

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 737

By: McCortney

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6 AS INTRODUCED

7 An Act relating to the Patient's Right to Pharmacy
8 Choice Act; amending Section 3, Chapter 426, O.S.L.
9 2019 (36 O.S. Supp. 2020, Section 6960), which
10 relates to definitions; adding definition of
11 provider; amending Section 8, Chapter 426, O.S.L.
12 2019 (36 O.S. Supp. 2020, Section 6965), which
13 relates to power to investigate; modifying timeframe
14 of certain required response; amending Section 9,
15 Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section
16 6966), which relates to Patient's Right to Pharmacy
17 Choice Advisory Committee; modifying powers of
18 advisory committee; requiring committee make certain
19 recommendation to Insurance Commissioner; modifying
20 terms of persons nominated to committee; modifying
21 procedures and requirements for hearings on violation
22 of act; authorizing Commissioner to censure, suspend
23 or revoke license of certain persons for violating
24 act; specifying amount of certain civil fine;
25 authorizing Commissioner to enforce provisions of
26 act; providing that fees and costs of hearing
27 examiner be assessed against respondent; authorizing
28 right of appeal for certain pharmacy benefit
29 managers; establishing standard of judicial review
30 for appeal; authorizing Commissioner to require
31 reports from certain pharmacy benefits managers;
32 providing for codification; and providing an
33 effective date.

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

1 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.

2 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as
3 follows:

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

6 1. "Health insurer" means any corporation, association, benefit
7 society, exchange, partnership or individual licensed by the
8 Oklahoma Insurance Code;

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

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

19 4. "Pharmacy and therapeutics committee" or "P&T committee"
20 means a committee at a hospital or a health insurance plan that
21 decides which drugs will appear on that entity's drug formulary;

22 5. "Provider" means a pharmacy, as defined in Section 353.1 of
23 Title 59 of the Oklahoma Statutes, licensed by the State Board of
24 Pharmacy or an agent or representative of a pharmacy including but

1 not limited to the contracting agent of a pharmacy who dispenses
2 prescription drugs or devices to covered individuals;

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

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

9 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in
10 which the population density is between one thousand (1,000) and
11 three thousand (3,000) individuals per square mile; and

12 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which
13 the population density is greater than three thousand (3,000)
14 individuals per square mile.

15 SECTION 2. AMENDATORY Section 8, Chapter 426, O.S.L.
16 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as
17 follows:

18 Section 6965. A. The Insurance Commissioner shall have power
19 to examine and investigate into the affairs of every pharmacy
20 benefits manager (PBM) engaged in pharmacy benefits management in
21 this state in order to determine whether such entity is in
22 compliance with the Patient's Right to Pharmacy Choice Act.

23 B. All PBM files and records shall be subject to examination by
24 the Insurance Commissioner or by duly appointed designees. The

1 Insurance Commissioner, authorized employees and examiners shall
2 have access to any of a PBM's files and records that may relate to a
3 particular complaint under investigation or to an inquiry or
4 examination by the Insurance Department.

5 C. Every officer, director, employee or agent of the PBM, upon
6 receipt of any inquiry from the Commissioner shall, within ~~thirty~~
7 ~~(30)~~ twenty (20) days from the date the inquiry is sent, furnish the
8 Commissioner with an adequate response to the inquiry.

9 D. When making an examination under this section, the Insurance
10 Commissioner may retain subject matter experts, attorneys,
11 appraisers, independent actuaries, independent certified public
12 accountants or an accounting firm or individual holding a permit to
13 practice public accounting, certified financial examiners or other
14 professionals and specialists as examiners, the cost of which shall
15 be borne by the PBM which is the subject of the examination.

16 SECTION 3. AMENDATORY Section 9, Chapter 426, O.S.L.
17 2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as
18 follows:

19 Section 6966. A. The Insurance Commissioner shall provide for
20 the receiving and processing of individual complaints alleging
21 violations of the provisions of the Patient's Right to Pharmacy
22 Choice Act.

23 B. The Commissioner shall establish a Patient's Right to
24 Pharmacy Choice Advisory Committee to advise the Commissioner and

1 serve at his or her discretion. The Advisory Committee shall review
2 ~~complaints, hold hearings, subpoena witnesses and records, initiate~~
3 ~~prosecution, reprimand, place on probation, suspend, revoke and/or~~
4 ~~levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each~~
5 ~~count for which~~ alleging any pharmacy benefits manager (PBM) has
6 violated a provision of ~~this act~~ the Patient's Right to Pharmacy
7 Choice Act. ~~The Advisory Committee may impose as part of any~~
8 ~~disciplinary action the payment of costs expended by the Insurance~~
9 ~~Department for any legal fees and costs including, but not limited~~
10 ~~to, staff time, salary and travel expense, witness fees and attorney~~
11 ~~fees. The Advisory Committee may take such actions singly or in~~
12 ~~combination, as the nature of the violation requires~~ After review,
13 the Advisory Committee shall make a recommendation to the
14 Commissioner as to administrative action to be taken against the
15 pharmacy benefits manager pursuant to subsections B and C of Section
16 4 of this act.

17 C. The Advisory Committee shall consist of seven (7) persons
18 appointed as follows:

19 1. Two persons who shall be ~~nominated~~ appointed by the Oklahoma
20 Pharmacists Association;

21 2. Two consumer members not employed or related to insurance,
22 pharmacy or PBM ~~nominated~~ appointed by the Office of the Governor;

23 3. Two persons representing the PBM or insurance industry
24 ~~nominated~~ appointed by the Insurance Commissioner; and
25

1 4. One person representing the Office of the Attorney General
2 ~~nominated~~ appointed by the Attorney General.

3 D. Committee members shall be appointed for terms of five (5)
4 years; provided, that of the members first appointed, the two
5 members appointed by the Office of the Governor shall serve for one
6 (1) year, the two members appointed by the Oklahoma Pharmacists
7 Association shall serve for two (2) years, the two members appointed
8 by the Insurance Commissioner shall serve for three (3) years and
9 the one member appointed by the Attorney General shall serve for
10 four (4) years. The terms of the members of the Advisory Committee
11 shall expire on the thirtieth day of June of the year designated for
12 the expiration of the term for which appointed, but the member shall
13 serve until a qualified successor has been duly appointed. No
14 person shall be appointed to serve more than two consecutive terms.

15 ~~E. Hearings shall be held in the Insurance Commissioner's~~
16 ~~offices or at such other place as the Insurance Commissioner may~~
17 ~~deem convenient.~~

18 ~~F. The Insurance Commissioner shall issue and serve upon the~~
19 ~~PBM a statement of the charges and a notice of hearing in accordance~~
20 ~~with the Administrative Procedures Act, Sections 250 through 323 of~~
21 ~~Title 75 of the Oklahoma Statutes.~~

22 ~~G. At the time and place fixed for a hearing, the PBM shall~~
23 ~~have an opportunity to be heard and to show cause why the Insurance~~
24 ~~Commissioner or his or her duly appointed hearing examiner should~~

1 ~~not revoke or suspend the PBM's license and levy administrative~~
2 ~~finer for each violation. Upon good cause shown, the Commissioner~~
3 ~~shall permit any person to intervene, appear and be heard at the~~
4 ~~hearing by counsel or in person.~~

5 ~~H. All hearings will be public and held in accordance with, and~~
6 ~~governed by, Sections 250 through 323 of Title 75 of the Oklahoma~~
7 ~~Statutes.~~

8 ~~I. The Insurance Commissioner, upon written request reasonably~~
9 ~~made by the licensed PBM affected by the hearing and at such PBM's~~
10 ~~expense shall cause a full stenographic record of the proceedings to~~
11 ~~be made by a competent court reporter.~~

12 ~~J. If the Insurance Commissioner determines, based on an~~
13 ~~investigation of complaints, that a PBM has engaged in violations of~~
14 ~~this act with such frequency as to indicate a general business~~
15 ~~practice and that such PBM should be subjected to closer supervision~~
16 ~~with respect to such practices, the Insurance Commissioner may~~
17 ~~require the PBM to file a report at such periodic intervals as the~~
18 ~~Insurance Commissioner deems necessary.~~

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The Insurance Commissioner may censure, suspend, revoke or
23 refuse to renew a license of or levy a civil penalty against any
24 person licensed under the insurance laws of this state for any

1 violation of the Patient's Right to Pharmacy Choice Act, Section
2 6958 et seq. of Title 36 of the Oklahoma Statutes.

3 B. The license of a pharmacy benefits manager may be censured,
4 suspended or revoked if the Commissioner finds, after notice and
5 opportunity for a hearing, that the pharmacy benefits manager
6 violated one or more provisions of the Patient's Right to Pharmacy
7 Choice Act.

8 C. In addition to or in lieu of any censure, suspension or
9 revocation of a license, a pharmacy benefits manager may, after
10 notice and opportunity for a hearing, be subject to a civil fine of
11 not less than One Hundred Dollars (\$100.00) and not greater than Ten
12 Thousand Dollars (\$10,000.00) for each violation. The penalty may
13 be enforced in the same manner in which civil judgments may be
14 enforced.

15 D. The Commissioner shall be authorized to enforce the
16 provisions of the Patient's Right to Pharmacy Choice Act and impose
17 any penalty or remedy authorized under the act against a pharmacy
18 benefits manager under investigation for or charged with a violation
19 of the act or any provision of Title 36 of the Oklahoma Statutes,
20 notwithstanding whether the license of the pharmacy benefits manager
21 has been surrendered or lapsed by operation of law.

22 E. 1. All hearings shall be public and held in accordance with
23 the Administrative Procedures Act.
24

1 2. Hearings shall be held at the office of the Insurance
2 Commissioner or at any other place as the Commissioner may deem
3 convenient.

4 3. The Commissioner, upon written request reasonably made by
5 the pharmacy benefits manager affected by the hearing, shall cause a
6 full stenographic record of the proceedings to be made by a
7 competent court reporter. This record shall be at the expense of
8 the pharmacy benefits manager.

9 4. The ordinary fees and costs of the hearing examiner
10 appointed pursuant to Section 319 of Title 36 of the Oklahoma
11 Statutes may be assessed by the hearing examiner against the
12 respondent unless the respondent is the prevailing party.

13 F. Any pharmacy benefits manager whose license has been
14 censured, suspended, revoked or denied renewal, or who has had a
15 fine levied against him or her, shall have the right of appeal from
16 the final order of the Commissioner, pursuant to Section 318 et seq.
17 of Title 75 of the Oklahoma Statutes.

18 G. If the Insurance Commissioner determines, based upon an
19 investigation of complaints, that a pharmacy benefits manager has
20 engaged in violations of the provisions of the Patient's Right to
21 Pharmacy Choice Act with such frequency as to indicate a general
22 business practice, and that the pharmacy benefits manager should be
23 subjected to closer supervision with respect to such practices, the
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1 Commissioner may require the pharmacy benefits manager to file a
2 report at any periodic intervals the Commissioner deems necessary.

3 SECTION 5. This act shall become effective November 1, 2021.

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