

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3514

By: McEntire

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to professions and occupations;
9 amending 59 O.S. 2021, Sections 357, 358 and 360,
10 which relate to pharmacy benefit plans; modifying
11 definitions; adding definition; modifying powers of
12 Oklahoma Insurance Department; modifying denial of
13 certain appeal; and providing an effective date.

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

15 SECTION 1. AMENDATORY 59 O.S. 2021, Section 357,

16 is amended to read as follows:

17 Section 357. As used in this act:

18 1. "Covered entity" means:

19 a. a nonprofit hospital or medical service organization,
20 insurer, health coverage plan or health maintenance
21 organization;

22 b. a health program administered by the state in the
23 capacity of provider of health coverage; or
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1 c. an employer, labor union, or other entity organized in
2 the state that provides health coverage to covered
3 individuals who are employed or reside in the state.

4 This term does not include a health plan that provides coverage only
5 for accidental injury, specified disease, hospital indemnity,
6 disability income, or other limited benefit health insurance
7 policies and contracts that do not include prescription drug
8 coverage;

9 2. "Covered individual" means a member, participant, enrollee,
10 contract holder or policy holder or beneficiary of a covered entity
11 who is provided health coverage by the covered entity. A covered
12 individual includes any dependent or other person provided health
13 coverage through a policy, contract or plan for a covered
14 individual;

15 3. "Department" means the Oklahoma Insurance Department;

16 4. "Maximum allowable cost" or "MAC" means the list of drug
17 products delineating the maximum per-unit reimbursement for
18 multiple-source prescription drugs, medical product or device;

19 5. "Multisource drug product reimbursement" (reimbursement)
20 means the total amount paid to a pharmacy inclusive of any reduction
21 in payment to the pharmacy, excluding prescription dispense fees;

22 6. "Pharmacy benefits management" means a service provided to
23 covered entities to facilitate the provision of prescription drug
24 benefits to covered individuals within the state, including

1 negotiating pricing and other terms with drug manufacturers and
2 providers. Pharmacy benefits management may include any or all of
3 the following services:

- 4 a. claims processing, retail network management and
5 payment of claims to pharmacies for prescription drugs
6 dispensed to covered individuals,
- 7 b. clinical formulary development and management
8 services,
- 9 c. rebate contracting and administration,
- 10 d. certain patient compliance, therapeutic intervention
11 and generic substitution programs, or
- 12 e. disease management programs;

13 7. "Pharmacy benefits manager" or "PBM" means a person,
14 business or other entity that performs pharmacy benefits management.
15 The term includes a person or entity acting for a PBM in a
16 contractual or employment relationship in the performance of
17 pharmacy benefits management for a managed care company, nonprofit
18 hospital, medical service organization, insurance company, third-
19 party payor, or a health program administered by an agency of this
20 state;

21 8. "Plan sponsor" means the employers, insurance companies,
22 unions and health maintenance organizations or any other entity
23 responsible for establishing, maintaining, or administering a health
24 benefit plan on behalf of covered individuals; ~~and~~

1 9. "Provider" means a pharmacy ~~licensed by the State Board of~~
2 ~~Pharmacy~~, or an agent or representative of a pharmacy, including,
3 but not limited to, the pharmacy's contracting agent, which
4 dispenses prescription drugs or devices to covered individuals; and

5 10. "Retail pharmacy" or "pharmacy" means a pharmacy, as
6 defined in Section 353.1 of this title.

7 SECTION 2. AMENDATORY 59 O.S. 2021, Section 358, is
8 amended to read as follows:

9 Section 358. A. In order to provide pharmacy benefits
10 management or any of the services included under the definition of
11 pharmacy benefits management in this state, a pharmacy benefits
12 manager or any entity acting as one in a contractual or employment
13 relationship for a covered entity shall first obtain a license from
14 the Oklahoma Insurance Department, and the Department may charge a
15 fee for such licensure.

16 B. The Department shall establish, by regulation, licensure
17 procedures, required disclosures for pharmacy benefits managers
18 (PBMs) and other rules as may be necessary for carrying out and
19 enforcing the provisions of this act. The licensure procedures
20 shall, at a minimum, include the completion of an application form
21 that shall include the name and address of an agent for service of
22 process, the payment of a requisite fee, and evidence of the
23 procurement of a surety bond.

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1 C. The Department may subpoena witnesses and information. Its
2 compliance officers may take and copy records for investigative use
3 and prosecutions. Nothing in this subsection shall limit the Office
4 of the Attorney General from using its investigative demand
5 authority to investigate and prosecute violations of the law.

6 D. The Department may issue a cease and desist order, place on
7 probation, suspend, revoke or refuse to issue or renew a license for
8 noncompliance with any of the provisions hereby established or with
9 the rules promulgated by the Department; for conduct likely to
10 mislead, deceive or defraud the public or the Department; for unfair
11 or deceptive business practices or for nonpayment of a renewal fee
12 or fine. The Department may also issue or order a reprimand,
13 require restitution, and levy administrative fines not to exceed Ten
14 Thousand Dollars (\$10,000.00) for each count of which a PBM has been
15 convicted in a Department hearing any pharmacy benefits manager has
16 violated any of the provisions hereby established or with the rules
17 promulgated by the Department.

18 SECTION 3. AMENDATORY 59 O.S. 2021, Section 360, is
19 amended to read as follows:

20 Section 360. A. The pharmacy benefits manager shall, with
21 respect to contracts between a pharmacy benefits manager and a
22 provider, including a pharmacy service administrative organization:

23 1. Include in such contracts the specific sources utilized to
24 determine the maximum allowable cost (MAC) pricing of the pharmacy,

1 update MAC pricing at least every seven (7) calendar days, and
2 establish a process for providers to readily access the MAC list
3 specific to that provider;

4 2. In order to place a drug on the MAC list, ensure that the
5 drug is listed as "A" or "B" rated in the most recent version of the
6 FDA's Approved Drug Products with Therapeutic Equivalence
7 Evaluations, also known as the Orange Book, and the drug is
8 generally available for purchase by pharmacies in the state from
9 national or regional wholesalers and is not obsolete;

10 3. Ensure dispensing fees are not included in the calculation
11 of MAC price reimbursement to pharmacy providers;

12 4. Provide a reasonable administration appeals procedure to
13 allow a provider, a provider's representative and a pharmacy service
14 administrative organization to contest reimbursement amounts within
15 fourteen (14) business days of the final adjusted payment date. The
16 pharmacy benefits manager shall not prevent the pharmacy or the
17 pharmacy service administrative organization from filing
18 reimbursement appeals in an electronic batch format. The pharmacy
19 benefits manager must respond to a provider, a provider's
20 representative and a pharmacy service administrative organization
21 who have contested a reimbursement amount through this procedure
22 within ten (10) business days. The pharmacy benefits manager must
23 respond in an electronic batch format to reimbursement appeals filed
24 in an electronic batch format. The pharmacy benefits manager shall

1 not require a pharmacy or pharmacy services administrative
2 organization to log into a system to upload individual claim appeals
3 or to download individual appeal responses. If a price update is
4 warranted, the pharmacy benefits manager shall make the change in
5 the reimbursement amount, permit the dispensing pharmacy to reverse
6 and rebill the claim in question, and make the reimbursement amount
7 change retroactive and effective for all contracted providers; and

8 5. If a below-cost reimbursement appeal is denied, the PBM
9 shall provide the reason for the denial, including the National Drug
10 Code number ~~from~~ and the specific national or regional wholesalers
11 ~~where~~ from which the drug ~~is~~ was available for purchase by the
12 dispensing pharmacy at a price below the PBM's reimbursement price
13 as of the date the adjudication of the claim was made. If the
14 pharmacy benefits manager ~~cannot~~ fails to provide a specific
15 national or regional wholesaler ~~where~~ from which the drug ~~can be~~
16 ~~purchased~~ was available for purchase by the dispensing pharmacy at a
17 price below the pharmacy benefits manager's reimbursement price, the
18 pharmacy benefits manager shall immediately adjust the reimbursement
19 amount, permit the dispensing pharmacy to reverse and rebill the
20 claim in question, and make the reimbursement amount adjustment
21 retroactive and effective for all contracted providers.

22 B. The pharmacy benefits manager shall not place a drug on a
23 MAC list, unless there are at least two therapeutically equivalent,
24 multiple-source drugs, generally available for purchase by

1 dispensing retail pharmacies from national or regional wholesalers
2 which are listed as accredited drug distributors on the National
3 Association of Boards of Pharmacy (NABP) website or other website as
4 recognized and approved by the State Board of Pharmacy.

5 C. The pharmacy benefits manager shall not require
6 accreditation or licensing of providers, or any entity licensed or
7 regulated by the State Board of Pharmacy, other than by the State
8 Board of Pharmacy or federal government entity as a condition for
9 participation as a network provider.

10 D. A pharmacy or pharmacist may decline to provide the
11 pharmacist clinical or dispensing services to a patient or pharmacy
12 benefits manager if the pharmacy or pharmacist is to be paid less
13 than the pharmacy's cost for providing the pharmacist clinical or
14 dispensing services.

15 E. The pharmacy benefits manager shall provide a dedicated
16 telephone number, email address and names of the personnel with
17 decision-making authority regarding MAC appeals and pricing.

18 SECTION 4. This act shall become effective November 1, 2022.

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