

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 3376

By: McEntire of the House

and

McCortney of the Senate

COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

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

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

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

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

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

- 10 a. claims processing, retail network management, and
11 payment of claims to pharmacies for prescription drugs
12 dispensed to covered individuals,
- 13 b. administration or management of pharmacy discount
14 cards or programs,
- 15 c. clinical formulary development and management
16 services, or
- 17 d. rebate contracting and administration;

18 ~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1
19 of Title 59 of the Oklahoma Statutes or an agent or representative
20 of a pharmacy;

21 ~~6.~~ 8. "Retail pharmacy network" means retail pharmacy providers
22 contracted with a PBM in which the pharmacy primarily fills and
23 sells prescriptions via a retail, storefront location;

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

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

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

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

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

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

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

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

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

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

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;

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

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

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

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

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

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

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

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

- 9 a. an application fee,
- 10 b. an enrollment or participation fee,
- 11 c. a credentialing or re-credentialing fee,
- 12 d. a change of ownership fee, or
- 13 e. a fee for the development or management of claims
14 processing services or claims payment services.

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

18 1. A PBM contract shall:

- 19 a. not restrict, directly or indirectly, any pharmacy
20 that dispenses a prescription drug from informing, or
21 penalize such pharmacy for informing, an individual of
22 any differential between the individual's out-of-
23 pocket cost or coverage with respect to acquisition of
24

1 the drug and the amount an individual would pay to
2 purchase the drug directly, and

3 b. ensure that any entity that provides pharmacy benefits
4 management services under a contract with any such
5 health plan or health insurance coverage does not,
6 with respect to such plan or coverage, restrict,
7 directly or indirectly, a pharmacy that dispenses a
8 prescription drug from informing, or penalize such
9 pharmacy for informing, a covered individual of any
10 differential between the individual's out-of-pocket
11 cost under the plan or coverage with respect to
12 acquisition of the drug and the amount an individual
13 would pay for acquisition of the drug without using
14 any health plan or health insurance coverage.

15 2. A pharmacy benefits manager's contract with a provider shall
16 not prohibit, restrict, or limit disclosure of information or
17 documents to the Attorney General, law enforcement or state and
18 federal governmental officials investigating or examining a
19 complaint or conducting a review of a pharmacy benefits manager's
20 compliance with the requirements under the Patient's Right to
21 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
22 357 through 360 of Title 59 of the Oklahoma Statutes.

23 D. A pharmacy benefits manager shall:
24

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

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

9 3. Provide the Attorney General, insurers, self-funded employer
10 plans and unions unrestricted audit rights of and access to the
11 respective PBM pharmaceutical manufacturer and provider contracts,
12 plan utilization data, plan pricing data, pharmacy utilization data
13 and pharmacy pricing data;

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

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

- 21 a. the aggregate amount of rebates received by the PBM,
- 22 b. the aggregate amount of rebates distributed to the
- 23 appropriate health insurer payor,

- 1 c. the aggregate amount of rebates passed on to the
2 enrollees of each health insurer payor at the point of
3 sale that reduced the applicable deductible,
4 copayment, coinsure or other cost sharing amount of
5 the enrollee,
- 6 d. the individual and aggregate amount paid by the health
7 insurer payor to the PBM for pharmacy services
8 itemized by pharmacy, drug product and service
9 provided, and
- 10 e. the individual and aggregate amount a PBM paid a
11 provider for pharmacy services itemized by pharmacy,
12 drug product and service provided.

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

19 F. The Attorney General may promulgate rules to implement the
20 provisions of the Patient's Right to Pharmacy Choice Act, the
21 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
22 59 of the Oklahoma Statutes.

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

4 Section 6965. A. The Attorney General shall have power and
5 authority to examine and investigate the affairs of every pharmacy
6 benefits manager (PBM) engaged in pharmacy benefits management in
7 this state in order to determine whether such entity is in
8 compliance with the Patient's Right to Pharmacy Choice Act, the
9 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
10 59 of the Oklahoma Statutes.

11 B. The Attorney General shall have the power and authority to
12 subpoena witnesses and records, whether prior to or during an
13 investigation or prosecution of a complaint, from any relevant
14 entity or persons to ensure compliance with the Patient's Right to
15 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
16 357 through 360 of Title 59 of the Oklahoma Statutes.

17 C. All PBM files and records shall be subject to examination by
18 the Attorney General or by duly appointed designees. The Attorney
19 General, authorized employees and examiners shall have access to any
20 of a PBM's files and records that may relate to a particular
21 complaint under investigation or to an inquiry or examination by the
22 Attorney General.

23 ~~C.~~ D. Every officer, director, employee or agent of the PBM,
24 upon receipt of any inquiry from the Attorney General, shall, within

1 twenty (20) days from the date the inquiry is sent, furnish the
2 Attorney General with an adequate response to the inquiry.

3 ~~D.~~ E. When making an examination under this section, the
4 Attorney General may retain subject matter experts, attorneys,
5 appraisers, independent actuaries, independent certified public
6 accountants or an accounting firm or individual holding a permit to
7 practice public accounting, certified financial examiners or other
8 professionals and specialists as examiners, the cost of which shall
9 be borne by the PBM that is the subject of the examination.

10 F. 1. Protected health information (PHI) held by a PBM shall
11 be provided at the request of the Attorney General for the purpose
12 of conducting investigations into potential violations of state laws
13 and regulations related to the PBM. Disclosure of protected health
14 information shall be limited to the extent necessary for the
15 investigation and enforcement of state law.

16 2. All disclosures of protected health information shall be
17 made in compliance with all applicable federal and state privacy
18 laws, including the Health Insurance Portability and Accountability
19 Act of 1996 (HIPAA), and other relevant laws protecting the privacy
20 and confidentiality of health information.

21 3. Any protected health information obtained for an
22 investigation shall be handled and maintained per applicable federal
23 and state privacy laws and regulations, including HIPAA.
24

1 4. Unauthorized disclosure of protected health information
2 obtained during an investigation is strictly prohibited and subject
3 to legal penalties.

4 G. 1. If the Attorney General, after notice and opportunity
5 for hearing, finds that any PBM operating within this state has not
6 fully cooperated with an investigation or inquiry conducted by the
7 Attorney General related to compliance with the Patient's Right to
8 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
9 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney
10 General may instruct the Insurance Commissioner that the PBM be
11 censured or his or her license be suspended or revoked. If the
12 Attorney General makes such instruction, the Commissioner shall
13 enforce the instructed action within thirty (30) days.

14 2. In addition to or in lieu of any censure, suspension, or
15 revocation by the Commissioner, the Attorney General may levy a
16 civil or administrative fine not less than One Hundred Dollars
17 (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for
18 each violation of this subsection and assess any other penalty or
19 remedy authorized by this act. For purposes of this section, each
20 day a PBM fails to comply with an investigation or inquiry may be
21 considered a separate violation.

22 SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L.
23 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S.
24 Supp. 2023, Section 6966.1), is amended to read as follows:

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

6 B. 1. If the Attorney General finds, after notice and
7 opportunity for hearing, that a pharmacy benefits manager (PBM)
8 violated one or more provisions of the Patient's Right to Pharmacy
9 Choice Act, the Pharmacy Audit Integrity Act or the provisions of
10 Sections 357 through 360 of Title 59 of the Oklahoma ~~Statutes~~
11 Statutes, the Attorney General may ~~recommend~~ instruct the Insurance
12 Commissioner that the PBM be censured, or his or her license ~~may~~ be
13 suspended or revoked ~~and a penalty or remedy authorized by this act~~
14 ~~may be imposed~~. If the Attorney General makes such ~~recommendation~~
15 instruction, the Commissioner shall ~~take the recommended action~~
16 enforce such action within thirty (30) days.

17 2. In addition to or in lieu of any censure, suspension or
18 revocation of a license by the Commissioner, ~~a PBM~~ the Attorney
19 General ~~may be subject to~~ levy a civil or administrative fine ~~of~~ not
20 less than One Hundred Dollars (\$100.00) and not greater than Ten
21 Thousand Dollars (\$10,000.00) for each violation of the provisions
22 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit
23 Integrity Act or the provisions of Sections 357 through 360 of Title
24

1 59 of the Oklahoma ~~Statutes~~, following notice and an opportunity for
2 a hearing Statutes.

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

8 C. Notwithstanding whether the license of a PBM has been
9 issued, suspended, revoked, surrendered or lapsed by operation of
10 law, the Attorney General is hereby authorized to enforce the
11 provisions of the Patient's Right to Pharmacy Choice Act and impose
12 any penalty or remedy authorized under the act against a PBM under
13 investigation for or charged with a violation of the Patient's Right
14 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the
15 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
16 ~~Statutes~~ Statutes or any provision of the insurance laws of this
17 state.

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

21 E. 1. All hearings conducted by the Office of the Attorney
22 General pursuant to this section shall be public and held in
23 accordance with the Administrative Procedures Act.
24

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

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

7 4. The ordinary fees and costs of the hearing examiner
8 appointed pursuant to Section 319 of this title may be assessed by
9 the hearing examiner against the respondent unless the respondent is
10 the prevailing party.

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

16 G. If the Attorney General determines, based upon an
17 investigation of complaints, that a PBM has engaged in violations of
18 the provisions of the Patient's Right to Pharmacy Choice Act, the
19 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
20 59 of the Oklahoma Statutes with such frequency as to indicate a
21 general business practice, and that the PBM should be subjected to
22 closer supervision with respect to those practices, the Attorney
23 General may require the PBM to file a report at any periodic
24 interval the Attorney General deems necessary.

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

14 2. Costs of investigation, litigation, attorney fees, and other
15 expenses incurred shall be retained by the Office of the Attorney
16 General. Remaining funds shall be distributed to pharmacists,
17 patients, or other injured parties as determined by the Attorney
18 General.

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

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6966.2 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:
24

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

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

19 Section 6967. A. Documents, evidence, materials, records,
20 reports, complaints or other information in the possession or
21 control of the Office of the Attorney General or Insurance
22 Department ~~or the Right to Pharmacy Choice Commission~~ that ~~are~~ is
23 obtained by, created by or disclosed to the Office of the Attorney
24 General or Insurance Commissioner, ~~Pharmacy Choice Commission~~ or any

1 other person in the course of an evaluation, examination,
2 investigation or review made pursuant to the provisions of the
3 Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit
4 Integrity Act or Sections 357 through 360 of Title 59 of the
5 Oklahoma Statutes, except as provided in subsection C of this
6 section, shall be confidential by law and privileged, shall not be
7 subject to open records request, shall not be subject to subpoena
8 and shall not be subject to discovery or admissible in evidence in
9 any private civil action if obtained from the Attorney General,
10 Insurance Commissioner, ~~the Pharmacy Choice Commission~~ or any
11 employees or representatives of the Attorney General or Insurance
12 Commissioner.

13 B. Nothing in this section shall prevent the disclosure of a
14 final order issued against a pharmacy benefits manager by the Office
15 of the Attorney General or Insurance Commissioner ~~or Pharmacy Choice~~
16 ~~Commission~~. Such orders shall be open records.

17 C. Nothing in this section shall prevent the Attorney General
18 from making public, in the form of an examination report, any
19 findings from an examination pursuant to Section 6965 of this title.
20 It shall be the Attorney General's sole discretion to determine
21 whether it is in the public's interest to publish these findings.
22 Only the final examination report shall be made public. Any
23 documents, evidence, materials, records, reports, complaints, or
24 other information in possession or control of the Attorney General

1 obtained through the examination shall be confidential by law and
2 privileged, shall not be subject to the Oklahoma Open Records Act,
3 shall not be subject to subpoena, and shall not be subject to
4 discovery or admissible evidence in any private civil action if
5 obtained from the Attorney General.

6 D. In the course of any hearing made pursuant to the provisions
7 of the Patient's Right to Pharmacy Choice Act, the Pharmacy
8 ~~Integrity~~ Audit Integrity Act or Sections 357 through 360 of Title
9 59 of the Oklahoma Statutes, nothing in this section shall be
10 construed to prevent the Insurance Commissioner or any employees or
11 representatives of the Insurance Commissioner from presenting
12 admissible documents, evidence, materials, records, reports or
13 complaints to the adjudicating authority.

14 SECTION 7. REPEALER 36 O.S. 2021, Section 6966, is
15 hereby repealed.

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

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