

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 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,
Dossett (J.J.) and **Dossett**
9 **(J.A.)** of the Senate

10 and

11 McEntire, Moore, Frix, Grego,
12 Pae, Boles, **Davis, Marti,**
13 **Dempsey, Hilbert, Olsen,**
14 **Phillips, Johns, Humphrey,**
15 **Sterling, Fugate, West (Tammy),**
16 **Kerbs, Vancuren, Gann, Smith,**
17 **McBride, Hasenbeck, Roe,**
18 **Dobrinski, Kendrix, Caldwell**
19 **(Chad), Ranson, Hardin (David),**
20 **Fetgatter, O'Donnell, Virgin,**
21 **May, Roberts (Dustin), Newton,**
22 **Lowe (Dick), Talley, Randleman,**
23 **West (Josh), McCall, Townley,**
24 **Conley, Burns, Boatman,**
 Cornwell, Bashore, Strom,
 Miller, Lawson, Luttrell,
 Culver, Russ, Ford, Sims,
 McDugle, Walke, Cruz, Wallace,
 Echols, Nichols, Provenzano,
 Patzkowsky, Manger, Bush,
 Worthen, Bennett, Crosswhite
 Hader, West (Kevin),
 Rosecrants, Williams, Sneed,
 Caldwell (Trey) and Baker of
 the House

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

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

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

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

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

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

4 3. "Pharmacy benefits management" means any or all of the
5 following activities:

6 a. provider contract negotiation and/or provider network
7 administration including decisions related to provider
8 network participation status,

9 b. drug rebate contract negotiation or drug rebate
10 administration, and

11 c. claims processing which may include claim billing and
12 payment services;

13 4. "Pharmacy benefits manager" or "PBM" means a person or
14 entity that performs pharmacy benefits management activities and any
15 other person or entity acting for ~~such~~ a person or entity performing
16 pharmacy benefits management activities ~~under a contractual or~~
17 ~~employment relationship in the performance of pharmacy benefits~~
18 ~~management for a managed-care company, nonprofit hospital, medical~~
19 ~~service organization, insurance company, third party payor or a~~
20 ~~health program administered by a department of this state;~~

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

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

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

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

11 ~~7.~~ 8. "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.~~ 9. "Urban service area" means a five-digit ZIP code in which
15 the population density is greater than three thousand (3,000)
16 individuals per square mile.

17 SECTION 2. AMENDATORY Section 4, Chapter 426, O.S.L.
18 2019 (36 O.S. Supp. 2020, Section 6961), is amended to read as
19 follows:

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

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

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

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

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

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

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

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

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

1 C. Pharmacy benefits managers shall not require patients to use
2 pharmacies that are directly or indirectly owned by ~~the~~ or
3 affiliated with a pharmacy benefits manager~~7~~ including all regular
4 prescriptions, refills or specialty drugs regardless of day supply.

5 D. Pharmacy benefits managers shall not in any manner on any
6 material~~7~~ including but not limited to mail and ID cards, include
7 the name of any pharmacy, hospital or other providers unless it
8 specifically lists all pharmacies, hospitals and providers
9 participating in the preferred and nonpreferred pharmacy and health
10 networks.

11 SECTION 3. AMENDATORY Section 5, Chapter 426, O.S.L.
12 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as
13 follows:

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

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

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

22 2. Charge a pharmacist or pharmacy a fee related to the
23 adjudication of a claim~~7~~ including without limitation a fee for:

24 a. the submission of a claim,

1 b. enrollment or participation in a retail pharmacy
2 network, or

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

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

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

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

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

- 4 a. the original claim was submitted fraudulently, or
5 b. to correct errors identified in an audit, so long as
6 the audit was conducted in compliance with Sections
7 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
8 or

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

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

15 1. A ~~PBM~~ provider contract shall not prohibit, restrict or
16 penalize a pharmacy or pharmacist in any way for disclosing to an
17 individual any health care information that the pharmacy or
18 pharmacist deems appropriate regarding:

- 19 a. ~~not restrict, directly or indirectly, any pharmacy~~
20 ~~that dispenses a prescription drug from informing, or~~
21 ~~penalize such pharmacy for informing, an individual of~~
22 ~~any differential between the individual's out-of-~~
23 ~~pocket cost or coverage with respect to acquisition of~~
24 ~~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,~~
~~with respect to such plan or coverage, restrict,~~
~~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

1 pharmacist services for a prescription drug or from selling a more
2 affordable alternative to the covered person if such alternative is
3 available.

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

11 ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain
12 an electronic claim inquiry processing system using the National
13 Council for Prescription Drug Programs' current standards to
14 communicate information to pharmacies submitting claim inquiries.

15 SECTION 4. AMENDATORY Section 6, Chapter 426, O.S.L.
16 2019 (36 O.S. Supp. 2020, Section 6963), is amended to read as
17 follows:

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

22 B. Whenever a health insurer performs pharmacy benefit
23 management on its own behalf or contracts with another person or
24 entity to perform ~~activities required under this act~~ pharmacy

1 benefit management, the health insurer shall be responsible for
2 monitoring the activities and conduct of that person or entity with
3 whom the health insurer contracts and for ensuring that the
4 requirements of this act are met.

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

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

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

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

1 2. Differentiating between in-network pharmacies, whether that
2 pharmacy is in a preferred or nonpreferred network, a retail
3 pharmacy, mail order pharmacy or any other type of pharmacy.
4 The provisions of this subsection shall not apply to any plan
5 subject to regulation under Medicare Part D, 42 U.S.C. Section
6 1395w-101, et seq.

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

11 SECTION 5. REPEALER Section 7, Chapter 426, O.S.L. 2019
12 (36 O.S. Supp. 2020, Section 6964), is hereby repealed.

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

14
15 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/08/2021 -
16 DO PASS, As Coauthored.