

1 **SENATE FLOOR VERSION**

2 February 21, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1635

By: Jett of the Senate

and

McEntire of the House

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8
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 modifying definitions; prohibiting certain actions by
13 pharmacy benefits managers; providing enforcement
14 measures for certain violations of the Patient's
15 Right to Pharmacy Choice Act; directing deposit of
16 certain attorney fees; updating statutory language;
17 providing for codification; and providing an
18 effective date.

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

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

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

24 1. "Clawback" means an act by the pharmacy benefits manager
(PBM) of recovering from the dispensing pharmacy and keeping as
revenue the difference between a patient's co-payment and the

1 pharmacy drug cost when the co-payment exceeds the pharmacy drug
2 cost;

3 ~~1.~~ 2. "Health insurer" means any corporation, association,
4 benefit society, exchange, partnership or individual licensed by the
5 Oklahoma Insurance Code;

6 ~~2.~~ 3. "Mail-order pharmacy" means a pharmacy licensed by this
7 state that primarily dispenses and delivers covered drugs via common
8 carrier;

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

16 ~~4.~~ 5. "Pharmacy and therapeutics committee" or "P&T committee"
17 means a committee at a hospital or a health insurance plan that
18 decides which drugs will appear on that entity's drug formulary;

19 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers
20 contracted with a PBM in which the pharmacy primarily fills and
21 sells prescriptions via a retail, storefront location;

22 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which
23 the population density is less than one thousand (1,000) individuals
24 per square mile;

1 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
2 which the population density is between one thousand (1,000) and
3 three thousand (3,000) individuals per square mile; and

4 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
5 the population density is greater than three thousand (3,000)
6 individuals per square mile.

7 SECTION 2. 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 of this~~
12 ~~act~~ Section 6961 et seq. of this 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 or submission of a claim, ~~including without limitation~~
19 ~~a fee for:~~

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

21 ~~b. enrollment or participation in a retail pharmacy~~
22 ~~network, or~~

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

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

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

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

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

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

1 ~~5.~~ 8. Deny, limit or terminate a pharmacy's contract based on
2 employment status of any employee who has an active license to
3 dispense, despite probation status, with the State Board of
4 Pharmacy;

5 ~~6.~~ 9. Retroactively deny or reduce reimbursement for a covered
6 service claim after returning a paid claim response as part of the
7 adjudication of the claim, unless:

- 8 a. the original claim was submitted fraudulently, or
- 9 b. to correct errors identified in an audit, so long as
- 10 the audit was conducted in compliance with Sections
- 11 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

12 ~~or~~

13 ~~7.~~ 10. Fail to make any payment due to a pharmacy or pharmacist
14 for covered services properly rendered in the event a PBM terminates
15 a pharmacy or pharmacist from a pharmacy benefits manager network;
16 or

17 11. Participate in a clawback as defined in Section 1 of this
18 act.

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

22 1. A PBM contract shall:

- 23 a. not restrict, directly or indirectly, any pharmacy
- 24 that dispenses a prescription drug from informing, or

1 penalize such pharmacy for informing, an individual of
2 any differential between the individual's out-of-
3 pocket cost or coverage with respect to acquisition of
4 the drug and the amount an individual would pay to
5 purchase the drug directly, ~~and~~

6 b. ensure that any entity that provides pharmacy benefits
7 management services under a contract with any such
8 health plan or health insurance coverage does not,
9 with respect to such plan or coverage, restrict,
10 directly or indirectly, a pharmacy that dispenses a
11 prescription drug from informing, or penalize such
12 pharmacy for informing, a covered individual of any
13 differential between the individual's out-of-pocket
14 cost under the plan or coverage with respect to
15 acquisition of the drug and the amount an individual
16 would pay for acquisition of the drug without using
17 any health plan or health insurance coverage, and

18 c. ensure that access to local healthcare is not
19 jeopardized by immediately modifying any rates or
20 provisions that would result in a reimbursement below
21 the pharmacy's cost to acquire and dispense the
22 medication or product.

23 2. A pharmacy benefits manager's contract with a participating
24 pharmacist or pharmacy shall not prohibit, restrict or limit

1 disclosure of information to the Insurance Commissioner, law
2 enforcement or state and federal governmental officials
3 investigating or examining a complaint or conducting a review of a
4 pharmacy benefits manager's compliance with the requirements under
5 the Patient's Right to Pharmacy Choice Act.

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

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Notwithstanding any other provisions of law, the Insurance
14 Commissioner, upon finding a pharmacy benefits manager in violation
15 of Section 6962 of Title 36 of the Oklahoma Statutes, shall issue a
16 cease and desist order to the PBM directing it to stop the unlawful
17 practice. If the PBM fails or refuses to comply with the order, the
18 Commissioner shall have the authority to revoke or suspend the PBM's
19 license. The Commissioner shall use his or her authority to the
20 extent necessary to obtain the PBM's compliance with the order. If
21 requested by the Commissioner, the Attorney General shall offer his
22 or her assistance to enforce the order of the Commissioner.

23 B. Reasonable attorney fees shall be awarded the Commissioner
24 if judicial action is necessary for the enforcement of the order.

1 Fees collected by the Commissioner without assistance of the Office
2 of the Attorney General shall be credited to the Insurance
3 Commissioner's Revolving Fund. Fees collected by the Attorney
4 General shall be credited to the Attorney General's Revolving Fund.

5 SECTION 4. This act shall become effective November 1, 2022.

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