

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2392

By: Hilliard

AS INTRODUCED

An Act relating to prescription drugs; providing for pharmacy benefits management; defining terms; specifying duties of pharmacy benefits managers; requiring compliance when entering into certain contracts; providing penalty; specifying applicability of provisions; 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 353.31 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Covered entity" means a nonprofit hospital licensed pursuant to Section 1-702 of Title 63 of the Oklahoma Statutes, or medical service organization, insurer, health coverage plan or health maintenance organization, a health program administered by the state in the capacity of provider of health coverage, or an employer, labor union, or other group of persons organized in the state that provides health coverage to covered individuals who are employed or reside in the state. "Covered entity" does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care, or other limited benefit health insurance policies and contracts;

2. "Covered individual" means a member, participant, enrollee, contract holder, or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. "Covered

1 individual" includes a dependent or other person provided health
2 coverage through a policy, contract, or plan for a covered
3 individual;

4 3. "Generic drug" means a chemically equivalent copy of a
5 brand-name drug with an expired patent;

6 4. "Labeler" means an entity or person that receives
7 prescription drugs from a manufacturer or wholesaler and repackages
8 those drugs for later retail sale and that has a labeler code from
9 the federal Food and Drug Administration under the Code of Federal
10 Regulations, Title 21 C.F.R., Section 270.20 (1999);

11 5. "Pharmacy benefits management" means the procurement of
12 prescription drugs at a negotiated rate for dispensation within this
13 state to covered individuals, the administration or management of
14 prescription drug benefits provided by a covered entity for the
15 benefit of covered individuals, or any of the following services
16 provided with regard to the administration of pharmacy benefits:

- 17 a. mail service pharmacy,
- 18 b. claims processing, retail network management, and
19 payment of claims to pharmacies for prescription drugs
20 dispensed to covered individuals,
- 21 c. clinical formulary development and management
22 services,
- 23 d. rebate contracting and administration,
- 24 e. certain patient compliance, therapeutic intervention
25 and generic substitution programs, and
- 26 f. disease management programs; and

27 6. "Pharmacy benefits manager" means an entity that performs
28 pharmacy benefits management. "Pharmacy benefits manager" includes
29 a person or entity acting for a pharmacy benefits manager in a
30 contractual or employment relationship in the performance of
31 pharmacy benefits management for a covered entity and includes mail
32 service pharmacy.

1 B. 1. A pharmacy benefits manager owes a fiduciary duty to a
2 covered entity and shall discharge that duty in accordance with the
3 provisions of state and federal law.

4 2. A pharmacy benefits manager shall perform its duties with
5 care, skill, prudence, and diligence and in accordance with the
6 standards of conduct applicable to a fiduciary in an enterprise of a
7 like character and with like aims.

8 3. A pharmacy benefits manager shall notify the covered entity
9 in writing of any activity, policy, or practice of the pharmacy
10 benefits manager that directly or indirectly presents any conflict
11 of interest with the duties imposed by this subsection.

12 4. A pharmacy benefits manager shall provide to a covered
13 entity all financial and utilization information requested by the
14 covered entity relating to the provision of benefits to covered
15 individuals through that covered entity and all financial and
16 utilization information relating to services to that covered entity.
17 A pharmacy benefits manager providing information under this
18 paragraph may designate that material as confidential. Information
19 designated as confidential by a pharmacy benefits manager and
20 provided to a covered entity under this paragraph may not be
21 disclosed by the covered entity to any person without the consent of
22 the pharmacy benefits manager, except that disclosure may be ordered
23 by a court of this state for good cause shown or made in a court
24 filing under seal unless or until otherwise ordered by a court.
25 Nothing in this paragraph limits the use of civil investigative
26 demand authority by the Attorney General under the Oklahoma
27 Deceptive Trade Practices Act to investigate violations of this
28 section.

29 5. With regard to the dispensation of a substitute prescription
30 drug for a prescribed drug to a covered individual, the following
31 provisions apply:
32

1 a. if a pharmacy benefits manager makes a substitution in
2 which the substitute drug costs more than the
3 prescribed drug, the pharmacy benefits manager shall
4 disclose to the covered entity the cost of both drugs
5 and any benefit or payment directly or indirectly
6 accruing to the pharmacy benefits manager as a result
7 of the substitution, and

8 b. the pharmacy benefits manager shall transfer in full
9 to the covered entity any benefit or payment received
10 in any form by the act of the pharmacy benefits
11 manager of substituting a lower-priced generic and
12 therapeutically equivalent drug for a higher-priced
13 prescribed drug.

14 6. A pharmacy benefits manager that derives any payment or
15 benefit for the dispensation of prescription drugs within this state
16 based on volume of sales for certain prescription drugs or classes
17 or brands of drugs within this state shall pass that payment or
18 benefit on in full to the covered entity.

19 7. A pharmacy benefits manager shall disclose to the covered
20 entity all financial terms and arrangements for remuneration of any
21 kind that apply between the pharmacy benefits manager and any
22 prescription drug manufacturer or labeler including, without
23 limitation, formulary management and drug-switch programs,
24 educational support, claims processing, and pharmacy network fees
25 that are charged from retail pharmacies and data sales fees. A
26 pharmacy benefits manager providing information under this paragraph
27 may designate that material as confidential. Information designated
28 as confidential by a pharmacy benefits manager and provided to a
29 covered entity under this paragraph may not be disclosed by the
30 covered entity to any person without the consent of the pharmacy
31 benefits manager, except that disclosure may be ordered by a court
32 of this state for good cause shown or made in a court filing under

1 seal unless or until otherwise ordered by a court. Nothing in this
2 paragraph limits the use of civil investigative demand authority by
3 the Attorney General under the Oklahoma Deceptive Trade Practices
4 Act to investigate violations of this section.

5 C. Compliance with the requirements of this section is required
6 in all contracts for pharmacy benefits management entered into in
7 this state or by a covered entity in this state.

8 D. A violation of this section is a violation of the Oklahoma
9 Deceptive Trade Practices Act, for which a fine of not more than Ten
10 Thousand Dollars (\$10,000.00) may be adjudged.

11 E. This section applies to contracts executed or renewed on or
12 after November 1, 2006. For the purposes of this subsection, a
13 contract executed pursuant to a memorandum of agreement executed
14 prior to November 1, 2006, is deemed to have been executed prior to
15 November 1, 2006, even if the contract was executed after that date.

16 SECTION 2. This act shall become effective November 1, 2006.

17

18 50-2-8099 SAB 01/09/06

19

20

21

22

23

24

25

26

27

28

29

30

31

32