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**AS AMENDED**

By: McEntire, Talley,  
Fetgatter, Johns, Moore,  
Frix, Dollens, Sims, West  
(Tammy), Hasenbeck,  
Townley, Dobrinski, Kerbs,  
May, Lawson, Hilbert, Pae,  
Kendrix, Roberts (Eric),  
Phillips, Roe, Fugate, and  
Grego of the House

McCortney and Garvin of the  
Senate

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

amended to read as follows:

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 under a contractual  
16 or employment relationship in the performance of pharmacy benefits  
17 management for a managed-care company, nonprofit hospital, medical  
18 service organization, insurance company, third party payer or a  
19 health program administered by a department of this state or entity  
20 performing pharmacy benefits management activities. Notwithstanding  
21 any other provision within the Patient's Right to Pharmacy Choice  
22 Act, a self-funded plan administered by an employer or organized  
23 labor union who negotiates and executes all provider contracts  
24 directly with a pharmacy or the pharmacy's contracted pharmacy

1 services administrative organization, and a pharmacy provider who  
2 does not use a pharmacy services administrative organization shall  
3 not be deemed a pharmacy benefits manager of its own group health  
4 plan and shall not be restricted in its ability to design and manage  
5 its own group health plan;

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

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

4        ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in  
5 which the population density is greater than three thousand (3,000)  
6 individuals per square mile.

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

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

11        1. At least ninety percent (90%) of covered individuals  
12 residing in ~~a~~ each urban service area live within two (2) miles of  
13 a retail pharmacy participating in the PBM's retail pharmacy  
14 network;

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

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

23        4. At least ninety percent (90%) of covered individuals  
24 residing in ~~a~~ each suburban service area live within seven (7) miles

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

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

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

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

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

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

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

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

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

6       1. Cause or knowingly permit the use of advertisement,  
7 promotion, solicitation, representation, proposal or offer that is  
8 untrue, deceptive or misleading;

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

11           a. the submission of a claim,

12           b. enrollment or participation in a retail pharmacy  
13 network, or

14           c. the development or management of claims processing  
15 services or claims payment services related to  
16 participation in a retail pharmacy network;

17       3. Reimburse a pharmacy or pharmacist in the state an amount  
18 less than the amount that the PBM reimburses a pharmacy owned by or  
19 under common ownership with a PBM for providing the same covered  
20 services. The reimbursement amount paid to the pharmacy shall be  
21 equal to the reimbursement amount calculated on a per-unit basis  
22 using the same generic product identifier or generic code number  
23 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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

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

- 15            a. the original claim was submitted fraudulently, or  
16            b. to correct errors identified in an audit, so long as  
17                the audit was conducted in compliance with Sections  
18                356.2 and 356.3 of Title 59 of the Oklahoma Statutes;  
19                or

20        7. Fail to make any payment due to a pharmacy or pharmacist for  
21 covered services properly rendered in the event a PBM terminates a  
22 pharmacy or pharmacist from a pharmacy benefits manager network.  
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1 C. The prohibitions under this section shall apply to contracts  
2 between pharmacy benefits managers and ~~pharmacists or pharmacies~~  
3 providers for participation in retail pharmacy networks.

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

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

17 b. ~~ensure that any entity that provides pharmacy benefits~~  
18 ~~management services under a contract with any such~~  
19 ~~health plan or health insurance coverage does not,~~  
20 ~~with respect to such plan or coverage, restrict,~~  
21 ~~directly or indirectly, a pharmacy that dispenses a~~  
22 ~~prescription drug from informing, or penalize such~~  
23 ~~pharmacy for informing, a covered individual of any~~  
24 ~~differential between the individual's out-of-pocket~~



1 ~~cost under the plan or coverage with respect to~~  
2 ~~acquisition of the drug and the amount an individual~~  
3 ~~would pay for acquisition of the drug without using~~  
4 ~~any health plan or health insurance coverage~~ the  
5 availability of alternate therapies, consultations, or  
6 tests,

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

9 d. the process that is used to authorize or deny health  
10 care services and structures used by the health  
11 insurer.

12 2. ~~A pharmacy benefits manager's contract with a participating~~  
13 ~~pharmacist or pharmacy~~ Provider contracts shall not prohibit a  
14 pharmacy or pharmacist from discussing information regarding the  
15 total cost of pharmacist services for a prescription drug or from  
16 selling a more affordable alternative to the covered person if such  
17 alternative is available.

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

1        ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain  
2 an electronic claim inquiry processing system using the National  
3 Council for Prescription Drug Programs' current standards to  
4 communicate information to pharmacies submitting claim inquiries.

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

7        Section 6963. A. A health insurer shall be responsible for  
8 monitoring all activities carried out by, or on behalf of, the  
9 health insurer under the Patient's Right to Pharmacy Choice Act, and  
10 for ensuring that all requirements of ~~this act~~ Section 6958 et seq.  
11 of this title are met.

12        B. Whenever a health insurer performs pharmacy benefits  
13 management on its own behalf or contracts with another person or  
14 entity to perform ~~activities required under this act~~ pharmacy  
15 benefits management, the health insurer shall be responsible for  
16 monitoring the activities and conduct of that person or entity with  
17 whom the health insurer contracts and for ensuring that the  
18 requirements of ~~this act~~ Section 6958 et seq. of this title are met.

19        C. An individual may be notified at the point of sale when the  
20 cash price for the purchase of a prescription drug is less than the  
21 individual's copayment or coinsurance price for the purchase of the  
22 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. ~~An individual's~~ 1. 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 retail  
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 Section 6960 of this title in the event the patient's chosen in-

1 network pharmacy is unable to purchase and dispense the specialty  
2 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 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
11 April 11, 2022 - DO PASS AS AMENDED  
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