

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3512 _____
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 58th Legislature (2022)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3512

By: McEntire

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to the Patient's Right to Pharmacy Choice Act; amending 36 O.S. 2021, Section 6960, which relates to definitions; adding definitions of pharmacy benefits management and retail pharmacy; modifying definitions; amending 36 O.S. 2021, Section 6961, which relates to retail pharmacy network access standards; specifying access standards; amending 36 O.S. 2021, Section 6962, which relates to compliance review; updating statutory reference; modifying prohibition on pharmacy benefits managers; modifying certain contract restrictions; amending 36 O.S. 2021, Section 6963, which relates to health insurer monitoring; modifying certain prohibitions on health insurers and pharmacy benefits managers; conforming language; repealing 36 O.S. 2021, Section 6964, which relates to health insurer formularies; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is amended to read as follows:

Section 6960. For purposes of the Patient's Right to Pharmacy Choice Act:

1 1. "Health insurer" means any corporation, association, benefit
2 society, exchange, partnership or individual licensed by the
3 Oklahoma Insurance Code;

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

7 3. "Pharmacy benefits management" means any or all of the
8 following activities:

9 a. provider contract negotiation and/or provider network
10 administration including decisions related to provider
11 network participation status,

12 b. drug rebate contract negotiation or drug rebate
13 administration, and

14 c. claims processing which may include claim billing and
15 payment services;

16 4. "Pharmacy benefits manager" or "PBM" means a person or
17 entity that performs pharmacy benefits management activities and any
18 other person or entity acting for ~~such a person under a contractual~~
19 ~~or employment relationship in the performance of pharmacy benefits~~
20 ~~management for a managed care company, nonprofit hospital, medical~~
21 ~~service organization, insurance company, third-party payor or a~~
22 ~~health program administered by a department of this state;~~

23 ~~4. "Pharmacy and therapeutics committee" or "P&T committee"~~
24 ~~means a committee at a hospital or a health insurance plan that~~

~~decides which drugs will appear on that entity's drug formulary or~~
entity performing pharmacy benefits management activities.

Notwithstanding any other provision within the Patient's Right to
Pharmacy Choice Act, a self-funded plan administered by an employee
or organized labor union who negotiates and executes all provider
contracts directly with a pharmacy services administrative
organization, and a pharmacy provider who does not use a pharmacy
services administrative organization shall not be deemed a pharmacy
benefits manager of its own group health plan and shall not be
restricted in its ability to design and manage its own group health
plan;

5. "Retail pharmacy" or "provider" means a pharmacy, as defined
in Section 353.1 of Title 59 of the Oklahoma Statutes, licensed by
the State Board of Pharmacy or an agent or representative of a
pharmacy;

6. "Retail pharmacy network" means retail pharmacy providers
contracted with a PBM in which the pharmacy primarily fills and
sells prescriptions via a retail, storefront location;

~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
the population density is less than one thousand (1,000) individuals
per square mile;

~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
which the population density is between one thousand (1,000) and
three thousand (3,000) individuals per square mile; and

1 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
2 the population density is greater than three thousand (3,000)
3 individuals per square mile.

4 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6961, is
5 amended to read as follows:

6 Section 6961. A. Pharmacy benefits managers (PBMs) shall
7 comply with the following retail pharmacy network access standards:

8 1. At least ninety percent (90%) of covered individuals
9 residing in ~~an~~ each urban service area live within two (2) miles of
10 a retail pharmacy participating in the PBM's retail pharmacy
11 network;

12 2. At least ninety percent (90%) of covered individuals
13 residing in ~~an~~ each urban service area live within five (5) miles of
14 a retail pharmacy designated as a preferred participating pharmacy
15 in the PBM's retail pharmacy network;

16 3. At least ninety percent (90%) of covered individuals
17 residing in ~~a~~ each suburban service area live within five (5) miles
18 of a retail pharmacy participating in the PBM's retail pharmacy
19 network;

20 4. At least ninety percent (90%) of covered individuals
21 residing in ~~a~~ each suburban service area live within seven (7) miles
22 of a retail pharmacy designated as a preferred participating
23 pharmacy in the PBM's retail pharmacy network;

1 5. At least seventy percent (70%) of covered individuals
2 residing in ~~a~~ each rural service area live within fifteen (15) miles
3 of a retail pharmacy participating in the PBM's retail pharmacy
4 network; and

5 6. At least seventy percent (70%) of covered individuals
6 residing in ~~a~~ each rural service area live within eighteen (18)
7 miles of a retail pharmacy designated as a preferred participating
8 pharmacy in the PBM's retail pharmacy network.

9 B. Mail-order pharmacies shall not be used to meet access
10 standards for retail pharmacy networks.

11 C. Pharmacy benefits managers shall not require patients to use
12 pharmacies that are directly or indirectly owned by ~~the~~ or
13 affiliated with a pharmacy benefits manager, including all regular
14 prescriptions, refills or specialty drugs regardless of day supply.

15 D. Pharmacy benefits managers shall not in any manner on any
16 material, including but not limited to mail and ID cards, include
17 the name of any pharmacy, hospital or other providers unless it
18 specifically lists all pharmacies, hospitals and providers
19 participating in the preferred and nonpreferred pharmacy and health
20 networks.

21 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6962, is
22 amended to read as follows:

23 Section 6962. A. The Oklahoma Insurance Department shall
24 review and approve retail pharmacy network access for all pharmacy

benefits managers (PBMs) to ensure compliance with Section 4 6961 of this ~~act~~ title.

B. A PBM, or an agent of a PBM, shall not:

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

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

a. the submission of a claim,

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

c. the development or management of claims processing 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 PBM reimburses a pharmacy owned by or under common ownership with a PBM for providing the same covered services. The reimbursement amount paid to the pharmacy shall be equal to the reimbursement amount calculated on a per-unit basis using the same generic product identifier or generic code number paid to the PBM-owned or PBM-affiliated pharmacy;

4. Deny a pharmacy the opportunity to participate in any form of pharmacy network at preferred participation status, whether in-network, preferred, or otherwise, if the pharmacy is willing to

1 accept the terms and conditions that the PBM has established for
2 other pharmacies as a condition ~~of preferred network~~ for
3 participation status in the network or networks of the pharmacy's
4 choice;

5 5. Deny, limit or terminate a pharmacy's contract based on
6 employment status of any employee who has an active license to
7 dispense, despite probation status, with the State Board of
8 Pharmacy;

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

- 12 a. the original claim was submitted fraudulently, or
- 13 b. to correct errors identified in an audit, so long as
- 14 the audit was conducted in compliance with Sections
- 15 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 16 or

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

20 C. The prohibitions under this section shall apply to contracts
21 between pharmacy benefits managers and ~~pharmacists or pharmacies~~
22 providers for participation in retail pharmacy networks.

23 1. A ~~PBM~~ provider contract shall not prohibit, restrict, or
24 penalize a pharmacy or pharmacist in any way for disclosing to an

1 individual any health care information that the pharmacy or
2 pharmacist deems appropriate regarding:

3 a. ~~not restrict, directly or indirectly, any pharmacy~~
4 ~~that dispenses a prescription drug from informing, or~~
5 ~~penalize such pharmacy for informing, an individual of~~
6 ~~any differential between the individual's out-of-~~
7 ~~pocket cost or coverage with respect to acquisition of~~
8 ~~the drug and the amount an individual would pay to~~
9 ~~purchase the drug directly~~ the nature of treatment,
10 risks, or alternatives to the prescription drug being
11 dispensed, and

12 b. ~~ensure that any entity that provides pharmacy benefits~~
13 ~~management services under a contract with any such~~
14 ~~health plan or health insurance coverage does not,~~
15 ~~with respect to such plan or coverage, restrict,~~
16 ~~directly or indirectly, a pharmacy that dispenses a~~
17 ~~prescription drug from informing, or penalize such~~
18 ~~pharmacy for informing, a covered individual of any~~
19 ~~differential between the individual's out-of-pocket~~
20 ~~cost under the plan or coverage with respect to~~
21 ~~acquisition of the drug and the amount an individual~~
22 ~~would pay for acquisition of the drug without using~~
23 ~~any health plan or health insurance coverage.~~

1 ~~2. A pharmacy benefits manager's contract with a participating~~
2 ~~pharmacist or pharmacy~~

3 the availability of alternate therapies,

4 consultations, or tests,

5 c. the decision of utilization reviewers or similar

6 persons to authorize or deny services, and

7 d. the process that is used to authorize or deny health

8 care services and structures used by the health

9 insurer.

10 2. Provider contracts shall not prohibit a pharmacy or
11 pharmacist from discussing information regarding the total cost of
12 pharmacist services for a prescription drug or from selling a more
13 affordable alternative to the covered person if such alternative is
14 available.

15 3. Provider contracts shall not prohibit, restrict or limit
16 disclosure of information to the Insurance Commissioner, law
17 enforcement or state and federal governmental officials
18 investigating or examining a complaint or conducting a review of a
19 pharmacy benefits manager's compliance with the requirements under
20 the Patient's Right to Pharmacy Choice Act.

21 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
22 an electronic claim inquiry processing system using the National
23 Council for Prescription Drug Programs' current standards to
24 communicate information to pharmacies submitting claim inquiries.

SECTION 4. AMENDATORY 36 O.S. 2021, Section 6963, is amended to read as follows:

Section 6963. A. A health insurer shall be responsible for monitoring all activities carried out by, or on behalf of, the health insurer under the Patient's Right to Pharmacy Choice Act, and for ensuring that all requirements of this act are met.

B. Whenever a health insurer performs pharmacy benefits management on its own behalf or contracts with another person or entity to perform ~~activities required under this act~~ pharmacy benefit management, the health insurer shall be responsible for monitoring the activities and conduct of that person or entity with whom the health insurer contracts and for ensuring that the requirements of this act are met.

C. An individual may be notified at the point of sale when the cash price for the purchase of a prescription drug is less than the individual's copayment or coinsurance price for the purchase of the same prescription drug.

D. A health insurer or pharmacy benefits manager (PBM) shall not restrict an individual's choice of in-network provider for prescription drugs.

E. ~~An individual's~~ A patient's choice of in-network provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether that pharmacy is in a preferred or nonpreferred network, a retail pharmacy, mail-order pharmacy, or any other pharmacy. A health

1 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-
2 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not
3 require or incentivize ~~using~~ individuals by:

4 1. Using any discounts in cost-sharing or a reduction in copay
5 or the number of copays to individuals to receive prescription drugs
6 ~~from an individual's choice of in-network pharmacy~~ ~~from an~~
7 individual's choice of in-network pharmacy; or

8 2. Differentiating between in-network pharmacies, whether that
9 pharmacy is in a preferred or nonpreferred network, a retail
10 pharmacy, mail-order pharmacy, or any other type of pharmacy.

11 The provisions of this subsection shall not apply to any plan
12 subject to regulation under Medicare Part D, 42 U.S.C., Section
13 1395w-101 et seq.

14 F. A health insurer, pharmacy or PBM shall adhere to all
15 Oklahoma laws, statutes and rules when mailing, shipping and/or
16 causing to be mailed or shipped prescription drugs into ~~the State of~~
17 ~~Oklahoma~~ this state.

18 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is
19 hereby repealed.

20 SECTION 6. This act shall become effective November 1, 2022.

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