

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 3376

By: McEntire of the House

and

McCortney of the Senate

[pharmacy benefits managers - Patient's Right to
Pharmacy Choice Act - definitions - fines and fees
- Attorney General's Pharmacy Benefits Manager
Enforcement Revolving Fund - Oklahoma Open Records
Act - Patient's Right to Pharmacy Choice Commission
- repealer - codification -
emergency]

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

"An Act relating to pharmacy benefits management;
amending 36 O.S. 2021, Sections 6960, as amended by
Section 1, Chapter 38, O.S.L. 2022, 6962, as last
amended by Section 1, Chapter 293, O.S.L. 2023, 6965,
as amended by Section 2, Chapter 293, O.S.L. 2023,
Section 3, Chapter 38, O.S.L. 2022, as amended by
Section 3, Chapter 293, O.S.L. 2023, and 6967 (36
O.S. Supp. 2023, Sections 6960, 6962, 6965, and
6966.1), which relate to the Patient's Right to
Pharmacy Choice Act; defining terms; modifying
definitions; prohibiting certain contract terms from
restricting document disclosure to certain entities;
modifying certain compliance provisions; conforming

1 language; construing provisions; providing for rule
2 promulgation; establishing requirements for
3 disclosure of protected health information; modifying
4 certain fine amount; providing for certain fines and
5 fees; creating the Attorney General's Pharmacy
6 Benefits Manager Enforcement Revolving Fund;
7 establishing fund source; stating purpose;
8 establishing provisions relating to public disclosure
9 of certain report and certain information obtained by
10 the Attorney General; repealing 36 O.S. 2021, Section
11 6966, which relates to the Patient's Right to
12 Pharmacy Choice Commission; updating statutory
13 reference; updating statutory language; providing for
14 codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, as
amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2023,
Section 6960), is amended to read as follows:

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

1. "Covered entity" means a nonprofit hospital or medical
service organization, for-profit hospital or medical service
organization, insurer, health benefit plan, health maintenance
organization, health program administered by the state in the
capacity of providing health coverage, or an employer, labor union,
or other group of persons that provides health coverage to persons
in this state. This term does not include a health plan that
provides coverage only for accidental injury, specified disease,
hospital indemnity, disability income, or other limited benefit

1 health insurance policies and contracts that do not include
2 prescription drug coverage;

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

6 ~~2.~~ 3. "Health insurer payor" means a health insurance company,
7 health maintenance organization, union, hospital and medical
8 services organization or any entity providing or administering a
9 self-funded health benefit plan;

10 ~~3.~~ 4. "Mail-order pharmacy" means a pharmacy licensed by this
11 state that primarily dispenses and delivers covered drugs via common
12 carrier;

13 ~~4.~~ 5. "Pharmacy benefits manager" or "PBM" means a person,
14 business, or other entity that performs pharmacy benefits management
15 ~~and any other person acting for such person under.~~ The term shall
16 include a person or entity acting on behalf of a PBM in a
17 contractual or employment relationship in the performance of
18 pharmacy benefits management for a ~~managed-care~~ managed care
19 company, nonprofit hospital, medical service organization, insurance
20 company, third-party payor or a health program administered by a
21 department of this state;

22 6. "Pharmacy benefits management" means a service provided to
23 covered entities to facilitate the provisions of prescription drug
24 benefits to covered individuals within the state, including, but not

1 limited to, negotiating pricing and other terms with drug
2 manufacturers and providers. Pharmacy benefits management may
3 include any or all of the following services:

- 4 a. claims processing, retail network management, and
5 payment of claims to pharmacies for prescription drugs
6 dispensed to covered individuals,
- 7 b. administration or management of pharmacy discount
8 cards or programs,
- 9 c. clinical formulary development and management
10 services, or
- 11 d. rebate contracting and administration;

12 ~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1
13 of Title 59 of the Oklahoma Statutes or an agent or representative
14 of a pharmacy;

15 ~~6.~~ 8. "Retail pharmacy network" means retail pharmacy providers
16 contracted with a PBM in which the pharmacy primarily fills and
17 sells prescriptions via a retail, storefront location;

18 ~~7.~~ 9. "Rural service area" means a five-digit ZIP code in which
19 the population density is less than one thousand (1,000) individuals
20 per square mile;

21 ~~8.~~ 10. "Spread pricing" means a prescription drug pricing model
22 utilized by a pharmacy benefits manager in which the PBM charges a
23 health benefit plan a contracted price for prescription drugs that
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differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;

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

~~10.~~ 12. "Urban service area" means a five-digit ZIP code in which the population density is greater than three thousand (3,000) individuals per square mile.

B. Nothing in the definitions of pharmacy benefits manager or pharmacy benefits management as such terms are defined in the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or Sections 357 through 360 of Title 59 of the Oklahoma Statutes shall be construed to deem the following entities to be a pharmacy benefits manager:

1. An employer of its own self-funded health benefit plan, except, to the extent permitted by applicable law, where the employer without the utilization of a third party and unrelated to the employer's own pharmacy:

- a. negotiates directly with drug manufacturers,
- b. processes claims on behalf of its members, or
- c. manages its own retail network of pharmacies; or

2. A pharmacy that provides a patient with a discount card or program that is for exclusive use at the pharmacy offering the discount.

1 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, as
2 last amended by Section 1, Chapter 293, O.S.L. 2023 (36 O.S. Supp.
3 2023, Section 6962), is amended to read as follows:

4 Section 6962. A. The Attorney General shall review and approve
5 retail pharmacy network access for all pharmacy benefits managers
6 (PBMs) to ensure compliance with Section 6961 of this title.

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

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

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

13 a. the submission of a claim,

14 b. enrollment or participation in a retail pharmacy
15 network, or

16 c. the development or management of claims processing
17 services or claims payment services related to
18 participation in a retail pharmacy network;

19 3. Reimburse a pharmacy or pharmacist in the state an amount
20 less than the amount that the PBM reimburses a pharmacy owned by or
21 under common ownership with a PBM for providing the same covered
22 services. The reimbursement amount paid to the pharmacy shall be
23 equal to the reimbursement amount calculated on a per-unit basis
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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 provider the opportunity to participate in any
4 pharmacy network at preferred participation status if the provider
5 is willing to accept the terms and conditions that the PBM has
6 established for other providers as a condition of preferred network
7 participation status;

8 5. Deny, limit or terminate a provider'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 7. Fail to make any payment due to a pharmacy or pharmacist for
20 covered services properly rendered in the event a PBM terminates a
21 provider from a pharmacy benefits manager network;

22 8. Conduct or practice spread pricing, as defined in ~~Section 1~~
23 ~~of this act~~ Section 6960 of this title, in this state; or

1 9. Charge a pharmacist or pharmacy a fee related to
2 participation in a retail pharmacy network including but not limited
3 to the following:

- 4 a. an application fee,
- 5 b. an enrollment or participation fee,
- 6 c. a credentialing or re-credentialing fee,
- 7 d. a change of ownership fee, or
- 8 e. a fee for the development or management of claims
9 processing services or claims payment services.

10 C. The prohibitions under this section shall apply to contracts
11 between pharmacy benefits managers and providers for participation
12 in retail pharmacy networks.

13 1. A PBM contract shall:

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

1 directly or indirectly, a pharmacy that dispenses a
2 prescription drug from informing, or penalize such
3 pharmacy for informing, a covered individual of any
4 differential between the individual's out-of-pocket
5 cost under the plan or coverage with respect to
6 acquisition of the drug and the amount an individual
7 would pay for acquisition of the drug without using
8 any health plan or health insurance coverage.

9 2. A pharmacy benefits manager's contract with a provider shall
10 not prohibit, restrict, or limit disclosure of information or
11 documents to the Attorney General, law enforcement or state and
12 federal governmental officials investigating or examining a
13 complaint or conducting a review of a pharmacy benefits manager's
14 compliance with the requirements under the Patient's Right to
15 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
16 357 through 360 of Title 59 of the Oklahoma Statutes.

17 D. A pharmacy benefits manager shall:

18 1. Establish and maintain an electronic claim inquiry
19 processing system using the National Council for Prescription Drug
20 ~~Programs'~~ Programs current standards to communicate information to
21 pharmacies submitting claim inquiries;

22 2. Fully disclose to insurers, self-funded employers, unions or
23 other PBM clients the existence of the respective aggregate
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1 prescription drug discounts, rebates received from drug
2 manufacturers and pharmacy audit recoupments;

3 3. Provide the Attorney General, insurers, self-funded employer
4 plans and unions unrestricted audit rights of and access to the
5 respective PBM pharmaceutical manufacturer and provider contracts,
6 plan utilization data, plan pricing data, pharmacy utilization data
7 and pharmacy pricing data;

8 4. Maintain, for no less than three (3) years, documentation of
9 all network development activities including but not limited to
10 contract negotiations and any denials to providers to join networks.
11 This documentation shall be made available to the Attorney General
12 upon request; and

13 5. Report to the Attorney General, on a quarterly basis for
14 each health insurer payor, on the following information:

- 15 a. the aggregate amount of rebates received by the PBM,
- 16 b. the aggregate amount of rebates distributed to the
17 appropriate health insurer payor,
- 18 c. the aggregate amount of rebates passed on to the
19 enrollees of each health insurer payor at the point of
20 sale that reduced the applicable deductible,
21 copayment, coinsure or other cost sharing amount of
22 the enrollee,
- 23 d. the individual and aggregate amount paid by the health
24 insurer payor to the PBM for pharmacy services

1 itemized by pharmacy, drug product and service
2 provided, and
3 e. the individual and aggregate amount a PBM paid a
4 provider for pharmacy services itemized by pharmacy,
5 drug product and service provided.

6 E. Nothing in the Patient's Right to Pharmacy Choice Act shall
7 prohibit the Attorney General from requesting and obtaining detailed
8 data, including raw data, in response to the information provided by
9 a PBM in the quarterly reports required by this section. The
10 Attorney General may alter the frequency of the reports required by
11 this section at his or her sole discretion.

12 F. The Attorney General may promulgate rules to implement the
13 provisions of the Patient's Right to Pharmacy Choice Act, the
14 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
15 59 of the Oklahoma Statutes.

16 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6965, as
17 amended by Section 2, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023,
18 Section 6965), is amended to read as follows:

19 Section 6965. A. The Attorney General shall have power and
20 authority to examine and investigate the affairs of every pharmacy
21 benefits manager (PBM) engaged in pharmacy benefits management in
22 this state in order to determine whether such entity is in
23 compliance with the Patient's Right to Pharmacy Choice Act, the
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1 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
2 59 of the Oklahoma Statutes.

3 B. The Attorney General shall have the power and authority to
4 subpoena witnesses and records, whether prior to or during an
5 investigation or prosecution of a complaint, from any relevant
6 entity or persons to ensure compliance with the Patient's Right to
7 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
8 357 through 360 of Title 59 of the Oklahoma Statutes.

9 C. All PBM files and records shall be subject to examination by
10 the Attorney General or by duly appointed designees. The Attorney
11 General, authorized employees and examiners shall have access to any
12 of a PBM's files and records that may relate to a particular
13 complaint under investigation or to an inquiry or examination by the
14 Attorney General.

15 ~~C.~~ D. Every officer, director, employee or agent of the PBM,
16 upon receipt of any inquiry from the Attorney General, shall, within
17 twenty (20) days from the date the inquiry is sent, furnish the
18 Attorney General with an adequate response to the inquiry.

19 ~~D.~~ E. When making an examination under this section, the
20 Attorney General may retain subject matter experts, attorneys,
21 appraisers, independent actuaries, independent certified public
22 accountants or an accounting firm or individual holding a permit to
23 practice public accounting, certified financial examiners or other
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1 professionals and specialists as examiners, the cost of which shall
2 be borne by the PBM that is the subject of the examination.

3 F. 1. Protected health information (PHI) held by a PBM shall
4 be provided at the request of the Attorney General for the purpose
5 of conducting investigations into potential violations of state laws
6 and regulations related to the PBM. Disclosure of protected health
7 information shall be limited to the extent necessary for the
8 investigation and enforcement of state law.

9 2. All disclosures of protected health information shall be
10 made in compliance with all applicable federal and state privacy
11 laws, including the Health Insurance Portability and Accountability
12 Act of 1996 (HIPAA), and other relevant laws protecting the privacy
13 and confidentiality of health information.

14 3. Any protected health information obtained for an
15 investigation shall be handled and maintained per applicable federal
16 and state privacy laws and regulations, including HIPAA.

17 4. Unauthorized disclosure of protected health information
18 obtained during an investigation is strictly prohibited and subject
19 to legal penalties.

20 G. 1. If the Attorney General, after notice and opportunity
21 for hearing, finds that any PBM operating within this state has not
22 fully cooperated with an investigation or inquiry conducted by the
23 Attorney General related to compliance with the Patient's Right to
24 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections

1 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney
2 General may instruct the Insurance Commissioner that the PBM be
3 censured or his or her license be suspended or revoked. If the
4 Attorney General makes such instruction, the Commissioner shall
5 enforce the instructed action within thirty (30) days.

6 2. In addition to or in lieu of any censure, suspension, or
7 revocation by the Commissioner, the Attorney General may levy a
8 civil or administrative fine not less than One Hundred Dollars
9 (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for
10 each violation of this subsection and assess any other penalty or
11 remedy authorized by this act. For purposes of this section, each
12 day a PBM fails to comply with an investigation or inquiry may be
13 considered a separate violation.

14 SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L.
15 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S.
16 Supp. 2023, Section 6966.1), is amended to read as follows:

17 Section 6966.1. A. The Insurance Commissioner may censure,
18 suspend, revoke, or refuse to issue or renew a license of or levy a
19 civil penalty against any person licensed under the insurance laws
20 of this state for any violation of the Patient's Right to Pharmacy
21 Choice Act, Section 6958 et seq. of this title.

22 B. 1. If the Attorney General finds, after notice and
23 opportunity for hearing, that a pharmacy benefits manager (PBM)
24 violated one or more provisions of the Patient's Right to Pharmacy

1 Choice Act, the Pharmacy Audit Integrity Act or the provisions of
2 Sections 357 through 360 of Title 59 of the Oklahoma ~~Statutes~~
3 Statutes, the Attorney General may ~~recommend~~ instruct the Insurance
4 Commissioner that the PBM be censured, or his or her license ~~may~~ be
5 suspended or revoked ~~and a penalty or remedy authorized by this act~~
6 ~~may be imposed~~. If the Attorney General makes such ~~recommendation~~
7 instruction, the Commissioner shall ~~take the recommended action~~
8 enforce such action within thirty (30) days.

9 2. In addition to or in lieu of any censure, suspension or
10 revocation of a license by the Commissioner, ~~a PBM~~ the Attorney
11 General ~~may be subject to~~ levy a civil or administrative fine ~~of~~ not
12 less than One Hundred Dollars (\$100.00) and not greater than Ten
13 Thousand Dollars (\$10,000.00) for each violation of the provisions
14 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit
15 Integrity Act or the provisions of Sections 357 through 360 of Title
16 59 of the Oklahoma ~~Statutes, following notice and an opportunity for~~
17 ~~a hearing~~ Statutes.

18 3. The Attorney General may order restitution for economic loss
19 suffered by pharmacies or patients for violations of the Patient's
20 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or
21 the provisions of Sections 357 through 360 of Title 59 of the
22 Oklahoma Statutes.

23 C. Notwithstanding whether the license of a PBM has been
24 issued, suspended, revoked, surrendered or lapsed by operation of

1 law, the Attorney General is hereby authorized to enforce the
2 provisions of the Patient's Right to Pharmacy Choice Act and impose
3 any penalty or remedy authorized under the act against a PBM under
4 investigation for or charged with a violation of the Patient's Right
5 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the
6 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
7 ~~Statutes~~ Statutes or any provision of the insurance laws of this
8 state.

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

12 E. 1. All hearings conducted by the Office of the Attorney
13 General pursuant to this section shall be public and held in
14 accordance with the Administrative Procedures Act.

15 2. Hearings shall be held at the ~~office~~ Office of the Attorney
16 General or any other place the Attorney General may deem convenient.

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

21 4. The ordinary fees and costs of the hearing examiner
22 appointed pursuant to Section 319 of this title may be assessed by
23 the hearing examiner against the respondent unless the respondent is
24 the prevailing party.

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

6 G. If the Attorney General determines, based upon an
7 investigation of complaints, that a PBM has engaged in violations of
8 the provisions of the Patient's Right to Pharmacy Choice Act, the
9 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
10 59 of the Oklahoma Statutes with such frequency as to indicate a
11 general business practice, and that the PBM should be subjected to
12 closer supervision with respect to those practices, the Attorney
13 General may require the PBM to file a report at any periodic
14 interval the Attorney General deems necessary.

15 H. 1. The Attorney General shall have the authority to collect
16 all fines, penalties, restitution, and interest thereon pursuant to
17 the provisions of the Patient's Right to Pharmacy Choice Act, the
18 Pharmacy Audit Integrity Act, and the provisions of Sections 357
19 through 360 of Title 59 of the Oklahoma Statutes, or any other
20 charge, cause of action, prelitigation settlement, or other
21 settlement that requires the recovery of money as a result of
22 violations of the Patient's Right to Pharmacy Choice Act. Funds
23 collected by the Attorney General pursuant to the Patient's Right to
24 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections

1 357 through 360 of Title 59 of the Oklahoma Statutes shall be
2 deposited into the Attorney General's Pharmacy Benefits Manager
3 Enforcement Revolving Fund.

4 2. Costs of investigation, litigation, attorney fees, and other
5 expenses incurred shall be retained by the Office of the Attorney
6 General. Remaining funds shall be distributed to pharmacists,
7 patients, or other injured parties as determined by the Attorney
8 General.

9 3. The Attorney General shall promulgate rules for the
10 distribution of funds pursuant to this subsection.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 There is hereby created in the State Treasury a revolving fund
15 for the Office of the Attorney General, to be designated the
16 "Attorney General's Pharmacy Benefits Manager Enforcement Revolving
17 Fund". The fund shall be a continuing fund, not subject to fiscal
18 year limitations, and shall consist of any monies collected by the
19 Attorney General and designated to the fund by law, including those
20 levied for activities related to enforcement of the Patient's Right
21 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and the
22 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
23 Statutes. All monies accruing to the credit of the fund are hereby
24 appropriated and may be budgeted and expended by the Attorney

1 General for the purposes provided in this section. Expenditures
2 from the fund shall be made upon warrants issued by the State
3 Treasurer against claims filed as prescribed by law with the
4 Director of the Office of Management and Enterprise Services for
5 approval and payment.

6 SECTION 6. AMENDATORY 36 O.S. 2021, Section 6967, is
7 amended to read as follows:

8 Section 6967. A. Documents, evidence, materials, records,
9 reports, complaints or other information in the possession or
10 control of the Office of the Attorney General or Insurance
11 Department ~~or the Right to Pharmacy Choice Commission~~ that ~~are~~ is
12 obtained by, created by or disclosed to the Office of the Attorney
13 General or Insurance Commissioner, ~~Pharmacy Choice Commission~~ or any
14 other person in the course of an evaluation, examination,
15 investigation or review made pursuant to the provisions of the
16 Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit
17 Integrity Act or Sections 357 through 360 of Title 59 of the
18 Oklahoma Statutes, except as provided in subsection C of this
19 section, shall be confidential by law and privileged, shall not be
20 subject to open records request, shall not be subject to subpoena
21 and shall not be subject to discovery or admissible in evidence in
22 any private civil action if obtained from the Attorney General,
23 Insurance Commissioner, ~~the Pharmacy Choice Commission~~ or any
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1 employees or representatives of the Attorney General or Insurance
2 Commissioner.

3 B. Nothing in this section shall prevent the disclosure of a
4 final order issued against a pharmacy benefits manager by the Office
5 of the Attorney General or Insurance Commissioner or Pharmacy Choice
6 Commission. Such orders shall be open records.

7 C. Nothing in this section shall prevent the Attorney General
8 from making public, in the form of an examination report, any
9 findings from an examination pursuant to Section 6965 of this title.
10 It shall be the Attorney General's sole discretion to determine
11 whether it is in the public's interest to publish these findings.
12 Only the final examination report shall be made public. Any
13 documents, evidence, materials, records, reports, complaints, or
14 other information in possession or control of the Attorney General
15 obtained through the examination shall be confidential by law and
16 privileged, shall not be subject to the Oklahoma Open Records Act,
17 shall not be subject to subpoena, and shall not be subject to
18 discovery or admissible evidence in any private civil action if
19 obtained from the Attorney General.

20 D. In the course of any hearing made pursuant to the provisions
21 of the Patient's Right to Pharmacy Choice Act, the Pharmacy
22 ~~Integrity~~ Integrity Act or Sections 357 through 360 of Title
23 59 of the Oklahoma Statutes, nothing in this section shall be
24 construed to prevent the Insurance Commissioner or any employees or

1 representatives of the Insurance Commissioner from presenting
2 admissible documents, evidence, materials, records, reports or
3 complaints to the adjudicating authority.

4 SECTION 7. REPEALER 36 O.S. 2021, Section 6966, is
5 hereby repealed.

6 SECTION 8. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval."

10 Passed the Senate the 17th day of April, 2024.

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12 _____
13 Presiding Officer of the Senate

14 Passed the House of Representatives the ____ day of _____,
15 2024.

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17 _____
18 Presiding Officer of the House
19 of Representatives
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1 ENGROSSED HOUSE
2 BILL NO. 3376

By: McEntire of the House

3 and

4 McCortney of the Senate

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7 [pharmacy benefits managers - Patient's Right to
8 Pharmacy Choice Act - definitions - fines and fees
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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 9. AMENDATORY 36 O.S. 2021, Section 6960, as
18 amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2023,
19 Section 6960), is amended to read as follows:

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

22 1. "Covered entity" means a nonprofit hospital or medical
23 service organization, for-profit hospital or medical service
24 organization, insurer, health benefit plan, health maintenance

organization, health program administered by the state in the capacity of providing health coverage, or an employer, labor union, or other group of persons that provides health coverage to persons in this state. This term does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, disability income, or other limited benefit health insurance policies and contracts that do not include prescription drug coverage;

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

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

~~4.~~ 5. "Pharmacy benefits manager" or "PBM" means a person, business, or other entity that performs pharmacy benefits management and any other person acting for such person under. The term shall include a person or entity acting on behalf of a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care company, nonprofit

1 hospital, medical service organization, insurance company, third-
2 party payor or a health program administered by a department of this
3 state;

4 6. "Pharmacy benefits management" means a service provided to
5 covered entities to facilitate the provisions of prescription drug
6 benefits to covered individuals within the state, including, but not
7 limited to, negotiating pricing and other terms with drug
8 manufacturers and providers. Pharmacy benefits management may
9 include any or all of the following services:

- 10 a. claims processing, retail network management, and
11 payment of claims to pharmacies for prescription drugs
12 dispensed to covered individuals,
- 13 b. administration or management of pharmacy discount
14 cards or programs,
- 15 c. clinical formulary development and management
16 services,
- 17 d. rebate contracting and administration,
- 18 e. certain patient compliance, therapeutic intervention,
19 and generic substitution programs,
- 20 f. administration or management of mail-order pharmacy
21 programs, or
- 22 g. disease management programs;

~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1 of Title 59 of the Oklahoma Statutes or an agent or representative of a pharmacy;

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

~~7.~~ 9. "Rural service area" means a five-digit ZIP code in which the population density is less than one thousand (1,000) individuals per square mile;

~~8.~~ 10. "Spread pricing" means a prescription drug pricing model utilized by a pharmacy benefits manager in which the PBM charges a health benefit plan a contracted price for prescription drugs that differs from the amount the PBM directly or indirectly pays the pharmacy or pharmacist for providing pharmacy services;

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

~~10.~~ 12. "Urban service area" means a five-digit ZIP code in which the population density is greater than three thousand (3,000) individuals per square mile.

SECTION 10. AMENDATORY 36 O.S. 2021, Section 6962, as amended by Section 1, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023, Section 6962), is amended to read as follows:

1 Section 6962. A. The Attorney General shall review and approve
2 retail pharmacy network access for all pharmacy benefits managers
3 (PBMs) to ensure compliance with Section 6961 of this title.

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

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

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

10 a. the submission of a claim,

11 b. enrollment or participation in a retail pharmacy
12 network, or

13 c. the development or management of claims processing
14 services or claims payment services related to
15 participation in a retail pharmacy network;

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

23 4. Deny a provider the opportunity to participate in any
24 pharmacy network at preferred participation status if the provider

1 is willing to accept the terms and conditions that the PBM has
2 established for other providers as a condition of preferred network
3 participation status;

4 5. Deny, limit or terminate a provider's contract based on
5 employment status of any employee who has an active license to
6 dispense, despite probation status, with the State Board of
7 Pharmacy;

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

11 a. the original claim was submitted fraudulently, or

12 b. to correct errors identified in an audit, so long as
13 the audit was conducted in compliance with Sections
14 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

18 8. Conduct or practice spread pricing, as defined in ~~Section 1~~
19 ~~of this act~~ Section 6960 of this title, in this state; or

20 9. Charge a pharmacist or pharmacy a fee related to
21 participation in a retail pharmacy network including but not limited
22 to the following:

23 a. an application fee,

24 b. an enrollment or participation fee,

- c. a credentialing or re-credentialing fee,
- d. a change of ownership fee, or
- e. a fee for the development or management of claims processing services or claims payment services.

C. The prohibitions under this section shall apply to contracts between pharmacy benefits managers and providers for participation in retail pharmacy networks.

1. A PBM contract shall:

- a. not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, and
- b. ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict, directly or indirectly, a pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, a covered individual of any differential between the individual's out-of-pocket 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 provider shall
5 not prohibit, restrict, or limit disclosure of information or
6 documents to the Attorney General, law enforcement or state and
7 federal governmental officials investigating or examining a
8 complaint or conducting a review of a pharmacy benefits manager's
9 compliance with the requirements under the Patient's Right to
10 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
11 357 through 360 of Title 59 of the Oklahoma Statutes.

12 D. A pharmacy benefits manager shall:

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

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

21 3. Provide the Attorney General, insurers, self-funded employer
22 plans and unions unrestricted audit rights of and access to the
23 respective PBM pharmaceutical manufacturer and provider contracts,
24

1 plan utilization data, plan pricing data, pharmacy utilization data
2 and pharmacy pricing data;

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

8 5. Report to the Attorney General, on a quarterly basis for
9 each health insurer payor, on the following information:

- 10 a. the aggregate amount of rebates received by the PBM,
- 11 b. the aggregate amount of rebates distributed to the
12 appropriate health insurer payor,
- 13 c. the aggregate amount of rebates passed on to the
14 enrollees of each health insurer payor at the point of
15 sale that reduced the applicable deductible,
16 copayment, coinsure or other cost sharing amount of
17 the enrollee,
- 18 d. the individual and aggregate amount paid by the health
19 insurer payor to the PBM for pharmacy services
20 itemized by pharmacy, drug product and service
21 provided, and
- 22 e. the individual and aggregate amount a PBM paid a
23 provider for pharmacy services itemized by pharmacy,
24 drug product and service provided.

1 E. Nothing in the Patient's Right to Pharmacy Choice Act shall
2 prohibit the Attorney General from requesting and obtaining detailed
3 data, including raw data, in response to the information provided by
4 a PBM in the quarterly reports required by this section. The
5 Attorney General may alter the frequency of the reports required by
6 this section at his or her sole discretion.

7 F. The Attorney General may promulgate rules to implement the
8 provisions of the Patient's Right to Pharmacy Choice Act, the
9 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
10 59 of the Oklahoma Statutes.

11 SECTION 11. AMENDATORY 36 O.S. 2021, Section 6965, as
12 amended by Section 2, Chapter 293, O.S.L. 2023 (36 O.S. Supp. 2023,
13 Section 6965), is amended to read as follows:

14 Section 6965. A. The Attorney General shall have power and
15 authority to examine and investigate the affairs of every pharmacy
16 benefits manager (PBM) engaged in pharmacy benefits management in
17 this state in order to determine whether such entity is in
18 compliance with the Patient's Right to Pharmacy Choice Act, the
19 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
20 59 of the Oklahoma Statutes.

21 B. The Attorney General shall have the power and authority to
22 subpoena witnesses and records, whether prior to or during an
23 investigation or prosecution of a complaint, from any relevant
24 entity or persons to ensure compliance with the Patient's Right to

1 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
2 357 through 360 of Title 59 of the Oklahoma Statutes.

3 C. All PBM files and records shall be subject to examination by
4 the Attorney General or by duly appointed designees. The Attorney
5 General, authorized employees and examiners shall have access to any
6 of a PBM's files and records that may relate to a particular
7 complaint under investigation or to an inquiry or examination by the
8 Attorney General.

9 ~~C.~~ D. Every officer, director, employee or agent of the PBM,
10 upon receipt of any inquiry from the Attorney General shall, within
11 twenty (20) days from the date the inquiry is sent, furnish the
12 Attorney General with an adequate response to the inquiry.

13 ~~D.~~ E. When making an examination under this section, the
14 Attorney General may retain subject matter experts, attorneys,
15 appraisers, independent actuaries, independent certified public
16 accountants or an accounting firm or individual holding a permit to
17 practice public accounting, certified financial examiners or other
18 professionals and specialists as examiners, the cost of which shall
19 be borne by the PBM that is the subject of the examination.

20 F. 1. Protected health information, or "PHI", held by a PBM
21 shall be provided at the request of the Attorney General for the
22 purpose of conducting investigations into potential violations of
23 state laws and regulations related to the PBM. Disclosure of
24

1 protected health information shall be limited to the extent
2 necessary for the investigation and enforcement of state law.

3 2. All disclosures of protected health information shall be
4 made in compliance with all applicable federal and state privacy
5 laws, including the Health Insurance Portability and Accountability
6 Act of 1996 (HIPAA), and other relevant laws protecting the privacy
7 and confidentiality of health information.

8 3. Any protected health information obtained for an
9 investigation shall be handled and maintained per applicable federal
10 and state privacy laws and regulations, including HIPAA.

11 4. Unauthorized disclosure of protected health information
12 obtained during an investigation is strictly prohibited and subject
13 to legal penalties.

14 G. 1. If the Attorney General, after notice and opportunity
15 for hearing, finds that any PBM operating within the State of
16 Oklahoma has not fully cooperated with an investigation or inquiry
17 conducted by the Attorney General related to compliance with the
18 Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity
19 Act, or Sections 357 through 360 of Title 59 of the Oklahoma
20 Statutes, the Attorney General may instruct the Insurance
21 Commissioner that the PBM be censured or his or her license
22 suspended or revoked. If the Attorney General makes such
23 instruction, the Commissioner shall enforce the instructed action
24 within thirty (30) days.

1 2. In addition to or in lieu of any censure, suspension, or
2 revocation by the Commissioner, the Attorney General may levy a
3 civil or administrative fine of not less than One Hundred Dollars
4 (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for
5 each violation of this subsection and/or assess any other penalty or
6 remedy authorized by this act. For purposes of this section, each
7 day a PBM fails to comply with an investigation or inquiry may be
8 considered a separate violation.

9 SECTION 12. AMENDATORY Section 3, Chapter 38, O.S.L.
10 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S.
11 Supp. 2023, Section 6966.1), is amended to read as follows:

12 Section 6966.1 A. The Insurance Commissioner may censure,
13 suspend, revoke, or refuse to issue or renew a license of or levy a
14 civil penalty against any person licensed under the insurance laws
15 of this state for any violation of the Patient's Right to Pharmacy
16 Choice Act, Section 6958 et seq. of this title.

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

1 ~~may be imposed.~~ If the Attorney General makes such ~~recommendation~~
2 instruction, the Commissioner shall ~~take the recommended action~~
3 enforce such action within thirty (30) days.

4 2. In addition to or in lieu of any censure, suspension or
5 revocation of a license by the Commissioner, ~~a PBM~~ the Attorney
6 General may ~~be subject to~~ levy a civil or administrative fine ~~of~~ not
7 less than One Hundred Dollars (\$100.00) and not greater than Ten
8 Thousand Dollars (\$10,000.00) for each violation of the provisions
9 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit
10 Integrity Act or the provisions of Sections 357 through 360 of Title
11 59 of the Oklahoma ~~Statutes, following notice and an opportunity for~~
12 ~~a hearing~~ Statutes.

13 3. The Attorney General may order restitution for economic loss
14 suffered by pharmacies or patients for violations of the Patient's
15 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or
16 the provisions of Sections 357 through 360 of Title 59 of the
17 Oklahoma Statutes.

18 C. Notwithstanding whether the license of a PBM has been
19 issued, suspended, revoked, surrendered or lapsed by operation of
20 law, the Attorney General is hereby authorized to enforce the
21 provisions of the Patient's Right to Pharmacy Choice Act and impose
22 any penalty or remedy authorized under the act against a PBM under
23 investigation for or charged with a violation of the Patient's Right
24 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the

1 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
2 ~~Statutes~~ Statutes or any provision of the insurance laws of this
3 state.

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

7 E. 1. All hearings conducted by the Office of the Attorney
8 General pursuant to this section shall be public and held in
9 accordance with the Administrative Procedures Act.

10 2. Hearings shall be held at the office of the Attorney General
11 or any other place the Attorney General may deem convenient.

12 3. The Attorney General, upon written request from a PBM
13 affected by the hearing, shall cause a full stenographic record of
14 the proceedings to be made by a competent court reporter. This
15 record shall be at the expense of the PBM.

16 4. The ordinary fees and costs of the hearing examiner
17 appointed pursuant to Section 319 of this title may be assessed by
18 the hearing examiner against the respondent unless the respondent is
19 the prevailing party.

20 F. Any PBM whose license has been censured, suspended, revoked
21 or denied renewal or who has had a fine levied against him or her
22 shall have the right of appeal from the final order of the Attorney
23 General, pursuant to Section 318 et seq. of Title 75 of the Oklahoma
24 Statutes.

1 G. If the Attorney General determines, based upon an
2 investigation of complaints, that a PBM has engaged in violations of
3 the provisions of the Patient's Right to Pharmacy Choice Act, the
4 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
5 59 of the Oklahoma Statutes with such frequency as to indicate a
6 general business practice, and that the PBM should be subjected to
7 closer supervision with respect to those practices, the Attorney
8 General may require the PBM to file a report at any periodic
9 interval the Attorney General deems necessary.

10 H. 1. The Attorney General shall have the authority to collect
11 all fines, penalties, restitution, and interest thereon pursuant to
12 the provisions of the Patient's Right to Pharmacy Choice Act, the
13 Pharmacy Audit Integrity Act, and the provisions of Sections 357
14 through 360 of Title 59 of the Oklahoma Statutes, or any other
15 charge, cause of action, prelitigation settlement, or other
16 settlement that requires the recovery of money as a result of
17 violations of the Patient's Right to Pharmacy Choice Act. Funds
18 collected by the Attorney General pursuant to the Patient's Right to
19 Pharmacy Choice Act shall be deposited into the Attorney General's
20 Pharmacy Benefits Manager Enforcement Revolving Fund.

21 2. Costs of investigation, litigation, attorney fees, and other
22 expenses incurred shall be retained by the Office of the Attorney
23 General. Remaining funds shall be distributed to pharmacists,
24

1 patients, or other injured parties as determined by the Attorney
2 General.

3 3. The Attorney General shall promulgate rules for the
4 distribution of funds pursuant to this subsection.

5 SECTION 13. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 There is hereby created in the State Treasury a revolving fund
9 for the Office of the Attorney General, to be designated the
10 "Attorney General's Pharmacy Benefits Manager Enforcement Revolving
11 Fund". The fund shall be a continuing fund, not subject to fiscal
12 year limitations, and shall consist of any monies collected by the
13 Attorney General and designated to the fund by law, including those
14 levied for activities related to enforcement of the Patient's Right
15 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and the
16 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
17 Statutes. All monies accruing to the credit of the fund are hereby
18 appropriated and may be budgeted and expended by the Attorney
19 General for the purposes provided in this section. Expenditures
20 from the fund shall be made upon warrants issued by the State
21 Treasurer against claims filed as prescribed by law with the
22 Director of the Office of Management and Enterprise Services for
23 approval and payment.

1 SECTION 14. AMENDATORY 36 O.S. 2021, Section 6967, is
2 amended to read as follows:

3 Section 6967. A. Documents, evidence, materials, records,
4 reports, complaints or other information in the possession or
5 control of the Office of the Attorney General or Insurance
6 ~~Department or the Right to Pharmacy Choice Commission~~ that are
7 obtained by, created by or disclosed to the Office of the Attorney
8 General or Insurance Commissioner, ~~Pharmacy Choice Commission~~ or any
9 other person in the course of an evaluation, examination,
10 investigation or review made pursuant to the provisions of the
11 Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit
12 Integrity Act or Sections 357 through 360 of Title 59 of the
13 Oklahoma Statutes, except as provided in subsection C of this
14 section, shall be confidential by law and privileged, shall not be
15 subject to open records request, shall not be subject to subpoena
16 and shall not be subject to discovery or admissible in evidence in
17 any private civil action if obtained from the Attorney General,
18 Insurance Commissioner, ~~the Pharmacy Choice Commission~~ or any
19 employees or representatives of the Attorney General or Insurance
20 Commissioner.

21 B. Nothing in this section shall prevent the disclosure of a
22 final order issued against a pharmacy benefits manager by the Office
23 of the Attorney General and Insurance Commissioner ~~or Pharmacy~~
24 ~~Choice Commission~~. Such orders shall be open records.

1 C. Nothing in this section shall prevent the Attorney General
2 from making public, in the form of an examination report, any
3 findings from an examination pursuant to Section 6965 of this title.
4 It shall be the Attorney General's sole discretion to determine
5 whether it is in the public's interest to publish these findings.
6 Only the final examination report shall be made public. Any
7 documents, evidence, materials, records, reports, complaints, or
8 other information in possession or control of the Attorney General
9 obtained through the examination shall be confidential by law and
10 privileged, shall not be subject to the Oklahoma Open Records Act,
11 shall not be subject to subpoena, and shall not be subject to
12 discovery or admissible evidence in any private civil action if
13 obtained from the Attorney General.

14 D. In the course of any hearing made pursuant to the provisions
15 of the Patient's Right to Pharmacy Choice Act, the Pharmacy
16 Integrity Audit Act or Sections 357 through 360 of Title 59 of the
17 Oklahoma Statutes, nothing in this section shall be construed to
18 prevent the Insurance Commissioner or any employees or
19 representatives of the Insurance Commissioner from presenting
20 admissible documents, evidence, materials, records, reports or
21 complaints to the adjudicating authority.

22 SECTION 15. REPEALER 36 O.S. 2021, Section 6966, is
23 hereby repealed.

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

Passed the House of Representatives the 12th day of March, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2024.

Presiding Officer of the Senate