

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1670

By: McCortney, Prieto, Jett,  
Coleman, Hamilton, and  
Alvord of the Senate

4 and

5 McEntire of the House

6

7

8 [ pharmacy benefits management - pharmacy  
9 reimbursement - rule promulgation - audit - notice  
and reporting - fines and fees - recouped funds -  
emergency ]

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13 AMENDMENT NO. 1. Strike the stricken title, enacting clause, and  
entire bill and insert:

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15 "An Act relating to pharmacy benefits management;  
16 amending 59 O.S. 2021, Sections 356.1, 356.2, 356.3,  
357, 358, and 360, which relate to the Pharmacy Audit  
17 Integrity Act and pharmacy reimbursement; providing  
for rule promulgation; modifying audit notice  
18 requirements; requiring notice and reporting to the  
Office of the Attorney General; providing for fines  
19 and fees; modifying definitions; requiring certain  
recouped funds from audit to be paid to patients  
20 first; making certain audits null and void; requiring  
certain notice to include certain declaration;  
21 modifying definition; modifying reimbursement appeal  
process; requiring reimbursement at certain rate  
22 under certain circumstances; updating statutory  
references; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 59 O.S. 2021, Section 356.1, is  
3 amended to read as follows:

4 Section 356.1. A. For purposes of the Pharmacy Audit Integrity  
5 Act, "pharmacy benefits manager" or "PBM" ~~means a person, business,~~  
6 ~~or other entity that performs pharmacy benefits management. The~~  
7 ~~term includes a person or entity acting for a PBM in a contractual~~  
8 ~~or employment relationship in the performance of pharmacy benefits~~  
9 ~~management for a managed care company, nonprofit hospital, medical~~  
10 ~~service organization, insurance company, third-party payor, or a~~  
11 ~~health program administered by a department of this state~~ shall have  
12 the same meaning as in Section 6960 of Title 36 of the Oklahoma  
13 Statutes.

14 B. The purpose of the Pharmacy Audit Integrity Act is to  
15 establish minimum and uniform standards and criteria for the audit  
16 of pharmacy records by or on behalf of certain entities.

17 C. The Pharmacy Audit Integrity Act shall apply to any audit of  
18 the records of a pharmacy conducted by a managed care company,  
19 nonprofit hospital, medical service organization, insurance company,  
20 third-party payor, pharmacy benefits manager, a health program  
21 administered by a department of this state, or any entity that  
22 represents these companies, groups, or departments.

23 D. The Attorney General may promulgate rules to implement the  
24 provisions of the Pharmacy Audit Integrity Act.

1 SECTION 2. AMENDATORY 59 O.S. 2021, Section 356.2, is  
2 amended to read as follows:

3 Section 356.2. A. The entity conducting an audit of a pharmacy  
4 shall:

5 1. Identify and specifically describe the audit and appeal  
6 procedures in the pharmacy contract. Prescription claim  
7 documentation and record-keeping requirements shall not exceed the  
8 requirements set forth by the Oklahoma Pharmacy Act or other  
9 applicable state or federal laws or regulations;

10 2. Give the pharmacy written notice by certified letter to the  
11 pharmacy and the pharmacy's contracting agent, including  
12 identification of specific prescription numbers and fill dates to be  
13 audited, at least ~~two (2) weeks~~ fourteen (14) calendar days prior to  
14 conducting the audit, including, but not limited to, an on-site  
15 audit, a desk audit, or a wholesale purchase audit, request for  
16 documentation related to the dispensing of a prescription drug or  
17 any reimbursed activity by a pharmacy provider; provided, however,  
18 that wholesale purchase audits shall require a minimum of thirty  
19 ~~(30) days'~~ calendar days' written notice. For an on-site audit, the  
20 audit date shall be the date the on-site audit occurs. For all  
21 other audit types, the audit date shall be the date the pharmacy  
22 provides the documentation requested in the audit notice. The  
23 pharmacy shall have the opportunity to reschedule the audit no more  
24

1 than seven (7) calendar days from the date designated on the  
2 original audit notification;

3 3. Not interfere with the delivery of pharmacist services to a  
4 patient and shall utilize every reasonable effort to minimize  
5 inconvenience and disruption to pharmacy operations during the audit  
6 process;

7 4. Conduct any audit involving clinical or professional  
8 judgment by means of or in consultation with a licensed pharmacist;

9 5. Not consider as fraud any clerical or record-keeping error,  
10 such as a typographical error, scrivener's error or computer error,  
11 including, but not limited to, a miscalculated day supply,  
12 incorrectly billed prescription written date or prescription origin  
13 code, and such errors shall not be subject to recoupment. The  
14 pharmacy shall have the right to submit amended claims  
15 electronically to correct clerical or record-keeping errors in lieu  
16 of recoupment. To the extent that an audit results in the  
17 identification of any clerical or record-keeping errors such as  
18 typographical errors, scrivener's errors or computer errors in a  
19 required document or record, the pharmacy shall not be subject to  
20 recoupment of funds by the pharmacy benefits manager unless the  
21 pharmacy benefits manager can provide proof of intent to commit  
22 fraud. A person shall not be subject to criminal penalties for  
23 errors provided for in this paragraph without proof of intent to  
24 commit fraud;

1       6. Permit a pharmacy to use the records of a hospital,  
2 physician, or other authorized practitioner of the healing arts for  
3 drugs or medicinal supplies written or transmitted by any means of  
4 communication for purposes of validating the pharmacy record with  
5 respect to orders or refills of a legend or narcotic drug;

6       7. Not include the dispensing fee amount or the actual invoice  
7 cost of the prescription dispensed in a finding of an audit  
8 recoupment unless a prescription was not actually dispensed or a  
9 physician denied authorization of a dispensing order;

10       8. Audit each pharmacy under identical standards, regularity  
11 and parameters as other similarly situated pharmacies and all  
12 pharmacies owned or managed by the pharmacy benefits manager  
13 conducting or having conducted the audit;

14       9. Not exceed one (1) year from the date the claim was  
15 submitted to or adjudicated by a managed care company, nonprofit  
16 hospital or medical service organization, insurance company, third-  
17 party payor, pharmacy benefits manager, a health program  
18 administered by a department of this state, or any entity that  
19 represents the companies, groups, or departments for the period  
20 covered by an audit;

21       10. Not schedule or initiate an audit during the first seven  
22 (7) calendar days of any month unless otherwise consented to by the  
23 pharmacy;

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1 11. Disclose to any plan sponsor whose claims were included in  
2 the audit any money recouped in the audit; ~~and~~

3 12. Not require pharmacists to break open packaging labeled  
4 "for single-patient-use only". Packaging labeled "for single-  
5 patient-use only" shall be deemed to be the smallest package size  
6 available; and

7 13. Upon recoupment of funds from a pharmacy, refund first to  
8 the patient the portion of the recovered funds that were originally  
9 paid by the patient, provided such funds were part of the  
10 recoupment.

11 B. 1. Any entity that conducts wholesale purchase review  
12 during an audit of a pharmacist or pharmacy shall not require the  
13 pharmacist or pharmacy to provide a full dispensing report.  
14 Wholesaler invoice reviews shall be limited to verification of  
15 purchase inventory specific to the pharmacy claims paid by the  
16 health benefits plan or pharmacy benefits manager conducting the  
17 audit.

18 2. Any entity conducting an audit shall not identify or label a  
19 prescription claim as an audit discrepancy when:

- 20 a. the National Drug Code for the dispensed drug is in a  
21 quantity that is a subunit or multiple of the drug  
22 purchased by the pharmacist or pharmacy as supported  
23 by a wholesale invoice,

1           b.    the pharmacist or pharmacy dispensed the correct  
2                    quantity of the drug according to the prescription,  
3                    and

4           c.    the drug dispensed by the pharmacist or pharmacy  
5                    shares all but the last two digits of the National  
6                    Drug Code of the drug reflected on the supplier  
7                    invoice.

8           3.    An entity conducting an audit shall accept as evidence,  
9           subject to validation, to support the validity of a pharmacy claim  
10           related to a dispensed drug:

11           a.    redacted copies of supplier invoices in the  
12                    pharmacist's or pharmacy's possession, or

13           b.    invoices and any supporting documents from any  
14                    supplier as authorized by federal or state law to  
15                    transfer ownership of the drug acquired by the  
16                    pharmacist or pharmacy.

17           4.    An entity conducting an audit shall provide, no later than  
18           five (5) ~~business~~ calendar days after the date of a request by the  
19           pharmacist or pharmacy, all supporting documents the pharmacist's or  
20           pharmacy's purchase suppliers provided to the health benefits plan  
21           issuer or pharmacy benefits manager.

22           C.    A pharmacy shall be allowed to provide the pharmacy's  
23           computerized patterned medical records or the records of a hospital,  
24           physician, or other authorized practitioner of the healing arts for

1 drugs or medicinal supplies written or transmitted by any means of  
2 communication for purposes of supporting the pharmacy record with  
3 respect to orders or refills of a legend or narcotic drug.

4 D. The entity conducting the audit shall not audit more than  
5 fifty prescriptions, with specific date of service, per calendar  
6 year. The annual limit to the number of prescription claims audited  
7 shall be inclusive of all audits, including any prescription-related  
8 documentation requests from the health insurer, pharmacy benefits  
9 manager or any third-party company conducting audits on behalf of  
10 any health insurer or pharmacy benefits manager during a calendar  
11 year.

12 E. If paper copies of records are requested by the entity  
13 conducting the audit, the entity shall pay twenty-five cents (\$0.25)  
14 per page to cover the costs incurred by the pharmacy. The entity  
15 conducting the audit shall provide the pharmacy with accurate  
16 instructions, including any required form for obtaining  
17 reimbursement for the copied records.

18 F. The entity conducting the audit shall:

19 1. Deliver a preliminary audit findings report to the pharmacy  
20 and the pharmacy's contracting agent within forty-five (45) calendar  
21 days of conducting the audit;

22 2. Allow the pharmacy at least ninety (90) calendar days  
23 following receipt of the preliminary audit findings report in which  
24 to produce documentation to address any discrepancy found during the

1 audit; provided, however, a pharmacy may request an extension, not  
2 to exceed an additional forty-five (45) calendar days;

3 3. Deliver a final audit findings report to the pharmacy and  
4 the pharmacy's contracting agent signed by the auditor within ten  
5 (10) calendar days after receipt of additional documentation  
6 provided by the pharmacy, as provided for in Section 356.3 of this  
7 title;

8 4. Allow the pharmacy to reverse and resubmit claims  
9 electronically within thirty (30) calendar days of receipt of the  
10 final audit report in lieu of the auditing entity recouping  
11 discrepant claim amounts from the pharmacy;

12 5. Not recoup any disputed funds until after final disposition  
13 of the audit findings, including the appeals process as provided for  
14 in Section 356.3 of this title; and

15 6. Not accrue interest during the audit and appeal period.

16 G. Each entity conducting an audit shall provide a copy of the  
17 final audit results, and a final audit report upon request, after  
18 completion of any review process to the plan sponsor.

19 H. 1. The full amount of any recoupment on an audit shall be  
20 refunded to the plan sponsor. Except as provided for in paragraph 2  
21 of this subsection, a charge or assessment for an audit shall not be  
22 based, directly or indirectly, on amounts recouped.

23 2. This subsection does not prevent the entity conducting the  
24 audit from charging or assessing the responsible party, directly or

1 indirectly, based on amounts recouped if both of the following  
2 conditions are met:

- 3 a. the plan sponsor and the entity conducting the audit  
4 have a contract that explicitly states the percentage  
5 charge or assessment to the plan sponsor, and
- 6 b. a commission to an agent or employee of the entity  
7 conducting the audit is not based, directly or  
8 indirectly, on amounts recouped.

9 I. Unless superseded by state or federal law, auditors shall  
10 only have access to previous audit reports on a particular pharmacy  
11 conducted by the auditing entity for the same pharmacy benefits  
12 manager, health plan or insurer. An auditing vendor contracting  
13 with multiple pharmacy benefits managers or health insurance plans  
14 shall not use audit reports or other information gained from an  
15 audit on a pharmacy to conduct another audit for a different  
16 pharmacy benefits manager or health insurance plan.

17 J. Sections A through I of this section shall not apply to any  
18 audit initiated based on or that involves fraud, willful  
19 misrepresentation, or abuse.

20 K. If the Attorney General, after notice and opportunity for  
21 hearing, finds that the entity conducting the audit failed to follow  
22 any of the requirements pursuant to the Pharmacy Audit Integrity  
23 Act, the audit shall be considered null and void. Any monies  
24 recouped from a null and void audit shall be returned to the

1 affected pharmacy within fourteen (14) calendar days. Any violation  
2 of this section by a pharmacy benefits manager or auditing entity  
3 shall be deemed a violation of the Pharmacy Audit Integrity Act.

4 SECTION 3. AMENDATORY 59 O.S. 2021, Section 356.3, is  
5 amended to read as follows:

6 Section 356.3. A. Each entity conducting an audit shall  
7 establish a written appeals process under which a pharmacy may  
8 appeal an unfavorable preliminary audit report and/or final audit  
9 report to the entity.

10 B. Following an appeal, if the entity finds that an unfavorable  
11 audit report or any portion thereof is unsubstantiated, the entity  
12 shall dismiss the audit report or the unsubstantiated portion of the  
13 audit report without any further action.

14 C. Any final audit report, following the final audit appeal  
15 period, with a finding of fraud or willful misrepresentation shall  
16 be referred to the district attorney having proper jurisdiction or  
17 the Attorney General for prosecution upon completion of the appeals  
18 process.

19 D. ~~This act does not apply to any audit, review or~~  
20 ~~investigation that is~~ For any audit initiated based on or that  
21 involves fraud, willful misrepresentation, or abuse, the auditing  
22 entity shall provide, in writing, at the time of the audit, a clear  
23 and conspicuous declaration to the pharmacy being audited that the  
24 audit is being conducted under suspicion of fraud, willful

1 misrepresentation, or abuse and a statement of facts that supports  
2 the reasonable suspicion.

3 E. Any entity conducting an audit that is based on or involves  
4 fraud, willful misrepresentation, or abuse shall provide to the  
5 Office of the Attorney General:

6 1. Notice at least two (2) calendar days prior to beginning  
7 performance of an audit pursuant to this section;

8 2. A preliminary report within thirty (30) calendar days of  
9 performing the audit pursuant to this section; and

10 3. A final report within thirty (30) calendar days following  
11 the closure of the final appeal period for an audit performed  
12 pursuant to this section.

13 F. The Attorney General, authorized employees, and examiners  
14 shall have access to any pharmacy benefits manager's files and  
15 records that may relate to an audit that is based on or involves  
16 fraud, willful misrepresentation, or abuse.

17 G. The Attorney General may levy a civil or administrative fine  
18 of not less than One Hundred Dollars (\$100.00) and not greater than  
19 Ten Thousand Dollars (\$10,000.00) for each violation of this section  
20 and assess any other penalty or remedy authorized by law.

21 SECTION 4. AMENDATORY 59 O.S. 2021, Section 357, is  
22 amended to read as follows:

23 Section 357. A. As used in this act Sections 357 through 360  
24 of this title:

1 1. "Covered entity" means a nonprofit hospital or medical  
2 service organization, for-profit hospital or medical service  
3 organization, insurer, health ~~coverage~~ benefit plan ~~or~~, health  
4 maintenance organization, ~~a~~, health program administered by the  
5 state in the capacity of ~~provider of~~ providing health coverage, ~~or~~, or  
6 an employer, labor union, or other ~~entity organized in the state~~  
7 group of persons that provides health coverage to ~~covered~~  
8 ~~individuals who are employed or reside in the~~ persons in this state.  
9 This term does not include a health benefit plan that provides  
10 coverage only for accidental injury, specified disease, hospital  
11 indemnity, disability income, or other limited benefit health  
12 insurance policies and contracts that do not include prescription  
13 drug coverage;

14 2. "Covered individual" means a member, participant, enrollee,  
15 contract holder or policy holder or beneficiary of a covered entity  
16 who is provided health coverage by the covered entity. A covered  
17 individual includes any dependent or other person provided health  
18 coverage through a policy, contract or plan for a covered  
19 individual;

20 3. "Department" means the ~~Oklahoma~~ Insurance Department;

21 4. "Maximum allowable cost" ~~or~~, "MAC", or "MAC list" means the  
22 list of drug products delineating the maximum per-unit reimbursement  
23 for multiple-source prescription drugs, medical product, or device;

24

1 5. "Multisource drug product reimbursement" (reimbursement)  
2 means the total amount paid to a pharmacy inclusive of any reduction  
3 in payment to the pharmacy, excluding prescription dispense fees;

4 6. "Office" means the Office of the Attorney General;

5 7. "Pharmacy benefits management" means a service provided to  
6 covered entities to facilitate the provision of prescription drug  
7 benefits to covered individuals within the state, including  
8 negotiating pricing and other terms with drug manufacturers and  
9 providers. Pharmacy benefits management may include any or all of  
10 the following services:

11 a. claims processing, retail network management and  
12 payment of claims to pharmacies for prescription drugs  
13 dispensed to covered individuals,

14 b. clinical formulary development and management  
15 services, or

16 c. rebate contracting and administration,

17 ~~d. certain patient compliance, therapeutic intervention  
18 and generic substitution programs, or~~

19 ~~e. disease management programs;~~

20 ~~7.~~ 8. "Pharmacy benefits manager" or "PBM" means a person,  
21 business, or other entity that performs pharmacy benefits  
22 management. The term ~~includes~~ shall include a person or entity  
23 acting ~~for~~ on behalf of a PBM in a contractual or employment  
24 relationship in the performance of pharmacy benefits management for

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

4 ~~8.~~ 9. "Plan sponsor" means the employers, insurance companies,  
5 unions and health maintenance organizations or any other entity  
6 responsible for establishing, maintaining, or administering a health  
7 benefit plan on behalf of covered individuals; and

8 ~~9.~~ 10. "Provider" means a pharmacy licensed by the State Board  
9 of Pharmacy, or an agent or representative of a pharmacy, including,  
10 but not limited to, the pharmacy's contracting agent, which  
11 dispenses prescription drugs or devices to covered individuals.

12 B. Nothing in the definition of pharmacy benefits management or  
13 pharmacy benefits manager in the Patient's Right to Pharmacy Choice  
14 Act, Pharmacy Audit Integrity Act, or Sections 357 through 360 of  
15 this title shall deem an employer a "pharmacy benefits manager" of  
16 its own self-funded health benefit plan, except, to the extent  
17 permitted by applicable law, where the employer, without the  
18 utilization of a third party and unrelated to the employer's own  
19 pharmacy:

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

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1 SECTION 5. AMENDATORY 59 O.S. 2021, Section 358, is  
2 amended to read as follows:

3 Section 358. A. In order to provide pharmacy benefits  
4 management or any of the services included under the definition of  
5 pharmacy benefits management in this state, a pharmacy benefits  
6 manager or any entity acting as one in a contractual or employment  
7 relationship for a covered entity shall first obtain a license from  
8 the ~~Oklahoma~~ Insurance Department, and the Department may charge a  
9 fee for such licensure.

10 B. The Department shall establish, by regulation, licensure  
11 procedures, required disclosures for pharmacy benefits managers  
12 (PBMs) and other rules as may be necessary for carrying out and  
13 enforcing the provisions of ~~this act~~ this title. The licensure  
14 procedures shall, at a minimum, include the completion of an  
15 application form that shall include the name and address of an agent  
16 for service of process, the payment of a requisite fee, and evidence  
17 of the procurement of a surety bond.

18 C. The Department or the Office of the Attorney General may  
19 subpoena witnesses and information. Its compliance officers may  
20 take and copy records for investigative use and prosecutions.  
21 Nothing in this subsection shall limit the Office of the Attorney  
22 General from using its investigative demand authority to investigate  
23 and prosecute violations of the law.

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1 D. The Department may suspend, revoke or refuse to issue or  
2 renew a license for noncompliance with any of the provisions hereby  
3 established or with the rules promulgated by the Department; for  
4 conduct likely to mislead, deceive or defraud the public or the  
5 Department; for unfair or deceptive business practices or for  
6 nonpayment of ~~a~~ an application or renewal fee or fine. The  
7 Department may also levy administrative fines for each count of  
8 which a PBM has been convicted in a Department hearing.

9 E. 1. The Office of the Attorney General, after notice and  
10 opportunity for hearing, may instruct the Insurance Commissioner  
11 that the PBM's license be censured, suspended, or revoked for  
12 conduct likely to mislead, deceive, or defraud the public or the  
13 State of Oklahoma; or for unfair or deceptive business practices, or  
14 for any violation of the Patient's Right to Pharmacy Choice Act, the  
15 Pharmacy Audit Integrity Act, or Sections 357 through 360 of this  
16 title. The Office of the Attorney General may also levy  
17 administrative fines for each count of which a PBM has been  
18 convicted following a hearing before the Attorney General. If the  
19 Attorney General makes such instruction, the Commissioner shall  
20 enforce the instructed action within thirty (30) calendar days.

21 2. In addition to or in lieu of any censure, suspension, or  
22 revocation of a license by the Commissioner, the Attorney General  
23 may levy a civil or administrative fine of not less than One Hundred  
24 Dollars (\$100.00) and not greater than Ten Thousand Dollars

1 (\$10,000.00) for each violation of this subsection and/or assess any  
2 other penalty or remedy authorized by this section. For purposes of  
3 this section, each day a PBM fails to comply with an investigation  
4 or inquiry may be considered a separate violation.

5 F. The Attorney General may promulgate rules to implement the  
6 provisions of Sections 357 through 360 of this title.

7 SECTION 6. AMENDATORY 59 O.S. 2021, Section 360, is  
8 amended to read as follows:

9 Section 360. A. The pharmacy benefits manager shall, with  
10 respect to contracts between a pharmacy benefits manager and a  
11 provider, including a pharmacy service administrative organization:

12 1. Include in such contracts the specific sources utilized to  
13 determine the maximum allowable cost (MAC) pricing of the pharmacy,  
14 update MAC pricing at least every seven (7) calendar days, and  
15 establish a process for providers to readily access the MAC list  
16 specific to that provider;

17 2. In order to place a drug on the MAC list, ensure that the  
18 drug is listed as "A" or "B" rated in the most recent version of the  
19 FDA's Approved Drug Products with Therapeutic Equivalence  
20 Evaluations, also known as the Orange Book, and the drug is  
21 generally available for purchase by pharmacies in the state from  
22 national or regional wholesalers and is not obsolete;

23 3. Ensure dispensing fees are not included in the calculation  
24 of MAC price reimbursement to pharmacy providers;

1 4. Provide a reasonable administration appeals procedure to  
2 allow a provider, a provider's representative and a pharmacy service  
3 administrative organization to contest reimbursement amounts within  
4 fourteen (14) ~~business~~ calendar days of the final adjusted payment  
5 date. The pharmacy benefits manager shall not prevent the pharmacy  
6 or the pharmacy service administrative organization from filing  
7 reimbursement appeals in an electronic batch format. The pharmacy  
8 benefits manager must respond to a provider, a provider's  
9 representative and a pharmacy service administrative organization  
10 who have contested a reimbursement amount through this procedure  
11 within ten (10) ~~business~~ calendar days. The pharmacy benefits  
12 manager must respond in an electronic batch format to reimbursement  
13 appeals filed in an electronic batch format. The pharmacy benefits  
14 manager shall not require a pharmacy or pharmacy services  
15 administrative organization to log into a system to upload  
16 individual claim appeals or to download individual appeal responses.  
17 If a price update is warranted, the pharmacy benefits manager shall  
18 make the change in the reimbursement amount, permit the dispensing  
19 pharmacy to reverse and rebill the claim in question, and make the  
20 reimbursement amount change retroactive and effective for all  
21 contracted providers; and

22 5. If a below-cost reimbursement appeal is denied, the PBM  
23 shall provide the reason for the denial, including the National Drug  
24 Code (NDC) number from, and the name of, the specific national or

1 regional wholesalers doing business in this state where the drug is  
2 currently in stock and available for purchase by the dispensing  
3 pharmacy at a price below the PBM's reimbursement price. ~~If the~~  
4 ~~pharmacy benefits manager cannot provide a specific national or~~  
5 ~~regional wholesaler where the drug can be purchased by the~~  
6 ~~dispensing pharmacy at a price below the pharmacy benefits manager's~~  
7 ~~reimbursement price~~ If the NDC number provided by the pharmacy  
8 benefits manager is not available below the acquisition cost  
9 obtained from the pharmaceutical wholesaler from whom the dispensing  
10 pharmacy purchases the majority of the prescription drugs that are  
11 dispensed, the pharmacy benefits manager shall immediately adjust  
12 the reimbursement amount, permit the dispensing pharmacy to reverse  
13 and rebill the claim in question, and make the reimbursement amount  
14 adjustment retroactive and effective for all contracted providers.

15 B. The reimbursement appeal requirements in this section shall  
16 apply to all drugs, medical products, or devices reimbursed  
17 according to any payment methodology, including, but not limited to:

- 18 1. Average acquisition cost, including the National Average  
19 Drug Acquisition Cost;
- 20 2. Average manufacturer price;
- 21 3. Average wholesale price;
- 22 4. Brand effective rate or generic effective rate;
- 23 5. Discount indexing;
- 24 6. Federal upper limits;

1        7. Wholesale acquisition cost; and

2        8. Any other term that a pharmacy benefits manager or an  
3 insurer of a health benefit plan may use to establish reimbursement  
4 rates to a pharmacist or pharmacy for pharmacist services.

5        C. The pharmacy benefits manager shall not place a drug on a  
6 MAC list, unless there are at least two therapeutically equivalent,  
7 multiple-source drugs, generally available for purchase by  
8 dispensing retail pharmacies from national or regional wholesalers.

9        ~~E.~~ D. In the event that a drug is placed on the FDA Drug  
10 Shortages Database, pharmacy benefits managers shall reimburse  
11 claims to pharmacies at no less than the wholesale acquisition cost  
12 for the specific NDC number being dispensed.

13        E. The pharmacy benefits manager shall not require  
14 accreditation or licensing of providers, or any entity licensed or  
15 regulated by the State Board of Pharmacy, other than by the State  
16 Board of Pharmacy or federal government entity as a condition for  
17 participation as a network provider.

18        ~~D.~~ F. A pharmacy or pharmacist may decline to provide the  
19 pharmacist clinical or dispensing services to a patient or pharmacy  
20 benefits manager if the pharmacy or pharmacist is to be paid less  
21 than the pharmacy's cost for providing the pharmacist clinical or  
22 dispensing services.

1        ~~E.~~ G. The pharmacy benefits manager shall provide a dedicated  
2 telephone number, email address and names of the personnel with  
3 decision-making authority regarding MAC appeals and pricing.

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

8        Passed the House of Representatives the 25th day of April, 2024.

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\_\_\_\_\_  
Presiding Officer of the House of  
Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2024.

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\_\_\_\_\_  
Presiding Officer of the Senate

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1 ENGROSSED SENATE  
2 BILL NO. 1670

By: McCortney, Prieto, Jett,  
Coleman, Hamilton, and  
Alvord of the Senate

3  
4 and

5 McEntire of the House

6  
7 [ pharmacy benefits management - pharmacy  
8 reimbursement - rule promulgation - audit - notice  
and reporting - fines and fees - recouped funds -  
9 emergency ]

10  
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 8. AMENDATORY 59 O.S. 2021, Section 356.1, is  
13 amended to read as follows:

14 Section 356.1. A. For purposes of the Pharmacy Audit Integrity  
15 Act, "pharmacy benefits manager" or "PBM" means a person, business,  
16 or other entity that performs pharmacy benefits management. The  
17 term includes a person or entity acting for a PBM in a contractual  
18 or employment relationship in the performance of pharmacy benefits  
19 management for a managed care company, nonprofit hospital, medical  
20 service organization, insurance company, third-party payor, or a  
21 health program administered by a department of this state.

22 B. The purpose of the Pharmacy Audit Integrity Act is to  
23 establish minimum and uniform standards and criteria for the audit  
24 of pharmacy records by or on behalf of certain entities.

1 C. The Pharmacy Audit Integrity Act shall apply to any audit of  
2 the records of a pharmacy conducted by a managed care company,  
3 nonprofit hospital, medical service organization, insurance company,  
4 third-party payor, pharmacy benefits manager, a health program  
5 administered by a department of this state, or any entity that  
6 represents these companies, groups, or departments.

7 D. The Attorney General may promulgate rules to implement the  
8 provisions of the Pharmacy Audit Integrity Act.

9 SECTION 9. AMENDATORY 59 O.S. 2021, Section 356.2, is  
10 amended to read as follows:

11 Section 356.2. A. The entity conducting an audit of a pharmacy  
12 shall:

13 1. Identify and specifically describe the audit and appeal  
14 procedures in the pharmacy contract. Prescription claim  
15 documentation and record-keeping requirements shall not exceed the  
16 requirements set forth by the Oklahoma Pharmacy Act or other  
17 applicable state or federal laws or regulations;

18 2. Give the pharmacy written notice by certified letter to the  
19 pharmacy and the pharmacy's contracting agent, including  
20 identification of specific prescription numbers and fill dates to be  
21 audited, at least ~~two (2) weeks~~ fourteen (14) calendar days prior to  
22 conducting the audit, including, but not limited to, an on-site  
23 audit, a desk audit, or a wholesale purchase audit, request for  
24 documentation related to the dispensing of a prescription drug or

1 any reimbursed activity by a pharmacy provider; provided, however,  
2 that wholesale purchase audits shall require a minimum of thirty  
3 (30) calendar days' written notice. For an on-site audit, the audit  
4 date shall be the date the on-site audit occurs. For all other  
5 audit types, the audit date shall be the date the pharmacy provides  
6 the documentation requested in the audit notice. The pharmacy shall  
7 have the opportunity to reschedule the audit no more than seven (7)  
8 calendar days from the date designated on the original audit  
9 notification;

10 3. Not interfere with the delivery of pharmacist services to a  
11 patient and shall utilize every reasonable effort to minimize  
12 inconvenience and disruption to pharmacy operations during the audit  
13 process;

14 4. Conduct any audit involving clinical or professional  
15 judgment by means of or in consultation with a licensed pharmacist;

16 5. Not consider as fraud any clerical or record-keeping error,  
17 such as a typographical error, scrivener's error or computer error,  
18 including, but not limited to, a miscalculated day supply,  
19 incorrectly billed prescription written date or prescription origin  
20 code, and such errors shall not be subject to recoupment. The  
21 pharmacy shall have the right to submit amended claims  
22 electronically to correct clerical or record-keeping errors in lieu  
23 of recoupment. To the extent that an audit results in the  
24 identification of any clerical or record-keeping errors such as

1 typographical errors, scrivener's errors or computer errors in a  
2 required document or record, the pharmacy shall not be subject to  
3 recoupment of funds by the pharmacy benefits manager unless the  
4 pharmacy benefits manager can provide proof of intent to commit  
5 fraud. A person shall not be subject to criminal penalties for  
6 errors provided for in this paragraph without proof of intent to  
7 commit fraud;

8       6. Permit a pharmacy to use the records of a hospital,  
9 physician, or other authorized practitioner of the healing arts for  
10 drugs or medicinal supplies written or transmitted by any means of  
11 communication for purposes of validating the pharmacy record with  
12 respect to orders or refills of a legend or narcotic drug;

13       7. Not include the dispensing fee amount or the actual invoice  
14 cost of the prescription dispensed in a finding of an audit  
15 recoupment unless a prescription was not actually dispensed or a  
16 physician denied authorization of a dispensing order;

17       8. Audit each pharmacy under identical standards, regularity  
18 and parameters as other similarly situated pharmacies and all  
19 pharmacies owned or managed by the pharmacy benefits manager  
20 conducting or having conducted the audit;

21       9. Not exceed one (1) year from the date the claim was  
22 submitted to or adjudicated by a managed care company, nonprofit  
23 hospital or medical service organization, insurance company, third-  
24 party payor, pharmacy benefits manager, a health program

1 administered by a department of this state, or any entity that  
2 represents the companies, groups, or departments for the period  
3 covered by an audit;

4 10. Not schedule or initiate an audit during the first seven  
5 (7) calendar days of any month unless otherwise consented to by the  
6 pharmacy;

7 11. Disclose to any plan sponsor whose claims were included in  
8 the audit any money recouped in the audit; ~~and~~

9 12. Not require pharmacists to break open packaging labeled  
10 "for single-patient-use only". Packaging labeled "for single-  
11 patient-use only" shall be deemed to be the smallest package size  
12 available; and

13 13. Upon recoupment of funds from a pharmacy, refund first to  
14 the patient the portion of the recovered funds that were originally  
15 paid by the patient.

16 B. 1. Any entity that conducts wholesale purchase review  
17 during an audit of a pharmacist or pharmacy shall not require the  
18 pharmacist or pharmacy to provide a full dispensing report.  
19 Wholesaler invoice reviews shall be limited to verification of  
20 purchase inventory specific to the pharmacy claims paid by the  
21 health benefits plan or pharmacy benefits manager conducting the  
22 audit.

23 2. Any entity conducting an audit shall not identify or label a  
24 prescription claim as an audit discrepancy when:

- a. the National Drug Code for the dispensed drug is in a quantity that is a subunit or multiple of the drug purchased by the pharmacist or pharmacy as supported by a wholesale invoice,
- b. the pharmacist or pharmacy dispensed the correct quantity of the drug according to the prescription, and
- c. the drug dispensed by the pharmacist or pharmacy shares all but the last two digits of the National Drug Code of the drug reflected on the supplier invoice.

3. An entity conducting an audit shall accept as evidence, subject to validation, to support the validity of a pharmacy claim related to a dispensed drug:

- a. redacted copies of supplier invoices in the pharmacist's or pharmacy's possession, or
- b. invoices and any supporting documents from any supplier as authorized by federal or state law to transfer ownership of the drug acquired by the pharmacist or pharmacy.

4. An entity conducting an audit shall provide, no later than five (5) business days after the date of a request by the pharmacist or pharmacy, all supporting documents the pharmacist's or pharmacy's

1 purchase suppliers provided to the health benefits plan issuer or  
2 pharmacy benefits manager.

3 C. A pharmacy shall be allowed to provide the pharmacy's  
4 computerized patterned medical records or the records of a hospital,  
5 physician, or other authorized practitioner of the healing arts for  
6 drugs or medicinal supplies written or transmitted by any means of  
7 communication for purposes of supporting the pharmacy record with  
8 respect to orders or refills of a legend or narcotic drug.

9 D. The entity conducting the audit shall not audit more than  
10 fifty prescriptions, with specific date of service, per calendar  
11 year. The annual limit to the number of prescription claims audited  
12 shall be inclusive of all audits, including any prescription-related  
13 documentation requests from the health insurer, pharmacy benefits  
14 manager or any third-party company conducting audits on behalf of  
15 any health insurer or pharmacy benefits manager during a calendar  
16 year.

17 E. If paper copies of records are requested by the entity  
18 conducting the audit, the entity shall pay twenty-five cents (\$0.25)  
19 per page to cover the costs incurred by the pharmacy. The entity  
20 conducting the audit shall provide the pharmacy with accurate  
21 instructions, including any required form for obtaining  
22 reimbursement for the copied records.

23 F. The entity conducting the audit shall:  
24

- 1        1. Deliver a preliminary audit findings report to the pharmacy  
2 and the pharmacy's contracting agent within forty-five (45) calendar  
3 days of conducting the audit;
- 4        2. Allow the pharmacy at least ninety (90) calendar days  
5 following receipt of the preliminary audit findings report in which  
6 to produce documentation to address any discrepancy found during the  
7 audit; provided, however, a pharmacy may request an extension, not  
8 to exceed an additional forty-five (45) calendar days;
- 9        3. Deliver a final audit findings report to the pharmacy and  
10 the pharmacy's contracting agent signed by the auditor within ten  
11 (10) calendar days after receipt of additional documentation  
12 provided by the pharmacy, as provided for in Section 356.3 of this  
13 title;
- 14        4. Allow the pharmacy to reverse and resubmit claims  
15 electronically within thirty (30) days of receipt of the final audit  
16 report in lieu of the auditing entity recouping discrepant claim  
17 amounts from the pharmacy;
- 18        5. Not recoup any disputed funds until after final disposition  
19 of the audit findings, including the appeals process as provided for  
20 in Section 356.3 of this title; and
- 21        6. Not accrue interest during the audit and appeal period.
- 22        G. Each entity conducting an audit shall provide a copy of the  
23 final audit results, and a final audit report upon request, after  
24 completion of any review process to the plan sponsor.

1 H. 1. The full amount of any recoupment on an audit shall be  
2 refunded to the plan sponsor. Except as provided for in paragraph 2  
3 of this subsection, a charge or assessment for an audit shall not be  
4 based, directly or indirectly, on amounts recouped.

5 2. This subsection does not prevent the entity conducting the  
6 audit from charging or assessing the responsible party, directly or  
7 indirectly, based on amounts recouped if both of the following  
8 conditions are met:

9 a. the plan sponsor and the entity conducting the audit  
10 have a contract that explicitly states the percentage  
11 charge or assessment to the plan sponsor, and

12 b. a commission to an agent or employee of the entity  
13 conducting the audit is not based, directly or  
14 indirectly, on amounts recouped.

15 I. Unless superseded by state or federal law, auditors shall  
16 only have access to previous audit reports on a particular pharmacy  
17 conducted by the auditing entity for the same pharmacy benefits  
18 manager, health plan or insurer. An auditing vendor contracting  
19 with multiple pharmacy benefits managers or health insurance plans  
20 shall not use audit reports or other information gained from an  
21 audit on a pharmacy to conduct another audit for a different  
22 pharmacy benefits manager or health insurance plan.

23 J. An audit shall be considered null and void if the entity  
24 conducting the audit fails to follow any of the requirements under

1 this section. Any violation of this section by a pharmacy benefits  
2 manager or auditing entity shall be deemed a violation of the  
3 Pharmacy Audit Integrity Act.

4 SECTION 10. AMENDATORY 59 O.S. 2021, Section 356.3, is  
5 amended to read as follows:

6 Section 356.3. A. Each entity conducting an audit shall  
7 establish a written appeals process under which a pharmacy may  
8 appeal an unfavorable preliminary audit report and/or final audit  
9 report to the entity.

10 B. Following an appeal, if the entity finds that an unfavorable  
11 audit report or any portion thereof is unsubstantiated, the entity  
12 shall dismiss the audit report or the unsubstantiated portion of the  
13 audit report without any further action.

14 C. Any final audit report, following the final audit appeal  
15 period, with a finding of fraud or willful misrepresentation shall  
16 be referred to the district attorney having proper jurisdiction or  
17 the Attorney General for prosecution upon completion of the appeals  
18 process.

19 D. This ~~act does~~ section and Section 356.2 of this title do not  
20 apply to any audit, ~~review or investigation~~ that is initiated based  
21 on or that involves fraud, willful misrepresentation or abuse so  
22 long as the auditing entity provides in writing at the time of the  
23 audit, a clear and conspicuous declaration that the audit is being  
24 conducted under suspicion of fraud, willful misrepresentation, or

1 abuse and a statement of facts that supports the reasonable  
2 suspicion. Any monies recouped from a null and void audit shall be  
3 returned to the affected pharmacy within fourteen (14) calendar  
4 days.

5 E. Any entity conducting an audit based on or that involves  
6 fraud, willful misrepresentation, or abuse shall provide to the  
7 Office of the Attorney General:

8 1. Notice at least two (2) business days prior to beginning  
9 performance of an audit under this section;

10 2. A preliminary report within thirty (30) days of performing  
11 the audit; and

12 3. A final report within thirty (30) days following the closure  
13 of the final audit appeal period.

14 F. The Attorney General shall have unrestricted access to any  
15 documents relevant to an audit that is based on or that involves  
16 fraud, willful misrepresentation, or abuse.

17 G. The Attorney General may levy a civil or administrative fine  
18 not less than One Hundred Dollars (\$100.00) and not greater than Ten  
19 Thousand Dollars (\$10,000.00) for each violation of this section and  
20 assess any other penalty or remedy authorized by law.

21 SECTION 11. AMENDATORY 59 O.S. 2021, Section 357, is  
22 amended to read as follows:

23 Section 357. As used in this act section through Section 360 of  
24 this title:

1 1. "Covered entity" means a nonprofit hospital or medical  
2 service organization, insurer, health ~~coverage~~ benefit plan, ~~or~~  
3 health maintenance organization, ~~a~~, health program administered by  
4 the state in the capacity of ~~provider of~~ providing health coverage, ~~,~~  
5 or an employer, labor union, or other ~~entity organized in the state~~  
6 group of persons that provides health coverage to ~~covered~~  
7 ~~individuals who are employed or reside in the~~ persons in this state.  
8 This term does not include a health benefit plan that provides  
9 coverage only for accidental injury, specified disease, hospital  
10 indemnity, disability income, or other limited benefit health  
11 insurance policies and contracts that do not include prescription  
12 drug coverage;

13 2. "Covered individual" means a member, participant, enrollee,  
14 contract holder or policy holder or beneficiary of a covered entity  
15 who is provided health coverage by the covered entity. A covered  
16 individual includes any dependent or other person provided health  
17 coverage through a policy, contract or plan for a covered  
18 individual;

19 3. "Department" means the ~~Oklahoma~~ Insurance Department;

20 4. "Maximum allowable cost", or "MAC", or "MAC list" means the  
21 list of drug products delineating the maximum per-unit reimbursement  
22 for multiple-source prescription drugs, medical product products, or  
23 device devices including, but not limited to:

24

- a. average acquisition cost, including the national drug acquisition cost,
- b. average manufacturer price,
- c. average wholesale price,
- d. brand effective rate or generic effective rate,
- e. discount indexing,
- f. federal upper limits,
- g. wholesale acquisition cost, and
- h. any other term that a pharmacy benefits manager or an insurer of a health benefit plan may use to establish reimbursement rates to a pharmacist or pharmacy for pharmacist services;

5. "Multisource drug product reimbursement" (reimbursement) means the total amount paid to a pharmacy inclusive of any reduction in payment to the pharmacy, excluding prescription dispense fees;

6. "Office" means the Office of the Attorney General;

7. "Pharmacy benefits management" means a service provided to covered entities to facilitate the provision of prescription drug benefits to covered individuals within the state, including negotiating pricing and other terms with drug manufacturers and providers. Pharmacy benefits management may include any or all of the following services:

- 1 a. claims processing, retail network management and  
2 payment of claims to pharmacies for prescription drugs  
3 dispensed to covered individuals,  
4 b. administration or management of pharmacy discount  
5 cards or programs,  
6 c. clinical formulary development and management  
7 services,  
8 ~~e.~~ d. rebate contracting and administration,  
9 ~~d.~~ e. certain patient compliance, therapeutic intervention  
10 and generic substitution programs, ~~e~~  
11 ~~e.~~ f. administration or management of mail-order pharmacy  
12 programs, or  
13 g. disease management programs;

14 ~~7.~~ 8. "Pharmacy benefits manager" or "PBM" means a person,  
15 business, or other entity that performs pharmacy benefits  
16 management. The term ~~includes~~ shall include a person or entity  
17 acting ~~for~~ on behalf of a PBM in a contractual or employment  
18 relationship in the performance of pharmacy benefits management for  
19 a managed care company, nonprofit hospital, medical service  
20 organization, insurance company, third-party payor, or a health  
21 program administered by an agency or department of this state;

22 ~~8.~~ 9. "Plan sponsor" means the employers, insurance companies,  
23 unions and health maintenance organizations or any other entity  
24

1 responsible for establishing, maintaining, or administering a health  
2 benefit plan on behalf of covered individuals; and

3 ~~9.~~ 10. "Provider" means a pharmacy licensed by the State Board  
4 of Pharmacy, or an agent or representative of a pharmacy, including,  
5 but not limited to, the pharmacy's contracting agent, which  
6 dispenses prescription drugs or devices to covered individuals.

7 SECTION 12. AMENDATORY 59 O.S. 2021, Section 358, is  
8 amended to read as follows:

9 Section 358. A. In order to provide pharmacy benefits  
10 management or any of the services included under the definition of  
11 pharmacy benefits management in this state, a pharmacy benefits  
12 manager or any entity acting as one in a contractual or employment  
13 relationship for a covered entity shall first obtain a license from  
14 the ~~Oklahoma~~ Insurance Department, and the Department may charge a  
15 fee for such licensure.

16 B. The Department shall establish, by regulation, licensure  
17 procedures, required disclosures for pharmacy benefits managers  
18 (PBMs) and other rules as may be necessary for carrying out and  
19 enforcing the provisions of ~~this act~~ the Oklahoma Pharmacy Act. The  
20 licensure procedures shall, at a minimum, include the completion of  
21 an application form that shall include the name and address of an  
22 agent for service of process, the payment of a requisite fee, and  
23 evidence of the procurement of a surety bond.

24

1 C. The Department may subpoena witnesses and information. Its  
2 compliance officers may take and copy records for investigative use  
3 and prosecutions. Nothing in this subsection shall limit the Office  
4 of the Attorney General from using its investigative demand  
5 authority to investigate and prosecute violations of the law.

6 D. The Department may suspend, revoke or refuse to issue or  
7 renew a license for noncompliance with any of the provisions hereby  
8 established or with the rules promulgated by the Department; for  
9 conduct likely to mislead, deceive or defraud the public or the  
10 Department; for unfair or deceptive business practices or for  
11 nonpayment of a renewal fee or fine. The Department may also levy  
12 administrative fines for each count of which a PBM has been  
13 convicted in a Department hearing.

14 E. The Attorney General may promulgate rules to implement the  
15 provisions of Sections 357 through 360 of this title.

16 SECTION 13. AMENDATORY 59 O.S. 2021, Section 360, is  
17 amended to read as follows:

18 Section 360. A. The pharmacy benefits manager shall, with  
19 respect to contracts between a pharmacy benefits manager and a  
20 provider, including a pharmacy service administrative organization:

21 1. Include in such contracts the specific sources utilized to  
22 determine the maximum allowable cost (MAC) pricing of the pharmacy,  
23 update MAC pricing at least every seven (7) calendar days, and  
24

1 establish a process for providers to readily access the MAC list  
2 specific to that provider;

3 2. In order to place a drug on the MAC list, ensure that the  
4 drug is listed as "A" or "B" rated in the most recent version of the  
5 FDA's Approved Drug Products with Therapeutic Equivalence  
6 Evaluations, also known as the Orange Book, and the drug is  
7 generally available for purchase by pharmacies in the state from  
8 national or regional wholesalers and is not obsolete;

9 3. Ensure dispensing fees are not included in the calculation  
10 of MAC price reimbursement to pharmacy providers;

11 4. Provide a reasonable administration appeals procedure to  
12 allow a provider, a provider's representative and a pharmacy service  
13 administrative organization to contest reimbursement amounts within  
14 fourteen (14) business days of the final adjusted payment date. The  
15 pharmacy benefits manager shall not prevent the pharmacy or the  
16 pharmacy service administrative organization from filing  
17 reimbursement appeals in an electronic batch format. The pharmacy  
18 benefits manager must respond to a provider, a provider's  
19 representative and a pharmacy service administrative organization  
20 who have contested a reimbursement amount through this procedure  
21 within ten (10) business days. The pharmacy benefits manager must  
22 respond in an electronic batch format to reimbursement appeals filed  
23 in an electronic batch format. The pharmacy benefits manager shall  
24 not require a pharmacy or pharmacy services administrative

1 organization to log into a system to upload individual claim appeals  
2 or to download individual appeal responses. If a price update is  
3 warranted, the pharmacy benefits manager shall make the change in  
4 the reimbursement amount, permit the dispensing pharmacy to reverse  
5 and rebill the claim in question, and make the reimbursement amount  
6 change retroactive and effective for all contracted providers; and

7 5. If a below-cost reimbursement appeal is denied, the PBM  
8 shall provide the reason for the denial, including the National Drug  
9 Code (NDC) number from and the name of the specific national or  
10 regional wholesalers doing business in this state where the drug is  
11 currently in stock and available for purchase by the dispensing  
12 pharmacy at a price below the PBM's reimbursement price. ~~If the~~  
13 ~~pharmacy benefits manager cannot provide a specific national or~~  
14 ~~regional wholesaler where the drug can be purchased by the~~  
15 ~~dispensing pharmacy at a price below the pharmacy benefits manager's~~  
16 ~~reimbursement price~~ If the NDC number provided by the pharmacy  
17 benefits manager is not available below the acquisition cost  
18 obtained from the pharmaceutical wholesaler from whom the dispensing  
19 pharmacy purchases the majority of the prescription drugs that are  
20 dispensed, the pharmacy benefits manager shall immediately adjust  
21 the reimbursement amount, permit the dispensing pharmacy to reverse  
22 and rebill the claim in question, and make the reimbursement amount  
23 adjustment retroactive and effective for all contracted providers.

24

1 B. The pharmacy benefits manager shall not place a drug on a  
2 MAC list, unless there are at least two therapeutically equivalent,  
3 multiple-source drugs, generally available for purchase by  
4 dispensing retail pharmacies from national or regional wholesalers.

5 C. In the event that a drug is placed on the FDA Drug Shortages  
6 Database, pharmacy benefits managers shall reimburse claims to  
7 pharmacies at no less than the wholesale acquisition cost for the  
8 specific NDC number being dispensed.

9 D. The pharmacy benefits manager shall not require  
10 accreditation or licensing of providers, or any entity licensed or  
11 regulated by the State Board of Pharmacy, other than by the State  
12 Board of Pharmacy or federal government entity as a condition for  
13 participation as a network provider.

14 ~~D.~~ E. A pharmacy or pharmacist may decline to provide the  
15 pharmacist clinical or dispensing services to a patient or pharmacy  
16 benefits manager if the pharmacy or pharmacist is to be paid less  
17 than the pharmacy's cost for providing the pharmacist clinical or  
18 dispensing services.

19 ~~E.~~ F. The pharmacy benefits manager shall provide a dedicated  
20 telephone number, email address and names of the personnel with  
21 decision-making authority regarding MAC appeals and pricing.

22 SECTION 14. It being immediately necessary for the preservation  
23 of the public peace, health or safety, an emergency is hereby  
24

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

3 Passed the Senate the 12th day of March, 2024.

4

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\_\_\_\_\_  
Presiding Officer of the Senate

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7 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
8 2024.

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Presiding Officer of the House  
of Representatives

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