

OKLAHOMA STATE SENATE  
CONFERENCE  
COMMITTEE REPORT

May 19, 2021

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB737

By: McCortney of the Senate and McEntire and Phillips of the House

Title: Health insurance; modifying duties and prohibited acts of pharmacy benefit managers; authorizing Insurance Commissioner to take action on certain licenses; emergency.

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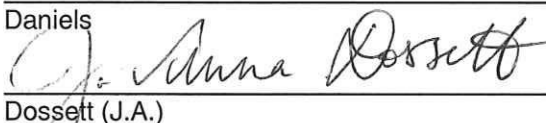
together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,


SENATE CONFEREES:

  
McCortney

  
Daniels  
Dossett (J.A.)

  
Hicks

  
Rosino

  
Simpson

HOUSE CONFEREES:

Conference Committee on Insurance

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED

SENATE BILL NO. 737

By: McCortney of the Senate

and

McEntire and Phillips of  
the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to pharmacy benefits management; amending Section 3, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6960), which relates to definitions; adding definition of provider and spread pricing; deleting definition; amending Section 5, Chapter 426, O.S.L. 2019 (36 O.S. Supp. 2020, Section 6962), which relates to compliance review; updating reference; adding prohibited activities; adding duties of pharmacy benefits managers; authorizing Commissioner to take certain actions on PBM licenses for certain violations; authorizing fine for violation of certain acts; authorizing Insurance Commissioner to enforce Patient's Right to Pharmacy Choice Act and investigate violations of certain acts; specifying that operating without a PBM license is a violation of Patient's Right to Pharmacy Choice Act; specifying certain hearings be conducted pursuant to Administrative Procedures Act; establishing procedures for certain hearings; authorizing full stenographic record of hearing proceedings in certain circumstances; providing for payment of certain costs and fees; authorizing appeal from certain final order of Commissioner; authorizing Commissioner to require certain reporting from PBMs in certain circumstances; providing for codification; and declaring an emergency.

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

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

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

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

10 2. "Health insurer payor" means a health insurance company,  
11 health maintenance organization, union, hospital and medical  
12 services organization or any entity providing or administering a  
13 self-funded health benefit plan;

14 3. "Mail-order pharmacy" means a pharmacy licensed by this  
15 state that primarily dispenses and delivers covered drugs via common  
16 carrier;

17 ~~3.~~ 4. "Pharmacy benefits manager" or "PBM" means a person that  
18 performs pharmacy benefits management and any other person acting  
19 for such person under a contractual or employment relationship in  
20 the performance of pharmacy benefits management for a managed-care  
21 company, nonprofit hospital, medical service organization, insurance  
22 company, third-party payor or a health program administered by a  
23 department of this state;

24

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

4       5. "Provider" means a pharmacy, as defined in Section 353.1 of  
5 Title 59 of the Oklahoma Statutes or an agent or representative of a  
6 pharmacy;

7       ~~5.~~ 6. "Retail pharmacy network" means retail pharmacy providers  
8 contracted with a PBM in which the pharmacy primarily fills and  
9 sells prescriptions via a retail, storefront location;

10       ~~6.~~ 7. "Rural service area" means a five-digit ZIP code in which  
11 the population density is less than one thousand (1,000) individuals  
12 per square mile;

13       ~~7.~~ 8. "Spread pricing" means a prescription drug pricing model  
14 utilized by a pharmacy benefits manager in which the PBM charges a  
15 health benefit plan a contracted price for prescription drugs that  
16 differs from the amount the PBM directly or indirectly pays the  
17 pharmacy or pharmacist for providing pharmacy services;

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

21       ~~9.~~ 10. "Urban service area" means a five-digit ZIP code in  
22 which the population density is greater than three thousand (3,000)  
23 individuals per square mile.

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

Section 6962. A. The Oklahoma Insurance Department shall  
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

1 using the same generic product identifier or generic code number  
2 paid to the PBM-owned or PBM-affiliated pharmacy;

3 4. Deny a ~~pharmacy~~ provider the opportunity to participate in  
4 any pharmacy network at preferred participation status if the  
5 ~~pharmacy~~ provider is willing to accept the terms and conditions that  
6 the PBM has established for other ~~pharmacies~~ providers as a  
7 condition of preferred network participation status;

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

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

- 15 a. the original claim was submitted fraudulently, or
- 16 b. to correct errors identified in an audit, so long as
- 17 the audit was conducted in compliance with Sections
- 18 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

19 ~~or~~

20 7. Fail to make any payment due to a pharmacy or pharmacist for  
21 covered services properly rendered in the event a PBM terminates a  
22 ~~pharmacy or pharmacist~~ provider from a pharmacy benefits manager  
23 network;  
24

1       8. Conduct or practice spread pricing, as defined in Section 1  
2 of this act, in this state; or

3       9. Charge a pharmacist or pharmacy a fee related to  
4 participation in a retail pharmacy network including but not limited  
5 to the following:

- 6           a. an application fee,
- 7           b. an enrollment or participation fee,
- 8           c. a credentialing or re-credentialing fee,
- 9           d. a change of ownership fee, or
- 10          e. a fee for the development or management of claims  
11           processing services or claims payment services.

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

15       1. A PBM contract shall:

- 16           a. not restrict, directly or indirectly, any pharmacy  
17           that dispenses a prescription drug from informing, or  
18           penalize such pharmacy for informing, an individual of  
19           any differential between the individual's out-of-  
20           pocket cost or coverage with respect to acquisition of  
21           the drug and the amount an individual would pay to  
22           purchase the drug directly, and
- 23           b. ensure that any entity that provides pharmacy benefits  
24           management services under a contract with any such

1 health plan or health insurance coverage does not,  
2 with respect to such plan or coverage, restrict,  
3 directly or indirectly, a pharmacy that dispenses a  
4 prescription drug from informing, or penalize such  
5 pharmacy for informing, a covered individual of any  
6 differential between the individual's out-of-pocket  
7 cost under the plan or coverage with respect to  
8 acquisition of the drug and the amount an individual  
9 would pay for acquisition of the drug without using  
10 any health plan or health insurance coverage.

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

18 ~~3. D.~~ D. A pharmacy benefits manager shall ~~establish:~~

19 1. Establish and maintain an electronic claim inquiry  
20 processing system using the National Council for Prescription Drug  
21 Programs' current standards to communicate information to pharmacies  
22 submitting claim inquiries;

23 2. Fully disclose to insurers, self-funded employers, unions or  
24 other PBM clients the existence of the respective aggregate



prescription drug discounts, rebates received from drug  
manufacturers and pharmacy audit recoupments;

3. Provide the Insurance Commissioner, insurers, self-funded  
employer plans and unions unrestricted audit rights of and access to  
the respective PBM pharmaceutical manufacturer and provider  
contracts, plan utilization data, plan pricing data, pharmacy  
utilization data and pharmacy pricing data;

4. Maintain, for no less than three (3) years, documentation of  
all network development activities including but not limited to  
contract negotiations and any denials to providers to join networks.  
This documentation shall be made available to the Commissioner upon  
request;

5. Report to the Commissioner, on a quarterly basis for each  
health insurer payor, on the following information:

- a. the aggregate amount of rebates received by the PBM,
- b. the aggregate amount of rebates distributed to the  
appropriate health insurer payor,
- c. the aggregate amount of rebates passed on to the  
enrollees of each health insurer payor at the point of  
sale that reduced the applicable deductible,  
copayment, coinsure or other cost sharing amount of  
the enrollee,
- d. the individual and aggregate amount paid by the health  
insurer payor to the PBM for pharmacy services

1                   itemized by pharmacy, drug product and service  
2                   provided, and  
3           e.    the individual and aggregate amount a PBM paid a  
4                   provider for pharmacy services itemized by pharmacy,  
5                   drug product and service provided.

6           SECTION 3.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section 6966.1 of Title 36, unless there  
8 is created a duplication in numbering, reads as follows:

9           A.   The Insurance Commissioner may censure, suspend, revoke or  
10 refuse to issue or renew a license of or levy a civil penalty  
11 against any person licensed under the insurance laws of this state  
12 for any violation of the Patient's Right to Pharmacy Choice Act,  
13 Section 6958 et seq. of Title 6 of the Oklahoma Statutes.

14           B.   1.   If the Commissioner finds, after notice and opportunity  
15 for hearing, that a pharmacy benefits manager (PBM) violated one or  
16 more provisions of the Patient's Right to Pharmacy Choice Act, the  
17 Pharmacy Audit Integrity Act or the provisions of Sections 357  
18 through 360 of Title 59 of the Oklahoma Statutes, the PBM may be  
19 censured, his or her license may be suspended or revoked and a  
20 penalty or remedy authorized by this act may be imposed.

21           2.   In addition to or in lieu of any censure, suspension or  
22 revocation of a license, a PBM may be subject to a civil fine of not  
23 less than One Hundred Dollars (\$100.00) and not greater than Ten  
24 Thousand Dollars (\$10,000.00) for each violation of the provisions

1 of the Patient's Right to Pharmacy Choice Act, the Pharmacy Audit  
2 Integrity Act or the provisions of Sections 357 through 360 of Title  
3 59 of the Oklahoma Statutes, following notice and an opportunity for  
4 a hearing.

5 C. Notwithstanding whether the license of a PBM has been  
6 issued, suspended, revoked, surrendered or lapsed by operation of  
7 law, the Commissioner is hereby authorized to enforce the provisions  
8 of the Patient's Right to Pharmacy Choice Act and impose any penalty  
9 or remedy authorized under the Act against a PBM under investigation  
10 for or charged with a violation of the Patient's Right to Pharmacy  
11 Choice Act, the Pharmacy Audit Integrity Act, the provisions of  
12 Sections 357 through 360 of Title 59 of the Oklahoma Statutes or any  
13 provision of the insurance laws of this state.

14 D. Each day that a PBM conducts business in this state without  
15 a license from the Insurance Department shall be deemed a violation  
16 of the Patient's Right to Pharmacy Choice Act.

17 E. 1. All hearings conducted by the Insurance Department  
18 pursuant to this section shall be public and held in accordance with  
19 the Administrative Procedures Act.

20 2. Hearings shall be held at the office of the Insurance  
21 Commissioner or any other place the Commissioner may deem  
22 convenient.

23 3. The Commissioner, upon written request from a PBM affected  
24 by the hearing, shall cause a full stenographic record of the

1 proceedings to be made by a competent court reporter. This record  
2 shall be at the expense of the PBM.

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

7 F. Any PBM whose license has been censured, suspended, revoked  
8 or denied renewal or who has had a fine levied against him or her  
9 shall have the right of appeal from the final order of the Insurance  
10 Commissioner, pursuant to Section 318 et seq. of Title 75 of the  
11 Oklahoma Statutes.

12 G. If the Insurance Commissioner determines, based upon an  
13 investigation of complaints, that a PBM has engaged in violations of  
14 the provisions of the Patient's Right to Pharmacy Choice Act with  
15 such frequency as to indicate a general business practice, and that  
16 the PBM should be subjected to closer supervision with respect to  
17 those practices, the Commissioner may require the PBM to file a  
18 report at any periodic interval the Commissioner deems necessary.

19 SECTION 4. It being immediately necessary for the preservation  
20 of the public peace, health or safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

23  
24 58-1-2211

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