

1 ENGROSSED HOUSE
2 BILL NO. 3376

By: McEntire of the House

3 and

4 McCortney of the Senate

5
6
7 [pharmacy benefits managers - Patient's Right to
8 Pharmacy Choice Act - definitions - fines and fees
9 - Attorney General's Pharmacy Benefits Manager
10 Enforcement Revolving Fund - Oklahoma Open Records
11 Act - Patient's Right to Pharmacy Choice Commission
12 - repealer - codification -
13 emergency]

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~5.~~ 7. "Provider" means a pharmacy, as defined in Section 353.1
2 of Title 59 of the Oklahoma Statutes or an agent or representative
3 of a pharmacy;

4 ~~6.~~ 8. "Retail pharmacy network" means retail pharmacy providers
5 contracted with a PBM in which the pharmacy primarily fills and
6 sells prescriptions via a retail, storefront location;

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

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

15 ~~9.~~ 11. "Suburban service area" means a five-digit ZIP code in
16 which the population density is between one thousand (1,000) and
17 three thousand (3,000) individuals per square mile; and

18 ~~10.~~ 12. "Urban service area" means a five-digit ZIP code in
19 which the population density is greater than three thousand (3,000)
20 individuals per square mile.

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

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

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

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

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

10 a. the submission of a claim,

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

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

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

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

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

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

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

- 11 a. the original claim was submitted fraudulently, or
- 12 b. to correct errors identified in an audit, so long as
- 13 the audit was conducted in compliance with Sections
- 14 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

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

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

- 23 a. an application fee,
- 24 b. an enrollment or participation fee,

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

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

1. A PBM contract shall:

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

1 acquisition of the drug and the amount an individual
2 would pay for acquisition of the drug without using
3 any health plan or health insurance coverage.

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

12 D. A pharmacy benefits manager shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L.
10 2022, as amended by Section 3, Chapter 293, O.S.L. 2023 (36 O.S.
11 Supp. 2023, Section 6966.1), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 SECTION 7. REPEALER 36 O.S. 2021, Section 6966, is
23 hereby repealed.

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

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

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2024.

Presiding Officer of the Senate