

1 ENGROSSED SENATE
2 BILL NO. 1633

By: Jett and Stephens of the
Senate

3 and

4 McEntire of the House
5

6 An Act relating to pharmacy benefits managers;
7 amending 36 O.S. 2021, Sections 6960 and 6962, which
8 relate to definitions and compliance review;
9 providing definitions; updating statutory reference;
10 prohibiting pharmacy benefits managers from imposing
11 certain charges on pharmacist and pharmacy;
12 prohibiting pharmacy benefits managers from imposing
13 clawbacks; prohibiting pharmacy benefits managers
14 from engaging in spread pricing; providing that
15 pharmacy benefits manager contracts protect
16 healthcare access; requiring pharmacy benefits
17 managers to provide certain reports; requiring
18 certain reports be published by Insurance Department;
19 establishing certain fiduciary duties for pharmacy
20 benefits managers to their clients; requiring
21 notification of certain conflicts by pharmacy
22 benefits manager to health carrier client; providing
23 for codification; and providing an effective date.
24

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

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

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

22 1. "Aggregate retained rebate percentage" means the percentage
23 of all rebates received by a pharmacy benefits manager (PBM) from
24 all pharmaceutical manufacturers which is not passed on to the PBM's

1 health plan or health insurer clients. Aggregate retained rebate
2 percentage shall be expressed without disclosing any identifying
3 information regarding any health plan, prescription drug, or
4 therapeutic class, 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 and that did not pass
8 through to the pharmacy benefits manager's health plan
9 or health insurer clients, by

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

13 2. "Carrier" means a carrier as defined pursuant to Section
14 6902 of this title;

15 3. "Clawback" means the act of recovering from the dispensing
16 pharmacy and keeping as revenue the difference between a patient's
17 co-payment and the pharmacy drug cost when the co-payment exceeds
18 the pharmacy drug cost;

19 ~~1.~~ 4. "Health insurer" means any corporation, association,
20 benefit society, exchange, partnership or individual licensed by the
21 Oklahoma Insurance Code;

22 ~~2.~~ 5. "Mail-order pharmacy" means a pharmacy licensed by this
23 state that primarily dispenses and delivers covered drugs via common
24 carrier;

1 ~~3.~~ 6. "Pharmacy benefits manager" or "PBM" means a person that
2 performs pharmacy benefits management and any other person acting
3 for such person under a contractual or employment relationship in
4 the performance of pharmacy benefits management for a managed-care
5 company, nonprofit hospital, medical service organization, insurance
6 company, third-party payor or a health program administered by a
7 department of this state;

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

11 8. "Rebate administrative fees" means fees or payments from
12 pharmaceutical manufacturers to, or otherwise retained by, a
13 pharmacy benefits manager or its designee pursuant to a contract
14 between a PBM or affiliate, and the manufacturer in connection with
15 the PBM's administering, invoicing, allocating, and collecting the
16 rebates;

17 9. "Rebate" means negotiated price concessions including but
18 not limited to base price concessions, whether described as a rebate
19 or otherwise, and reasonable estimates of any price protection
20 rebates and performance-based price concessions that may accrue,
21 directly or indirectly, to the PBM during the coverage year from a
22 manufacturer;

1 ~~5.~~ 10. "Retail pharmacy network" means retail pharmacy
2 providers contracted with a PBM in which the pharmacy primarily
3 fills and sells prescriptions via a retail, storefront location;

4 ~~6.~~ 11. "Rural service area" means a five-digit ZIP code in
5 which the population density is less than one thousand (1,000)
6 individuals per square mile;

7 12. "Spread pricing" means the act by a PBM of keeping as
8 revenue the difference between the amount paid to the PBM by a
9 health plan for prescription drugs and the amount the PBM reimburses
10 the pharmacy dispensing the drug;

11 ~~7.~~ 13. "Suburban service area" means a five-digit ZIP code in
12 which the population density is between one thousand (1,000) and
13 three thousand (3,000) individuals per square mile; and

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

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

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

23 B. A PBM, or an agent of a PBM, shall not:
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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 or submission of a claim, ~~including without limitation~~
6 ~~a fee for:~~

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

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

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

13 3. Charge a pharmacist or pharmacy a fee related to the
14 credentialing of a pharmacy or pharmacist;

15 4. Charge a pharmacist or pharmacy a fee related to the
16 application, enrollment, or participation in a retail pharmacy
17 network;

18 5. Charge a pharmacist or pharmacy a fee related to the
19 development or management of claims processing services or claims
20 payment services related to participation in a retail pharmacy
21 network;

22 6. Reimburse a pharmacy or pharmacist in the state an amount
23 less than the amount that the PBM reimburses a pharmacy owned by or
24 under common ownership with a PBM for providing the same covered

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

5 ~~4.~~ 7. Deny a pharmacy the opportunity to participate in any
6 pharmacy network at preferred participation status if the pharmacy
7 is willing to accept the terms and conditions that the PBM has
8 established for other pharmacies as a condition of preferred network
9 participation status;

10 ~~5.~~ 8. Deny, limit or terminate a pharmacy's contract based on
11 employment status of any employee who has an active license to
12 dispense, despite probation status, with the State Board of
13 Pharmacy;

14 ~~6.~~ 9. Retroactively deny or reduce reimbursement for a covered
15 service claim after returning a paid claim response as part of the
16 adjudication of the claim, unless:

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

21 ~~or~~

22 ~~7.~~ 10. Fail to make any payment due to a pharmacy or pharmacist
23 for covered services properly rendered in the event a PBM terminates
24 a pharmacy or pharmacist from a pharmacy benefits manager network;

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

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

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

8 1. A PBM contract shall:

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

16 b. ensure that any entity that provides pharmacy benefits
17 management services under a contract with any such
18 health plan or health insurance coverage does not,
19 with respect to such plan or coverage, restrict,
20 directly or indirectly, a pharmacy that dispenses a
21 prescription drug from informing, or penalize such
22 pharmacy for informing, a covered individual of any
23 differential between the individual's out-of-pocket
24 cost under the plan or coverage with respect to

1 acquisition of the drug and the amount an individual
2 would pay for acquisition of the drug without using
3 any health plan or health insurance coverage, and
4 c. ensure that access to local healthcare is not
5 jeopardized by immediately modifying any rates or
6 provisions that would result in a reimbursement below
7 the pharmacy's cost to acquire and dispense the
8 medication or product.

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

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

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6962.1 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Beginning on November 1, 2022, and on an annual basis
24 thereafter, a pharmacy benefits manager (PBM) shall provide the

1 Insurance Department with a report containing the following
2 information from the prior calendar year as it pertains to pharmacy
3 benefits provided by health insurers to enrollees in the state:

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

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

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

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

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

16 6. The aggregate retained rebate percentage; and

17 7. Across all of the pharmacy benefits manager's contractual or
18 other relationships with all health plans or health insurers, the
19 highest aggregate retained rebate percentage, the lowest aggregate
20 retained rebate percentage, and the mean aggregate retained rebate
21 percentage.

22 B. The Department shall publish in a timely manner the
23 information that it receives under subsection A of this section on a
24 publicly available website, provided that such information shall be

1 made available in a form that does not disclose the identity of a
2 specific health plan or the identity of a specific manufacturer, the
3 prices charged for specific drugs or classes of drugs, or the amount
4 of any rebates provided for specific drugs or classes of drugs.

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

8 A. A pharmacy benefits manager (PBM) shall have a fiduciary
9 duty to any health carrier and health insurer clients and shall
10 discharge that duty in accordance with the provisions of state and
11 federal law.

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

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

18 SECTION 5. This act shall become effective November 1, 2022.
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1 Passed the Senate the 22nd day of March, 2022.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2022.

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8 _____
9 Presiding Officer of the House
10 of Representatives