

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 768

By: Hicks

AS INTRODUCED

An Act relating to prescription drugs; defining terms; requiring certain reports by certain pharmacy benefits managers by certain date; requiring notification by certain manufacturer to Insurance Department by certain date; requiring certain reports by certain entities by certain date; providing for certain information to be subject to certain protections; authorizing registration process for entities by Department; requiring certain fee assessment for certain purpose to be deposited into certain revolving fund; establishing deadline for payment; requiring certification by entity of certain reports; establishing civil penalty; providing for audit process to be administered at the cost of the entity at subject of certain audit; allowing Department to establish processes deemed necessary for act implementation; requiring Department to publish certain report; allowing certain information to be transmitted to Attorney General under certain conditions; authorizing promulgation of rules by Department; amending 51 O.S. 2021, Section 24A.3, as amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3), which relates to Open Records Act; modifying definition; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6971 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Brand-name drug" means a prescription drug approved under 21 U.S. Code Section 355(b), as amended, or 42 U.S. Code Section 262, as amended;

2. "Drug group" means a group of medications that work similarly, have a similar chemical makeup, or treat similar conditions;

3. "Insurer" means any entity authorized to provide health insurance or health benefits pursuant to the laws of this state and any entity or person engaged in the business of making contracts for accident or health insurance;

4. "Manufacturer" means any person or entity that holds the national drug code for a prescription drug and is either engaged in the production, preparation, propagation, compounding, conversion, or processing of drug products in this state;

5. "Market introduction" means the month and year in which the manufacturer acquired or first marketed the drug for sale in the United States;

6. "National drug code" means the numerical code maintained by the Food and Drug Administration that includes the labeler code, product code, and package code;

1 7. "Pharmacy benefits manager" or "PBM" means a pharmacy
2 benefits manager as defined pursuant to Section 6960 of Title 36 of
3 the Oklahoma Statutes;

4 8. "Reporting entity" means any manufacturer, insurer, pharmacy
5 benefits manager, wholesale drug distributor, or any other entity
6 required to report to the Insurance Department under the provisions
7 of this act;

8 9. "Wholesale acquisition cost" means the list price of the
9 manufacturer charged to wholesalers or direct purchases in the
10 United States on December 31 of the reference year, as reported in
11 the wholesale price guides or other publications of drug or
12 biological pricing data. This shall not include prompt pay or other
13 discounts, rebates, or reductions in price. The current or proposed
14 wholesale acquisition cost is the amount that requires reporting
15 under the provisions of this act;

16 10. "Wholesale acquisition cost unit" or "WAC unit" means the
17 lowest identifiable quantity of a drug or biological that is
18 dispensed, exclusive of any diluent without reference to volume
19 measures pertaining to liquids. If reporting by drug group, it is
20 the total number of wholesale acquisition cost units in the drug
21 group; and

22 11. "Wholesale drug distributor" means a person or entity
23 engaging in the sale of prescription drugs to persons other than a
24 consumer or patient and licensed by the State Board of Pharmacy.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6972 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 Any pharmacy benefits manager (PBM) that operates in this state
5 shall, within sixty (60) days of receiving notice by the Insurance
6 Department pursuant to Section 3 of this act, and to the extent
7 allowed by law, report annually to the Department, indicating the
8 specific drugs for which reporting is required, the following
9 information:

10 1. The minimum and maximum wholesale acquisition cost (WAC) for
11 each indicated drug and drug group for which the PBM has negotiated
12 directly with the manufacturer in the immediately preceding calendar
13 year;

14 2. The minimum and maximum WAC for each indicated drug and drug
15 group for which the PBM has negotiated directly with the
16 manufacturer in the current calendar year;

17 3. The number of WAC units for which the PBM negotiated
18 directly with the manufacturer in the immediately preceding calendar
19 year, for business in this state, in total and for each payer type
20 as deemed necessary by the Department;

21 4. The projected number of WAC units for which the PBM expects
22 to negotiate directly with the manufacturer in the current calendar
23 year, for business in this state, in total and for each payer type
24 as deemed necessary by the Department;

1 5. Total rebates, discounts, and price concessions received or
2 negotiated directly with the manufacturer in the immediately
3 preceding calendar year, for business in this state, in total and
4 for each payer type as deemed necessary by the Department;

5 6. Projected total rebates, discounts, and price concessions
6 that the PBM expects to receive or to negotiate directly with the
7 manufacturer in the current calendar year, for business in this
8 state, in total and for each payer type as deemed necessary by the
9 Department;

10 7. Total discounts, dispensing fees, and other fees paid or
11 allowed to pharmacies, prescription drug networks, or pharmacy
12 services administrative organizations in the immediately preceding
13 calendar year, for business in this state, in total and for each
14 payer type as deemed necessary by the Department;

15 8. Projected total discounts, dispensing fees, and other fees
16 that the PBM expects to pay or allow to pharmacies, prescription
17 drug networks, or pharmacy services administrative organizations in
18 the current calendar year, for business in this state, in total and
19 for each payer type as deemed necessary by the Department;

20 9. Total net income received in the immediately preceding
21 calendar year for business in this state, in total and for each
22 payer type as deemed necessary by the Department;
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24
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1 10. Projected net income that the PBM expects to receive in the
2 current calendar year for business in this state, in total and for
3 each payer type as deemed necessary by the Department; and

4 11. Any other information as prescribed by the Department.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6973 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. 1. A manufacturer shall notify the Insurance Department if
9 it is increasing the wholesale acquisition cost of a brand-name drug
10 by more than twenty percent (20%) per wholesale acquisition cost
11 unit (WAC unit) during any twelve-month period, or if it is
12 increasing the wholesale acquisition cost of a generic drug priced
13 at Ten Dollars (\$10.00) or more per WAC unit by more than twenty
14 percent (20%) during any twelve month period. The notice shall be
15 provided, in writing, at least sixty (60) days prior to the planned
16 effective date of the increase.

17 2. A manufacturer that is required to notify the Department
18 under this subsection shall report to the Department, at least
19 thirty (30) days before the planned effective date of the increase,
20 the following:

- 21 a. drug identification details, including the drug group,
- 22 b. four (4) year sales history in WAC units for sales in
23 this state and in the United States,
- 24 c. the wholesale acquisition cost of the drug,

- d. four (4) year revenue history from sales in this state and in the United States, and
- e. cost associated with sales in the United States by drug and drug group.

B. 1. A manufacturer shall notify the Department if it intends to introduce a new drug in the United States that has a wholesale acquisition cost of more than Six Hundred Seventy Dollars (\$670.00) per WAC unit. The notice shall be provided, in writing, at least sixty (60) days prior to market introduction.

2. A manufacturer that is required to notify the Department under this subsection shall report to the Department, at least thirty (30) days before the planned effective date of the increase, the following:

- a. drug identification details, including the drug group,
- b. patient volume, revenue, and price, and
- c. wholesale acquisition cost at introduction.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6974 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any wholesale drug distributor operating in this state shall report annually to the Insurance Department, within sixty (60) days after receiving notice from the Department indicating the specific drugs for which reporting is required, the following information:

1 1. The minimum and maximum wholesale acquisition cost for each
2 indicated drug and drug group for which the distributor has
3 negotiated directly with the manufacturer in the immediately
4 preceding calendar year, related to prescriptions under an insurance
5 policy issued in this state;

6 2. The minimum and maximum wholesale acquisition cost for each
7 indicated drug and drug group for which the distributor has
8 negotiated directly with the manufacturer in the current calendar
9 year, related to prescriptions under an insurance policy issued in
10 this state;

11 3. The number of WAC units for which the distributor negotiated
12 directly with the manufacturer in the immediately preceding calendar
13 year, for business in this state, in total and for each payer type
14 as deemed necessary by the Department;

15 4. The projected number of WAC units for which the distributor
16 expects to negotiate directly with the manufacturer in the current
17 calendar year, for business in this state, in total and for each
18 payer type as deemed necessary by the Department;

19 5. Total rebates, discounts, and price concessions received or
20 negotiated directly with the manufacturer in the immediately
21 preceding calendar year, for business in this state, in total and
22 for each payer type as deemed necessary by the Department;

23 6. Projected total rebates, discounts, and price concessions
24 that the distributor expects to receive or to negotiate directly

1 with the manufacturer in the current calendar year, for business in
2 this state, in total and for each payer type as deemed necessary by
3 the Department;

4 7. Total discounts, dispensing fees, and other fees paid or
5 allowed to pharmacies, prescription drug networks, or pharmacy
6 services administrative organizations in the immediately preceding
7 calendar year, for business in this state, in total and for each
8 payer type as deemed necessary by the Department;

9 8. Projected total discounts, dispensing fees, and other fees
10 that the PBM expects to pay or allow to pharmacies, prescription
11 drug networks, or pharmacy services administrative organizations in
12 the current calendar year, for business in this state, in total and
13 for each payer type as deemed necessary by the Department;

14 9. Total net income received in the immediately preceding
15 calendar year for business in this state, in total and for each
16 payer type as deemed necessary by the Department;

17 10. Projected net income that the distributor expects to
18 receive in the current calendar year for business in this state, in
19 total and for each payer type as deemed necessary by the Department;
20 and

21 11. Any other information as prescribed by the Department.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6975 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Each insurer designated by the Insurance Department as a
2 reporting entity shall report annually to the Department, to the
3 extent allowed by law, spending on prescription drugs before
4 enrollee cost sharing, in total and per prescription drug user, and
5 spending on the top twenty-five (25) prescription drugs prescribed
6 in this state, in total and individually, as determined by the
7 Insurance Department. The report shall include:

8 1. The greatest total spending before enrollee cost sharing in
9 the immediately preceding calendar year;

10 2. The greatest total spending per user of any drug before
11 enrollee cost sharing in the immediately preceding calendar year;

12 3. The highest year-over-year increase in total spending before
13 enrollee cost sharing; and

14 4. The highest year-over-year increase in total spending per
15 user of any drug before enrollee cost sharing.

16 B. For each drug and drug group, the insurer shall report to
17 the Department, within sixty (60) days of the close of each calendar
18 year, the following information:

19 1. For drugs that accounted for the highest total spending
20 before enrollee cost sharing in the last calendar year:

21 a. total spending before enrollee cost sharing in the
22 immediately preceding calendar year,

23 b. projected total spending before enrollee cost sharing
24 in the current calendar year,

1 c margins and fees paid directly to pharmacy benefit
2 managers (PBMs) or pharmacy services administrative
3 organizations in the immediately preceding calendar
4 year, and

5 d. other allowed retail discounts, price concessions, and
6 fees paid in the immediately preceding calendar year;

7 2. For drugs that accounted for the highest year-over-year
8 change in total spending before enrollee cost sharing:

9 a. year-over-year change in total spending before
10 enrollee cost sharing,

11 b. total spending before enrollee cost sharing in the
12 immediately preceding calendar year,

13 c. projected total spending before enrollee cost sharing
14 in the current calendar year,

15 d. margins and fees paid directly to PBMs or pharmacy
16 services administrative organizations in the
17 immediately preceding calendar year, and

18 e. other allowed retail discounts, price concessions, and
19 fees paid in the immediately preceding calendar year;

20 3. For drugs that accounted for the highest total spending per
21 user before enrollee cost sharing in the immediately preceding
22 calendar year:

23 a. total spending per user before enrollee cost sharing
24 in the immediately preceding calendar year,

- b. total spending before enrollee cost sharing in the immediately preceding calendar year,
- c. number of users in the immediately preceding calendar year,
- d. projected total spending per user before enrollee cost sharing in the current calendar year,
- e. margins and fees paid directly to PBMs or pharmacy services administrative organizations in the immediately preceding calendar year, and
- f. other allowed retail discounts, price concessions, and fees paid in the immediately preceding calendar year; and

4. For drugs that accounted for the highest year-over-year change in total spending per user before enrollee cost sharing in the immediately preceding calendar year:

- a. year-over-year change in total spending per user before enrollee cost sharing,
- b. total spending per user before enrollee cost sharing in the immediately preceding calendar year,
- c. number of users in the immediately preceding calendar year,
- d. projected total spending per user before enrollee cost sharing in the current calendar year,

1 e. margins and fees paid directly to PBMs or pharmacy
2 services administrative organizations in the
3 immediately preceding calendar year, and

4 f. other allowed retail discounts, price concessions, and
5 fees in the last calendar year.

6 C. Disclosure of all information reported under this section is
7 subject to the protections described in Section 6 of this act.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 6976 of Title 36, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Beginning on January 1, 2024, each reporting entity shall
12 register with the Insurance Department no later than January 31 of
13 each calendar year, in a form and manner specified by the
14 Department.

15 B. 1. Each reporting entity shall pay an annual assessment, in
16 an amount to be determined by the Department but not to be less than
17 One Hundred Dollars (\$100.00) for each individual entity required to
18 pay an assessment under this act, to support the operational costs
19 of the Department in implementing the provisions of this act. The
20 costs shall include staff salaries, administrative expenses, data
21 system expenses, and consulting fees of the Department. The total
22 annual assessments shall be based on the total annual allocation
23 authorized by the Legislature for the operational costs of the
24 Department under this act, as indicated in the fiscal year budget of

1 the Department. The amount to be assessed shall be reduced by the
2 difference between the total annual authorized allocation for the
3 next fiscal year and the beginning fund balance in the Department's
4 account for the prior fiscal year. Any assessment reduction shall
5 be applied proportionately to the categorical groups assessed.

6 2. The assessments shall be placed in State Insurance
7 Commissioner Revolving Fund pursuant to Section 307.3 of Title 36 of
8 the Oklahoma Statutes.

9 C. The Department shall send request for payment of the
10 assessment to all reporting entities under this act by certified
11 mail beginning July 1, 2024, and annually thereafter. All
12 assessments shall be due to the Department within thirty (30) days
13 of receipt of the request for payment. Any reporting entity that
14 fails to pay the assessment pursuant to this act shall be subject to
15 the penalties described under Section 7 of this act.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6977 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The reporting entity shall certify required reporting under
20 this act as accurate under penalty of perjury.

21 B. Failure of a reporting entity to comply with the provisions
22 of this act may result in a civil penalty, at the discretion of the
23 Insurance Commissioner. Civil penalties under this act shall not
24 exceed Thirty Thousand Dollars (\$30,000.00) per day that the
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1 reporting entity is found to be in violation of the provisions of
2 this act.

3 C. The Insurance Department may audit the data submitted to the
4 Department by a reporting entity pursuant to the provisions of this
5 act, in a form and manner to be specified by the Department. The
6 reporting entity shall pay all costs associated with the audit.

7 D. The Department may require a reporting entity to submit a
8 corrective action plan, in a form and manner to be specified by the
9 Department, to correct deficiencies in reporting pursuant to the
10 provisions of this act.

11 E. The Department is authorized to call one or more public
12 hearings on the price of prescription drugs in this state and may
13 subpoena any reporting entity pursuant to the provisions of this
14 act.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6978 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Not later than July 1, 2024, the Insurance Department shall
19 develop and publish on its website a report on emerging trends in
20 prescription drug prices in this state and conduct an annual public
21 hearing based on the report findings. To make clear the main
22 components of prescription drug pricing along the supply chain, the
23 report shall include, but not be limited to, analyses of
24 manufacturer prices and price increases as reported under this act,

1 information reported under this act by insurers, pharmacy benefits
2 managers, and wholesale drug distributors, and the impacts on
3 insurance premiums and consumer cost sharing. The data in the
4 report shall not reveal information specific to any individual
5 reporting entity.

6 B. Except as provided in this section, the Department shall
7 keep confidential all information submitted by an individual
8 reporting entity and protect it from public disclosure. The
9 Department may share such information with the Attorney General;
10 provided, however that the Attorney General shall keep confidential
11 any information shared by the Insurance Department. The information
12 shall not be considered a record under the Oklahoma Open Records Act
13 as defined pursuant to Section 24A.3 of Title 51 of the Oklahoma
14 Statutes.

15 C. The Insurance Department shall promulgate rules to
16 effectuate the provisions of this act.

17 SECTION 9. AMENDATORY 51 O.S. 2021, Section 24A.3, as
18 amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022,
19 Section 24A.3), is amended to read as follows:

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

21 1. "Record" means all documents including, but not limited to,
22 any book, paper, photograph, microfilm, data files created by or
23 used with computer software, computer tape, disk, record, sound
24 recording, film recording, video record or other material regardless

1 of physical form or characteristic, created by, received by, under
2 the authority of, or coming into the custody, control or possession
3 of public officials, public bodies or their representatives in
4 connection with the transaction of public business, the expenditure
5 of public funds or the administering of public property. ~~"Record"~~

6 Record does not mean:

- 7 a. computer software,
- 8 b. nongovernment personal effects,
- 9 c. unless public disclosure is required by other laws or
10 regulations, vehicle movement records of the Oklahoma
11 Transportation Authority obtained in connection with
12 the Authority's electronic toll collection system,
- 13 d. personal financial information, credit reports or
14 other financial data obtained by or submitted to a
15 public body for the purpose of evaluating credit
16 worthiness, obtaining a license, permit or for the
17 purpose of becoming qualified to contract with a
18 public body,
- 19 e. any digital audio/video recordings of the toll
20 collection and safeguarding activities of the Oklahoma
21 Transportation Authority,
- 22 f. any personal information provided by a guest at any
23 facility owned or operated by the Oklahoma Tourism and
24 Recreation Department to obtain any service at the

1 facility or by a purchaser of a product sold by or
2 through the Oklahoma Tourism and Recreation
3 Department,

4 g. a Department of Defense Form 214 (DD Form 214) filed
5 with a county clerk including any DD Form 214 filed
6 before July 1, 2002,

7 h. except as provided for in Section 2-110 of Title 47 of
8 the Oklahoma Statutes,

9 (1) any record in connection with a Motor Vehicle
10 Report issued by the Department of Public Safety,
11 as prescribed in Section 6-117 of Title 47 of the
12 Oklahoma Statutes, or

13 (2) personal information within driver records, as
14 defined by the Driver's Privacy Protection Act,
15 18 United States Code, Sections 2721 through
16 2725, which are stored and maintained by the
17 Department of Public Safety, ~~or~~

18 i. any portion of any document or information provided to
19 an agency or entity of the state or a political
20 subdivision to obtain licensure under the laws of this
21 state or a political subdivision that contains an
22 applicant's personal address, personal phone number,
23 personal electronic mail address or other contact
24 information. Provided, however, lists of persons
25

1 licensed, the existence of a license of a person, or a
2 business or commercial address, or other business or
3 commercial information disclosable under state law
4 submitted with an application for licensure shall be
5 public record, or

6 j. information relating to prescription drugs as
7 submitted by a reporting entity to the Insurance
8 Department under this act;

9 2. "Public body" shall include, but not be limited to, any
10 office, department, board, bureau, commission, agency, trusteeship,
11 authority, council, committee, trust or any entity created by a
12 trust, county, city, village, town, township, district, school
13 district, fair board, court, executive office, advisory group, task
14 force, study group or any subdivision thereof, supported in whole or
15 in part by public funds or entrusted with the expenditure of public
16 funds or administering or operating public property, and all
17 committees, or subcommittees thereof. Except for the records
18 required by Section 24A.4 of this title, ~~"public body"~~ public body
19 does not mean judges, justices, the Council on Judicial Complaints,
20 the Legislature or legislators. ~~"Public body"~~ Public body shall not
21 include an organization that is exempt from federal income tax under
22 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,
23 and whose sole beneficiary is a college or university, or an
24 affiliated entity of the college or university, that is a member of

1 The Oklahoma State System of Higher Education. Such organization
2 shall not receive direct appropriations from the Oklahoma
3 Legislature. The following persons shall not be eligible to serve
4 as a voting member of the governing board of the organization:

5 a. a member, officer, or employee of the Oklahoma State
6 Regents for Higher Education,

7 b. a member of the board of regents or other governing
8 board of the college or university that is the sole
9 beneficiary of the organization, or

10 c. an officer or employee of the college or university
11 that is the sole beneficiary of the organization;

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

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

16 5. "Law enforcement agency" means any public body charged with
17 enforcing state or local criminal laws and initiating criminal
18 prosecutions including, but not limited to, police departments,
19 county sheriffs, the Department of Public Safety, the Oklahoma State
20 Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic
21 Beverage Laws Enforcement Commission, and the Oklahoma State Bureau
22 of Investigation.

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

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