

1 **SENATE FLOOR VERSION**

2 February 20, 2025

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 773

6 By: Gollihare and Jech

7 An Act relating to pharmacy benefit managers;
8 amending 36 O.S. 2021, Sections 6960, as last amended
9 by Section 1, Chapter 306, O.S.L. 2024, 6962, as last
10 amended by Section 2, Chapter 306, O.S.L. 2024, 6965,
11 as last amended by Section 3, Chapter 306, O.S.L.
12 2024, and Section 3, Chapter 38, O.S.L. 2022, as last
13 amended by Section 4, Chapter 306, O.S.L. 2024 (36
14 O.S. Supp. 2024, Sections 6960, 6962, 6965, and
15 6966.1), which relate to definitions, compliance
16 review, and power, authority to investigate, examine,
17 and enforce, and violations, penalties, and hearings;
18 modifying definitions; prohibiting certain
19 circumstances; requiring nonpayment under providing
20 venue for certain court proceeding; allowing Attorney
21 General to obtain certain information; extending
22 certain duties; allowing certain request for a court
23 reporter; requiring certain refund of certain costs
24 by Attorney General; establishing certain fines and
penalties; updating statutory references; and
providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6960, as
last amended by Section 1, Chapter 306, O.S.L. 2024 (36 O.S. Supp.
2024, Section 6960), is amended to read as follows:

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

1 1. "Covered entity" means a nonprofit hospital or medical
2 service organization, for-profit hospital or medical service
3 organization, insurer, health benefit plan, health maintenance
4 organization, health program administered by the state in the
5 capacity of providing health coverage, or an employer, labor union,
6 or other group of persons that provides health coverage to persons
7 in this state. This term does not include a health plan that
8 provides coverage only for accidental injury, specified disease,
9 hospital indemnity, disability income, or other limited benefit
10 health insurance policies and contracts that do not include
11 prescription drug coverage;

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

15 3. "Health insurer payor" means a health insurance company,
16 health maintenance organization, union, hospital and medical
17 services organization or any entity providing or administering a
18 self-funded health benefit plan;

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

22 5. "Pharmacy benefits manager" or "PBM" means a person,
23 business, or other entity that performs pharmacy benefits
24 management. The term shall include any business or entity licensed

1 by the Insurance Department to perform PBM services, or a person or
2 entity acting on behalf of a PBM in a contractual or employment
3 relationship in the performance of pharmacy benefits management for
4 a managed care company, nonprofit hospital, medical service
5 organization, insurance company, third-party payor or a health
6 program administered by a department of this state;

7 6. "Pharmacy benefits management" means a service provided to
8 covered entities to facilitate the provisions of prescription drug
9 benefits to covered individuals within the state, including, but not
10 limited to, negotiating pricing and other terms with drug
11 manufacturers and providers. Pharmacy benefits management may
12 include any or all of the following services:

- 13 a. claims processing, retail network management, and
14 payment of claims to pharmacies for prescription drugs
15 dispensed to covered individuals,
- 16 ~~b. administration or management of pharmacy discount~~
17 ~~cards or programs,~~
- 18 ~~e.~~ clinical formulary development and management
19 services, or
- 20 ~~d.~~ c. rebate contracting and administration;

21 7. "Provider" means a pharmacy, as defined in Section 353.1 of
22 Title 59 of the Oklahoma Statutes or an agent or representative of a
23 pharmacy;

24

1 8. "Retail pharmacy network" means retail pharmacy providers
2 contracted with a PBM in which the pharmacy primarily fills and
3 sells prescriptions via a retail, storefront location;

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

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

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

15 12. "Urban service area" means a five-digit ZIP code in which
16 the population density is greater than three thousand (3,000)
17 individuals per square mile.

18 B. Nothing in the definitions of pharmacy benefits manager or
19 pharmacy benefits management as such terms are defined in the
20 Patient's Right to Pharmacy Choice Act, the Pharmacy Audit Integrity
21 Act, or Sections 357 through 360 of Title 59 of the Oklahoma
22 Statutes shall be construed to deem the following entities to be a
23 pharmacy benefits manager:
24

1 1. An employer of its own self-funded health benefit plan,
2 except, to the extent permitted by applicable law, where the
3 employer without the utilization of a third party and unrelated to
4 the employer's own pharmacy:

- 5 a. negotiates directly with drug manufacturers,
- 6 b. processes claims on behalf of its members, or
- 7 c. manages its own retail network of pharmacies; or

8 2. A pharmacy that provides a patient with a discount card or
9 program that is for exclusive use at the pharmacy offering the
10 discount.

11 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6962, as
12 last amended by Section 2, Chapter 306, O.S.L. 2024 (36 O.S. Supp.
13 2024, Section 6962), is amended to read as follows:

14 Section 6962. A. The Attorney General shall review and approve
15 retail pharmacy network access for all pharmacy benefits managers
16 (PBMs) to ensure compliance with Section 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 provider the opportunity to participate in any
14 pharmacy network at preferred participation status if the provider
15 is willing to accept the terms and conditions that the PBM has
16 established for other providers as a condition of preferred network
17 participation status;

18 5. Deny, limit or terminate a provider'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:

- 1 a. the original claim was submitted fraudulently, or
2 b. to correct errors identified in an audit, so long as
3 the audit was conducted in compliance with Sections
4 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

8 8. Fail to make any payment due to a pharmacy or pharmacist for
9 covered services properly rendered in the event a PBM terminates its
10 contract with a plan sponsor or insurer;

11 9. Conduct or practice spread pricing, as defined in Section
12 6960 of this title, in this state; or

13 ~~9.~~ 10. Charge a pharmacist or pharmacy a fee related to
14 participation in a retail pharmacy network including, but not
15 limited to, the following:

- 16 a. an application fee,
17 b. an enrollment or participation fee,
18 c. a credentialing or re-credentialing fee,
19 d. a change of ownership fee, or
20 e. a fee for the development or management of claims
21 processing services or claims payment services.

22 C. The prohibitions under this section shall apply to contracts
23 between pharmacy benefits managers and providers for participation
24 in retail pharmacy networks.

1 1. A PBM contract shall:

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

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

21 2. A pharmacy benefits manager's contract with a provider shall
22 not prohibit, restrict, or limit disclosure of information or
23 documents to the Attorney General, law enforcement or state and
24 federal governmental officials investigating or examining a

1 complaint or conducting a review of a pharmacy benefits manager's
2 compliance with the requirements under the Patient's Right to
3 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
4 357 through 360 of Title 59 of the Oklahoma Statutes.

5 D. A pharmacy benefits manager shall:

6 1. Establish and maintain an electronic claim inquiry
7 processing system using the National Council for Prescription Drug
8 ~~Programs'~~ Programs's current standards to communicate information to
9 pharmacies submitting claim inquiries;

10 2. Fully disclose to insurers, self-funded employers, unions or
11 other PBM clients the existence of the respective aggregate
12 prescription drug discounts, rebates received from drug
13 manufacturers and pharmacy audit recoupments;

14 3. Provide the Attorney General, insurers, self-funded employer
15 plans and unions unrestricted audit rights of and access to the
16 respective PBM pharmaceutical manufacturer and provider contracts,
17 plan utilization data, plan pricing data, pharmacy utilization data
18 and pharmacy pricing data;

19 4. Maintain, for no less than three (3) years, documentation of
20 all network development activities including, l but not limited to, l
21 contract negotiations and any denials to providers to join networks.
22 This documentation shall be made available to the Attorney General
23 upon request; and
24

1 5. Report to the Attorney General, on a quarterly basis for
2 each health insurer payor, on the following information:

3 a. the aggregate amount of rebates received by the PBM,

4 b. the aggregate amount of rebates distributed to the
5 appropriate health insurer payor,

6 c. the aggregate amount of rebates passed on to the
7 enrollees of each health insurer payor at the point of
8 sale that reduced the applicable deductible,
9 copayment, coinsure or other cost sharing amount of
10 the enrollee,

11 d. the individual and aggregate amount paid by the health
12 insurer payor to the PBM for pharmacy services
13 itemized by pharmacy, drug product and service
14 provided, and

15 e. the individual and aggregate amount a PBM paid a
16 provider for pharmacy services itemized by pharmacy,
17 drug product and service provided.

18 E. Nothing in the Patient's Right to Pharmacy Choice Act shall
19 prohibit the Attorney General from requesting and obtaining detailed
20 data, including raw data, in response to the information provided by
21 a PBM in the quarterly reports required by this section. The
22 Attorney General may alter the frequency of the reports required by
23 this section at his or her sole discretion.

1 F. The Attorney General may promulgate rules to implement the
2 provisions of the Patient's Right to Pharmacy Choice Act, the
3 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
4 59 of the Oklahoma Statutes.

5 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6965, as
6 last amended by Section 3, Chapter 306, O.S.L. 2024 (36 O.S. Supp.
7 2024, Section 6965), is amended to read as follows:

8 Section 6965. A. The Attorney General shall have power and
9 authority to examine and investigate the affairs of every pharmacy
10 benefits manager (PBM) engaged in pharmacy benefits management in
11 this state in order to determine whether such entity is in
12 compliance with the Patient's Right to Pharmacy Choice Act, the
13 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
14 59 of the Oklahoma Statutes.

15 B. The Attorney General shall have the power and authority to
16 subpoena witnesses and records, whether prior to or during an
17 investigation or prosecution of a complaint, from any relevant
18 entity or persons to ensure compliance with the Patient's Right to
19 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
20 357 through 360 of Title 59 of the Oklahoma Statutes.

21 C. All PBM files and records shall be subject to examination by
22 the Attorney General or by duly appointed designees. The Attorney
23 General, authorized employees and examiners shall have access to any
24 of a PBM's files and records that may relate to a particular

1 complaint under investigation or to an inquiry or examination by the
2 Attorney General.

3 D. Every officer, director, employee or agent of the PBM, upon
4 receipt of any inquiry from the Attorney General, shall, within
5 twenty (20) days from the date the inquiry is sent, furnish the
6 Attorney General with an adequate response to the inquiry.

7 E. When making an examination under this section, the Attorney
8 General may retain subject matter experts, attorneys, appraisers,
9 independent actuaries, independent certified public accountants or
10 an accounting firm or individual holding a permit to practice public
11 accounting, certified financial examiners or other professionals and
12 specialists as examiners, the cost of which shall be borne by the
13 PBM that is the subject of the examination.

14 F. 1. Protected health information (PHI) held by a PBM shall
15 be provided at the request of the Attorney General for the purpose
16 of conducting investigations into potential violations of state laws
17 and regulations related to the PBM. Disclosure of protected health
18 information shall be limited to the extent necessary for the
19 investigation and enforcement of state law.

20 2. All disclosures of protected health information shall be
21 made in compliance with all applicable federal and state privacy
22 laws, including the Health Insurance Portability and Accountability
23 Act of 1996 (HIPAA), and other relevant laws protecting the privacy
24 and confidentiality of health information.

1 3. Any protected health information obtained for an
2 investigation shall be handled and maintained per applicable federal
3 and state privacy laws and regulations, including HIPAA.

4 4. Unauthorized disclosure of protected health information
5 obtained during an investigation is strictly prohibited and subject
6 to legal penalties.

7 G. 1. If the Attorney General, after notice and opportunity
8 for hearing, finds that any PBM operating within this state has not
9 fully cooperated with an investigation or inquiry conducted by the
10 Attorney General related to compliance with the Patient's Right to
11 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
12 357 through 360 of Title 59 of the Oklahoma Statutes, the Attorney
13 General may instruct the Insurance Commissioner that the PBM be
14 censured or his or her license be suspended or revoked. If the
15 Attorney General makes such instruction, the Commissioner shall
16 enforce the instructed action within thirty (30) days.

17 2. In addition to or in lieu of any censure, suspension, or
18 revocation by the Commissioner, the Attorney General may levy a
19 civil or administrative fine not less than One Hundred Dollars
20 (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for
21 each violation of this subsection and assess any other penalty or
22 remedy authorized by this ~~act~~ section and Sections 6960, 6962,
23 6966.1, 6966.2, and 6967 of this title. For purposes of this
24

1 section, each day a PBM fails to comply with an investigation or
2 inquiry may be considered a separate violation.

3 H. The proper venue to compel compliance with a subpoena of a
4 person or entity under this section shall be in the Oklahoma County
5 District Court.

6 I. No provision of this state's law shall be construed to
7 prohibit the Attorney General from obtaining any information or
8 documentation pertaining to prescription drug transactions
9 including, but not limited to, data, statements, testimonies,
10 contracts, communications, provider manuals, or any other
11 documentation or materials, whether related to discount programs,
12 loyalty programs, or otherwise. The duty to provide cooperation as
13 set forth in this section shall extend to all PBMs, insurers,
14 auditors, employers, vendors, or any other individuals or entities
15 acting on behalf of or in collaboration with a PBM.

16 SECTION 4. AMENDATORY Section 3, Chapter 38, O.S.L.
17 2022, as last amended by Section 4, Chapter 306, O.S.L. 2024 (36
18 O.S. Supp. 2024, Section 6966.1), is amended to read as follows:

19 Section 6966.1. A. The Insurance Commissioner may censure,
20 suspend, revoke, or refuse to issue or renew a license of or levy a
21 civil penalty against any person licensed under the insurance laws
22 of this state for any violation of the Patient's Right to Pharmacy
23 Choice Act, Section 6958 et seq. of this title.

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1 B. 1. If the Attorney General finds, after notice and
2 opportunity for hearing, that a pharmacy benefits manager (PBM)
3 violated one or more provisions of the Patient's Right to Pharmacy
4 Choice Act, the Pharmacy Audit Integrity Act or the provisions of
5 Sections 357 through 360 of Title 59 of the Oklahoma Statutes, the
6 Attorney General may instruct the Insurance Commissioner that the
7 PBM be censured or his or her license be suspended or revoked. If
8 the Attorney General makes such instruction, the Commissioner shall
9 enforce such action within thirty (30) days.

10 2. In addition to or in lieu of any censure or suspension or
11 revocation of a license by the Commissioner, the Attorney General
12 may levy a civil or administrative fine not less than One Hundred
13 Dollars (\$100.00) and not greater than Ten Thousand Dollars
14 (\$10,000.00) for each violation of the provisions of the Patient's
15 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act or
16 the provisions of Sections 357 through 360 of Title 59 of the
17 Oklahoma Statutes.

18 3. The Attorney General may order restitution for economic loss
19 suffered by pharmacies or patients for violations of the Patient's
20 Right to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, or
21 the provisions of Sections 357 through 360 of Title 59 of the
22 Oklahoma Statutes.

23 C. Notwithstanding whether the license of a PBM has been
24 issued, suspended, revoked, surrendered or lapsed by operation of

1 law, the Attorney General is hereby 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 PBM under
4 investigation for or charged with a violation of the Patient's Right
5 to Pharmacy Choice Act, the Pharmacy Audit Integrity Act, the
6 provisions of Sections 357 through 360 of Title 59 of the Oklahoma
7 Statutes or any provision of the insurance laws of this state.

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

11 E. 1. All hearings conducted by the Office of the Attorney
12 General pursuant to this section shall be public and held in
13 accordance with the Administrative Procedures Act.

14 2. Hearings shall be held at the Office of the Attorney General
15 or any other place the Attorney General may deem convenient.

16 3. The Attorney General, upon written request from a PBM
17 affected by the hearing, shall cause a full stenographic record of
18 the proceedings to be made by a competent court reporter. This
19 record shall be at the expense of the PBM. The Attorney General may
20 request a court reporter without a request from a PBM, which shall
21 be at the cost of the Office of the Attorney General unless the
22 Attorney General is the prevailing party in litigation following a
23 final order.

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1 4. The ordinary fees and costs of the hearing examiner
2 appointed pursuant to Section 319 of this title may be assessed by
3 the hearing examiner against the respondent unless the respondent is
4 the prevailing party.

5 F. 1. Any PBM whose license has been censured, suspended,
6 revoked, ~~or~~ denied renewal, or who has had monetary damages or a
7 fine levied against him or her shall have the right of appeal from
8 the final order of the Attorney General, pursuant to Section 318 et
9 seq. of Title 75 of the Oklahoma Statutes.

10 2. Any monetary damages, administrative fines, or court costs
11 owed by the PBM resulting from any appeal of a final order of the
12 Attorney General pursuant to Section 318 of Title 75 of the Oklahoma
13 Statutes shall be placed in a holding account with the Office of the
14 Attorney General within thirty (30) days of the issuance of the
15 final order.

16 3. If the PBM prevails on every issue raised in the appeal of a
17 final order of the Attorney General pursuant to Section 318 of Title
18 75 of the Oklahoma Statutes, the Attorney General shall refund all
19 monies related to the appeal at issue and paid by the PBM within
20 sixty (60) days of the expiration of the appeal deadlines for the
21 Office of the Attorney General.

22 4. Any instance in which a PBM fails to pay monies owed as a
23 result of a final order or an appeal of a final order within thirty
24 (30) days of the issuance of the final order shall be considered a

1 separate violation of the provisions of Sections 6958 through 6969
2 of this title and Sections 356 through 356.5 and 357 through 360 of
3 Title 59 of the Oklahoma Statutes.

4 5. The PBM shall be assessed a fine of Ten Thousand Dollars
5 (\$10,000.00) per calendar day for each day the PBM fails to comply
6 with this section.

7 6. A PBM that fails to comply with this section for more than
8 six (6) months shall have its license to operate in this state
9 suspended for the duration of time it takes the PBM to comply with
10 this section.

11 G. If the Attorney General determines, based upon an
12 investigation of complaints, that a PBM has engaged in violations of
13 the provisions of the Patient's Right to Pharmacy Choice Act, the
14 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
15 59 of the Oklahoma Statutes with such frequency as to indicate a
16 general business practice, and that the PBM should be subjected to
17 closer supervision with respect to those practices, the Attorney
18 General may require the PBM to file a report at any periodic
19 interval the Attorney General deems necessary.

20 H. 1. The Attorney General shall have the authority to collect
21 all fines, penalties, restitution, and interest thereon pursuant to
22 the provisions of the Patient's Right to Pharmacy Choice Act, the
23 Pharmacy Audit Integrity Act, and the provisions of Sections 357
24 through 360 of Title 59 of the Oklahoma Statutes, or any other

1 charge, cause of action, prelitigation settlement, or other
2 settlement that requires the recovery of money as a result of
3 violations of the Patient's Right to Pharmacy Choice Act. Funds
4 collected by the Attorney General pursuant to the Patient's Right to
5 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
6 357 through 360 of Title 59 of the Oklahoma Statutes shall be
7 deposited into the Attorney General's Pharmacy Benefits Manager
8 Enforcement Revolving Fund created in Section ~~5 of this act~~ 6966.2
9 of this title.

10 2. Costs of investigation, litigation, attorney fees, and other
11 expenses incurred shall be retained by the Office of the Attorney
12 General. Remaining funds shall be distributed to pharmacists,
13 patients, or other injured parties as determined by the Attorney
14 General.

15 3. The Attorney General shall promulgate rules for the
16 distribution of funds pursuant to this subsection.

17 SECTION 5. This act shall become effective November 1, 2025.

18 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND INSURANCE
19 February 20, 2025 - DO PASS AS AMENDED BY CS
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