

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1633

By: Jett of the Senate

and

McEntire of the House

COMMITTEE SUBSTITUTE

An Act relating to pharmacy benefits managers;
amending 36 O.S. 2021, Sections 6960 and 6962, which
relate to definitions and compliance review;
providing definitions; prohibiting pharmacy benefits
managers from imposing certain charges on pharmacist
and pharmacy; prohibiting pharmacy benefits managers
from imposing clawbacks; prohibiting pharmacy
benefits managers from engaging in spread pricing;
providing that pharmacy benefits manager contracts
protect healthcare access; requiring pharmacy
benefits managers to provide certain reports;
requiring certain reports be published by Insurance
Department; establishing certain fiduciary duties for
pharmacy benefits managers to their clients;
requiring notification of certain conflicts by
pharmacy benefits manager to health carrier client;
providing for codification; and providing an
effective date.

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

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

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

6 1. "Aggregate retained rebate percentage" means the percentage
7 of all rebates received by a pharmacy benefits manager (PBM) from
8 all pharmaceutical manufacturers which is not passed on to the PBM's
9 health plan or health insurer clients. Aggregate retained rebate
10 percentage shall be expressed without disclosing any identifying
11 information regarding any health plan, prescription drug, or
12 therapeutic class, and shall be calculated by dividing:

13 a. the aggregate dollar amount of all rebates that the
14 PBM received during the prior calendar year from all
15 pharmaceutical manufacturers and that did not pass
16 through to the pharmacy benefits manager's health plan
17 or health insurer clients, by

18 b. the aggregate dollar amount of all rebates that the
19 pharmacy benefits manager received during the prior
20 calendar year from all pharmaceutical manufacturers;

21 2. "Carrier" means a carrier as defined pursuant to Section
22 6902 of this title;

23 3. "Clawback" means the act of recovering from the dispensing
24 pharmacy and keeping as revenue the difference between a patient's

1 co-payment and the pharmacy drug cost when the co-payment exceeds
2 the pharmacy drug cost;

3 ~~1.~~ 4. "Health insurer" means any corporation, association,
4 benefit society, exchange, partnership or individual licensed by the
5 Oklahoma Insurance Code;

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

9 ~~3.~~ 6. "Pharmacy benefits manager" or "PBM" means a person that
10 performs pharmacy benefits management and any other person acting
11 for such person under a contractual or employment relationship in
12 the performance of pharmacy benefits management for a managed-care
13 company, nonprofit hospital, medical service organization, insurance
14 company, third-party payor or a health program administered by a
15 department of this state;

16 ~~4.~~ 7. "Pharmacy and therapeutics committee" or "P&T committee"
17 means a committee at a hospital or a health insurance plan that
18 decides which drugs will appear on that entity's drug formulary;

19 8. "Rebate administrative fees" means fees or payments from
20 pharmaceutical manufacturers to, or otherwise retained by, a
21 pharmacy benefits manager or its designee pursuant to a contract
22 between a PBM or affiliate, and the manufacturer in connection with
23 the PBM's administering, invoicing, allocating, and collecting the
24 rebates;

1 9. "Rebate" means negotiated price concessions including but
2 not limited to base price concessions, whether described as a rebate
3 or otherwise, and reasonable estimates of any price protection
4 rebates and performance-based price concessions that may accrue,
5 directly or indirectly, to the PBM during the coverage year from a
6 manufacturer;

7 ~~5.~~ 10. "Retail pharmacy network" means retail pharmacy
8 providers contracted with a PBM in which the pharmacy primarily
9 fills and sells prescriptions via a retail, storefront location;

10 ~~6.~~ 11. "Rural service area" means a five-digit ZIP code in
11 which the population density is less than one thousand (1,000)
12 individuals per square mile;

13 12. "Spread pricing" means the act by a PBM of keeping as
14 revenue the difference between the amount paid to the PBM by a
15 health plan for prescription drugs and the amount the PBM reimburses
16 the pharmacy dispensing the drug;

17 ~~7.~~ 13. "Suburban service area" means a five-digit ZIP code in
18 which the population density is between one thousand (1,000) and
19 three thousand (3,000) individuals per square mile; and

20 ~~8.~~ 14. "Urban service area" means a five-digit ZIP code in
21 which the population density is greater than three thousand (3,000)
22 individuals per square mile.

23 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, is
24 amended to read as follows:

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

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

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

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

12 ~~a. the submission of a claim,~~

13 ~~b. enrollment or participation in a retail pharmacy~~
14 ~~network, or~~

15 ~~c. the development or management of claims processing~~
16 ~~services or claims payment services related to~~
17 ~~participation in a retail pharmacy network;~~

18 3. Charge a pharmacist or pharmacy a fee related to the
19 credentialing of a pharmacy or pharmacist;

20 4. Charge a pharmacist or pharmacy a fee related to the
21 application, enrollment or participation in a retail pharmacy
22 network;

23 5. Charge a pharmacist or pharmacy a fee related to the
24 development or management of claims processing services or claims

1 payment services related to participation in a retail pharmacy
2 network;

3 6. Reimburse a pharmacy or pharmacist in the state an amount
4 less than the amount that the PBM reimburses a pharmacy owned by or
5 under common ownership with a PBM for providing the same covered
6 services. The reimbursement amount paid to the pharmacy shall be
7 equal to the reimbursement amount calculated on a per-unit basis
8 using the same generic product identifier or generic code number
9 paid to the PBM-owned or PBM-affiliated pharmacy;

10 ~~4.~~ 7. Deny a pharmacy the opportunity to participate in any
11 pharmacy network at preferred participation status if the pharmacy
12 is willing to accept the terms and conditions that the PBM has
13 established for other pharmacies as a condition of preferred network
14 participation status;

15 ~~5.~~ 8. Deny, limit or terminate a pharmacy's contract based on
16 employment status of any employee who has an active license to
17 dispense, despite probation status, with the State Board of
18 Pharmacy;

19 ~~6.~~ 9. Retroactively deny or reduce reimbursement for a covered
20 service claim after returning a paid claim response as part of the
21 adjudication of the claim, unless:

- 22 a. the original claim was submitted fraudulently, or
- 23 b. to correct errors identified in an audit, so long as
- 24 the audit was conducted in compliance with Sections

356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

~~or~~

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

11. Directly or indirectly participate in a clawback as defined in paragraph 3 of Section 6960 of this title; or

12. Directly or indirectly engage in spread pricing as defined in paragraph 12 of Section 6960 of this title.

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

1. A PBM contract shall:

a. not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, ~~and~~

b. ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict,

1 directly or indirectly, a pharmacy that dispenses a
2 prescription drug from informing, or penalize such
3 pharmacy for informing, a covered individual of any
4 differential between the individual's out-of-pocket
5 cost under the plan or coverage with respect to
6 acquisition of the drug and the amount an individual
7 would pay for acquisition of the drug without using
8 any health plan or health insurance coverage, and
9 c. ensure that access to local healthcare is not
10 jeopardized by immediately modifying any rates or
11 provisions that would result in a reimbursement below
12 the pharmacy's cost to acquire and dispense the
13 medication or product.

14 2. A pharmacy benefits manager's contract with a participating
15 pharmacist or pharmacy 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. A pharmacy benefits manager shall establish and maintain an
22 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 3. NEW LAW

A new section of law to be codified

in the Oklahoma Statutes as Section 6962.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning on November 1, 2022, and on an annual basis thereafter, a pharmacy benefits manager (PBM) shall provide the Insurance Department with a report containing the following information from the prior calendar year as it pertains to pharmacy benefits provided by health insurers to enrollees in the state:

1. The aggregate dollar amount of all rebates that the PBM received from all pharmaceutical manufacturers;

2. The aggregate dollar amount of all rebate administrative fees that the PBM received;

3. The aggregate dollar amount of all issuer administrative service fees that the PBM received;

4. The aggregate dollar amount of all rebates that the PBM received from all pharmaceutical manufacturers and did not pass through to health plans or health insurers;

5. The aggregate dollar amount of all rebate administrative fees that the PBM received from all pharmaceutical manufacturers and did not pass through to health plans or health insurers;

6. The aggregate retained rebate percentage; and

7. Across all of the pharmacy benefits manager's contractual or other relationships with all health plans or health insurers, the highest aggregate retained rebate percentage, the lowest aggregate

1 retained rebate percentage, and the mean aggregate retained rebate
2 percentage.

3 B. The Department shall publish in a timely manner the
4 information that it receives under subsection A of this section on a
5 publicly available website, provided that such information shall be
6 made available in a form that does not disclose the identity of a
7 specific health plan or the identity of a specific manufacturer, the
8 prices charged for specific drugs or classes of drugs, or the amount
9 of any rebates provided for specific drugs or classes of drugs.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6962.2 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A pharmacy benefits manager (PBM) shall have a fiduciary
14 duty to any health carrier and health insurer clients and shall
15 discharge that duty in accordance with the provisions of state and
16 federal law.

17 B. A PBM shall perform its duties with care, skill, prudence,
18 diligence, and professionalism.

19 C. A PBM shall notify a health carrier client in writing of any
20 activity, policy, or practice of the pharmacy benefits manager that
21 directly or indirectly presents any conflict of interest with the
22 duties imposed in this section.

SECTION 5. This act shall become effective November 1, 2022.

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