

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL NO. 841

By: McCortney

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6 AS INTRODUCED

7 An Act relating to insurance; creating the
8 Prescription Access and Affordability Act; stating
9 purpose of act; defining terms; requiring retail
10 pharmacy networks to comply with certain standards;
11 authorizing Insurance Department to promulgate rules;
12 requiring department to ensure compliance of act;
13 prohibiting pharmacy benefit manager from certain
14 acts; applying prohibitions to certain contracts;
15 directing certain compensation be remitted to certain
16 benefit plans; listing uses for certain compensation;
17 requiring certain filing with Insurance Commissioner;
18 requiring the Pharmacy and Therapeutics committee of
19 each insurer to develop formulary; prohibiting
20 certain persons from serving on committee; requiring
21 insurer to prohibit certain compensation for
22 committee members; requiring insurer to display
23 formulary on website; requiring certain elements be
24 included in formulary; authorizing Commissioner to
25 hire and retain certain employees; requiring
26 Commissioner to provide specific process for certain
27 violation; requiring Commissioner to establish
28 Prescription Access and Affordability Advisory
29 Committee; specifying duties of advisory committee;
30 authorizing advisory committee to impose certain fees
31 and fines; specifying advisory committee makeup;
32 specifying terms of serving on advisory committee;
33 specifying place of committee hearings; establishing
34 procedures of committee hearings; authorizing
35 Commissioner to require certain report; exempting
36 certain documents from certain legal procedures;
37 authorizing Commissioner to disclose certain
38 documents; providing for codification; and providing
39 an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 6170 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 A. This act shall be known and may be cited as the
6 "Prescription Access and Affordability Act".

7 B. The purpose of the Prescription Access and Affordability Act
8 is to establish minimum and uniform access standards and
9 prohibitions on restriction of the right of a patient to choose a
10 pharmacy provider.

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6171 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 For purposes of this act:

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

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

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

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

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 6172 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Retail pharmacy networks shall comply with the following
16 access standards:

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

21 2. At least seventy percent (70%) of covered individuals in the
22 benefit plan's Rural Service Area live within fifteen (15) miles of
23 a retail pharmacy participating in the benefit plan's retail
24 pharmacy network;

1 3. At least seventy percent (70%) of covered individuals in the
2 benefit plan's Rural Service Area live within eighteen (18) miles of
3 a retail pharmacy designated as a preferred participating pharmacy
4 in the benefit plan's retail pharmacy network; and

5 4. Mail-order pharmacies shall not be used to meet access
6 standards for retail pharmacy networks.

7 B. The Oklahoma Insurance Department shall promulgate any
8 rules necessary to administer and enforce the provisions of this
9 section.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6173 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

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

16 B. A pharmacy benefits manager or representative of a pharmacy
17 benefits manager shall not:

18 1. Cause or knowingly permit the use of any advertisement,
19 promotion, solicitation, representation, proposal or offer that is
20 untrue, deceptive or misleading;

21 2. Charge a pharmacist or pharmacy a fee related to the
22 resolution of a claim, including but not limited to a fee for:

23 a. the submission of a claim,
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- b. enrollment or participation in a retail pharmacy network,
- c. the development or management of claims processing services, or
- d. services or claims payment services related to participation in a retail pharmacy network;

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

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

5. Impose on a covered individual a monetary advantage or penalty, including a higher cost-sharing or additional fee which would affect choices of network pharmacy by a covered person;

1 6. Retroactively deny or reduce reimbursement for a covered
2 service claim after returning a paid claim response as part of the
3 resolution of the claim, unless:

- 4 a. the original claim was submitted fraudulently, or
- 5 b. the pharmacy service provided related to the subject
6 claim violated the Oklahoma Pharmacy Act; or

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

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6174 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 The prohibitions under this section apply to contracts between
15 pharmacy benefit managers and pharmacists or pharmacies for
16 participation in retail pharmacy networks.

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

21 2. A pharmacy benefits manager contract with a participating
22 pharmacist or pharmacy shall not prohibit, restrict or limit
23 disclosure of information to the Insurance Commissioner, law
24 enforcement or state and federal governmental officials

1 investigating or examining a complaint or conducting a review of a
2 pharmacy benefits manager's compliance with the requirements under
3 this act.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6175 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. All compensation remitted by a pharmaceutical manufacturer,
8 developer or labeler, directly or indirectly related to a health
9 benefit plan or pharmacy benefit plan shall be remitted to, and
10 retained by, that health benefit plan or pharmacy benefit plan for
11 the purposes described in Subsection B of this section.

12 B. All compensation received by or on behalf of a health
13 insurer from a pharmaceutical manufacturer, developer or labeler
14 shall be used by the health insurer to:

15 1. Lower health benefits plan or pharmacy benefit plan premiums
16 for covered persons;

17 2. Lower copayment and coinsurance amounts for covered persons;

18 or

19 3. Expand pharmacy benefit plan coverage.

20 C. A health insurer shall file with the commissioner, on or
21 before March 1 each year, an annual report, in a manner and form
22 established by the Insurance Department, demonstrating the amount
23 and nature of how compensation received from pharmaceutical
24 manufacturers, developers or labelers has:

1 1. Lowered health benefit plan or pharmacy benefit plan
2 premiums for covered persons;

3 2. Lowered copayment and coinsurance amounts for covered
4 persons; or

5 3. Expanded pharmacy benefit plan coverage.

6 D. The annual report filing requirement in subsection C of this
7 section shall not begin until March 1, 2021.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 6176 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A health insurer's Pharmacy and Therapeutics committee shall
12 establish a formulary.

13 B. A health insurer shall prohibit conflicts of interest for
14 members of the Pharmacy and Therapeutics committee.

15 1. A person may not serve on a Pharmacy and Therapeutics
16 committee if the person is:

17 a. currently employed or was employed within the
18 preceding year, by a pharmaceutical manufacturer,
19 developer, labeler, wholesaler, or distributor, or

20 b. currently receives compensation, or received
21 compensation within the preceding year, from a
22 pharmaceutical manufacturer, developer, labeler,
23 wholesaler, or distributor.

1 2. A health insurer shall prohibit the Pharmacy and
2 Therapeutics committee, and any member of the Pharmacy and
3 Therapeutics committee, from receiving any compensation or funding
4 from a pharmaceutical manufacturer, developer, labeler, wholesaler,
5 or distributor.

6 C. A health insurer shall display its formulary on its website
7 to be publicly accessible.

8 1. The formulary shall be electronically searchable by drug
9 name and any other means required by the commissioner, as
10 established by rule.

11 2. The formulary shall include, at a minimum, the following:

- 12 a. an indication of whether each drug on the formulary is
13 preferred under the plan,
- 14 b. an indication of whether each drug on the formulary
15 requires prior authorization or has step therapy or
16 quantity limit restrictions,
- 17 c. the specific tier the drug falls under, if the health
18 insurer's plan uses a tiered formulary,
- 19 d. the amount of the drug copayment, if applicable,
- 20 e. the amount of the drug coinsurance, if applicable,
- 21 f. whether the drug is subject to a deductible, and if
22 so, the amount of the deductible,
- 23 g. whether the drug is included on the maximum allowable
24 cost list of the health insurer, and if so, the price

1 of the drug as established by the maximum allowable
2 cost list, and

3 h. for drugs not included on the maximum allowable cost
4 list of the health insurer, the average wholesale
5 price as established by the national pricing source.

6 D. The health insurer shall update the information required in
7 subparagraph g of paragraph 2 of subsection C of this section no
8 less than every seven (7) days.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6177 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The Insurance Commissioner may hire additional employees and
13 examiners as needed for the enforcement of provisions with this act
14 and with the provisions of Sections 357 through 360 of Title 59 of
15 the Oklahoma Statutes.

16 B. The Commissioner may retain other governmental or non-
17 governmental entities or individuals as needed for the enforcement
18 of provisions of this act and with provisions of Sections 357
19 through 360 of Title 59 of the Oklahoma Statutes.

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6179 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Commissioner shall provide for the receiving and
24 processing of individual complaints alleging violations of the
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1 provisions of this act or with provisions of Sections 357 through
2 360 of Title 59 of the Oklahoma Statutes.

3 B. The Commissioner shall establish a Prescription Access and
4 Affordability Advisory Committee to review complaints, hold hearings
5 and subpoena witnesses and records, initiate prosecution, reprimand,
6 place on probation, suspend, revoke and levy fines not to exceed Ten
7 Thousand Dollars (\$10,000.00) for each count for which any pharmacy
8 benefits manager has been convicted in hearings by the committee.
9 The committee may impose as part of any disciplinary action the
10 payment of costs expended by the Department of Insurance for any
11 legal fees and costs, including but not limited to staff time,
12 salary and travel expense, witness fees and attorney fees. The
13 committee may take such actions singly or in combination, as the
14 nature of the violation requires.

15 C. The Committee shall consist of seven (7) persons appointed
16 as follows:

- 17 1. Two persons who shall be nominated by the Oklahoma
18 Pharmacists Association;
- 19 2. Two consumer members not employed or related to insurance,
20 pharmacy or pharmacy benefit management nominated by the Governor's
21 office;
- 22 3. Two persons representing the pharmacy benefits manager or
23 Insurance Industry nominated by the Insurance Commissioner; and
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1 4. One person representing the Attorney General's Office
2 nominated by the Attorney General.

3 D. Committee members shall be appointed for a term of five (5)
4 years. The terms of the members of the Committee shall expire on
5 June 30 of the year designated for the expiration of the term for
6 which appointed but the member shall serve until a qualified
7 successor has been duly appointed. No person shall be appointed to
8 serve more than two consecutive terms.

9 E. Hearings shall be held in the Insurance Commissioner's
10 offices or at such other place as the Commissioner may deem
11 convenient.

12 F. The Commissioner shall issue and serve upon the pharmacy
13 benefits manager a statement of the charges and a notice of hearing
14 in accordance with the Administrative Procedures Act.

15 G. At the time and place fixed for a hearing, the pharmacy
16 benefits manager shall have an opportunity to be heard and to show
17 cause why the Commissioner or his or her duly appointed hearing
18 examiner should not revoke or suspend the license of the pharmacy
19 benefits manager and levy administrative fines for each count, or
20 both. Upon good cause shown, the Commissioner shall permit any
21 person to intervene, appear and be heard at the hearing by counsel
22 or in person.

1 H. All hearings will be public and held in accordance with, and
2 governed by, Article II of the Administrative Procedures Act,
3 Section 308A et seq. of Title 75 of the Oklahoma Statutes.

4 I. The Commissioner, upon written request reasonably made by
5 the licensed pharmacy benefits manager affected by the hearing, and
6 at such expense of the pharmacy benefits manager, shall cause a full
7 stenographic record of the proceedings to be made by a competent
8 court reporter.

9 J. If the Insurance Commissioner determines, based on an
10 investigation of complaints, that a pharmacy benefits manager has
11 engaged in violations of this act with such frequency as to indicate
12 a general business practice and that the pharmacy benefits manager
13 should be subjected to closer supervision with respect to such
14 practices, the Commissioner may require the pharmacy benefits
15 manager to file a report at such periodic intervals as the
16 Commissioner deems necessary.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6180 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Documents, materials, reports, complaints or other
21 information in the possession or control of the Insurance Department
22 that are obtained by or disclosed to the Commissioner or any other
23 person in the course of an evaluation, examination, investigation or
24 review made pursuant to the provisions of this act shall be

1 confidential by law and privileged, shall not be subject to open
2 records request, shall not be subject to subpoena and shall not be
3 subject to discovery or admissible in evidence in any private civil
4 action if obtained from the Commissioner or any employees or
5 representatives of the Commissioner.

6 B. Nothing in this section shall prevent the disclosure of a
7 final order issued against a pharmacy benefits manager by the
8 Commissioner or his or her duly appointed hearing examiner. Such
9 orders shall be open records.

10 SECTION 11. This act shall become effective November 1, 2019.

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