a contract with the  
6 state to perform pharmacy benefits management services shall owe a  
7 fiduciary duty to the state or the counterparty to the contract with  
8 any state governmental entity.

9           C.     In addition to any other fiduciary duty that may be imposed  
10 pursuant to the provisions of this act, a pharmacy consultant  
11 performing pharmacy benefits management services shall:

12           1.     Perform its duties with care, skill, prudence, and diligence  
13 and in accordance with the standards of conduct applicable to a  
14 fiduciary in an enterprise of a like character and with like aims;  
15 and

16           2.     Notify the state in writing of any activity, policy or  
17 practice of pharmacy benefits management services that directly or  
18 indirectly presents any conflict of interest with the duties imposed  
19 by this section.

20           D.     Upon request by the state, a pharmacy consultant performing  
21 pharmacy benefits management services under contract with the state  
22 shall disclose to the state all financial terms and arrangements for  
23 remuneration of any kind that apply between the pharmacy consultant  
24 performing pharmacy benefits management services and any

1 prescription drug manufacturer or labeler, including, without  
2 limitation, formulary management and drug-substitution programs,  
3 educational support, claims processing, and data sales fees.

4 E. Any provision of a contract between the state and a pharmacy  
5 consultant that waives or limits the obligations as set forth in  
6 this section is against public policy, void, and unenforceable.

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

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9 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/02/2020 - DO PASS,  
10 As Amended.