STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 549 By: Montgomery of the Senate

and

Sneed of the House

COMMITTEE SUBSTITUTE

An Act relating to pharmacy benefits management; amending 36 O.S. 2021, Sections 319, 6960, as amended by Section 1, Chapter 38, O.S.L. 2022, 6962, as amended by Section 2, Chapter 38, O.S.L. 2022, 6965, 6966, and 6967 (36 O.S. Supp. 2022, Sections 6960 and 6962), which relate to hearings by the Patient's Right to Pharmacy Choice Commission and the Patient's Right to Pharmacy Choice Act; updating statutory reference; conforming language; modifying definitions; requiring certain insurer and pharmacy benefits manager to submit certain audit; establishing submission means for certain audit and fee; providing time period to constitute certain violation; prohibiting pharmacy benefits manager contracts from certain amendment, revision, or cancellation without certain notice and agreement; establishing minimum for certain fines; amending 59 O.S. 2021, Sections 356.1, 357, and 360, which relate to definitions and maximum allowable cost list; modifying definitions; requiring pharmacy benefits manager to adjust maximum allowable cost under certain circumstances; prohibiting pharmacy benefits manager from canceling certain contracts due to certain declination of service provisions; updating statutory language; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 319, is amended to read as follows:

Section 319. A. In conducting any hearing pursuant to the Oklahoma Insurance Code, the Insurance Commissioner may appoint an independent hearing examiner who shall sit as a quasi-judicial officer. The ordinary fees and costs of such hearing examiner shall be assessed by the hearing examiner against the respondent, unless the respondent is the prevailing party. Within thirty (30) days after termination of the hearing or of any rehearing thereof or reargument thereon, unless such time is extended by stipulation, a final order shall be issued.

B. 1. The Patient's Right to Pharmacy Choice Commission ~~established pursuant to Section 10 of this act~~ shall conduct ~~any hearing pursuant to the Patient's Right to Pharmacy Choice Act or relating to the oversight of pharmacy benefits managers pursuant to the Pharmacy Audit Integrity Act and Sections 357 through 360 of Title 59 of the Oklahoma Statutes~~ hearings in accordance with Section 6966 of this title. Within thirty (30) days after termination of a hearing or of any rehearing thereof or reargument thereon, unless such time is extended by stipulation, a final order shall be issued.

2. The Pharmacy Choice Commission members shall not be entitled to receive any compensation related to conducting a hearing pursuant

to this section including per diem or mileage for any travel or expenses related to appointment on the Commission.

SECTION 2. AMENDATORY 36 O.S. 2021, Section 6960, as amended by Section 1, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022, Section 6960), is amended to read as follows:

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

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

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

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

4. "Pharmacy benefits manager" or "PBM" means a person, business, or entity that performs pharmacy benefits management, as defined pursuant to Section 357 of Title 59 of the Oklahoma Statutes, and any other person, business, or entity acting for ~~such person~~ the PBM under a contractual or employment relationship in the performance of pharmacy benefits management for a ~~managed-care company, nonprofit hospital, medical service organization, insurance~~

~~company, third-party payor or a health program administered by a department of this state~~ provider or covered entity, as defined by Section 357 of Title 59 of the Oklahoma Statutes;

5. "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. "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. "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. "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. "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. "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 3. AMENDATORY 36 O.S. 2021, Section 6962, as amended by Section 2, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022, Section 6962), is amended to read as follows:

Section 6962. A. The ~~Oklahoma~~ Insurance Department shall review and approve retail pharmacy network access for all pharmacy benefits managers (PBMs) to ensure compliance with Section 6961 of this title.

1. On a semi-annual basis, each health insurer payor that utilizes the services of a PBM that is licensed in this state and each PBM licensed in this state shall electronically submit a network adequacy audit and any transaction or applicable fees to the Department in the manner and form prescribed by the Insurance Commissioner.

2. Each calendar day in a single 5-digit postal code where a PBM or insurer has failed to comply with the provisions of Section 6961 et seq. of this title shall be deemed an instance of violation.

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

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

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

a. the submission of a claim,

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

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

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

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

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

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

a. the original claim was submitted fraudulently, or

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

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

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

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

a. an application fee,

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 acquisition of the drug and the amount an individual would pay for acquisition of the drug without using any health plan or health insurance coverage,

c. not be amended or modified unilaterally by any party to the original or subsequent contract without providing proper notice to all other parties to the contract and agreement to the changes by all parties to the contract. Agreement shall be evidenced by the signature of a party to the contract affixed to the amendment or modification, and

d. not be unilaterally canceled by any party to a contract on or before the date of renewal without providing proper notice to all other parties to the contract.

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

D. A pharmacy benefits manager shall:

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

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

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

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

5. Report to the Commissioner, on a quarterly basis for each health insurer payor, in the manner and form prescribed by the Commissioner, along with any applicable fees, on the following information:

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

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

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

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

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

SECTION 4. AMENDATORY 36 O.S. 2021, Section 6965, is amended to read as follows:

Section 6965. A. The Insurance Commissioner shall have power and authority to examine and investigate the affairs of every pharmacy benefits manager (PBM) engaged in pharmacy benefits management in this state in order to determine whether such entity is in compliance with the Patient's Right to Pharmacy Choice Act and any other applicable provisions of the Oklahoma Insurance Code, Section 357 et seq. of Title 59 of the Oklahoma Statutes, the Pharmacy Audit Integrity Act pursuant to Section 356 et seq. of Title 59 of the Oklahoma Statutes, the Third Party Prescription Act pursuant to Section 781 et seq. of Title 15 of the Oklahoma Statutes, and Section 365 of the Oklahoma Administrative Code.

B. All PBM files and records shall be subject to examination by the Insurance Commissioner or by duly appointed designees. The Insurance Commissioner, authorized employees, investigators, and examiners shall have access to any of a PBM's files and records that may relate to a particular complaint under investigation or to an inquiry or examination by the Insurance Department.

C. Every officer, director, employee, or agent of the PBM or of the health insurer, upon receipt of any inquiry from the Commissioner shall, within twenty (20) days from the date the inquiry is sent, furnish the Commissioner with an adequate response to the inquiry.

D. ~~When making an examination under this section~~ While in the course of an evaluation, examination, investigation, or review, the Insurance Commissioner may retain subject matter experts, attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists ~~as examiners, the~~. The cost of any examination ~~which~~ shall be borne by the PBM that is the subject of the examination.

SECTION 5. AMENDATORY 36 O.S. 2021, Section 6966, is amended to read as follows:

Section 6966. A. There is hereby created the Patient's Right to Pharmacy Choice Commission.

B. The Insurance Commissioner shall provide for the receiving and processing of individual complaints alleging violations of the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act and Sections 357 through 360 of Title 59 of the Oklahoma Statutes.

C. The Commissioner shall have the power and authority to review complaints, subpoena witnesses and records, initiate prosecution, reprimand, require restitution, approve and sign settlement agreements, place on probation, suspend, revoke, ~~and/or~~ levy fines not less than One Hundred Dollars ($100.00) and not to exceed Ten Thousand Dollars ($10,000.00), or any combination

thereof, for each count for which any pharmacy benefits manager (PBM) has violated a provision of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act pursuant to Section 356 et seq. of Title 59 of the Oklahoma Statutes, ~~and~~ Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Third Party Prescription Act pursuant to Section 781 et seq. of Title 15 of the Oklahoma Statutes, and Section 365 of the Oklahoma Administrative Code. Any allegation of violation that cannot be settled shall go to a hearing before the Pharmacy Choice Commission.

The Pharmacy Choice Commission shall hold hearings and may reprimand, require restitution, ~~place on probation, suspend, revoke~~ or levy fines not less than One Hundred Dollars ($100.00) and not to exceed Ten Thousand Dollars ($10,000.00) for each count that a PBM has violated a provision of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act, ~~or~~ Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Third Party Prescription Act, or Section 365 of the Oklahoma Administrative Code. The Insurance Commissioner or the Pharmacy Choice Commission may impose as part of any disciplinary action restitution to the provider or patient and the payment of costs expended by the Pharmacy Choice Commission or Insurance Department for any legal fees and costs including, but not limited to, staff time, salary and travel expense, witness fees and attorney fees. The Insurance Commissioner or the Pharmacy Choice Commission may review violations

singularly or in combination, as the nature of the violation requires.

D. The Pharmacy Choice Commission shall consist of seven (7) persons who shall serve as hearing examiners and shall be appointed as follows:

1. Two persons who are members in good standing of the Oklahoma Pharmacists Association, who shall be appointed by the ~~Oklahoma~~ State Board of Pharmacy; a list of eligible appointees shall be sent annually to the ~~Oklahoma~~ State Board of Pharmacy by the Oklahoma Pharmacists Association;

2. Two consumer members not employed by or professionally related to the insurance, pharmacy or PBM industry appointed by the Office of the Governor;

3. Two persons representing the PBM or insurance industry appointed by the Insurance Commissioner; and

4. One person representing the Office of the Attorney General appointed by the Attorney General.

E. Pharmacy Choice Commission members first appointed shall serve the initial term staggered as follows: the two members appointed by the Office of the Governor shall serve for one (1) year, the two members appointed by the Insurance Commissioner shall serve for two (2) years, the two members appointed by the Oklahoma Pharmacists Association shall serve for two (2) years and the one member appointed by the Attorney General shall serve for three (3)

years. Subsequent terms shall be for five (5) years. The terms of the members shall expire on the thirtieth day of June of the year designated for the expiration of the term for which appointed, but the member shall serve until a qualified successor has been duly appointed. Except for the initial term to establish the Pharmacy Choice Commission, no person shall be appointed to serve more than two consecutive terms. The Commission shall annually elect a chair and ~~vice-chair~~ vice chair from among its members. There shall be no limit on the number of times a member may serve as chair or ~~vice-chair~~ vice chair. A quorum shall consist of no less than five members and shall be required for the Commission to hold a hearing.

F. Hearings shall be held in the Insurance Commissioner's offices or at such other place as the Insurance Commissioner may deem convenient.

G. The Insurance Commissioner shall issue and serve upon the PBM a statement of the charges and a notice of hearing in accordance with the Administrative Procedures Act, Sections 250 through 323 of Title 75 of the Oklahoma Statutes. A hearing shall be set within thirty (30) days and notice of that hearing date shall be provided to the complainant within a reasonable time period.

H. At the time and place fixed for a hearing, the PBM shall have an opportunity to be heard and to show cause why ~~the Pharmacy Choice Commission~~ his, her, or the entity's license should not ~~revoke or suspend the PBM's license and levy~~ be revoked, put on

probation, or suspended or why a reprimand or an administrative ~~fines~~ fine should not be issued against him, her, or it for each violation. Upon good cause shown, ~~the Commission shall permit~~ any complainant or a duly authorized representative of the complainant shall be permitted to intervene, appear and be heard at the hearing on the merits by counsel or in person.

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

J. The Insurance Commissioner, upon written request reasonably made by the complainant or the licensed PBM affected by the hearing and at such expense of the requesting party, shall cause a full stenographic record of the proceedings to be made by a competent court reporter.

K. If the Insurance Commissioner or Pharmacy Choice Commission determines that a PBM has engaged in violations of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the Third Party Prescription Act, ~~or~~ Sections 357 through 360 of Title 59 of the Oklahoma Statutes, or Section 365 of the Oklahoma Administrative Code, with such frequency as to indicate a general business practice and that such PBM should be subjected to closer supervision with respect to such practices, the Insurance Commissioner or the Pharmacy Choice Commission may require the PBM

to file a report at such periodic intervals as the Insurance Commissioner or the Pharmacy Choice Commission deems necessary.

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

Section 6967. A. Documents, evidence, materials, records, reports, complaints or other information in the possession or control of the Insurance Department or the Patient's Right to Pharmacy Choice Commission that are obtained by, created by or disclosed to the Insurance Commissioner, Pharmacy Choice Commission or any other person in the course of an evaluation, examination, investigation or review made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act or Sections 357 through 360 of Title 59 of the Oklahoma Statutes shall be confidential by law and privileged, shall not be subject to open records request, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Insurance Commissioner, the Pharmacy Choice Commission or any employees or representatives of the Insurance Commissioner.

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

C. In the course of any hearing made pursuant to the provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act, the Third Party Prescription Act, Section 365 of the Oklahoma Administrative Code, or Sections 357 through 360 of Title 59 of the Oklahoma Statutes, nothing in this section shall be construed to prevent the Insurance Commissioner or any employees or representatives of the Insurance Commissioner from presenting admissible documents, evidence, materials, records, reports or complaints to the adjudicating authority.

SECTION 7. AMENDATORY 59 O.S. 2021, Section 356.1, is amended to read as follows:

Section 356.1. A. For purposes of the Pharmacy Audit Integrity Act, "pharmacy benefits manager" or "PBM" means a person, business, or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity as defined pursuant to Section 357 of this title, managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by a department of this state.

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

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

SECTION 8. AMENDATORY 59 O.S. 2021, Section 357, is amended to read as follows:

Section 357. As used in ~~this act~~ Sections 357 through 360 of this title:

1. "Covered entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan, third-party payor, or health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or an employer, labor union, or other entity ~~organized in the state~~ that provides health coverage to covered individuals who are employed or reside in the 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. "Covered individual" means a member, participant, enrollee, contract holder or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. A covered

individual includes any dependent or other person provided health coverage through a policy, contract or plan for a covered individual;

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

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

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

6. "Pharmacy benefits management" means a service provided to covered entities or providers to facilitate the provision of prescription drugs and 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~~:

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

b. clinical formulary development and management services,

c. rebate contracting and administration,

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

e. disease management programs;

7. "Pharmacy benefits manager" or "PBM" means a person, business or other entity that performs pharmacy benefits management~~.~~ ~~The term includes a person or entity acting for a PBM in~~ and any other person, business, or other entity acting for the PBM under a contractual or employment relationship in the performance of pharmacy benefits management for a ~~managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by an agency of this state~~ provider or covered entity;

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

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

SECTION 9. AMENDATORY 59 O.S. 2021, Section 360, is amended to read as follows:

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

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

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

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

4. Provide a reasonable administration appeals procedure to allow a provider, a provider's representative and a pharmacy service administrative organization to contest reimbursement amounts within fourteen (14) business days of the final adjusted payment date. The pharmacy benefits manager shall not prevent the pharmacy or the pharmacy service administrative organization from filing reimbursement appeals in an electronic batch format. The pharmacy

benefits manager must respond to a provider, a provider's representative and a pharmacy service administrative organization who have contested a reimbursement amount through this procedure within ten (10) business days. The pharmacy benefits manager must respond in an electronic batch format to reimbursement appeals filed in an electronic batch format. The pharmacy benefits manager shall not require a pharmacy or pharmacy services administrative organization to log into a system to upload individual claim appeals or to download individual appeal responses. If a price update is warranted, the pharmacy benefits manager shall make the change in the reimbursement amount, permit the dispensing pharmacy to reverse and rebill the claim in question, and make the reimbursement amount change retroactive and effective for all contracted providers; and

5. If a below-cost reimbursement appeal is denied~~,~~:

a. the PBM shall provide the reason for the denial, including the National Drug Code number from and the name of the specific national or regional wholesalers doing business in this state where the drug is currently in stock and available for purchase by the dispensing pharmacy at a price below the PBM's reimbursement price~~. If the pharmacy benefits manager cannot provide a specific national or regional wholesaler where the drug can be purchased by the dispensing pharmacy at a price below the pharmacy~~

~~benefits manager's reimbursement price, the pharmacy benefits manager shall immediately adjust the reimbursement amount, permit the dispensing pharmacy to reverse and rebill the claim in question, and make the reimbursement amount adjustment retroactive and effective for all contracted providers~~, or

b. if the National Drug Code number provided by the PBM is not available below the provider's acquisition cost from the pharmaceutical wholesaler from whom the provider purchases the majority of prescription drugs for resale, then the PBM shall adjust the maximum allowable cost list above the challenging provider's acquisition cost and permit the provider to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the previously challenged maximum allowable cost.

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

C. The pharmacy benefits manager shall not require accreditation or licensing of providers, or any entity licensed or regulated by the State Board of Pharmacy, other than by the State

Board of Pharmacy or federal government entity as a condition for participation as a network provider.

D. A pharmacy or pharmacist may decline to provide the pharmacist clinical or dispensing services to a patient or pharmacy benefits manager if the pharmacy or pharmacist is to be paid less than the pharmacy's cost for providing the pharmacist clinical or dispensing services. A PBM shall not cancel or threaten to cancel its contract with a provider in response to a provider's declination to provide such service if the provider was to be paid less than the cost to the pharmacy for providing such service.

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

SECTION 10. This act shall become effective November 1, 2023.

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