

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

AS AMENDED

By: Montgomery

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

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

1. "Aggregate retained rebate percentage" means the percentage of all rebates received by a PBM from all pharmaceutical manufacturers which is not passed on to the PBM's health plan or health insurer clients. The aggregate retained rebate percentage shall be expressed without disclosing any identifying information regarding any health plan, prescription drug, or therapeutic class, and shall be calculated by dividing:

1 a. the aggregate dollar amount of all rebates that the
2 PBM received during the prior calendar year from all
3 pharmaceutical manufacturers that did not pass through
4 to the pharmacy benefits manager's health plan or
5 health insurer clients, by

6 b. the aggregate dollar amount of all rebates that the
7 pharmacy benefits manager received during the prior
8 calendar year from all pharmaceutical manufacturers;

9 2. "Defined cost sharing" means a deductible payment or
10 coinsurance amount imposed on an enrollee for a covered prescription
11 drug under the enrollee's health plan;

12 3. "Formulary" means a list of prescription drugs, any
13 prescription drug accompanying tiering, and other coverage
14 information that has been developed by a health insurer or its
15 designee that is referenced in determining applicable coverage and
16 benefit levels;

17 4. "Generic equivalent" means a drug that is designated as
18 therapeutically equivalent by the United States Food and Drug
19 Administration's Approved Drug Products with Therapeutic Equivalence
20 Evaluations; provided, however, a drug shall not be considered a
21 generic equivalent until the drug becomes nationally available;

22 5. "Health insurer" or "insurer" means any corporation,
23 association, benefit society, exchange, partnership, ~~or~~ individual,
24

1 or other legal entity licensed by the Oklahoma Insurance Code to
2 provide health benefit plans;

3 6. "Health insurer administrative service fees" means fees or
4 payments from a health insurer or its designee to, or otherwise
5 retained by, a PBM or its designee pursuant to a contract between a
6 PBM or affiliate and the health insurer or its designee in
7 connection with the PBM's managing or administering the pharmacy
8 benefit and administering, invoicing, allocating, and collecting
9 rebates;

10 7. "Health benefit plan" means a policy, contract,
11 certification, or agreement offered or issued by a health insurer to
12 provide, deliver, arrange for, pay for, or reimburse any of the
13 costs of health services;

14 ~~2.~~ 8. "Health insurer payor" means a health insurance company,
15 health maintenance organization, union, hospital and medical
16 services organization or any entity providing or administering a
17 self-funded health benefit plan;

18 ~~3.~~ 9. "Mail-order pharmacy" means a pharmacy licensed by this
19 state that primarily dispenses and delivers covered drugs ~~via~~ by
20 common carrier;

21 10. "Pharmaceutical manufacturing administrative fees" means
22 fees or payments from pharmaceutical manufacturers to, or otherwise
23 retained by, a pharmacy benefits manager (PBM) or its designee
24 pursuant to a contract between a PBM or affiliate and the

1 manufacturer in connection with the PBM's administering, invoicing,
2 allocating, and collecting rebates;

3 11. "Pharmacy" or "provider" means a pharmacy as defined
4 pursuant to Section 353.1 of Title 59 of the Oklahoma Statutes;

5 ~~4.~~ 12. "Pharmacy benefits manager" or "PBM" means a person
6 that, either directly or through an intermediary, performs pharmacy
7 benefits management, as defined by paragraph 6 of Section 357 of
8 Title 59 of the Oklahoma Statutes, and any other person acting for
9 such person under a contractual or employment relationship in the
10 performance of pharmacy benefits management for a managed-care
11 company, nonprofit hospital, medical service organization, insurance
12 company, third-party payor or a health program administered by a
13 department of this state;

14 13. "Price protection rebate" means a negotiated price
15 concession that accrues directly or indirectly to the health insurer
16 or other party on behalf of the health insurer in the event of an
17 increase in the wholesale acquisition cost of a drug above a
18 specified cost threshold;

19 ~~5. "Provider" means a pharmacy, as defined in Section 353.1 of~~
20 ~~Title 59 of the Oklahoma Statutes or an agent or representative of a~~
21 ~~pharmacy;~~

22 14. "Rebates" means:

23 a. negotiated price concessions including but not limited
24 to base price concessions, whether described as a

1 rebate or otherwise, and reasonable estimates of any
2 price protection rebates and performance-based price
3 concessions that may accrue directly or indirectly to
4 the PBM during the coverage year from a manufacturer,
5 dispensing pharmacy, or other party in connection with
6 the dispensing or administration of a prescription
7 drug, and

8 b. reasonable estimates of any price concessions, fees,
9 and other administrative costs that are passed
10 through, or are reasonably anticipated to be passed
11 through, to the PBM and serve to reduce the PBM's
12 liabilities for a prescription drug;

13 ~~6.~~ 15. "Retail pharmacy network" means retail pharmacy
14 providers contracted with a PBM in which the pharmacy primarily
15 fills and sells prescriptions ~~via~~ from a retail, storefront
16 location;

17 ~~7.~~ 16. "Rural service area" means a five-digit ZIP code in
18 which the population density is less than one thousand (1,000)
19 individuals per square mile;

20 ~~8.~~ 17. "Spread pricing" means a prescription drug pricing model
21 utilized by a pharmacy benefits manager in which the PBM charges a
22 health benefit plan a contracted price for prescription drugs that
23 differs from the amount the PBM directly or indirectly pays the
24 pharmacy or pharmacist for providing pharmacy services;

1 ~~9.~~ 18. "Suburban service area" means a five-digit ZIP code in
2 which the population density is between one thousand (1,000) and
3 three thousand (3,000) individuals per square mile; and

4 ~~10.~~ 19. "Urban service area" means a five-digit ZIP code in
5 which the population density is greater than three thousand (3,000)
6 individuals per square mile.

7 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, as
8 amended by Section 2, Chapter 38, O.S.L. 2022 (36 O.S. Supp. 2022,
9 Section 6962), is amended to read as follows:

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

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

15 1. Cause or knowingly permit the use of advertisement,
16 promotion, solicitation, representation, proposal or offer that is
17 untrue, deceptive or misleading;

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

20 a. the submission of a claim,

21 b. enrollment or participation in a retail pharmacy
22 network, or
23
24

1 c. the development or management of claims processing
2 services or claims payment services related to
3 participation in a retail pharmacy network;

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

11 4. Deny a provider the opportunity to participate in any
12 pharmacy network at preferred participation status if the provider
13 is willing to accept the terms and conditions that the PBM has
14 established for other providers as a condition of preferred network
15 participation status;

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

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

23 a. the original claim was submitted fraudulently, or
24

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 ~~4~~ 6960 of this title, 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

1 any differential between the individual's out-of-
2 pocket cost or coverage with respect to acquisition of
3 the drug and the amount an individual would pay to
4 purchase the drug directly, ~~and~~

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

17 c. not prohibit from or penalize for a pharmacy or
18 pharmacist disclosing to an individual information
19 regarding the existence and clinical efficacy of a
20 generic equivalent that would be less expensive to the
21 enrollee under his or her health plan prescription
22 drug benefit or outside his or her health plan
23 prescription drug benefit, without requesting any
24

1 health plan reimbursement, than the drug that was
2 originally prescribed, and

3 d. not prohibit from or penalize for a pharmacy or
4 pharmacist selling to an individual, instead of a
5 particular prescribed drug, a therapeutically
6 equivalent drug that would be less expensive to the
7 enrollee under his or her health plan prescription
8 drug benefit or outside his or her health plan
9 prescription drug benefit, without requesting any
10 health plan reimbursement, than the drug that was
11 originally prescribed.

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

18 3. For each of the PBM's contracts or other relationships with
19 a health plan, a PBM shall publish on an easily accessible website
20 the health plan formulary and timely notification of formulary
21 changes and product exclusions.

22 D. A pharmacy benefits manager shall:

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

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, on the following information:

19 a. the aggregate amount of rebates received by the PBM,

20 b. the aggregate amount of rebates distributed to the
21 appropriate health insurer payor,

22 c. the aggregate amount of rebates passed on to the
23 enrollees of each health insurer payor at the point of
24 sale that reduced the applicable deductible,

1 copayment, coinsure or other cost sharing amount of
2 the enrollee,

3 d. the individual and aggregate amount paid by the health
4 insurer payor to the PBM for pharmacy services
5 itemized by pharmacy, drug product and service
6 provided, and

7 e. the individual and aggregate amount a PBM paid a
8 provider for pharmacy services itemized by pharmacy,
9 drug product and service provided.

10 SECTION 3. NEW LAW A new section of law to be codified

11 in the Oklahoma Statutes as Section 6962.1 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Beginning on November 1, 2023, and on an annual basis
14 thereafter, a pharmacy benefits manager (PBM) shall provide the
15 Insurance Department with a report containing the following
16 information from the prior calendar year as it pertains to pharmacy
17 benefits provided by health insurers to enrollees in the state:

18 1. The aggregate dollar amount of all rebates that the PBM
19 received from all pharmaceutical manufacturers;

20 2. The aggregate dollar amount of all administrative fees that
21 the PBM received;

22 3. The aggregate dollar amount of all issuer administrative
23 service fees that the PBM received;

1 4. The aggregate dollar amount of all rebates that the PBM
2 received from all pharmaceutical manufacturers and did not pass
3 through to health plans or health insurers;

4 5. The aggregate dollar amount of all administrative fees that
5 the PBM received from all pharmaceutical manufacturers and did not
6 pass through to health plans or health insurers;

7 6. The aggregate retained rebate percentage; and

8 7. The highest aggregate retained rebate percentage, the lowest
9 aggregate retained rebate percentage, and the mean aggregate
10 retained rebate percentage across all of the pharmacy benefits
11 manager's contractual or other relationships with all health benefit
12 plans or health insurers.

13 B. The Department shall publish in a timely manner the
14 information that it receives under subsection A of this section on a
15 publicly available website, provided that such information shall be
16 made available in a form that does not disclose the identity of a
17 specific health plan or the identity of a specific manufacturer, the
18 prices charged for specific drugs or classes of drugs, or the amount
19 of any rebates provided for specific drugs or classes of drugs.

20 C. The PBM and the Department shall not publish or otherwise
21 disclose any information that would disclose the identity of a
22 specific health plan, any prices charged for a specific drug or
23 class of drugs, the amount of any rebates provided for a specific
24 drug or class of drugs, the manufacturer, or information that would

1 otherwise have the potential to compromise the financial,
2 competitive, or proprietary nature of the information. The
3 information shall be protected from direct or indirect disclosure as
4 confidential and proprietary information and shall not be deemed a
5 public record as defined pursuant to Section 24A.3 of Title 51 of
6 the Oklahoma Statutes. A PBM shall impose the confidentiality
7 protections of this section on any vendor or downstream third party
8 that performs health care or administrative services on behalf of
9 the PBM that may receive or have access to rebate information.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6962.2 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. An enrollee's defined cost sharing, as defined pursuant to
14 Section 6960 of Title 36 of the Oklahoma Statutes, for each
15 prescription drug shall be calculated at the point of sale based on
16 a price that is reduced by an amount equal to one hundred percent
17 (100%) of all rebates received, or to be received, in connection
18 with the dispensing or administration of the prescription drug.

19 B. For any violation of this section, the Insurance
20 Commissioner may subject a pharmacy benefits manager (PBM) to an
21 administrative penalty not less than One Hundred Dollars (\$100.00),
22 nor more than Five Thousand Dollars (\$5,000.00) for each occurrence.
23 Such administrative penalty may be enforced in the same manner in
24 which civil judgments may be enforced.

1 C. Nothing in this section shall preclude a PBM from decreasing
2 an enrollee's defined cost sharing by an amount greater than that
3 required under subsection A of this section.

4 D. In complying with the provisions of this section, a PBM or
5 its agents shall not publish or otherwise disclose information
6 regarding the actual amount of rebates a PBM receives on a product
7 or therapeutic class of products, manufacturer, or pharmacy-specific
8 basis. Such information is protected as a trade secret, is not a
9 public record as defined pursuant to Section 24A.3 of Title 51 of
10 the Oklahoma Statutes, and shall not be disclosed directly or
11 indirectly, or in a manner that would allow for the identification
12 of an individual product, therapeutic class of products, or
13 manufacturer, or in a manner that would have the potential to
14 compromise the financial, competitive, or proprietary nature of the
15 information. A PBM shall impose the confidentiality protections of
16 this section on any vendor or downstream third party that performs
17 health care or administrative services on behalf of the insurer that
18 may receive or have access to rebate information.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6962.3 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A. An enrollee's defined cost sharing, as defined pursuant to
23 Section 6960 of Title 36 of the Oklahoma Statutes, for each
24 prescription drug shall be calculated at the point of sale based on

1 a price that is reduced by an amount equal to one hundred percent
2 (100%) of all rebates received or to be received in connection with
3 the dispensing or administration of the prescription drug.

4 B. For any violation of this section, the Insurance
5 Commissioner may subject an insurer to an administrative penalty not
6 less than One Hundred Dollars (\$100.00), nor more than Five Thousand
7 Dollars (\$5,000.00) for each occurrence. Such administrative
8 penalty may be enforced in the same manner in which civil judgments
9 may be enforced.

10 C. Nothing in this section shall preclude an insurer from
11 decreasing an enrollee's defined cost sharing by an amount greater
12 than that required under subsection A of this section.

13 D. An insurer or its agents shall not publish or otherwise
14 disclose information regarding the actual amount of rebates an
15 insurer receives on a product or therapeutic class of products,
16 manufacturer, or pharmacy-specific basis. Such information is
17 protected as a trade secret, is not a public record pursuant to
18 Section 24A.3 of Title 51 of the Oklahoma Statutes, and shall not be
19 disclosed directly or indirectly or in a manner that would allow for
20 the identification of an individual product, therapeutic class of
21 products, or manufacturer, or in a manner that would have the
22 potential to compromise the financial, competitive, or proprietary
23 nature of the information. The confidentiality protections provided
24 in this section shall apply to any vendor or downstream third party

1 that performs healthcare or administrative services on behalf of the
2 insurer that may receive or have access to rebate information.

3 SECTION 6. AMENDATORY 36 O.S. 2021, Section 6964, is
4 amended to read as follows:

5 Section 6964. A. A ~~health insurer's~~ pharmacy and therapeutics
6 committee (P&T committee) of a health insurer or its agent,
7 including pharmacy benefits managers (PBMs), shall establish a
8 formulary, which shall be a list of prescription drugs, both generic
9 and brand name, used by practitioners to identify drugs that offer
10 the greatest overall value. The P&T committee shall review the
11 formulary annually.

12 B. A health insurer shall prohibit conflicts of interest for
13 members of the P&T committee. The P&T committee shall meet the
14 following requirements:

15 1. A person may not serve on a P&T committee if the person is
16 currently employed or was employed within the preceding year by a
17 pharmaceutical manufacturer, developer, labeler, wholesaler or
18 distributor;
19

20 2. A majority of P&T committee members shall be practicing
21 physicians, practicing pharmacists, or both, and shall be licensed
22 in this state;

23 3. A health insurer shall require any member of the P&T
24 committee to disclose any compensation or funding from a
pharmaceutical manufacturer, developer, labeler, wholesaler or

1 distributor. Such P&T committee member shall be recused from voting
2 on any product manufactured or sold by such pharmaceutical
3 manufacturer, developer, labeler, wholesaler or distributor-;

4 4. P&T committee members shall practice in various clinical
5 specialties that adequately represent the needs of the health plan
6 enrollees and there shall be an adequate number, to be determined by
7 the Insurance Department, of high-volume specialists and specialists
8 treating rare or orphan diseases;

9 5. The P&T committee shall meet at least on a quarterly basis;

10 6. P&T committee formulary development shall be conducted
11 pursuant to a transparent process, and formulary decisions and
12 rationale shall be documented in writing. Upon request, the records
13 and documents shall be made available to the health plan, subject to
14 the conditions in subsection C of this section;

15 7. If the P&T committee relies upon any third party to provide
16 cost-effectiveness analysis or research for a Medicaid managed care
17 organization's prescription drug policy, the P&T committee shall:

18 a. disclose to the health benefit plan, the President Pro
19 Tempore of the Senate, the Speaker of the House of
20 Representatives, and the Governor, the name of a
21 relevant third party, and

22 b. provide a process through which patients and providers
23 potentially impacted by the third party's analysis or
24 research may provide input to the P&T committee;

1 8. P&T committee members who are specialists with current
2 clinical expertise and actively treat patients in a specific
3 therapeutic area, and the specific conditions within a therapeutic
4 area, shall participate in formulary decisions regarding each
5 therapeutic area and specific condition;

6 9. The P&T committee shall base its clinical decisions on the
7 strength of scientific evidence, standards of practice, and
8 nationally accepted treatment guidelines;

9 10. The P&T committee shall consider whether a particular drug
10 has a clinically meaningful therapeutic advantage over other drugs
11 in terms of safety, effectiveness, or clinical outcome for patient
12 populations who may be treated with the drug;

13 11. The P&T committee shall evaluate and analyze treatment
14 protocols and procedures related to the health plan's formulary at
15 least annually;

16 12. The P&T committee shall review formulary management
17 activities including exceptions and appeals processes, prior
18 authorization, step therapy, quantity limits, generic substitutions,
19 therapeutic interchange, and other drug utilization management
20 activities for clinical appropriateness and consistency with
21 industry standards and patient and provider organization guidelines;

22 13. The P&T committee shall annually review and provide a
23 written report to the pharmacy benefits manager on:
24

- 1 a. the percentage of prescription drugs on a formulary
2 subject to each of the types of utilization management
3 described in paragraph 12 of this subsection,
4 b. rates of adherence and nonadherence to medicines by
5 therapeutic area,
6 c. rates of abandonment of medicines by therapeutic area,
7 d. recommendations for improved adherence and reduced
8 abandonment, and
9 e. recommendations for improvement in formulary
10 management practices consistent with patient and
11 provider organization and other clinical guidelines,
12 provided that the report shall be subject to the
13 conditions in subsection C of this section; and

14 14. The P&T committee shall review and make a formulary
15 decision on a new United States Food and Drug Administration-
16 approved drug within ninety (90) days of the drug's approval, or
17 shall provide a clinical justification if this timeframe is not met.

18 C. The health insurer, its agents including pharmacy benefits
19 managers, and the Department shall not publish or otherwise disclose
20 any confidential, proprietary information including but not limited
21 to any information that would disclose the identity of a specific
22 health plan, the price or prices charged for a specific drug or
23 class of drugs, the amount of any rebates provided for a specific
24 drug or class of drugs, the manufacturer, or that would otherwise

have the potential to compromise the financial, competitive, or
proprietary nature of the information. The information shall be
protected from direct or indirect disclosure as confidential and
proprietary information and shall not be deemed a public record as
defined pursuant to Section 24A.3 of Title 51 of the Oklahoma
Statutes. The confidentiality protections provided in this section
shall apply to any vendor or third party that performs health care
or administrative services on behalf of the pharmacy benefits
manager that may receive or have access to rebate information.

SECTION 7. AMENDATORY 51 O.S. 2021, Section 24A.3, as
last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp.
2022, Section 24A.3), is amended to read as follows:

Section 24A.3. As used in the Oklahoma Open Records Act:

1. "Record" means all documents including, but not limited to,
any book, paper, photograph, microfilm, data files created by or
used with computer software, computer tape, disk, record, sound
recording, film recording, video record or other material regardless
of physical form or characteristic, created by, received by, under
the authority of, or coming into the custody, control or possession
of public officials, public bodies or their representatives in
connection with the transaction of public business, the expenditure
of public funds or the administering of public property. "Record"
does not mean:

a. computer software,

- b. nongovernment personal effects,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with a public body,
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department,
- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk including any DD Form 214 filed before July 1, 2002,

- 1 h. except as provided for in Section 2-110 of Title 47 of
2 the Oklahoma Statutes,
3 (1) any record in connection with a Motor Vehicle
4 Report issued by the Department of Public Safety,
5 as prescribed in Section 6-117 of Title 47 of the
6 Oklahoma Statutes, or
7 (2) personal information within driver records, as
8 defined by the Driver's Privacy Protection Act,
9 18 United States Code, Sections 2721 through
10 2725, which are stored and maintained by the
11 Department of Public Safety, ~~or~~
12 i. any portion of any document or information provided to
13 an agency or entity of the state or a political
14 subdivision to obtain licensure under the laws of this
15 state or a political subdivision that contains an
16 applicant's personal address, personal phone number,
17 personal electronic mail address or other contact
18 information. Provided, however, lists of persons
19 licensed, the existence of a license of a person, or a
20 business or commercial address, or other business or
21 commercial information disclosable under state law
22 submitted with an application for licensure shall be
23 public record, or
24

1 j. for the purposes of the Patient's Right to Pharmacy
2 Choice Act, any information or record that would have
3 the potential to compromise the financial,
4 competitive, or proprietary nature of information
5 about a specific drug or class of drugs, or a specific
6 product or therapeutic class of products. Additional
7 information that shall not be disclosed includes but
8 is not limited to:

- 9 (1) any information relating to specific drugs or
10 classes of drugs that would disclose the identity
11 of a specific health plan, drug prices, the
12 rebate amount received by a pharmacy benefits
13 manager, the rebate amount received by the
14 insurer, or the identity of the manufacturer, and
15 (2) any information relating to a product or
16 therapeutic class of products that would disclose
17 the rebate received by a pharmacy benefits
18 manager, the rebate amount received by an
19 insurer, or the identity of the manufacturer;

20 2. "Public body" shall include, but not be limited to, any
21 office, department, board, bureau, commission, agency, trusteeship,
22 authority, council, committee, trust or any entity created by a
23 trust, county, city, village, town, township, district, school
24 district, fair board, court, executive office, advisory group, task

1 force, study group or any subdivision thereof, supported in whole or
2 in part by public funds or entrusted with the expenditure of public
3 funds or administering or operating public property, and all
4 committees, or subcommittees thereof. Except for the records
5 required by Section 24A.4 of this title, "public body" does not mean
6 judges, justices, the Council on Judicial Complaints, the
7 Legislature or legislators. "Public body" shall not include an
8 organization that is exempt from federal income tax under Section
9 501(c)(3) of the Internal Revenue Code of 1986, as amended, and
10 whose sole beneficiary is a college or university, or an affiliated
11 entity of the college or university, that is a member of The
12 Oklahoma State System of Higher Education. Such organization shall
13 not receive direct appropriations from the Oklahoma Legislature.
14 The following persons shall not be eligible to serve as a voting
15 member of the governing board of the organization:

- 16 a. a member, officer, or employee of the Oklahoma State
17 Regents for Higher Education,
- 18 b. a member of the board of regents or other governing
19 board of the college or university that is the sole
20 beneficiary of the organization, or
- 21 c. an officer or employee of the college or university
22 that is the sole beneficiary of the organization;

23 3. "Public office" means the physical location where public
24 bodies conduct business or keep records;

1 4. "Public official" means any official or employee of any
2 public body as defined herein; and

3 5. "Law enforcement agency" means any public body charged with
4 enforcing state or local criminal laws and initiating criminal
5 prosecutions including, but not limited to, police departments,
6 county sheriffs, the Department of Public Safety, the Oklahoma State
7 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
8 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
9 of Investigation.

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

12 Section 357. As used in ~~this act~~ the Oklahoma Pharmacy Act:

13 1. "Covered entity" means a nonprofit hospital or medical
14 service organization, insurer, health coverage plan or health
15 maintenance organization; a health program administered by the state
16 in the capacity of provider of health coverage; or an employer,
17 labor union, or other entity organized in the state that provides
18 health coverage to covered individuals who are employed or reside in
19 the state. This term does not include a health plan that provides
20 coverage only for accidental injury, specified disease, hospital
21 indemnity, disability income, or other limited benefit health
22 insurance policies and contracts that do not include prescription
23 drug coverage;

1 2. "Covered individual" means a member, participant, enrollee,
2 contract holder or policy holder or beneficiary of a covered entity
3 who is provided health coverage by the covered entity. A covered
4 individual includes any dependent or other person provided health
5 coverage through a policy, contract or plan for a covered
6 individual;

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

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

11 5. "Multisource drug product reimbursement" (reimbursement)
12 means the total amount paid to a pharmacy inclusive of any reduction
13 in payment to the pharmacy, excluding prescription dispense fees;

14 6. "Pharmacy benefits management" means a service provided to
15 covered entities to facilitate the provision of prescription drug
16 benefits to covered individuals within the state, including
17 negotiating pricing and other terms with drug manufacturers and
18 providers. Pharmacy benefits management may include ~~any or all of~~
19 the following services:

- 20 a. claims processing, performance of drug utilization
21 review, processing of prior authorization requests,
22 retail network management and payment of claims to
23 pharmacies for prescription drugs dispensed to covered
24 individuals,

- b. clinical formulary development and management services,
- c. rebate contracting and administration,
- d. certain patient compliance, therapeutic intervention and generic substitution programs, ~~or~~
- e. disease management programs,
- f. adjudication of appeals or grievances related to the prescription drug benefit, and
- g. oversight of prescription drug costs;

7. "Pharmacy benefits manager" or "PBM" means a person, business or other entity that, either directly or through an intermediary, performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital, medical service organization, insurance company, third-party payor, or a health program administered by an agency of this state;

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

9. "Provider" means a pharmacy licensed by the State Board of Pharmacy, or an agent or representative of a pharmacy, including,

1 but not limited to, the pharmacy's contracting agent, which
2 dispenses prescription drugs or devices to covered individuals.

3 SECTION 9. AMENDATORY 59 O.S. 2021, Section 358, is
4 amended to read as follows:

5 Section 358. A. In order to provide pharmacy benefits
6 management or any of the services included under the definition of
7 pharmacy benefits management in this state, a pharmacy benefits
8 manager or any entity acting as one in a contractual or employment
9 relationship for a covered entity shall first obtain a license from
10 the ~~Oklahoma~~ Insurance Department, and the Department may charge a
11 fee for such licensure.

12 B. The Department shall establish, by regulation, licensure
13 procedures, required disclosures for pharmacy benefits managers
14 (PBMs) and other rules as may be necessary for carrying out and
15 enforcing the provisions of ~~this act~~ the Oklahoma Pharmacy Act. The
16 licensure procedures shall, at a minimum, include the completion of
17 an application form that shall include ~~the name and address of an~~
18 ~~agent for service of process, the payment of a requisite fee, and~~
19 ~~evidence of the procurement of a surety bond;~~

20 1. The name, address, and telephone contact number of the PBM;

21 2. The name and address of the PBM's agent for service of
22 process in the state;

23 3. The name and address of each person with management or
24 control over the PBM;

1 4. Evidence of the procurement of a surety bond;

2 5. The name and address of each person with a beneficial
3 ownership interest in the PBM;

4 6. In the case of a PBM applicant that is a partnership or
5 other unincorporated association, limited liability company, or
6 corporation, and has five or more partners, members, or
7 stockholders, the applicant shall:

8 a. specify its legal structure and the total number of
9 its partners, members, or stockholders,

10 b. specify the name, address, usual occupation, and
11 professional qualifications of the five partners,
12 members, or stockholders with the five largest
13 ownership interests in the PBM, and

14 c. upon request by the Department, furnish the Department
15 with information regarding the name, address, usual
16 occupation, and professional qualifications of any
17 other partners, members, or stockholders; and

18 7. A signed statement indicating that the PBM has not been
19 convicted of a felony and has not violated any of the requirements
20 of the Oklahoma Pharmacy Act and the Patient's Right to Pharmacy
21 Choice Act, or, if the applicant cannot provide such a statement, a
22 signed statement describing any relevant conviction or violation.

23 C. The Department may subpoena witnesses and information. Its
24 compliance officers may take and copy records for investigative use

1 and prosecutions. Nothing in this subsection shall limit the Office
2 of the Attorney General from using its investigative demand
3 authority to investigate and prosecute violations of the law.

4 D. The Department may suspend, revoke or refuse to issue or
5 renew a license for noncompliance with any of the provisions hereby
6 established or with the rules promulgated by the Department; for
7 conduct likely to mislead, deceive or defraud the public or the
8 Department; for unfair or deceptive business practices or for
9 nonpayment of a renewal fee or fine. The Department may also levy
10 administrative fines for each count of which a PBM has been
11 convicted in a Department hearing.

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

13 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
14 February 14, 2023 - DO PASS AS AMENDED
15
16
17
18
19
20
21
22
23
24