

**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; defining terms; modifying definition; 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~~

1 ~~decides which drugs will appear on that entity's drug formulary or~~  
2 entity performing pharmacy benefits management activities.  
3 Notwithstanding any other provision of the Patient's Right to  
4 Pharmacy Choice Act, a pharmacy provider who does not use a pharmacy  
5 services administrative organization and a self-funded plan  
6 administered by an employee or organized labor union who negotiates  
7 and executes all provider contracts directly with a pharmacy  
8 services administrative organization, shall not be deemed a pharmacy  
9 benefits manager of its own group health plan and shall not be  
10 restricted in its ability to design and manage its own group health  
11 plan;

12 5. "Pharmacy services administrative organization" means an  
13 entity that contracts with a pharmacy to act as the pharmacy's agent  
14 with respect to matters involving a pharmacy benefits manager,  
15 third-party payor, or other entities, including but not limited to  
16 negotiating, executing, or administering contracts with the pharmacy  
17 benefits manager;

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

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

1       ~~6.~~ 8. "Rural service area" means a five-digit ZIP code in which  
2 the population density is less than one thousand (1,000) individuals  
3 per square mile;

4       ~~7.~~ 9. "Suburban service area" means a five-digit ZIP code in  
5 which the population density is between one thousand (1,000) and  
6 three thousand (3,000) individuals per square mile; and

7       ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in  
8 which the population density is greater than three thousand (3,000)  
9 individuals per square mile.

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

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

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

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

22       3. At least ninety percent (90%) of covered individuals  
23 residing in ~~a~~ each suburban service area live within five (5) miles  
24

1 of a retail pharmacy participating in the PBM's retail pharmacy  
2 network;

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

7 5. At least seventy percent (70%) of covered individuals  
8 residing in a each rural service area live within fifteen (15) miles  
9 of a retail pharmacy participating in the PBM's retail pharmacy  
10 network; and

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

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

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

21 D. Pharmacy benefits managers shall not in any manner on any  
22 material, including but not limited to mail and ID cards, include  
23 the name of any pharmacy, hospital or other providers unless it  
24 specifically lists all pharmacies, hospitals and providers

1 participating in the preferred and nonpreferred pharmacy and health  
2 networks.

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

5 Section 6962. A. The Oklahoma Insurance Department shall  
6 review and approve retail pharmacy network access for all pharmacy  
7 benefits managers (PBMs) to ensure compliance with Section 4 6961 of  
8 this ~~act~~ title.

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

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

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

- 15 a. the submission of a claim,  
16 b. enrollment or participation in a retail pharmacy  
17 network, or  
18 c. the development or management of claims processing  
19 services or claims payment services related to  
20 participation in a retail pharmacy network;

21 3. Reimburse a pharmacy or pharmacist in the state an amount  
22 less than the amount that the PBM reimburses a pharmacy owned by or  
23 under common ownership with a PBM for providing the same covered  
24 services. The reimbursement amount paid to the pharmacy shall be

1 equal to the reimbursement amount calculated on a per-unit basis  
2 using the same generic product identifier or generic code number  
3 paid to the PBM-owned or PBM-affiliated pharmacy;

4 4. Deny a pharmacy the opportunity to participate in any form  
5 of pharmacy network at preferred participation status, whether in-  
6 network, preferred, or otherwise, if the pharmacy is willing to  
7 accept the terms and conditions that the PBM has established for  
8 other pharmacies as a condition ~~of preferred network~~ for  
9 participation status in the network or networks of the pharmacy's  
10 choice;

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

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

- 18 a. the original claim was submitted fraudulently, or
- 19 b. to correct errors identified in an audit, so long as
- 20 the audit was conducted in compliance with Sections
- 21 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 22 or



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

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

7        1. A ~~PBM~~ provider contract shall not prohibit, restrict, or  
8 penalize a pharmacy or pharmacist in any way for disclosing to an  
9 individual any health care information that the pharmacy or  
10 pharmacist deems appropriate regarding:

11            a. ~~not restrict, directly or indirectly, any pharmacy~~  
12 ~~that dispenses a prescription drug from informing, or~~  
13 ~~penalize such pharmacy for informing, an individual of~~  
14 ~~any differential between the individual's out-of-~~  
15 ~~pocket cost or coverage with respect to acquisition of~~  
16 ~~the drug and the amount an individual would pay to~~  
17 ~~purchase the drug directly~~ the nature of treatment,  
18 risks, or alternatives to the prescription drug being  
19 dispensed, and

20            b. ~~ensure that any entity that provides pharmacy benefits~~  
21 ~~management services under a contract with any such~~  
22 ~~health plan or health insurance coverage does not,~~  
23 ~~with respect to such plan or coverage, restrict,~~  
24 ~~directly or indirectly, a pharmacy that dispenses a~~

~~prescription drug from informing, or penalize such  
pharmacy for informing, a covered individual of any  
differential between the individual's out-of-pocket  
cost under the plan or coverage with respect to  
acquisition of the drug and the amount an individual  
would pay for acquisition of the drug without using  
any health plan or health insurance coverage.~~

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

~~the availability of alternate therapies,  
consultations, or tests,~~

~~c. the decision of utilization reviewers or similar  
persons to authorize or deny services, and~~

~~d. the process that is used to authorize or deny health  
care services and structures used by the health  
insurer.~~

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

~~3. Provider contracts shall not prohibit, restrict or limit  
disclosure of information to the Insurance Commissioner, law  
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 the Patient's Right to Pharmacy Choice Act.

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

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

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

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

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

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

4 E. ~~An individual's~~ A patient's choice of in-network provider  
5 may include ~~a retail~~ an in-network pharmacy ~~or a,~~ whether that  
6 pharmacy is in a preferred or nonpreferred network, a retail  
7 pharmacy, mail-order pharmacy, or any other pharmacy. A health  
8 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-  
9 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not  
10 require or incentivize ~~using~~ individuals by:

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

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

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

22 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is  
23 hereby repealed.

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

58-2-10785 KN 03/01/22