

# An Act

ENROLLED 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, Bell,  
Strom, Fugate, Frix,  
Newton, West (Tammy),  
Dills, Taylor, Perryman,  
Munson, Boatman, Sterling,  
Cornwell, Sneed, Lawson,  
Sims, Randleman, Caldwell  
(Trey), Manger, Grego,  
Dollens, West (Kevin),  
McBride, May, Ford, Gann,  
Humphrey, Burns, Harden  
(David), O'Donnell, Johns,  
Kiger, Hilbert, Moore,  
Brewer, Ortega and  
Provenzano 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,  
Ikley-Freeman, Thompson,  
Boren and Quinn of the  
Senate

An Act relating to insurance; creating the Patient's Right to Pharmacy Choice Act; declaring purpose; defining terms; providing compliance standards for retail pharmacy networks; providing for review of retail pharmacy network access; prohibiting certain actions; providing exceptions; providing for monitoring of certain actions; prohibiting restrictions; directing a health insurer's pharmacy and therapeutics committee to establish a formulary; prohibiting conflicts of interest; providing conditions for persons to serve on pharmacy and therapeutics committee; authorizing investigations and examinations; directing the Insurance Commissioner to establish a Patient's Right to Pharmacy Choice Advisory Committee; providing duties; providing for appointment of members; providing for hearing process; providing for confidentiality; providing exception; providing for severability; providing for codification; and providing an effective date.

SUBJECT: Patient's Right to Pharmacy Choice Act

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

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

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

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.

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

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

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

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

3. "Pharmacy benefits manager" or "PBM" means a person that performs pharmacy benefits management and any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed-care company, nonprofit hospital, medical service organization, insurance company, third-party payor or a health program administered by a department of this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Pharmacy benefits managers shall not in any manner on any material, including but not limited to mail and ID cards, include

the name of any pharmacy, hospital or other providers unless it specifically lists all pharmacies, hospitals and providers participating in the preferred and nonpreferred pharmacy and health networks.

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

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

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

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

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

a. the submission of a claim,

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

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

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

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

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

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

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

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

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

1. A PBM contract shall:

- a. not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, and
- b. ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict, directly or indirectly, a pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, a covered individual of any differential between the individual's out-of-pocket cost under the plan or coverage with respect to acquisition of the drug and the amount an individual

would pay for acquisition of the drug without using any health plan or health insurance coverage.

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

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

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

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

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

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

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

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

prescription drugs from an individual's choice of in-network pharmacy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. If the Insurance Commissioner determines, based on an investigation of complaints, that a PBM has engaged in violations of this act with such frequency as to indicate a general business

practice and that such PBM should be subjected to closer supervision with respect to such practices, the Insurance Commissioner may require the PBM to file a report at such periodic intervals as the Insurance Commissioner deems necessary.

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

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

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

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

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

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

Passed the House of Representatives the 8th day of May, 2019.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 16th day of May, 2019.

\_\_\_\_\_  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_