

1 ENGROSSED HOUSE
2 BILL NO. 2617

By: Echols, Roberts (Dustin),
Frix and Sneed of the House

3 and

4 Standridge and Scott of the
5 Senate

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7
8 An Act relating to pharmacy consultants; defining
9 terms; establishing that a pharmacy consultant
10 performing pharmacy benefits management services
11 shall have a fiduciary duty to the state; requiring
12 certain performance standards and notification;
13 requiring certain disclosure; prohibiting contract
14 waiver of fiduciary duty; providing for codification;
15 and providing an effective date.

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

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 360.1 of Title 59, unless there
19 is created a duplication in numbering, reads as follows:

20 A. As used in this act:

21 1. "Covered individual" means a policy holder, subscriber,
22 enrollee or other individual participating in a health benefit plan
23 offered by the state;

24 2. "Entity" means a sole proprietor, general partnership,
limited partnership, limited liability partnership, limited

1 liability limited partnership, corporation, limited liability
2 company or any other lawfully recognized business entity;

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

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

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

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

1 6. "State" means the Oklahoma Health Care Authority or the
2 Office of Management and Enterprise Services.

3 B. Any pharmacy consultant that enters into a contract with the
4 state to perform pharmacy benefits management services shall owe a
5 fiduciary duty to the state or the counterparty to the contract with
6 any state governmental entity.

7 C. In addition to any other fiduciary duty that may be imposed
8 pursuant to the provisions of this act, a pharmacy consultant
9 performing pharmacy benefits management services shall:

10 1. Perform its duties with care, skill, prudence, and diligence
11 and in accordance with the standards of conduct applicable to a
12 fiduciary in an enterprise of a like character and with like aims;
13 and

14 2. Notify the state in writing of any activity, policy or
15 practice of pharmacy benefits management services that directly or
16 indirectly presents any conflict of interest with the duties imposed
17 by this section.

18 D. Upon request by the state, a pharmacy consultant performing
19 pharmacy benefits management services under contract with the state
20 shall disclose to the state all financial terms and arrangements for
21 remuneration of any kind that apply between the pharmacy consultant
22 performing pharmacy benefits management services and any
23 prescription drug manufacturer or labeler, including, without
24

1 limitation, formulary management and drug-substitution programs,
2 educational support, claims processing, and data sales fees.

3 E. Any provision of a contract between the state and a pharmacy
4 consultant that waives or limits the obligations as set forth in
5 this section is against public policy, void, and unenforceable.

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

7 Passed the House of Representatives the 10th day of March, 2020.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ____ day of _____, 2020.

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Presiding Officer of the Senate

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