

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

☒ **FLOOR AMENDMENT**

No. 1

☐ **COMMITTEE AMENDMENT**

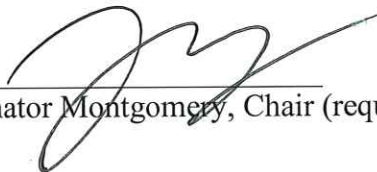
(Date)

I move to amend Senate Bill No. 549 by substituting the attached floor substitute (Request No. 1988) for the title, enacting clause, and entire body of the measure.

Submitted by:

  
\_\_\_\_\_  
Senator Montgomery

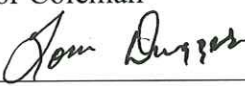
I hereby grant permission for the floor substitute to be adopted.

  
\_\_\_\_\_  
Senator Montgomery, Chair (required)


\_\_\_\_\_  
Senator Jett

\_\_\_\_\_  
Senator Brooks

  
\_\_\_\_\_  
Senator Coleman

  
\_\_\_\_\_  
Senator Dugger


\_\_\_\_\_  
Senator Treat, President Pro Tempore

  
\_\_\_\_\_  
Senator Garvin

  
\_\_\_\_\_  
Senator Hamilton

  
\_\_\_\_\_  
Senator Matthews

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Senator Prieto

  
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Senator Woods

\_\_\_\_\_  
Senator McCortney, Majority Floor Leader

Note: Retirement and Insurance committee majority requires six (6) members' signatures.

Montgomery-RD-FS-SB549  
2/27/2023 2:09 PM

1

(Floor Amendments Only)

Date and Time Filed: 3-1-23 9:14 am gd

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE  
FOR

SENATE BILL NO. 549

By: Montgomery of the Senate

and

Sneed of the House

FLOOR SUBSTITUTE

[ pharmacy benefits management - Patient's Right to  
Pharmacy Choice Commission - audit - fee - contracts  
- fines - 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, and applicable provisions of Titles 15 and  
59 of the Oklahoma Statutes, 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.

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

11        2. The Pharmacy Choice Commission members shall not be entitled  
12 to receive any compensation related to conducting a hearing pursuant  
13 to this section including per diem or mileage for any travel or  
14 expenses related to appointment on the Commission.

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

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

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

23        2. "Health insurer payor" means a health insurance company,  
24 health maintenance organization, union, hospital and medical

1 services organization or any entity providing or administering a  
2 self-funded health benefit plan;

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

6 4. "Pharmacy benefits manager" or "PBM" means a person,  
7 business, or entity that performs pharmacy benefits management, as  
8 defined pursuant to Section 357 of Title 59 of the Oklahoma  
9 Statutes, and any other person, business, or entity acting for such  
10 ~~person~~ the PBM under a contractual or employment relationship in the  
11 performance of pharmacy benefits management for a ~~managed-care~~  
12 ~~company, nonprofit hospital, medical service organization, insurance~~  
13 ~~company, third-party payor or a health program administered by a~~  
14 ~~department of this state~~ provider or covered entity, as defined by  
15 Section 357 of Title 59 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

1        2. Each calendar day in a single 5-digit postal code where a  
2        PBM or insurer has failed to comply with the provisions of Section  
3        6961 et seq. of this title shall be deemed an instance of violation.

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

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

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

21 D. A pharmacy benefits manager shall:

22 1. Establish and maintain an electronic claim inquiry  
23 processing system using the National Council for Prescription Drug  
24

1 Programs' current standards to communicate information to pharmacies  
2 submitting claim inquiries;

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

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

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

17 5. Report to the Commissioner, on a quarterly basis for each  
18 health insurer payor, in the manner and form prescribed by the  
19 Commissioner, along with any applicable fees, on the following  
20 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,
- 24

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

15 Section 6965. A. The Insurance Commissioner shall have power  
16 and authority to examine and investigate the affairs of every  
17 pharmacy benefits manager (PBM) engaged in pharmacy benefits  
18 management in this state in order to determine whether such entity  
19 is in compliance with the Patient's Right to Pharmacy Choice Act and  
20 any other applicable provisions of the Oklahoma Insurance Code,  
21 Section 357 et seq. of Title 59 of the Oklahoma Statutes, the  
22 Pharmacy Audit Integrity Act pursuant to Section 356 et seq. of  
23 Title 59 of the Oklahoma Statutes, the Third Party Prescription Act  
24

1 pursuant to Section 781 et seq. of Title 15 of the Oklahoma  
2 Statutes, and Section 365 of the Oklahoma Administrative Code.

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

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

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

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

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

3 B. The Insurance Commissioner shall provide for the receiving  
4 and processing of individual complaints alleging violations of the  
5 provisions of the Patient's Right to Pharmacy Choice Act, the  
6 Pharmacy Audit Integrity Act and Sections 357 through 360 of Title  
7 59 of the Oklahoma Statutes.

8 C. The Commissioner shall have the power and authority to  
9 review complaints, subpoena witnesses and records, initiate  
10 prosecution, reprimand, require restitution, approve and sign  
11 settlement agreements, place on probation, suspend, revoke, ~~and/or~~  
12 levy fines not less than One Hundred Dollars (\$100.00) and not to  
13 exceed Ten Thousand Dollars (\$10,000.00), or any combination  
14 thereof, for each count for which any pharmacy benefits manager  
15 (PBM) has violated a provision of the Patient's Right to Pharmacy  
16 Choice Act, the Pharmacy ~~Integrity~~ Audit Integrity Act pursuant to  
17 Section 356 et seq. of Title 59 of the Oklahoma Statutes, and  
18 Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the  
19 Third Party Prescription Act pursuant to Section 781 et seq. of  
20 Title 15 of the Oklahoma Statutes, and Section 365 of the Oklahoma  
21 Administrative Code. Any allegation of violation that cannot be  
22 settled shall go to a hearing before the Pharmacy Choice Commission.

23 The Pharmacy Choice Commission shall hold hearings and may  
24 reprimand, require restitution, ~~place on probation, suspend, revoke~~

1 or levy fines not less than One Hundred Dollars (\$100.00) and not to  
2 exceed Ten Thousand Dollars (\$10,000.00) for each count that a PBM  
3 has violated a provision of the Patient's Right to Pharmacy Choice  
4 Act, the Pharmacy ~~Integrity~~ Audit Integrity Act, ~~or~~ Sections 357  
5 through 360 of Title 59 of the Oklahoma Statutes, the Third Party  
6 Prescription Act, or Section 365 of the Oklahoma Administrative  
7 Code. The Insurance Commissioner or the Pharmacy Choice Commission  
8 may impose as part of any disciplinary action restitution to the  
9 provider or patient and the payment of costs expended by the  
10 Pharmacy Choice Commission or Insurance Department for any legal  
11 fees and costs including, but not limited to, staff time, salary and  
12 travel expense, witness fees and attorney fees. The Insurance  
13 Commissioner or the Pharmacy Choice Commission may review violations  
14 singularly or in combination, as the nature of the violation  
15 requires.

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

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

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

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

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

8        E. Pharmacy Choice Commission members first appointed shall  
9 serve the initial term staggered as follows: the two members  
10 appointed by the Office of the Governor shall serve for one (1)  
11 year, the two members appointed by the Insurance Commissioner shall  
12 serve for two (2) years, the two members appointed by the Oklahoma  
13 Pharmacists Association shall serve for two (2) years and the one  
14 member appointed by the Attorney General shall serve for three (3)  
15 years. Subsequent terms shall be for five (5) years. The terms of  
16 the members shall expire on the thirtieth day of June of the year  
17 designated for the expiration of the term for which appointed, but  
18 the member shall serve until a qualified successor has been duly  
19 appointed. Except for the initial term to establish the Pharmacy  
20 Choice Commission, no person shall be appointed to serve more than  
21 two consecutive terms. The Commission shall annually elect a chair  
22 and ~~vice-chair~~ vice chair from among its members. There shall be no  
23 limit on the number of times a member may serve as chair or ~~vice-~~  
24

1 ~~chair~~ vice chair. A quorum shall consist of no less than five  
2 members and shall be required for the Commission to hold a hearing.

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

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

12 H. At the time and place fixed for a hearing, the PBM shall  
13 have an opportunity to be heard and to show cause why ~~the Pharmacy~~  
14 ~~Choice Commission~~ his, her, or the entity's license should not  
15 ~~revoke or suspend the PBM's license and levy~~ be revoked, put on  
16 probation, or suspended or why a reprimand or an administrative  
17 ~~finer~~ fine should not be issued against him, her, or it for each  
18 violation. Upon good cause shown, ~~the Commission shall permit~~ any  
19 complainant or a duly authorized representative of the complainant  
20 shall be permitted to intervene, appear and be heard at the hearing  
21 on the merits by counsel or in person.

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



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

6 K. If the Insurance Commissioner or Pharmacy Choice Commission  
7 determines that a PBM has engaged in violations of the Patient's  
8 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the  
9 Third Party Prescription Act, ~~or~~ Sections 357 through 360 of Title  
10 59 of the Oklahoma Statutes, or Section 365 of the Oklahoma  
11 Administrative Code, with such frequency as to indicate a general  
12 business practice and that such PBM should be subjected to closer  
13 supervision with respect to such practices, the Insurance  
14 Commissioner or the Pharmacy Choice Commission may require the PBM  
15 to file a report at such periodic intervals as the Insurance  
16 Commissioner or the Pharmacy Choice Commission deems necessary.

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 Insurance Department or the Patient's Right to  
22 Pharmacy Choice Commission that are obtained by, created by or  
23 disclosed to the Insurance Commissioner, Pharmacy Choice Commission  
24 or any other person in the course of an evaluation, examination,

1 investigation or review made pursuant to the provisions of the  
2 Patient's Right to Pharmacy Choice Act, the Pharmacy ~~Integrity~~ Audit  
3 Integrity Act or Sections 357 through 360 of Title 59 of the  
4 Oklahoma Statutes shall be confidential by law and privileged, shall  
5 not be subject to open records request, shall not be subject to  
6 subpoena and shall not be subject to discovery or admissible in  
7 evidence in any private civil action if obtained from the Insurance  
8 Commissioner, the Pharmacy Choice Commission or any employees or  
9 representatives of the Insurance Commissioner.

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

14 C. 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 Integrity Act, the Third Party Prescription Act,  
17 Section 365 of the Oklahoma Administrative Code, or Sections 357  
18 through 360 of Title 59 of the Oklahoma Statutes, nothing in this  
19 section shall be construed to prevent the Insurance Commissioner or  
20 any employees or representatives of the Insurance Commissioner from  
21 presenting admissible documents, evidence, materials, records,  
22 reports or complaints to the adjudicating authority.

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

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

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

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

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

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

23       1. "Covered entity" means a nonprofit hospital or medical  
24 service organization, insurer, health coverage plan, third-party

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

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

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

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

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

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

- 7           a. claims processing, retail network management and  
8             payment of claims to pharmacies for prescription drugs  
9             dispensed to covered individuals,
- 10          b. clinical formulary development and management  
11             services,
- 12          c. rebate contracting and administration,
- 13          d. certain patient compliance, therapeutic intervention  
14             and generic substitution programs, or
- 15          e. disease management programs;

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

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

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

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

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

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

19        2. In order to place a drug on the MAC list, ensure that the  
20 drug is listed as "A" or "B" rated in the most recent version of the  
21 ~~FDA's~~ United States Food and Drug Administration Approved Drug  
22 Products with Therapeutic Equivalence Evaluations, also known as the  
23 Orange Book, and the drug is generally available for purchase by  
24

1 pharmacies in the state from national or regional wholesalers and is  
2 not obsolete;

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

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

1 5. If a below-cost reimbursement appeal is denied<sup>7</sup>:

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



1           provider to reverse and rebill each claim affected by  
2           the inability to procure the drug at a cost that is  
3           equal to or less than the previously challenged  
4           maximum allowable cost.

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

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

14           D. A pharmacy or pharmacist may decline to provide the  
15 pharmacist clinical or dispensing services to a patient or pharmacy  
16 benefits manager if the pharmacy or pharmacist is to be paid less  
17 than the pharmacy's cost for providing the pharmacist clinical or  
18 dispensing services. A PBM shall not cancel or threaten to cancel  
19 its contract with a provider, or take any other punitive measures or  
20 actions against a provider, in response to a provider's declination  
21 to provide such service if the provider was to be paid less than the  
22 cost to the pharmacy for providing such service.

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

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

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