

1 **SENATE FLOOR VERSION**

2 April 10, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2632

6 By: Echols, McEntire, Roberts
7 (Dustin), Sanders,
8 Patzkowsky, West (Josh),
9 Townley, Pae, Boles,
10 Hasenbeck, Davis, Roberts
11 (Sean), Phillips, Talley,
12 Stark, Roe, McDugle,
13 Vancuren, Virgin, Bell,
14 Strom, Fugate, Frix, Newton
15 and West (Tammy) of the
16 House

17 and

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

25 [insurance - Patient's Right to Pharmacy Choice Act
26 - codification - effective date]

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

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

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

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

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

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

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

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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 benefit plan shall:

5 a. not restrict, directly or indirectly, any pharmacy
6 that dispenses a prescription drug to an enrollee in
7 the plan or coverage from informing, or penalize such
8 pharmacy for informing, an enrollee of any
9 differential between the enrollee's out-of-pocket cost
10 under the plan or coverage with respect to acquisition
11 of the drug and the amount an individual would pay for
12 acquisition of the drug without using any health plan
13 or health insurance coverage, and

14 b. ensure that any entity that provides pharmacy benefits
15 management services under a contract with any such
16 health plan or health insurance coverage does not,
17 with respect to such plan or coverage, restrict,
18 directly or indirectly, a pharmacy that dispenses a
19 prescription drug from informing, or penalize such
20 pharmacy for informing, an enrollee of any
21 differential between the enrollee's out-of-pocket cost
22 under the plan or coverage with respect to acquisition
23 of the drug and the amount an individual would pay for
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1 acquisition of the drug without using any health plan
2 or health insurance coverage.

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 3. A pharmacy benefits manager shall establish and maintain an
11 electronic claim inquiry processing system using the National
12 Council for Prescription Drug Programs current standards to
13 communicate eligibility, benefit and claim payment information to
14 pharmacies submitting claim inquiries.

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

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

22 B. Whenever a health insurer contracts with another person to
23 perform activities required under this act, the health insurer shall
24 be responsible for monitoring the activities of that person with

1 whom the health insurer contracts and for ensuring that the
2 requirements of this act are met.

3 C. A health insurer and its PBM have a fiduciary duty to all
4 covered persons with respect to the provision of prescription drug
5 benefits.

6 D. A covered person may be notified at the point of sale when
7 the cash price for the purchase of a prescription drug is less than
8 the covered person's copayment or coinsurance price for the purchase
9 of the same prescription drug.

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

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

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

23 A. All compensation remitted by a pharmaceutical manufacturer,
24 developer or labeler, directly or indirectly related to a health

1 benefit plan or pharmacy benefit plan, shall be remitted to, and
2 retained by, that health benefit plan or pharmacy benefit plan for
3 the purposes described in subsection C of this section.

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

7 1. Lower health benefit plan or pharmacy benefit plan premiums
8 for covered persons;

9 2. Lower copayment and coinsurance amounts for covered persons;
10 or

11 3. Expand pharmacy benefit plan coverage.

12 C. A health insurer shall file with the Insurance Commissioner,
13 on or before March 1 each year, an annual report, in a manner and
14 form established by rule promulgated by the Commissioner,
15 demonstrating how the amount and nature of compensation received
16 from pharmaceutical manufacturers, developers or labelers has:

17 1. Lowered health benefit plan or pharmacy benefit plan
18 premiums for covered persons;

19 2. Lowered copayment and coinsurance amounts for covered
20 persons; or

21 3. Expanded pharmacy benefit plan coverage.

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

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

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

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

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

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

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.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
11 April 10, 2019 - DO PASS AS AMENDED
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