

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

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

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1324

By: McCortney, Hicks, and
 Pederson of the Senate

and

McEntire of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to pharmacy benefits managers;
12 amending 36 O.S. 2021, Sections 6960 and 6962, which
13 relate to definitions and compliance review; adding
14 and modifying definitions; prohibiting certain
15 contractual provisions; requiring publication of
16 certain formulary information; requiring pharmacy
17 benefits managers to provide certain reports;
18 requiring certain publication of certain monies
19 received by pharmacy benefits managers; providing
20 confidentiality of certain records; providing certain
21 provisions and compliance measures for defined cost
22 sharing; amending 36 O.S. 2021, Section 6964, which
23 relates to formulary decisions to identify drugs that
24 offer greatest value; modifying requirements and
 duties for pharmacy and therapeutics committee
 members; amending 51 O.S. 2021, Section 24A.3, which
 relates to open records; exempting certain
 information from open records; amending 59 O.S. 2021,
 Sections 357 and 358, which relate to definitions and
 pharmacy benefits management licensure; modifying
 definitions; modifying required information for
 certain application forms; providing for
 codification; and providing an effective date.

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

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

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

6 1. "Administrative fees" means fees or payments from
7 pharmaceutical manufacturers to, or otherwise retained by, a
8 pharmacy benefits manager (PBM) or its designee pursuant to a
9 contract between a PBM or affiliate and the manufacturer in
10 connection with the PBM's administering, invoicing, allocating, and
11 collecting the rebates;

12 2. "Aggregate retained rebate percentage" means the percentage
13 of all rebates received by a PBM from all pharmaceutical
14 manufacturers which is not passed on to the PBM's health plan or
15 health insurer clients. The aggregate retained rebate percentage
16 shall be expressed without disclosing any identifying information
17 regarding any health plan, prescription drug, or therapeutic class,
18 and shall be calculated by dividing:

19 a. the aggregate dollar amount of all rebates that the
20 PBM received during the prior calendar year from all
21 pharmaceutical manufacturers that did not pass through
22 to the pharmacy benefits manager's health plan or
23 health insurer clients, by

24

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

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

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

5. "Generic equivalent" means a drug that is designated as therapeutically equivalent by the United States Food and Drug Administration's "Approved Drug Products with Therapeutic Equivalence Evaluations"; provided, however, a drug shall not be considered a generic equivalent until the drug becomes nationally available;

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

7. "Health insurer administrative service fees" means fees or payments from a health insurer or its designee to, or otherwise retained by, a PBM or its designee pursuant to a contract between a PBM or affiliate and the health insurer or its designee in

1 connection with the PBM's managing or administering the pharmacy
2 benefit and administering, invoicing, allocating, and collecting
3 rebates;

4 8. "Health plan" means a policy, contract, certification, or
5 agreement offered or issued by a health insurer to provide, deliver,
6 arrange for, pay for, or reimburse any of the costs of health
7 services;

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

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

13 ~~3.~~ 11. "Pharmacy benefits manager" or "PBM" means a person
14 that, either directly or through an intermediary, performs pharmacy
15 benefits management, as defined by paragraph 6 of Section 357 of
16 Title 59 of the Oklahoma Statutes, and any other person acting for
17 such person under a contractual or employment relationship in the
18 performance of pharmacy benefits management for a managed-care
19 company, nonprofit hospital, medical service organization, insurance
20 company, third-party payor or a health program administered by a
21 department of this state;

22 ~~4.~~ 12. "Pharmacy and therapeutics committee" or "P&T committee"
23 means a committee at a hospital or a health insurance plan that
24 decides which drugs will appear on that entity's drug formulary;

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

6 14. "Rebates" means:

7 a. negotiated price concessions including but not limited
8 to base price concessions, whether described as a
9 rebate or otherwise, and reasonable estimates of any
10 price protection rebates and performance-based price
11 concessions that may accrue directly or indirectly to
12 the PBM during the coverage year from a manufacturer,
13 dispensing pharmacy, or other party in connection with
14 the dispensing or administration of a prescription
15 drug, and

16 b. reasonable estimates of any price concessions, fees,
17 and other administrative costs that are passed
18 through, or are reasonably anticipated to be passed
19 through, to the PBM and serve to reduce the PBM's
20 liabilities for a prescription drug;

21 ~~5.~~ 15. "Retail pharmacy network" means retail pharmacy
22 providers contracted with a PBM in which the pharmacy primarily
23 fills and sells prescriptions via a retail, storefront location;
24

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

4 ~~7.~~ 17. "Suburban service area" means a five-digit ZIP code in
5 which the population density is between one thousand (1,000) and
6 three thousand (3,000) individuals per square mile; and

7 ~~8.~~ 18. "Urban service area" means a five-digit ZIP code in
8 which the population density is greater than three thousand (3,000)
9 individuals per square mile.

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

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

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

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

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

22 a. the submission of a claim,

23 b. enrollment or participation in a retail pharmacy
24 network, or

1 c. the development or management of claims processing
2 services or claims payment services related to
3 participation in a retail pharmacy network;

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

11 4. Deny a pharmacy the opportunity to participate in any
12 pharmacy network at preferred participation status if the pharmacy
13 is willing to accept the terms and conditions that the PBM has
14 established for other pharmacies as a condition of preferred network
15 participation status;

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

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

23 a. the original claim was submitted fraudulently, or
24

1 b. to correct errors identified in an audit, so long as
2 the audit was conducted in compliance with Sections
3 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
4 or

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

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

11 1. A PBM contract shall:

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

19 b. ensure that any entity that provides pharmacy benefits
20 management services under a contract with any such
21 health plan or health insurance coverage does not,
22 with respect to such plan or coverage, restrict,
23 directly or indirectly, a pharmacy that dispenses a
24 prescription drug from informing, or penalize such

1 pharmacy for informing, a covered individual of any
2 differential between the individual's out-of-pocket
3 cost under the plan or coverage with respect to
4 acquisition of the drug and the amount an individual
5 would pay for acquisition of the drug without using
6 any health plan or health insurance coverage,

7 c. not prohibit from or penalize for a pharmacy or
8 pharmacist disclosing to an individual information
9 regarding the existence and clinical efficacy of a
10 generic equivalent that would be less expensive to the
11 enrollee under his or her health plan prescription
12 drug benefit or outside his or her health plan
13 prescription drug benefit, without requesting any
14 health plan reimbursement, than the drug that was
15 originally prescribed, and

16 d. not prohibit from or penalize for a pharmacy or
17 pharmacist selling to an individual, instead of a
18 particular prescribed drug, therapeutically equivalent
19 drug that would be less expensive to the enrollee
20 under his or her health plan prescription drug benefit
21 or outside his or her health plan prescription drug
22 benefit, without requesting any health plan
23 reimbursement, than the drug that was originally
24 prescribed.

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

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

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

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

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

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

3 2. The aggregate dollar amount of all administrative fees that
4 the PBM received;

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

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

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

13 6. The aggregate retained rebate percentage; and

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

19 B. The Department shall publish in a timely manner the
20 information that it receives under subsection A of this section on a
21 publicly available website, provided that such information shall be
22 made available in a form that does not disclose the identity of a
23 specific health plan or the identity of a specific manufacturer, the
24

1 prices charged for specific drugs or classes of drugs, or the amount
2 of any rebates provided for specific drugs or classes of drugs.

3 C. The PBM and the Department shall not publish or otherwise
4 disclose any information that would disclose the identity of a
5 specific health plan, any prices charged for a specific drug or
6 class of drugs, the amount of any rebates provided for a specific
7 drug or class of drugs, the manufacturer, or information that would
8 otherwise have the potential to compromise the financial,
9 competitive, or proprietary nature of the information. The
10 information shall be protected from direct or indirect disclosure as
11 confidential and proprietary information and shall not be deemed a
12 public record as defined pursuant to Section 24A.3 of Title 51 of
13 the Oklahoma Statutes. A PBM shall impose the confidentiality
14 protections of this section on any vendor or downstream third party
15 that performs health care or administrative services on behalf of
16 the PBM that may receive or have access to rebate information.

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

20 A. An enrollee's defined cost sharing, as defined pursuant to
21 Section 6960 of Title 36 of the Oklahoma Statutes, for each
22 prescription drug shall be calculated at the point of sale based on
23 a price that is reduced by an amount equal to one hundred percent
24

1 (100%) of all rebates received, or to be received, in connection
2 with the dispensing or administration of the prescription drug.

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

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

12 D. In complying with the provisions of this section, a PBM or
13 its agents shall not publish or otherwise disclose information
14 regarding the actual amount of rebates a PBM receives on a product
15 or therapeutic class of products, manufacturer, or pharmacy-specific
16 basis. Such information is protected as a trade secret, is not a
17 public record as defined pursuant to Section 24A.3 of Title 51 of
18 the Oklahoma Statutes, and shall not be disclosed directly or
19 indirectly, or in a manner that would allow for the identification
20 of an individual product, therapeutic class of products, or
21 manufacturer, or in a manner that would have the potential to
22 compromise the financial, competitive, or proprietary nature of the
23 information. A PBM shall impose the confidentiality protections of
24 this section on any vendor or downstream third party that performs

1 health care or administrative services on behalf of the insurer that
2 may receive or have access to rebate information.

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

6 A. An enrollee's defined cost sharing, as defined pursuant to
7 Section 6960 of Title 36 of the Oklahoma Statutes, for each
8 prescription drug shall be calculated at the point of sale based on
9 a price that is reduced by an amount equal to one hundred percent
10 (100%) of all rebates received or to be received in connection with
11 the dispensing or administration of the prescription drug.

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

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

21 D. An insurer or its agents shall not publish or otherwise
22 disclose information regarding the actual amount of rebates an
23 insurer receives on a product or therapeutic class of products,
24 manufacturer, or pharmacy-specific basis. Such information is

1 protected as a trade secret, is not a public record pursuant to
2 Section 24A.3 of Title 51 of the Oklahoma Statutes, and shall not be
3 disclosed directly or indirectly or in a manner that would allow for
4 the identification of an individual product, therapeutic class of
5 products, or manufacturer, or in a manner that would have the
6 potential to compromise the financial, competitive, or proprietary
7 nature of the information. The confidentiality protections provided
8 in this section shall apply to any vendor or downstream third party
9 that performs healthcare or administrative services on behalf of the
10 insurer that may receive or have access to rebate information.

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

13 Section 6964. A. A ~~health insurer's~~ pharmacy and therapeutics
14 committee (P&T committee) of a health insurer or its agent including
15 pharmacy benefits managers, shall establish a formulary, which shall
16 be a list of prescription drugs, both generic and brand name, used
17 by practitioners to identify drugs that offer the greatest overall
18 value. The P&T committee shall review the formulary annually.

19 B. A health insurer shall prohibit conflicts of interest for
20 members of the P&T committee. The P&T committee shall meet the
21 following requirements:

22 1. A person may not serve on a P&T committee if the person is
23 currently employed or was employed within the preceding year by a
24

1 pharmaceutical manufacturer, developer, labeler, wholesaler or
2 distributor~~;~~;

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

6 ~~2.~~ 3. A health insurer shall require any member of the P&T
7 committee to disclose any compensation or funding from a
8 pharmaceutical manufacturer, developer, labeler, wholesaler or
9 distributor. Such P&T committee member shall be recused from voting
10 on any product manufactured or sold by such pharmaceutical
11 manufacturer, developer, labeler, wholesaler or distributor~~;~~;

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

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

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

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

1 a. disclose to the health benefit plan, the President Pro
2 Tempore of the Senate, the Speaker of the House of
3 Representatives, and the Governor, the name of a
4 relevant third party, and

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

8 8. P&T committee members who are specialists with current
9 clinical expertise and actively treat patients in a specific
10 therapeutic area, and the specific conditions within a therapeutic
11 area, shall participate in formulary decisions regarding each
12 therapeutic area and specific condition;

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

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

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

23 12. The P&T committee shall review formulary management
24 activities including exceptions and appeals processes, prior

1 authorization, step therapy, quantity limits, generic substitutions,
2 therapeutic interchange, and other drug utilization management
3 activities for clinical appropriateness and consistency with
4 industry standards and patient and provider organization guidelines;

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

- 7 a. the percentage of prescription drugs on a formulary
8 subject to each of the types of utilization management
9 described in paragraph 10 of this subsection,
- 10 b. rates of adherence and nonadherence to medicines by
11 therapeutic area,
- 12 c. rates of abandonment of medicines by therapeutic area,
- 13 d. recommendations for improved adherence and reduced
14 abandonment, and
- 15 e. recommendations for improvement in formulary
16 management practices consistent with patient and
17 provider organization and other clinical guidelines,
18 provided that the report shall be subject to the
19 conditions in subsection C of this section; and

20 14. The P&T committee shall review and make a formulary
21 decision on a new U.S. Food and Drug Administration-approved drug
22 within ninety (90) days of the drug's approval, or shall provide a
23 clinical justification if this timeframe is not met.
24

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

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

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

21 1. "Record" means all documents, including, but not limited to,
22 any book, paper, photograph, microfilm, data files created by or
23 used with computer software, computer tape, disk, record, sound
24 recording, film recording, video record or other material regardless

1 of physical form or characteristic, created by, received by, under
2 the authority of, or coming into the custody, control or possession
3 of public officials, public bodies, or their representatives in
4 connection with the transaction of public business, the expenditure
5 of public funds or the administering of public property. ~~"Record"~~

6 Record does not mean:

- 7 a. computer software,
- 8 b. nongovernment personal effects,
- 9 c. unless public disclosure is required by other laws or
10 regulations, vehicle movement records of the Oklahoma
11 Transportation Authority obtained in connection with
12 the Authority's electronic toll collection system,
- 13 d. personal financial information, credit reports or
14 other financial data obtained by or submitted to a
15 public body for the purpose of evaluating credit
16 worthiness, obtaining a license, permit, or for the
17 purpose of becoming qualified to contract with a
18 public body,
- 19 e. any digital audio/video recordings of the toll
20 collection and safeguarding activities of the Oklahoma
21 Transportation Authority,
- 22 f. any personal information provided by a guest at any
23 facility owned or operated by the Oklahoma Tourism and
24 Recreation Department or the Board of Trustees ~~of~~ for

1 the Quartz Mountain Arts and Conference Center and
2 Nature Park to obtain any service at the facility or
3 by a purchaser of a product sold by or through the
4 Oklahoma Tourism and Recreation Department or the
5 Quartz Mountain Arts and Conference Center and Nature
6 Park,

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

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

12 (1) any record in connection with a Motor Vehicle
13 Report issued by the Department of Public Safety,
14 as prescribed in Section 6-117 of Title 47 of the
15 Oklahoma Statutes, or

16 (2) personal information within driver records, as
17 defined by the Driver's Privacy Protection Act,
18 18 United States Code, Sections 2721 through
19 2725, which are stored and maintained by the
20 Department of Public Safety, or

21 i. for the purposes of the Patient's Right to Pharmacy
22 Choice Act, any information or record that would have
23 the potential to compromise the financial,
24 competitive, or proprietary nature of information

1 about a specific drug or class of drugs, or a specific
2 product or therapeutic class of products. Additional
3 information that shall not be disclosed includes but
4 is not limited to:

5 (1) any information relating to specific drugs or
6 classes of drugs that would disclose the identity
7 of a specific health plan, drug prices, the
8 rebate amount received by a pharmacy benefits
9 manager, the rebate amount received by the
10 insurer, or the identity of the manufacturer, and

11 (2) any information relating to a product or
12 therapeutic class of products that would disclose
13 the rebate received by a pharmacy benefits
14 manager, the rebate amount received by an
15 insurer, or the identity of the manufacturer;

16 2. "Public body" shall include, but not be limited to, any
17 office, department, board, bureau, commission, agency, trusteeship,
18 authority, council, committee, trust or any entity created by a
19 trust, county, city, village, town, township, district, school
20 district, fair board, court, executive office, advisory group, task
21 force, study group, or any subdivision thereof, supported in whole
22 or in part by public funds or entrusted with the expenditure of
23 public funds or administering or operating public property, and all
24 committees, or subcommittees thereof. Except for the records

1 required by Section 24A.4 of this title, ~~"public body"~~ public body
2 does not mean judges, justices, the Council on Judicial Complaints,
3 the Legislature, or legislators;

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

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

8 5. "Law enforcement agency" means any public body charged with
9 enforcing state or local criminal laws and initiating criminal
10 prosecutions, including, but not limited to, police departments,
11 county sheriffs, the Department of Public Safety, the Oklahoma State
12 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
13 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
14 of Investigation.

15 SECTION 8. AMENDATORY 59 O.S. 2021, Section 357, is
16 amended to read as follows:

17 Section 357. As used in this act:

18 1. "Covered entity" means a nonprofit hospital or medical
19 service organization, insurer, health coverage plan or health
20 maintenance organization; a health program administered by the state
21 in the capacity of provider of health coverage; or an employer,
22 labor union, or other entity organized in the state that provides
23 health coverage to covered individuals who are employed or reside in
24 the state. This term does not include a health plan that provides

1 coverage only for accidental injury, specified disease, hospital
2 indemnity, disability income, or other limited benefit health
3 insurance policies and contracts that do not include prescription
4 drug coverage;

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

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

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

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

18 6. "Pharmacy benefits management" means a service provided to
19 covered entities to facilitate the provision of prescription drug
20 benefits to covered individuals within the state, including
21 negotiating pricing and other terms with drug manufacturers and
22 providers. Pharmacy benefits management may include ~~any or all of~~
23 the following services:

24

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

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

8. "Plan sponsor" means the employers, insurance companies, unions and health maintenance organizations or any other entity

1 responsible for establishing, maintaining, or administering a health
2 benefit plan on behalf of covered individuals; and

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

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

9 Section 358. A. In order to provide pharmacy benefits
10 management or any of the services included under the definition of
11 pharmacy benefits management in this state, a pharmacy benefits
12 manager or any entity acting as one in a contractual or employment
13 relationship for a covered entity shall first obtain a license from
14 the ~~Oklahoma~~ Insurance Department, and the Department may charge a
15 fee for such licensure.

16 B. The Department shall establish, by regulation, licensure
17 procedures, required disclosures for pharmacy benefits managers
18 (PBMs) and other rules as may be necessary for carrying out and
19 enforcing the provisions of this ~~act~~ section. The licensure
20 procedures shall, at a minimum, include the completion of an
21 application form that shall include ~~the name and address of an agent~~
22 ~~for service of process, the payment of a requisite fee, and evidence~~
23 ~~of the procurement of a surety bond~~.

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

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

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

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

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

8 6. In the case of a PBM applicant that is a partnership or
9 other unincorporated association, limited liability company, or
10 corporation, and has five or more partners, members, or
11 stockholders, the applicant shall:

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

14 b. specify the name, address, usual occupation, and
15 professional qualifications of the five partners,
16 members, or stockholders with the five largest
17 ownership interests in the PBM, and

18 c. upon request by the Department, furnish the Department
19 with information regarding the name, address, usual
20 occupation, and professional qualifications of any
21 other partners, members, or stockholders; and

22 7. A signed statement indicating that the PBM has not been
23 convicted of a felony and has not violated any of the requirements
24 of the Oklahoma Pharmacy Act and the Patient's Right to Pharmacy

1 Choice Act, or, if the applicant cannot provide such a statement, a
2 signed statement describing any relevant conviction or violation.

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

8 D. The Department may suspend, revoke, or refuse to issue or
9 renew a license for noncompliance with any of the provisions hereby
10 established or with the rules promulgated by the Department; for
11 conduct likely to mislead, deceive or defraud the public or the
12 Department; for unfair or deceptive business practices or for
13 nonpayment of a renewal fee or fine. The Department may also levy
14 administrative fines for each count of which a PBM has been
15 convicted in a Department hearing.

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

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18 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/06/2022 -
19 DO PASS, As Amended and Coauthored.
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