

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1860

By: McCortney

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5  
6 AS INTRODUCED

7 An Act relating to the Patient's Right to Pharmacy  
8 Choice Act; amending 36 O.S. 2021, Sections 6960,  
9 6961, 6962, and 6963, which relate to definitions,  
10 retail pharmacy network access standards, compliance  
11 review, and health insurer monitoring; adding  
12 definitions of pharmacy benefits management and  
13 retail pharmacy; modifying definitions; specifying  
14 access standards; modifying prohibition on pharmacy  
15 benefit managers; modifying certain contract  
16 restrictions; updating statutory reference; modifying  
17 certain prohibitions on health insurers and pharmacy  
18 benefit managers; conforming language; repealing 36  
19 O.S. 2021, Section 6964, which relates to health  
20 insurer formularies; updating statutory language; and  
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is  
24 amended to read as follows:

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

27 1. "Health insurer" means any corporation, association, benefit  
28 society, exchange, partnership or individual licensed by the  
29 Oklahoma Insurance Code;

1           2. "Mail-order pharmacy" means a pharmacy licensed by this  
2 state that primarily dispenses and delivers covered drugs via common  
3 carrier;

4           3. "Pharmacy benefits management" means any or all of the  
5 following activities:

6           a. provider contract negotiation and/or provider network  
7           administration including decisions related to provider  
8           network participation status,

9           b. drug rebate contract negotiation or drug rebate  
10           administration, and

11           c. claims processing which may include claim billing and  
12           payment services;

13           4. "Pharmacy benefits manager" or "PBM" means a person or  
14 entity that performs pharmacy benefits management activities and any  
15 other person or entity acting for ~~such~~ a person or entity performing  
16 pharmacy benefits management activities. ~~under a contractual or~~

17 ~~employment relationship in the performance of pharmacy benefits~~  
18 ~~management for a managed-care company, nonprofit hospital, medical~~  
19 ~~service organization, insurance company, third party payor or a~~  
20 ~~health program administered by a department of this state~~

21 Notwithstanding any other provision within the Patient's Right to  
22 Pharmacy Choice Act, a self-funded plan administered by an employee  
23 or organized labor union who negotiates and executes all provider  
24 contracts directly with a pharmacy services administrative

1 organization, and a pharmacy provider who does not use a pharmacy  
2 services administrative organization shall not be deemed a pharmacy  
3 benefit manager of its own group health plan and shall not be  
4 restricted in its ability to design and manage its own group health  
5 plan;

6 ~~4. "Pharmacy and therapeutics committee" or "P&T committee"~~  
7 ~~means a committee at a hospital or a health insurance plan that~~  
8 ~~decides which drugs will appear on that entity's drug formulary;~~

9 5. "Retail pharmacy" or "provider" means a pharmacy, as defined  
10 in Section 353.1 of Title 59 of the Oklahoma Statutes licensed by  
11 the State Board of Pharmacy or an agent or representative of a  
12 pharmacy;

13 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers  
14 contracted with a PBM in which the pharmacy primarily fills and  
15 sells prescriptions via a retail, storefront location;

16 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which  
17 the population density is less than one thousand (1,000) individuals  
18 per square mile;

19 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in  
20 which the population density is between one thousand (1,000) and  
21 three thousand (3,000) individuals per square mile; and

22 ~~8.~~ 9. "Urban service area" means a five-digit ZIP code in which  
23 the population density is greater than three thousand (3,000)  
24 individuals per square mile.

1 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6961, is

2 amended to read as follows:

3 Section 6961. A. Pharmacy benefits managers (PBMs) shall  
4 comply with the following retail pharmacy network access standards:

5 1. At least ninety percent (90%) of covered individuals  
6 residing in ~~a~~ each urban service area live within two (2) miles of  
7 a retail pharmacy participating in the PBM's retail pharmacy  
8 network;

9 2. At least ninety percent (90%) of covered individuals  
10 residing in ~~a~~ each urban service area live within five (5) miles of  
11 a retail pharmacy designated as a preferred participating pharmacy  
12 in the PBM's retail pharmacy network;

13 3. At least ninety percent (90%) of covered individuals  
14 residing in ~~a~~ each suburban service area live within five (5) miles  
15 of a retail pharmacy participating in the PBM's retail pharmacy  
16 network;

17 4. At least ninety percent (90%) of covered individuals  
18 residing in ~~a~~ each suburban service area live within seven (7) miles  
19 of a retail pharmacy designated as a preferred participating  
20 pharmacy in the PBM's retail pharmacy network;

21 5. At least seventy percent (70%) of covered individuals  
22 residing in ~~a~~ each rural service area live within fifteen (15) miles  
23 of a retail pharmacy participating in the PBM's retail pharmacy  
24 network; and

1           6. At least seventy percent (70%) of covered individuals  
2 residing in a each rural service area live within eighteen (18)  
3 miles of a retail pharmacy designated as a preferred participating  
4 pharmacy in the PBM's retail pharmacy network.

5           B. Mail-order pharmacies shall not be used to meet access  
6 standards for retail pharmacy networks.

7           C. Pharmacy benefits managers shall not require patients to use  
8 pharmacies that are directly or indirectly owned by ~~the~~ or  
9 affiliated with a pharmacy benefits manager, including all regular  
10 prescriptions, refills or specialty drugs regardless of day supply.

11           D. Pharmacy benefits managers shall not in any manner on any  
12 material, including but not limited to mail and ID cards, include  
13 the name of any pharmacy, hospital or other providers unless it  
14 specifically lists all pharmacies, hospitals and providers  
15 participating in the preferred and nonpreferred pharmacy and health  
16 networks.

17           SECTION 3.           AMENDATORY           36 O.S. 2021, Section 6962, is  
18 amended to read as follows:

19           Section 6962. A. The ~~Oklahoma~~ Insurance Department shall  
20 review and approve retail pharmacy network access for all pharmacy  
21 benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~  
22 ~~act~~ 6961 of this title.

23           B. A PBM, or an agent of a PBM, shall not:  
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25

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

4 2. Charge a pharmacist or pharmacy a fee related to the  
5 adjudication of a claim, including without limitation a fee for:

6 a. the submission of a claim,

7 b. enrollment or participation in a retail pharmacy  
8 network, or

9 c. the development or management of claims processing  
10 services or claims payment services related to  
11 participation in a retail pharmacy network;

12 3. Reimburse a pharmacy or pharmacist in the state an amount  
13 less than the amount that the PBM reimburses a pharmacy owned by or  
14 under common ownership with a PBM for providing the same covered  
15 services. The reimbursement amount paid to the pharmacy shall be  
16 equal to the reimbursement amount calculated on a per-unit basis  
17 using the same generic product identifier or generic code number  
18 paid to the PBM-owned or PBM-affiliated pharmacy;

19 4. Deny a pharmacy the opportunity to participate in any form  
20 of pharmacy network at preferred participation status, whether in-  
21 network, preferred or otherwise, if the pharmacy is willing to  
22 accept the terms and conditions that the PBM has established for  
23 other pharmacies as a condition of preferred network for  
24

1 participation status in the network or networks of the pharmacy's  
2 choice;

3 5. Deny, limit or terminate a pharmacy's contract based on  
4 employment status of any employee who has an active license to  
5 dispense, despite probation status, with the State Board of  
6 Pharmacy;

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

- 10 a. the original claim was submitted fraudulently, or  
11 b. to correct errors identified in an audit, so long as  
12 the audit was conducted in compliance with Sections  
13 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;  
14 or

15 7. Fail to make any payment due to a pharmacy or pharmacist for  
16 covered services properly rendered in the event a PBM terminates a  
17 pharmacy or pharmacist from a pharmacy benefits manager network.

18 C. The prohibitions under this section shall apply to contracts  
19 between pharmacy benefits managers and ~~pharmacists or pharmacies~~  
20 providers for participation in retail pharmacy networks.

21 1. A ~~PBM~~ provider contract shall not prohibit, restrict or  
22 penalize a pharmacy or pharmacist in any way for disclosing to an  
23 individual any health care information that the pharmacy or  
24 pharmacist deems appropriate regarding:

1 a. ~~not restrict, directly or indirectly, any pharmacy~~  
2 ~~that dispenses a prescription drug from informing, or~~  
3 ~~penalize such pharmacy for informing, an individual of~~  
4 ~~any differential between the individual's out-of-~~  
5 ~~pocket cost or coverage with respect to acquisition of~~  
6 ~~the drug and the amount an individual would pay to~~  
7 ~~purchase the drug directly~~ the nature of treatment,  
8 risks or alternatives to the prescription drug being  
9 dispensed, and

10 b. ~~ensure that any entity that provides pharmacy benefits~~  
11 ~~management services under a contract with any such~~  
12 ~~health plan or health insurance coverage does not,~~  
13 ~~with respect to such plan or coverage, restrict,~~  
14 ~~directly or indirectly, a pharmacy that dispenses a~~  
15 ~~prescription drug from informing, or penalize such~~  
16 ~~pharmacy for informing, a covered individual of any~~  
17 ~~differential between the individual's out-of-pocket~~  
18 ~~cost under the plan or coverage with respect to~~  
19 ~~acquisition of the drug and the amount an individual~~  
20 ~~would pay for acquisition of the drug without using~~  
21 ~~any health plan or health insurance coverage~~ the  
22 availability of alternate therapies, consultations or  
23 tests,



- 1            c. the decision of utilization reviewers or similar  
2            persons to authorize or deny services, and  
3            d. the process that is used to authorize or deny  
4            healthcare services and structures used by the health  
5            insurer.

6            2. Provider contracts shall not prohibit a pharmacy or  
7 pharmacist from discussing information regarding the total cost of  
8 pharmacist services for a prescription drug or from selling a more  
9 affordable alternative to the covered person if such alternative is  
10 available.

11            ~~A pharmacy benefits manager's contract with a participating~~  
12 ~~pharmacist or pharmacy~~ 3. Provider contracts shall not prohibit,  
13 restrict or limit disclosure of information to the Insurance  
14 Commissioner, law enforcement or state and federal governmental  
15 officials investigating or examining a complaint or conducting a  
16 review of a pharmacy benefits manager's compliance with the  
17 requirements under the Patient's Right to Pharmacy Choice Act.

18            ~~3.~~ 4. A pharmacy benefits manager shall establish and maintain  
19 an electronic claim inquiry processing system using the National  
20 Council for Prescription Drug Programs' current standards to  
21 communicate information to pharmacies submitting claim inquiries.

22            SECTION 4.            AMENDATORY            36 O.S. 2021, Section 6963, is  
23 amended to read as follows:

1 Section 6963. A. A health insurer shall be responsible for  
2 monitoring all activities carried out by, or on behalf of, the  
3 health insurer under the Patient's Right to Pharmacy Choice Act, and  
4 for ensuring that all requirements of this act are met.

5 B. Whenever a health insurer performs pharmacy benefit  
6 management on its own behalf or contracts with another person or  
7 entity to perform activities required under this act pharmacy  
8 benefit management, the health insurer shall be responsible for  
9 monitoring the activities and conduct of that person or entity with  
10 whom the health insurer contracts and for ensuring that the  
11 requirements of this act are met.

12 C. An individual may be notified at the point of sale when the  
13 cash price for the purchase of a prescription drug is less than the  
14 individual's copayment or coinsurance price for the purchase of the  
15 same prescription drug.

16 D. A health insurer or pharmacy benefits manager (PBM) shall  
17 not restrict an individual's choice of in-network provider for  
18 prescription drugs.

19 E. ~~An individual's~~ A patient's choice of in-network provider  
20 may include ~~a retail~~ an in-network pharmacy ~~or a,~~ whether that  
21 pharmacy is in a preferred or nonpreferred network, a retailer  
22 pharmacy, mail-order pharmacy or any other pharmacy. A health  
23 insurer or PBM shall not restrict ~~such~~ a patient's choice of in-  
24

1 network pharmacy providers. ~~Such~~ A health insurer or PBM shall not  
2 require or incentivize ~~using~~ individuals by:

3 1. Using any discounts in cost-sharing or a reduction in copay  
4 or the number of copays to individuals to receive prescription drugs  
5 ~~from an individual's choice of in-network pharmacy~~ from an  
6 individual's choice of in-network pharmacy; or

7 2. Differentiating between in-network pharmacies, whether that  
8 pharmacy is in a preferred or nonpreferred network, a retail  
9 pharmacy, mail order pharmacy or any other type of pharmacy.

10 The provisions of this subsection shall not apply to any plan  
11 subject to regulation under Medicare Part D, 42 U.S.C. Section  
12 1395w-101, et seq.

13 F. A health insurer, pharmacy or PBM shall adhere to all  
14 Oklahoma laws, statutes and rules when mailing, shipping and/or  
15 causing to be mailed or shipped prescription drugs into ~~the State of~~  
16 ~~Oklahoma~~ this state.

17 SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is  
18 hereby repealed.

19 SECTION 6. This act shall become effective November 1, 2022.

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