

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2632

By: Echols, McEntire, Roberts
(Dustin), Sanders, Patzkowsky,
West (Josh), Townley, Pae,
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Sterling, Cornwell, Sneed,
Lawson, Sims, Randleman,
Caldwell (Trey), Manger,
Grego, Dollens, West (Kevin),
McBride, May, Ford, Gann and
Humphrey of the House

and

McCortney, Pemberton, Haste,
Dahm, Hicks, Murdock, Silk,
Coleman, Kidd, Bergstrom,
Montgomery, Stanley, Simpson,
Pederson, Scott, Standridge,
Boggs, Shaw, Rader, Weaver,
Leewright, Allen, Bullard,
Smalley, Jech, Matthews,
Rosino, Stanislawski, Paxton,
Dossett, Sharp, Dugger and
Ikley-Freeman of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Patient's
Right to Pharmacy Choice Act; declaring purpose;
defining terms; providing compliance standards for

1 retail pharmacy networks; providing for review of
2 retail pharmacy network access; prohibiting certain
3 actions; providing exceptions; providing for
4 monitoring of certain actions; prohibiting
5 restrictions; directing a health insurer's pharmacy
6 and therapeutics committee to establish a formulary;
7 prohibiting conflicts of interest; providing
8 conditions for persons to serve on pharmacy and
9 therapeutics committee; authorizing investigations
10 and examinations; directing the Insurance
11 Commissioner to establish a Patient's Right to
12 Pharmacy Choice Advisory Committee; providing duties;
13 providing for appointment of members; providing for
14 hearing process; providing for confidentiality;
15 providing exception; providing for severability;
16 providing for codification; and providing an
17 effective date.

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

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

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

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

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

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

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

5 1. "Health insurer" means any corporation, association, benefit
6 society, exchange, partnership or individual licensed by the
7 Oklahoma Insurance Code;

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

11 3. "Pharmacy benefits manager" or "PBM" means a person that
12 performs pharmacy benefits management and any other person acting
13 for such person under a contractual or employment relationship in
14 the performance of pharmacy benefits management for a managed-care
15 company, nonprofit hospital, medical service organization, insurance
16 company, third-party payor or a health program administered by a
17 department of this 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 a PBM in which the pharmacy primarily fills and
23 sells prescriptions via a 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. Pharmacy benefits managers (PBMs) shall comply with the
14 following retail pharmacy network access standards:

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

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

22 3. At least ninety percent (90%) of covered individuals
23 residing in a suburban service area live within five (5) miles of a
24 retail pharmacy participating in the PBM's retail pharmacy network;

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

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

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

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

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

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

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

4 A. The Oklahoma Insurance Department shall review and approve
5 retail pharmacy network access for all pharmacy benefits managers
6 (PBMs) to ensure compliance with Section 4 of this act.

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

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

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

13 a. the submission of a claim,

14 b. enrollment or participation in a retail pharmacy
15 network, or

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

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

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

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

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

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

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

5 a. not restrict, directly or indirectly, any pharmacy
6 that dispenses a prescription drug from informing, or
7 penalize such pharmacy for informing, an individual of
8 any differential between the individual's out-of-
9 pocket cost or coverage with respect to acquisition of
10 the drug and the amount an individual would pay to
11 purchase the drug directly, and

12 b. ensure that any entity that provides pharmacy benefits
13 management services under a contract with any such
14 health plan or health insurance coverage does not,
15 with respect to such plan or coverage, restrict,
16 directly or indirectly, a pharmacy that dispenses a
17 prescription drug from informing, or penalize such
18 pharmacy for informing, a covered individual of any
19 differential between the individual's out-of-pocket
20 cost under the plan or coverage with respect to
21 acquisition of the drug and the amount an individual
22 would pay for acquisition of the drug without using
23 any health plan or health insurance coverage.
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1 2. A pharmacy benefits manager's contract with a participating
2 pharmacist or pharmacy shall not prohibit, restrict or limit
3 disclosure of information to the Insurance Commissioner, law
4 enforcement or state and federal governmental officials
5 investigating or examining a complaint or conducting a review of a
6 pharmacy benefits manager's compliance with the requirements under
7 the Patient's Right to Pharmacy Choice Act.

8 3. A pharmacy benefits manager shall establish and maintain an
9 electronic claim inquiry processing system using the National
10 Council for Prescription Drug Programs' current standards to
11 communicate information to pharmacies submitting claim inquiries.

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

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

19 B. Whenever a health insurer contracts with another person to
20 perform activities required under this act, the health insurer shall
21 be responsible for monitoring the activities of that person with
22 whom the health insurer contracts and for ensuring that the
23 requirements of this act are met.
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1 C. An individual may be notified at the point of sale when the
2 cash price for the purchase of a prescription drug is less than the
3 individual's copayment or coinsurance price for the purchase of the
4 same prescription drug.

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

8 E. An individual's choice of in-network provider may include a
9 retail pharmacy or a mail-order pharmacy. A health insurer or PBM
10 shall not restrict such choice. Such health insurer or PBM shall
11 not require or incentivize using any discounts in cost-sharing or a
12 reduction in copay or the number of copays to individuals to receive
13 prescription drugs from an individual's choice of in-network
14 pharmacy.

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

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

22 A. A health insurer's pharmacy and therapeutics committee (P&T
23 committee) shall establish a formulary, which shall be a list of
24 prescription drugs, both generic and brand name, used by

1 practitioners to identify drugs that offer the greatest overall
2 value.

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

5 1. A person may not serve on a P&T committee if the person is
6 currently employed or was employed within the preceding year by a
7 pharmaceutical manufacturer, developer, labeler, wholesaler or
8 distributor.

9 2. A health insurer shall require any member of the P&T
10 committee to disclose any compensation or funding from a
11 pharmaceutical manufacturer, developer, labeler, wholesaler or
12 distributor. Such P&T committee member shall be recused from voting
13 on any product manufactured or sold by such pharmaceutical
14 manufacturer, developer, labeler, wholesaler or distributor.

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

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

23 B. All PBM files and records shall be subject to examination by
24 the Insurance Commissioner or by duly appointed designees. The

1 Insurance Commissioner, authorized employees and examiners shall
2 have access to any of a PBM's files and records that may relate to a
3 particular complaint under investigation or to an inquiry or
4 examination by the Insurance Department.

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

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

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

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

22 B. The Commissioner shall establish a Patient's Right to
23 Pharmacy Choice Advisory Committee to review complaints, hold
24 hearings, subpoena witnesses and records, initiate prosecution,

1 reprimand, place on probation, suspend, revoke and/or levy fines not
2 to exceed Ten Thousand Dollars (\$10,000.00) for each count for which
3 any pharmacy benefits manager (PBM) has violated a provision of this
4 act. The Advisory Committee may impose as part of any disciplinary
5 action the payment of costs expended by the Insurance Department for
6 any legal fees and costs including, but not limited to, staff time,
7 salary and travel expense, witness fees and attorney fees. The
8 Advisory Committee may take such actions singly or in combination,
9 as the nature of the violation requires.

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

- 12 1. Two persons who shall be nominated by the Oklahoma
13 Pharmacists Association;
- 14 2. Two consumer members not employed or related to insurance,
15 pharmacy or PBM nominated by the Office of the Governor;
- 16 3. Two persons representing the PBM or insurance industry
17 nominated by the Insurance Commissioner; and
- 18 4. One person representing the Office of the Attorney General
19 nominated by the Attorney General.

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

3 E. Hearings shall be held in the Insurance Commissioner's
4 offices or at such other place as the Insurance Commissioner may
5 deem convenient.

6 F. The Insurance Commissioner shall issue and serve upon the
7 PBM a statement of the charges and a notice of hearing in accordance
8 with the Administrative Procedures Act, Sections 250 through 323 of
9 Title 75 of the Oklahoma Statutes.

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

17 H. All hearings will be public and held in accordance with, and
18 governed by, Sections 250 through 323 of Title 75 of the Oklahoma
19 Statutes.

20 I. The Insurance Commissioner, upon written request reasonably
21 made by the licensed PBM affected by the hearing and at such PBM's
22 expense shall cause a full stenographic record of the proceedings to
23 be made by a competent court reporter.
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1 J. If the Insurance Commissioner determines, based on an
2 investigation of complaints, that a PBM has engaged in violations of
3 this act with such frequency as to indicate a general business
4 practice and that such PBM should be subjected to closer supervision
5 with respect to such practices, the Insurance Commissioner may
6 require the PBM to file a report at such periodic intervals as the
7 Insurance Commissioner deems necessary.

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

11 A. Documents, materials, reports, complaints or other
12 information in the possession or control of the Insurance Department
13 that are obtained by or disclosed to the Insurance Commissioner or
14 any other person in the course of an evaluation, examination,
15 investigation or review made pursuant to the provisions of the
16 Patient's Right to Pharmacy Choice Act shall be confidential by law
17 and privileged, shall not be subject to open records request, shall
18 not be subject to subpoena, and shall not be subject to discovery or
19 admissible in evidence in any private civil action if obtained from
20 the Insurance Commissioner or any employees or representatives of
21 the Insurance Commissioner.

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

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

6 If any one or more provision, section, subsection, sentence,
7 clause, phrase or word of this act or the application hereof to any
8 person or circumstance is found to be unconstitutional, the same is
9 hereby declared to be severable and the balance of this act shall
10 remain effective notwithstanding such unconstitutionality. The
11 Legislature hereby declares that it would have passed this act, and
12 each provision, section, subsection, sentence, clause, phrase or
13 word thereof, irrespective of the fact that any one or more
14 provision, section, subsection, sentence, clause, phrase, or word be
15 declared unconstitutional.

16 SECTION 12. This act shall become effective November 1, 2019.

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