

1 **SENATE FLOOR VERSION**

2 February 18, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 841

5 By: McCortney

6 **[ insurance - Prescription Access and Affordability**  
7 **Act - codification - effective date ]**

8  
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 6170 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. This act shall be known and may be cited as the  
14 "Prescription Access and Affordability Act".

15 B. The purpose of the Prescription Access and Affordability Act  
16 is to establish minimum and uniform access standards and  
17 prohibitions on restriction of the right of a patient to choose a  
18 pharmacy provider.

19 SECTION 2. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 6171 of Title 36, unless there  
21 is created a duplication in numbering, reads as follows:

22 For purposes of this act:

23 1. "Benefit plan" means any health benefit plan offered by a  
24 health insurance carrier, health maintenance organization, managed

1 care entity, or any other entity that provides prescription drug  
2 benefits to covered individuals, including workers' compensation  
3 programs, state-administered health benefit plans and self-funded  
4 benefit programs;

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

8 3. "Pharmacy benefits manager" means a person, business or  
9 other entity that performs pharmacy benefits management. The term  
10 includes a person or entity acting for a PBM in a contractual or  
11 employment relationship in the performance of pharmacy benefits  
12 management for a managed-care company, nonprofit hospital, medical  
13 service organization, insurance company, third-party payor or a  
14 health program administered by a department of this state; and

15 4. "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 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 6172 of Title 36, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. Retail pharmacy networks shall comply with the following  
23 access standards:

24

1 1. At least ninety percent (90%) of covered individuals in the  
2 benefit plan's Suburban Service Area live within seven (7) miles of  
3 a retail pharmacy designated as preferred participating pharmacy in  
4 the benefit plan's retail pharmacy network;

5 2. At least seventy percent (70%) of covered individuals in the  
6 benefit plan's Rural Service Area live within fifteen (15) miles of  
7 a retail pharmacy participating in the benefit plan's retail  
8 pharmacy network;

9 3. At least seventy percent (70%) of covered individuals in the  
10 benefit plan's Rural Service Area live within eighteen (18) miles of  
11 a retail pharmacy designated as a preferred participating pharmacy  
12 in the benefit plan's retail pharmacy network; and

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

15 B. The Oklahoma Insurance Department shall promulgate any  
16 rules necessary to administer and enforce the provisions of this  
17 section.

18 SECTION 4. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 6173 of Title 36, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. The Oklahoma Insurance Department shall review and approve  
22 retail pharmacy network access for all benefit plans to ensure  
23 compliance with Section 3 of this act.

1 B. A pharmacy benefits manager or representative of a pharmacy  
2 benefits manager shall not:

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

6 2. Charge a pharmacist or pharmacy a fee related to the  
7 resolution of a claim, including but not limited to a fee for:

8 a. the submission of a claim,

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

11 c. the development or management of claims processing  
12 services, or

13 d. services or claims payment services related to  
14 participation in a retail pharmacy network;

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

22 4. Deny a pharmacy the opportunity to participate in any  
23 pharmacy network at standard or preferred participation status if  
24 the pharmacy is willing to accept the terms and conditions that the

1 pharmacy benefits manager has established for other pharmacies as a  
2 condition of standard network participation or preferred network  
3 participation status;

4 5. Impose on a covered individual a monetary advantage or  
5 penalty, including a higher cost-sharing or additional fee which  
6 would affect choices of network pharmacy by a covered person;

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

- 10 a. the original claim was submitted fraudulently, or  
11 b. the pharmacy service provided related to the subject  
12 claim violated the Oklahoma Pharmacy Act; or

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

17 SECTION 5. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 6174 of Title 36, unless there  
19 is created a duplication in numbering, reads as follows:

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

23 1. A pharmacy benefits manager 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 this act.

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 6175 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. All compensation remitted by a pharmaceutical manufacturer,  
14 developer or labeler, directly or indirectly related to a health  
15 benefit plan or pharmacy benefit plan shall be remitted to, and  
16 retained by, that health benefit plan or pharmacy benefit plan for  
17 the purposes described in Subsection B of this section.

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

21 1. Lower health benefits plan or pharmacy benefit plan premiums  
22 for covered persons;

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

24 or

1           3. Expand pharmacy benefit plan coverage.

2           C. A health insurer shall file with the commissioner, on or  
3 before March 1 each year, an annual report, in a manner and form  
4 established by the Insurance Department, demonstrating the amount  
5 and nature of how compensation received from pharmaceutical  
6 manufacturers, developers or labelers has:

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

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

11           3. Expanded pharmacy benefit plan coverage.

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

14           SECTION 7.       NEW LAW       A new section of law to be codified  
15 in the Oklahoma Statutes as Section 6176 of Title 36, unless there  
16 is created a duplication in numbering, reads as follows:

17           A. A health insurer's Pharmacy and Therapeutics committee shall  
18 establish a formulary.

19           B. A health insurer shall prohibit conflicts of interest for  
20 members of the Pharmacy and Therapeutics committee.

21           1. A person may not serve on a Pharmacy and Therapeutics  
22 committee if the person is:

- 1 a. currently employed or was employed within the  
2 preceding year, by a pharmaceutical manufacturer,  
3 developer, labeler, wholesaler, or distributor, or  
4 b. currently receives compensation, or received  
5 compensation within the preceding year, from a  
6 pharmaceutical manufacturer, developer, labeler,  
7 wholesaler, or distributor.

8 2. A health insurer shall prohibit the Pharmacy and  
9 Therapeutics committee, and any member of the Pharmacy and  
10 Therapeutics committee, from receiving any compensation or funding  
11 from a pharmaceutical manufacturer, developer, labeler, wholesaler,  
12 or distributor.

13 C. A health insurer shall display its formulary on its website  
14 to be publicly accessible.

15 1. The formulary shall be electronically searchable by drug  
16 name and any other means required by the commissioner, as  
17 established by rule.

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

- 19 a. an indication of whether each drug on the formulary is  
20 preferred under the plan,  
21 b. an indication of whether each drug on the formulary  
22 requires prior authorization or has step therapy or  
23 quantity limit restrictions,  
24



- 1 c. the specific tier the drug falls under, if the health  
2 insurer's plan uses a tiered formulary,  
3 d. the amount of the drug copayment, if applicable,  
4 e. the amount of the drug coinsurance, if applicable,  
5 f. whether the drug is subject to a deductible, and if  
6 so, the amount of the deductible,  
7 g. whether the drug is included on the maximum allowable  
8 cost list of the health insurer, and if so, the price  
9 of the drug as established by the maximum allowable  
10 cost list, and  
11 h. for drugs not included on the maximum allowable cost  
12 list of the health insurer, the average wholesale  
13 price as established by the national pricing source.

14 D. The health insurer shall update the information required in  
15 subparagraph g of paragraph 2 of subsection C of this section no  
16 less than every seven (7) days.

17 SECTION 8. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 6177 of Title 36, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. The Insurance Commissioner may hire additional employees and  
21 examiners as needed for the enforcement of provisions with this act  
22 and with the provisions of Sections 357 through 360 of Title 59 of  
23 the Oklahoma Statutes.  
24

1 B. The Commissioner may retain other governmental or non-  
2 governmental entities or individuals as needed for the enforcement  
3 of provisions of this act and with provisions of Sections 357  
4 through 360 of Title 59 of the Oklahoma Statutes.

5 SECTION 9. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 6179 of Title 36, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. The Commissioner shall provide for the receiving and  
9 processing of individual complaints alleging violations of the  
10 provisions of this act or with provisions of Sections 357 through  
11 360 of Title 59 of the Oklahoma Statutes.

12 B. The Commissioner shall establish a Prescription Access and  
13 Affordability Advisory Committee to review complaints, hold hearings  
14 and subpoena witnesses and records, initiate prosecution, reprimand,  
15 place on probation, suspend, revoke and levy fines not to exceed Ten  
16 Thousand Dollars (\$10,000.00) for each count for which any pharmacy  
17 benefits manager has been convicted in hearings by the committee.  
18 The committee may impose as part of any disciplinary action the  
19 payment of costs expended by the Department of Insurance for any  
20 legal fees and costs, including but not limited to staff time,  
21 salary and travel expense, witness fees and attorney fees. The  
22 committee may take such actions singly or in combination, as the  
23 nature of the violation requires.

24

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

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

5 2. Two consumer members not employed or related to insurance,  
6 pharmacy or pharmacy benefit management nominated by the Governor's  
7 office;

8 3. Two persons representing the pharmacy benefits manager or  
9 Insurance Industry nominated by the Insurance Commissioner; and

10 4. One person representing the Attorney General's Office  
11 nominated by the Attorney General.

12 D. Committee members shall be appointed for a term of five (5)  
13 years. The terms of the members of the Committee shall expire on  
14 June 30 of the year designated for the expiration of the term for  
15 which appointed but the member shall serve until a qualified  
16 successor has been duly appointed. No person shall be appointed to  
17 serve more than two consecutive terms.

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

21 F. The Commissioner shall issue and serve upon the pharmacy  
22 benefits manager a statement of the charges and a notice of hearing  
23 in accordance with the Administrative Procedures Act.

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1 G. At the time and place fixed for a hearing, the pharmacy  
2 benefits manager shall have an opportunity to be heard and to show  
3 cause why the Commissioner or his or her duly appointed hearing  
4 examiner should not revoke or suspend the license of the pharmacy  
5 benefits manager and levy administrative fines for each count, or  
6 both. Upon good cause shown, the Commissioner shall permit any  
7 person to intervene, appear and be heard at the hearing by counsel  
8 or in person.

9 H. All hearings will be public and held in accordance with, and  
10 governed by, Article II of the Administrative Procedures Act,  
11 Section 308A et seq. of Title 75 of the Oklahoma Statutes.

12 I. The Commissioner, upon written request reasonably made by  
13 the licensed pharmacy benefits manager affected by the hearing, and  
14 at such expense of the pharmacy benefits manager, shall cause a full  
15 stenographic record of the proceedings to be made by a competent  
16 court reporter.

17 J. If the Insurance Commissioner determines, based on an  
18 investigation of complaints, that a pharmacy benefits manager has  
19 engaged in violations of this act with such frequency as to indicate  
20 a general business practice and that the pharmacy benefits manager  
21 should be subjected to closer supervision with respect to such  
22 practices, the Commissioner may require the pharmacy benefits  
23 manager to file a report at such periodic intervals as the  
24 Commissioner deems necessary.

1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6180 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Documents, materials, reports, complaints or other  
5 information in the possession or control of the Insurance Department  
6 that are obtained by or disclosed to the Commissioner or any other  
7 person in the course of an evaluation, examination, investigation or  
8 review made pursuant to the provisions of this act shall be  
9 confidential by law and privileged, shall not be subject to open  
10 records request, shall not be subject to subpoena and shall not be  
11 subject to discovery or admissible in evidence in any private civil  
12 action if obtained from the Commissioner or any employees or  
13 representatives of the Commissioner.

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

18 SECTION 11. This act shall become effective November 1, 2019.

19 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
20 February 18, 2019 - DO PASS AS AMENDED and referred to second  
21 committee, to general order February 20, 2019.  
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