

1 **SENATE FLOOR VERSION**

2 February 13, 2024

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1955

By: Standridge

6
7 An Act relating to the Patient's Right to Pharmacy
8 Choice Act; defining terms; authorizing cause of
9 action for certain violations; authorizing award of
10 certain costs and fees; requiring award of certain
11 damages upon specified showing by plaintiff;
12 authorizing joinder of certain actions; providing for
13 division of certain damage award; requiring certain
14 evidence; authorizing discovery of specified
15 information; authorizing intervention of Attorney
16 General; providing for codification; and declaring an
17 emergency.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6696.2 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A. As used in this act:

23 1. "Closely aligned pharmacy provider" means a pharmacy
24 provider wholly or partially owned by:

a. the pharmacy benefits manager (PBM),

b. an entity that owns any portion of the PBM,

c. an entity owned wholly or partially by the PBM, or

1 d. an entity closely aligned with the PBM which would be
2 established by any other working relationship between
3 the PBM and the pharmacy provider which would be
4 construed as being beneficial to the PBM;

5 2. "Damages" includes, but is not limited to, the difference in
6 reimbursement between the plaintiff or plaintiffs and the highest
7 total reimbursement, including drug pricing and any associated
8 reimbursed costs, of a closely aligned pharmacy provider or any
9 pharmacy provider that would be considered in competition with the
10 plaintiff or plaintiffs providing pharmacy services to the PBM;

11 3. "Drug pricing" includes but is not limited to drug costs,
12 rebates, incentives, discounts, kickbacks, profits, spread pricing,
13 fees, and other pricing information that would cause a disparity
14 between reimbursement for the plaintiff or plaintiffs and other
15 contracted pharmacy providers of the PBM;

16 4. "Payment history" includes but is not limited to direct
17 payments, rebates, discounts, kickbacks, credits, or any other form
18 of benefit to the payee; and

19 5. "Pharmacy contract" means any contract between a PBM and a
20 pharmacy provider.

21 B. 1. A licensed pharmacy or pharmacist located in this state
22 who is aggrieved by a violation of the Patient's Right to Pharmacy
23 Choice Act, Section 6959 et seq. of Title 36 of the Oklahoma
24 Statutes, related to pricing models or reimbursement rates by a

1 pharmacy benefits manager (PBM) or the entity for which the PBM
2 performs pharmacy benefits management shall have a cause of action
3 against the PBM or entity to recover damages attributable to such
4 violation. In addition to actual damages, a court may award court
5 costs and reasonable attorney fees.

6 2. If a plaintiff shows that the disparity in reimbursement
7 between the amount the PBM reimburses the plaintiff and the amount
8 the PBM reimburses either a closely aligned pharmacy provider or any
9 pharmacy provider that would be considered in competition with the
10 plaintiff is financially harmful to the plaintiff while beneficial
11 to the other provider, then such damage will be considered
12 unnecessarily harmful to the plaintiff and the court shall award
13 damages to the plaintiff in an amount needed to cover the financial,
14 personal, and business harm that resulted from such unnecessary
15 financial harm and an amount needed to bring the plaintiff to the
16 financial position that would have occurred if such unnecessary
17 financial harm was not inflicted.

18 3. If more than one licensed pharmacy or pharmacist has similar
19 damages from the same PBM, such pharmacies or pharmacists may join
20 their cause of action and any damage award shall be divided among
21 the aggrieved parties according to the proportion of damages each
22 party sustained.

1 C. A licensed pharmacy or pharmacist, or more than one of
2 either or both, filing an action pursuant to subsection B of this
3 section shall be required to:

4 1. Present evidence of a consistent reimbursement rate that is
5 less than the combined total of the cost of medication and the
6 average cost of dispensing the medication as recognized in the
7 industry. Each plaintiff must show a minimum of twelve (12) such
8 instances in a ninety-day period to sustain a claim for damages
9 under this section; or

10 2. Present evidence that a PBM initiated an audit against the
11 pharmacy or pharmacies in violation of the Pharmacy Audit Integrity
12 Act.

13 D. In an action filed pursuant to this section, the plaintiff
14 or plaintiffs shall have rights of discovery in all relevant areas
15 to determine the existence of unfair, anti-competitive, or
16 monopolistic actions on behalf of the PBM. Such discovery may
17 include but not be limited to:

18 1. Payment history and pharmacy contracts for similar pharmacy
19 services to any closely aligned pharmacy provider or any pharmacy
20 provider that would be considered in competition with the plaintiff
21 or plaintiffs;

22 2. Communications related to the contract of the plaintiff or
23 plaintiffs;

1 3. Drug pricing or communications about drug pricing related to
2 the plaintiff or plaintiffs, any closely aligned pharmacy provider,
3 or contracted pharmacy providers of the PBM that would be considered
4 competitors of the plaintiff or plaintiffs; or

5 4. Any information or communication related to the disparity in
6 reimbursement between the plaintiff or plaintiffs and any contracted
7 pharmacy provider of the PBM when such information or communication
8 would show anti-competitive or unfair business practices on the part
9 of the PBM.

10 E. In addition to the oversight and investigative authority
11 granted under the Patient's Right to Pharmacy Choice Act, the
12 Attorney General may intervene in any action filed pursuant to
13 subsection B of this section.

14 SECTION 2. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

18 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
19 February 13, 2024 - DO PASS AS AMENDED BY CS
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