

1 **SENATE FLOOR VERSION**

2 February 21, 2022

3 SENATE BILL NO. 1860

By: McCortney of the Senate

4 and

5 McEntire of the House

6  
7  
8 An Act relating to the Patient's Right to Pharmacy  
9 Choice Act; amending 36 O.S. 2021, Sections 6960,  
6961, 6962, and 6963, which relate to definitions,  
10 retail pharmacy network access standards, compliance  
review, and health insurer monitoring; adding  
11 definitions of pharmacy benefits management and  
retail pharmacy; modifying definitions; specifying  
12 access standards; modifying prohibition on pharmacy  
benefits managers; modifying certain contract  
13 restrictions; updating statutory reference; modifying  
certain prohibitions on health insurers and pharmacy  
14 benefits managers; conforming language; repealing 36  
O.S. 2021, Section 6964, which relates to health  
15 insurer formularies; updating statutory language; and  
providing an effective date.

16  
17  
18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, is  
20 amended to read as follows:

21 Section 6960. For purposes of the Patient's Right to Pharmacy  
22 Choice Act:

1 1. "Health insurer" means any corporation, association, benefit  
2 society, exchange, partnership or individual licensed by the  
3 Oklahoma Insurance Code;

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

7 3. "Pharmacy benefits management" means any or all of the  
8 following activities:

9 a. provider contract negotiation and/or provider network  
10 administration including decisions related to provider  
11 network participation status,

12 b. drug rebate contract negotiation or drug rebate  
13 administration, and

14 c. claims processing which may include claim billing and  
15 payment services;

16 4. "Pharmacy benefits manager" or "PBM" means a person or  
17 entity that performs pharmacy benefits management activities and any  
18 other person or entity acting for ~~such a person or entity performing~~  
19 pharmacy benefits management activities. ~~under a contractual or~~  
20 ~~employment relationship in the performance of pharmacy benefits~~  
21 ~~management for a managed-care company, nonprofit hospital, medical~~  
22 ~~service organization, insurance company, third party payer or a~~  
23 ~~health program administered by a department of this state~~  
24 Notwithstanding any other provision within the Patient's Right to

1 Pharmacy Choice Act, a self-funded plan administered by an employee  
2 or organized labor union who negotiates and executes all provider  
3 contracts directly with a pharmacy services administrative  
4 organization, and a pharmacy provider who does not use a pharmacy  
5 services administrative organization shall not be deemed a pharmacy  
6 benefits manager of its own group health plan and shall not be  
7 restricted in its ability to design and manage its own group health  
8 plan;

9 ~~4. "Pharmacy and therapeutics committee" or "P&T committee"~~  
10 ~~means a committee at a hospital or a health insurance plan that~~  
11 ~~decides which drugs will appear on that entity's drug formulary;~~

12 5. "Retail pharmacy" or "provider" means a pharmacy, as defined  
13 in Section 353.1 of Title 59 of the Oklahoma Statutes licensed by  
14 the Board of Pharmacy or an agent or representative of a pharmacy;

15 ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers  
16 contracted with a PBM in which the pharmacy primarily fills and  
17 sells prescriptions via a retail, storefront location;

18 ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which  
19 the population density is less than one thousand (1,000) individuals  
20 per square mile;

21 ~~7.~~ 8. "Suburban service area" means a five-digit ZIP code in  
22 which the population density is between one thousand (1,000) and  
23 three thousand (3,000) individuals per square mile; and  
24

1       ~~8.~~ 9. "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 2.       AMENDATORY       36 O.S. 2021, Section 6961, is  
5 amended to read as follows:

6       Section 6961. A. Pharmacy benefits managers (PBMs) shall  
7 comply with the following retail pharmacy network access standards:

8       1. At least ninety percent (90%) of covered individuals  
9 residing in ~~an~~ each urban service area live within two (2) miles of  
10 a retail pharmacy participating in the PBM's retail pharmacy  
11 network;

12       2. At least ninety percent (90%) of covered individuals  
13 residing in ~~an~~ each urban service area live within five (5) miles of  
14 a retail pharmacy designated as a preferred participating pharmacy  
15 in the PBM's retail pharmacy network;

16       3. At least ninety percent (90%) of covered individuals  
17 residing in ~~a~~ each suburban service area live within five (5) miles  
18 of a retail pharmacy participating in the PBM's retail pharmacy  
19 network;

20       4. At least ninety percent (90%) of covered individuals  
21 residing in ~~a~~ each suburban service area live within seven (7) miles  
22 of a retail pharmacy designated as a preferred participating  
23 pharmacy in the PBM's retail pharmacy network;

1        5. At least seventy percent (70%) of covered individuals  
2 residing in ~~a~~ each rural service area live within fifteen (15) miles  
3 of a retail pharmacy participating in the PBM's retail pharmacy  
4 network; and

5        6. At least seventy percent (70%) of covered individuals  
6 residing in ~~a~~ each rural service area live within eighteen (18)  
7 miles of a retail pharmacy designated as a preferred participating  
8 pharmacy in the PBM'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 shall not require patients to use  
12 pharmacies that are directly or indirectly owned by ~~the~~ or  
13 affiliated with a pharmacy benefits manager, including all regular  
14 prescriptions, refills or specialty drugs regardless of day supply.

15        D. Pharmacy benefits managers shall not in any manner on any  
16 material, including but not limited to mail and ID cards, include  
17 the name of any pharmacy, hospital or other providers unless it  
18 specifically lists all pharmacies, hospitals and providers  
19 participating in the preferred and nonpreferred pharmacy and health  
20 networks.

21        SECTION 3.        AMENDATORY        36 O.S. 2021, Section 6962, is  
22 amended to read as follows:

23        Section 6962. A. The ~~Oklahoma~~ Insurance Department shall  
24 review and approve retail pharmacy network access for all pharmacy

benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~  
~~act~~ 6961 of this title.

B. A PBM, or an agent of a PBM, shall not:

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

2. Charge a pharmacist or pharmacy a fee related to the  
adjudication of a claim, including without limitation a fee for:

a. the submission of a claim,

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

c. the development or management of claims processing  
services or claims payment services related to  
participation in a retail pharmacy network;

3. Reimburse a pharmacy or pharmacist in the state an amount  
less than the amount that the PBM reimburses a pharmacy owned by or  
under common ownership with a PBM for providing the same covered  
services. The reimbursement amount paid to the pharmacy shall be  
equal to the reimbursement amount calculated on a per-unit basis  
using the same generic product identifier or generic code number  
paid to the PBM-owned or PBM-affiliated pharmacy;

4. Deny a pharmacy the opportunity to participate in any form  
of pharmacy network at preferred participation status, whether in-  
network, preferred or otherwise, if the pharmacy is willing to

1 accept the terms and conditions that the PBM has established for  
2 other pharmacies as a condition ~~of preferred network~~ for  
3 participation status in the network or networks of the pharmacy's  
4 choice;

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

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

- 12 a. the original claim was submitted fraudulently, or  
13 b. to correct errors identified in an audit, so long as  
14 the audit was conducted in compliance with Sections  
15 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;  
16 or

17 7. 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~~  
22 providers for participation in retail pharmacy networks.

23 1. A ~~PBM~~ provider contract shall not prohibit, restrict, or  
24 penalize a pharmacy or pharmacist in any way for disclosing to an

1 individual any health care information that the pharmacy or  
2 pharmacist deems appropriate regarding:

3 a. ~~not restrict, directly or indirectly, any pharmacy~~  
4 ~~that dispenses a prescription drug from informing, or~~  
5 ~~penalize such pharmacy for informing, an individual of~~  
6 ~~any differential between the individual's out-of-~~  
7 ~~pocket cost or coverage with respect to acquisition of~~  
8 ~~the drug and the amount an individual would pay to~~  
9 ~~purchase the drug directly~~ the nature of treatment,  
10 risks or alternatives to the prescription drug being  
11 dispensed, and

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



1                   availability of alternate therapies, consultations, or  
2                   tests,

3           c.    the decision of utilization reviewers or similar  
4           persons to authorize or deny services, and

5           d.    the process that is used to authorize or deny  
6           healthcare services and structures used by the health  
7           insurer.

8           2.   Provider contracts shall not prohibit a pharmacy or  
9           pharmacist from discussing information regarding the total cost of  
10          pharmacist services for a prescription drug or from selling a more  
11          affordable alternative to the covered person if such alternative is  
12          available.

13          ~~A pharmacy benefits manager's contract with a participating~~  
14          ~~pharmacist or pharmacy~~ 3.   Provider contracts shall not prohibit,  
15          restrict or limit disclosure of information to the Insurance  
16          Commissioner, law enforcement or state and federal governmental  
17          officials investigating or examining a complaint or conducting a  
18          review of a pharmacy benefits manager's compliance with the  
19          requirements under the Patient's Right to Pharmacy Choice Act.

20          ~~3.~~ 4.   A pharmacy benefits manager shall establish and maintain  
21          an electronic claim inquiry processing system using the National  
22          Council for Prescription Drug Programs' current standards to  
23          communicate information to pharmacies submitting claim inquiries.

SECTION 4. AMENDATORY 36 O.S. 2021, Section 6963, is amended to read as follows:

Section 6963. A. A health insurer shall be responsible for monitoring all activities carried out by, or on behalf of, the health insurer under the Patient's Right to Pharmacy Choice Act, and for ensuring that all requirements of this act are met.

B. Whenever a health insurer performs pharmacy benefit management on its own behalf or contracts with another person or entity to perform ~~activities required under this act~~ pharmacy benefit management, the health insurer shall be responsible for monitoring the activities and conduct of that person or entity with whom the health insurer contracts and for ensuring that the requirements of this act are met.

C. An individual may be notified at the point of sale when the cash price for the purchase of a prescription drug is less than the individual's copayment or coinsurance price for the purchase of the same prescription drug.

D. A health insurer or pharmacy benefits manager (PBM) shall not restrict an individual's choice of in-network provider for prescription drugs.

E. ~~An individual's~~ A patient's choice of in-network provider may include ~~a retail~~ an in-network pharmacy ~~or a~~, whether that pharmacy is in a preferred or nonpreferred network, a retailer pharmacy, mail-order pharmacy, or any other pharmacy. A health

insurer or PBM shall not restrict ~~such~~ a patient's choice of in-  
network pharmacy providers. ~~Such~~ A health insurer or PBM shall not  
require or incentivize ~~using~~ individuals by:

1. Using any discounts in cost-sharing or a reduction in copay  
or the number of copays to individuals to receive prescription drugs  
~~from an individual's choice of in-network pharmacy~~ from an  
individual's choice of in-network pharmacy; or

2. Differentiating between in-network pharmacies, whether that  
pharmacy is in a preferred or nonpreferred network, a retail  
pharmacy, mail order pharmacy, or any other type of pharmacy.

The provisions of this subsection shall not apply to any plan  
subject to regulation under Medicare Part D, 42 U.S.C. Section  
1395w-101, et seq.

F. A health insurer, pharmacy or PBM shall adhere to all  
Oklahoma laws, statutes and rules when mailing, shipping and/or  
causing to be mailed or shipped prescription drugs into ~~the State of~~  
~~Oklahoma~~ this state.

SECTION 5. REPEALER 36 O.S. 2021, Section 6964, is  
hereby repealed.

SECTION 6. This act shall become effective November 1, 2022.

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
February 21, 2022 - DO PASS