

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2632 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Jon Echols \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2632

By: Echols

7 PROPOSED COMMITTEE SUBSTITUTE

8  
9 An Act relating to insurance; creating the Patient's  
10 Right to Pharmacy Choice Act; declaring purpose;  
11 defining terms; providing for compliance standards  
12 for retail pharmacy networks; directing the Insurance  
13 Department to promulgate rules; providing for review  
14 of retail pharmacy network access; prohibiting  
15 certain actions; prohibiting certain restrictions;  
16 requiring health insurer to monitor compliance;  
17 requiring specific uses for certain compensation;  
18 requiring health insurer file annual report;  
19 directing a health insurer's pharmacy and  
20 therapeutics committee to establish a formulary;  
21 prohibiting conflicts of interest; providing  
22 conditions for persons to serve on pharmacy and  
23 therapeutics committee; prohibiting compensation;  
24 providing for publication of drug formulary;  
requiring regular updates; authorizing Insurance  
Commissioner investigative powers; authorizing  
Insurance Commissioner to hire additional employees;  
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 1. 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 2. 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 3. 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 (P&T committee)" means  
13 a committee at a hospital or a health insurance plan that decides  
14 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 three thousand (3,000)  
21 individuals 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 4.        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 invite  
12 all health care providers, including but not limited to pharmacies,  
13 physicians, and clinics, to join their networks, and shall set the  
14 same criteria for all providers including those providers that are  
15 directly or indirectly owned by or working in conjunction with the  
16 PBM or benefit plan.

17           D. Pharmacy benefits managers and benefit plans shall allow all  
18 patients to use any health care provider, in- or out-of-network, if  
19 that provider accepts the same conditions as those within the  
20 network.

21           E. Pharmacy benefits managers and benefit plans shall not  
22 require patients to use pharmacies that are directly or indirectly  
23 owned by or working in conjunction with the pharmacy benefits  
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1 manager or benefit plan, including all regular prescriptions,  
2 refills or specialty drugs regardless of day supply.

3 F. Pharmacy benefits managers and benefit plans shall not in  
4 any manner on any material, including but not limited to mail and ID  
5 cards, include the name of any pharmacy, hospital or other providers  
6 unless it specifically lists ALL pharmacies, hospitals and providers  
7 participating in the preferred and nonpreferred pharmacy and health  
8 networks.

9 G. The Oklahoma Insurance Department shall promulgate any rules  
10 necessary to administer and enforce the provisions of this section.

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

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

17 B. A pharmacy benefits manager or representative of a pharmacy  
18 benefits manager shall not:

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

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

24 a. the submission of a claim,

- 1           b. enrollment or participation in a retail pharmacy  
2           network, or
- 3           c. the development or management of claims processing  
4           services or claims payment services related to  
5           participation in a retail pharmacy network;

6           3. Reimburse a pharmacy or pharmacist in the state an amount  
7 less than the amount that the pharmacy benefits manager reimburses a  
8 pharmacy owned by or under common ownership with a PBM for providing  
9 the same covered services. The reimbursement amount shall be  
10 calculated on a per-unit basis using the same generic product  
11 identifier or generic code number submitted by the PBM-owned or PBM-  
12 affiliated pharmacy;

13           4. Deny a pharmacy the opportunity to participate in any  
14 pharmacy network at standard or preferred participation status if  
15 the pharmacy is willing to accept the terms and conditions that the  
16 PBM has established for other pharmacies as a condition of standard  
17 network participation or preferred network participation status;

18           5. Deny, limit or terminate a contract based on employment  
19 status of any employee that has a license currently in good  
20 standing, despite probation status, with the Oklahoma State Board of  
21 Pharmacy;

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



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

- 4           a. the original claim was submitted fraudulently, or
- 5           b. the pharmacy service provided related to the subject  
6                claim violated the Oklahoma Pharmacy Act; or

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

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

13       1. A pharmacy benefits manager contract with a pharmacist or  
14 pharmacy shall not contain a provision prohibiting disclosure to  
15 patients of billed or allowed amounts, reimbursement rates or out-  
16 of-pocket costs.

17       2. A pharmacy benefits manager contract with a participating  
18 pharmacist or pharmacy shall not prohibit, restrict or limit  
19 disclosure of information to the Insurance Commissioner, law  
20 enforcement, or state and federal governmental officials  
21 investigating or examining a complaint or conducting a review of a  
22 pharmacy benefits manager's compliance with the requirements under  
23 the Patient's Right to Pharmacy Choice Act.

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

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

8 B. Whenever a health insurer contracts with another person to  
9 perform activities required under this act, the health insurer shall  
10 be responsible for monitoring the activities of that person with  
11 whom the health insurer contracts and for ensuring that the  
12 requirements of this act are met.

13 C. A health insurer owes a fiduciary duty to all covered  
14 persons with respect to the provision of prescription drug benefits.

15 D. A covered person shall be notified at the point of sale when  
16 the cash price for the purchase of a prescription drug is less than  
17 the covered person's copayment or coinsurance price for the purchase  
18 of the same prescription drug.

19 E. A health insurer or any entity hired or employed to manage a  
20 prescription drug plan or plans shall not restrict a covered  
21 person's choice of provider for prescription drugs and shall not  
22 require or incentivize using any discounts in cost-sharing to  
23 covered persons to receive prescription drugs from mail order  
24 pharmacies.

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

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

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

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

16 1. Lower health benefit plan or pharmacy benefit plan premiums  
17 for covered persons;

18 2. Lower copayment and coinsurance amounts for covered persons;

19 or

20 3. Expand pharmacy benefit plan coverage.

21 C. A health insurer shall file with the Insurance Commissioner,  
22 on or before March 1 each year, an annual report, in a manner and  
23 form established by rule promulgated by the Commissioner,

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1 demonstrating how the amount and nature of compensation received  
2 from pharmaceutical manufacturers, developers or labelers has:

3 1. Lowered health benefit plan or pharmacy benefit plan  
4 premiums for covered persons;

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

7 3. Expanded pharmacy benefit plan coverage.

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

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

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

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

20 1. A person may not serve on a P&T committee if the person is:  
21 a. currently employed or was employed within the  
22 preceding year by a pharmaceutical manufacturer,  
23 developer, labeler, wholesaler or distributor, or  
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1           b.    currently receiving compensation, or received  
2                    compensation within the preceding year, from a  
3                    pharmaceutical manufacturer, developer, labeler,  
4                    wholesaler or distributor.

5           2.    A health insurer shall prohibit the P&T committee, and any  
6 member of the P&T committee, from receiving any compensation or  
7 funding from a pharmaceutical manufacturer, developer, labeler,  
8 wholesaler or distributor.

9           C.    A health insurer shall display its formulary on its website  
10 to be publicly accessible.

11           1.    The formulary shall be electronically searchable by drug  
12 name and any other means required by the Insurance Commissioner, as  
13 established by rule.

14           2.    The formulary shall include, at a minimum, the following:

- 15           a.    an indication of whether each drug on the formulary is  
16                    preferred under the plan,
- 17           b.    an indication of whether each drug on the formulary  
18                    requires prior authorization or has step therapy or  
19                    quantity limit restrictions,
- 20           c.    the specific tier the drug falls under, if the health  
21                    insurer's plan uses a tiered formulary,
- 22           d.    the amount of the drug copayment, if applicable,
- 23           e.    the amount of the drug coinsurance, if applicable,

- 1           f.    whether the drug is subject to a deductible, and if  
2                so, the amount of the deductible,  
3           g.    whether the drug is included on the health insurer's  
4                maximum allowable cost (MAC) list and, if so, the  
5                price of the drug as established by the health  
6                insurer's MAC list, and  
7           h.    for drugs not included on the health insurer's MAC  
8                list, the average wholesale price (AWP).

9           3.    The health insurer shall update drugs included on the health  
10           insurer's MAC list no less than every seven (7) days.

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

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

19           B.    All PBM files and records shall be subject to examination by  
20           the Insurance Commissioner or by duly appointed designees.  The  
21           Insurance Commissioner, authorized employees, state legislators, and  
22           examiners shall have access to any of a PBM's files and records that  
23           may relate to a particular complaint under investigation or to an  
24           inquiry or examination by the Insurance Department.

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

5 D. When making an examination under this section, the Insurance  
6 Commissioner may retain subject matter experts, attorneys,  
7 appraisers, independent actuaries, independent certified public  
8 accountants or an accounting firm or individual holding a permit to  
9 practice public accounting, certified financial examiners or other  
10 professionals and specialists as examiners, the cost of which shall  
11 be borne by the PBM which is the subject of the examination.

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

15 A. The Insurance Commissioner may hire additional employees and  
16 examiners as needed for the enforcement of the provisions of the  
17 Patient's Right to Pharmacy Choice Act.

18 B. The Commissioner may retain other governmental or  
19 nongovernmental entities or individuals as needed for the  
20 enforcement of the provisions of this act.

21 SECTION 11. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 6968 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 provide for the receiving  
2 and processing of individual complaints alleging violations of the  
3 provisions of the Patient's Right to Pharmacy Choice Act.

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

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

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

20 2. Two consumer members not employed or related to insurance,  
21 pharmacy or pharmacy benefit management nominated by the Office of  
22 the Governor;

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



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

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

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

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

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

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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 12. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 6969 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 13. This act shall become effective November 1, 2019.

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