

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2632

By: Echols, **McEntire** and
Roberts (Dustin)

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8 COMMITTEE SUBSTITUTE

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; providing for review of
13 retail pharmacy network access; prohibiting certain
14 actions; prohibiting certain restrictions; requiring
15 health insurer to monitor compliance; requiring
16 specific uses for certain compensation; requiring
17 health insurer file annual report; directing a health
18 insurer's pharmacy and therapeutics committee to
19 establish a formulary; prohibiting conflicts of
20 interest; providing conditions for persons to serve
21 on pharmacy and therapeutics committee; prohibiting
22 compensation; providing for publication of drug
23 formulary; requiring regular updates; authorizing
24 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.

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

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

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

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

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

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

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

17 1. "Benefit plan" means any health benefit plan offered by a
18 health insurance carrier, health maintenance organization, managed
19 care entity, or any other entity that provides prescription drug
20 benefits to covered individuals, including workers' compensation
21 programs, state-administered health benefit plans and self-funded
22 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 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 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 5. 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 a pharmacy or pharmacist in the state an amount
18 less than the amount that the PBM reimburses a pharmacy owned by or
19 under common ownership with a PBM for providing the same covered
20 services. The reimbursement amount shall be calculated on a per-
21 unit basis using the same generic product identifier or generic code
22 number submitted by the PBM-owned or PBM-affiliated pharmacy;

23 4. Deny a pharmacy the opportunity to participate in any
24 pharmacy network at standard or preferred participation status if

1 the pharmacy is willing to accept the terms and conditions that the
2 PBM has established for other pharmacies as a condition of standard
3 network participation or preferred network participation status;

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

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

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

- 14 a. the original claim was submitted fraudulently, or
- 15 b. the pharmacy service provided related to the subject
16 claim violated the Oklahoma Pharmacy Act; or

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

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

23 1. A pharmacy benefits manager's contract with a pharmacist or
24 pharmacy shall not contain a provision prohibiting disclosure to

1 patients of billed or allowed amounts, reimbursement rates or out-
2 of-pocket costs.

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

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

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

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

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1 D. A covered person shall be notified at the point of sale when
2 the cash price for the purchase of a prescription drug is less than
3 the covered person's copayment or coinsurance price for the purchase
4 of the same prescription drug.

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

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

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

18 A. All compensation remitted by a pharmaceutical manufacturer,
19 developer or labeler, directly or indirectly related to a health
20 benefit plan or pharmacy benefit plan, shall be remitted to, and
21 retained by, that health benefit plan or pharmacy benefit plan for
22 the purposes described in subsection C of this section.

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

4 1. Lower health benefit plan or pharmacy benefit plan premiums
5 for covered persons;

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

7 or

8 3. Expand pharmacy benefit plan coverage.

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

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

14 1. Lowered health benefit plan or pharmacy benefit plan
15 premiums for covered persons;

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

18 3. Expanded pharmacy benefit plan coverage.

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

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

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

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

8 1. A person may not serve on a P&T committee if the person is:

9 a. currently employed or was employed within the
10 preceding year by a pharmaceutical manufacturer,
11 developer, labeler, wholesaler or distributor, or

12 b. currently receiving compensation, or received
13 compensation within the preceding year, from a
14 pharmaceutical manufacturer, developer, labeler,
15 wholesaler or distributor.

16 2. A health insurer shall prohibit the P&T committee, and any
17 member of the P&T committee, from receiving any compensation or
18 funding from a pharmaceutical manufacturer, developer, labeler,
19 wholesaler or distributor.

20 C. A health insurer shall display its formulary on its website
21 to be publicly accessible.

22 1. The formulary shall be electronically searchable by drug
23 name and any other means required by the Insurance Commissioner, as
24 established by rule.

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

- 2 a. an indication of whether each drug on the formulary is
3 preferred under the plan,
- 4 b. an indication of whether each drug on the formulary
5 requires prior authorization or has step therapy or
6 quantity limit restrictions,
- 7 c. the specific tier the drug falls under, if the health
8 insurer's plan uses a tiered formulary,
- 9 d. the amount of the drug copayment, if applicable,
- 10 e. the amount of the drug coinsurance, if applicable,
- 11 f. whether the drug is subject to a deductible, and if
12 so, the amount of the deductible,
- 13 g. whether the drug is included on the health insurer's
14 maximum allowable cost (MAC) list and, if so, the
15 price of the drug as established by the health
16 insurer's MAC list, and
- 17 h. for drugs not included on the health insurer's MAC
18 list, the average wholesale price (AWP).

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

21 SECTION 9. 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 10. 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 11. 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 12. This act shall become effective November 1, 2019.

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11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
12 03/04/2019 - DO PASS, As Amended and Coauthored.

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