HB3538 POLPCS1 TJ Marti-TKR
2/11/2026 4:03:01 pm

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3538
Of the printed Bill

Page _____ Section _____ Lines _____
Of the Engrossed Bill

By deleting the content of the entire measure, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: TJ Marti

Adopted: _____

_____
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 60th Legislature (2026)

PROPOSED POLICY
COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3538 By: Marti

PROPOSED POLICY COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; providing legislative findings and intent; amending 59 O.S. 2021, Section 353.1, as last amended by Section 5, Chapter 340, O.S.L. 2025 (59 O.S. Supp. 2025, Section 353.1), which relates to pharmacy definitions; defining term; creating a prohibition on certain pharmacy licenses for retail sale of drugs or medicines; directing the creation of a written policy; requiring notice; providing for noncodification; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Oklahoma Legislature finds that:

1. It is beneficial to the State of Oklahoma to support patient access to prescription drugs and pharmacy services at fair prices in a market that supports optimal patient care;

2. The Federal Trade Commission and the United States House Committee on Oversight and Government Reform have found evidence of

anticompetitive business tactics that have driven locally operated pharmacies out of business, limiting patient choices and inflating drug prices at pharmacies owned by pharmacy benefits managers; and

3. The State of Oklahoma wishes to minimize conflicts of interest by stopping the pharmacy benefits managers acting as a "fox guarding the henhouse" by being both a price setter and price taker.

B. It is the intent of the Legislature that the State of Oklahoma shall improve health care delivery in the pharmacy market for patients by eliminating certain anticompetitive business tactics as a basic tenet of this act.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 353.1, as last amended by Section 5, Chapter 340, O.S.L. 2025 (59 O.S. Supp. 2025, Section 353.1), is amended to read as follows:

Section 353.1. For the purposes of the Oklahoma Pharmacy Act:

1. "Accredited program" means those seminars, classes, meetings, work projects, and other educational courses approved by the State Board of Pharmacy for purposes of continuing professional education;

2. "Act" means the Oklahoma Pharmacy Act;

3. "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient;

4. "Assistant pharmacist" means any person presently licensed as an assistant pharmacist in this state by the Board pursuant to

Section 353.10 of this title and for the purposes of the Oklahoma Pharmacy Act shall be considered the same as a pharmacist, except where otherwise specified;

5. "Board" or "State Board" means the State Board of Pharmacy;

6. "Certify" or "certification of a prescription" means the review of a filled prescription by a licensed pharmacist or a licensed practitioner with dispensing authority to confirm that the medication, labeling, and packaging of the filled prescription are accurate and meet all requirements prescribed by state and federal law. For the purposes of this paragraph, "licensed practitioner" shall not include optometrists with dispensing authority;

7. "Chemical" means any medicinal substance, whether simple or compound or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin;

8. "Compounding" means the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug. Compounding includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns;

9. "Continuing professional education" means professional, pharmaceutical education in the general areas of the socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the etiology, characteristics, and therapeutics of the diseased state;

10. "Dangerous drug", "legend drug", "prescription drug", or "Rx Only" means a drug:

a. for human use subject to 21 U.S.C., Section 353(b)(1), or

b. is labeled "Prescription Only", or labeled with the following statement: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.";

11. "Director" means the Executive Director of the State Board of Pharmacy unless context clearly indicates otherwise;

12. "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order including the preparation and delivery of a drug or device to a patient or a patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispense includes sell, distribute, leave with, give away, dispose of, deliver, or supply;

13. "Dispenser" means a retail pharmacy, hospital pharmacy, a group of chain pharmacies under common ownership and control that do not act as a wholesale distributor, or any other person authorized by law to dispense or administer prescription drugs, and the affiliated warehouses or distributions of such entities under common ownership and control that do not act as a wholesale distributor. For the purposes of this paragraph, dispenser does not mean a person

who dispenses only products to be used in animals in accordance with 21 U.S.C., Section 360b(a)(5);

14. "Distribute" or "distribution" means the sale, purchase, trade, delivery, handling, storage, or receipt of a product, and does not include the dispensing of a product pursuant to a prescription executed in accordance with 21 U.S.C., Section 353(b)(1) or the dispensing of a product approved under 21 U.S.C., Section 360b(b); provided, taking actual physical possession of a product or title shall not be required;

15. "Doctor of Pharmacy" means a person licensed by the Board to engage in the practice of pharmacy. The terms "pharmacist", "D.Ph.", and "Doctor of Pharmacy" shall be interchangeable and shall have the same meaning wherever they appear in the Oklahoma Statutes and the rules promulgated by the Board;

16. "Drug outlet" means all manufacturers, repackagers, outsourcing facilities, wholesale distributors, third-party logistics providers, pharmacies, and all other facilities which are engaged in dispensing, delivery, distribution, or storage of dangerous drugs;

17. "Drugs" means all medicinal substances and preparations recognized by the United States Pharmacopeia and National Formulary, or any revision thereof, and all substances and preparations intended for external and/or internal use in the cure, diagnosis, mitigation, treatment, or prevention of disease in humans or animals

and all substances and preparations, other than food, intended to affect the structure or any function of the body of a human or animals;

18. "Drug sample" means a unit of a prescription drug packaged under the authority and responsibility of the manufacturer that is not intended to be sold and is intended to promote the sale of the drug;

19. "Durable medical equipment" has the same meaning as provided by Section 375.2 of this title;

20. "Filled prescription" means a packaged prescription medication to which a label has been affixed which contains such information as is required by the Oklahoma Pharmacy Act;

21. "Hospital" means any institution licensed as a hospital by this state for the care and treatment of patients, or a pharmacy operated by the Oklahoma Department of Veterans Affairs;

22. "Licensed practitioner" means:

a. an allopathic physician,

b. an osteopathic physician,

c. a podiatric physician,

d. a dentist,

e. a veterinarian,

f. an optometrist, or

g. an Advanced Practice Registered Nurse,

licensed to practice and authorized to prescribe dangerous drugs within the scope of practice of such practitioner;

23. "Manufacturer" or "virtual manufacturer" means with respect to a product:

a. a person that holds an application approved under 21 U.S.C., Section 355 or a license issued under 42 U.S.C., Section 262 for such product, or if such product is not the subject of an approved application or license, the person who manufactured the product,

b. a co-licensed partner of the person described in subparagraph a of this paragraph that obtains the product directly from a person described in this subparagraph or subparagraph a of this paragraph,

c. an affiliate of a person described in subparagraph a or b of this paragraph who receives the product directly from a person described in this subparagraph or in subparagraph a or b of this paragraph, or

d. a person who contracts with another to manufacture a product;

24. "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the

substances or labeling or relabeling of its container, and the promotion and marketing of such drugs or devices. The term manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by licensed pharmacies, licensed practitioners, or other persons;

25. "Medical gas" means those gases including those in liquid state upon which the manufacturer or distributor has placed one of several cautions, such as "Rx Only", in compliance with federal law;

26. "Medical gas order" means an order for medical gas issued by a licensed prescriber;

27. "Medical gas distributor" means a person licensed to distribute, transfer, wholesale, deliver, or sell medical gases on drug orders to suppliers or other entities licensed to use, administer, or distribute medical gas and may also include a patient or ultimate user;

28. "Medical gas supplier" means a person who dispenses medical gases on drug orders only to a patient or ultimate user;

29. "Medicine" means any drug or combination of drugs which has the property of curing, preventing, treating, diagnosing, or mitigating diseases, or which is used for that purpose;

30. "Nonprescription drugs" means medicines or drugs which are sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

Such items shall also include medical and dental supplies and bottled or nonbulk chemicals which are sold or offered for sale to the general public if such articles or preparations meet the requirements of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A., Section 321 et seq.;

31. "Outsourcing facility" including "virtual outsourcing facility" means a facility at one geographic location or address that:

a. is engaged in the compounding of sterile drugs,

b. has elected to register as an outsourcing facility, and

c. complies with all requirements of 21 U.S.C., Section 353b;

32. "Package" means the smallest individual saleable unit of product for distribution by a manufacturer or repackager that is intended by the manufacturer for ultimate sale to the dispenser of such product. For the purposes of this paragraph, "individual saleable unit" means the smallest container of a product introduced into commerce by the manufacturer or repackager that is intended by the manufacturer or repackager for individual sale to a dispenser;

33. "Person" means an individual, partnership, limited liability company, corporation, or association, unless the context otherwise requires;

34. "Pharmacist-in-charge" or "PIC" means the pharmacist licensed in this state responsible for the management control of a pharmacy and all other aspects of the practice of pharmacy in a licensed pharmacy as provided by Section 353.18 of this title;

35. "Pharmacy" means a place regularly licensed by the State Board of Pharmacy in which prescriptions, drugs, medicines, chemicals, and poisons are compounded or dispensed or such place where pharmacists practice the profession of pharmacy, or a pharmacy operated by the Oklahoma Department of Veterans Affairs;

36. "Pharmacy benefits manager" means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that provides claims processing services or other prescription drug or device services, or both, for health benefit plans. Pharmacy benefits manager does not include any:

a. health care facility licensed in Oklahoma,

b. health care professional licensed in Oklahoma,

c. consultant who only provides advice as to the selection or performance of a pharmacy benefits manager, or

d. entity that provides claims processing services or other prescription drug or device services for the fee-for-service Oklahoma Medicaid program only in that capacity;

37. "Pharmacy employer" means an employer that sponsors a health benefit plan for its employees and their dependents, and owns, operates, or controls a pharmacy that provides pharmacy services exclusively to those employees and dependents;

38. "Pharmacy technician", "technician", "Rx tech", or "tech" means a person issued a technician permit by the State Board of Pharmacy to assist the pharmacist and perform nonjudgmental, technical, manipulative, non-discretionary functions in the prescription department under the immediate and direct supervision of a pharmacist;

~~37.~~ 39. "Poison" means any substance which when introduced into the body, either directly or by absorption, produces violent, morbid, or fatal changes, or which destroys living tissue with which such substance comes into contact;

~~38.~~ 40. "Practice of pharmacy" means:

a. the interpretation and evaluation of prescription orders,

b. the compounding, dispensing, administering, and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged legend drugs and devices,

c. the participation in drug selection and drug utilization reviews,

d. the proper and safe storage of drugs and devices and the maintenance of proper records thereof,

e. the responsibility for advising by counseling and providing information, where professionally necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices,

f. the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a pharmacy, or

g. the provision of those acts or services that are necessary to provide pharmaceutical care;

~~39.~~ 41. "Preparation" means an article which may or may not contain sterile products compounded in a licensed pharmacy pursuant to the order of a licensed prescriber;

~~40.~~ 42. "Prescriber" means a person licensed in this state who is authorized to prescribe dangerous drugs within the scope of practice of the person's profession;

~~41.~~ 43. "Prescription" means and includes any order for drug or medical supplies written or signed, or transmitted by word of mouth, telephone, or other means of communication:

a. by a licensed prescriber,

b. by a physician assistant pursuant to a practice agreement,

c. (1) under the supervision of a supervising physician, by a Certified Nurse Practitioner, Clinical Nurse Specialist, or Certified Nurse-Midwife licensed in this state who has not obtained independent prescriptive authority under Section ~~1~~ 567.4c of this ~~act~~ title, or

(2) by a Certified Nurse Practitioner, Clinical Nurse Specialist, or Certified Nurse-Midwife licensed in this state who has obtained independent prescriptive authority under Section ~~1~~ 567.4c of ~~act~~ title, or

d. by an Oklahoma licensed wholesaler or distributor as authorized in Section 353.29.1 of this title;

~~42.~~ 44. "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution. Product does not include blood components intended for transfusion, radioactive drugs or biologics and medical gas;

~~43.~~ 45. "Repackager", including "virtual repackager", means a person who owns or operates an establishment that repacks and relabels a product or package for further sale or distribution without further transaction;

~~44.~~ 46. "Sterile drug" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug that is required to be sterile under state and federal law;

~~45.~~ 47. "Supervising physician" means an individual holding a current license to practice as a physician from the State Board of Medical Licensure and Supervision, pursuant to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, or the State Board of Osteopathic Examiners, pursuant to the provisions of the Oklahoma Osteopathic Medicine Act, who supervises a Certified Nurse Practitioner, Clinical Nurse Specialist, or Certified Nurse-Midwife as defined in Section 567.3a of this title who has not obtained independent prescriptive authority under Section ~~1~~ 567.4c of this ~~act~~ title, and who is not in training as an intern, resident, or fellow. The supervising physician shall remain in compliance with the rules promulgated by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners;

~~46.~~ 48. "Supportive personnel" means technicians and auxiliary supportive persons who are regularly paid employees of a pharmacy who work and perform tasks in the pharmacy as authorized by Section 353.18A of this title;

~~47.~~ 49. "Third-party logistics provider" including "virtual third-party logistics provider" means an entity that provides or

coordinates warehousing, or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product but does not take ownership of the product, nor have responsibility to direct the sale or disposition of the product. For the purposes of this paragraph, third-party logistics provider does not include shippers and the United States Postal Service;

~~48.~~ 50. "Wholesale distributor" including "virtual wholesale distributor" means a person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or repackager engaged in wholesale distribution as defined by 21 U.S.C., Section 353(e)(4) as amended by the Drug Supply Chain Security Act;

~~49.~~ 51. "County jail" means a facility operated by a county for the physical detention and correction of persons charged with, or convicted of, criminal offenses or ordinance violations or persons found guilty of civil or criminal contempt;

~~50.~~ 52. "State correctional facility" means a facility or institution that houses a prisoner population under the jurisdiction of the Department of Corrections;

~~51.~~ 53. "Unit dose package" means a package that contains a single dose drug with the name, strength, control number, and expiration date of that drug on the label; and

~~52.~~ 54. "Unit of issue package" means a package that provides multiple doses of the same drug, but each drug is individually separated and includes the name, lot number, and expiration date.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "License" means a license issued under Section 358 of this title;

2. "Permit" includes a pharmacy permit for a mail-order pharmacy;

3. "Pharmacy benefits manager" means the same as defined in Section 353.1 of this title; and

4. "Pharmacy benefits manager" includes an entity that:

a. is managed by a pharmacy benefits manager or is a subsidiary of a pharmacy benefits manager, or

b. has a direct or indirect ownership interest in a pharmacy benefits manager.

B. A pharmacy benefits manager shall not acquire direct or indirect interest in, or otherwise hold, directly or indirectly, a license under Section 358 of this title for the retail sale of drugs or medicines in this state.

C. On and after the effective date of this act, the Oklahoma State Board of Pharmacy shall either revoke or not renew a license of an entity that violates this section.

D. The Board may issue a limited use license for certain rare, orphan, or limited distribution drugs that are otherwise unavailable in the market to a patient or a pharmacy that would otherwise be prohibited under this section.

E. The Board may assess the need for rare, orphan, or limited distribution drugs for a limited use license for certain rare, orphan, or limited distribution drugs under subsection D of this section before revocation or renewal of an existing retail license for a pharmacy.

F. If the assessment made by the Board in subsection E of this section determines that a rare, orphan, or limited distribution drug is otherwise unavailable in the market to a patient or pharmacy that would otherwise be prohibited in this section, the Board shall convert the retail license for the prohibited pharmacy to a limited use license for that pharmacy for a period of no less than ninety (90) days.

G. Before the effective date of this act, the Board shall adopt a written policy to implement subsection D of this section. The written policy shall establish:

1. The process in which a patient, pharmacy, or health care provider may notify the Board of a rare, orphan, or limited distribution drug unavailable in the market;

2. The process in which a pharmacy may request a limited use license under subsection D of this section;

3. The timeline in which the Board must make a decision; and

4. The process for emergency determinations due to patient need.

H. The Board may extend the use of a retail license or issue a renewal of a retail license for a pharmacy that offers same-day patient access for pharmacist services, a prescription for a controlled substance, mental health services, or other critical patient health care services for a period of time as determined by the Board if there is a pending sale of the pharmacy to an eligible buyer.

I. This section does not apply to a pharmacy employer and a pharmacy that:

1. Has direct or indirect interest in a pharmacy benefits manager;

2. Are the sole Oklahoma client of the pharmacy benefits manager that the pharmacy employer has a direct or indirect interest in; and

3. Exclusively services the employees and dependents of the pharmacy employer while utilizing the affiliated pharmacy benefits manager in this state.

J. Subsections D through I of this section shall expire on September 1, 2028.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360.11 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Board of Pharmacy shall conduct an initial assessment of each active retail pharmacy license that was issued under Section 353.18 of this title as of July 1, 2026, and shall send written notice to each pharmacy license holder that the Board reasonably believes will violate Section 353.18 of this title at least ninety (90) days before January 1, 2027.

B. As used in subsection A of this section, "written notice" means actual notice to the pharmacy license holder via mail or email.

C. The written notice required under subsection A of this section shall include:

1. A list of each pharmacy benefits manager that holds a direct or indirect interest in, or otherwise holds, directly or indirectly, a license under Section 353.18 of this title for the retail sale of drugs or medicines in this state held by the pharmacy license holder;

2. A phone number and email address that is monitored by the Board during regular business hours; and

3. A list of Oklahoma pharmacies that hold an active retail pharmacy license that are not reasonably expected to be in violation of this act as of January 1, 2027. The list shall include:

a. the name of the pharmacy,

b. the phone number of the pharmacy,

c. the physical address of the pharmacy,

d. the website of the pharmacy, if known, and

e. an email address for the pharmacy, if known.

D. If the Board has a searchable website that includes the information required in paragraph 3 of subsection C of this section, the Board may provide the website information in lieu of the list.

E. A pharmacy license holder with written notice from the Board in subsection A of this section shall provide written notice at least sixty (60) days before January 1, 2028, to each patient and each patient's prescribing health care provider that has used the pharmacy within the previous twelve (12) months that the pharmacy can no longer dispense retail drugs to the patient on or after December 31, 2027.

F. As used in subsection E of this section, "written notice" means actual notice to the patient via mail, email, or through the pharmacy's patient portal.

G. The written notice required in subsection E of this section shall include the information under paragraphs 2 and 3 of subsection C of this section provided by the Board to the pharmacy license holder.

SECTION 5. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

60-2-15983 TKR 02/11/26