

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2632

By: Echols, McEntire, Roberts
(Dustin), Sanders,
Patzkowsky, West (Josh),
Townley, Pae, Boles,
Hasenbeck, Davis, Roberts
(Sean), Phillips, Talley,
Stark, Roe, McDugle,
Vancuren, Virgin and Bell
of the House

and

McCortney of the Senate

11 An Act relating to insurance; creating the Patient's
12 Right to Pharmacy Choice Act; declaring purpose;
13 defining terms; providing for compliance standards
14 for retail pharmacy networks; providing for review of
15 retail pharmacy network access; prohibiting certain
16 actions; *** directing a health insurer's pharmacy
17 and therapeutics committee to establish a formulary;
18 prohibiting conflicts of interest; providing
19 conditions for persons to serve on pharmacy and
20 therapeutics committee *** Administrative Procedures
21 Act; providing for confidentiality; providing
22 exception; providing for codification; and providing
23 an effective date.

20 AUTHORS: Add the following House Coauthors: Strom, Fugate, Frix,
21 Newton, West (Tammy), Dills, Taylor, Perryman, Munson,
22 Boatman, Sterling, Cornwell, Sneed, Lawson, Sims,
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24 Dahm, Hicks, Murdock, Silk, Coleman, Kidd, Bergstrom,
Montgomery, Stanley, Simpson, Pederson, Scott, Standridge,

1 Boggs, Shaw, Rader, Weaver, Leewright, Allen, Bullard,
2 Smalley, Jech, Matthews, Rosino, Stanislowski, Paxton,
3 Dossett, Sharp, Dugger and Ikley-Freeman

4 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
5 entire bill and insert

6 "[insurance - Patient's Right to Pharmacy Choice Act
7 - codification - effective date]

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

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6958 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 This act shall be known and may be cited as the "Patient's Right
13 to Pharmacy Choice Act".

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6959 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 The purpose of the Patient's Right to Pharmacy Choice Act is to
18 establish minimum and uniform access to a provider and standards and
19 prohibitions on restrictions of a patient's right to choose a
20 pharmacy provider.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6960 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24 For purposes of the Patient's Right to Pharmacy Choice Act:

1 1. "Benefit plan" means any health benefit plan offered by a
2 health insurance carrier, health maintenance organization, managed
3 care entity, or any other entity that provides prescription drug
4 benefits to covered individuals, including workers' compensation
5 programs, state-administered health benefit plans and self-funded
6 benefit programs;

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

10 3. "Pharmacy benefits manager" or "PBM" means a person,
11 business or other entity that performs pharmacy benefits management.
12 The term includes a person or entity acting for a PBM in a
13 contractual or employment relationship in the performance of
14 pharmacy benefits management for a managed-care company, nonprofit
15 hospital, medical service organization, insurance company, third-
16 party payor or a health program administered by a department of this
17 state;

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

21 5. "Retail pharmacy network" means retail pharmacy providers
22 contracted with the entity providing or administering a benefit plan
23 in which the pharmacy primarily fills and sells prescriptions via a
24 retail, storefront location;

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

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

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

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6961 of Title 36, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Retail pharmacy networks shall comply with the following
14 access standards:

15 1. At least ninety percent (90%) of covered individuals in the
16 benefit plan's urban service area live within two (2) miles of a
17 retail pharmacy participating in the benefit plan's retail pharmacy
18 network;

19 2. At least ninety percent (90%) of covered individuals in the
20 benefit plan's urban service area live within five (5) miles of a
21 retail pharmacy designated as a preferred participating pharmacy in
22 the benefit plan's retail pharmacy network;

23 3. At least ninety percent (90%) of covered individuals in the
24 benefit plan's suburban service area live within five (5) miles of a

1 retail pharmacy participating in the benefit plan's retail pharmacy
2 network;

3 4. At least ninety percent (90%) of covered individuals in the
4 benefit plan's suburban service area live within seven (7) miles of
5 a retail pharmacy designated as a preferred participating pharmacy
6 in the benefit plan's retail pharmacy network;

7 5. At least seventy percent (70%) of covered individuals in the
8 benefit plan's rural service area live within fifteen (15) miles of
9 a retail pharmacy participating in the benefit plan's retail
10 pharmacy network; and

11 6. At least seventy percent (70%) of covered individuals in the
12 benefit plan's rural service area live within eighteen (18) miles of
13 a retail pharmacy designated as a preferred participating pharmacy
14 in the benefit plan's retail pharmacy network.

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

17 C. Pharmacy benefits managers and benefit plans shall not
18 require patients to use pharmacies that are directly or indirectly
19 owned by the pharmacy benefits manager or benefit plan, including
20 all regular prescriptions, refills or specialty drugs regardless of
21 day supply.

22 D. Pharmacy benefits managers and benefit plans shall not in
23 any manner on any material, including but not limited to mail and ID
24 cards, include the name of any pharmacy, hospital or other providers

1 unless it specifically lists all pharmacies, hospitals and providers
2 participating in the preferred and nonpreferred pharmacy and health
3 networks.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6962 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Oklahoma Insurance Department shall review and approve
8 retail pharmacy network access for all benefit plans to ensure
9 compliance with Section 4 of this act.

10 B. A pharmacy benefits manager (PBM), or PBM representative of
11 a PBM, shall not:

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

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

- 17 a. the submission of a claim,
- 18 b. enrollment or participation in a retail pharmacy
19 network, or
- 20 c. the development or management of claims processing
21 services or claims payment services related to
22 participation in a retail pharmacy network;

23 3. Reimburse a pharmacy or pharmacist in the state an amount
24 less than the amount that the PBM reimburses a pharmacy owned by or

1 under common ownership with a PBM for providing the same covered
2 services. The reimbursement amount paid to the pharmacy shall be
3 equal to the reimbursement amount calculated on a per-unit basis
4 using the same generic product identifier or generic code number
5 submitted by the PBM-owned or PBM-affiliated pharmacy;

6 4. Deny a pharmacy the opportunity to participate in any
7 pharmacy network at preferred participation status if the pharmacy
8 is willing to accept the terms and conditions that the PBM has
9 established for other pharmacies as a condition of preferred network
10 participation status;

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

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

- 18 a. the original claim was submitted fraudulently, or
- 19 b. to correct errors identified in an audit, so long as
20 the audit was conducted in compliance with Sections
21 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
22 or

23
24

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

4 C. The prohibitions under this section shall apply to contracts
5 between pharmacy benefits managers and pharmacists or pharmacies for
6 participation in retail pharmacy networks.

7 1. A benefit plan shall:

8 a. not restrict, directly or indirectly, any pharmacy
9 that dispenses a prescription drug to an enrollee in
10 the plan or coverage from informing, or penalize such
11 pharmacy for informing, an enrollee of any
12 differential between the enrollee's out-of-pocket cost
13 under the plan or coverage with respect to acquisition
14 of the drug and the amount an individual would pay for
15 acquisition of the drug without using any health plan
16 or health insurance coverage, and

17 b. ensure that any entity that provides pharmacy benefits
18 management services under a contract with any such
19 health plan or health insurance coverage does not,
20 with respect to such plan or coverage, restrict,
21 directly or indirectly, a pharmacy that dispenses a
22 prescription drug from informing, or penalize such
23 pharmacy for informing, an enrollee of any
24 differential between the enrollee's out-of-pocket cost

1 under the plan or coverage with respect to acquisition
2 of the drug and the amount an individual would pay for
3 acquisition of the drug without using any health plan
4 or health insurance coverage.

5 2. A pharmacy benefits manager contract with a participating
6 pharmacist or pharmacy shall not prohibit, restrict or limit
7 disclosure of information to the Insurance Commissioner, law
8 enforcement or state and federal governmental officials
9 investigating or examining a complaint or conducting a review of a
10 pharmacy benefits manager's compliance with the requirements under
11 the Patient's Right to Pharmacy Choice Act.

12 3. A pharmacy benefits manager shall establish and maintain an
13 electronic claim inquiry processing system using the National
14 Council for Prescription Drug Programs current standards to
15 communicate eligibility, benefit and claim payment information to
16 pharmacies submitting claim inquiries.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6963 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A health insurer shall be responsible for monitoring all
21 activities carried out by, or on behalf of, the health insurer under
22 the Patient's Right to Pharmacy Choice Act, and for ensuring that
23 all requirements of this act are met.

1 B. Whenever a health insurer contracts with another person to
2 perform activities required under this act, the health insurer shall
3 be responsible for monitoring the activities of that person with
4 whom the health insurer contracts and for ensuring that the
5 requirements of this act are met.

6 C. A covered person may be notified at the point of sale when
7 the cash price for the purchase of a prescription drug is less than
8 the covered person's copayment or coinsurance price for the purchase
9 of the same prescription drug.

10 D. A health insurer or any entity hired or employed to manage a
11 prescription drug plan or plans shall not restrict a covered
12 person's choice of in-network provider for prescription drugs.

13 E. A covered person's choice of in-network provider may include
14 a retail pharmacy or a mail-order pharmacy. A health insurer or any
15 entity hired or employed to manage the prescription drug plan or
16 plans shall not restrict such choice. Such health insurer or entity
17 shall not require or incentivize using any discounts in cost-sharing
18 or a reduction in copay or the number of copays to covered persons
19 to receive prescription drugs from a cover person's choice of in-
20 network pharmacy.

21 F. A health insurer, pharmacy or any entity hired or employed
22 to manage a prescription drug plan shall adhere to all Oklahoma
23 laws, statutes and rules when mailing, shipping and/or causing to be
24 mailed or shipped prescription drugs into the State of Oklahoma.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6964 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. All compensation remitted by a pharmaceutical manufacturer,
5 developer or labeler, directly or indirectly related to a health
6 benefit plan or pharmacy benefit plan, shall be remitted to, and
7 retained by, that health benefit plan or pharmacy benefit plan for
8 the purposes described in subsection C of this section.

9 B. All compensation received by or on behalf of a health
10 insurer from a pharmaceutical manufacturer, developer or labeler
11 shall be used by the health insurer to:

12 1. Lower health benefit plan or pharmacy benefit plan premiums
13 for covered persons;

14 2. Lower copayment and coinsurance amounts for covered persons;
15 or

16 3. Expand pharmacy benefit plan coverage.

17 C. A health insurer shall file with the Insurance Commissioner,
18 on or before March 1 each year, an annual report, in a manner and
19 form established by rule promulgated by the Commissioner,
20 demonstrating how, in the previous year, the amount and nature of
21 compensation received from pharmaceutical manufacturers, developers
22 or labelers has:

23 1. Lowered health benefit plan or pharmacy benefit plan
24 premiums for covered persons;

1 2. Lowered copayment and coinsurance amounts for covered
2 persons; or

3 3. Expanded pharmacy benefit plan coverage.

4 D. The annual-report-filing requirement in subsection C of this
5 section shall not be considered proprietary information and shall
6 not begin until March 1, 2021.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6965 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A health insurer's pharmacy and therapeutics committee (P&T
11 committee) shall establish a formulary, which shall be a list of
12 prescription drugs, both generic and brand name, used by
13 practitioners to identify drugs that offer the greatest overall
14 value.

15 B. A health insurer shall prohibit conflicts of interest for
16 members of the P&T committee.

17 1. A person may not serve on a P&T committee if the person is
18 currently employed or was employed within the preceding year by a
19 pharmaceutical manufacturer, developer, labeler, wholesaler or
20 distributor.

21 2. A health insurer shall require any member of the P&T
22 committee to disclose any compensation or funding from a
23 pharmaceutical manufacturer, developer, labeler, wholesaler or
24 distributor. Such P&T committee member shall be recused from voting

1 on any product manufactured or sold by such pharmaceutical
2 manufacturer, developer, labeler, wholesaler or distributor.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6966 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The Insurance Commissioner shall have power to examine and
7 investigate into the affairs of every pharmacy benefits manager
8 (PBM) engaged in pharmacy benefits management in this state in order
9 to determine whether such entity is in compliance with the Patient's
10 Right to Pharmacy Choice Act.

11 B. All PBM files and records shall be subject to examination by
12 the Insurance Commissioner or by duly appointed designees. The
13 Insurance Commissioner, authorized employees and examiners shall
14 have access to any of a PBM's files and records that may relate to a
15 particular complaint under investigation or to an inquiry or
16 examination by the Insurance Department.

17 C. Every officer, director, employee or agent of the PBM, upon
18 receipt of any inquiry from the Commissioner shall, within thirty
19 (30) days from the date the inquiry is sent, furnish the
20 Commissioner with an adequate response to the inquiry.

21 D. When making an examination under this section, the Insurance
22 Commissioner may retain subject matter experts, attorneys,
23 appraisers, independent actuaries, independent certified public
24 accountants or an accounting firm or individual holding a permit to

1 practice public accounting, certified financial examiners or other
2 professionals and specialists as examiners, the cost of which shall
3 be borne by the PBM which is the subject of the examination.

4 SECTION 10. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6967 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Insurance Commissioner shall provide for the receiving
8 and processing of individual complaints alleging violations of the
9 provisions of the Patient's Right to Pharmacy Choice Act.

10 B. The Commissioner shall establish a Right to Patient Choice
11 Advisory Committee to review complaints, hold hearings and subpoena
12 witnesses and records, initiate prosecution, reprimand, place on
13 probation, suspend, revoke, and/or levy fines not to exceed Ten
14 Thousand Dollars (\$10,000.00) for each count for which any pharmacy
15 benefits manager (PBM) has violated a provision of this act. The
16 Advisory Committee may impose as part of any disciplinary action the
17 payment of costs expended by the Insurance Department for any legal
18 fees and costs, including but not limited to, staff time, salary and
19 travel expense, witness fees and attorney fees. The Advisory
20 Committee may take such actions singly or in combination, as the
21 nature of the violation requires.

22 C. The Advisory Committee shall consist of seven (7) persons
23 appointed as follows:

24

1 1. Two persons who shall be nominated by the Oklahoma
2 Pharmacists Association;

3 2. Two consumer members not employed or related to insurance,
4 pharmacy or PBM nominated by the Office of the Governor;

5 3. Two persons representing the PBM or insurance industry
6 nominated by the Insurance Commissioner; and

7 4. One person representing the Office of the Attorney General
8 nominated by the Attorney General.

9 D. Committee members shall be appointed for terms of five (5)
10 years. The terms of the members of the Advisory Committee shall
11 expire on the thirtieth day of June of the year designated for the
12 expiration of the term for which appointed, but the member shall
13 serve until a qualified successor has been duly appointed. No
14 person shall be appointed to serve more than two consecutive terms.

15 E. Hearings shall be held in the Insurance Commissioner's
16 offices or at such other place as the Insurance Commissioner may
17 deem convenient.

18 F. The Insurance Commissioner shall issue and serve upon the
19 PBM a statement of the charges and a notice of hearing in accordance
20 with the Administrative Procedures Act, Sections 250.1 through 323
21 of Title 75 of the Oklahoma Statutes.

22 G. At the time and place fixed for a hearing, the PBM shall
23 have an opportunity to be heard and to show cause why the Insurance
24 Commissioner or his or her duly appointed hearing examiner should

1 not revoke or suspend the PBM's license and levy administrative
2 fines for each violation. Upon good cause shown, the Commissioner
3 shall permit any person to intervene, appear and be heard at the
4 hearing by counsel or in person.

5 H. All hearings will be public and held in accordance with, and
6 governed by, Sections 250.1 through 323 of Title 75 of the Oklahoma
7 Statutes.

8 I. The Insurance Commissioner, upon written request reasonably
9 made by the licensed PBM affected by the hearing, and at such PBM's
10 expense, shall cause a full stenographic record of the proceedings
11 to be made by a competent court reporter.

12 J. If the Insurance Commissioner determines, based on an
13 investigation of complaints, that a PBM has engaged in violations of
14 this act with such frequency as to indicate a general business
15 practice and that such PBM should be subjected to closer supervision
16 with respect to such practices, the Insurance Commissioner may
17 require the PBM to file a report at such periodic intervals as the
18 Insurance Commissioner deems necessary.

19 SECTION 11. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6968 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Documents, materials, reports, complaints or other
23 information in the possession or control of the Insurance Department
24 that are obtained by or disclosed to the Insurance Commissioner or

1 any other person in the course of an evaluation, examination,
2 investigation or review made pursuant to the provisions of the
3 Patient's Right to Pharmacy Choice Act shall be confidential by law
4 and privileged, shall not be subject to open records request, shall
5 not be subject to subpoena, and shall not be subject to discovery or
6 admissible in evidence in any private civil action if obtained from
7 the Insurance Commissioner or any employees or representatives of
8 the Insurance Commissioner.

9 B. Nothing in this section shall prevent the disclosure of a
10 final order issued against a pharmacy benefits manager by the
11 Insurance Commissioner or his or her duly appointed hearing
12 examiner. Such orders shall be open records.

13 SECTION 12. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6969 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 Nothing in this Act shall be construed to apply to a self-funded
17 benefit program that is governed by federal regulation pursuant to
18 the federal Employee Retirement Income Security Act of 1974.
19 However, in the event the Supreme Court of the United States or
20 Congress provides that state laws may regulate pharmacy benefit
21 managers, the provisions of this act shall apply to such plans to
22 the extent provided for by the Supreme Court or Congress.

23 SECTION 13. This act shall become effective November 1, 2019."
24

1 ENGROSSED HOUSE
2 BILL NO. 2632

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(Dustin), Sanders,
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10 An Act relating to insurance; creating the Patient's
11 Right to Pharmacy Choice Act; declaring purpose;
12 defining terms; providing for compliance standards
13 for retail pharmacy networks; providing for review of
14 retail pharmacy network access; prohibiting certain
15 actions; prohibiting certain restrictions; requiring
16 a pharmacy benefits manager to establish and maintain
17 an electronic claim inquiry processing system;
18 requiring health insurer to monitor compliance;
19 requiring specific uses for certain compensation;
20 requiring health insurer file annual report;
21 directing a health insurer's pharmacy and
22 therapeutics committee to establish a formulary;
23 prohibiting conflicts of interest; providing
24 conditions for persons to serve on pharmacy and
therapeutics committee; prohibiting compensation;
authorizing Insurance Commissioner investigative
powers; establishing a Right to Patient Choice
Advisory Committee; providing the Right to Patient
Choice Advisory Committee with certain powers;
providing for composition and appointment of the
Right to Patient Choice Advisory Committee; providing
term length; providing hearings be held in accordance
with the Administrative Procedures Act; providing for
confidentiality; providing exception; providing for
codification; and providing an effective date.

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

2 SECTION 14. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 6958 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Patient's Right
6 to Pharmacy Choice Act".

7 SECTION 15. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6959 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 The purpose of the Patient's Right to Pharmacy Choice Act is to
11 establish minimum and uniform access to a provider and standards and
12 prohibitions on restrictions of a patient's right to choose a
13 pharmacy provider.

14 SECTION 16. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6960 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 For purposes of the Patient's Right to Pharmacy Choice Act:

18 1. "Benefit plan" means any health benefit plan offered by a
19 health insurance carrier, health maintenance organization, managed
20 care entity, or any other entity that provides prescription drug
21 benefits to covered individuals, including workers' compensation
22 programs, state-administered health benefit plans and self-funded
23 benefit programs;

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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 manager" or "PBM" means a person,
5 business or other entity that performs pharmacy benefits management.
6 The term includes a person or entity acting for a PBM in a
7 contractual or employment relationship in the performance of
8 pharmacy benefits management for a managed-care company, nonprofit
9 hospital, medical service organization, insurance company, third-
10 party payor or a health program administered by a department of this
11 state;

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

15 5. "Retail pharmacy network" means retail pharmacy providers
16 contracted with the entity providing or administering a benefit plan
17 in which the pharmacy primarily fills and sells prescriptions via a
18 retail, storefront location;

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

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

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

4 SECTION 17. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6961 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Retail pharmacy networks shall comply with the following
8 access standards:

9 1. At least ninety percent (90%) of covered individuals in the
10 benefit plan's urban service area live within two (2) miles of a
11 retail pharmacy participating in the benefit plan's retail pharmacy
12 network;

13 2. At least ninety percent (90%) of covered individuals in the
14 benefit plan's urban service area live within five (5) miles of a
15 retail pharmacy designated as a preferred participating pharmacy in
16 the benefit plan's retail pharmacy network;

17 3. At least ninety percent (90%) of covered individuals in the
18 benefit plan's suburban service area live within five (5) miles of a
19 retail pharmacy participating in the benefit plan's retail pharmacy
20 network;

21 4. At least ninety percent (90%) of covered individuals in the
22 benefit plan's suburban service area live within seven (7) miles of
23 a retail pharmacy designated as a preferred participating pharmacy
24 in the benefit plan's retail pharmacy network;

1 5. At least seventy percent (70%) of covered individuals in the
2 benefit plan's rural service area live within fifteen (15) miles of
3 a retail pharmacy participating in the benefit plan's retail
4 pharmacy network; and

5 6. At least seventy percent (70%) of covered individuals in the
6 benefit plan's rural service area live within eighteen (18) miles of
7 a retail pharmacy designated as a preferred participating pharmacy
8 in the benefit plan's retail pharmacy network.

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

11 C. Pharmacy benefits managers and benefit plans shall not
12 require patients to use pharmacies that are directly or indirectly
13 owned by the pharmacy benefits manager or benefit plan, including
14 all regular prescriptions, refills or specialty drugs regardless of
15 day supply.

16 D. Pharmacy benefits managers and benefit plans shall not in
17 any manner on any material, including but not limited to mail and ID
18 cards, include the name of any pharmacy, hospital or other providers
19 unless it specifically lists all pharmacies, hospitals and providers
20 participating in the preferred and nonpreferred pharmacy and health
21 networks.

22 SECTION 18. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6962 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The Oklahoma Insurance Department shall review and approve
2 retail pharmacy network access for all benefit plans to ensure
3 compliance with Section 4 of this act.

4 B. A pharmacy benefits manager (PBM), or PBM representative of
5 a PBM, shall not:

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

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

11 a. the submission of a claim,

12 b. enrollment or participation in a retail pharmacy
13 network, or

14 c. the development or management of claims processing
15 services or claims payment services related to
16 participation in a retail pharmacy network;

17 3. Reimburse an independent pharmacy or independent pharmacist
18 in the state an amount less than the amount that the PBM reimburses
19 a pharmacy owned by or under common ownership with a PBM for
20 providing the same covered services. The reimbursement amount shall
21 be calculated on a per-unit basis using the same generic product
22 identifier or generic code number submitted by the PBM-owned or PBM-
23 affiliated pharmacy;

1 4. Deny a pharmacy the opportunity to participate in any
2 pharmacy network at preferred participation status if the pharmacy
3 is willing to accept the terms and conditions that the PBM has
4 established for other pharmacies as a condition of preferred network
5 participation status;

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

10 6. Impose on a covered individual a monetary advantage or
11 penalty, including a higher cost-sharing or additional fee which
12 would affect a covered individual's choices of network pharmacy;

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

- 16 a. the original claim was submitted fraudulently, or
- 17 b. to correct errors identified in an audit, so long as
- 18 the audit was conducted in compliance with Sections
- 19 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;
- 20 or

21 8. Fail to make any payment due to a pharmacy or pharmacist for
22 covered services properly rendered in the event a PBM terminates a
23 pharmacy or pharmacist from a pharmacy benefits manager network.

1 C. The prohibitions under this section shall apply to contracts
2 between pharmacy benefits managers and pharmacists or pharmacies for
3 participation in retail pharmacy networks.

4 1. A benefit plan shall:

5 a. not restrict, directly or indirectly, any pharmacy
6 that dispenses a prescription drug to an enrollee in
7 the plan or coverage from informing, or penalize such
8 pharmacy for informing, an enrollee of any
9 differential between the enrollee's out-of-pocket cost
10 under the plan or coverage with respect to acquisition
11 of the drug and the amount an individual would pay for
12 acquisition of the drug without using any health plan
13 or health insurance coverage, and

14 b. ensure that any entity that provides pharmacy benefits
15 management services under a contract with any such
16 health plan or health insurance coverage does not,
17 with respect to such plan or coverage, restrict,
18 directly or indirectly, a pharmacy that dispenses a
19 prescription drug from informing, or penalize such
20 pharmacy for informing, an enrollee of any
21 differential between the enrollee's out-of-pocket cost
22 under the plan or coverage with respect to acquisition
23 of the drug and the amount an individual would pay for
24

1 acquisition of the drug without using any health plan
2 or health insurance coverage.

3 2. A pharmacy benefits manager contract with a participating
4 pharmacist or pharmacy shall not prohibit, restrict or limit
5 disclosure of information to the Insurance Commissioner, law
6 enforcement or state and federal governmental officials
7 investigating or examining a complaint or conducting a review of a
8 pharmacy benefits manager's compliance with the requirements under
9 the Patient's Right to Pharmacy Choice Act.

10 3. A pharmacy benefits manager shall establish and maintain an
11 electronic claim inquiry processing system using the National
12 Council for Prescription Drug Programs current standards to
13 communicate eligibility, benefit and claim payment information to
14 pharmacies submitting claim inquiries.

15 SECTION 19. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6963 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A health insurer shall be responsible for monitoring all
19 activities carried out by, or on behalf of, the health insurer under
20 the Patient's Right to Pharmacy Choice Act, and for ensuring that
21 all requirements of this act are met.

22 B. Whenever a health insurer contracts with another person to
23 perform activities required under this act, the health insurer shall
24 be responsible for monitoring the activities of that person with

1 whom the health insurer contracts and for ensuring that the
2 requirements of this act are met.

3 C. A health insurer and its PBM have a fiduciary duty to all
4 covered persons with respect to the provision of prescription drug
5 benefits.

6 D. A covered person may be notified at the point of sale when
7 the cash price for the purchase of a prescription drug is less than
8 the covered person's copayment or coinsurance price for the purchase
9 of the same prescription drug.

10 E. A health insurer or any entity hired or employed to manage a
11 prescription drug plan or plans shall not restrict a covered
12 person's choice of provider for prescription drugs and shall not
13 require or incentivize using any discounts in cost-sharing to
14 covered persons to receive prescription drugs from mail order
15 pharmacies.

16 F. A health insurer, pharmacy or any entity hired or employed
17 to manage a prescription drug plan shall adhere to all Oklahoma
18 laws, statutes and rules when mailing, shipping and/or causing to be
19 mailed or shipped prescription drugs into the State of Oklahoma.

20 SECTION 20. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6964 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. All compensation remitted by a pharmaceutical manufacturer,
24 developer or labeler, directly or indirectly related to a health

1 benefit plan or pharmacy benefit plan, shall be remitted to, and
2 retained by, that health benefit plan or pharmacy benefit plan for
3 the purposes described in subsection C of this section.

4 B. All compensation received by or on behalf of a health
5 insurer from a pharmaceutical manufacturer, developer or labeler
6 shall be used by the health insurer to:

7 1. Lower health benefit plan or pharmacy benefit plan premiums
8 for covered persons;

9 2. Lower copayment and coinsurance amounts for covered persons;
10 or

11 3. Expand pharmacy benefit plan coverage.

12 C. A health insurer shall file with the Insurance Commissioner,
13 on or before March 1 each year, an annual report, in a manner and
14 form established by rule promulgated by the Commissioner,
15 demonstrating how the amount and nature of compensation received
16 from pharmaceutical manufacturers, developers or labelers has:

17 1. Lowered health benefit plan or pharmacy benefit plan
18 premiums for covered persons;

19 2. Lowered copayment and coinsurance amounts for covered
20 persons; or

21 3. Expanded pharmacy benefit plan coverage.

22 D. The annual-report-filing requirement in subsection C of this
23 section shall not begin until March 1, 2021.

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1 SECTION 21. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6965 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A health insurer's pharmacy and therapeutics committee (P&T
5 committee) shall establish a formulary, which shall be a list of
6 prescription drugs, both generic and brand name, used by
7 practitioners to identify drugs that offer the greatest overall
8 value.

9 B. A health insurer shall prohibit conflicts of interest for
10 members of the pharmacy and therapeutics committee (P&T committee).

11 1. A person may not serve on a P&T committee if the person is
12 currently employed or was employed within the preceding year by a
13 pharmaceutical manufacturer, developer, labeler, wholesaler or
14 distributor.

15 2. A health insurer shall require any member of the P&T
16 committee to disclose any compensation or funding from a
17 pharmaceutical manufacturer, developer, labeler, wholesaler or
18 distributor. Such P&T committee member shall be recused from voting
19 on any product manufactured or sold by such pharmaceutical
20 manufacturer, developer, labeler, wholesaler or distributor.

21 SECTION 22. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6966 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. The Insurance Commissioner shall have power to examine and
2 investigate into the affairs of every pharmacy benefits manager
3 (PBM) engaged in pharmacy benefits management in this state in order
4 to determine whether such entity is in compliance with the Patient's
5 Right to Pharmacy Choice Act.

6 B. All PBM files and records shall be subject to examination by
7 the Insurance Commissioner or by duly appointed designees. The
8 Insurance Commissioner, authorized employees and examiners shall
9 have access to any of a PBM's files and records that may relate to a
10 particular complaint under investigation or to an inquiry or
11 examination by the Insurance Department.

12 C. Every officer, director, employee or agent of the PBM, upon
13 receipt of any inquiry from the Commissioner shall, within thirty
14 (30) days from the date the inquiry is sent, furnish the
15 Commissioner with an adequate response to the inquiry.

16 D. When making an examination under this section, the Insurance
17 Commissioner may retain subject matter experts, attorneys,
18 appraisers, independent actuaries, independent certified public
19 accountants or an accounting firm or individual holding a permit to
20 practice public accounting, certified financial examiners or other
21 professionals and specialists as examiners, the cost of which shall
22 be borne by the PBM which is the subject of the examination.

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1 SECTION 23. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6967 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Insurance Commissioner shall provide for the receiving
5 and processing of individual complaints alleging violations of the
6 provisions of the Patient's Right to Pharmacy Choice Act.

7 B. The Commissioner shall establish a Right to Patient Choice
8 Advisory Committee to review complaints, hold hearings and subpoena
9 witnesses and records, initiate prosecution, reprimand, place on
10 probation, suspend, revoke, and/or levy fines not to exceed Ten
11 Thousand Dollars (\$10,000.00) for each count for which any pharmacy
12 benefits manager (PBM) has violated a provision of this act. The
13 Advisory Committee may impose as part of any disciplinary action the
14 payment of costs expended by the Insurance Department for any legal
15 fees and costs, including but not limited to, staff time, salary and
16 travel expense, witness fees and attorney fees. The Advisory
17 Committee may take such actions singly or in combination, as the
18 nature of the violation requires.

19 C. The Advisory Committee shall consist of seven (7) persons
20 appointed as follows:

21 1. Two persons who shall be nominated by the Oklahoma
22 Pharmacists Association;

23 2. Two consumer members not employed or related to insurance,
24 pharmacy or PBM nominated by the Office of the Governor;

1 3. Two persons representing the PBM or insurance industry
2 nominated by the Insurance Commissioner; and

3 4. One person representing the Office of the Attorney General
4 nominated by the Attorney General.

5 D. Committee members shall be appointed for terms of five (5)
6 years. The terms of the members of the Advisory Committee shall
7 expire on the thirtieth day of June of the year designated for the
8 expiration of the term for which appointed, but the member shall
9 serve until a qualified successor has been duly appointed. No
10 person shall be appointed to serve more than two consecutive terms.

11 E. Hearings shall be held in the Insurance Commissioner's
12 offices or at such other place as the Insurance Commissioner may
13 deem convenient.

14 F. The Insurance Commissioner shall issue and serve upon the
15 PBM a statement of the charges and a notice of hearing in accordance
16 with the Administrative Procedures Act, Sections 250.1 through 323
17 of Title 75 of the Oklahoma Statutes.

18 G. At the time and place fixed for a hearing, the PBM shall
19 have an opportunity to be heard and to show cause why the Insurance
20 Commissioner or his or her duly appointed hearing examiner should
21 not revoke or suspend the PBM's license and levy administrative
22 fines for each violation. Upon good cause shown, the Commissioner
23 shall permit any person to intervene, appear and be heard at the
24 hearing by counsel or in person.

1 H. All hearings will be public and held in accordance with, and
2 governed by, Sections 250.1 through 323 of Title 75 of the Oklahoma
3 Statutes.

4 I. The Insurance Commissioner, upon written request reasonably
5 made by the licensed PBM affected by the hearing, and at such PBM's
6 expense, shall cause a full stenographic record of the proceedings
7 to be made by a competent court reporter.

8 J. If the Insurance Commissioner determines, based on an
9 investigation of complaints, that a PBM has engaged in violations of
10 this act with such frequency as to indicate a general business
11 practice and that such PBM should be subjected to closer supervision
12 with respect to such practices, the Insurance Commissioner may
13 require the PBM to file a report at such periodic intervals as the
14 Insurance Commissioner deems necessary.

15 SECTION 24. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 6968 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Documents, materials, reports, complaints or other
19 information in the possession or control of the Insurance Department
20 that are obtained by or disclosed to the Insurance Commissioner or
21 any other person in the course of an evaluation, examination,
22 investigation or review made pursuant to the provisions of the
23 Patient's Right to Pharmacy Choice Act shall be confidential by law
24 and privileged, shall not be subject to open records request, shall

1 not be subject to subpoena, and shall not be subject to discovery or
2 admissible in evidence in any private civil action if obtained from
3 the Insurance Commissioner or any employees or representatives of
4 the Insurance Commissioner.

5 B. Nothing in this section shall prevent the disclosure of a
6 final order issued against a pharmacy benefits manager by the
7 Insurance Commissioner or his or her duly appointed hearing
8 examiner. Such orders shall be open records.

9 SECTION 25. This act shall become effective November 1, 2019.

10 Passed the House of Representatives the 11th day of March, 2019.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2019.

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Presiding Officer of the Senate

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