STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTE SUBSTITUTE
FOR
HOUSE BILL NO. 3924 By: Pfeiffer

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2021, Section 6960, which relates to definitions in the Patient's Right to Pharmacy Choice Act; modifying definitions; adding definitions of certain terms; amending 36 O.S. 2021, Section 6962, which relates to compliance and prohibitions; clarifying reference; prohibiting spread pricing; modifying duties of pharmacy benefits managers; directing the Insurance Commissioner on procedure for violation of the Patient's Right to Pharmacy Choice Act; exempting certain groups; providing for codification; providing an effective date; and declaring an emergency.

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. "Administrator" means any person or entity defined in 29 U.S.C., Section 1002(16)(A);

2. "Employee benefit plan" means any person or entity defined in 29 U.S.C., Section 1002(1) and (3), and covered by 29 U.S.C., Section 1003;

3. "Fiduciary" means any person or entity defined in 29 U.S.C., Section 1002(21);

4. "Health insurer" means any business entity, corporation, company, mutual reserve company, association, benefit society, exchange, partnership or individual, that is either:

a. engaged in the business of insurance in Oklahoma; or

b. licensed ~~by~~ under the Oklahoma Insurance Code;

5. "Health insurer payor" means a health insurance company, health maintenance organization, union, hospital and medical services organization or, except under Section 4 of this act, any entity providing, sponsoring, or administering a self-funded health benefit plan;

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

~~3.~~ 7. "Pharmacy benefits manager" or "PBM" means a person that performs pharmacy benefits management and any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care company, nonprofit hospital, medical service organization, insurance

company, third-party payor or a health program administered by a department of this state;

~~4.~~ 8. "Pharmacy and therapeutics committee" or "P&T committee" means a committee at a hospital or a health insurance plan that decides which drugs will appear on that entity's drug formulary;

9. "Plan sponsor" or "sponsor" means any person or entity defined in 29 U.S.C., Section 1002(16)(B);

10. "Provider" means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes;

~~5.~~ 11. "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.~~ 12. "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;

13. "Spread pricing" means a prescription drug pricing model utilized by a pharmacy benefits manager in which the PBM charges a health benefit plan a contracted price for prescription drugs that differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;

~~7.~~ 14. "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

~~8.~~ 15. "Urban service area" means a five-digit ZIP code in which the population density is greater than three thousand (3,000) individuals per square mile.

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

Section 6962. A. The Oklahoma Insurance Department shall 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 provider the opportunity to participate in any pharmacy network at preferred participation status if the ~~pharmacy~~ provider is willing to accept the terms and conditions that the PBM has established for other ~~pharmacies~~ providers as a condition of preferred network participation status;

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

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

a. the original claim was submitted fraudulently, or

b. to correct errors identified in an audit, so long as the audit was conducted in compliance with Sections 356.2 and 356.3 of Title 59 of the Oklahoma Statutes; ~~or~~

7. Fail to make any payment due to a pharmacy or pharmacist for covered services properly rendered in the event a PBM terminates a

~~pharmacy~~ provider or pharmacist from a pharmacy benefits manager network; or

8. Conduct or practice spread pricing, as defined in Section 6960 of this title, in this state.

C. The prohibitions under this section shall apply to contracts between pharmacy benefits managers and ~~pharmacists or pharmacies~~ providers 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, 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~~ provider shall not prohibit, restrict or limit disclosure of information to the Insurance Commissioner, law enforcement or state and federal governmental officials investigating or examining a complaint or conducting a review of a pharmacy benefits manager's compliance with the requirements under the Patient's Right to Pharmacy Choice Act.

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

D. A pharmacy benefits manager shall:

1. Establish and maintain an electronic claim inquiry processing system using the National Council for Prescription Drug Programs' current standards to communicate information to pharmacies submitting claim inquiries;

2. Unless prohibited by a drug manufacturer contract, fully disclose to insurers, self-funded plans and their sponsors, administrators, fiduciaries, employers, unions, other PBM clients, or employer-appointed consultants and/or auditors, with respect to their specific plans or policies, the existence of any prescription

drug discounts, invoice offsets, and any and all direct or indirect payments, revenues, or soft or hard dollar incentives of any kind to include, but not be limited to: rebates, administrative fees, market-shift bonuses, technology fees, consulting or advisory fees, or pharmacy audit recoupments;

3. Unless prohibited by a drug manufacturer contract, provide insurers, employers, unions, and self-funded plans and their sponsors, administrators, fiduciaries, with respect to their specific plans or policies, unrestricted audit rights of and access to PBM pharmaceutical manufacturer and provider contracts, plan utilization data, plan pricing data, pharmacy utilization data and pharmacy pricing data;

4. Maintain, for no less than three (3) years, documentation of all network development activities including, but not limited to, contract negotiations and any denials to providers to join networks. This documentation shall be made available to the Insurance Commissioner upon request;

E. Notwithstanding any provisions in the Patient's Right to Pharmacy Choice Act or any other state law, a pharmacy benefits manager and a PBM contract may incentivize an individual to utilize one pharmacy, including mail order, instead of another pharmacy as it relates to the purchase of any specialty drug. A specialty drug is a drug that possesses any number of these common attributes:

1. Is prescribed for a person with a complex or chronic medical condition, defined as a physical, behavioral, or developmental condition that may have no known cure, is progressive, and/or is debilitating or fatal if left untreated or undertreated;

2. Treats rare or orphan disease indications;

3. Requires additional patient education, adherence, and support beyond traditional dispensing activities;

4. Is an oral, injectable, inhalable, or infusible drug product;

5. Has a high monthly cost;

6. Has unique storage or shipment requirements, such as refrigeration; and/or

7. Is not stocked at a majority of retail pharmacies.

Notwithstanding the above, a self-funded plan may decide and implement its own definition of a specialty drug.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may censure, suspend, revoke, or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of Title 36 of the Oklahoma Statutes.

B. 1. If the Commissioner finds, after notice and opportunity for hearing, that a pharmacy benefits manager (PBM) or pharmacy violated one or more provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statues, the PBM or pharmacy may be censured, his or her license may be suspended or revoked and a penalty or remedy authorized by this act may be imposed.

2. In addition to or in lieu of any censure, suspension, or revocation of a license, a PBM or pharmacy may be subject to a civil fine of not less than One Hundred Dollars ($100.00) and not greater than Ten Thousand Dollars ($10,000.00) for each violation of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statues, following notice and an opportunity for a hearing.

C. Notwithstanding whether the license of a PBM has been issued, suspended, revoked, surrendered, or lapsed by operation of law, the Commissioner is hereby authorized to enforce the provisions of the Patient's Right to Pharmacy Choice Act and impose any penalty or remedy authorized under the act against a PBM or pharmacy under investigation for or charged with a violation of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the

provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statues or any provision of the insurance laws of this state.

D. Each day that a PBM conducts business in this state without a license from the Insurance Department shall be deemed a violation of the Patient's Right to Pharmacy Choice Act.

E. 1. All hearings conducted by the Insurance Department pursuant to this section shall be public and held in accordance with the Administrative Procedures Act.

2. Hearings shall be held at the office of the Insurance Commissioner or any other place the Commissioner may deem convenient.

3. The Commissioner, upon written request from a PBM affected by the hearing, shall cause a full stenographic record of the proceedings to be made by a competent court reporter. This record shall be at the expense of the PBM.

4. The ordinary fees and costs of the hearing examiner appointed pursuant to Section 319 of Title 36 of the Oklahoma Statutes may be assessed by the hearing examiner against the respondent unless the respondent is the prevailing party.

F. Any PBM whose license has been censured, suspended, revoked, or denied renewal or who has had a fine levied against him or her shall have the right of appeal from the final order of the Insurance Commissioner, pursuant to Section 318 et seq. of Title 75 of the Oklahoma Statutes.

G. If the Insurance Commissioner determines, based upon an investigation of complaints, that a PBM has engaged in violations of the provisions of the Patient's Right to Pharmacy Choice Act with such frequency as to indicate a general business practice, and that the PBM should be subjected to closer supervision with respect to those practices, the Commissioner may require the PBM to file a report at any periodic interval the Commissioner deems necessary.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall not apply to the following:

A. Any plan sponsor, administrator, fiduciary, or employee benefit plan, who is exempt from state regulation under 29 U.S.C., Section 1144;

B. Any self-funded employee benefit plan as defined by 29 U.S.C., Section 1002(1) and (3);

C. Any high deductible plan as defined by 26 U.S.C., Section 220(c)(2) or 223(c)(2); and

D. Any own use or in-house pharmacy, including but not limited to a hospital ambulatory pharmacy, inpatient pharmacy, or an employer-contracted pharmacy operated by a third-party pharmacy on behalf of an employer for the convenience of its employees.

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

SECTION 6. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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