

1 ENGROSSED SENATE
2 BILL NO. 1860

By: McCortney, Taylor, Bullard,
Burns, Garvin, Stanley,
Pemberton, Standridge,
Stephens, Rader, Coleman,
Pederson, Simpson, Kidd,
Murdock, Jech, Leewright,
and Rogers of the Senate

and

McEntire, Olsen, Hasenbeck,
and Pae of the House

8
9 An Act relating to the Patient's Right to Pharmacy
10 Choice Act; amending 36 O.S. 2021, Sections 6960,
6961, 6962, and 6963, which relate to definitions,
11 retail pharmacy network access standards, compliance
review, and health insurer monitoring; defining
12 terms; modifying definition; expanding retail
pharmacy network access standards; prohibiting
13 pharmacy benefits managers from requiring patient use
affiliated pharmacy; providing for expansion of
14 pharmacy network participation; prohibiting provider
contracts from limiting the ability of a pharmacy to
disclose certain health care and cost information;
15 providing health insurers performing pharmacy
benefits management activities be responsible for
16 certain conduct; modifying patient choices of in-
network pharmacy; providing that pharmacy benefits
17 managers not require or incentivize individuals
through certain means; construing provision;
18 repealing 36 O.S. 2021, Section 6964, which relates
to Pharmacy and Therapeutics Committees; updating
19 statutory reference; and providing an effective date.

20
21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is
23 amended to read as follows:
24

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

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

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

9 3. "Pharmacy benefits management" means any or all of the
10 following activities:

11 a. provider contract negotiation and/or provider network
12 administration including decisions related to provider
13 network participation status,

14 b. drug rebate contract negotiation or drug rebate
15 administration, and

16 c. claims processing which may include claim billing and
17 payment services;

18 4. "Pharmacy benefits manager" or "PBM" means a person or
19 entity that performs pharmacy benefits management activities and any
20 other person or entity acting for such a person or entity performing
21 pharmacy benefits management activities. under a contractual or
22 employment relationship in the performance of pharmacy benefits
23 management for a managed-care company, nonprofit hospital, medical
24 service organization, insurance company, third party payer or a

~~health program administered by a department of this state~~
Notwithstanding any other provision within the Patient's Right to
Pharmacy Choice Act, a self-funded plan administered by an employer
or organized labor union who negotiates and executes all provider
contracts directly with a pharmacy or the pharmacy's contracted
pharmacy services administrative organization, and a pharmacy
provider who does not use a pharmacy services administrative
organization shall not be deemed a pharmacy benefits manager of its
own group health plan and shall not be restricted in its ability to
design and manage its own group health plan;

~~4. "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;~~

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

~~5.~~ 6. "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.~~ 7. "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;

1 8. "Specialty drug" means prescription medication that requires
2 special handling, administration, or monitoring and is used for the
3 treatment of patients with serious health conditions requiring
4 complex therapies. Specialty drugs shall also include drugs that
5 are limited in distribution by the manufacturer and may be purchased
6 only at specialty pharmacies;

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

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

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

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

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

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

1 3. At least ninety percent (90%) of covered individuals
2 residing in a each suburban service area live within five (5) miles
3 of a retail pharmacy participating in the PBM's retail pharmacy
4 network;

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

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

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

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

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

23 D. Pharmacy benefits managers shall not in any manner on any
24 material, including but not limited to mail and ID cards, include

1 the name of any pharmacy, hospital or other providers unless it
2 specifically lists all pharmacies, hospitals and providers
3 participating in the preferred and nonpreferred pharmacy and health
4 networks.

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

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

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

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

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

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

23 3. Reimburse a pharmacy or pharmacist in the state an amount
24 less than the amount that the PBM reimburses a pharmacy owned by or

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

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

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

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

- 20 a. the original claim was submitted fraudulently, or
- 21 b. to correct errors identified in an audit, so long as
- 22 the audit was conducted in compliance with Sections
- 23 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 24 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 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
healthcare 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.

~~A pharmacy benefits manager's contract with a participating
pharmacist or pharmacy~~ 3. Provider contracts 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

1 review of a pharmacy benefits manager's compliance with the
2 requirements under the Patient's Right to Pharmacy Choice Act.

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

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

9 Section 6963. A. A health insurer shall be responsible for
10 monitoring all activities carried out by, or on behalf of, the
11 health insurer under the Patient's Right to Pharmacy Choice Act, and
12 for ensuring that all requirements of ~~this act~~ Section 6958 et seq.
13 of this title 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~~ Section 6958 et seq. of this title 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. 1. An individual's A patient's choice of in-network
5 provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether
6 that pharmacy is in a preferred or nonpreferred network, a retailer
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 a. using any ~~discounts in cost-sharing or a~~ reduction in
12 copay, ~~or~~ the number of copays, or any other patient-
13 copay equivalent to individuals to receive
14 prescription drugs from an individual's choice of in-
15 network pharmacy, or

16 b. using financial incentives to differentiate between
17 in-network pharmacies, whether that pharmacy is in a
18 preferred or nonpreferred network, a retail pharmacy,
19 mail order pharmacy, or any other type of pharmacy.

20 2. Nothing in this subsection shall be construed to prohibit a
21 person or entity participating in pharmacy benefits management
22 activities from directing a patient to use a specific pharmacy for
23 the purchase of a specialty drug as defined in paragraph 8 of
24

1 Section 1 of this act in the event the patient's chosen in-network
2 pharmacy is unable to purchase and dispense the specialty drug.

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

7 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is
8 hereby repealed.

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

10 Passed the Senate the 22nd day of March, 2022.

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12 _____
13 Presiding Officer of the Senate

14 Passed the House of Representatives the ____ day of _____,
15 2022.

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17 _____
18 Presiding Officer of the House
19 of Representatives
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