

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1633

By: Jett

AS INTRODUCED

An Act relating to pharmacy benefits managers; amending 36 O.S. 2021, Sections 6960 and 6962, which relate to definitions and compliance review; providing definitions; prohibiting pharmacy benefits managers from imposing clawbacks; prohibiting pharmacy benefits managers from engaging in spread pricing; authorizing certain fees; requiring pharmacy benefits managers to provide certain reports; establishing certain fiduciary duties for pharmacy benefits managers to their clients; 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. "Administrative fees" means fees or payments from pharmaceutical manufacturers to, or otherwise retained by, a pharmacy benefits manager (PBM) or its designee pursuant to a contract between a PBM or affiliate, and the manufacturer in

1 connection with the PBM's administering, invoicing, allocating, and  
2 collecting the rebates;

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

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

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

18     3. "Carrier" means a carrier as defined pursuant to Section  
19 6902 of this title;

20     4. "Clawback" means the act of recovering from the dispensing  
21 pharmacy and keeping as a profit the difference between a patient's  
22 co-payment and the pharmacy drug cost when the co-payment exceeds  
23 the pharmacy drug cost;

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

4       ~~2.~~ 6. "Mail-order pharmacy" means a pharmacy licensed by this  
5 state that primarily dispenses and delivers covered drugs via common  
6 carrier;

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

14       ~~4.~~ 8. "Pharmacy and therapeutics committee" or "P&T committee"  
15 means a committee at a hospital or a health insurance plan that  
16 decides which drugs will appear on that entity's drug formulary;

17       9. "Rebates" means:

18           a. negotiated price concessions including but not limited  
19           to base price concessions, whether described as a  
20           "rebate" or otherwise, and reasonable estimates of any  
21           price protection rebates and performance-based price  
22           concessions that may accrue, directly or indirectly,  
23           to the PBM during the coverage year from a  
24           manufacturer, dispensing pharmacy, or other party in

1 connection with the dispensing or administration of a  
2 prescription drug, and

3 b. reasonable estimates of any price concessions, fees,  
4 and other administrative costs that are passed  
5 through, or are reasonably anticipated to be passed  
6 through, to the PBM and serve to reduce the PBM's  
7 liabilities for a prescription drug;

8 ~~5.~~ 10. "Retail pharmacy network" means retail pharmacy  
9 providers contracted with a PBM in which the pharmacy primarily  
10 fills and sells prescriptions via a retail, storefront location;

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

14 12. "Spread pricing" means the act by a PBM of keeping as a  
15 profit the difference between the amount paid to the PBM by a health  
16 plan for prescription drugs and the amount the PBM reimburses the  
17 pharmacy dispensing the drug;

18 ~~7.~~ 13. "Suburban service area" means a five-digit ZIP code in  
19 which the population density is between one thousand (1,000) and  
20 three thousand (3,000) individuals per square mile; and

21 ~~8.~~ 14. "Urban service area" means a five-digit ZIP code in  
22 which the population density is greater than three thousand (3,000)  
23 individuals per square mile.

SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, is

amended to read as follows:

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

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

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

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

- a. the submission of a claim,
- b. enrollment or participation in a retail pharmacy network, or
- c. the development or management of claims processing services or claims payment services related to participation in a retail pharmacy network;

3. 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

1 using the same generic product identifier or generic code number  
2 paid to the PBM-owned or PBM-affiliated pharmacy;

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

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;

23 8. Directly or indirectly participate in a clawback as defined  
24 in paragraph 4 of Section 6960 of this title; or

1       9. Directly or indirectly engage in spread pricing as defined  
2 in paragraph 12 of Section 6960 of this title; provided, however, a  
3 PBM may charge a transaction fee to the insurer in an amount not to  
4 exceed 15% of the transaction.

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

8       1. A PBM contract shall:

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

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

1                    acquisition of the drug and the amount an individual  
2                    would pay for acquisition of the drug without using  
3                    any health plan or health insurance coverage.

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

11           3. A pharmacy benefits manager shall establish and maintain an  
12 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 3.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 6962.1 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

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

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



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

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

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

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

11       6. The aggregate retained rebate percentage; and

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

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

1           SECTION 4.           NEW LAW

2           A new section of law to be codified  
3 in the Oklahoma Statutes as Section 6962.2 of Title 36, unless there  
4 is created a duplication in numbering, reads as follows:

5           A. A pharmacy benefits manager (PBM) shall have a fiduciary  
6 duty to any health carrier and health insurer clients and shall  
7 discharge that duty in accordance with the provisions of state and  
8 federal law.

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

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

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

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