

An Act

ENROLLED HOUSE
BILL NO. 1843

By: Kerbs, Davis, Newton,
Grego, Maynard, Burns,
Roberts and Talley of the
House

and

McCortney, Bullard and
Stephens of the Senate

An Act relating to pharmacy benefit managers;
amending 36 O.S. 2021, Section 6962, as amended by
Section 2, Chapter 38, O.S.L. 2022 (36 O.S. Supp.
2022, Section 6962), which relates to compliance
review; replacing Insurance Commissioner with
Attorney General; amending 36 O.S. 2021, Section
6965, which relates to power to investigate;
replacing investigative authority with the Attorney
General; amending 36 O.S. 2021, Section 6966.1, as
amended by Section 3, Chapter 38, O.S.L. 2022 (36
O.S. Supp. 2022, Section 6966.1), which relates to
violations, penalties, and hearings; replacing
enforcement authority with the Attorney General;
and providing an effective date.

SUBJECT: Pharmacy benefit managers

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

SECTION 1. 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~~ 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;

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, 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.

2. A pharmacy benefits manager's contract with a provider shall not prohibit, restrict or limit disclosure of information to the ~~Insurance Commissioner~~ Attorney General, 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~~ Attorney General, 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~~ Attorney General upon request;

5. Report to the ~~Commissioner~~ Attorney General, on a quarterly basis for each health insurer payor, 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 2. AMENDATORY 36 O.S. 2021, Section 6965, is amended to read as follows:

Section 6965. A. The ~~Insurance Commissioner~~ Attorney General 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.

B. All PBM files and records shall be subject to examination by the ~~Insurance Commissioner~~ Attorney General or by duly appointed designees. The ~~Insurance Commissioner~~ Attorney General, authorized employees 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~~ Attorney General.

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

D. When making an examination under this section, the ~~Insurance Commissioner~~ Attorney General 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 cost of

which shall be borne by the PBM that is the subject of the examination.

SECTION 3. AMENDATORY 36 O.S. 2021, Section 6966.1, as amended by Section 3, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022, Section 6966.1), is amended to read as follows:

Section 6966.1 A. The Insurance Commissioner may censure, suspend, revoke or refuse to issue or renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of ~~Title 6 of the Oklahoma Statutes~~ this title.

B. 1. If the ~~Commissioner~~ Attorney General finds, after notice and opportunity for hearing, that a pharmacy benefits manager (PBM) violated one or more provisions of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or the provisions of Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney General may recommend the PBM ~~may~~ be censured, his or her license may be suspended or revoked and a penalty or remedy authorized by this act may be imposed. If the Attorney General makes such recommendation, the Commissioner shall take the recommended action.

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

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

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

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

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

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

4. The ordinary fees and costs of the hearing examiner appointed pursuant to Section 319 of ~~Title 36 of the Oklahoma Statutes~~ this title may be assessed by the hearing examiner against the respondent unless the respondent is the prevailing party.

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

G. If the ~~Insurance Commissioner~~ Attorney General determines, based upon an investigation of complaints, that a PBM has engaged in violations of the provisions of the Patient's Right to Pharmacy Choice Act with such frequency as to indicate a general business practice, and that the PBM should be subjected to closer supervision with respect to those practices, the ~~Commissioner~~ Attorney General may require the PBM to file a report at any periodic interval the ~~Commissioner~~ Attorney General deems necessary.

SECTION 4. This act shall become effective November 1, 2023.

Passed the House of Representatives the 21st day of March, 2023.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____