

1 ENGROSSED SENATE
2 BILL NO. 1324

By: McCortney and Hicks of the
Senate

3 and

4 McEntire of the House

5
6 [pharmacy benefits managers - contractual provisions
7 - publication of certain formulary information -
8 confidentiality of certain records - requirements and
duties for pharmacy and therapeutics committee
members - codification - effective date]

9
10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

16 1. "Administrative fees" means fees or payments from
17 pharmaceutical manufacturers to, or otherwise retained by, a
18 pharmacy benefits manager (PBM) or its designee pursuant to a
19 contract between a PBM or affiliate and the manufacturer in
20 connection with the PBM's administering, invoicing, allocating, and
21 collecting the rebates;

22 2. "Aggregate retained rebate percentage" means the percentage
23 of all rebates received by a PBM from all pharmaceutical
24 manufacturers which is not passed on to the PBM's health plan or

1 health insurer clients. The aggregate retained rebate percentage
2 shall be expressed without disclosing any identifying information
3 regarding any health plan, prescription drug, or therapeutic class,
4 and shall be calculated by dividing:

5 a. the aggregate dollar amount of all rebates that the
6 PBM received during the prior calendar year from all
7 pharmaceutical manufacturers that did not pass through
8 to the pharmacy benefits manager's health plan or
9 health insurer clients, by

10 b. the aggregate dollar amount of all rebates that the
11 pharmacy benefit manager received during the prior
12 calendar year from all pharmaceutical manufacturers;

13 3. "Defined cost sharing" means a deductible payment or
14 coinsurance amount imposed on an enrollee for a covered prescription
15 drug under the enrollee's health plan;

16 4. "Formulary" means a list of prescription drugs, any
17 prescription drug accompanying tiering, and other coverage
18 information that has been developed by a health insurer or its
19 designee that is referenced in determining applicable coverage and
20 benefit levels;

21 5. "Generic equivalent" means a drug that is designated as
22 therapeutically equivalent by the United States Food and Drug
23 Administration's "Approved Drug Products with Therapeutic
24 Equivalence Evaluations"; provided, however, a drug shall not be

1 considered a generic equivalent until the drug becomes nationally
2 available;

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

6 7. "Health insurer administrative service fees" means fees or
7 payments from a health insurer or its designee to, or otherwise
8 retained by, a PBM or its designee pursuant to a contract between a
9 PBM or affiliate and the health insurer or its designee in
10 connection with the PBM's managing or administering the pharmacy
11 benefit and administering, invoicing, allocating, and collecting
12 rebates;

13 8. "Health plan" means a policy, contract, certification, or
14 agreement offered or issued by a health insurer to provide, deliver,
15 arrange for, pay for, or reimburse any of the costs of health
16 services;

17 9. "Insurer" means a health insurer as defined pursuant to
18 paragraph 6 of this section;

19 ~~2.~~ 10. "Mail-order pharmacy" means a pharmacy licensed by this
20 state that primarily dispenses and delivers covered drugs via common
21 carrier;

22 ~~3.~~ 11. "Pharmacy benefits manager" or "PBM" means a person
23 that, either directly or through an intermediary, performs pharmacy
24 benefits management, as defined by paragraph 6 of Section 357 of

1 Title 59 of the Oklahoma Statutes, and any other person acting for
2 such person under a contractual or employment relationship in the
3 performance of pharmacy benefits management for a managed-care
4 company, nonprofit hospital, medical service organization, insurance
5 company, third-party payor or a health program administered by a
6 department of this state;

7 ~~4.~~ 12. "Pharmacy and therapeutics committee" or "P&T committee"
8 means a committee at a hospital or a health insurance plan that
9 decides which drugs will appear on that entity's drug formulary;

10 13. "Price protection rebate" means a negotiated price
11 concession that accrues directly or indirectly to the health insurer
12 or other party on behalf of the health insurer in the event of an
13 increase in the wholesale acquisition cost of a drug above a
14 specified cost threshold;

15 14. "Rebates" means:

16 a. negotiated price concessions including but not limited
17 to base price concessions, whether described as a
18 rebate or otherwise, and reasonable estimates of any
19 price protection rebates and performance-based price
20 concessions that may accrue directly or indirectly to
21 the PBM during the coverage year from a manufacturer,
22 dispensing pharmacy, or other party in connection with
23 the dispensing or administration of a prescription
24 drug, and

1 b. reasonable estimates of any price concessions, fees,
2 and other administrative costs that are passed
3 through, or are reasonably anticipated to be passed
4 through, to the PBM and serve to reduce the PBM's
5 liabilities for a prescription drug;

6 ~~5.~~ 15. "Retail pharmacy network" means retail pharmacy
7 providers contracted with a PBM in which the pharmacy primarily
8 fills and sells prescriptions via a retail, storefront location;

9 ~~6.~~ 16. "Rural service area" means a five-digit ZIP code in
10 which the population density is less than one thousand (1,000)
11 individuals per square mile;

12 ~~7.~~ 17. "Suburban service area" means a five-digit ZIP code in
13 which the population density is between one thousand (1,000) and
14 three thousand (3,000) individuals per square mile; and

15 ~~8.~~ 18. "Urban service area" means a five-digit ZIP code in
16 which the population density is greater than three thousand (3,000)
17 individuals per square mile.

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

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

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

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

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

6 a. the submission of a claim,

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

9 c. the development or management of claims processing
10 services or claims payment services related to
11 participation in a retail pharmacy network;

12 3. Reimburse a pharmacy or pharmacist in the state an amount
13 less than the amount that the PBM reimburses a pharmacy owned by or
14 under common ownership with a PBM for providing the same covered
15 services. The reimbursement amount paid to the pharmacy shall be
16 equal to the reimbursement amount calculated on a per-unit basis
17 using the same generic product identifier or generic code number
18 paid to the PBM-owned or PBM-affiliated pharmacy;

19 4. Deny a pharmacy the opportunity to participate in any
20 pharmacy network at preferred participation status if the pharmacy
21 is willing to accept the terms and conditions that the PBM has
22 established for other pharmacies as a condition of preferred network
23 participation status;

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

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

- 8 a. the original claim was submitted fraudulently, or
9 b. to correct errors identified in an audit, so long as
10 the audit was conducted in compliance with Sections
11 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
12 or

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

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

19 1. A PBM contract shall:

- 20 a. not restrict, directly or indirectly, any pharmacy
21 that dispenses a prescription drug from informing, or
22 penalize such pharmacy for informing, an individual of
23 any differential between the individual's out-of-
24 pocket cost or coverage with respect to acquisition of

1 the drug and the amount an individual would pay to
2 purchase the drug directly, ~~and~~

3 b. ensure that any entity that provides pharmacy benefits
4 management services under a contract with any such
5 health plan or health insurance coverage does not,
6 with respect to such plan or coverage, restrict,
7 directly or indirectly, a pharmacy that dispenses a
8 prescription drug from informing, or penalize such
9 pharmacy for informing, a covered individual of any
10 differential between the individual's out-of-pocket
11 cost under the plan or coverage with respect to
12 acquisition of the drug and the amount an individual
13 would pay for acquisition of the drug without using
14 any health plan or health insurance coverage,

15 c. not prohibit from or penalize for a pharmacy or
16 pharmacist disclosing to an individual information
17 regarding the existence and clinical efficacy of a
18 generic equivalent that would be less expensive to the
19 enrollee under his or her health plan prescription
20 drug benefit or outside his or her health plan
21 prescription drug benefit, without requesting any
22 health plan reimbursement, than the drug that was
23 originally prescribed, and
24

1 d. not prohibit from or penalize for a pharmacy or
2 pharmacist selling to an individual, instead of a
3 particular prescribed drug, therapeutically equivalent
4 drug that would be less expensive to the enrollee
5 under his or her health plan prescription drug benefit
6 or outside his or her health plan prescription drug
7 benefit, without requesting any health plan
8 reimbursement, than the drug that was originally
9 prescribed.

10 2. A pharmacy benefits manager's contract with a participating
11 pharmacist or pharmacy shall not prohibit, restrict or limit
12 disclosure of information to the Insurance Commissioner, law
13 enforcement or state and federal governmental officials
14 investigating or examining a complaint or conducting a review of a
15 pharmacy benefits manager's compliance with the requirements under
16 the Patient's Right to Pharmacy Choice Act.

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

21 D. For each of the PBM's contracts or other relationships with
22 a health plan, a PBM shall publish on an easily accessible website
23 the health plan formulary and timely notification of formulary
24 changes and product exclusions.

1 SECTION 3. NEW LAW A new section of law to be codified

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

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

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

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

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

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

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

21 6. The aggregate retained rebate percentage; and

22 7. Across all of the pharmacy benefits manager's contractual or
23 other relationships with all health plans or health insurers, the
24 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 C. The PBM and the Department shall not publish or otherwise
11 disclose any information that would disclose the identity of a
12 specific health plan, any prices charged for a specific drug or
13 class of drugs, the amount of any rebates provided for a specific
14 drug or class of drugs, the manufacturer, or information that would
15 otherwise have the potential to compromise the financial,
16 competitive, or proprietary nature of the information. The
17 information shall be protected from direct or indirect disclosure as
18 confidential and proprietary information and shall not be deemed a
19 public record as defined pursuant to Section 24A.3 of Title 51 of
20 the Oklahoma Statutes. A PBM shall impose the confidentiality
21 protections of this section on any vendor or downstream third party
22 that performs health care or administrative services on behalf of
23 the PBM that may receive or have access to rebate information.

1 SECTION 4. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 6962.2 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. An enrollee's defined cost sharing, as defined pursuant to
5 Section 6960 of Title 36 of the Oklahoma Statutes, for each
6 prescription drug shall be calculated at the point of sale based on
7 a price that is reduced by an amount equal to one hundred percent
8 (100%) of all rebates received, or to be received, in connection
9 with the dispensing or administration of the prescription drug.

10 B. For any violation of this section, the Insurance
11 Commissioner may subject a pharmacy benefits manager (PBM) to an
12 administrative penalty not less than One Hundred Dollars (\$100.00),
13 nor more than Five Thousand Dollars (\$5,000.00) for each occurrence.
14 Such administrative penalty may be enforced in the same manner in
15 which civil judgments may be enforced.

16 C. Nothing in this section shall preclude a PBM from decreasing
17 an enrollee's defined cost sharing by an amount greater than that
18 required under subsection A of this section.

19 D. In complying with the provisions of this section, a PBM or
20 its agents shall not publish or otherwise disclose information
21 regarding the actual amount of rebates a PBM receives on a product
22 or therapeutic class of products, manufacturer, or pharmacy-specific
23 basis. Such information is protected as a trade secret, is not a
24 public record as defined pursuant to Section 24A.3 of Title 51 of

1 the Oklahoma Statutes, and shall not be disclosed directly or
2 indirectly, or in a manner that would allow for the identification
3 of an individual product, therapeutic class of products, or
4 manufacturer, or in a manner that would have the potential to
5 compromise the financial, competitive, or proprietary nature of the
6 information. A PBM shall impose the confidentiality protections of
7 this section on any vendor or downstream third party that performs
8 health care or administrative services on behalf of the insurer that
9 may receive or have access to rebate information.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6962.3 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. An enrollee's defined cost sharing, as defined pursuant to
14 Section 6960 of Title 36 of the Oklahoma Statutes, for each
15 prescription drug shall be calculated at the point of sale based on
16 a price that is reduced by an amount equal to one hundred percent
17 (100%) of all rebates received or to be received in connection with
18 the dispensing or administration of the prescription drug.

19 B. For any violation of this section, the Insurance
20 Commissioner may subject an insurer to an administrative penalty not
21 less than One Hundred Dollars (\$100.00), nor more than Five Thousand
22 Dollars (\$5,000.00) for each occurrence. Such administrative
23 penalty may be enforced in the same manner in which civil judgments
24 may be enforced.

1 C. Nothing in this section shall preclude an insurer from
2 decreasing an enrollee's defined cost sharing by an amount greater
3 than that required under subsection B of this section.

4 D. An insurer or its agents shall not publish or otherwise
5 disclose information regarding the actual amount of rebates an
6 insurer receives on a product or therapeutic class of products,
7 manufacturer, or pharmacy-specific basis. Such information is
8 protected as a trade secret, is not a public record pursuant to
9 Section 24A.3 of Title 51 of the Oklahoma Statutes, and shall not be
10 disclosed directly or indirectly or in a manner that would allow for
11 the identification of an individual product, therapeutic class of
12 products, or manufacturer, or in a manner that would have the
13 potential to compromise the financial, competitive, or proprietary
14 nature of the information. The confidentiality protections provided
15 in this section shall apply to any vendor or downstream third party
16 that performs healthcare or administrative services on behalf of the
17 insurer that may receive or have access to rebate information.

18 SECTION 6. AMENDATORY 36 O.S. 2021, Section 6964, is
19 amended to read as follows:

20 Section 6964. A. ~~A health insurer's~~ pharmacy and therapeutics
21 committee (P&T committee) of a health insurer or its agent including
22 pharmacy benefits managers, shall establish a formulary, which shall
23 be a list of prescription drugs, both generic and brand name, used
24

1 by practitioners to identify drugs that offer the greatest overall
2 value. The P&T committee shall review the formulary annually.

3 B. A health insurer shall prohibit conflicts of interest for
4 members of the P&T committee. The P&T committee shall meet the
5 following requirements:

6 1. A person may not serve on a P&T committee if the person is
7 currently employed or was employed within the preceding year by a
8 pharmaceutical manufacturer, developer, labeler, wholesaler or
9 distributor-;

10 2. A majority of P&T committee members shall be practicing
11 physicians, practicing pharmacists, or both, and shall be licensed
12 in this state;

13 ~~2.~~ 3. A health insurer shall require any member of the P&T
14 committee to disclose any compensation or funding from a
15 pharmaceutical manufacturer, developer, labeler, wholesaler or
16 distributor. Such P&T committee member shall be recused from voting
17 on any product manufactured or sold by such pharmaceutical
18 manufacturer, developer, labeler, wholesaler or distributor-;

19 4. P&T committee members shall practice in various clinical
20 specialties that adequately represent the needs of the health plan
21 enrollees and there shall be an adequate number of high-volume
22 specialists and specialists treating rare or orphan diseases;

23 5. The P&T committee shall meet at least on a quarterly basis;
24

1 6. P&T committee formulary development shall be conducted
2 pursuant to a transparent process, and formulary decisions and
3 rationale shall be documented in writing. Upon request, the records
4 and documents shall be made available to the health plan, subject to
5 the conditions in subsection C of this section;

6 7. If the P&T committee relies upon any third party to provide
7 cost-effectiveness analysis or research for a Medicaid Managed Care
8 organization's prescription drug policy, the P&T committee shall:

9 a. disclose to the health benefit plan, the President Pro
10 Tempore of the Senate, the Speaker of the House of
11 Representatives, and the Governor, the name of a
12 relevant third party, and

13 b. provide a process through which patients and providers
14 potentially impacted by the third party's analysis or
15 research may provide input to the P&T committee;

16 8. P&T committee members who are specialists with current
17 clinical expertise and actively treat patients in a specific
18 therapeutic area, and the specific conditions within a therapeutic
19 area, shall participate in formulary decisions regarding each
20 therapeutic area and specific condition;

21 9. The P&T committee shall base its clinical decisions on the
22 strength of scientific evidence, standards of practice, and
23 nationally accepted treatment guidelines;

1 10. The P&T committee shall consider whether a particular drug
2 has a clinically meaningful therapeutic advantage over other drugs
3 in terms of safety, effectiveness, or clinical outcome for patient
4 populations who may be treated with the drug;

5 11. The P&T committee shall evaluate and analyze treatment
6 protocols and procedures related to the health plan's formulary at
7 least annually;

8 12. The P&T committee shall review formulary management
9 activities including exceptions and appeals processes, prior
10 authorization, step therapy, quantity limits, generic substitutions,
11 therapeutic interchange, and other drug utilization management
12 activities for clinical appropriateness and consistency with
13 industry standards and patient and provider organization guidelines;

14 13. The P&T committee shall annually review and provide a
15 written report to the pharmacy benefits manager on:

- 16 a. the percentage of prescription drugs on a formulary
17 subject to each of the types of utilization management
18 described in paragraph 10 of this subsection,
19 b. rates of adherence and nonadherence to medicines by
20 therapeutic area,
21 c. rates of abandonment of medicines by therapeutic area,
22 d. recommendations for improved adherence and reduced
23 abandonment, and

1 e. recommendations for improvement in formulary
2 management practices consistent with patient and
3 provider organization and other clinical guidelines,
4 provided that the report shall be subject to the
5 conditions in subsection C of this section; and

6 14. The P&T committee shall review and make a formulary
7 decision on a new U.S. Food and Drug Administration-approved drug
8 within ninety (90) days of the drug's approval, or shall provide a
9 clinical justification if this timeframe is not met.

10 C. The health insurer, its agents including pharmacy benefits
11 managers, and the Insurance Department shall not publish or
12 otherwise disclose any confidential, proprietary information
13 including but not limited to any information that would disclose the
14 identity of a specific health plan, the price or prices charged for
15 a specific drug or class of drugs, the amount of any rebates
16 provided for a specific drug or class of drugs, the manufacturer, or
17 that would otherwise have the potential to compromise the financial,
18 competitive, or proprietary nature of the information. The
19 information shall be protected from direct or indirect disclosure as
20 confidential and proprietary information and shall not be deemed a
21 public record as defined pursuant to Section 24A.3 of Title 51 of
22 the Oklahoma Statutes. The confidentiality protections provided in
23 this section shall apply to any vendor or third party that performs
24 health care or administrative services on behalf of the pharmacy

1 benefits manager that may receive or have access to rebate
2 information.

3 SECTION 7. AMENDATORY 51 O.S. 2021, Section 24A.3, is
4 amended to read as follows:

5 Section 24A.3. As used in the Oklahoma Open Records Act:

6 1. "Record" means all documents, including, but not limited to,
7 any book, paper, photograph, microfilm, data files created by or
8 used with computer software, computer tape, disk, record, sound
9 recording, film recording, video record or other material regardless
10 of physical form or characteristic, created by, received by, under
11 the authority of, or coming into the custody, control or possession
12 of public officials, public bodies, or their representatives in
13 connection with the transaction of public business, the expenditure
14 of public funds or the administering of public property. ~~"Record"~~

15 Record does not mean:

- 16 a. computer software,
- 17 b. nongovernment personal effects,
- 18 c. unless public disclosure is required by other laws or
19 regulations, vehicle movement records of the Oklahoma
20 Transportation Authority obtained in connection with
21 the Authority's electronic toll collection system,
- 22 d. personal financial information, credit reports or
23 other financial data obtained by or submitted to a
24 public body for the purpose of evaluating credit

1 worthiness, obtaining a license, permit, or for the
2 purpose of becoming qualified to contract with a
3 public body,

4 e. any digital audio/video recordings of the toll
5 collection and safeguarding activities of the Oklahoma
6 Transportation Authority,

7 f. any personal information provided by a guest at any
8 facility owned or operated by the Oklahoma Tourism and
9 Recreation Department or the Board of Trustees ~~of~~ for
10 the Quartz Mountain Arts and Conference Center and
11 Nature Park to obtain any service at the facility or
12 by a purchaser of a product sold by or through the
13 Oklahoma Tourism and Recreation Department or the
14 Quartz Mountain Arts and Conference Center and Nature
15 Park,

16 g. a Department of Defense Form 214 (DD Form 214) filed
17 with a county clerk, including any DD Form 214 filed
18 before July 1, 2002, ~~or~~

19 h. except as provided for in Section 2-110 of Title 47 of
20 the Oklahoma Statutes,

21 (1) any record in connection with a Motor Vehicle
22 Report issued by the Department of Public Safety,
23 as prescribed in Section 6-117 of Title 47 of the
24 Oklahoma Statutes, or

1 (2) personal information within driver records, as
2 defined by the Driver's Privacy Protection Act,
3 18 United States Code, Sections 2721 through
4 2725, which are stored and maintained by the
5 Department of Public Safety, or

6 i. for the purposes of the Patient's Right to Pharmacy
7 Choice Act, any information or record that would have
8 the potential to compromise the financial,
9 competitive, or proprietary nature of information
10 about a specific drug or class of drugs, or a specific
11 product or therapeutic class of products. Additional
12 information that shall not be disclosed includes but
13 is not limited to:

14 (1) any information relating to specific drugs or
15 classes of drugs that would disclose the identity
16 of a specific health plan, drug prices, the
17 rebate amount received by a pharmacy benefits
18 manager, the rebate amount received by the
19 insurer, or the identity of the manufacturer, and

20 (2) any information relating to a product or
21 therapeutic class of products that would disclose
22 the rebate received by a pharmacy benefits
23 manager, the rebate amount received by an
24 insurer, or the identity of the manufacturer;

1 2. "Public body" shall include, but not be limited to, any
2 office, department, board, bureau, commission, agency, trusteeship,
3 authority, council, committee, trust or any entity created by a
4 trust, county, city, village, town, township, district, school
5 district, fair board, court, executive office, advisory group, task
6 force, study group, or any subdivision thereof, supported in whole
7 or in part by public funds or entrusted with the expenditure of
8 public funds or administering or operating public property, and all
9 committees, or subcommittees thereof. Except for the records
10 required by Section 24A.4 of this title, ~~"public body"~~ public body
11 does not mean judges, justices, the Council on Judicial Complaints,
12 the Legislature, or legislators;

13 3. "Public office" means the physical location where public
14 bodies conduct business or keep records;

15 4. "Public official" means any official or employee of any
16 public body as defined herein; and

17 5. "Law enforcement agency" means any public body charged with
18 enforcing state or local criminal laws and initiating criminal
19 prosecutions, including, but not limited to, police departments,
20 county sheriffs, the Department of Public Safety, the Oklahoma State
21 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
22 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
23 of Investigation.
24

SECTION 8. AMENDATORY 59 O.S. 2021, Section 357, is

amended to read as follows:

Section 357. As used in this act:

1. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan or health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, labor union, or other entity organized in the state that provides health coverage to covered individuals who are employed or reside in the state. This term does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, disability income, or other limited benefit health insurance policies and contracts that do not include prescription drug coverage;

2. "Covered individual" means a member, participant, enrollee, contract holder or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. A covered individual includes any dependent or other person provided health coverage through a policy, contract or plan for a covered individual;

3. "Department" means the ~~Oklahoma~~ Insurance Department;

4. "Maximum allowable cost" or "MAC" means the list of drug products delineating the maximum per-unit reimbursement for multiple-source prescription drugs, medical product or device;

1 5. "Multisource drug product reimbursement" (reimbursement)
2 means the total amount paid to a pharmacy inclusive of any reduction
3 in payment to the pharmacy, excluding prescription dispense fees;

4 6. "Pharmacy benefits management" means a service provided to
5 covered entities to facilitate the provision of prescription drug
6 benefits to covered individuals within the state, including
7 negotiating pricing and other terms with drug manufacturers and
8 providers. Pharmacy benefits management may include ~~any or all of~~
9 the following services:

- 10 a. claims processing, performance of drug utilization
11 review, processing of prior authorization requests,
12 retail network management and payment of claims to
13 pharmacies for prescription drugs dispensed to covered
14 individuals,
- 15 b. clinical formulary development and management
16 services,
- 17 c. rebate contracting and administration,
- 18 d. certain patient compliance, therapeutic intervention
19 and generic substitution programs, ~~or~~
- 20 e. disease management programs,
- 21 f. adjudication of appeals and grievances related to the
22 prescription drug benefit, and
- 23 g. oversight of prescription drug costs;

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

9 8. "Plan sponsor" means the employers, insurance companies,
10 unions and health maintenance organizations or any other entity
11 responsible for establishing, maintaining, or administering a health
12 benefit plan on behalf of covered individuals; and

13 9. "Provider" means a pharmacy licensed by the State Board of
14 Pharmacy, or an agent or representative of a pharmacy, including,
15 but not limited to, the pharmacy's contracting agent, which
16 dispenses prescription drugs or devices to covered individuals.

17 SECTION 9. AMENDATORY 59 O.S. 2021, Section 358, is
18 amended to read as follows:

19 Section 358. A. In order to provide pharmacy benefits
20 management or any of the services included under the definition of
21 pharmacy benefits management in this state, a pharmacy benefits
22 manager or any entity acting as one in a contractual or employment
23 relationship for a covered entity shall first obtain a license from
24

1 the ~~Oklahoma~~ Insurance Department, and the Department may charge a
2 fee for such licensure.

3 B. The Department shall establish, by regulation, licensure
4 procedures, required disclosures for pharmacy benefits managers
5 (PBMs) and other rules as may be necessary for carrying out and
6 enforcing the provisions of this ~~act~~ section. The licensure
7 procedures shall, at a minimum, include the completion of an
8 application form that shall include ~~the name and address of an agent~~
9 ~~for service of process, the payment of a requisite fee, and evidence~~
10 ~~of the procurement of a surety bond~~:

11 1. The name, address, and telephone contact number of the PBM;

12 2. The name and address of the PBM's agent for service of
13 process in the state;

14 3. The name and address of each person with management or
15 control over the PBM;

16 4. Evidence of the procurement of a surety bond;

17 5. The name and address of each person with a beneficial
18 ownership interest in the PBM;

19 6. In the case of a PBM applicant that is a partnership or
20 other unincorporated association, limited liability company, or
21 corporation, and has five or more partners, members, or
22 stockholders, the applicant shall:

23 a. specify its legal structure and the total number of
24 its partners, members, or stockholders,

1 b. specify the name, address, usual occupation, and
2 professional qualifications of the five partners,
3 members, or stockholders with the five largest
4 ownership interests in the PBM, and

5 c. upon request by the Department, furnish the Department
6 with information regarding the name, address, usual
7 occupation, and professional qualifications of any
8 other partners, members, or stockholders; and

9 7. A signed statement indicating that the PBM has not been
10 convicted of a felony and has not violated any of the requirements
11 of the Oklahoma Pharmacy Act and the Patient's Right to Pharmacy
12 Choice Act, or, if the applicant cannot provide such a statement, a
13 signed statement describing any relevant conviction or violation.

14 C. The Department may subpoena witnesses and information. Its
15 compliance officers may take and copy records for investigative use
16 and prosecutions. Nothing in this subsection shall limit the Office
17 of the Attorney General from using its investigative demand
18 authority to investigate and prosecute violations of the law.

19 D. The Department may suspend, revoke, or refuse to issue or
20 renew a license for noncompliance with any of the provisions hereby
21 established or with the rules promulgated by the Department; for
22 conduct likely to mislead, deceive or defraud the public or the
23 Department; for unfair or deceptive business practices or for
24 nonpayment of a renewal fee or fine. The Department may also levy

administrative fines for each count of which a PBM has been convicted in a Department hearing.

SECTION 10. This act shall become effective November 1, 2022.

Passed the Senate the 23rd day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2022.

Presiding Officer of the House
of Representatives