

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3512

By: McEntire, **Talley**,
 Fetgatter, **Johns**, **Moore**,
 Frix, **Dollens**, **Sims**, **West**
 (Tammy), **Hasenbeck**,
 Townley, **Dobrinski**, **Kerbs**,
 May, **Lawson**, and **Hilbert** of
 the House

9 and

10 **McCortney** of the Senate

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13 COMMITTEE SUBSTITUTE

14 An Act relating to the Patient's Right to Pharmacy
15 Choice Act; amending 36 O.S. 2021, Section 6960,
16 which relates to definitions; defining terms;
17 modifying definition; amending 36 O.S. 2021, Section
18 6961, which relates to retail pharmacy network access
19 standards; specifying access standards; amending 36
20 O.S. 2021, Section 6962, which relates to compliance
21 review; updating statutory reference; modifying
22 prohibition on pharmacy benefits managers; modifying
23 certain contract restrictions; amending 36 O.S. 2021,
24 Section 6963, which relates to health insurer
 monitoring; modifying certain prohibitions on health
 insurers and pharmacy benefits managers; conforming
 language; repealing 36 O.S. 2021, Section 6964, which
 relates to health insurer formularies; and providing
 an effective date.

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

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

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

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

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

11 3. "Pharmacy benefits management" means any or all of the
12 following activities:

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

16 b. drug rebate contract negotiation or drug rebate
17 administration, and

18 c. claims processing which may include claim billing and
19 payment services;

20 4. "Pharmacy benefits manager" or "PBM" means a person or
21 entity that performs pharmacy benefits management activities and any
22 other person or entity acting for such a person under a contractual
23 or employment relationship in the performance of pharmacy benefits
24 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. "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 or entity performing pharmacy benefits management activities.~~

Notwithstanding any other provision of the Patient's Right to Pharmacy Choice Act, a pharmacy provider who does not use a pharmacy services administrative organization and a self-funded plan administered by an employee or organized labor union who negotiates and executes all provider contracts directly with 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;

5. "Pharmacy services administrative organization" means an entity that contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefits manager, third-party payor, or other entities, including but not limited to negotiating, executing, or administering contracts with the pharmacy benefits manager;

6. "Retail pharmacy" or "provider" means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes, licensed by

1 the State Board of Pharmacy or an agent or representative of a
2 pharmacy;

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

6 ~~6.~~ 8. "Rural service area" means a five-digit ZIP code in which
7 the population density is less than one thousand (1,000) individuals
8 per square mile;

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

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

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

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

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

23 2. At least ninety percent (90%) of covered individuals
24 residing in ~~an~~ each urban service area live within five (5) miles of

1 a retail pharmacy designated as a preferred participating pharmacy
2 in the PBM's retail pharmacy network;

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

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

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

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

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

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

1 D. Pharmacy benefits managers shall not in any manner on any
2 material, including but not limited to mail and ID cards, include
3 the name of any pharmacy, hospital or other providers unless it
4 specifically lists all pharmacies, hospitals and providers
5 participating in the preferred and nonpreferred pharmacy and health
6 networks.

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

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

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

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

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

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

1 3. Reimburse a pharmacy or pharmacist in the state an amount
2 less than the amount that the PBM reimburses a pharmacy owned by or
3 under common ownership with a PBM for providing the same covered
4 services. The reimbursement amount paid to the pharmacy shall be
5 equal to the reimbursement amount calculated on a per-unit basis
6 using the same generic product identifier or generic code number
7 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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

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

- 22 a. the original claim was submitted fraudulently, or
- 23 b. to correct errors identified in an audit, so long as
- 24 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 or pharmacist from a pharmacy benefits manager network.

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~~ provider contract shall not prohibit, restrict, or penalize a pharmacy or pharmacist in any way for disclosing to an individual any health care information that the pharmacy or pharmacist deems appropriate regarding:

- 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~~ the nature of treatment, risks, or alternatives to the prescription drug being dispensed, 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,~~

1 ~~with respect to such plan or coverage, restrict,~~
2 ~~directly or indirectly, a pharmacy that dispenses a~~
3 ~~prescription drug from informing, or penalize such~~
4 ~~pharmacy for informing, a covered individual of any~~
5 ~~differential between the individual's out-of-pocket~~
6 ~~cost under the plan or coverage with respect to~~
7 ~~acquisition of the drug and the amount an individual~~
8 ~~would pay for acquisition of the drug without using~~
9 ~~any health plan or health insurance coverage.~~

10 ~~2. A pharmacy benefits manager's contract with a participating~~
11 ~~pharmacist or pharmacy~~

12 the availability of alternate therapies,
13 consultations, or tests,

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

16 d. the process that is used to authorize or deny health
17 care services and structures used by the health
18 insurer.

19 2. Provider contracts shall not prohibit a pharmacy or
20 pharmacist from discussing information regarding the total cost of
21 pharmacist services for a prescription drug or from selling a more
22 affordable alternative to the covered person if such alternative is
23 available.

1 3. Provider contracts shall not prohibit, restrict or limit
2 disclosure of information to the Insurance Commissioner, law
3 enforcement or state and federal governmental officials
4 investigating or examining a complaint or conducting a review of a
5 pharmacy benefits manager's compliance with the requirements under
6 the Patient's Right to Pharmacy Choice Act.

7 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
8 an electronic claim inquiry processing system using the National
9 Council for Prescription Drug Programs' current standards to
10 communicate information to pharmacies submitting claim inquiries.

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

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

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

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

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

8 E. ~~An individual's~~ A patient's choice of in-network provider
9 may include ~~a retail~~ an in-network pharmacy ~~or a,~~ whether that
10 pharmacy is in a preferred or nonpreferred network, a retail
11 pharmacy, mail-order pharmacy, or any other pharmacy. A health
12 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-
13 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not
14 require or incentivize ~~using~~ individuals by:

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

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

22 F. A health insurer, pharmacy or PBM shall adhere to all
23 Oklahoma laws, statutes and rules when mailing, shipping and/or
24

1 causing to be mailed or shipped prescription drugs into ~~the State of~~
2 ~~Oklahoma~~ this state.

3 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is
4 hereby repealed.

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

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7 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03/02/2022 -
8 DO PASS, As Amended and Coauthored.

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