

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 1843

By: Kerbs of the House

5 and

6 **McCortney** of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to pharmacy benefit managers;
11 amending 36 O.S. 2021, Section 6962, as amended by
12 Section 2, Chapter 38, O.S.L. 2022 (36 O.S. Supp.
13 2022, Section 6962), which relates to compliance
14 review; replacing Insurance Commissioner with
15 Attorney General; amending 36 O.S. 2021, Section
16 6965, which relates to power to investigate;
17 replacing investigative authority with the Attorney
18 General; amending 36 O.S. 2021, Section 6966.1, as
19 amended by Section 3, Chapter 38, O.S.L. 2022 (36
20 O.S. Supp. 2022, Section 6966.1), which relates to
21 violations, penalties, and hearings; replacing
22 enforcement authority with the Attorney General; and
23 providing an effective date.

24 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

1 all pharmacy benefits managers (PBMs) to ensure compliance with
2 Section 6961 of this title.

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

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

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

9 a. the submission of a claim,

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

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

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

22 4. Deny a provider the opportunity to participate in any
23 pharmacy network at preferred participation status if the provider
24 is willing to accept the terms and conditions that the PBM has

1 established for other providers as a condition of preferred network
2 participation status;

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

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

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

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

17 8. Conduct or practice spread pricing, as defined in Section 1
18 of this act, in this state; or

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

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

1 would pay for acquisition of the drug without using
2 any health plan or health insurance coverage.

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

10 D. A pharmacy benefits manager shall:

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

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

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

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

6 5. Report to the ~~Commissioner~~ Attorney General, on a quarterly
7 basis for each health insurer payor, on the following information:

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

23 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6965, is
24 amended to read as follows:

1 Section 6965. A. The ~~Insurance Commissioner~~ Attorney General
2 shall have power and authority to examine and investigate the
3 affairs of every pharmacy benefits manager (PBM) engaged in pharmacy
4 benefits management in this state in order to determine whether such
5 entity is in compliance with the Patient's Right to Pharmacy Choice
6 Act.

7 B. All PBM files and records shall be subject to examination by
8 the ~~Insurance Commissioner~~ Attorney General or by duly appointed
9 designees. The ~~Insurance Commissioner~~ Attorney General, authorized
10 employees and examiners shall have access to any of a PBM's files
11 and records that may relate to a particular complaint under
12 investigation or to an inquiry or examination by the ~~Insurance~~
13 ~~Department~~ Attorney General.

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

19 D. When making an examination under this section, the ~~Insurance~~
20 ~~Commissioner~~ Attorney General may retain subject matter experts,
21 attorneys, appraisers, independent actuaries, independent certified
22 public accountants or an accounting firm or individual holding a
23 permit to practice public accounting, certified financial examiners
24 or other professionals and specialists as examiners, the cost of

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

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

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

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

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

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

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

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

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

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

23 3. The ~~Commissioner~~ Attorney General, upon written request from
24 a PBM affected by the hearing, shall cause a full stenographic

1 record of the proceedings to be made by a competent court reporter.
2 This record shall be at the expense of the PBM.

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

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

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

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

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22 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 02/28/2023 - DO
23 PASS, As Coauthored.
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