

SENATE FLOOR VERSION

February 13, 2024

SENATE BILL NO. 1581

By: Hicks of the Senate

and

Marti of the House

An Act relating to pharmacy benefits management; amending 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), which relates to pharmacy benefits manager compliance; updating statutory reference; requiring pharmacy benefits manager to maintain certain fiduciary duty; and providing an effective date.

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

SECTION 1. 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;

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

3 a. the submission of a claim,

4 b. enrollment or participation in a retail pharmacy
5 network, or

6 c. the development or management of claims processing
7 services or claims payment services related to
8 participation in a retail pharmacy network;

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

16 4. Deny a provider the opportunity to participate in any
17 pharmacy network at preferred participation status if the provider
18 is willing to accept the terms and conditions that the PBM has
19 established for other providers as a condition of preferred network
20 participation status;

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

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

4 a. the original claim was submitted fraudulently, or

5 b. to correct errors identified in an audit, so long as
6 the audit was conducted in compliance with Sections
7 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

11 8. Conduct or practice spread pricing, as defined in Section ~~4~~
12 6960 of this ~~act~~ title, in this state; or

13 9. Charge a pharmacist or pharmacy a fee related to
14 participation in a retail pharmacy network including but not limited
15 to the following:

16 a. an application fee,

17 b. an enrollment or participation fee,

18 c. a credentialing or re-credentialing fee,

19 d. a change of ownership fee, or

20 e. a fee for the development or management of claims
21 processing services or claims payment services.

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

1 1. A PBM contract shall:

2 a. not restrict, directly or indirectly, any pharmacy
3 that dispenses a prescription drug from informing, or
4 penalize such pharmacy for informing, an individual of
5 any differential between the individual's out-of-
6 pocket cost or coverage with respect to acquisition of
7 the drug and the amount an individual would pay to
8 purchase the drug directly, and

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

21 2. A pharmacy benefits manager's contract with a provider shall
22 not prohibit, restrict or limit disclosure of information to the
23 Attorney General, law enforcement or state and federal governmental
24 officials investigating or examining a complaint or conducting a

1 review of a pharmacy benefits manager's compliance with the
2 requirements under the Patient's Right to Pharmacy Choice Act.

3 D. A pharmacy benefits manager shall:

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

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

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

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

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

24 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; and

6. Maintain a fiduciary duty to insurers and insureds served by the PBM.

SECTION 2. This act shall become effective November 1, 2024.

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
February 13, 2024 - DO PASS