

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3481

By: McEntire

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7 COMMITTEE SUBSTITUTE

8 [pharmacy management consultants - defining terms -
9 payments and reimbursements - mail order pharmacies
10 - fiduciary duty - performance standards; - annual
11 report - codification - effective date]

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 360.1 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. As used in this section:

20 1. "Average reimbursement" means a statistical methodology
21 selected by the Oklahoma Health Care Authority through
22 administrative rules promulgated pursuant to this section which
23 shall include, at minimum, the median and mean;

1 2. "Fiduciary duty" means the same duties imposed by law upon a
2 trustee of an express private trust;

3 3. "Network pharmacy" means a pharmacy that contracts with a
4 pharmacy benefits manager;

5 4. "Pharmacy management consultant" or "PMC" means any entity,
6 including but not limited to, pharmaceutical consultants, pharmacy
7 benefit managers, and managed care organizations, that provide
8 pharmacy benefits management services to the state through contract;

9 5. "Pharmacy benefits management services" means services
10 provided to the state through contract to facilitate the provision
11 of prescription drug benefits to covered individuals within the
12 state including:

- 13 a. negotiating prices and other terms with drug
14 manufacturers and providers, or
- 15 b. claims processing, retail network management, and
16 payment of claims to pharmacies for prescription drugs
17 dispensed to covered individuals, or
- 18 c. rebate contracting and administration, or
- 19 d. certain patient compliance, therapeutic intervention,
20 and generic substitution programs, or
- 21 e. disease management programs, or
- 22 f. formulary consultation, or
- 23 g. developing value-based contracts analytics, or
- 24 h. drug utilization review; and

1 6. "Spread pricing" means any amount charged or claimed by a
2 PMC to a managed care organization that is in excess of the amount
3 paid to the pharmacy that filled the prescription.

4 B. A PMC shall:

5 1. Not pay or reimburse a pharmacy or pharmacist for the
6 ingredient drug component of pharmacist services in an amount less
7 than the lesser of the following:

8 a. the pharmacy's usual and customary price,

9 b. the current National Average Drug Acquisition Cost
10 (NADAC) as published by the Centers for Medicare and
11 Medicaid Services,

12 c. wholesale acquisition cost, or

13 d. the pharmacy's wholesale acquisition cost if the
14 national average drug acquisition cost is unavailable;

15 2. Pay to every pharmacy a professional dispensing fee that is
16 equal to the dispensing fee set in the state program for medical
17 assistance; and

18 3. Not utilize mail order pharmacies in the pharmacy network.

19 C. A PMC shall owe a fiduciary duty to its clients and shall:

20 1. Exercise good faith and fair dealing in the performance of
21 its contractual duties;

22 2. Notify its clients in writing of any activities, policies or
23 practices that may directly or indirectly present a conflict of
24 interest with the duties imposed in this section;

1 3. Retain any portion of any manufacturer rebates including,
2 but not limited to, state supplemental rebates submitted to the
3 state by any pharmaceutical manufacturer; and

4 4. Retain any portion of spread pricing.

5 D. A PMC contracting with a managed care organization to
6 administer Medicaid benefits shall provide an annual report to the
7 Oklahoma Health Care Authority no later than November 1, 2021, and
8 for each year thereafter that the PMC is contracted with the managed
9 care organization to administer Medicaid benefits. Each annual
10 report shall contain the following:

11 1. Total dollars paid to the PMC by a managed care organization
12 for any reason other than claims payments;

13 2. Total dollars paid to the PMC from drug manufacturers or
14 wholesalers for all reasons;

15 3. Total dollars paid to managed care organizations for drug
16 manufacturer rebates;

17 4. Total dollars paid to Oklahoma pharmacies for claims
18 payments;

19 5. Total dollars paid to non-Oklahoma pharmacies for claims
20 payments;

21 6. The average ingredient cost reimbursement by drug,
22 dispensing fee, and any other fee paid by a PMC to licensed
23 pharmacies with which the PMC shares common ownership, management,
24 or control; or which are owned, managed, or controlled by any of the

1 PMC's management companies, parent companies, subsidiary companies,
2 jointly held companies or companies otherwise affiliated by a common
3 owner, manager or holding company; or which share any common members
4 on the board of directors; or which share managers in common;

5 7. The average ingredient cost reimbursement by drug,
6 dispensing fee, and any other fee paid by a PMC to licensed
7 pharmacies with which the PMC does not share common ownership,
8 management or control; nor which are owned, managed or controlled by
9 any of the PMC's management companies parent companies, subsidiary
10 companies, jointly held companies or companies otherwise affiliated
11 by a common owner, manager or holding company; nor which share any
12 common members on the board of directors; or which share managers in
13 common; and

14 8. Any direct or indirect fees, charges, or any kind of
15 assessments imposed by the PMC on pharmacies.

16 E. All information provided by a PMC pursuant to subsection D
17 of this section shall reflect data for the most recent full calendar
18 year and shall be divided by month. This information shall be
19 managed by the Oklahoma Health Care Authority.

20 F. Any provision of a contract between a PMC and its clients
21 that waives or limits the obligations as set forth in this section
22 violates public policy and is void and unenforceable.

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1 SECTION 2. This act shall become effective November 1, 2020.

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