

1 **SENATE FLOOR VERSION**

2 February 22, 2021

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 737

By: McCortney of the Senate

and

McEntire of the House

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8  
9 **[ Patient's Right to Pharmacy Choice Act - power to  
10 investigate - powers of advisory committee - right of  
11 appeal - codification - effective date ]**

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY Section 3, Chapter 426, O.S.L.  
15 2019 (36 O.S. Supp. 2020, Section 6960), is amended to read as  
16 follows:

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

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

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

1        3. "Pharmacy benefits manager" or "PBM" means a person that  
2 performs pharmacy benefits management and any other person acting  
3 for such person under a contractual or employment relationship in  
4 the performance of pharmacy benefits management for a managed-care  
5 company, nonprofit hospital, medical service organization, insurance  
6 company, third-party payor or a health program administered by a  
7 department of this state;

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

11        5. "Provider" means a pharmacy, as defined in Section 353.1 of  
12 Title 59 of the Oklahoma Statutes, licensed by the State Board of  
13 Pharmacy or an agent or representative of a pharmacy including but  
14 not limited to the contracting agent of a pharmacy who dispenses  
15 prescription drugs or devices to covered individuals;

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

19        ~~6.~~ 7. "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        8. "Spread pricing" shall mean the model of prescription drug  
23 pricing in which the pharmacy benefit manager charges a health  
24 benefit plan a contracted price for prescription drugs, and the

1 contracted price for the prescription drugs differs from the amount  
2 the pharmacy benefit manager directly or indirectly pays the  
3 pharmacy or pharmacist for providing pharmacy services;

4 ~~7.~~ 9. "Suburban service area" means a five-digit ZIP code in  
5 which the population density is between one thousand (1,000) and  
6 three thousand (3,000) individuals per square mile; and

7 ~~8.~~ 10. "Urban service area" means a five-digit ZIP code in  
8 which the population density is greater than three thousand (3,000)  
9 individuals per square mile.

10 SECTION 2. AMENDATORY Section 5, Chapter 426, O.S.L.  
11 2019 (36 O.S. Supp. 2020, Section 6962), is amended to read as  
12 follows:

13 Section 6962. A. The Oklahoma Insurance Department shall  
14 review and approve retail pharmacy network access for all pharmacy  
15 benefits managers (PBMs) to ensure compliance with Section ~~4 of this~~  
16 ~~act~~ 6961 of this title.

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

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

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

23 a. the submission of a claim,  
24

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

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

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

13       4.   Deny a pharmacy the opportunity to participate in any  
14   pharmacy network at preferred participation status if the pharmacy  
15   is willing to accept the terms and conditions that the PBM has  
16   established for other pharmacies as a condition of preferred network  
17   participation status;

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

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

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

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

8. Conduct spread pricing, as defined in Section 6960 of this title, in this state.

C. The prohibitions under this section shall apply to contracts between pharmacy benefits managers and pharmacists or pharmacies for participation in retail pharmacy networks.

1. A PBM contract shall:

- a. not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug from informing, or penalize such pharmacy for informing, an individual of any differential between the individual's out-of-pocket cost or coverage with respect to acquisition of the drug and the amount an individual would pay to purchase the drug directly, and
- b. ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not,

1 with respect to such plan or coverage, restrict,  
2 directly or indirectly, a pharmacy that dispenses a  
3 prescription drug from informing, or penalize such  
4 pharmacy for informing, a covered individual of any  
5 differential between the individual's out-of-pocket  
6 cost under the plan or coverage with respect to  
7 acquisition of the drug and the amount an individual  
8 would pay for acquisition of the drug without using  
9 any health plan or health insurance coverage.

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

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

21 SECTION 3. AMENDATORY Section 8, Chapter 426, O.S.L.  
22 2019 (36 O.S. Supp. 2020, Section 6965), is amended to read as  
23 follows:  
24

1       Section 6965. A. The Insurance Commissioner shall have power  
2 to examine and investigate into the affairs of every pharmacy  
3 benefits manager (PBM) engaged in pharmacy benefits management in  
4 this state in order to determine whether such entity is in  
5 compliance with the Patient's 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)~~ twenty (20) 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.

SECTION 4. AMENDATORY Section 9, Chapter 426, O.S.L.

2019 (36 O.S. Supp. 2020, Section 6966), is amended to read as follows:

Section 6966. A. The Insurance Commissioner shall provide for the receiving and processing of individual complaints alleging violations of the provisions of the Patient's Right to Pharmacy Choice Act.

B. The Commissioner shall establish a Patient's Right to Pharmacy Choice Advisory Committee to advise the Commissioner and serve at his or her discretion. The Advisory Committee shall review complaints, ~~hold hearings, subpoena witnesses and records, initiate prosecution, reprimand, place on probation, suspend, revoke and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each count for which~~ alleging any pharmacy benefits manager (PBM) has violated a provision of ~~this act~~ the Patient's Right to Pharmacy Choice Act. ~~The Advisory Committee may impose as part of any disciplinary action the payment of costs expended by the Insurance Department for any legal fees and costs including, but not limited to, staff time, salary and travel expense, witness fees and attorney fees.~~ ~~The Advisory Committee may take such actions singly or in combination, as the nature of the violation requires~~ After review, the Advisory Committee shall make a recommendation to the Commissioner as to administrative action to be taken against the



1 pharmacy benefits manager pursuant to subsections B and C of Section  
2 5 of this act.

3 C. The Advisory Committee shall consist of seven (7) persons  
4 appointed as follows:

5 1. Two persons who shall be ~~nominated~~ appointed by the Oklahoma  
6 Pharmacists Association;

7 2. Two consumer members not employed or related to insurance,  
8 pharmacy or PBM ~~nominated~~ appointed by the Office of the Governor;

9 3. Two persons representing the PBM or insurance industry  
10 ~~nominated~~ appointed by the Insurance Commissioner; and

11 4. One person representing the Office of the Attorney General  
12 ~~nominated~~ appointed by the Attorney General.

13 D. Committee members shall be appointed for terms of five (5)  
14 years; provided, that of the members first appointed, the two  
15 members appointed by the Office of the Governor shall serve for one  
16 (1) year, the two members appointed by the Oklahoma Pharmacists  
17 Association shall serve for two (2) years, the two members appointed  
18 by the Insurance Commissioner shall serve for three (3) years and  
19 the one member appointed by the Attorney General shall serve for  
20 four (4) years. The terms of the members of the Advisory Committee  
21 shall expire on the thirtieth day of June of the year designated for  
22 the expiration of the term for which appointed, but the member shall  
23 serve until a qualified successor has been duly appointed. No  
24 person shall be appointed to serve more than two consecutive terms.

1       ~~E. Hearings shall be held in the Insurance Commissioner's~~  
2 ~~offices or at such other place as the Insurance Commissioner may~~  
3 ~~deem convenient.~~

4       ~~F. The Insurance Commissioner shall issue and serve upon the~~  
5 ~~PBM a statement of the charges and a notice of hearing in accordance~~  
6 ~~with the Administrative Procedures Act, Sections 250 through 323 of~~  
7 ~~Title 75 of the Oklahoma Statutes.~~

8       ~~G. At the time and place fixed for a hearing, the PBM shall~~  
9 ~~have an opportunity to be heard and to show cause why the Insurance~~  
10 ~~Commissioner or his or her duly appointed hearing examiner should~~  
11 ~~not revoke or suspend the PBM's license and levy administrative~~  
12 ~~finer for each violation. Upon good cause shown, the Commissioner~~  
13 ~~shall permit any person to intervene, appear and be heard at the~~  
14 ~~hearing by counsel or in person.~~

15       ~~H. All hearings will be public and held in accordance with, and~~  
16 ~~governed by, Sections 250 through 323 of Title 75 of the Oklahoma~~  
17 ~~Statutes.~~

18       ~~I. The Insurance Commissioner, upon written request reasonably~~  
19 ~~made by the licensed PBM affected by the hearing and at such PBM's~~  
20 ~~expense shall cause a full stenographic record of the proceedings to~~  
21 ~~be made by a competent court reporter.~~

22       ~~J. If the Insurance Commissioner determines, based on an~~  
23 ~~investigation of complaints, that a PBM has engaged in violations of~~  
24 ~~this act with such frequency as to indicate a general business~~

~~practice and that such PBM should be subjected to closer supervision with respect to such practices, the Insurance Commissioner may require the PBM to file a report at such periodic intervals as the Insurance Commissioner deems necessary.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may censure, suspend, revoke or refuse to renew a license of or levy a civil penalty against any person licensed under the insurance laws of this state for any violation of the Patient's Right to Pharmacy Choice Act, Section 6958 et seq. of Title 36 of the Oklahoma Statutes.

B. The license of a pharmacy benefits manager may be censured, suspended or revoked if the Commissioner finds, after notice and opportunity for a hearing, that the pharmacy benefits manager violated one or more provisions of the Patient's Right to Pharmacy Choice Act.

C. In addition to or in lieu of any censure, suspension or revocation of a license, a pharmacy benefits manager may, after notice and opportunity for a hearing, be subject to a civil fine of not less than One Hundred Dollars (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for each violation. The penalty may be enforced in the same manner in which civil judgments may be enforced.

1 D. The Commissioner shall be authorized to enforce the  
2 provisions of the Patient's Right to Pharmacy Choice Act and impose  
3 any penalty or remedy authorized under the act against a pharmacy  
4 benefits manager under investigation for or charged with a violation  
5 of the act or any provision of Title 36 of the Oklahoma Statutes,  
6 notwithstanding whether the license of the pharmacy benefits manager  
7 has been surrendered or lapsed by operation of law.

8 E. 1. All hearings shall be public and held in accordance with  
9 the Administrative Procedures Act.

10 2. Hearings shall be held at the office of the Insurance  
11 Commissioner or at any other place as the Commissioner may deem  
12 convenient.

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

18 4. The ordinary fees and costs of the hearing examiner  
19 appointed pursuant to Section 319 of Title 36 of the Oklahoma  
20 Statutes may be assessed by the hearing examiner against the  
21 respondent unless the respondent is the prevailing party.

22 F. Any pharmacy benefits manager whose license has been  
23 censured, suspended, revoked or denied renewal, or who has had a  
24 fine levied against him or her, shall have the right of appeal from

1 the final order of the Commissioner, pursuant to Section 318 et seq.  
2 of Title 75 of the Oklahoma Statutes.

3 G. If the Insurance Commissioner determines, based upon an  
4 investigation of complaints, that a pharmacy benefits manager has  
5 engaged in violations of the provisions of the Patient's Right to  
6 Pharmacy Choice Act with such frequency as to indicate a general  
7 business practice, and that the pharmacy benefits manager should be  
8 subjected to closer supervision with respect to such practices, the  
9 Commissioner may require the pharmacy benefits manager to file a  
10 report at any periodic intervals the Commissioner deems necessary.

11 SECTION 6. This act shall become effective November 1, 2021.

12 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
13 February 22, 2021 - DO PASS AS AMENDED  
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