

1 ENGROSSED SENATE
2 BILL NO. 821

By: McCortney, Murdock, Kidd,
Pemberton, Stephens,
Garvin, Stanley, Bullard,
Rogers, Standridge, Hicks,
Weaver, Jett, Dugger,
Simpson, Hamilton, Hall,
Jech, Taylor, Boren,
Pederson, Allen, Coleman,
Burns, Bergstrom and
Dossett (J.J.) of the
Senate

and

McEntire, Moore, Frix,
Grego, Pae and Boles of the
House

12 An Act relating to the Patient's Right to Pharmacy
13 Choice Act; amending Section 3, Chapter 426, O.S.L.
14 2019 (36 O.S. Supp. 2020, Section 6960), which
15 relates to definitions; adding definitions of
16 pharmacy benefits management and retail pharmacy;
17 modifying definitions; amending Section 4, Chapter
18 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6961),
19 which relates to retail pharmacy network access
20 standards; specifying access standards; modifying
21 prohibition on pharmacy benefit managers; amending
22 Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp.
23 2020, Section 6962), which relates to compliance
24 review; modifying certain contract restrictions;
updating statutory reference; amending Section 6,
Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section
6963), which relates to health insurer monitoring;
modifying certain prohibitions on health insurers and
pharmacy benefit managers; conforming language;
repealing Section 7, Chapter 426, O.S.L. 2019 (36
O.S. Supp. 2020, Section 6964), which relates to
health insurer formularies; and providing an
effective date.

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

2 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.
3 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as
4 follows:

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

7 1. "Health insurer" means any corporation, association, benefit
8 society, exchange, partnership or individual licensed by the
9 Oklahoma Insurance Code;

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

13 3. "Pharmacy benefits management" means any or all of the
14 following activities:

15 a. provider contract negotiation and/or provider network
16 administration including decisions related to provider
17 network participation status,

18 b. drug rebate contract negotiation or drug rebate
19 administration, and

20 c. claims processing which may include claim billing and
21 payment services;

22 4. "Pharmacy benefits manager" or "PBM" means a person or
23 entity that performs pharmacy benefits management activities and any
24 other person or entity acting for ~~such~~ a person or entity performing

1 pharmacy benefits management activities ~~under a contractual or~~
2 ~~employment relationship in the performance of pharmacy benefits~~
3 ~~management for a managed care company, nonprofit hospital, medical~~
4 ~~service organization, insurance company, third-party payor or a~~
5 ~~health program administered by a department of this state;~~

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

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

13 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers
14 contracted with a PBM in which the pharmacy primarily fills and
15 sells prescriptions via a retail, storefront location;

16 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
17 the population density is less than one thousand (1,000) individuals
18 per square mile;

19 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
20 which the population density is between one thousand (1,000) and
21 three thousand (3,000) individuals per square mile; and

22 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
23 the population density is greater than three thousand (3,000)
24 individuals per square mile.

1 SECTION 2. AMENDATORY Section 4, Chapter 426, O.S.L.

2 2019 (36 O.S. Supp. 2020, Section 6961), is amended to read as
3 follows:

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

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

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

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

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

22 5. At least seventy percent (70%) of covered individuals
23 residing in ~~a~~ each rural service area live within fifteen (15) miles
24

1 of a retail pharmacy participating in the PBM's retail pharmacy
2 network; and

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

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

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

13 D. Pharmacy benefits managers shall not in any manner on any
14 material, including but not limited to mail and ID cards, include
15 the name of any pharmacy, hospital or other providers unless it
16 specifically lists all pharmacies, hospitals and providers
17 participating in the preferred and nonpreferred pharmacy and health
18 networks.

19 SECTION 3. AMENDATORY Section 5, Chapter 426, O.S.L.
20 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
21 follows:

22 Section 6962. A. The Oklahoma Insurance Department shall
23 review and approve retail pharmacy network access for all pharmacy
24

benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~
~~act~~ 6961 of this 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 pharmacy the opportunity to participate in any form
of pharmacy network at preferred participation status, whether in-
network, preferred or otherwise, if the pharmacy is willing to

1 accept the terms and conditions that the PBM has established for
2 other pharmacies as a condition ~~of preferred network~~ for
3 participation status in the network or networks of the pharmacy's
4 choice;

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

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

- 12 a. the original claim was submitted fraudulently, or
- 13 b. to correct errors identified in an audit, so long as
- 14 the audit was conducted in compliance with Sections
- 15 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 16 or

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

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

23 1. A ~~PBM~~ provider contract shall not prohibit, restrict or
24 penalize a pharmacy or pharmacist in any way for disclosing to an

1 individual any health care information that the pharmacy or
2 pharmacist deems appropriate regarding:

3 a. ~~not restrict, directly or indirectly, any pharmacy~~
4 ~~that dispenses a prescription drug from informing, or~~
5 ~~penalize such pharmacy for informing, an individual of~~
6 ~~any differential between the individual's out-of-~~
7 ~~pocket cost or coverage with respect to acquisition of~~
8 ~~the drug and the amount an individual would pay to~~
9 ~~purchase the drug directly~~ the nature of treatment,
10 risks or alternatives to the prescription drug being
11 dispensed, and

12 b. ~~ensure that any entity that provides pharmacy benefits~~
13 ~~management services under a contract with any such~~
14 ~~health plan or health insurance coverage does not,~~
15 ~~with respect to such plan or coverage, restrict,~~
16 ~~directly or indirectly, a pharmacy that dispenses a~~
17 ~~prescription drug from informing, or penalize such~~
18 ~~pharmacy for informing, a covered individual of any~~
19 ~~differential between the individual's out-of-pocket~~
20 ~~cost under the plan or coverage with respect to~~
21 ~~acquisition of the drug and the amount an individual~~
22 ~~would pay for acquisition of the drug without using~~
23 ~~any health plan or health insurance coverage~~ the

1 availability of alternate therapies, consultations or
2 tests,

3 c. the decision of utilization reviewers or similar
4 persons to authorize or deny services, and

5 d. the process that is used to authorize or deny
6 healthcare services and structures used by the health
7 insurer.

8 2. Provider contracts shall not prohibit a pharmacy or
9 pharmacist from discussing information regarding the total cost of
10 pharmacist services for a prescription drug or from selling a more
11 affordable alternative to the covered person if such alternative is
12 available.

13 ~~A pharmacy benefits manager's contract with a participating~~
14 ~~pharmacist or pharmacy~~ 3. Provider contracts shall not prohibit,
15 restrict or limit disclosure of information to the Insurance
16 Commissioner, law enforcement or state and federal governmental
17 officials investigating or examining a complaint or conducting a
18 review of a pharmacy benefits manager's compliance with the
19 requirements under the Patient's Right to Pharmacy Choice Act.

20 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
21 an electronic claim inquiry processing system using the National
22 Council for Prescription Drug Programs' current standards to
23 communicate information to pharmacies submitting claim inquiries.

SECTION 4. AMENDATORY Section 6, Chapter 426, O.S.L.

2019 (36 O.S. Supp. 2020, Section 6963), is amended to read as follows:

Section 6963. A. A health insurer shall be responsible for monitoring all activities carried out by, or on behalf of, the health insurer under the Patient's Right to Pharmacy Choice Act, and for ensuring that all requirements of this act are met.

B. Whenever a health insurer performs pharmacy benefit management on its own behalf or contracts with another person or entity to perform ~~activities required under this act~~ pharmacy benefit management, the health insurer shall be responsible for monitoring the activities and conduct of that person or entity with whom the health insurer contracts and for ensuring that the requirements of this act are met.

C. An individual may be notified at the point of sale when the cash price for the purchase of a prescription drug is less than the individual's copayment or coinsurance price for the purchase of the same prescription drug.

D. A health insurer or pharmacy benefits manager (PBM) shall not restrict an individual's choice of in-network provider for prescription drugs.

E. ~~An individual's~~ A patient's choice of in-network provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether that pharmacy is in a preferred or nonpreferred network, a retailer

1 pharmacy, mail-order pharmacy or any other pharmacy. A health
2 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-
3 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not
4 require or incentivize ~~using~~ individuals by:

5 1. Using any discounts in cost-sharing or a reduction in copay
6 or the number of copays to individuals to receive prescription drugs
7 ~~from an individual's choice of in-network pharmacy~~ from an
8 individual's choice of in-network pharmacy; or

9 2. Differentiating between in-network pharmacies, whether that
10 pharmacy is in a preferred or nonpreferred network, a retail
11 pharmacy, mail order pharmacy or any other type of pharmacy.

12 The provisions of this subsection shall not apply to any plan
13 subject to regulation under Medicare Part D, 42 U.S.C. Section
14 1395w-101, et seq.

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

19 SECTION 5. REPEALER Section 7, Chapter 426, O.S.L. 2019
20 (36 O.S. Supp. 2020, Section 6964), is hereby repealed.

21 SECTION 6. This act shall become effective November 1, 2021.

1 Passed the Senate the 10th day of March, 2021.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2021.

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8 _____
9 Presiding Officer of the House
10 of Representatives