

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 17, 2021

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB737

By: McCortney of the Senate and McEntire and Phillips of the House

Title: Patient's Right to Pharmacy Choice Act; modifying powers of advisory committee and Insurance Commissioner. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

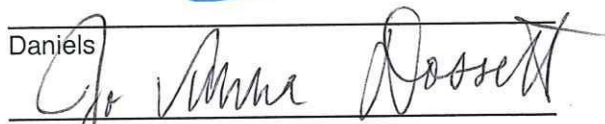
1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.


Respectfully submitted,

SENATE CONFEREES:


McCortney


Hicks


Daniels


Dossett (J.A.)


Rosino


Simpson

HOUSE CONFEREES:

Conference Committee on Insurance

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 737

By: McCortney of the Senate

and

McEntire and Phillips of
the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to pharmacy benefits management; amending Section 3, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6960), which relates to definitions; adding definition of provider and spread pricing; deleting definition; amending Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6962), which relates to compliance review; updating reference; adding prohibited activity; adding duties of pharmacy benefits managers; authorizing Commissioner to take certain actions on PBM licenses for certain violations; authorizing fine for violation of certain acts; authorizing Insurance Commissioner to enforce Patient's Right to Pharmacy Choice Act and investigate violations of certain acts; specifying that operating without a PBM license is a violation of Patient's Right to Pharmacy Choice Act; specifying certain hearings be conducted pursuant to Administrative Procedures Act; establishing procedures for certain hearings; authorizing full stenographic record of hearing proceedings in certain circumstances; providing for payment of certain costs and fees; authorizing appeal from certain final order of Commissioner; authorizing Commissioner to require certain reporting from PBMs in certain circumstances; providing for codification; and declaring an emergency.

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;

2. "Health insurer payor" means a health insurance company, health maintenance organization, union, hospital and medical services organization or any entity providing or administering a self-funded health benefit plan;

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

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

1 ~~4. "Pharmacy and therapeutics committee" or "P&T committee"~~
2 ~~means a committee at a hospital or a health insurance plan that~~
3 ~~decides which drugs will appear on that entity's drug formulary~~

4 5 "Provider" means a pharmacy, as defined in Section 353.1 of
5 Title 59 of the Oklahoma Statutes or an agent or representative of a
6 pharmacy;

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

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

13 ~~7.~~ 8. "Spread pricing" means a prescription drug pricing model
14 utilized by a pharmacy benefits manager in which the PBM charges a
15 health benefit plan a contracted price for prescription drugs that
16 differs from the amount the PBM directly or indirectly pays the
17 pharmacy or pharmacist for providing pharmacy services;

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

21 ~~9.~~ 10. "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 Section 5, Chapter 426, O.S.L.
2019 (36 O.S. Supp. 2020, 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 of this~~
~~act~~ 6961 of this 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~~ provider the opportunity to participate in
4 any pharmacy network at preferred participation status if the
5 ~~pharmacy~~ provider is willing to accept the terms and conditions that
6 the PBM has established for other ~~pharmacies~~ providers as a
7 condition of preferred network participation status;

8 5. Deny, limit or terminate a ~~pharmacy's~~ provider's contract
9 based on employment status of any employee who has an active license
10 to 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~~ provider from a pharmacy benefits manager
23 network; or
24

1 8. Conduct or practice spread pricing, as defined in Section 1
2 of this act, in this state.

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

6 1. A PBM contract shall:

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

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

1 would pay for acquisition of the drug without using
2 any health plan or health insurance coverage.

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

10 ~~3. D.~~ A pharmacy benefits manager shall ~~establish:~~

11 1. Establish and maintain an electronic claim inquiry
12 processing system using the National Council for Prescription Drug
13 Programs' current standards to communicate information to pharmacies
14 submitting claim inquiries;

15 2. Fully disclose to insurers, self-funded employers, unions or
16 other PBM clients the existence of any prescription drug discounts,
17 rebates received from drug manufacturers and pharmacy audit
18 recoupments;

19 3. Provide the Insurance Commissioner, insurers, self-funded
20 employer plans and unions unrestricted audit rights of and access to
21 PBM pharmaceutical manufacturer and provider contracts, plan
22 utilization data, plan pricing data, pharmacy utilization data and
23 pharmacy pricing data;
24

1 4. Maintain, for no less than three (3) years, documentation of
2 all network development activities including but not limited to
3 contract negotiations and any denials to providers to join networks.
4 This documentation shall be made available to the Commissioner upon
5 request;

6 5. Report to the Commissioner, on a quarterly basis for each
7 health insurer payor, on the following information:

8 a. the aggregate amount of rebates received by the PBM,

9 b. the aggregate amount of rebates distributed to the
10 appropriate health insurer payor,

11 c. the aggregate amount of rebates passed on to the
12 enrollees of each health insurer payor at the point of
13 sale that reduced the applicable deductible,
14 copayment, coinsure or other cost sharing amount of
15 the enrollee,

16 d. the individual and aggregate amount paid by the health
17 insurer payor to the PBM for pharmacy services
18 itemized by pharmacy, drug product and service
19 provided, and

20 e. the individual and aggregate amount a PBM paid a
21 provider for pharmacy services itemized by pharmacy,
22 drug product and service provided.

SECTION 3. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may censure, suspend, revoke or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of Title 6 of the Oklahoma Statutes.

B. 1. If the Commissioner finds, after notice and opportunity for hearing, that a pharmacy benefits manager (PBM) violated one or more provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the PBM may be censured, his or her license may be suspended or revoked and a penalty or remedy authorized by this act may be imposed.

2. In addition to or in lieu of any censure, suspension or revocation of a license, a PBM may be subject to a civil fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, following notice and an opportunity for a hearing.

1 C. Notwithstanding whether the license of a PBM has been
2 issued, suspended, revoked, surrendered or lapsed by operation of
3 law, the Commissioner is hereby authorized to enforce the provisions
4 of the Patient's Right to Pharmacy Choice Act and impose any penalty
5 or remedy authorized under the Act against a PBM under investigation
6 for or charged with a violation of the Patient's Right to Pharmacy
7 Choice Act, the Pharmacy Audit Integrity Act, the provisions of
8 Sections 357 through 360 of Title 59 of the Oklahoma Statutes or any
9 provision of the insurance laws of this state.

10 D. Each day that a PBM conducts business in this state without
11 a license from the Insurance Department shall be deemed a violation
12 of the Patient's Right to Pharmacy Choice Act.

13 E. 1. All hearings conducted by the Insurance Department
14 pursuant to this section shall be public and held in accordance with
15 the Administrative Procedures Act.

16 2. Hearings shall be held at the office of the Insurance
17 Commissioner or any other place the Commissioner may deem
18 convenient.

19 3. The Commissioner, upon written request from a PBM affected
20 by the hearing, shall cause a full stenographic record of the
21 proceedings to be made by a competent court reporter. This record
22 shall be at the expense of the PBM.

23 4. The ordinary fees and costs of the hearing examiner
24 appointed pursuant to Section 319 of Title 36 of the Oklahoma

1 Statutes may be assessed by the hearing examiner against the
2 respondent unless the respondent is the prevailing party.

3 F. Any PBM whose license has been censured, suspended, revoked
4 or denied renewal or who has had a fine levied against him or her
5 shall have the right of appeal from the final order of the Insurance
6 Commissioner, pursuant to Section 318 et seq. of Title 75 of the
7 Oklahoma Statutes.

8 G. If the Insurance Commissioner determines, based upon an
9 investigation of complaints, that a PBM has engaged in violations of
10 the provisions of the Patient's Right to Pharmacy Choice Act with
11 such frequency as to indicate a general business practice, and that
12 the PBM should be subjected to closer supervision with respect to
13 those practices, the Commissioner may require the PBM to file a
14 report at any periodic interval the Commissioner deems necessary.

15 SECTION 4. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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