

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1635

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; modifying definitions; prohibiting certain actions by pharmacy benefits managers; providing enforcement measures for certain violations of the Patient's Right to Pharmacy Choice Act to the Insurance Commissioner over pharmacy benefits managers; directing deposit of certain attorney fees; updating statutory language; 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. "Clawback" means the act of recovering from the dispensing pharmacy and keeping as a profit the difference between a patient's co-payment and the pharmacy drug cost when the co-payment exceeds the pharmacy drug cost;

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

4       ~~2.~~ 3. "Mail-order pharmacy" means a pharmacy licensed by this  
5 state that primarily dispenses and delivers covered drugs via common  
6 carrier;

7       ~~3.~~ 4. "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.~~ 5. "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       ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers  
18 contracted with a PBM in which the pharmacy primarily fills and  
19 sells prescriptions via a retail, storefront location;

20       ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which  
21 the population density is less than one thousand (1,000) individuals  
22 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 of a claim~~7~~ including without limitation a fee for:

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

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

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

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

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

- 20           a. the original claim was submitted fraudulently, or
- 21           b. to correct errors identified in an audit, so long as
- 22               the audit was conducted in compliance with Sections
- 23               356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

24           ~~or~~

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

4 8. Participate in a clawback as defined in Section 1 of this  
5 act.

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

9 1. A PBM contract shall:

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

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

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

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

19 A. Notwithstanding any other provisions of law, the Insurance  
20 Commissioner, upon finding a pharmacy benefits manager in violation  
21 of Section 2 of this act, the Commissioner shall issue a cease and  
22 desist order to the PBM directing it to stop the unlawful practice.  
23 If the PBM fails or refuses to comply with the order, the  
24 Commissioner shall have the authority to revoke or suspend the PBM's

1 license. The Commissioner shall use his or her authority to the  
2 extent necessary to obtain the PBM's compliance with the order. If  
3 requested by the Commissioner, the Attorney General shall offer his  
4 or her assistance to enforce the order of the Commissioner.

5 B. Reasonable attorney fees shall be awarded the Commissioner  
6 if judicial action is necessary for the enforcement of the order.  
7 Fees collected by the Commissioner without assistance of the Office  
8 of the Attorney General shall be credited to the Insurance  
9 Commissioner's Revolving Fund. Fees collected by the Attorney  
10 General shall be credited to the Attorney General's Revolving Fund.

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