

1 **SENATE FLOOR VERSION**

2 February 21, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1633

By: Jett of the Senate

and

McEntire of the House

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9 An Act relating to pharmacy benefits managers;
10 amending 36 O.S. 2021, Sections 6960 and 6962, which
11 relate to definitions and compliance review;
12 providing definitions; updating statutory reference;
13 prohibiting pharmacy benefits managers from imposing
14 certain charges on pharmacist and pharmacy;
15 prohibiting pharmacy benefits managers from imposing
16 clawbacks; prohibiting pharmacy benefits managers
17 from engaging in spread pricing; providing that
18 pharmacy benefits manager contracts protect
19 healthcare access; requiring pharmacy benefits
20 managers to provide certain reports; requiring
21 certain reports be published by Insurance Department;
22 establishing certain fiduciary duties for pharmacy
23 benefits managers to their clients; requiring
24 notification of certain conflicts by pharmacy
benefits manager to health carrier client; providing
for codification; and providing an effective date.

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

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

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

1 1. "Aggregate retained rebate percentage" means the percentage
2 of all rebates received by a pharmacy benefits manager (PBM) from
3 all pharmaceutical manufacturers which is not passed on to the PBM's
4 health plan or health insurer clients. Aggregate retained rebate
5 percentage shall be expressed without disclosing any identifying
6 information regarding any health plan, prescription drug, or
7 therapeutic class, and shall be calculated by dividing:

8 a. the aggregate dollar amount of all rebates that the
9 PBM received during the prior calendar year from all
10 pharmaceutical manufacturers and that did not pass
11 through to the pharmacy benefits manager's health plan
12 or health insurer clients, by

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

16 2. "Carrier" means a carrier as defined pursuant to Section
17 6902 of this title;

18 3. "Clawback" means the act of recovering from the dispensing
19 pharmacy and keeping as revenue the difference between a patient's
20 co-payment and the pharmacy drug cost when the co-payment exceeds
21 the pharmacy drug cost;

22 ~~1.~~ 4. "Health insurer" means any corporation, association,
23 benefit society, exchange, partnership or individual licensed by the
24 Oklahoma Insurance Code;

1 ~~2.~~ 5. "Mail-order pharmacy" means a pharmacy licensed by this
2 state that primarily dispenses and delivers covered drugs via common
3 carrier;

4 ~~3.~~ 6. "Pharmacy benefits manager" or "PBM" means a person that
5 performs pharmacy benefits management and any other person acting
6 for such person under a contractual or employment relationship in
7 the performance of pharmacy benefits management for a managed-care
8 company, nonprofit hospital, medical service organization, insurance
9 company, third-party payor or a health program administered by a
10 department of this state;

11 ~~4.~~ 7. "Pharmacy and therapeutics committee" or "P&T committee"
12 means a committee at a hospital or a health insurance plan that
13 decides which drugs will appear on that entity's drug formulary;

14 8. "Rebate administrative fees" means fees or payments from
15 pharmaceutical manufacturers to, or otherwise retained by, a
16 pharmacy benefits manager or its designee pursuant to a contract
17 between a PBM or affiliate, and the manufacturer in connection with
18 the PBM's administering, invoicing, allocating, and collecting the
19 rebates;

20 9. "Rebate" means negotiated price concessions including but
21 not limited to base price concessions, whether described as a rebate
22 or otherwise, and reasonable estimates of any price protection
23 rebates and performance-based price concessions that may accrue,
24

1 directly or indirectly, to the PBM during the coverage year from a
2 manufacturer;

3 ~~5.~~ 10. "Retail pharmacy network" means retail pharmacy
4 providers contracted with a PBM in which the pharmacy primarily
5 fills and sells prescriptions via a retail, storefront location;

6 ~~6.~~ 11. "Rural service area" means a five-digit ZIP code in
7 which the population density is less than one thousand (1,000)
8 individuals per square mile;

9 12. "Spread pricing" means the act by a PBM of keeping as
10 revenue the difference between the amount paid to the PBM by a
11 health plan for prescription drugs and the amount the PBM reimburses
12 the pharmacy dispensing the drug;

13 ~~7.~~ 13. "Suburban service area" means a five-digit ZIP code in
14 which the population density is between one thousand (1,000) and
15 three thousand (3,000) individuals per square mile; and

16 ~~8.~~ 14. "Urban service area" means a five-digit ZIP code in
17 which the population density is greater than three thousand (3,000)
18 individuals per square mile.

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

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

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

2 1. Cause or knowingly permit the use of advertisement,
3 promotion, solicitation, representation, proposal or offer that is
4 untrue, deceptive or misleading;

5 2. Charge a pharmacist or pharmacy a fee related to the
6 adjudication or submission of a claim, ~~including without limitation~~
7 ~~a fee for:~~

8 ~~a. the submission of a claim,~~

9 ~~b. enrollment or participation in a retail pharmacy~~
10 ~~network, or~~

11 ~~c. the development or management of claims processing~~
12 ~~services or claims payment services related to~~
13 ~~participation in a retail pharmacy network;~~

14 3. Charge a pharmacist or pharmacy a fee related to the
15 credentialing of a pharmacy or pharmacist;

16 4. Charge a pharmacist or pharmacy a fee related to the
17 application, enrollment, or participation in a retail pharmacy
18 network;

19 5. Charge a pharmacist or pharmacy a fee related to the
20 development or management of claims processing services or claims
21 payment services related to participation in a retail pharmacy
22 network;

23 6. Reimburse a pharmacy or pharmacist in the state an amount
24 less than the amount that the PBM reimburses a pharmacy owned by or

1 under common ownership with a PBM for providing the same covered
2 services. The reimbursement amount paid to the pharmacy shall be
3 equal to the reimbursement amount calculated on a per-unit basis
4 using the same generic product identifier or generic code number
5 paid to the PBM-owned or PBM-affiliated pharmacy;

6 ~~4.~~ 7. Deny a pharmacy the opportunity to participate in any
7 pharmacy network at preferred participation status if the pharmacy
8 is willing to accept the terms and conditions that the PBM has
9 established for other pharmacies as a condition of preferred network
10 participation status;

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

15 ~~6.~~ 9. Retroactively deny or reduce reimbursement for a covered
16 service claim after returning a paid claim response as part of the
17 adjudication of the claim, unless:

- 18 a. the original claim was submitted fraudulently, or
- 19 b. to correct errors identified in an audit, so long as
- 20 the audit was conducted in compliance with Sections
- 21 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

22 ~~or~~

1 ~~7.~~ 10. Fail to make any payment due to a pharmacy or pharmacist
2 for covered services properly rendered in the event a PBM terminates
3 a pharmacy or pharmacist from a pharmacy benefits manager network;

4 11. Directly or indirectly participate in a clawback as defined
5 in paragraph 3 of Section 6960 of this title; or

6 12. Directly or indirectly engage in spread pricing as defined
7 in paragraph 12 of Section 6960 of this title.

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, and
7 c. ensure that access to local healthcare is not
8 jeopardized by immediately modifying any rates or
9 provisions that would result in a reimbursement below
10 the pharmacy's cost to acquire and dispense the
11 medication or product.

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

19 3. A pharmacy benefits manager shall establish and maintain an
20 electronic claim inquiry processing system using the National
21 Council for Prescription Drug Programs' current standards to
22 communicate information to pharmacies submitting claim inquiries.
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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6962.1 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

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

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

11 2. The aggregate dollar amount of all rebate administrative
12 fees that the PBM received;

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

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

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

21 6. The aggregate retained rebate percentage; and

22 7. Across all of the pharmacy benefits manager's contractual or
23 other relationships with all health plans or health insurers, the
24 highest aggregate retained rebate percentage, the lowest aggregate

1 retained rebate percentage, and the mean aggregate retained rebate
2 percentage.

3 B. The Department shall publish in a timely manner the
4 information that it receives under subsection A of this section on a
5 publicly available website, provided that such information shall be
6 made available in a form that does not disclose the identity of a
7 specific health plan or the identity of a specific manufacturer, the
8 prices charged for specific drugs or classes of drugs, or the amount
9 of any rebates provided for specific drugs or classes of drugs.

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

13 A. A pharmacy benefits manager (PBM) shall have a fiduciary
14 duty to any health carrier and health insurer clients and shall
15 discharge that duty in accordance with the provisions of state and
16 federal law.

17 B. A PBM shall perform its duties with care, skill, prudence,
18 diligence, and professionalism.

19 C. A PBM shall notify a health carrier client in writing of any
20 activity, policy, or practice of the pharmacy benefits manager that
21 directly or indirectly presents any conflict of interest with the
22 duties imposed in this section.

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

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
February 21, 2022 - DO PASS AS AMENDED