

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3514

By: McEntire of the House

and

**Jett** of the Senate

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10                                   COMMITTEE SUBSTITUTE

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

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

18                   SECTION 1.            AMENDATORY            59 O.S. 2021, Section 357,  
19 is amended to read as follows:

20                   Section 357. As used in this act:

21                   1. "Covered entity" means:

- 22                   a.    a nonprofit hospital or medical service organization,  
23                                   insurer, health coverage plan or health maintenance  
24                                   organization;

1           b.    a health program administered by the state in the  
2                    capacity of provider of health coverage; or

3           c.    an employer, labor union, or other entity organized in  
4                    the state that provides health coverage to covered  
5                    individuals who are employed or reside in the state.

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

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

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

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

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

1       6. "Pharmacy benefits management" means a service provided to  
2 covered entities to facilitate the provision of prescription drug  
3 benefits to covered individuals within the state, including  
4 negotiating pricing and other terms with drug manufacturers and  
5 providers. Pharmacy benefits management may include any or all of  
6 the following services:

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

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

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

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

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

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

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

20 B. The Department shall establish, by regulation, licensure  
21 procedures, required disclosures for pharmacy benefits managers  
22 (PBMs) and other rules as may be necessary for carrying out and  
23 enforcing the provisions of this act. The licensure procedures  
24 shall, at a minimum, include the completion of an application form

1 that shall include the name and address of an agent for service of  
2 process, the payment of a requisite fee, and evidence of the  
3 procurement of a surety bond.

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

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

21 SECTION 3. AMENDATORY 59 O.S. 2021, Section 360, is  
22 amended to read as follows:  
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1 Section 360. A. The pharmacy benefits manager shall, with  
2 respect to contracts between a pharmacy benefits manager and a  
3 provider, including a pharmacy service administrative organization:

4 1. Include in such contracts the specific sources utilized to  
5 determine the maximum allowable cost (MAC) pricing of the pharmacy,  
6 update MAC pricing at least every seven (7) calendar days, and  
7 establish a process for providers to readily access the MAC list  
8 specific to that provider;

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

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

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

1 representative and a pharmacy service administrative organization  
2 who have contested a reimbursement amount through this procedure  
3 within ten (10) business days. The pharmacy benefits manager must  
4 respond in an electronic batch format to reimbursement appeals filed  
5 in an electronic batch format. The pharmacy benefits manager shall  
6 not require a pharmacy or pharmacy services administrative  
7 organization to log into a system to upload individual claim appeals  
8 or to download individual appeal responses. If a price update is  
9 warranted, the pharmacy benefits manager shall make the change in  
10 the reimbursement amount, permit the dispensing pharmacy to reverse  
11 and rebill the claim in question, and make the reimbursement amount  
12 change retroactive and effective for all contracted providers; and

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

1 claim in question, and make the reimbursement amount adjustment  
2 retroactive and effective for all contracted providers.

3 B. The pharmacy benefits manager shall not place a drug on a  
4 MAC list, unless there are at least two therapeutically equivalent,  
5 multiple-source drugs, generally available for purchase by  
6 dispensing retail pharmacies from national or regional wholesalers  
7 which are listed as accredited drug distributors on the National  
8 Association of Boards of Pharmacy (NABP) website or other website as  
9 recognized and approved by the State Board of Pharmacy.

10 C. The pharmacy benefits manager shall not require  
11 accreditation or licensing of providers, or any entity licensed or  
12 regulated by the State Board of Pharmacy, other than by the State  
13 Board of Pharmacy or federal government entity as a condition for  
14 participation as a network provider.

15 D. A pharmacy or pharmacist may decline to provide the  
16 pharmacist clinical or dispensing services to a patient or pharmacy  
17 benefits manager if the pharmacy or pharmacist is to be paid less  
18 than the pharmacy's cost for providing the pharmacist clinical or  
19 dispensing services.

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

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

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3 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated  
4 03/02/2022 - DO PASS, As Amended and Coauthored.  
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