

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

SENATE BILL 773

By: Gollihare

AS INTRODUCED

An Act relating to pharmacy benefit managers; amending 36 O.S. 2021, Sections 6960, as last amended by Section 1, Chapter 306, O.S.L. 2024, 6962, as last amended by Section 2, Chapter 306, O.S.L. 2024, and 6965, as last amended by Section 3, Chapter 306, O.S.L. 2024 (36 O.S. Supp. 2024, Sections 6960, 6962, and 6965), which relate to definitions, compliance review, and power and authority to investigate, examine, and enforce; modifying definitions; prohibiting certain circumstances; requiring nonpayment under providing venue for certain court proceeding; allowing Attorney General to obtain certain information; extending certain duties; 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. "Covered entity" means a nonprofit hospital or medical service organization, for-profit hospital or medical service organization, insurer, health benefit plan, health maintenance

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

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

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

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

19 5. "Pharmacy benefits manager" or "PBM" means a person,
20 business, or other entity that performs pharmacy benefits
21 management. The term shall include a person or entity acting on
22 behalf of a PBM in a contractual or employment relationship in the
23 performance of pharmacy benefits management for a managed care
24 company, nonprofit hospital, medical service organization, insurance

1 company, third-party payor or a health program administered by a
2 department of this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6962. A. The Attorney General shall review and approve retail pharmacy network access for all pharmacy benefits managers (PBMs) to ensure compliance with Section 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;

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

8 4. Deny a provider the opportunity to participate in any
9 pharmacy network at preferred participation status if the provider
10 is willing to accept the terms and conditions that the PBM has
11 established for other providers as a condition of preferred network
12 participation status;

13 5. Deny, limit or terminate a provider's contract based on
14 employment status of any employee who has an active license to
15 dispense, despite probation status, with the State Board of
16 Pharmacy;

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

- 20 a. the original claim was submitted fraudulently, or
- 21 b. to correct errors identified in an audit, so long as
- 22 the audit was conducted in compliance with Sections
- 23 356.2 and 356.3 of Title 59 of the Oklahoma Statutes;

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

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

7 9. Conduct or practice spread pricing, as defined in Section
8 6960 of this title, in this state; or

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

- 12 a. an application fee,
- 13 b. an enrollment or participation fee,
- 14 c. a credentialing or re-credentialing fee,
- 15 d. a change of ownership fee, or
- 16 e. a fee for the development or management of claims
17 processing services or claims payment services.

18 C. The prohibitions under this section shall apply to contracts
19 between pharmacy benefits managers and providers for participation
20 in retail pharmacy networks.

21 1. A PBM contract shall:

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

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

17 2. A pharmacy benefits manager's contract with a provider shall
18 not prohibit, restrict, or limit disclosure of information or
19 documents to the Attorney General, law enforcement or state and
20 federal governmental officials investigating or examining a
21 complaint or conducting a review of a pharmacy benefits manager's
22 compliance with the requirements under the Patient's Right to
23 Pharmacy Choice Act, the Pharmacy Audit Integrity Act, and Sections
24 357 through 360 of Title 59 of the Oklahoma Statutes.

1 D. A pharmacy benefits manager shall:

2 1. Establish and maintain an electronic claim inquiry
3 processing system using the National Council for Prescription Drug
4 Programs' current standards to communicate information to pharmacies
5 submitting claim inquiries;

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

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

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

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

- 22 a. the aggregate amount of rebates received by the PBM,
- 23 b. the aggregate amount of rebates distributed to the
24 appropriate health insurer payor,

- 1 c. the aggregate amount of rebates passed on to the
2 enrollees of each health insurer payor at the point of
3 sale that reduced the applicable deductible,
4 copayment, coinsure or other cost sharing amount of
5 the enrollee,
- 6 d. the individual and aggregate amount paid by the health
7 insurer payor to the PBM for pharmacy services
8 itemized by pharmacy, drug product and service
9 provided, and
- 10 e. the individual and aggregate amount a PBM paid a
11 provider for pharmacy services itemized by pharmacy,
12 drug product and service provided.

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

19 F. The Attorney General may promulgate rules to implement the
20 provisions of the Patient's Right to Pharmacy Choice Act, the
21 Pharmacy Audit Integrity Act, and Sections 357 through 360 of Title
22 59 of the Oklahoma Statutes.

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

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

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

17 C. All PBM files and records shall be subject to examination by
18 the Attorney General or by duly appointed designees. The Attorney
19 General, authorized employees and examiners shall have access to any
20 of a PBM's files and records that may relate to a particular
21 complaint under investigation or to an inquiry or examination by the
22 Attorney General.

23 D. Every officer, director, employee or agent of the PBM, upon
24 receipt of any inquiry from the Attorney General, shall, within

1 twenty (20) days from the date the inquiry is sent, furnish the
2 Attorney General with an adequate response to the inquiry.

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

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

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

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

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

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

14 2. In addition to or in lieu of any censure, suspension, or
15 revocation by the Commissioner, the Attorney General may levy a
16 civil or administrative fine not less than One Hundred Dollars
17 (\$100.00) and not greater than Ten Thousand Dollars (\$10,000.00) for
18 each violation of this subsection and assess any other penalty or
19 remedy authorized by this act. For purposes of this section, each
20 day a PBM fails to comply with an investigation or inquiry may be
21 considered a separate violation.

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

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

11 SECTION 4. This act shall become effective November 1, 2025.

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